



Import VAT in UK - HMRC brief on incorrect import VAT deduction

1 HMRC focusses on import VAT deduction in UK

Be alert as regards input VAT deduction of import VAT in the UK: In its brief of 11.04.2019, HMRC points out that import VAT is often incorrectly deducted by unauthorized taxable persons (non-owners). HMRC's brief explicitly describes this incorrect procedure by using the example of toll operators and then sets out how it should be correctly done. HMRC has also announced strict implementation and transitional arrangements. As soon as the UK ceases to be part of the European Union territory due to Brexit, all transactions involving the import of goods from the EU into the UK will also be affected. Business operators should review their business processes related to imports into the UK and adjust them if necessary.

2 Importation VAT as deductible input tax

In the UK, as in Germany, it is normally only the taxable person who owns the imported goods at the time of import (=owner), who can claim the import VAT as input tax. However, import VAT is often not declared and paid by the person who is entitled to deduct it. HMRC focuses on two main constellations: toll operators and cases in which the ownership and title passes to the new owner shortly before importation. Most toll operators share a similar business model: they import goods into the UK, process them and distribute them on behalf of the manufacturer and owner. At no time do they acquire ownership or the power to dispose of the goods for VAT purposes. Nevertheless, the toll operator usually acts as the customs declarant for the import declaration of the goods to be processed and designates himself as the "importer of record". This means that he declares the goods in his own name for import and pays the import VAT to HMRC. This import VAT is then stated on his monthly import VAT certificate C79. Import VAT may only be claimed as input tax in the



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UK on the basis of the C79 certificate. The same applies to constellations in which a supplier transfers ownership and power of disposal of his goods to his customer shortly before they are imported into the UK and where he still acts as "importer of record" during the customs declaration process.

However, the customs declarant is, himself, also liable for the import VAT due – completely independently of the owner or person entitled to dispose of the goods. As a result, the customs declarant may, and often does, pay the import VAT to HMRC himself. This gives rise to the constellations described above, in which the person who declares the goods to customs and pays the import VAT indicates the incorrect person as the "importer of record" when making the customs declaration. As a result, this importation and the resulting VAT is not recorded in the required C79 certificate of the person entitled to deduct the import VAT as input tax, but rather, in the C79 certificate of the declarant. Since the customs declarant is charged with the payment of the import VAT and is in possession of the C79 certificate, he claims it as input tax in his British VAT return. This procedure is not correct.

The correct procedure is for the "owner", (in HMRC's examples: manufacturer or customer), who has the right of disposal at the time of importation, to be stated as the "importer of record" in the customs declaration, so that the import VAT is listed in his C79 certificate and where he, as the "owner", claims the import VAT as his input tax. The British VAT law only provides for exceptions in a few instances in which a customs agent established in the UK is engaged. Here, however, strict conditions apply so that the latter may claim the import VAT as input tax instead of the "owner". The "owner" can correctly claim the import VAT either in his British VAT return as input tax or, if he is not subject to a VAT registration obligation due to other transactions rendered in the UK, he can claim it in the input VAT refund procedure.

3 HMRC looks ahead

In cases where British import VAT has been incorrectly claimed, there is a need for correction. This means repayment of the import VAT by the unauthorized non-owner. On the other hand, the owner entitled to deduct input tax can, in principle, only claim his import VAT retroactively within the 4-year limitation period and only if he is in possession of corrected C79 certificates.

However, HMRC does accept that this widespread incorrect practice was generally not intentional, and was, to some extent, also due to the previously unclear provisions. HMRC has therefore granted a transitional period during which the companies concerned can adapt their processes: Only from 15.07.2019 onwards will strict implementation be enforced and import VAT will only be reimbursed to the entitled parties using the correct procedure. As no tax loss would have been incurred if the correct procedure had been followed, HMRC will not pursue unjustified input tax claims from previous reporting periods before 15.07.2019, provided the affected businesses meet all of the following qualifying criteria:

- VAT deductions were made in genuine error, through misinterpretation of the legislation or guidance;
- the owner of the goods would have been entitled to full import VAT recovery; and
- HMRC is satisfied that there has been no VAT deduction by another person.

4 Action required

Tax payers should urgently review and adapt their import processes in the UK. If the above qualifying criteria cannot be substantiated, a retrospective correction should be sought immediately to demonstrate good will in relation to this HMRC brief.