KRESTON INTERNATIONAL

Knowing you.

Kreston VAT News

December, 2017

A global network of independent accounting firms

Follow us on:

Dear reader,
This is the second edition of our Kreston VAT Special Interest Group (SIG) news.

The importance of Value Added Tax (VAT) can hardly be overestimated. It is the largest single tax source for governments, certainly in the European Union. And indirect taxes are becoming more and more popular around the world. The United Arab Emirates has stated that they will implement VAT on 1 January 2018. India introduced its Goods & Services Tax (GST). It replaced some 20 consumption taxes charged by the Centre and the States.

There are also developments in Europe which are very important from a VAT perspective. In October, the European Commission launched plans for the biggest reform of EU VAT rules in a quarter of a century. The United Kingdom is going to leave the European Union. Today no one knows exactly what consequences Brexit will have in terms of VAT and customs. What we do know are the upcoming changes in Swiss VAT Law, effective 1 January 2018. Around 30,000 foreign businesses might be affected and must register for VAT in Switzerland.

All these developments clearly show that it is important for businesses to ensure that they are always fully in control of their VAT position, both in respect of domestic and cross border transactions. Our KRESTON VAT SPECIALISTS will support you.

CONTENTS:

Enjoy reading!

Thomas Lachera, Chair
Kreston VAT Special Interest Group
Kreston Bansbach
thomas.lachera@kreston-bansbach.de

KRESTON INTERNATIONAL Knowing you.

1 Brexit – 'cliff-edge' or smooth exit – the UK's Customs Bill White Paper

On 9 October 2017, the UK government released its Customs Bill white paper. This set out its plans to legislate for customs, VAT and excise systems which the UK will need once it leaves the EU, which is scheduled to happen on 29 March 2019.

The Paper, in summary, sets out two approaches which could be adopted in order to meet the UK's objectives which include its aim to make future UK-EU trade as frictionless as possible in order to avoid a 'cliff-edge' after Brexit. The two approaches are a "highly streamlined customs arrangement" and a "new customs partnership". A "highly streamlined customs arrangement" would involve the introduction of formal customs processes to manage the trade between the UK and the EU, while seeking to minimise additional requirements as far as possible by, for example, negotiating a continuation of there being no requirement to submit entry and exit declarations for goods being moved between the UK and EU and the UK remaining as a member of the Common Transit Convention ('CTC').

Under a "new customs partnership" with the EU, however, the UK would aim to align its approach to its customs border with that of the EU, with the aim of removing the need for a hard border between the UK and the EU. One approach identified would be to share the same Customs tariff for goods as the EU, in order that there is no friction for non-EU organisations in trade with the UK, compared with the EU.

The above approach sets out a number of scenarios which might reduce friction on the Customs procedures at Brexit, but any changes to the current customs, VAT and excise systems will only be known following the conclusion of on-going negotiations. As has been widely reported, these negotiations are not currently at an advanced stage.

Although Brexit will happen in 2019, a transitional period may be negotiated that will allow time for UK and EU businesses to adjust to any new arrangements and to avoid any 'cliff-edge' changes immediately following Brexit.

Though the UK hopes and expects to achieve an agreement with the EU, it is also being prudent in preparing for the possibility of a 'no deal' scenario; and has a contingency plan should no agreement be reached with the EU. Without any agreement, the UK would adopt World Trade Organisation ('WTO') terms which include imposing customs duty and VAT on imports from the EU and vice versa.

With regards to new customs arrangements, media reports give the impression that we are approaching a cliff-edge because there appears to be no progress in negotiations with the EU. As such many believe that there is the possibility that there will be no system to cope with trade when the UK's exit arrives. Despite such doomsday predictions, there is already in fact a customs framework in place, the Union Custom Code ('UCC'), which became law on 1 May 2016 and which could be adopted at Brexit. Exactly what is adopted is subject to negotiations. However, the UK could agree to remain compliant with the UCC which would be consistent with the current design and delivery timescale of the replacement for the system for controlling imports and exports (CHIEF), which is a system called the Customs Declarations Service or "CDS", which is planned for delivery prior to March 2019.

There will inevitably be practical changes which businesses will need to adopt when Brexit arrives and it is likely that we will not know the full extent of what is needed to continue to trade effectively until very much nearer March/April 2019. Transitional arrangements may alleviate some of the issues. However, we would recommend in the meantime that businesses now review their potential risks, in terms of current supply chain models, with a view to putting in place contingency plans – as is the UK government in its Customs Bill White Paper – to deal with potential problems which may arise at Brexit.

Businesses should look at issues including:

Contracts - that span pre-and post-Brexit periods, so these allow for any necessary revisions including supply chains, routes, timescales. Is there a need to agree revisions so that these can remain valid and not give rise to breaches at Brexit? Or should your business consider holding additional inventory ahead of Brexit to allow for possible delays in procurements?

Investigating alternative supply routes - for goods destined to and from the EU. Although the UK is looking to negotiate a deal that minimises disruption, busier ports, such as in Dover, could experience delays following Brexit because of any additional customs requirements or the inability of the system to cope with the increase in declarations. Should businesses test alternative routes and forwarders, building relationships that stand them in good stead at Brexit should the need arise?

For UK suppliers, is an EU establishment and EU VAT registration number needed? In certain circumstances businesses and other organisations within the EU demand that an EU VAT number is provided and/or that a supplier has an EU establishment for the supplier to be part of a contract/tender, or to avoid the need to register for VAT in a country. See also comments regarding 'distance selling' below.

Distance selling - The EU operates a 'distance selling' regime for businesses which sell goods from one EU country, say the UK, to private individuals and other unregistered organisations in other EU member states. For such sales VAT is paid by the supplier in the country of dispatch, until it exceeds the distance selling threshold in the country the customer is based in. This threshold varies depending on the member state, between EUR 35,000-EUR 100,000 per annum. If the threshold is exceeded a UK supplier would be obliged to register for VAT in that territory and to charge VAT there instead of the UK. This regime only exists within the EU and will presumably not apply to UK businesses post Brexit.

This means that unless a UK business expects its private customers to pay Duty and VAT on imports into EU countries post Brexit, or unless the business wishes to register for VAT in every country it supplies goods to, no matter the turnover, it will need to set up a base (and EU registration) in an EU country from which it can trade (and benefit from the distance selling regime once more). The Netherlands is the territory most frequently cited as an appropriate base from which to dispatch goods. As well as having good distribution networks to major European markets, it is also a territory in which a business does not have to have a local 'establishment' in order to register for VAT. It will therefore be possible to rent warehouse space, register for VAT, and continue to benefit from the EU 'distance sales' regime.

For EU suppliers, dealing with the UK – Post Brexit, who pays the Duty and VAT on imports of goods to the UK? Again, unless private customers are expected to pay the taxes in order for goods to be released to them, there will need to be a VAT registration in the UK to declare the VAT and Duty at import and subsequent VAT on the supply to the customer.

For B2B supplies, which entity will be responsible for the import? The self-accounting (acquisitions) mechanism for VAT on goods received in the UK from the EU will no longer apply and thus it is likely that suppliers will want to act as the importer, requiring a UK VAT registration. The imposition of a VAT charge at import will result in a cash flow disadvantage in that importers, or EU businesses that have registered for VAT in the UK, will have to await the refund of the import VAT from the UK Revenue following submission of their VAT returns. In addition, with many UK businesses likely to be in a VAT repayment position for the first time, this may cause significant delays in HMRC processing refunds. Perhaps another reason for UK businesses to consider ordering high value goods for delivery to the UK prior to Brexit.

The Office of Tax Simplification in the UK has just announced, in the first complete review of the VAT system in the UK since its introduction in 1973, a recommendation that HMRC should consider introducing an electronic system for dealing with import VAT certificates (that allow the import VAT to be claimed back). Whilst this may alleviate some of the cash flow issues such a change is thought to be a few years away.

Selling 'electronically supplied services' -

Currently, the EU operates a 'Mini One Stop Shop' (MOSS) regime in which a supplier accounts for VAT due in each EU country on sales of electronically supplied services to EU private customers. The MOSS system avoids the need for a supplier to register in every country to which it supplies e-services. It allows for a single MOSS VAT return filing. This may no longer be applicable post Brexit.

For UK businesses currently supplying e-services to EU private customers (such as automated tutorials, e-magazines/books), in order to avoid the need to register for VAT in each EU country post Brexit, it will need to identify an EU country that it can register in, in order to continue to file MOSS returns. Equally, post Brexit, there will be changes for EU suppliers. Those supplying e-services to UK private persons will need to register for VAT as the UK will presumably no longer fall within the EU MOSS rules.

Major change to B2B rules for supplies of goods within the EU

Finally, as if Brexit was not enough, there is also a major change which has been confirmed recently which will affect the trade, initially just in goods, between EU businesses.

Under the new system VAT will be due by the supplier, but according to the country where the goods are destined. VAT will be charged at the buyer's local rate, collected by the seller and then remitted to the buyer's tax authority via the MOSS mechanism. In other words, VAT in the EU will become a destination based system.

Because of Brexit these measures will not be applicable to the UK. The changes were first announced by the European Commission in its 2016 VAT Action Plan and are due to take effect around 2022.

For more detailed information please see article 5.

Rupert Moyle
Kreston Reeves LLP

2 Revision of the Swiss VAT Law

Following an affirmative vote in the Swiss Parliament on 29 September 2016, a revised Swiss VAT Law is expected to be in force as of 1 January 2018. The revision covers a variety of issues, whereby the most significant changes are expected to lead to an additional 30,000 foreign businesses having to register for Swiss VAT.

While the majority of the amendments are of an administrative or linguistic character, the revised VAT Law will trigger some significant changes for businesses operating in Switzerland.

Change of the calculation basis of the relevant turnover to evaluate the obligation to register for VAT in Switzerland

The most notable change is the near elimination of the turnover threshold for foreign entities doing business in Switzerland. While the turnover threshold of CHF100,000 per annum will remain in force, the global turnover will have to be included in the calculation basis, effectively resulting in an obligation for any non-established business with a total turnover of more than CHF100,000 annually to register for Swiss VAT from the first taxable turnover generated in Switzerland.

The supply of services subject to the reverse charge mechanism by foreign businesses will continue to be excluded from the turnover threshold, however particularly for companies operating in the European Union, it is worth keeping in mind that Switzerland has never adopted the so-called non-established business principle. As a consequence of this, once a foreign entity has been registered for Swiss VAT, it is obligated to levy Swiss VAT on any supplies in Switzerland, including services that would otherwise have been subject to reverse charge.

The change to the registration threshold is thus expected to have an impact not only on foreign businesses operating on a low scale in Switzerland, but also on businesses regularly selling services to Swiss recipients, as well as making occasional supplies of e.g., goods in Swiss territory.

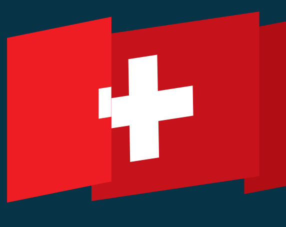
Businesses established in Switzerland will also be affected by some of these amendments, as the turnover threshold for Swiss businesses will also include the global turnover of the company.

Swiss based businesses mostly generating turnovers abroad will thus be liable to register for Swiss VAT as well if their total turnover exceeds the CHF100,000 threshold.

Change for non-established entities supplying low-value goods to Swiss customers

Another amendment impacting foreign businesses is a CHF100,000 threshold which will be introduced for non-established entities supplying low-value goods (tax below CHF 5 per shipment) to Swiss customers. Low-value imports have previously not triggered an obligation for suppliers based abroad to register for Swiss VAT.

With the introduction of the proposed amendment, foreign businesses supplying low value goods at a total of CHF100,000 or more per annum to Swiss customers will be required to register for Swiss VAT, import the goods, and charge Swiss VAT on the sale to Swiss customers. The purpose of the proposed amendment is to ensure that non-established online suppliers compete on equal terms with suppliers established in Switzerland. From the proposed wording, it is not clear when the registration liability will exactly arise and whether it will be re-assessed on an annual basis.



Impact

The revised Swiss VAT Law is expected to lead to a significant increase in VAT registration obligations, primarily foreign businesses operating in Switzerland should clarify their obligations under the revised VAT Law to ensure that they are compliant and do not encounter unexpected risks.

Dr. Manuel Vogel
a&o accta ortag ag

3 European Court of Justice: Postal address on invoice is sufficient

It is a common practice that companies use PO Box addresses on invoices. The German revenue office refused an input VAT deduction because the address of the vendor written on the invoice was merely a "letter box address". In its decision of 15 November 2017 (C-374/16 and C-375/16) the European Court of Justice (ECJ) decided that Article 226 (5) of the VAT Directive precludes national legislation making the right to deduct input VAT dependent on an invoice indicating the address where the supplier carries out its business. Any type of address, including a so called "letter-box address" is sufficient, provided that the supplier can in fact be contacted at that address. In order to identify the supplier it should not be necessary that the place of economic activities must be shown in the invoice.

Based on the ECJ decision, companies may continue using PO Box addresses. Though the ECJ decided on the supplier's address the decision is applicable to the recipient's address as well, we think. There is no reason for a different treatment.

Another question is where a business is domiciled for VAT. Pursuant to Article 10 of the Council Implementing Regulation (EU) No 282/201, the place where the business of a taxable person is established shall be the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets. The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person. However, with regard to recent economic developments such as e.g. e-commerce, office sharing and teleworking it is sometimes difficult to maintain that an economic activity is carried out physically from one particular place. Update required?

Thomas Lachera
KRESTON BANSBACH GmbH

4 eBay starts charging VAT

eBay has announced that it has moved its UK operations from Luxembourg to the UK. This action was designed to reduce the risk of HM Revenue & Customs (HMRC) activating its powers granted last year for non-compliant overseas businesses who sell goods to UK consumers via online marketplaces.

HMRC now has the power to charge internet platforms the VAT avoided by overseas companies who fail to register in the UK, if all other attempts to collect the undeclared VAT from the overseas seller are unsuccessful. eBay fees to UK buyers and sellers will now include UK VAT. VAT charged by eBay to those overseas sellers who deliberately refuse to register, will reduce the benefits of non-compliance as the amount of unrecoverable VAT on costs will increase.

Meera Rajah
James Cowper Kreston

5 European Commission releases proposals for reform of VAT system for intra-EU trade

The transitional solution for intra-Community trade introduced more than 25 years ago is to be replaced by a definitive VAT system. On 4 October 2017, the EU Commission published the first proposals for Council Directives and explained the new system's basic structure.

What is the biggest change?

The proposal envisages a future VAT system where VAT will be charged on sales that are made across borders to another country in the EU. The rate applicable in the country of destination will be charged.

The VAT on cross-border sales would be collected by the tax authority of the originating country and transferred to the country where the goods or services are ultimately consumed. In order to allow a soft transition for tax administrations and businesses, the first step of the definitive VAT system will focus only on transactions in goods.

How does the 'One Stop Shop' portal work?

Businesses that trade within the EU will be able to sort out their VAT far more simply and easily, via an online web portal (or 'One Stop Shop') in their home country. Otherwise, traders would have to register for VAT, file returns and make payments in every EU country where they operate. The online portal would also allow VAT to be collected by the country where the sale is made and transferred to the country where the goods are consumed. A similar system is already in place and working well for sales of cross-border e-services. The Commission proposal to extend this system to online sales of tangible goods is currently being discussed by Member States in the Council.

In order to allow for a gradual transition, trustworthy businesses ('certified taxable persons') that are certified by their tax administrations, including SMEs, could continue to purchase goods free of VAT in another Member State and pay VAT in their own country.

What is a 'Certified Taxable Person'?

The concept of a Certified Taxable Person is a new initiative being proposed today to facilitate trade and make life easier for companies operating cross-border in the EU. Provided that companies, small or big, meet a set of criteria, they can get a certificate allowing them to be considered throughout the EU to be a reliable VAT taxpayer. A business can become a Certified Taxable Person by applying to their national tax authorities and proving compliance with a set of sufficiently harmonised and standardised pre-defined criteria including: regular payment of taxes, reliable internal control systems and proof of solvency. These are similar to the criteria for obtaining Authorised Economic Operator (AEO) status for customs purposes, and AEO certified operators will by default be deemed to meet the CTP criteria.

Once certified, both they and the companies that do business with them will enjoy a number of simplified procedures for the declaration and payment of cross-border VAT. The status of Certified Taxable Person will be mutually recognised by all EU Member States.

Short -term 'quick-fixies'

The Commission also presented four 'quick fixes' to improve the day-to-day functioning of the current VAT system, until the definitive regime is fully agreed and implemented:

• Simplification of VAT rules for cross-border 'call-off stock arrangements' - only available for certified taxable persons;

• Simplification for chain transaction situations identifying the supply with which the intra-Community transport of goods should be linked - only available for certified taxable persons;

• Simplification of the proof of transport of goods between two Member States needed for the application of the exemption of intra-Community supplies - only available for certified taxable persons; and

• Clarification that, in addition to the proof of transport, the VAT identification number of the commercial partners recorded in the electronic EU VAT number verification system (VIES) is a material condition to apply the cross-border VAT exemption under the current rules.

Next steps

The proposal will be forwarded to the European Parliament for consultation and to the Council of Ministers for their agreement. It will require unanimous agreement from all Member States in the Council before it can enter into force.

A second directive overhauling the whole VAT Directive will be proposed in which the cornerstones will be implemented and the current transitional articles will be replaced or deleted.

Further changes regarding the administrative cooperation rules and substantial IT developments will be needed in order to ensure the proper operation of the system.

The adoption of this second proposal is currently scheduled for 2018 and the definitive regime should enter into application in 2022.

Source: http://europa.eu/rapid/press-release_MEMO-17-3444_en.htm

What we expect

This is one of, if not the, most important set of changes to the current VAT system, which we had forgotten was only supposed to be 'transitional' when it was introduced in 1993. We are sure all member states will agree to the plan, in the interest of saving € 40billion of lost VAT revenue - the Commission estimates - from cross-border fraud.

We note the immediate 'quick fixes' announced will only apply to 'Certified Taxable Persons', effectively those receiving 'gold star' status as taxpayers from their member state authority. There is clearly going to be a focus on compliance and controls over systems. Being outside of that elite club does not look attractive in terms of easements available for Certified entities; for proof of transport, the treatment of chain transactions, and cross-border stock movements that are 'called-off' by customers. There may also be cash flow issues for non-certified entities.

Although we can see that the level of complexity of VAT may decrease with the new system - which will be where the supplier pays the VAT based on the destination of goods - we suspect there will be teething problems for our clients. Surely there will also be exceptions to the rules. We will see, when the details of the proposals arrive early on in 2018.

We can also foresee a growing use of the term Certified Taxable Person, which will be defined in the detail in due course. This, for us, means an ever-increasing need for assistance with compliance and controls and for associated accountancy and tax services to help keep the business solvent and compliant. In terms of other potential problems with the new system, might it be difficult to determine how much VAT to declare on returns, unless of course the current lack of uniformity in treatment of certain goods (such as food and books) is ironed out?

Rupert Moyle
Kreston Reeves LLP

Thomas Lachera
KRESTON BANSBACH GmbH

THANK YOU FOR READING!

KRESTON VAT