

Brexit and VAT

1. Will the UK retain VAT?

VAT was introduced into the UK as a condition of joining the European Economic Community (EEC) which has evolved into the European Union (EU).

Hypothetically VAT could be abolished if the UK leaves the EU. However, most people consider that an abolition of VAT is so unlikely that it can be discounted as a possibility. VAT raises just short of £120 billion per annum. The UK has already signalled a desire to reduce corporation tax to 15% to attract investment and offset Brexit. The likelihood that any politician will elect to transfer £120 billion of tax onto other taxes must be viewed as 'low'. Outside the UK VAT has become an increasingly popular tax with some form of sales tax now existing in most countries.

2. What might change?

Members of the EU are required to apply a common set of VAT rules. Flexibility exists in some areas but this flexibility is limited (for the obvious reasons that VAT rules should be subject to legal certainty and deliver a level playing field within the EU). Leaving the EU will remove constraints upon the UK and it will have the freedom to decide where transactions arise and what rate of VAT, if any, applies. Additional points to note are:

- The UK will no longer be bound by the principles of EU law such as fiscal neutrality, legitimate expectation, abuse of law etc.
- Where businesses are relying on EU law in applying a particular VAT treatment this is unlikely to be possible after the UK leaves the EU.
- Where EU case law indicates that a particular UK VAT treatment is not a reflection of EU law this currently means the UK has to change its treatment. This is likely to end. It remains to be seen whether there will be any reversion to past treatments where the UK has already implemented CJEU judgements remains to be seen.

However, EU VAT rules will not change, if a particular transaction is deemed to arise in a given location under EU rules then under EU rules this will remain the case. A UK business with a VAT liability elsewhere in Europe will still need to take steps to remain compliant with local VAT rules.

3. How will sale of goods be affected?

The most significant changes will be procedural in relation to goods shipped to the EU. For example, under current rules, if a UK business sells goods to a French business there are no border controls and import/export declarations are not required. The process requires:

1. Zero-rating of the sale by the UK business – reporting no VAT on its UK VAT return.
2. The issue of a VAT invoice bearing the French customer's VAT registration number.
3. A declaration of VAT due on the transaction by the French customer on its French VAT return.
4. The submission by the UK business of an EC Sales List (reporting all such sales to the EU).
5. The submission of Intrastat declarations reporting the nature and values of such shipments to the EU, subject to the Intrastat value threshold.

Assuming that “normal rules apply” (i.e. the Brexit negotiations results in no special relationship) in a post Brexit world the same transactions would be treated as follows:

1. The sale would be zero-rated as an export, assuming proof of export is held.
2. An export declaration would be required (although it may be that a simplified reporting arrangement would be put in place - this would be up to the UK).
3. When the goods reach France an import declaration is likely to be required and import VAT would become payable as the goods enter France (assuming France offers no deferment simplified accounting arrangements).
4. Depending on the trade deal in place other customs duties which do not currently apply may also be payable.
5. Whether the UK supplier has to register for VAT in France and charge French VAT will depend on who acts as the importer of record. If this is the French customer no French VAT registration will be necessary. If the UK supplier acts as importer then it is likely that it will need to register for VAT in France and account for French VAT on the sale.
6. Assuming no special alternative arrangement exists, the UK supplier will no longer be obliged to submit an EC Sales list or an Intrastat declaration in the UK.

Whether there is an additional tax cost will depend on whether the EU imposes additional taxes at the point of entry to France. However, there will almost certainly be a commercial impact. For example, customers may not want to process imports if the same goods can be sourced elsewhere in the EU without this additional work and the cash flow cost of paying and then reclaiming import VAT. If UK businesses decide to lighten the administrative burden for their customers by dealing with the import into the EU then they will almost certainly need to register for VAT in at least one EU territory and this will increase the UK business's compliance costs.

4. How will supplies of services be affected?

A business that can continue to sell services into the EU will probably face less disruption to its business than a business selling goods. In the vast majority of cases the VAT treatments are likely to remain the same and B2B sales should not trigger a local VAT registration obligation that would not have arisen under current rules. Where B2C supplies arise then again liabilities are likely to remain broadly comparable albeit there may be some procedural changes. Indeed if exports to the EU are to be treated as non-EU sales are at present there may be some benefits. For example, giving higher input VAT recovery rights in respect of exported financial services.

The Mini-One-Stop Shop (MOSS) package allowed suppliers of such services to account for all EU VAT through a single UK portal. After the UK leaves the EU it is unlikely this scheme will be available in the UK and affected businesses will either have to register for VAT in every EU country in which they supply services or register under a non-union MOSS scheme in another Member State.

Of course this assumes that it is possible to continue to supply services from a UK establishment. This will depend on the exit negotiations but perhaps the greatest threat to service providers is that they will be denied the right to sell services into the EU unless they create local establishments to make those supplies. This might apply for example in relation to financial services or in other regulated sectors. Clearly VAT will be a minor consideration if access to the EU market is blocked!

5. What should you do now?

If you are in a steady trading position it is perhaps a little early to take actions to deal with the Brexit vote. The future is too uncertain to make firm plans and most of the procedural points that are likely to require attention can be addressed as the situation becomes clearer.

If you are considering new lines of business or significant investment then it would be prudent to consider VAT related points now. Whilst no one can tell you at the moment what the final position will be, predictions can be made based on a proper understanding of EU VAT rules and the implications of trading with the EU from a non-EU location.

The other possibility is that supplies can be restructured to limit the impact of Brexit and in the time available it is desirable to solidify these arrangements, perhaps by seeking a cross border clearance. This of course could take time and action in the near future would be sensible.

If you do feel that a wait and see strategy is not for you it would not involve a huge amount of work for us to carry out a high level impact assessment, where we review your business and flag strategic and practical considerations. This would be of particular value for businesses that wish to lobby to ensure that their priorities are not overlooked as the UK negotiated its exit arrangements.

An impact assessment will, among other things, consider:

- The impact of any likely changes on cross-border transactions, including MOSS;
- Whether the removal of the ability to rely on EU law rights will impact on a particular business;
- Whether it may be possible to restructure some transactions to lessen the impact of changes resulting from Brexit;
- Whether it may be necessary to consider a VAT registration in another EU country.

For further information or to book in for an initial meeting please speak to one of our VAT consultants

Helen Carey

E: helen.carey@ensors.co.uk

T: 01206 321029

Dean Carey

E: dean.carey@ensors.co.uk

T: 01206 321029

Stewart Henry (Not-for-profit & Charity specialist)

E: stewart.henry@ensors.co.uk

T: 01206 321029