Brexit: behind the scenes

General Features | Indirect Tax

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We continue to receive numerous daily updates from GOV.UK setting out the UK government's preparations for a 'no-deal' Brexit scenario and our members continue to make similar preparations. The CIOT has also been working behind the scenes to clarify a number of tax matters in relation to VAT and direct tax that would arise if the UK left the EU without a deal. We set out two examples below.

Abortive costs for 'no-deal'

During a roundtable meeting between HMRC and CIOT representatives in February, the VAT and direct tax implications of expenditure by businesses on preparations for a 'no-deal' outcome were discussed. The CIOT subsequently wrote to HMRC highlighting two points:

- That taxpayers preparing for 'no-deal' outcomes face resource, time and cost constraint pressures and, inevitably, mistakes may be made in 'no-deal' preparations;
- That HMRC's future compliance activity should take into consideration the unprecedented climate in which taxpayers are making decisions and incurring costs, and that it should adopt a suitable pragmatic compliance strategy for input VAT recovery and the deduction of costs for direct tax purposes incurred in preparation for a 'no-deal' outcome which, in the event that the UK and the EU successfully negotiate an exit agreement, turn out to have been unnecessary, abortive, or do not lead to the business activity that would have been undertaken in a 'no-deal' scenario.

The CIOT also set out several VAT examples for holding companies, option to tax and partial exemption that could create issues in circumstances where a 'no-deal' outcome does not arise.

HMRC's response indicated that they recognised the unique circumstances in which taxpayers are making decisions around 'no-deal' preparations and it intended to work with front-line staff in preparing them to address the arising difficulties. The current position for recovery of VAT/deductibility of direct taxes for abortive costs would still be available to taxpayers. Recommendations included:

- Consider early engagement with HMRC in cases of legal uncertainty, including setting out the intended recovery position on costs and values. HMRC indicated that they would like to take a collaborative approach to taxpayers and advisers;
- Retain documentary evidence relating to the purpose of activities and transactions; and
- Document why the expense was incurred and why particular steps were taken.

In considering any future penalty position, where a taxpayer has taken reasonable care, there would be no penalty. However where there has been behaviour that may ordinarily be considered careless (not deliberate), HMRC should take full account of all relevant circumstances, including how a particular taxpayer is affected, any exceptional pressures they might have faced and how they were able to respond when considering the position for reasonable excuse.

VAT registration for 'intending traders' only in a 'no-deal' outcome

There are a number of EU VAT simplifications available to non-established EU businesses that allow the UK customer to account for the cross-border transaction, thereby preventing the EU supplier from having to register for VAT in the UK. Examples include:

- Goods that are supplied with installation/assembly services in the UK (with advance notification to HMRC);
- Triangulation with an EU intermediary and UK end customer (with advance notification to HMRC); and,
- Call-off stock where the stock is held in the UK.

A number of members have contacted the CIOT to raise the difficulties encountered by EU clients taking preparatory 'no-deal' action in requesting registration for VAT in the UK as an 'intending trader', effective from Brexit date. Where the EU VAT simplification is no longer available, the EU supplier will become responsible for

accounting for VAT in the UK so a UK VAT registration number is essential from day one for the smooth continuation of business.

We raised this issue with HMRC and have received the following response in relation to such applications:

‘Businesses in the position you have described can register for VAT using the Advanced Notification facility, by registering online requesting a voluntary registration from an advanced date of 1 November 2019. In the ‘business activity’ section they should enter trade class/SIC code 99000 European Community. In the free text box they should describe accurately what the business does and ensure there is a positive amount entered in the ‘taxable turnover in the next 12 months’ box. If this is not done the application will be rejected. This information will enable the VAT Registration Team (VRT) to identify and actively manage any registration that is conditional on the UK leaving the EU without a deal.

If there is a change to the date of withdrawal from the EU, the VRT will amend the Advanced Notification date to match this new date. If the UK enters a transitional period or agrees a deal with the EU that allows current arrangements to continue then the registration will be cancelled. The approval of an Advanced Notification registration in these circumstances is only made as a contingency for the UK leaving the EU without a deal and the VAT number may not be used unless that happens. The business will receive an automated notification of an Advanced Notification VAT Registration and the VRT may follow this up with a manual letter to further explain the conditions and both.

With the UK having agreed an extension to the date of withdrawal from the EU, we would not expect businesses to use this facility until closer to the 1st November.’