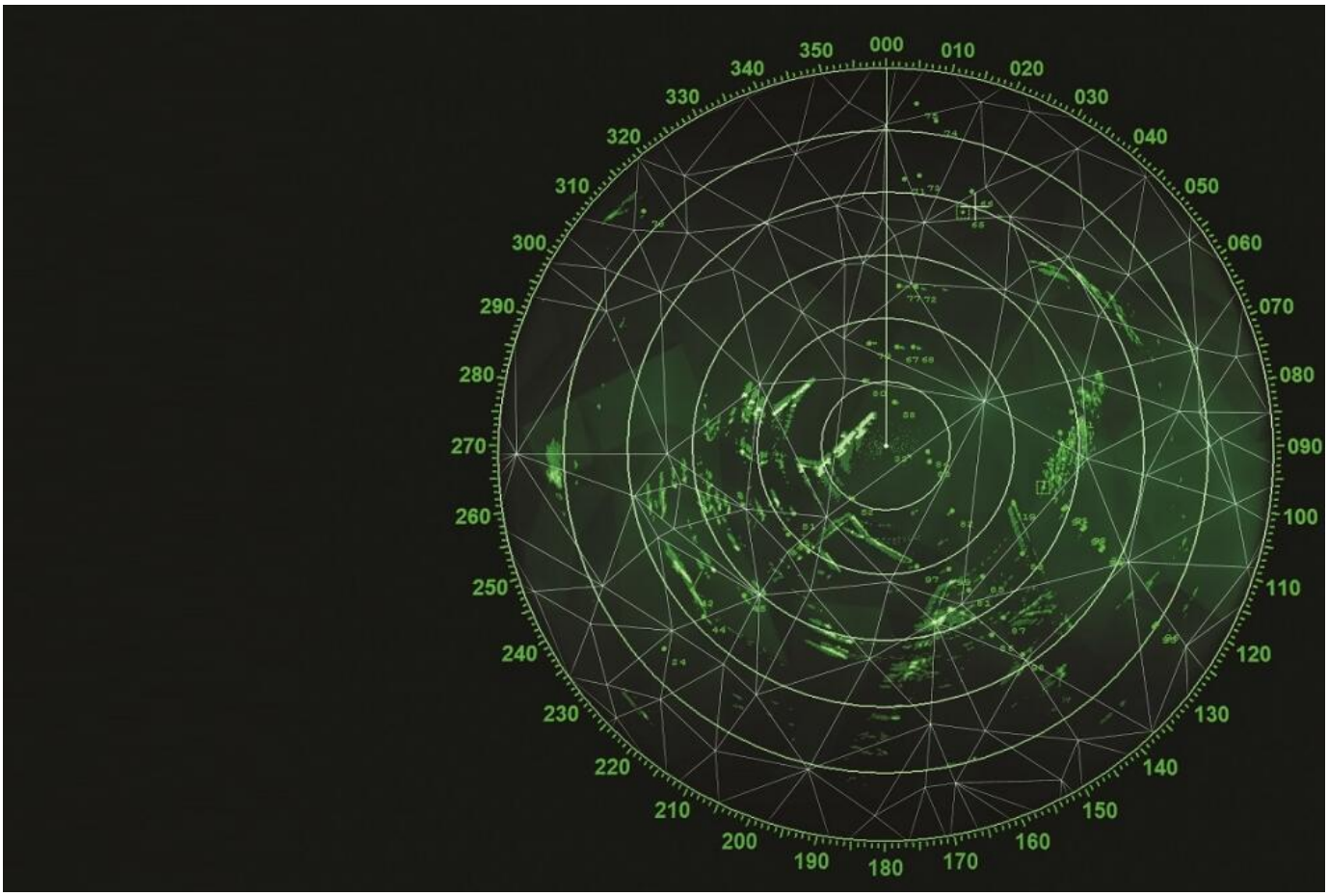
On your radar

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01 July 2019

Rob Janering looks at why the EU's 'four quick fixes' for supply of cross-border goods should be on your radar

Key Points

What is the issue?

Sliding under the radar somewhat, implementation of the EU's four 'quick fixes' is underway, with the new rules taking effect from 1 January 2020.

What does it mean to me?

These rules will affect all B2B supplies of goods which move cross border within the EU and hence businesses involved with such transactions need to use the next nine months to plan and make changes which will be necessary.

What can I take away?

Businesses are encouraged to start these reviews and procedural changes now, so they are completed in a timely manner. This will especially be the case where customers need to be consulted with.

Among all the noise surrounding Brexit and HMRC's implementation of Making Tax Digital (MTD), another significant VAT change is also not far away. Sliding under the radar somewhat, implementation of the EU's four 'quick fixes' is underway, with the new rules taking effect from 1 January 2020. These rules will affect all B2B supplies of goods which move cross border within the EU and hence businesses involved with such transactions need to use the next nine months to plan and make changes which will be necessary.

What are the quick fixes?

In 1993 the EU agreed on new VAT rules, which form the basis of the existing EU VAT Directive. These were only ever meant to be transitional though, ahead of more definitive rules being implemented shortly. As often happens though, the new rules did not appear and instead, the transitional rules have survived for just over 25 years.

Now though change is in the air and a new definitive VAT system is slated to be introduced with effect from 1 July 2022. In the short term however, in order to address concerns from Member States around fraud and the proliferation of differing approaches to combat that, the four quick fixes are being introduced. The quick fixes will cover the following:

Call off stock

When a business moves its own stock from one EU Member State to another with the intention of supplying them to another already known business, a call off stock

situation is created. Currently when this happens, the default position requires the supplier to be registered in the second Member State. It does this so it can account for acquisition tax and any VAT due on the onward local supply. This is the case unless a simplification arrangement has been enacted which allows for the recipient to account for the acquisition tax instead of the supplier (many Member States have enacted a simplification in varying form creating complexity).

Under the quick fix, the simplification arrangement will be applied universally where a call off stock arrangement applies. This should allow for businesses to obtain certainty on the VAT treatment to apply and in some situations, reduce the need for a VAT registration.

Chain transactions

These transactions occur when there are successive supplies of goods between different parties and those goods make a single movement from one Member State to another. In these instances, it is necessary to determine which supply between the parties is the intracommunity one, because only that one can benefit from exemption (zero rating). This identification also allows for confirmation as to which party has to account for acquisition tax. Any supplies which are not eligible for these treatments will be domestic supplies and hence the suppliers or recipients may need to obtain additional VAT registrations.

In the past, determining the VAT treatment to apply to each different supply has been difficult and subject to challenge from tax authorities. The European Court of Justice (ECJ) has passed many judgements relating to chain transactions and different Member States apply different approaches as to how the situations should be interpreted. This results in uncertainty for business and therefore increased risk of penalties and tax being due.

Under the quick fix rule, if the supplier of the goods is responsible for transporting them to the final recipient then the intracommunity supply will be deemed to be the one made to the intermediary. Only if the intermediary can provide to the supplier a valid VAT number from the same Member State of those where the goods are despatched can the intermediary treat its supply as the intracommunity one. When this happens, the supplier will treat its supply to the intermediary as a domestic one.

Increased use of VAT numbers

At the moment, to apply the exemption for intracommunity supplies of goods the EU VAT Directive only stipulates that the supplier must make its supply to another taxable person. In practice though, most tax authorities demand that two conditions are met:

1. The supplier retains evidence to show that the goods have been despatched from the Member State of departure; and
2. A valid VAT number is obtained from the recipient and shown on the supplier's VAT invoice issued in relation to the supply.

The application of these additional rules has been repeatedly challenged by businesses in the past few years and in many situations, the ECJ has agreed with them. The basis for this agreement has been the fact that the ECJ deemed it only necessary to meet the substantive conditions (i.e. that the recipient is a taxable person) set out in order for the exemption to apply. If the formal conditions (i.e. those listed above) were not met but the substantive ones were then the exemption still applied.

The quick fix will change the wording of Article 138 in the EU VAT Directive to make it clear that for the exemption to apply:

- The recipient will need to be a taxable person or a non-taxable person acting as such in a Member State other than that in which despatch of the goods begins; and
- The recipient of the supply must be identified for VAT purposes in a Member State other than that where the despatch of the goods begins. It will have indicated that VAT number to the supplier.

However, if the supplier does not then declare that transaction and the associated VAT number in its recapitulative statement (i.e. the EC Sales List), the exemption cannot apply.

This quick fix means that suppliers will need to take increased care to obtain and keep records of the recipient's VAT status if they are to apply the exemption. It will also become critical to make sure that recapitulative statements are completed and submitted in a correct and timely manner. If not, a real risk will be created of demands from Tax Authorities for VAT related to the supply and penalties for noncompliance.

Evidence of intracommunity supplies

The final quick fix will add additional requirements to obtain and keep specific pieces of evidence that will support application of the exemption to intracommunity supplies of goods. This has been achieved by inserting new legislation into the EU VAT Directive’s implementing regulations.

To meet these conditions the supplier or recipient will have to acknowledge to the other party that the goods have moved. They will also have to obtain two independently prepared documents from lists within the legislation which both evidence where the goods have been moved from and to. For example, these could consist of a signed CMR alongside a policy for transport insurance of the goods being moved.

Next steps

Whilst the above rules have been drafted in order to provide simplifications and easements for suppliers and recipients trading goods, they also need to be applied to other scenarios. These will include the own movement of goods where an onward supply is not taking place and also goods moved for a temporary purpose. Analysis of all movements of goods which a business is involved with should be reviewed and mapped to assist with understanding the implications of these new rules.

To comply with the new rules it is likely that businesses will need to review customer master data to make sure that VAT details and addresses are in place. The existing collection of documentation will also need to be checked, to ensure that the new record keeping requirements are met.

With just nine months to go until these rules apply, businesses are encouraged to start these reviews and procedural changes now, so they are completed in a timely manner. This will especially be the case where customers need to be consulted with. Businesses with large numbers of transactions across many different parties and territories will need to project manage and have appropriate resources in order to be ready.