

VAT:alert

December 2019


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elcome to our VAT:alert. This briefing contains timely information on VAT issues that may affect your business.

EU VAT changes from 1 January 2020

With a no-deal Brexit now looking less likely, at least until the end of 2020, businesses involved in the EU movements of goods should be making themselves familiar with the four 'EU quick fixes' that are coming into effect on 1 January 2020. These 'non-Brexit' related changes cover the following areas:

- The compulsory introduction of a uniform set of rules for 'call-off stock' arrangements covering all EU member states. The UK has operated a call-off stock simplification for many years. This has avoided overseas businesses having to register for VAT where goods are stored in the UK for the customer to call-off when required. The UK will see changes to the way in which the acquisition VAT needs to be accounted, a requirement for both the overseas supplier and UK customer to maintain a register of call-off stock and the introduction of a maximum 12 month period when goods can remain within the call-off stock regime.
- A uniform treatment for when a zero-rated movement of goods takes place within a chain of transactions involving multiple EU member states. Within any chain of supplies, comprising a single movement of goods, there can only be one zero-rated cross border supply. The new rules specify that, where an intermediary in the chain arranges the transport, only the first sale in the chain is zero rated (unless the intermediary is registered in the same EU member state as the first supplier. All business in the EU will need to apply these new rules.
- Tougher measures are being introduced in order to obtain zero rating by making it a legal obligation to obtain the customer's VAT number, to include this on your sales invoice and enter the transaction on an EC Sales List. HM Revenue & Customs (HMRC) in the UK have traditionally required these conditions but will now be able to deny zero rating and assess for VAT if any one of these material conditions are not met.
- In contract, there will be a welcome relaxation in the amount of evidence required to prove an EU movement of goods. In brief, two independent, non-contradictory items should suffice (e.g. a bill of lading and invoice for transport).

These new rules, although not legislated for in the UK yet, will have direct effect unless we leave the EU without a trade deal. Should you wish to discuss how these changes will affect your business please reach out to one of our VAT team or your usual partner contact.

Intrastats post Brexit

The question of whether Intrastat declarations will still need to be submitted once 'Brexit is done' now appears to be uncertain. It had been widely expected that with the return of import and export documents, Intrastats would disappear from the UK. However, HMRC states on its [UK Trade Info website](#) that businesses will need to continue to provide Intrastat declarations.

However, we now understand that HMRC has since said there will be exceptions to this rule. So, it's a case of 'watch this space' as Brexit progresses.

Automatic enrolment for transitional simplified import procedures

Similar to the auto-enrolment for Economic Operators Registration and Identification (EORI) numbers, HMRC has automatically signed up all UK VAT registered businesses for transitional simplified import procedures (TSP) where they are currently acquiring goods from the EU. This should ensure readiness for a no-deal Brexit as TSP allows goods to be cleared more quickly with minimal information required at the point of entry into the UK.

If you expect to be importing goods post a no-deal Brexit and haven't registered for TSP, we recommend that you visit the new [Brexit hub on our website](#) for further information and updates.

Also, for additional customs duty and excise duty information please visit our [Customs and Excise Duty page](#).

HMRC challenges the exemption for 'serviced offices' and similar leasing and letting arrangements

The scope of the VAT exemption for the leasing or letting of property has been uncertain for some time. The UK's approach is to set out the basic VAT exemptions and then list a number of exceptions which are subject to VAT. This has sat uneasily with the underlying VAT principles because it may be that the supplies included in the basic VAT exemptions are not actually exempt in the first place. This is precisely the matter the courts have been grappling with for some time. The approach increasingly being taken by the courts is to exempt only the 'passive' availability of land, which calls into question the VAT treatment of many leasing or letting arrangements that include associated services.

There should be little change to basic leasing or letting of buildings or office space, many of which are opted to tax anyway. However, function rooms and conference venues are already being challenged by HMRC and serviced offices, serviced flats, shop concessions and many other types of arrangements that were previously treated as VAT exempt must now be on HMRC's radar. The inclusion of even minor associated services could put the VAT exemption at risk and allow HMRC to issue demands for 20% VAT on the rent or hire charge.

This will become an increasing area of focus for HMRC who are due to publish a new Public Notice 742 soon. We understand that a number of examples, previously regarded by HMRC as exempt types of leasing, letting and hire of premises, have been removed from the updated draft version. This means there will be more uncertainty than before and could mean many options to tax for commercial property may not have been necessary if the nature of the activity is now automatically standard rated.

Our VAT team can review your leasing and letting arrangements in light of HMRC's new approach and highlight any areas of risk.



Input tax restriction for leased cars

The UK's current 50% restriction on the right to recover input tax on leased cars is based on a derogation from EU law which expires on 31 December 2019. The derogation also means that the private use of leased business cars does not need to be treated as taxable supply of services.

The UK has applied for, and the European Commission has approved, an extension of this derogation for a further three years to 31 December 2022.

Making Tax Digital update

Firstly, the 'deferred' group of taxpayers with VAT periods starting on 1 October 2019 will now begin to fall into the Making Tax Digital (MTD) regime. These include VAT groups, overseas businesses, trust and not-for-profit organisations, and those on annual accounting or monthly payments on account.

Secondly, HMRC has updated its guidance in relation to the extended deadline of 1 April 2020 for when 'digital links' (which transfer data between software applications) must be in place. HMRC recognises that businesses with complex or legacy IT systems, or which have recently acquired another business, may require a longer period to implement these links.



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Therefore, businesses meeting certain conditions, can formally apply for additional time to comply fully with the digital link requirements of MTD. In short, a business must be able to demonstrate that it would be unachievable and unreasonable to expect digital links to be in place before the original deadline. Cost alone is not regarded as sufficient reason to grant an extension.

[Further insights on MTD can be found on our website.](#)

Law Society: Update on VAT treatment of electronic searches

In the case of [Brabners LLP](#) the First Tier Tribunal decided that electronic property search fees were not disbursements for VAT purposes, but costs subsumed in the provision of the solicitor's legal services to its clients. The search fees therefore should take on the same VAT liability as the legal services being supplied. The Law Society has recently updated its guidance in light of this decision in order to provide clarification in a difficult area of VAT law.

Matchmaking: Not a harmonious decision but it's not consultancy

[Gray & Farrar International LLP](#) ran an exclusive matchmaking business with clients located in many countries. The question

was whether VAT was chargeable to individuals that were resident outside the EU. If its activities qualified as 'services of consultants' or 'other similar services, data processing and provision of information', then the supply would be outside the scope of UK VAT.

The First-tier Tribunal discussed the nature of the matchmaking services in some detail and agreed that it was a single composite supply. However, the two tribunal members could not agree on the essential nature of the supply. Therefore, the presiding tribunal member had a casting vote which he used to dismiss the taxpayer's appeal. In his view, the services provided were far more than the provision of expert advice and information.

This case serves as a reminder that not all services with elements of consultancy or similar services can be invoiced without UK VAT to non-EU clients.

Crowdfunding: VAT reaches beyond this planet!

The Upper Tribunal confirmed in the case of [Lunar Mission Limited](#) that crowdfunding revenues, for an unmanned lunar mission, represented payments for single purpose vouchers. Supporters could pledge funds to the project and were offered rewards in the form of digital and/or physical space in a capsule that would be buried on the moon. Once the pledges became unconditional, the business issued the vouchers for the pledged amounts and the payments were collected. Accordingly, VAT was due on the payments at the time they were received.

This case illustrates the importance of determining the VAT liability and tax point rules correctly from the outset of a project. This was especially important in this case where the main aim was **fundraising with the making of supplies not the principle objective at that point in time.**



How we can help

Our VAT specialists offer a wide range of bespoke services to support your business, including:

- Governance and VAT risk management
- Specific transaction-based VAT consultancy
- Land and property transactions (including construction services)
- Business mergers, acquisitions and restructuring
- Businesses expanding internationally
- Overseas businesses coming to the UK
- International, cross border and EU issues

- Partial exemption calculations and reviews
- Special reliefs for charities and not-for-profit organisations
- Enquiries, disputes, penalties and interest charges imposed by HMRC
- VAT compliance including VAT returns

If you have a VAT question, wider indirect tax problem or if you are about to embark on a transaction and want to understand the VAT implications for your business, get in touch now to speak with an advisor.



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