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Indirect tax update

Edition 34/2020 – 16 October 2020

Summary

Welcome to this week's Indirect Tax Update.

There have been no cases of any real interest this week either at the Court of Justice or the UK courts and Tribunals so again, we look at HMRC's recent published guidance notes relating to Brexit.

The first technical guidance note relates to import VAT and the advent of a new method of accounting known as Postponed VAT Accounting (or PVA).

HMRC has issued a paper which sets out the changes to import VAT for importers of goods into the UK, how PVA will work and how the regime is to be implemented in four stages.

Businesses importing goods into the UK need to understand these changes and the implications for VAT accounting after 1 January 2021.

HMRC has also issued a policy paper entitled "UK Transition: The Customs (Transitional Arrangements) (EU Exit) Regulations 2020" which accompanies a new statutory instrument dealing with simplified customs declarations after Brexit. The instrument sets out the rules of what HMRC describes as a facilitation measure which will allow traders importing goods from the EU to make a declaration in their commercial records at the time of importation and to delay providing a declaration to HMRC for up to six months.

Finally this week, as detailed Brexit negotiations reach a climax in Brussels, the EU Commission has commenced infraction proceedings against the UK.

The EU Commission considers that the UK is breach of its obligations under the Withdrawal Agreement by tabling the United Kingdom Internal Market Bill which the Commission states would, if adopted, flagrantly violate the terms of the Ireland / Northern Ireland Protocol. The UK has until the end of October to respond and submit its observations to the Commission which may then issue a 'reasoned opinion' as part of the infraction proceedings.

HMRC Policy – Preparing for Brexit – Postponed VAT Accounting

HMRC issues a technical guidance note

Businesses involved with importing goods into the UK will be familiar with the existing VAT accounting regime. When the Brexit transition period comes to an end on 31 December 2020, however, a new VAT accounting regime will commence. These businesses, along with many businesses that will be involved with importing goods for the first time need to familiarise themselves with the new regime.

Under the existing rules, generally, a business may have what is known as a duty deferment account with HMRC. When goods arrive at the UK border, a customs declaration is made (either directly or through a customs agent) and any VAT and customs duty is deferred to the duty deferment account. Once a month, HMRC issues a certificate (C79) to each importer and takes a payment from the importer's bank account to settle the VAT and duty liability. The importer may reclaim the VAT paid in this way through his UK VAT return using the C79 and the C88 as evidence.

Perhaps the largest impact of Brexit (in a commercial sense) is the anticipated quadrupling (if not more) of the number of customs declarations that will arise as a result of the UK becoming a "third" country relative to the rest of the EU on 1 January 2021. Every movement of goods to the United Kingdom after that date will require an import declaration (including goods arriving from the EU). As a result, many businesses would, under the existing system find themselves with cash flow problems as import VAT would need to be paid and then reclaimed on a later VAT return. To counter that problem, the UK is to adopt a new system known as Postponed VAT Accounting (PVA).

This PVA system was originally in place before the advent of the EU single market. In essence, a business importing goods will now declare any import VAT due (and reclaimable) through entries on the relevant VAT return. This way, a fully taxable business (ie a business that is entitled to reclaim all of its input VAT) will no longer be required to make a payment and a subsequent claim but will be entitled to 'offset' the amounts on the VAT return. All UK businesses will be eligible to use PVA – no prior authorisation is required. A business will simply make the appropriate customs declaration and provide its UK VAT and EORI numbers on that declaration. As currently with C79s, HMRC will issue a monthly statement of import VAT postponed and this document will be the evidence to reclaim the import VAT through the VAT return.

The exact method of postponing the VAT due will depend on whether the importer is using CHIEF to make the customs declaration or CDS (CDS is the 'customs declaration system' that will eventually replace CHIEF). Where CDS is used the declaration will need to show the importer's VAT registration number in Data Element 3/40. However, where CHIEF is used, the importer will need to use its EORI number in box 8 of the customs declaration, its VAT number in box 44h and they will need to indicate 'G' as the method of payment in box 47e.

Where entries are made by agents acting on behalf of importers, the importers' details will be required on the declaration – not the agents'.

Comment – these new import VAT arrangements will come into effect in the UK at 11pm on 31 December 2020. The new rules will apply to all goods imported into the UK regardless of the geographical location of the country from which the goods are exported. Postponed VAT Accounting should be fairly simple provided that correct import declarations are made and businesses have EORI numbers etc. Postponed VAT accounting is not, however, compulsory. Businesses can continue to use the old import VAT arrangements should they choose to do so. However, the cash flow advantage of the new regime is likely to mean that the majority of businesses will use PVA.

Preparing for Brexit – HMRC Guidance

The Customs Transitional Arrangements (EU Exit) Regulations 2020

A statutory instrument was laid before the House of Commons on 8 October 2020. The instrument amends various regulations relating to the exit of the UK from the EU. In particular, regulation 3 amends the Customs (Import Duty) (EU Exit) Regulations making provision for a procedure known as the transitional EIDR simplified customs procedure process.

In essence, this is a process of simplified customs declarations whereby importers can make declarations in two stages. Firstly, an importer can make a transitional simplified declaration followed by a transitional supplementary declaration. The measure is a facilitation that will allow traders importing goods from the EU to Great Britain (not including Northern Ireland) to make a declaration in their commercial records at the time of importation and delay providing a declaration to HMRC for up to 6 months. The objective of this policy is to assist those businesses that have been adversely impacted by coronavirus (Covid 19).

Under existing rules, simplified customs declarations can be made but the supplementary declaration containing the remainder of the customs information is generally required by the 4th working day of the following month. The statutory instrument amends these rules to allow businesses and intermediaries to defer the submission of the a supplementary declaration for up to 6 months.

The main benefit of these new rules is that affected businesses will no longer need to have a duty deferment account in place until the supplementary declaration is made. The simplified customs declaration process will be available to all eligible businesses that import non-controlled goods during the period 1 January 2021 to 30 June 2021. The process will not, however, apply to any controlled goods such as alcohol and tobacco where full customs declarations will be required.

Comment

These new rules are intended to help UK importers of non-controlled goods impacted by the coronavirus pandemic.

In normal circumstances the supplementary declaration would need to be made within four working days of the end of the month of importation.

Under the new rules, businesses can now take up to 6 months before they are required to make the full supplementary declaration. In addition, there is no requirement to have a duty deferment account in place until the supplementary declaration is due.

The amendment to the rules should provide economic certainty to traders by staging the introduction of customs requirements post Brexit and giving affected businesses more time to make the necessary arrangements.

Commission begins infraction proceedings against the UK

Commission alleges that the UK has breached its EU law obligations

When a Member State of the European Union fails to implement EU law or fails to implement it correctly, the Commission, as the 'guardian of EU law' has power under the Treaty to take the miscreant Member State to task. The proceedings against a Member State by the Commission are known as infraction proceedings whereby the Commission begins a formal process to bring the Member State to heel.

Despite the UK's departure from the EU, whilst it is still within the transitional provisions which treats the UK as if it were a Member State, the Commission has started formal proceedings against the UK by the issue of a formal notice. The Commission considers that by tabling the United Kingdom Internal Market Bill before Parliament, the UK has failed to fulfil its legal obligations arising under the terms of the withdrawal agreement negotiated between the EU and the UK.

The Commission considers that the bill, if passed, would flagrantly breach the Protocol on Ireland / Northern Ireland as it would allow the UK authorities to disregard the legal effect of the Protocol's substantive provisions. Whilst the UK has acknowledged that the bill does violate the Protocol, it has failed to withdraw the bill as requested by the Commission. According to the Commission, this failure to withdraw the bill amounts to a breach of the UK's legal obligation under EU law to act in good faith and this failure has led to the Commission beginning these infraction proceedings. The UK has one month to respond to the formal notice by submitting its own observations. If it does not respond, the Commission may then proceed further by issuing a reasoned opinion. Ultimately, if the Commission and the UK cannot agree, the Commission may refer the issue to the Court of Justice. In such circumstances, any judgment from the Court is likely to take up to 15 months and will be delivered at a time when the UK will have been out of the EU for almost two years.

Comment

The withdrawal agreement between the EU and the UK was negotiated by the parties and entered into force on 1 February 2020. The agreement is legally binding and, under Article 5 both parties agreed to 'take all appropriate measures to ensure the fulfilment of the obligations arising from it'.

The agreement included measures dealing with Ireland / Northern Ireland. However, the UK has unilaterally tabled legislation in Parliament which will amend the Irish Protocol in the event that there is 'no deal' in the continuing trade-deal negotiations.

The UK considers that it has a sovereign right to take these measures but the Commission considers that the Internal Market Bill violates the terms of the agreement that the UK signed up for. Ultimately, it is likely that the Court of Justice will be the final arbiter.

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