Grant Thornton
An instinct for growth™

# Indirect tax update

**Edition 36/2020 – 29 October 2020**

## Summary

Welcome to this week's Indirect Tax Update.

With the end of the Brexit transition period fast approaching HMRC has finally issued guidance in relation to how businesses should account for VAT on transactions which involve the supply of goods to or from Northern Ireland.

It is clear that this issue is far from straightforward. Northern Ireland is, of course, part of the United Kingdom but it does share a border with the Republic of Ireland. The issue – how to operate a VAT and customs system without imposing a hard border between NI and the Republic means that an ingenious solution had to be found. HMRC's paper, published on 26 October – just nine weeks before the end of the transition period, sets out how businesses trading goods between Great Britain (the UK excluding NI) and NI should account for VAT. The paper does not provide all the answers by any means and it is hoped that HMRC will provide further detail as a matter of some urgency.

Affected businesses have very little time left to amend their procedures and accounting systems.

The Advocate General of the Court of Justice has issued an opinion in relation to a 'place of supply' case concerning roaming charges for telecoms services. In SK Telecom Co Ltd, the AG has confirmed that the place of supply is the country where the service is used or enjoyed even though both the supplier and the customer belonged in a third country.

The AG has also issued an opinion in a case concerning the issue of whether two supplies were 'separate' supplies for VAT purposes or whether there was, in fact, a single supply.

The taxpayer provided taxable fitness services but also offered nutrition advice which it claimed was a separate supply of medical care and exempt from VAT. The AG has delivered an opinion which confirms that the services are separate and distinct but that the nutrition advice does not qualify as medical care and is, thus, not exempt from VAT.

## HMRC issues Policy Paper on trading goods with Northern Ireland post Brexit

*HMRC issues guidance on VAT accounting*

Businesses involved with trading goods between Great Britain (for these purposes GB is made up of the United Kingdom excluding Northern Ireland) and Northern Ireland itself have just nine weeks to familiarise themselves with new VAT accounting rules. With the Brexit transitional period set to expire at 11pm on 31 December 2020, businesses have little time to get to grips with these new rules.

In normal circumstances, the supply of goods between two entities established in the same country is treated, for VAT purposes as a 'domestic' supply. The supplier charges 'domestic' VAT to the customer and the customer reclaims that VAT as input tax subject to the normal rules. In the case of Northern Ireland, it is part of the UK and so, under present rules, the supply of goods between Birmingham and Belfast is simply treated as a domestic supply with UK VAT charged and reclaimed. However, after the expiry of the Brexit transitional period on 31 December, Northern Ireland, whilst remaining part of the United Kingdom, is to be treated as if it were still part of the European Union and, as a consequence, a new set of VAT accounting rules are needed.

With NI treated as if it were a Member State of the EU and GB being regarded by the EU as a third country after Brexit, the EU considers that when goods are supplied from the UK to NI (and vice versa) then, to all intents and purposes, there is an export from the UK and an import into NI (even though NI is still part of the UK). Under the EU proposals, import VAT would be due in the territory of arrival of the goods. In general terms, this would have meant that goods being shipped from Birmingham to Belfast would be zero-rated in GB with a corresponding import in NI.

In its policy paper issued on 26 October 2020, HMRC has confirmed that, despite the Commission's policy, UK VAT will continue to be chargeable in relation to most supplies of goods between GB and NI. According to HMRC, businesses in both territories will continue to use their existing VAT registration numbers and there will be no need for any new registrations. VAT will continue to be accounted for on transactions as it is presently. There will, however, be a number of exceptions where goods are declared to a special customs procedure, are goods that are subject to a domestic reverse charge or a goods that are subject to an 'Onward Supply' procedure.

The policy paper also deals with the movement of own goods by a business (ie where there is no supply of the goods to a customer but there is a movement of the goods from one territory to another). In essence, VAT will be due on such movements between GB and NI and, as a consequence, business moving their own goods will need to account for output VAT on their VAT return and will be entitled to reclaim the VAT on the same VAT return. Where a business is fully taxable, this accounting procedure produces a neutral result. Where a business is partly exempt it will need to claim only the proportion that is attributable to its taxable supplies.

There are also provisions in the document relating to VAT groups. Under general rules, supplies of goods (or services) between members of the same VAT group are disregarded for VAT purposes. Under the policy guidance, HMRC has stated that VAT groups will, largely, continue as they do now. However where the supplying member is located in GB and the customer member is located in NI VAT will be due on the supply (but will also be reclaimable similar to the situation for the movement of own goods). Where the goods in question are physically located in NI, the supply of the goods between two members of the same VAT group will only be disregarded as a supply for VAT purposes if both VAT group members are established or have a fixed establishment in NI.

***Comment – the terms of the EU Withdrawal Agreement and the resulting Ireland / Northern Ireland Protocol dictate that special VAT accounting and customs rules are needed to deal with the fact that a hard border between the Republic and NI is undesirable. The solution seems to be something of a fudge but in practical terms seems also to be pragmatic. There are, of course, many unanswered questions and it is hope that HMRC will provide more clarity as a matter of some urgency given that the changes to VAT accounting will come into force in just over two months. businesses that move their own goods or are members of a VAT group will need to pay attention to the special rules. Businesses should review their trade flows involving Northern Ireland and ensure systems and processes are updated to reflect any required changes relating to VAT and Customs.***

### Court of Justice – Advocate General's Opinion – SK Telecoms Co Ltd

#### Place of supply of roaming services

The Advocate General of the Court has issued his opinion in relation to the place of supply of 'roaming' services. This was a referral to the Court of Justice by the Austrian Courts and concerns supplies of telecoms services by a company established in South Korea to customers (also established in South Korea but who were temporarily located in Austria). In essence, the company had to buy in Telecoms services from an Austrian network operator and it recharged its customers for those 'roaming' services. The Austrian network operator charged the company Austrian VAT at 20% and the company sought a refund of that VAT under the provisions of the 13th VAT Directive.

The Austrian Tax Authority refused the claim. This was on the basis that it considered that the company had made taxable supplies in Austria which required it to be registered for VAT in Austria and to account for VAT on the supplies of roaming services to its customers. The company argued, on the other hand, that it and its customers were established outside the EU and that, as a result, the services could not be subject to Austrian VAT.

The AG has concluded that, as the network being utilised by the users was located in Austria, the use or enjoyment of that network took place in Austria. Accordingly, under Article 59a of the VAT Directive, in order to prevent double taxation, non-taxation or distortion of competition, the place of supply of telecoms services can be shifted to the place where effective use and enjoyment of the service takes place.

In the circumstances in this case, whilst the supplier and the customers were established outside the European Union, the effective use and enjoyment of the service took place in Austria. Given that the place of supply of the service by the company to its customers was, therefore, Austria, it was not entitled to a refund under the 13th VAT Directive.

**Comment**

***The EU VAT system requires a set of rules (known as the place of supply rules) in order to determine the place where a supply takes place (or is deemed to take place) for VAT purposes.***

***Generally, supplies of services by an entity established outside the EU to customers who also belong outside the EU are not liable to taxation in the EU. However, the VAT Directive provides an exception to that general rule where the supply in question is, in reality, used or enjoyed within the territory of the Community.***

***In this case the Advocate General confirms that, in his view, telecoms services are provided in the country where the physical network is located. VAT is a tax on consumption and, in his view, the customers consumed the telecoms service whilst they were physically located in Austria.***

### Court of Justice – Advocate General's Opinion - Frenetikexito

#### Single v Multiple supply – whether nutrition advisory service medical care?

There were two main issues in this case. Firstly, the old chestnut of whether there was a single or a multiple supply of services and secondly, if there was a multiple supply, whether the supply of nutrition advisory services was to be regarded as 'medical care' and thus exempt from VAT.

In this case, a referral by the Portuguese courts, the taxpayer company provided fitness services through the operation of fitness studios. It also provides, for a separate fee, nutrition advice to customers. The company considered that these nutrition advisory services were separate to the fitness services it provides and, moreover, they were medical care services that should qualify for exemption from VAT. The tax authority on the other hand argued that there was, in reality, a single supply of fitness services and that the nutrition advisory service was simply ancillary to the principal supply. Accordingly the whole of the income should be liable to VAT.

Advocate General Kokott has issued her opinion essentially agreeing with the taxpayer on the first point but not in relation to the second. Generally, every supply should be treated as an independent supply but there are limitations. That rule is not an absolute rule. In this case, there were two distinct supplies of services and the nutritional advice service could be and, in many cases was, purchased separately to the fitness service. Accordingly, the nutrition advice services supplied by the applicant in the present case are independent services for the purposes of the VAT Directive, which are separate from the VAT assessment of the fitness service. On the second point, the AG confirmed that the exempt from VAT could apply if (and only if) the nutrition services were provided for a therapeutic purpose. The AG considers that it is for the referring court to determine those facts but hinted that, on the face of it, the nutrition service at issue in this case did not meet such a purpose.

**Comment**

***For services to qualify as 'medical care' which benefit form the VAT exemption provided by the Directive, the service must have a therapeutic aim. The concept of medical care covers only services that have as their aim the diagnosis, treatment and, in so far as possible, cure of diseases or health disorders. The necessary condition for exemption to apply is thus that the medical care service should have a therapeutic aim.***

***That condition is not met in the case of general nutrition advice. It is true that the Court of Justice has adopted a broad understanding of that term which includes preventive measures which protect and maintain health. To qualify as therapeutic, the service must seek to avert, avoid or prevent the occurrence of a health disorder. In the AG's view, the supply of general nutrition advice does not achieve those aims.***

## Contacts


**Karen Robb**
**T +44 (0)20 7728 2556**
**E karen.robb@uk.gt.com**

**Nick Warner**
**T +44 (0)20 7728 3085**
**E nick.warner@uk.gt.com**

**Alex Baulf**
**T +44 (0)20 7728 2863**
**E alex.baulf@uk.gt.com**

**Daniel Sherwood**
**T +44 (0)1223 225616**
**E daniel.sherwood@uk.gt.com**

**Nick Garside**
**T +44 (0)20 7865 2331**
**E nick.garside@uk.gt.com**

**Paul Wilson**
**T +44 (0)161 953 6462**
**E paul.m.wilson@uk.gt.com**

**Claire Hamlin**
**T +44 (0)161 953 6397**
**E claire.a.hamlin@uk.gt.com**

**Morgan Montgomery**
**T +44 (0)121 232 5126**
**E morgan.montgomery@uk.gt.com**