VAT alert

HMRC announces various VAT changes in the event of a 'No Deal' exit from the EU

Summary

The UK has announced that, if it agrees a 'Brexit' deal with the European Union and that deal is ratified by the UK Parliament, the UK will enter into a two-year transitional period in relation to Value Added Tax (VAT). In essence, very little will change until January 2021

As things currently stand (early February 2019) however, the Government is still trying to negotiate a deal that will be supported by Parliament. In the circumstances, it is still possible (and some say likely) that the UK will leave the EU on 29 March 2019 with 'no-deal'.

HMRC is preparing for both eventualities and has recently published draft legislation to ensure that if there is 'no deal' the UK's VAT system operates as required.

The proposed amendments to UK VAT law will affect businesses registered for VAT in the UK that provide financial services and fund managers. These businesses need to familiarise themselves with these new rules. The law in relation to 'specified supplies' will be amended from a date yet to be appointed. The law in relation to fund management services will be effective from 29 March 2019 (ie 'exit day').

Proposed changes will affect providers of financial services and fund managers

At the time of writing (early February 2019) there is just over 6 weeks to 'exit-day' (ie 29 March 2019 – the day that the United Kingdom is set to leave the European Union). The UK Government is still hopeful of obtaining the approval of the UK parliament to the negotiated deal it has agreed with the EU. However, there is a distinct and real possibility that no such agreement will be reached and that, as a consequence, the UK will actually 'exit' the EU on 29 March with 'no-deal'. In those circumstances, HMRC and the UK Treasury have published draft legislation that will come into force if there is no deal.

Of interest to the financial community will be two statutory instruments that have been laid before Parliament. The First (SI 2019/175 - The Value Added Tax (Input Tax) (Specified Supplies) (EU Exit) Regulations 2019) deals with the supply of financial services generally and the second (SI 2019/43 – The Value Added Tax (Finance) (EU Exit) Order 2019 deals with the VAT liability of fund management services after exit day.

Specified Supplies

Under existing legislation, UK businesses supplying VAT exempt financial services are not entitled to reclaim input VAT incurred on the purchase of goods and services. However, there is an exception to that general rule where the business provides such services to customers established outside the EU. In those circumstances, they are entitled to reclaim VAT that they incur in the UK. If the UK leaves the EU on 29 March 2019 with no deal, then UK customers of these businesses would be regarded as being established outside the EU with the consequence that the business would be entitled to input VAT recovery. The Statutory instrument makes it clear that after exit day, the entitlement to input VAT recovery only applies where the customer is established both outside the UK and outside the EU.

Fund Management Services

This next amendment is not, strictly, being made as a result of the UK's exit from the EU. However, the UK is choosing to tidy up the UK law following earlier judgments of the Court of Justice and will bring these measures into force on 29 March 2019 irrespective of whether the UK has agreed an exit deal.

Essentially, the definition of the term 'closed-ended collective investment undertaking' is to change to include funds that do not necessarily only invest in securities. In addition, exemption for fund management services is being extended to include 'recognised pension funds'. Presently, UK law does not provide exemption for fund management services provided to certain pension schemes. The new law, as drafted will ensure that a 'recognised pension scheme' will be regarded as a Special Investment Fund for VAT purposes. This will be on condition that the pension scheme is solely funded by the pension members who also bear the investment risk, the contributions of pension members are pooled together and the investment risk is spread over a range of investments.

Comment – affected businesses need to be aware of these proposed changes and to be prepare to implement them going forward.

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