

## Flash News

### VAT consequences of a no-deal BREXIT

By end of February 2019 it is still unclear what the final Brexit position will be in terms of the relationship of the European Union (“EU”) with the United Kingdom (“UK”). The UK Parliament will vote the Brexit withdrawal agreement on 12 March 2019.

If this vote fails the UK may leave the EU without withdrawal agreement, which would lead to a no-deal Brexit, or it may request an extension to the Article 50 negotiation process to delay the EU withdrawal beyond 29 March.

In a no-deal Brexit scenario the UK will be withdrawn from the European Union as of 30 March 2019 0:00h CET (“the withdrawal date”) and will be outside the EU legal and trade jurisdiction.

The exit without a withdrawal agreement will have immediate impact on VAT rules applying to business transactions where UK customers or suppliers are involved. As of 30 March 2019, the UK will become a third country for which the European legislation (including the settled case-law of the Court of Justice of the European Union) will not be binding anymore.

In January 2019, the Luxembourg Registration Duties, Estates and VAT Authority (“AED”) has released a preparedness notice in this respect which summarizes the direct and (currently) expected VAT consequences.

Given this notice and our daily experience in VAT matters, we present below some points of attention for Luxembourg taxable persons performing cross-border transactions with the UK.

#### **A. VAT treatment for the supply of goods and services**

##### **1) Supplies of goods between Luxembourg and the UK**

As of the withdrawal date, supplies and movements of own goods between Luxembourg and the UK will be considered as exports and imports. The VAT rules for intra-Community supplies of goods and intra-Community acquisitions of goods will no longer be applicable.

As well, the distance sales regime for goods to and from the UK cannot be used anymore.

Taxable persons currently involved in cross-border supplies / acquisitions of goods to / from the UK should acquaint themselves with the customs procedure and the export – import formalities.

In this respect particular care should be taken that the correct classification is given to the goods to ensure that the right amount of duty is levied pursuant to the UK Trade Tariff or the EU Tariff, respectively.

Please be advised that duty costs are irrecoverable, which means a potential increase of costs due to import duty and VAT cashflow.

## **2) Supplies of services between Luxembourg and the UK**

As of the withdrawal date, the supplies of services will be considered as between Luxembourg and a third country and therefore, such cross-border third country VAT rules will apply.

In general, Luxembourg businesses will continue to apply the reverse charge procedure to the receipt of services from an UK taxable person.

The VAT treatment of supplies of services rendered to an UK business depends on the nature of the service, whether or not the customer is a taxable person, the place of supply of the service and other conditions have an impact on the VAT rules applicable.

To this end, it will be important to monitor and see if the UK will remain in line with the European definitions and criteria as regards, among others, the business-to-business (“B2B”) / business-to-consumer (“B2C”) VAT principles, the fixed establishment criteria, the application of the reverse charge rules, etc.

For intangible services (e.g. advisory, consultancy, legal, advertising, directorship services, etc.) rendered by Luxembourg taxable persons to UK customers, irrespective whether the recipient is a taxable person or not, the place of supply will be in the UK.

A positive aspect as regards the supply of services from Luxembourg to UK recipients is that, after the withdrawal date, the financial and insurance services performed by Luxembourg taxable persons will allow them the deduction of input VAT.

## **B. VAT compliance obligations and VAT refund procedure**

### **1. EC Sales Lists for supplies of goods and services**

As of the withdrawal date, there will be no more the obligation to submit the European Community Sales List (“EC SL”) for goods and services supplied to the UK as these will not be considered as intra-Community supplies. These supplies will be considered as exports (goods) or supplies of services to a third country.

Thus, taxable persons currently rendering taxable services (not VAT exempt) to taxable persons registered for VAT purposes in the UK will no longer be required to submit such EC SL. The box where such turnover has to be reported in the Luxembourg VAT return will change accordingly.

## **2. Warranty / letter of guarantee**

It should be noted that after the withdrawal date, if the person liable for VAT in Luxembourg is an UK taxable person, the latter could be obliged by the AED to submit a warranty or a letter of guarantee issued by an accredited banking institution for ensuring the payment of VAT due or any penalties (if the case).

This could be the case of UK companies performing construction services in Luxembourg. Such warranty / letter of guarantee should be submitted within one month following the request of the AED.

## **3. VAT refunds**

As of the withdrawal date, the electronic submission of refund claims in connection with VAT paid in the UK by Luxembourg taxable persons through the portal of the AED will not be possible anymore.

In this sense, it is highly recommended to submit, before the withdrawal date, the electronic requests for the refunds in connection with UK VAT incurred until 29 March 2019 (UK VAT of 2018 included).

After the withdrawal date, Luxembourg taxable persons having incurred expenses subject to UK VAT shall submit their VAT refund application in paper form directly to the UK VAT authorities. Subject to changes, the refund application and all original invoices or import documents have to be filed no later than 6 months after the end of the prescribed year which runs from 1 July to 30 June, i.e. the application covering the period 1 July 2018 to 30 June 2019 has to be submitted until 31 December 2019.

An UK business will have to claim the refund of Luxembourg VAT according to the existing Luxembourg rules for the VAT refund of non-EU businesses. VAT refund rules are still to be determined including whether reciprocity conditions should apply.

## **C. Eligibility for EU VAT schemes and disconnection from EU IT system**

### **1. Mini One-Stop Shop scheme (“MOSS”)**

As of the withdrawal date, the taxable persons identified for MOSS in Luxembourg and making B2C supplies of telecom, broadcasting and electronic services to customers (non-taxable persons) in the UK, will no longer be able to use this MOSS scheme.

Going forward, VAT registration requirements in the UK for Luxembourg taxable persons performing such services to UK individuals could potentially apply.

The UK suppliers of telecom, broadcasting and electronic services providing these services to customers within the European territory and who want to continue to use the MOSS, will have to apply for the "non-Union MOSS scheme".

## **2. VIES**

As of the withdrawal date, the UK will be disconnected from the common system of verification of validity of VAT numbers, Thus, the UK VAT numbers will not be available in the VIES database anymore.

It is recommended to check the validity of the VAT numbers of the UK business partners before the withdrawal date.

There are still some clarifications to be made as regards the VAT rules applicable after the withdrawal date. Therefore, we recommend to carefully monitor any future notices from AED as well as from HM Revenue & Customs. Taxable persons involved in cross-border transactions with the UK should analyse the VAT impacts of a no-deal Brexit on a case-by-case basis.

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In case you might require further information or support in order to be prepared for the Brexit changes and to lessen their impact on your trading activity with the UK, please do not hesitate to contact us:

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