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REV1 - Replaces the Notice to  
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2018

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF VALUE ADDED TAX

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. On 22 March 2019, the European Council (Article 50) decided, in agreement with the United Kingdom, and in the event that the Withdrawal Agreement is approved by the House of Commons by 29 March, to extend the 2-years period provided for in Article 50(3) of the Treaty on European Union until 22 May 2019.

In the event that the Withdrawal Agreement is not approved by the House of Commons by 29 March 2019, the European Council decided to extend the period provided for in Article 50(3) of the Treaty on European Union until 12 April 2019. This means that as from 13 April 2019, 00:00h (CET) ('the withdrawal date') the United Kingdom may be a 'third country'.<sup>1</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement, all interested parties, and especially economic operators, are reminded of legal repercussions in the field of value added tax (VAT), which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the draft Withdrawal Agreement,<sup>2</sup> as of the withdrawal date, the EU rules in the field of VAT, and in particular Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax<sup>3</sup> (hereafter the 'VAT Directive') and Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive

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<sup>1</sup> A third country is a country not member of the EU.

<sup>2</sup> Cf. Part Four of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ, C 66 I, 19.2.2019, p. 1).

<sup>3</sup> OJ L 347, 11.12.2006, p. 1.

2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State<sup>4</sup>, no longer apply to the United Kingdom. This has in particular the following consequences concerning the treatment of taxable transactions (see below, 1) and VAT refunds (see below, 2):<sup>5</sup>

## 1. VAT PAYMENTS AND LIABILITY

### 1.1. Treatment of supplies of goods between the EU and the United Kingdom

#### 1.1.1. *EU rules for VAT payments/returns for cross-border supplies of goods*

EU VAT legislation provides for different regimes of VAT payments/returns for cross-border supplies/acquisitions and movements to/from Member States and third countries.

As of the withdrawal date, the EU rules for cross-border supplies and movements between EU Member States will no longer apply in the relations between EU-27 Member States and the United Kingdom (e.g. no intra-Community supplies and acquisitions; no distance sales regime for goods to and from the United Kingdom).

Instead, as of the withdrawal date, supplies and movements of goods between the EU and the United Kingdom are subject to the VAT rules on imports and exports. This implies that goods which are brought into the VAT territory of the EU from the United Kingdom or are to be taken out of that territory for transport to the United Kingdom, will be subject to customs supervision and may be subject to customs controls in accordance with Regulation (EU) No 952/2013 of 9 October 2013 laying down the Union Customs Code.<sup>6</sup>

- VAT will be due at the **importation** in the EU<sup>7</sup>, at the rate that applies to the supplies of the same goods within the EU.<sup>8</sup> VAT will be payable to customs authorities at the time of importation, unless the Member State of importation allows to enter import VAT in the periodical VAT return of the taxable person.<sup>9</sup> The taxable amount is based on the value for customs purposes, but increased by (a) taxes, duties, levies and other charges due outside the Member State of

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<sup>4</sup> OJ L 44, 20.2.2008, p. 23.

<sup>5</sup> This notice complements the "*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of customs and indirect taxation*", published on 30 January 2018.

<sup>6</sup> OJ L 269, 10.10.2013, p. 1.

<sup>7</sup> Article 2(1)(d) of the VAT Directive.

<sup>8</sup> Article 94(2) of the VAT Directive.

<sup>9</sup> Article 211 of the VAT Directive.

importation, and those due by reason of importation, excluding the VAT to be levied, and (b) incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of the Member State of importation as well as those resulting from transport to another place of destination within the EU, if that other place is known when the chargeable event occurs.<sup>10</sup>

- The customs **export** procedure will be obligatory for Union goods leaving the EU customs territory. First the exporter will present the goods and a pre-departure declaration (customs declaration, re-export declaration, exit summary declaration) at the customs office responsible for the place where he is established or where the goods are packed or loaded for export shipment (customs office of export). Subsequently, the goods will be presented at the customs office of exit which may examine the goods presented based on the information received from the customs office of export and will supervise their physical exit out of the EU customs territory.

Goods will be exempt from VAT if they are dispatched or transported to a destination outside the EU.<sup>11</sup> The supplier of exported goods must be able to prove that the goods have left the EU. In this regard, Member States generally base themselves on the certification of exit given to the exporter by the customs office of export.

#### *1.1.2. On-going movements of goods from the United Kingdom to the EU-27 Member States at the moment of its withdrawal*

There may be situations where goods are dispatched or transported from the United Kingdom before the withdrawal date, but where these arrive in the EU's VAT territory only on or after the withdrawal date.

An intra-Community acquisition of goods is regarded as being made when the corresponding supply is effected. In certain cases, such a supply may have been effected before the withdrawal date, at the time when dispatch or transport of these goods began, or during dispatch or transport of the goods, even if the goods arrive after withdrawal.

An intra-Community acquisition of goods of which the dispatch or transport from the United Kingdom to the EU-27 Member States started before its withdrawal from the EU is disregarded if the importation of these goods, as provided for in Article 30 of the VAT

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<sup>10</sup> Articles 85 and 86 of the VAT Directive.

<sup>11</sup> Article 146 of the VAT Directive.

Directive, in a Member State of the EU-27 takes place as from the withdrawal date.<sup>12</sup> This approach respects the principle of neutrality of VAT, provides legal certainty and ensures a rational taxation that avoids double taxation.

### *1.1.3. Re-importation of goods after the withdrawal of the United Kingdom*

Article 143(1)(e) of the VAT Directive provides for an exemption from VAT of the reimportation, by the person who exported them, of goods in the state in which they were exported, where those goods are exempt from customs duties.

There may be situations where goods that were transported or dispatched from an EU-27 Member State to the United Kingdom before the withdrawal date, are returned, in the same state, to the EU-27 on or after the withdrawal date.

The notion of "re-importation", as referred to in Article 143(1)(e) of the VAT Directive, also covers situations of importation where goods that have not been exported but were transported or dispatched from one of the EU-27 Member States to the United Kingdom before the withdrawal date are returned from the United Kingdom as from the withdrawal date.<sup>13</sup>

In these cases as there will be no export declaration available, the person who is reimporting the goods shall use alternative means to prove that the goods are re-imported in unaltered state within the time limit referred to in Article 203(1) of Regulation (EU) No 952/2013 laying down the Union Customs Code.<sup>14</sup>

**Taxable persons in the EU should take all necessary steps to ensure that they can provide all necessary evidence with regard to their intra-Community supplies and intra-Community acquisitions to/from the United Kingdom before the withdrawal date, and with regard to all other supplies that they have made in, or received from, the United Kingdom before the withdrawal date.**

**Taxable persons may have to familiarize themselves with customs procedures and formalities regarding import and export of goods.<sup>15</sup>**

<sup>12</sup> See the guidelines of the VAT Committee of 13 March 2019 ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal_en.pdf)).

<sup>13</sup> See the guidelines of the VAT Committee of 13 March 2019 ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal_en.pdf)).

<sup>14</sup> OJ L 269, 10.10.2013, p. 1.

<sup>15</sup> See "Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of customs and indirect taxation", 30 January 2018.

#### *1.1.4. Personal property imported after the withdrawal of the United Kingdom*

Article 4 of Directive 2009/132/EC provides for an exemption from VAT of personal property imported by natural persons when moving their place of residence from outside the EU to the EU. The exemption is subject to the possession of the personal property and, in the case of non-consumable goods, its use by the person concerned at his or her former normal place of residence for a minimum of six months before the date on which he or she ceases to have his or her normal place of residence outside the Union.

There may be situations where natural persons move their residence from the United Kingdom to the EU-27 on or after the withdrawal date.

For natural persons moving their normal place of residence from the United Kingdom to an EU-27 Member State within 6 months as from the withdrawal date, the exemption laid down in Article 4 of Directive 2009/132/EC shall apply to personal property imported by such persons into the EU-27 as from the withdrawal date.<sup>16</sup> However, the exemption shall be subject to the following conditions:

- a. the goods concerned have been in the possession of and, in the case of non-consumable goods, used by the person concerned at his or her former normal place of residence in the United Kingdom for a minimum of six months (except in special cases justified by circumstances) before the date on which he or she ceased to have his or her normal place of residence outside the EU-27; and
- b. such property has borne the customs and/or fiscal charges to which it was normally liable in the United Kingdom or in one of the EU-27 Member States before the importation in the EU.

## **1.2. Treatment of supplies of services between the EU and the United Kingdom**

### *1.2.1. EU rules on VAT for cross-border supplies of services*

EU VAT legislation provides for different regimes of VAT payments/returns for cross-border supplies of services to/from Member States and third countries. The place of supply of services depends on various factors, such as the nature of the service, whether or not the person receiving the service is a taxable person, the place where the service is carried out, etc.

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<sup>16</sup> See the guidelines of the VAT Committee of 13 March 2019 ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal_en.pdf)).

The withdrawal of the United Kingdom may have an impact for taxable persons established in the United Kingdom who supply services in the EU from the withdrawal date and for taxable persons established in the EU who supply services in the United Kingdom from the withdrawal date.

In particular, Member States are permitted to require the designation of a tax representative if the taxable person supplying the services is established in a third country that does not provide administrative cooperation and recovery assistance for VAT.<sup>17</sup> As of the withdrawal date, this requirement may apply to taxable persons established in the United Kingdom.

Taxable persons established in the United Kingdom applying the Mini One-Stop Shop (MOSS) scheme for their Business-to-Consumer supplies of telecom, broadcasting and electronic services to customers in the EU will have to change their MOSS identification (see point 1.3. below).

*1.2.2. Advice to taxable persons for preparing for a withdrawal without withdrawal agreement*

Taxable persons established in the EU should take all necessary steps to ensure that they can provide all necessary evidence with regard to the supplies of services before the withdrawal date that they have made in, or received from, the United Kingdom before the withdrawal date.

Taxable persons established in the United Kingdom will have to examine whether new liability rules will apply to them with regard to their supplies of services that take place within the EU after the withdrawal of the United Kingdom.

### **1.3. Submission of VAT returns through the Mini One-Stop Shop scheme**

*1.3.1. The EU Mini One-Stop Shop scheme*

In accordance with Article 58 of the VAT Directive, VAT on Business-to-Consumer supplies of telecom, broadcasting and electronic services are subject to VAT in the Member State of consumption.

Articles 358 to 369k of the VAT Directive set the legal framework for special schemes for non-established taxable persons supplying telecommunications services, broadcasting or electronic services to non-taxable persons in the EU – the Mini One-Stop Shop (**MOSS**) schemes. MOSS allows a taxable person to submit a MOSS VAT return for each calendar quarter to the Member State of identification. That Member State of identification splits the MOSS VAT return by

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<sup>17</sup> Article 204 of the VAT Directive.

Member State of consumption and forwards the details to the various Member States of consumption.

The VAT Directive provides for a MOSS scheme for taxable persons established in a Member State different from the Member State of consumption ("Union MOSS scheme"), and for a MOSS scheme for taxable persons established in a third country ("non-Union MOSS scheme").

1.3.2. *Advice to taxable persons for preparing for a withdrawal without withdrawal agreement*

a) Taxable persons established in an EU-27 Member State or in a third country, identified for MOSS in the EU-27 and making Business-to-Consumer supplies of telecom, broadcasting and electronic services to customers in the United Kingdom:

These taxable persons are liable to pay the VAT for services provided until and including the day before the withdrawal date (i.e. until and including 29 March 2019) in accordance with the VAT Directive. For the services provided in the United Kingdom before the withdrawal date, the United Kingdom must still be considered a Member State of consumption. Thus, MOSS VAT returns for the first calendar quarter of 2019 should also cover services provided in the United Kingdom up to the withdrawal date, even though taxable persons are to submit those MOSS VAT returns after the withdrawal date.

b) Taxable persons identified for MOSS in the United Kingdom and making Business-to-Consumer supplies of telecom, broadcasting and electronic services to customers in the EU-27 Member States:

These taxable persons are liable to pay the VAT for services in accordance with the VAT Directive. In the absence of a withdrawal agreement, in order to facilitate the submission of returns to the EU-27 Member States for the services supplied from 1 January 2019 until and including the day before the withdrawal date (i.e. until and including 29 March 2019), these taxable persons should take the following measures:

- **Taxable persons established in a third country and identified for MOSS in the non-Union MOSS scheme in the United Kingdom:** These taxable persons should move their MOSS-identification from the United Kingdom to an EU-27 Member State. An early move – even before the first quarter of 2019 – may facilitate future corrections of MOSS returns submitted before the withdrawal date.<sup>18</sup>

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<sup>18</sup> Within the EU, corrective returns can be submitted until 3 years following the tax period concerned (Article 61(2) of Council Implementing Regulation (EU) No 282/2011).

- **Taxable persons established in a third country with a fixed establishment in the United Kingdom and in at least one EU-27 Member State:** If these taxable persons have opted for identification for the **Union MOSS scheme** in the United Kingdom and maintain their fixed establishment in the United Kingdom, these taxable persons are in principle bound by their decision for the calendar year concerned and the two calendar years following (in accordance with the second paragraph of Article 369a of the VAT Directive). However, as they cannot remain identified for the Union MOSS scheme in the United Kingdom as from the withdrawal date, they should move their identification for the Union MOSS scheme from the United Kingdom to a Member State of the EU-27 with effect from the withdrawal date.<sup>19</sup>
- **Taxable persons established only in the United Kingdom:** If these taxable persons have opted for identification for the Union MOSS scheme and maintain their fixed establishment in the United Kingdom, and want to continue to use the MOSS scheme, they should register for the **non-Union MOSS scheme** in a Member State of the EU-27 with effect from the withdrawal date, in accordance with Article 359 of the VAT Directive, since they will be considered as taxable persons not established within the EU as of the withdrawal date.

If, in accordance with the advice given in section 1.3.2., taxable persons currently identified for MOSS in the United Kingdom become identified for MOSS in one of the EU-27 Member States, they could report their MOSS transactions of the first quarter of 2019 to customers in the EU-27 in the first MOSS VAT return which they submit in an EU-27 Member State in April 2019, in accordance with Article 369f of the VAT Directive.

## 2. VAT REFUNDS

### 2.1. EU rules for VAT refunds

EU VAT legislation provides for different regimes of VAT refunds to taxable persons not established in the Member State in which they have paid VAT. This depends on whether the taxable person is established in the EU or in a third country.

#### a) Taxable persons established in the EU:

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<sup>19</sup> Article 369a, second paragraph, of the VAT Directive provides that these taxable persons are bound by their decision for the calendar year concerned and the two calendar years following. This implies that if their decision to identify for the Union MOSS scheme in the United Kingdom was taken before 2017, these taxable persons could already move their identification for the Union MOSS scheme to an EU-27 Member State with effect before the withdrawal date.



According to Articles 170 and 171 of the VAT Directive, taxable persons established in a Member State can request a Member State where they are not established to refund the VAT paid there. The following procedure applies:

- The refund request must be submitted electronically to the Member State of establishment at the latest on 30 September of the year following the refund period (Article 15 of Directive 2008/9/EC);
- The refund request must be forwarded by the Member State of establishment to the Member State of refund within 15 days (Article 48(1) of Council Regulation (EU) No 904/2010<sup>20</sup>);
- The Member State of refund must take a decision on the refund request within 4 months (Article 19(2) of Directive 2008/9/EC); if the refund application is approved, the refund must be paid within 4 months + 10 working days (Article 22 of Directive 2008/9/EC); these periods can be prolonged if the Member State of refund asks additional information (Article 21 of Directive 2008/9/EC).

b) Taxable persons established outside the EU:

According to the Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory<sup>21</sup> (hereafter '13<sup>th</sup> VAT Directive'), VAT refunds by Member States to taxable persons established outside the EU are subject to the following conditions:

- The request must be submitted directly to the Member State from which the refund is requested, in accordance with the arrangements determined by that Member State (Article 3(1) of the 13<sup>th</sup> VAT Directive);
- The VAT refund may be subject to a reciprocity condition (meaning that the refund is only permitted if VAT refund is also granted by the third country to taxable persons established in the Member State concerned (Article 2(2) of the 13<sup>th</sup> VAT Directive);
- Each Member State may require the taxable person established in a third country to designate a tax representative in order to obtain the VAT refund (Article 2(3) of the 13<sup>th</sup> VAT Directive).

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<sup>20</sup> Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010, p. 1.

<sup>21</sup> OJ L 326, 21.11.1986, p. 40.

## **2.2. Pending situations: refund of VAT charged before the withdrawal date in an EU-27 Member State to taxable persons established in the United Kingdom and not yet reimbursed**

### *2.2.1. Submission of applications*

Those taxable persons who have not submitted a refund application before the withdrawal date, or in respect of which the refund application has not yet been forwarded by their State of establishment to the State of refund by that date, must submit or resubmit their refund application directly to the State of refund. For applications for refund from an EU-27 Member State, this submission shall be done according to the procedure of the 13<sup>th</sup> VAT Directive.<sup>22</sup>

### *2.2.2. Substantial rules*

Although, as from the withdrawal date, Directive 2008/9/EC ceases to apply to the United Kingdom, the rights and corresponding obligations of taxable persons derived from that Directive continue to apply with regard to VAT charged in an EU-27 Member State to a taxable person before the withdrawal date.<sup>23</sup>

This will encompass notably the right to a refund of VAT, the time limits to submit a refund application, the information to be provided, the time limits to be notified or to be requested to provide additional information, the time limits to provide the requested additional or further additional information, the time limits to be refunded and the right to receive interest in case of late payment. Further, for the purposes of Articles 16 and 17 of Directive 2008/9/EC, the refund applications relating to VAT charged from 1 January 2019 until and including the day before the withdrawal date shall be treated as relating to the remainder of a calendar year.

The provisions on reciprocity (Article 2(2) of the 13<sup>th</sup> VAT Directive), on the appointment of a tax representative (Article 2(3) of the 13<sup>th</sup> VAT Directive) and on the exclusion of certain expenditure or possible additional conditions (Article 4(2) of the 13<sup>th</sup> VAT Directive) shall not be applicable in respect of VAT charged before the withdrawal date. However, in accordance with Article 273 of the VAT Directive, Member States may require the applicant to provide evidence of his status as taxable person or the original or copy of the invoices.

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<sup>22</sup> As from the withdrawal date, a taxable person established in one of the EU-27 Member States or in the United Kingdom can no longer use the electronic portal set up by his State of establishment for submitting an electronic refund application in accordance with Article 7 of Directive 2008/9/EC.

<sup>23</sup> See the guidelines of the VAT Committee of 13 March 2019 ([https://ec.europa.eu/taxation\\_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-of-the-vat-committee-in-case-of-no-deal_en.pdf)).

### 2.2.3. *Additional requests for information*

As from the withdrawal date the exchange of information between tax authorities relating to VAT refund applications provided for in Article 48(2) and (3) of Regulation (EU) No 904/2010 no longer applies in relation to the United Kingdom. Any request for information by the EU-27 Member State of refund with regard to a VAT refund application will therefore have to be addressed directly to the taxable person concerned.

## 2.3. **Advice to taxable persons for preparing for a withdrawal without withdrawal agreement**

### a) Taxable persons established in the EU-27 and requesting refunds from the United Kingdom:

These taxable persons are entitled to a refund from the United Kingdom for the period until and including the day before the withdrawal date (i.e. until and including 29 March 2019). There is currently no certainty about the future UK-regime for VAT refunds to taxable persons established outside the United Kingdom. Therefore, taxable persons established in the EU-27 should consider requesting refunds from the United Kingdom while the United Kingdom is still a Member State, provided that the conditions set out in the VAT Directive and Directive 2008/9/EC are fulfilled.

### b) Taxable persons established in the United Kingdom and requesting refunds from an EU-27 Member State:

As of the withdrawal date, requests by these taxable persons for a refund from the EU-27 Member States follow the procedural EU rules for taxable persons established outside the EU (see above).

The website of the Commission on taxation and customs union ([https://ec.europa.eu/taxation\\_customs/index\\_en](https://ec.europa.eu/taxation_customs/index_en)) provides general information concerning the consequences of the possible withdrawal in the field of VAT. These pages will be updated with further information, where necessary.

European Commission  
Directorate-General Taxation and Customs Union