NON-EU IMPORTS AND EXPORTS: VAT CONSIDERATIONS

It has been almost two years since the UK left the EU, and many Irish – and UK – based businesses have adapted to the new legal and customs implications of trading between the UK and Ireland in a post-Brexit environment. However, it is also important to ensure that all businesses continue to focus on the Irish VAT implications of trade with non-EU businesses so that they remain compliant.

In 2021 Revenue processed more than 27.1 million import declarations, compared to just over 1 million in 2020. This significant increase was attributed mainly to Brexit and the increase in online shopping as a result of the Covid-19 pandemic.

Due to the rise in volume of imports to Ireland, as well as the introduction of postponed accounting for VAT, it is likely that there will be an increase in Revenue queries and interventions in this area. This article considers the VAT compliance implications for Irish businesses of trading in goods with businesses in non-EU countries, with a particular focus on import VAT.

COMMERCIAL AGREEMENT

For a business to determine its VAT-related obligations in respect of a particular transaction, it is essential that both parties, *i.e.* the seller and the buyer, are aware of the commercial agreements in place and the associated responsibilities, which should be clear from the agreed Incoterm. The International Chamber of Commerce's (ICC) Incoterms are a set of eleven international standardised terms that are used in contracts for the sale and transit of goods and define the responsibilities (*e.g.* paying for and managing the shipment, insurance, customs clearance) of the seller and the buyer in respect of the transaction.

Of the current eleven Incoterms 2020, seven can be used for any mode of transport and four for sea or inland waterway transport:

Any mode of transport

- **EXW** Ex Works
- **FCA** Free Carrier
- **CPT** Carriage Paid To
- **CIP** Carriage and Insurance Paid To
- **DAP** Delivered at Place
- **DPU** Delivered at Place Unloaded
- **DDP** Delivered Duty Paid.

Sea or inland waterway transport only

- **FAS** Free Alongside Ship
- **FOB** Free on Board
- **CFR** Cost and Freight
- **CIF** Cost Insurance and Freight.

Where the Incoterm agreed between the seller and the buyer is Delivered Duty Paid (DDP), this means that the seller should be responsible for all shipping arrangements, clearing the goods for import and paying the customs duty (if any) and the import VAT. Once the goods are imported, the seller should make a domestic supply of the goods to the buyer.

From a buyer's perspective, therefore, a DDP supply is generally most favourable as all responsibility relating to the import rests with the seller. However, where the Incoterm agreed between

the seller and the buyer is any of the other ten, *i.e.* a non-DDP Incoterm, the buyer can be the responsible party for various elements of the transaction depending on the specific Incoterm agreed (*e.g.* insurance, carriage), but in all cases the buyer should be responsible for clearing the goods for import and paying the customs duty (if any) and the import VAT.

Where a buyer imports goods under a non-DDP Incoterm, there should not be any Irish VAT considerations for the seller, as all responsibility relating to the import rests with the buyer. It is therefore particularly important for businesses, at the time that commercial contracts are being entered into, to be familiar with the VAT- and customs-related obligations that arise because of the specific commercial arrangements and the agreed Incoterm.

In addition to the VAT and customs obligations, consideration should be given to supplementary costs that may be incurred by each party as a result of the agreed Incoterm, *e.g.* administration costs, shipping, insurance.

IMPORTS TO IRELAND

For VAT purposes, an import is where goods are acquired in an EU Member State from outside the EU, *e.g.* goods are acquired in Ireland from the USA. With effect from 1 January 2021, the acquisition in Ireland of goods from the UK (with the exception of Northern Ireland, which remains subject to the same EU VAT rules on goods as EU Member States from 1 January 2021 under the Northern Ireland Protocol – further detail on which is set out below) should be an import for VAT purposes.

Importer establishment status

Once it has been identified, based on the commercial arrangements, which party is responsible for the import of the goods to Ireland, consideration needs to be given to whether the responsible party can import the goods directly/directly via a direct representative or whether an indirect representative needs to be appointed. This is dependent on the customs establishment status of the party that is responsible for the import.

Where a business is established in the EU for customs purposes, *i.e.* it has a registered office, a permanent business establishment or its main headquarters in the EU, it should be possible for the business to import the goods to the EU directly itself. Alternatively, the EU-established business can appoint a direct representative, *i.e.* a customs agent who acts in the name of and on behalf of the importer. A direct representative is not jointly liable for the customs debt or the related obligations, and the importer remains exclusively liable for same.

However, for a business that is not established for customs purposes in the EU, it should not be possible for the business to import the goods directly itself, and instead it should be obliged to appoint an indirect representative, *i.e.* a customs agent who acts in its own name and on behalf of the importer and is jointly liable for the customs debt and related obligations.

As you can imagine, from 1 January 2021 there has been a significant increase in the demand for indirect representatives, as UK businesses that are not established for customs purposes in the EU but that wanted to continue supplying goods on a DDP basis post-Brexit to Irish, and indeed other EU-based, customers required the appointment of an indirect representative. Demand has been high, and the availability of indirect representatives has been a challenge for some businesses.

Import VAT

Before 1 January 2021, Irish import VAT was due to be paid at the point of entry (unless the business had a deferment account and payment could be deferred to the 15th day of the next month). Once the import VAT was paid or deferred, the business should have been entitled to recover the import VAT in its periodic Irish VAT return (subject to the normal rules on deductibility) provided the business had appropriate supporting documentation and depending on its VAT recovery entitlement. As such, there was a potential negative VAT cash-flow impact for all businesses involved in the import of goods, even where a business had full VAT recovery entitlement.

To alleviate some of the burdens on business as a result of Brexit, Revenue introduced VAT postponed accounting with effect from 1 January 2021. VAT postponed accounting permits a business to account for the import VAT in its VAT return on the reverse-charge basis, *i.e.* charge itself VAT at the rate of VAT that should apply if the goods were acquired locally, in Box T1, and take a simultaneous VAT input credit in Box T2 (subject to the business's VAT recovery entitlement), as opposed to paying the import VAT upfront at the point of entry, or deferring it to the 15th day of the next month, and later reclaiming the VAT in the relevant VAT return.

Therefore, where a business has full VAT recovery entitlement, there should be no negative VAT cash-flow impact (subject to the normal rules on deductibility) of importing goods where VAT postponed accounting is availed of. This development has been overwhelmingly welcomed by business in Ireland.

To use VAT postponed accounting, the business (or its customs agent on instruction) should insert the relevant code on the import declaration. Alternatively, if the importer does not wish to avail of VAT postponed accounting (it is not mandatory) and would like to pay VAT at the point of entry, the relevant code should not be entered.

To avail of VAT postponed accounting, the VAT-registered business, once registered for same, must comply with certain conditions and requirements, *e.g.* be tax complaint across

all relevant tax heads, maintain records as set out in VAT legislation, not have been convicted of an offence. Where the VAT-registered business fails to demonstrate compliance with the conditions and requirements to avail of VAT postponed accounting, a Notice of Exclusion will be served, and the VAT-registered business will be excluded from availing of VAT postponed accounting.

It should be emphasized that it is the importer of the goods and not the customs agent that is obliged to account for the import VAT in its VAT return under VAT postponed accounting. If VAT postponed accounting is not correctly reported in the relevant VAT return, the business could be liable to pay the import VAT that should have arisen upfront at the point of entry if VAT postponed accounting had not been availed of, together with interest (currently, at a rate of 0.0274% per day or part of a day) and penalties.

VAT return updates

As a result of the introduction of VAT postponed accounting, updates were made by Revenue to the VAT3 return and the Annual Return of Trading Details (ARTD) in 2021 to capture transactions where VAT postponed accounting was availed of. A new box, Box PA1, was added to the VAT3 return, which should include the customs value of goods imported under VAT postponed accounting, as per the customs declarations, plus customs duty. The ARTD was also updated to include additional fields PA2, PA3 and PA4 to capture the customs value of goods imported under VAT postponed accounting, as per customs declarations, plus customs duty.

Practical VAT matters

Where import VAT is paid at the point of entry or deferred to the 15th day of the following month, to be entitled to claim the import VAT in the relevant VAT return, the goods should have been imported for business purposes and the business should retain evidence of all import VAT paid, such as the relevant customs declarations, AEP monthly statements, customs clearance slips.

Where VAT postponed accounting has been availed of, it is important to ensure that the VAT has been correctly accounted for in the VAT return on the reverse-charge basis, *i.e.* VAT charged at the rate of VAT that should apply if the goods were acquired locally, in Box T1. To be entitled to claim simultaneous input VAT credit on the import VAT in the VAT return, the goods should have been imported for business purposes and the business should retain evidence that VAT postponed accounting was correctly availed of, such as the customs declarations.

If a business has engaged a customs agent to assist with clearing goods for import to Ireland, the customs agent should be able to provide the business with the details of the transactions where VAT was paid at the point of entry and where VAT postponed accounting was availed of for a particular VAT return period, which should enable the business to include these transactions in the VAT return. However, in practice, some businesses engage various third-party customs agents, and therefore additional administrative work is required to collate the detail from different service providers. Businesses have also experienced delays in receiving the requested detail, which can result in the late filing of the VAT return.

It is therefore helpful that the Revenue Online Service (ROS) permits businesses to download Custom & Excise weekly statements, which should detail all transactions (imports and exports) in that week using the business's Economic Operators Registration and Identification (EORI) number. The postponed VAT amounts can then be extracted from these weekly statements and be included in the relevant VAT return.

POST-IMPORTATION: VAT

It is, of course, important to ensure that all businesses importing goods to Ireland are compliant from a VAT perspective ¬– *i.e.* pay the appropriate VAT at the point of entry, have the correct evidence if a VAT reclaim is being made, account correctly for VAT postponed accounting in the relevant VAT return etc. – but it is also very important that all local, Irish, VAT obligations are complied with once the goods are cleared into Ireland.

As outlined above, the specific circumstances of each case should be analysed to ensure that the business is Irish VAT compliant, but the following are matters to consider:

- Is the correct VAT rate being charged on the domestic supply of the goods?
- Is the VAT charged being correctly accounted for in the relevant VAT return?
- Are VAT invoices being issued in a timely manner as set out in the VAT legislation, *i.e.* within 15 days of the end of the month in which goods are supplied?
- Are the VAT invoices valid in accordance with the Value-Added Tax Consolidation Act 2010 and the VAT Regulations 2010?

EXPORTS FROM IRELAND

For VAT purposes, an export is where goods are directly dispatched to a destination outside the EU, *e.g.* goods dispatched from Ireland to the USA. With effect from 1 January 2021, shipments of goods from Ireland to the UK (with the exception of Northern Ireland – further detail on which is set out below) should be an export for VAT purposes.

VAT at the 0% rate should apply to the export of goods, provided that the goods leave the EU and the seller has sufficient evidence to support this. Examples of evidence could include an export notification message, bill of lading, certificate of shipping and signed copy of the waybill. In all cases of evidence, the full name and address of the consignee, *i.e.* the buyer, must be clearly shown.

As VAT Information Exchange System (VIES) returns and Intrastat Dispatch returns record intra-EU transactions only, exports from Ireland should not be recorded on a business's Irish VIES return, Intrastat Dispatch return or in Box E1 of the VAT3 return.

REGISTRATION OBLIGATIONS

If you are a business that imports or exports goods to or from the EU, an EORI number is required. The EORI number should be valid throughout the EU, and therefore a business should only have one valid EU EORI number.

A registration for Customs & Excise is required before a business applies for an EORI number. A business can check to see if it is registered for EORI by inserting the VAT number prefixed by IE under "Validate EORI numbers" at the following website:

https://ec.europa.eu/taxation_customs/dds2/eos/eori_validation.jsp

If the business is not already registered for Irish VAT, it is likely that it will be obliged to register for Irish VAT, on the assumption that the goods will either be onward supplied in Ireland after import or will be used as part of the business's supply of goods or services in Ireland. However, as always, the specific circumstances of each case should be analysed to ensure that the business is VAT compliant.

All businesses that were registered for VAT and Customs & Excise at 11pm on 31 December 2020 were given automatic entitlement to avail of postponed accounting, and therefore there was no requirement for these businesses to apply for postponed accounting.

Businesses that were registered for VAT but not for Customs & Excise at 11pm on 31 December 2020 but that subsequently register for Customs & Excise should be given automatic entitlement to avail of postponed accounting.

For businesses that have a tax number but would like to register for VAT and avail of postponed accounting, a new "Postponed Accounting" heading is available on the VAT registration/re-registration screens on ROS to allow them to apply for postponed accounting with the online application for VAT registration.

If a business has no Irish tax number and would like to register for Irish VAT and avail of VAT postponed accounting, the business must complete the VAT and Customs & Excise registrations before the application for VAT postponed accounting can be processed. Once the VAT registration number is issued, the business should then register for Customs & Excise using the VAT registration number. When both the VAT and Customs & Excise registrations are approved by Revenue, the business should notify Revenue via MyEnquiries or email, and the postponed accounting application should then be processed.

NORTHERN IRELAND

As part of the EU–UK negotiations, the Northern Ireland Protocol was entered into, which resulted in Northern Ireland remaining part of the EU Single Market for goods purposes and therefore subject to the same VAT rules on goods as all EU Member States. The movement of goods between Ireland and Northern Ireland remains unchanged because of Brexit and should continue to be treated as intra-Community supplies and intra-Community acquisitions, with the exception that VAT-registered businesses in Northern Ireland were assigned a new prefix XI in their UK VAT number. With effect from 1 January 2021, Irish VAT-registered businesses supplying goods to VAT-registered businesses in Northern Ireland should quote XI, as opposed to GB, before the VAT number.

Finally, where goods are shipped from the UK to Ireland via Northern Ireland and vice versa, complex VAT and customs rules apply, and the specific circumstances of each case should be analysed to ensure that the business is VAT compliant both from a UK and an Irish VAT and customs perspective.

Ireland to Northern Ireland

The movement of goods from Ireland to Northern Ireland should not be an export for VAT purposes and should continue to be treated as an intra-Community supply for VAT purposes. In general, the 0% rate of VAT should apply to the supply of goods from Ireland to Northern Ireland, provided that the following conditions are met:

- The seller's Irish VAT number and the recipient's XI VAT number are quoted on the invoice.
- There is a reference to reverse-charge VAT applying on the sales invoice.
- The seller ensures that the movement is recorded on its VIES return.
- The net value is included in Box E1 of the appropriate VAT return.
- The goods are transported to Northern Ireland, and the seller retains evidence of the movement of the goods.

It should also be noted that if the seller is obliged to file Intrastat Dispatch returns (*i.e.* intra-Community supplies are at least €635,000 per calendar year), supplies to Northern Ireland should also be recorded on the Intrastat Dispatch return.

Northern Ireland to Ireland

Where an Irish VAT-registered business acquires goods from Northern Ireland, it should not be an import for VAT purposes and should continue to be treated as an intra-Community acquisition. In general, no UK VAT should be charged, and instead the Irish VAT-registered business should be obliged to self-account for the VAT on the reverse-charge basis in its VAT return, *i.e.* charge itself VAT at the rate of VAT that should apply if the goods were acquired locally, in Box T1, and take a simultaneous VAT input credit in Box T2 (subject to the business's VAT recovery entitlement). In addition, the Irish VAT-registered business should include the net value in Box E2 of its VAT return.

Finally, it should also be noted that if the Irish VAT-registered business is obliged to file Intrastat Arrival returns (*i.e.* intra-Community acquisitions are at least €500,000 per calendar year), acquisitions from Northern Ireland should be recorded on its Intrastat Arrival return.

CONCLUSION

As you can see from the above, Brexit has caused significant changes to the VAT treatment of the supply of goods between businesses in Ireland and the UK. The introduction of VAT postponed accounting in 2021 was a very welcome development as it removed the negative VAT cash-flow implications associated with importing goods to Ireland from outside the EU, which for some traders, especially SMEs, could have been detrimental to the success of their businesses when the UK became a non-EU, or "third", country.

However, it is important that businesses availing of VAT postponed accounting are compliant and correctly account for the transactions in the relevant VAT3 returns and ARTDs, as otherwise the business could be liable to pay the import VAT that should have arisen upfront at the point of entry if VAT postponed accounting had not been availed of, together with interest and penalties.

In addition, it is imperative that all businesses ensure that the customs-related paperwork correctly reflects the appropriate party as the importer of record to ensure that the importer is entitled to reclaim any import VAT paid or claim the simultaneous VAT input credit in its VAT return where the VAT is self-accounted for on the reverse-charge basis (subject to the business's entitlement to VAT recovery).

Where VAT is incorrectly reclaimed by a business on the basis that the supporting documentation is not valid, Revenue can deny a VAT reclaim and potentially apply interest and penalties. In addition, amended documentation may be required where errors are identified, which can lead to unnecessary administrative costs and delays.

Therefore, it is important that taxpayers periodically self-review and, where needed, self-correct their VAT affairs to identify and correct any errors in order to minimise potential latent VAT liabilities, together with interest, penalties and reputational risks.

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