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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF VALUE ADDED TAX (VAT) FOR SERVICES

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INTRODUCTION

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020.³ Until that date, EU law in its entirety applies to and in the United Kingdom.⁴

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁵ in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period (Part A below). This notice also explains certain relevant separation provisions of the Withdrawal Agreement (Part B below).⁶

¹ A third country is a country not member of the EU.

² 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 L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ The transition period may, before 1 July 2020, be extended once for up to 1 or 2 years (Article 132(1) of the Withdrawal Agreement). The UK government has so far ruled out such an extension.

⁴ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁵ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

⁶ The IE/Ni Protocol provides that EU VAT rules concerning goods apply to and in the United Kingdom in respect of Northern Ireland (Article 8 of the IE/Ni Protocol and section 1 of Annex 3 to that Protocol). **Transactions involving services are not covered by the IE/Ni Protocol.**

The attention of the stakeholders is in particular drawn on the following consequences: (i) Taxable persons established in Northern Ireland will not be able to use the special scheme for declaring and paying the VAT due in the EU on their B2C supplies of services (the MOSS “Union scheme”). They will instead have to change their MOSS identification to the “non-Union scheme” unless they are also established in one of the Member States (see point A.1.2 of this notice); (ii) Taxable persons established in Northern Ireland, who are not also established in one of the Member States, will have to request a refund of the VAT paid in a Member State on their acquisitions of services under the conditions provided for in the 13th Council Directive 86/560/EEC (see point A.2 of this notice).

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are in particular advised to:

- when they are established in the EU, familiarise themselves with the rules applicable to services supplied to and received from third countries/territories;
- when they are established in the United Kingdom, examine whether new liability rules will apply to them with regard to their services supplied in the EU;
- take the necessary steps as regards services covered by the Mini One-Stop-Shop;⁷ and
- pay attention to the changes in the VAT refund request procedures.

Please note:

This notice does not address:

- EU VAT rules for the treatment of goods;⁸
- EU legislation (other than VAT legislation) for the cross-border provision of certain services, such as digital services, creative services, or business services.

For these aspects, other notices are in preparation or have been published.⁹

It has to be noted that the purpose of this notice is to give a general explanation on the main consequences of the Withdrawal Agreement on the EU VAT rules applicable for services in relation to the United Kingdom. It is not intended to explain in detail each specific VAT rule, in particular the special schemes that will enter into force in 2021 for services.¹⁰ General information is available on the Taxation and Customs Union Commission website.¹¹

⁷ https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/

⁸ A separate notice on the VAT treatment of goods has been published. See: https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en.

⁹ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

¹⁰ https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en

¹¹ https://ec.europa.eu/taxation_customs/business/vat_en

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the EU rules in the field of VAT for services¹² no longer apply to and in the United Kingdom. This has in particular the following consequences concerning the treatment of taxable transactions in services (see below point 1) and VAT refunds (see below point 2):

1. VAT RULES FOR CROSS-BORDER SUPPLIES OF SERVICES

1.1. General rules

EU VAT legislation provides for different regimes of VAT for cross-border supplies of services between Member States and with third countries/territories. 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 actually provided, etc.

The withdrawal of the United Kingdom means that the way the rules will apply for taxable persons established in the United Kingdom who supply services in the EU and for taxable persons established in the EU who supply services in the United Kingdom will change after the end of the transition period.

The VAT Directive determines, via the “place of supply of services” rules (Title V, Chapter 3), where a service supplied by a taxable person is deemed to take place. After the end of the transition period, in case according to these rules, the place of supply of services is situated in a Member State, the supply will be subject to VAT in that Member State on the basis and under the conditions of the above-mentioned Directive. If, on the other hand, the place of supply of services is situated in the United Kingdom (or in any other third country/territory), the supply will not be subject to EU VAT.¹³

As a rule, B2B¹⁴ supplies of services are situated where the customer has established his business. Under this rule, the supply of services by a UK business¹⁵ to an EU business¹⁶ will be taxable in the Member State where the

¹² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), 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 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State, OJ L 44, 20.2.2008, p. 23.

¹³ It is not the purpose to provide in the present notice an exhaustive overview of all the place of supply rules for services; only the most basic and relevant situations are explained. There might be other or specific rules according to the type of services and Member States have also the possibility to apply, under certain circumstances, “effective use and enjoyment” rules to consider certain services as being inside or outside the EU while, under the general rules, they would, respectively, take place outside or inside the EU.

¹⁴ Business to Business.

¹⁵ Business established in the United Kingdom.

customer is established. As a rule, the customer will be liable for the payment of the VAT due in this Member State. The supply of services by an EU business to a UK business will be considered as situated outside the EU and therefore not taxable under EU VAT legislation.

As a rule, B2C¹⁷ supplies of services are situated where the supplier has established his business. Under this rule, the supply of services by EU businesses to private individuals in the United Kingdom will be taxable in the Member State where the supplier is established. The supply of services by UK businesses to private individuals in the EU will be, in principle, considered as situated outside the EU and therefore not taxable under EU VAT legislation. However, for some services supplied by UK businesses to private individuals in the EU, the VAT will be due in the EU and will be payable by the UK businesses (see point 1.2. below).

Where a UK business is liable for the payment of the VAT due in a Member State, that Member State is 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.¹⁸ After the end of the transition period, this requirement may apply to taxable persons established in the United Kingdom.

1.2. Mini One-Stop Shop (MOSS)

The B2C supplies of telecommunications, broadcasting and electronic services are normally deemed to be situated where the customer is established. If the customer is established in the EU, suppliers not established in the Member State of the customer can make use of a special scheme for declaring and paying the VAT due via the so-called Mini One-Stop-Shop (MOSS). Two types exist: the “Union scheme” for suppliers established in the EU¹⁹ and the “non-Union scheme” for those that are not established in the EU.²⁰ MOSS allows a taxable person to submit a MOSS VAT return for each calendar quarter and allows for a single payment to the Member State of identification. That Member State of identification splits the MOSS VAT return by Member State of consumption and forwards the details and the corresponding payments to the various Member States of consumption.

After the transition period, suppliers established in the United Kingdom and identified in the United Kingdom “Union scheme” and suppliers established in a third country/territory and identified in the United Kingdom “non-Union scheme” who will continue supplying telecommunications, broadcasting and electronic services to customers in the EU will have to switch to and make use

¹⁶ Business established in the EU.

¹⁷ Business to Consumers.

¹⁸ Article 204 of the VAT Directive.

¹⁹ Articles 369a to 369k of the VAT Directive (Title XII, Special schemes, Chapter 6, Section 3).

²⁰ Articles 358a to 369 of the VAT Directive (Title XII, Special schemes, Chapter 6, Section 2).

of the “non-Union scheme” in one of the Member States. Suppliers established in the United Kingdom and identified in the United Kingdom “Union scheme” who are also established in a Member State should move their identification for the “Union scheme” from the United Kingdom to this Member State with effect from the end of the transition period.

Suppliers established in the EU identified in one of the Member States’ “Union scheme” and suppliers established in a third country/territory identified in one of the Member States’ “non-Union scheme” who will continue supplying telecommunications, broadcasting and electronic services to customers in the United Kingdom after the end of the transition period will not be able to use the MOSS to report and pay any VAT that could be due in the United Kingdom. They will have to comply with the rules applicable in the United Kingdom.

To note that, as from 1 January 2021,²¹ the existing MOSS will be extended to a One-Stop Shop (OSS) and will cover, inter alia, other B2C supplies of services that are taxable in the EU.²² Suppliers established in the United Kingdom who will supply those other types of services to final consumers in the EU will have to make use of the “non-Union scheme” and register for that purpose in one of the Member States. Suppliers established in the United Kingdom who are also established in a Member State will have to make use of the “Union scheme” and register for that purpose in this Member State.²³

However, it is recalled that, since the MOSS/OSS is not mandatory, suppliers established in the UK, and making B2C supplies of services taxable in the EU, that do not want to make use of the non-Union scheme, should register in all Member States where the VAT is due.

2. VAT REFUNDS

VAT refunds by Member States to taxable persons established outside the EU are subject to the following conditions²⁴:

- 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 Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to

²¹ Please note that the Commission has proposed, on 8 May 2020, to delay the date of application by six months (COM(2020) 201 final).

²² https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en

²³ https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en

²⁴ Further information on : https://ec.europa.eu/taxation_customs/business/vat/eu-vat-rules-topic/vat-refunds_en

taxable persons not established in Community territory²⁵ - hereafter “13th 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 or territory to taxable persons established in the Member State concerned (Article 2(2) of the 13th VAT Directive);
- Each Member State may require the taxable person established in a third country or territory to designate a tax representative in order to obtain the VAT refund (Article 2(3) of the 13th VAT Directive).

Subject to the Withdrawal Agreement,²⁶ after the end of the transition period these rules apply to refunds of VAT in relation to supplies of services, by Member States to taxable persons established in the United Kingdom.

B. RELEVANT SEPARATION PROVISIONS OF THE WITHDRAWAL AGREEMENT

1. SUPPLY OF SERVICES

In accordance with Article 51(2) of the Withdrawal Agreement, the VAT Directive will continue to apply until 5 years after the end of the transition period with regard to the taxable persons’ rights and obligations in relation to transactions with a cross-border element between the United Kingdom and the Member States that took place before the end of the transition period.

This is, in particular, relevant for the rights and obligations in relation to the use of the MOSS by non-EU suppliers identified in the United Kingdom, as well as suppliers established in the United Kingdom, with regard to telecommunications, broadcasting and electronic services supplied in the Member States, and by non-EU suppliers registered in the Member States, as well as suppliers established in the Member States, with regard to similar services supplied in the United Kingdom, until the end of the transition period.

Therefore, the payment and reporting obligations in the VAT Directive in relation to these services provided until the end of the transition period will remain applicable after the end of the transition period. Thus, taxable persons registered for MOSS in the United Kingdom and in the Member States will be liable to pay the VAT for these services and will have to submit their MOSS VAT returns for the fourth quarter of 2020 by 20 January 2021.

However, in accordance with Article 51(4) of the Withdrawal Agreement, amendments to MOSS returns in relation to services supplied before the end of the transition period will have to be submitted at the latest on 31 December 2021.

²⁵ OJ L 326, 21.11.1986, p. 40.

²⁶ See below, part B of this notice.

Article 51(2) of the Withdrawal Agreement is also pertinent for other reporting obligations such as the recapitulative statements for, inter alia, intra-EU B2B services. By the end of January 2021, taxable persons established in the United Kingdom will have to submit their recapitulative statements to the UK tax authorities for services supplied in 2020 to taxable persons established in the Member States. Taxable persons established in a Member State will have to submit their recapitulative statements to the tax authorities of that Member State for services supplied in 2020 to taxable persons established in the United Kingdom.

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

2. REFUND REQUESTS RELATING TO VAT PAID BEFORE THE END OF THE TRANSITION PERIOD

According to Article 51(3) of the Withdrawal Agreement, a taxable person established in one of the Member States or in the United Kingdom is still to use the electronic portal set up by his State of establishment, in accordance with Article 7 of Directive 2008/9/EC, for submitting an electronic refund application that relates to VAT on services which was paid in, respectively, the United Kingdom or a Member State, before the end of the transition period.

The application is to be submitted under the conditions of the Directive at the latest on 31 March 2021.

The other rules provided for in the VAT Directive and in Directive 2008/9/EC will continue to apply, until 5 years after the end of the transition, to these refund applications and the previous ones relating to VAT chargeable²⁷ before the end of the transition period.

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

European Commission
Directorate-General Taxation and Customs Union

²⁷ Article 14 of Directive 2008/9/EC.