



Brussels, 11 September 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. This means that, unless a ratified withdrawal agreement<sup>1</sup> establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').<sup>2</sup> The United Kingdom will then become a 'third country'.<sup>3</sup>

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

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, taxable persons 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 any transitional arrangement that may be contained in a possible withdrawal agreement, 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>4</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 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State<sup>5</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>6 7</sup>

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<sup>1</sup> Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

<sup>2</sup> Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>3</sup> A third country is a country not member of the EU.

<sup>4</sup> OJ L 347, 11.12.2006, p. 1.

<sup>5</sup> OJ L 44, 20.2.2008, p. 23.

<sup>6</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.

## 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>8</sup>

- VAT will be due at the **importation** in the EU<sup>9</sup>, at the rate that applies to the supplies of the same goods within the EU.<sup>10</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>11</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 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

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<sup>7</sup> In the context of the negotiations of the EU-UK withdrawal agreement, the EU is trying to agree solutions with the United Kingdom concerning supplies that took place prior to the end of the transition period. See, in particular, the latest text of the draft withdrawal agreement agreed at negotiator's level, which is available here: [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_agreement\\_coloured.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf) and the "joint statement" from the negotiators of the EU and of the United Kingdom Government presented on 19 June 2018 ([https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom\\_en](https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en)).

<sup>8</sup> OJ L 269, 10.10.2013, p. 1.

<sup>9</sup> Article 2(1)(d) of the VAT Directive.

<sup>10</sup> Article 94(2) of the VAT Directive.

<sup>11</sup> Article 211 of the VAT Directive.

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>12</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>13</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. Advice to taxable persons for preparing for a withdrawal without withdrawal agreement*

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>14</sup>

## **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

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<sup>12</sup> Articles 85 and 86 of the VAT Directive.

<sup>13</sup> Article 146 of the VAT Directive.

<sup>14</sup> See Notice to stakeholders – Withdrawal of the United Kingdom and EU rules in the field of customs and indirect taxation, 30 January 2018.

or not the person receiving the service is a taxable person, the place where the service is carried out, etc.

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>15</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.

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<sup>15</sup> Article 204 of the VAT Directive.

That Member State of identification splits the MOSS VAT return by 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*<sup>16</sup>

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:

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<sup>16</sup> In the context of the negotiations of the EU-UK withdrawal agreement, the EU is trying to agree solutions with the United Kingdom concerning the VAT returns submitted in accordance with the rules on the mini one-stop shop. See, in particular, the latest text of the draft withdrawal agreement agreed at negotiator's level, which is available here: [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_agreement\\_coloured.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf) and the "joint statement" from the negotiators of the EU and of the United Kingdom Government presented on 19 June 2018 ([https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom\\_en](https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en)).

- **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>17</sup>
- **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>18</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.

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<sup>17</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).

<sup>18</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.

## 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:

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>19</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>20</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);

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<sup>19</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>20</sup> OJ L 326, 21.11.1986, p. 40.

- 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).

## **2.2. Advice to taxable persons for preparing for a withdrawal without withdrawal agreement<sup>21</sup>**

### 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

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<sup>21</sup> In the context of the negotiations of the EU-UK withdrawal agreement, the EU is trying to agree solutions with the United Kingdom to ensure the refund of VAT in relation to transactions prior to the end of the transition period in situations where the refund request could not be submitted by the taxable person or forwarded by his residence State before the end of the transition period. See, in particular, the latest text of the draft withdrawal agreement agreed at negotiator's level, which is available here: [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_agreement\\_coloured.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf) and the "joint statement" from the negotiators of the EU and of the United Kingdom Government presented on 19 June 2018 ([https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom\\_en](https://ec.europa.eu/commission/brexit-negotiations/negotiating-documents-article-50-negotiations-united-kingdom_en)).