Grant Thornton

Tax newsletter

Issue 12 · January 2020

This issue:

- Brexit – what happens next for businesses;
- New corporation tax rules for non-resident landlords;
- EU VAT 'quick fixes' to ease international trade;
- Irish budget 2020;
- Quarterly instalment payments for 'very large' companies;
- Making Tax Digital (MTD) for VAT – further changes; and
- Growth through Research & Development (R&D) investment.

Peter Legge
Partner, Tax
T +44 (0)28 9587 1081
E peter.legge@ie.gt.com

Brexit – what happens next for businesses?

Following the approval of the Withdrawal Agreement by the European Parliament, the United Kingdom (UK) left the European Union (EU) at 11 pm on 31 January. The first stage of Brexit has been achieved.

On 1 February, the 'implementation period' (also known as the 'transition period') began. During this period the UK is a non-voting member of the EU: the UK continues to participate in and is bound by EU rules, the single market, customs union, free movement of people and EU programmes. Any new EU laws will automatically apply in the UK.

Immediate implications for businesses

In terms of trade with EU countries, nothing changes for the duration of the implementation period. Businesses have continued access to markets and customs-free trade between the EU and the UK.

However, not all EU trade deals with third countries will necessarily roll over to the UK. The Withdrawal Agreement binds the UK to continue to abide by these trade agreements – so imports from these countries into the UK will be unaffected. However, third countries are not legally bound to treat the UK as a member of the EU and will not automatically apply the terms of EU trade agreements to UK exports.

Some countries have agreed to 'roll over' EU trade agreements to cover the UK. Other countries have yet to confirm whether or not they will do so UK exports of goods or services to these countries may, therefore, be affected from 1 February.

Looking ahead, businesses should now start preparing for the end of the implementation period, at which point the UK leaves the EU single market and customs union. The UK Government has said they will not extend this period, so it will end on 31 December 2020.

The impact from January 2021

The situation from January 2021 onwards will be determined by the future trading relationship negotiated between the UK and the EU during the transition period. The UK/EU Political Declaration suggests that the UK is now seeking a 'Canada style' free trade agreement, meaning the options seem to have narrowed to either this or trading on World Trade Organisation (WTO) terms.

Northern Ireland (NI) businesses also need to consider the special rules under the NI Protocol to the Withdrawal Agreement. NI will have a unique status from January 2021, described as part of the UK customs territory but still applying EU customs rules. In practice, this means that goods moving from Great Britain (GB) to NI could be subject to customs processes and payment of EU customs duties. Goods moving from

NI to GB may also be subject to some customs formalities.

NI will also follow most of the rules of the EU's single market in goods and the EU's VAT rules. These measures should ensure that there is no need for a hard border between the Republic of Ireland and NI, but at the cost of having a customs border of sorts between NI and GB.

Whatever happens, new customs processes will need to be implemented by any NI import/export business (whether trading with GB, the EU or both), and businesses should start preparing to meet these requirements now.

New corporation tax rules for non-resident landlords

From 6 April 2020, how non-UK resident companies are taxed on any profits made from UK property businesses will change. Any companies that may be affected should consider the impacts now to ensure that the transition takes place as seamlessly as possible and all compliance requirements are met.

Under current rules, corporate Non-Resident Landlords (NRLs) are subject to income tax on UK property rental income. From 6 April 2020, corporate NRLs will instead be chargeable to corporation tax.

This change will bring about new requirements for administration and potential changes in the rate of tax applied to profits.

The rate of income tax applying to NRLs under the old rules is 20%. However, under the new regime, this will fall to the corporation tax rate which is currently 19%. There was a further planned reduction in the corporation tax rate to 17% from April 2020 but the government announced this would be put on hold. The Spring Budget on 11 March is expected to confirm this.

Any company that currently files a NRL return will need to register for corporation tax if they have not already done so.

Other differences from the existing regime include the due date for filing corporation tax returns and the date on which payment of tax is required, which could impact cash flow. Returns will be required to be filed online within 12 months of the accounting period end along with iXBRL tagged accounts.

Payment of corporation tax will be due to HMRC nine months and one day after the end of the period. Companies may also have to consider whether they will qualify as a large company for corporation tax purposes which could mean that payments are required quarterly throughout the year.

In addition, NRLs will be subject to additional corporation tax legislation and anti-avoidance rules that were not applicable under the previous regime. They will have to consider whether they fall into a corporate group for tax purposes, which could have follow-on effects on how losses can be utilised by the NRL and how much interest can be deducted when calculating taxable profits.

Any NRLs which generate income from UK property should review their portfolio to ensure the potential impact of the new rules has been considered. This will allow companies to plan for any additional compliance and payment obligations.

EU VAT 'quick fixes' to ease international trade

The EU has implemented a number of 'quick fixes' to the existing EU VAT legislation, which aim to simplify and harmonise international trade between EU member states. The four changes had effect from 1 January 2020. The UK has not made any changes to its domestic legislation, but the new rules are directly effective in the UK, despite Brexit.

1. Chain transactions

Under the current system, the supply of goods to a business in another member state is zero-rated for VAT purposes, provided the goods are removed to that member state. This is known as an "intra-community supply". However, where there is a supply chain involving a number of parties, working out which transaction may be zero-rated can often be difficult.

Typically, this would arise where A sells goods to B, who then sells them to C (all of whom belong in different member states) but the goods are transported directly from A to C.

From January 2020, in this scenario, by default, the transaction from A to B will be zero-rated. This means that B may need to register and account for VAT in the member state of C (unless they can make use of the "triangulation simplification").

However, there is an exception to the above rule where B gives A its VAT number for the country from which the goods are dispatched, and B is responsible for transporting the goods. In that case, it is B's supply to C that is zero-rated.

The rules also apply to more complex chains involving four or more parties.

2. Call-off stock

The second fix relates to the VAT treatment of "call-off stock" (i.e. where goods are transported to another member state for later "call-off" by a specific customer). Under the current rules, the business supplying the goods makes a deemed supply in the country of dispatch and simultaneously acquires them in the country of destination. When the goods are "called-off", the supplier then makes a domestic supply of goods in the customer's country.

From January 2020, the deemed self-supply and acquisition will cease. Instead, provided that the goods are called-off by the customer within 12 months of dispatch, the supplier will be treated as making a zero-rated sale to the customer under the normal intra-Community supply rules.

There are additional record-keeping requirements in relation to these transfers.

3. VAT identification numbers
From January 2020, obtaining and displaying the customer's EU VAT number on the supplier's VAT invoice will become a substantive condition for obtaining zero-rating on an intra-Community supply of goods. At present, this is a formal requirement but can sometimes be displaced by alternative evidence.

Similarly, it will become a substantive requirement for zero-rating that the transaction is reported by the supplier on their European Commission (EC) Sales List.

4. Proof of transport
In order to zero-rate an intra-Community supply of goods, evidence must be retained to show that the goods have been transported to another Member State.

From January 2020, there is a rebuttable presumption that goods have been transported between Member States where:

1. the supplier produces two items of non-contradictory evidence, prepared by two different independent parties, of that fact; or
2. if the acquirer of the goods is responsible for transporting them, the supplier has a detailed written statement from the acquirer of the goods stating that the goods have been transported by or on behalf of the acquirer, plus at least two items of non-contradictory evidence (as in (1) above).

The acceptable forms of evidence are set out within the regulations.

While these changes should make the rules across the EU more uniform, they mean that changes may be required to VAT processes and the gathering of evidence for businesses involved in supplies to other EU countries. Failing to comply with the new requirements may mean that zero-rating is lost, and the supplier is assessed to additional VAT that cannot be passed on to or reclaimed by the customer.

Irish Budget 2020

At the end of October, Ireland's Minister for Finance, Paschal Donohoe, published the latest Irish Finance Bill, which outlined the legislative basis for measures announced in the Irish Budget 2020 a few weeks earlier, along with some additional measures. Among the more significant measures included within the Bill are:

Income tax

- The Irish Benefit In Kind (BIK) charge on company cars will change from 2023, and will be based on CO_2 emission levels and business mileage as opposed to a car's value, whilst the set rate on company vans is to be increased from 5% to 8%.
- Qualifying expenditure on business cars is to be determined by CO_2 emissions thresholds from 1 January 2021.

Research & Development (R&D) tax credits

- The increase to the R&D tax credit rate from 25% to 30% for small and micro enterprises has been confirmed.
- Additional changes announced include confirmation that all State or EU grants received must be excluded from qualifying R&D expenditure. Furthermore, a company which outsources to third parties must notify the third party in advance of the intention to claim the R&D tax credit on the expenditure.

Transfer pricing rules

- New Transfer Pricing (TP) rules have been introduced which will bring the Irish rules into line with international best practice Organisation for Economic Co-operation and Development (OECD) guidelines. The main changes are that connected party transactions that must be calculated on an arm's length basis will also include non-trading income such as loans and capital transactions which have a market value exceeding €25 million.
- Larger groups will now also be required to maintain a master and local TP file setting out their group TP principles. Medium sized groups are now also required to hold robust TP documentation, but may be required to provide master or local files where inter-company transactions exceed €1 million. Smaller groups who employ less than 50 staff with turnover less than €10 million or net assets under €10 million continue to be exempt.

Stamp duty

- The increase in the stamp duty rate on non–residential property transactions to 7.5% from 6% was confirmed, with the new rate applying with effect from 9 October 2019, unless a binding contract had been entered earlier.
- As announced on Budget day, a new anti-avoidance rule has been included which provides that stamp duty at 1% will apply where a scheme of arrangement is used for the acquisition of a company. Stamp duty will be payable on the consideration received by the shareholders for the cancellation of their shares in the company under such a scheme.

Quarterly instalment payments for 'very large' companies

The changes for Quarterly Instalment Payments (QIPs) for 'very large' companies have been in effect for accounting periods beginning on or after 1 April 2019. However, a reminder of these is appropriate as they will now take effect for 12 month accounting periods commencing in January 2020.

A very large company is one whose annual taxable profits for the accounting period are more than £20 million. The threshold is reduced proportionately if the accounting

period is less than 12 months and where the company has one or more related 51% group companies. For example, if a company has three 51% group companies, the profit limit will be reduced to £5 million (being £20 million divided by 4).

If a company breaches the thresholds set out above, corporation tax for that period must be paid by instalments which are due as follows:

- two months and 13 days after the first day of the accounting period;
- three months after the first instalment;
- three months after the second instalment; and
- three months after the third instalment.

This will be the 14th day of months 3, 6, 9 and 12 of the accounting period.

Unlike the QIP regime for large companies where no instalment payments are required to be made in the first year a company becomes large, there is no period of grace when a company becomes 'very large'. This means growing businesses approaching the threshold will need to monitor the position carefully.

The very large QIP regime is subject to a de minimis rule, which means if the amount of your total tax liability for the accounting period is less than £10,000, instalment payments will not be required for that period.

Making Tax Digital (MTD) for VAT – further changes

With the introduction of Making Tax Digital for VAT in April 2019, businesses should now already be complying with or be well underway with preparing and planning for the new requirements.

As of 1 April 2019, most affected businesses should now be maintaining digital records and a digital VAT account and should be submitting their VAT return data digitally using software compatible with the HM Revenue and Customs (HMRC) Application Programming Interface (API) platform. HMRC have allowed additional time for businesses to comply with some aspects of MTD, known as the 'soft landing period'. Now that the initial phase has been dealt with by most businesses, it is now time to focus on phase two, the 'digital links' requirement. Depending on the way you maintain your digital records, this may prove to be more time consuming and complex.

With effect from their first VAT period beginning on or after 1 April 2020, most businesses will be required to maintain a clear digital 'journey' or 'digital links' between their accounting systems and the software used to prepare and submit their VAT returns (although some more complex businesses will benefit from a deferral until October 2020).

A 'digital link' is one where the transfer or exchange of data is made electronically without manual intervention. This means transferring data manually (including by copy and pasting) within or between different software products is not permitted. Once data is entered into the digital records, any transfer of data between software programs must be done using 'digital links'. Each piece of software must be digitally linked to other pieces of software to create an integrated digital journey.

However, HMRC recognise that some adjustments (eg capital goods scheme or partial exemption calculations) may need to be performed separately outside of the software that keeps the digital records.

It is important that you now review your VAT accounting processes to establish to what extent your existing systems and any relevant software meet the stringent MTD requirements. It will also be necessary to review the quality of the accounting data to ensure that all necessary VAT information is captured by the reporting systems.

HMRC have recently announced that, in certain situations, businesses may be granted an extension to the deadline to implement digital links. If you believe your business requires more time to comply, you should make a formal application to HMRC (including a process map of your existing VAT systems) as soon as possible and by no later than the normal deadline for implementation.

Your application should explain why it is unachievable and not reasonable for you to have digital links in place by the end of the soft landing period. For example, this may be due to your business having complex or legacy IT systems, or because you have acquired another business. If your business qualifies, HMRC may grant you additional time to comply.

With this array of additional obligations facing businesses, Grant Thornton has developed a complete MTD readiness service. MTD should be seen as a 'first step' towards real-time tax reporting and increasingly detailed HMRC audits.

Growth through R&D investment

Research shows that R&D investment is a priority for businesses growing internationally – so how might R&D support your business's overseas expansion?

Successful growth companies are often defined by two characteristics:

1. they prioritise R&D investment; and
2. they prioritise global expansion.

R&D and internationalisation

71.9% of businesses that are looking to grow exports are increasing spending on R&D and IT, compared to an average of 45.2%.

The relationship between R&D and international growth is in evidence elsewhere. A recent study of German manufacturers by the Centre for Economic Policy Research (CEPR), found that exporting firms have higher rates of product and process innovation

and in turn, these innovations yield a higher economic return than for non-exporting firms.

R&D and opportunities in global markets
Spending on new technology and processes opens up opportunities to exploit that Intellectual Property (IP) in as many markets as possible.

R&D helps businesses adapt their offering to local markets
One of the critical mistakes many companies make can be expecting what's worked well in one country to work well in another.

Monique Pisters, International Business Centre director and partner at Grant Thornton Netherlands says: "Your products have to adapt to the consumers in that market. Your product might have to be adjusted and modified if you want to enter a different market such as Asia or Europe. From that perspective, we see many companies who want to enter a new market invest in R&D because that product doesn't match what is needed there."

Cross-border logistics
An important aspect to businesses that are trading over long distances is using R&D to improve storage and shelf life in exporting goods overseas.

R&D - your growth strategy
There is a split between companies that are opportunity-led and companies that are strategic about their international growth.

While it can take time to realise the benefits of R&D, it needs to form part of the long-term strategic thinking. Long-term companies that invest in R&D are also likely to be the ones thinking about the international market and expansion.

Global pricing
As your business grows and innovates internationally, the group should continually review its transfer pricing policy. It is important to ensure those entities undertaking R&D are compensated correctly and that any group inter-company pricing for the use of R&D, know-how and other intellectual property are being recharged in the most tax-efficient manner whilst being compliant across each jurisdiction in which the group operates.

There are many in-depth rules for tax relief on R&D that are not commonly known. Therefore, it is recommended that businesses have their R&D tax claims reviewed in order to ensure that the claims are maximised to their full potential.

Grant Thornton

grantthorntonni.com

© 2020 Grant Thornton (NI) LLP. All rights reserved. Regulated by Chartered Accountants Ireland (CAI) for a range of investment business activities in the United Kingdom.

'Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires.

Grant Thornton Ireland is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.