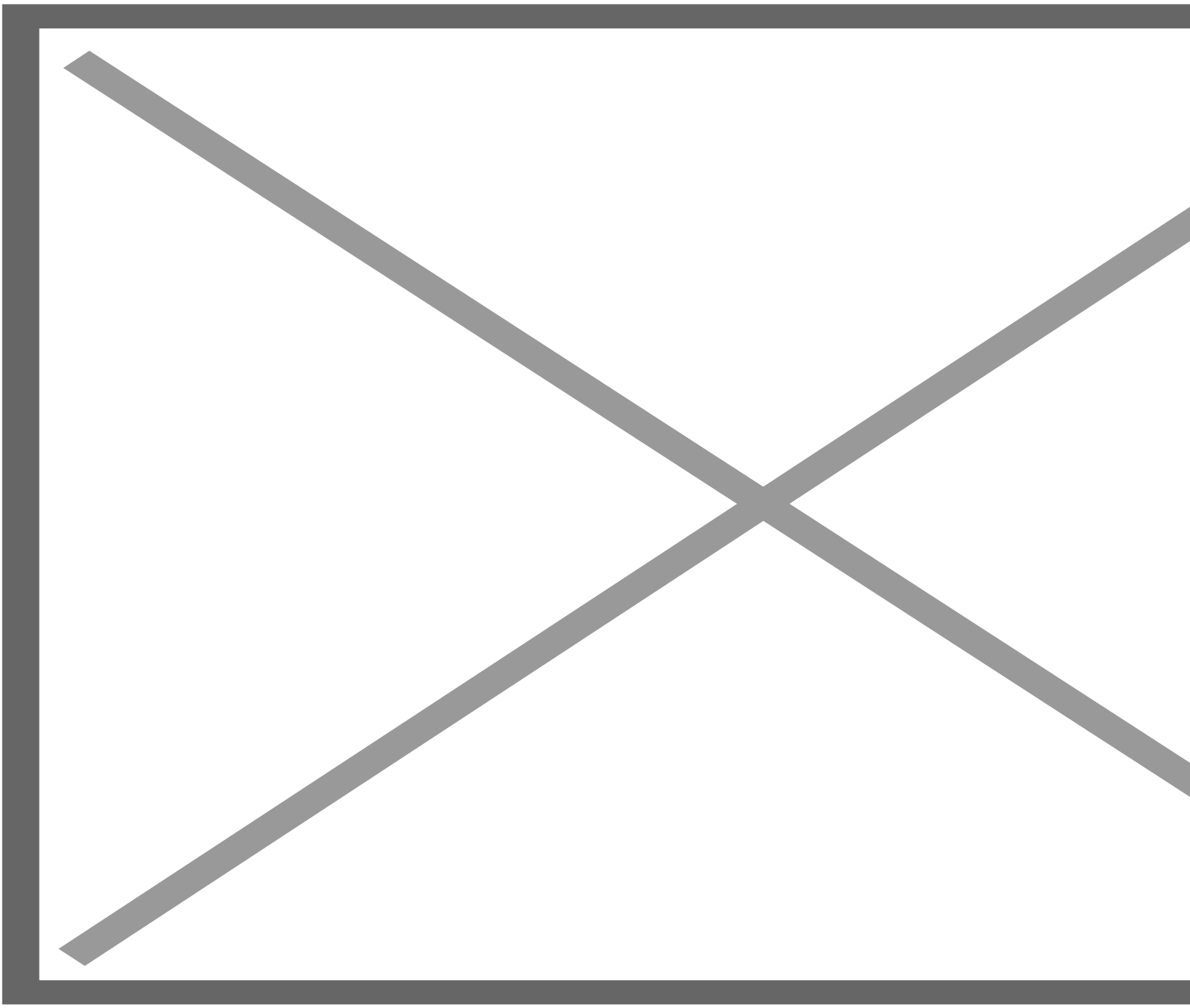
Trading overseas

Indirect Tax



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Jack Sims considers the administration of VAT and customs duties including EC Sales Lists, Intrastat Declarations, accounting and record keeping requirements, and HMRC's powers to investigate

Key Points

What is the issue?

Traders buying and selling overseas are required to meet a number of reporting and record keeping obligations. HMRC also has a number of powers to combat fraudulent transaction chains.

What does it mean to me?

Businesses should be aware of which compliance obligations they are required to meet, and should ensure that any relevant thresholds are monitored.

What can I take away?

Trading overseas can reap the rewards of a larger marketplace and customer base, but businesses must comply with the administrative burden

When businesses buy and sell overseas, the nature of the transactions will determine the reporting and record keeping requirements. While there are no Customs Duty implications when trading within the EU, there are a number of administrative requirements.

EC Sales Lists

There supplies of goods and certain services are made to VAT-registered customers in other EU member states, these supplies must be reported to HMRC on an EC Sales List (ESL). The ESL shows the value of supplies made to each customer, and identifies customers by their EU VAT registration numbers.

Sales to private individuals do not have to be reported, so suppliers should check the validity of the EC VAT registration number obtained from their customers. This can be done using the VIES (VAT Information Exchange System) on the Europa website. When entering a VAT number into VIES, the system will confirm whether the number is valid, and will display the name and address of the registered entity.

ESLs generally need to be submitted monthly or quarterly depending on the nature of the supply made. The submission frequency can be determined by the value of supplies, and whether the supplies are goods or services.

ESLs can be submitted either on a paper form, or electronically via the HMRC Online Services website. Paper forms are automatically sent to a business by HMRC, which is triggered when a value is entered in box 8 of the UK VAT return. It is worth noting that box 8 is used for reporting supplies of goods to EU customers, and there is no equivalent box for supplies of services. Therefore a business selling EU services will need to notify HMRC to request paper forms. Businesses which make large volumes of EU sales can bulk upload the data in spreadsheet format.

An indicator number on the ESL is used to identify whether the transaction is a supply of services, goods, or whether the business acts as an intermediary in a triangulation transaction.

ESLs must be submitted within 14 days of the end of the reporting period for paper submissions, and within 21 days of the end of the reporting period for electronic submissions. Failure to submit an ESL on time may result in penalties.

It is important to note that there is no threshold for the submission of ESLs, so a business making only one EU supply will still be required to report it.

Intrastat

Intrastat is the method of collecting information and producing statistics on the movement of goods between EU member states. In contrast to ESLs, there is no requirement to report the supply of services on an Intrastat Supplementary Declaration (SD).

Businesses are required to submit arrivals and dispatches SDs where the thresholds are exceeded. The thresholds are currently £1.5 million for arrivals and £250,000 for dispatches. The thresholds need to be monitored throughout the calendar year, and if a threshold is exceeded during the year, a business will need to start filing SDs. The thresholds for arrivals and dispatches should be treated as independent of each other, so if a business only exceeded the arrivals threshold it would not be required to submit dispatches SDs as well. HMRC should be notified by email if a business is required to submit SDs.

Businesses can elect to file SDs via HMRC's online service, or electronically by email attachment.

SDs must be submitted on a monthly basis. A calendar month is the normal reference period, and the SD must be filed by the 21st day of the month following the period.

Failure to submit an SD is a serious matter, as a business could be committing a criminal offence. Where businesses frequently submit late or inaccurate SDs, this could result in proceedings in the Magistrate's Court.

Importation of goods

Businesses resident in EU countries have access to the single market, and can freely trade in goods without incurring Customs Duty. When a business purchases goods from another EU member state these are known as acquisitions rather than imports. An import is the term used to describe goods which are brought in from outside the EU. With imports, the simplifications associated with the single market cannot be applied, and these movements of goods will be subject to formalities at the port of entry.

When goods are imported into the UK from outside the EU, they must be declared to HMRC using the Single Administrative Document ('SAD'), also known as a Form C88. Additionally, the value of the goods must normally be declared using Form C105, C105A, C105B or C109. Generally, import VAT must be paid at the border in the same way as Customs Duty. An importer may be able to defer the import VAT if they are approved for deferral. Goods may also be placed under a warehousing or customs arrangements, which can remove the immediate requirement to pay import VAT at the border.

Businesses which import goods are issued a monthly certificate, known as a C79. The C79 details all the import VAT which has been paid in the period, and can be used by a trader as official evidence for the recovery of the import VAT. Many businesses are not aware that they should recover VAT in line with their C79s, and some use documentation received from the freight company when completing their VAT return. Often the figures will not match, and businesses may be under-recovering the VAT they are entitled to.

The new Union Customs Code ('UCC') legislation came into force on 1 May 2016, and has meant that EU importers face the largest overhaul in the customs regulatory framework since the EU's inception in 1992. The UCC aims to modernise the customs environment, and to streamline import procedures across the EU.

Businesses should be aware that there will be changes to the simplification and warehousing arrangements previously in place.

HMRC Powers: Missing Trader Intra-Community Fraud

Missing Trader Intra-Community Fraud (MTIC), or carousel fraud, is a major issue for HMRC and has cost the UK billions of pounds in lost VAT. The fraud abuses the fact that EU cross-border transactions are zero-rated. MTIC fraud is often carried out by organised criminals, but innocent businesses can also be caught up in the fraudulent transaction chains.

A typical scenario is as follows:

- Company A purchases goods from a supplier located in another EU country. The acquisition is zero-rated. Company A then sells the goods to Company B, and charges VAT to Company B. Company A then disappears without paying this VAT to HMRC.
- Company B sells the goods onwards to Company C for a small profit. Company B accounts for VAT on the profit to HMRC.
- Company C then makes a zero-rated dispatch to an overseas customer, and submits a VAT return to HMRC for the input tax it was charged by Company B.

If HMRC repays the VAT to Company C, then the MTIC fraud has been carried out successfully. This is because Company A will never pay the output tax it is due to HMRC. In order to combat MTIC fraud, HMRC has a number of powers at its disposal.

Reverse charge

The reverse charge mechanism shifts the burden of accounting for VAT on a transaction from the supplier to the purchaser. Usually the reverse charge applies to services purchased from overseas, but the UK has been granted a derogation which allows it to apply this treatment to certain domestic supplies of goods. The goods in question are products which are at high risk of MTIC fraud, such as mobile phones, computer chips and more recently certain wholesale telecommunications services.

Joint and several liability

As with the reverse charge, this provision only applies to goods which are at high risk of MTIC fraud. HMRC has the power to hold any business involved in a supply chain of goods subject to MTIC fraud as jointly and severally liable for the net VAT unpaid. This can be applied by HMRC to any business which ‘knew’ or had ‘reasonable grounds to suspect’ that the VAT on the supply or on any previous or subsequent supply had been unpaid.

The issue here is that an innocent trader caught in a fraudulent supply chain could become liable for the unpaid VAT. It is therefore important for businesses to carry out reasonable checks to ensure the legitimacy of its customers and suppliers.

Denial of input tax

The European Court of Justice decision in the *Kittel* case established that a business can lose its right to recover input tax where it ‘knew’ or ‘ought to have known’ that it was participating in a fraudulent transaction. In the

UK Court of Appeal case of *Moblix*, the court found that a business 'ought to have known' that a transaction was connected with fraud if 'the only reasonable explanation for the circumstances in which the transactions in question were undertaken was that they were connected with fraud'.

Using the example above, HMRC would deny input tax to Company C, and would therefore not suffer the lost VAT in the transaction.

Further reading

To read more on the conditions for zero-rating exports/dispatches and the evidence required, please see '*Risk and Reward*' by Iona Brooks in the June 2015 issue of Tax Adviser.