FAQ: Transfer Pricing; Brexit – VAT & Customs

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1. **Question for Aoife-Regarding charges for Non-Trading transactions PC guarantees - is there a common practice for providing a charge for this type of service ie can you apply standard fee for every guarantee given or is it more accepted on a % of the value guaranteed?**

There is no real rule of thumb on how parent company guarantees are priced – it tends to be fact and circumstance specific. The two most typical types of guarantee in the construction space are financial guarantees (eg for a loan) and performance related guarantees. There are a number of things to consider from a transfer pricing perspective.

Financial guarantee

- What is the value provided by the guarantee? Is there a lower interest rate available as a result? This will determine if a guarantee fee should be charged.
- Would the local company have been able to borrow that amount without the guarantee? Or could the guarantee be in place of a capital injection – the risk here is that you wouldn't get a deduction for this at the operating company level for tax purposes.
- What would a company pay for such a guarantee in an arm's length scenario? There are a number of ways of pricing this – either through the savings generated or the anticipated cost of such a guarantee.

Performance related guarantee

- Some of the steps above are relevant here as well in determining if there is value attributable to the guarantee.
- There are a number of approaches we see in charging for these guarantees depending on the overall transfer pricing model and the strategic value of the guarantee in the local market.
- It may be done as a standalone charge. Many of the steps outlined above in terms of determining the value it provides and what a third party might be prepared to pay for that.
- This could also form part of a wider residual charge with the local operating company earning some target routine return.

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2. How far back can transfer pricing agreements be challenged?

The statute of limitations is currently four years after the end of the tax year or the accounting period in which the return is made.

3. If a new tariff in place now, for say importing plant or materials from the UK. HO changes price with its supply subsidiary company in the UK, to retain Irish margin. Will this be challenged given 12 ½% CT rate in Ireland and 19% in UK? After all, the company is just reacting to a market change!

Transfer pricing is, in many respects, a question of what would independent parties agree on an arms length basis. That being the case, if a duty is to be applied, would an Irish customer agree to absorb the duty cost – the answer of course is yes to the extent the price is still favourable and no to the extent they could secure better pricing elsewhere. The converse then applies from the UK perspective. So all of that is a long way of saying that the Irish company looking to maintain its margin is a reasonable assertion particularly if the goods can otherwise be sourced in the EU

4. Ireland allowed interest free loans. UK did not. Any changes now due to Brexit? 1) Within each of the countries and 2) cross board. Any difference if UK or NI?

There has been an expansion of the Irish transfer pricing rules to include interest free loans. The changes are not specifically related to Brexit. This update applies for accounting periods beginning on or after 1 January 2020. There are certain exemptions if the loans are between two Irish companies, with the lender taxable at the passive (25%) tax rate and the borrower entitled to a deduction for that interest at the trading (12.5%) rate. For any loans that are going cross border (either UK or NI), those loans are within the scope of transfer pricing.

5. If one has UK companies as well for operating in GB, does this make activity re vat/Brexit easier?

Yes, many ROI entities have established UK subsidiaries to deal with UK VAT/Customs matters post Brexit and typically involves an inter-group sale e.g. ROI Co to UK Co followed by domestic supply by UK to en customer with the reverse occurring when selling into ROI. This can assist in reducing additional burdens on VAT compliance for the Irish entities and may be cleaner for customs purposes also.

Where you have a UK entity as well as an ROI entity, then it can be beneficial for completing customs formalities to have the entity in the "local" market taking responsibility for completion – e.g. when you are exporting goods out of the UK, it will be simpler for the UK entity to act as exporter as they will be recognized as a legal person in the UK and will be able to contract on the most simple basis (direct representation) with a customs broker or freight agent, should they need one to complete an export declaration on their behalf.

6. How do you account for UK VAT in the bi-monthly VAT Return?

UK VAT that has be charged should not be included in the Irish bi-monthly VAT return. The first step would be to check that UK VAT has been properly chargeable e.g. whether any possibility this VAT was charged in error when billing a non-UK entity and if the UK VAT was properly chargeable (as perhaps land related or relating to supply of goods remaining within the UK) then it should be reclaimed under a foreign VAT refund claim. Please note that claims for UK VAT incurred in 2020 need to be submitted prior to 31 March 2021 to avail of the administratively easier EU VAT Refund Scheme as a concession. Otherwise a more onerous non-EU VAT refund claim would be required to be made.

Buying a car or typically for our industry the "the ford transit van" from the UK. I hear now 10% levy on second-hand vehicles! Can you give an example of pre and post 1 January 2021 the cost change? Also, are be better off buying from NI – what is the key difference

Example – acquiring a second-hand van from GB post Brexit (Assume not a UK origin vehicle).

Pre-Brexit

- VRT only

Post-Brexit

- Import duty: -Standard rate - 10% ad valorem (UK-EU TCA rate - 0% (but only where the rules of origin can be met))
- VAT at 21% (23% post 1 March 2021) – may be recoverable depending on exact use and VRT category
- VRT – applicable based on usual bands applying to the vehicle being imported

Whereas acquiring the vehicle from NI pre and post Brexit should just result in VRT cost as acquiring the vehicle from an NI dealer.

Note challenges with routing vehicle from a GB dealer through NI to get to ROI – should not result in avoiding VAT or Customs.

7. Are there many items relating to the Construction Industry, which are imported from the UK and tariffs imposed?

A quick review of CSO statistics for flow of goods from UK to Ireland shows that there is a high volume of construction related items imported from the UK (based on pre Brexit intra-community statistics).

Their import duty treatment post-Brexit will rely on (i) whether these goods have been manufactured in the UK and can meet the rules of origin so as to entitle them to the UK-EU TCA zero-tariff rates; (ii) whether these goods have been shipped into the UK from a different EU location (or another non-EU location with whom the EU has a free trade agreement) and the goods remain in a customs warehouse or under customs transit – in this case, there can be procedures put in place to make sure that there is no customs duty to be applied when these goods are imported into Ireland or; (iii) whether these goods have been in free circulation in the UK without undergoing sufficient processing to grant them UK preferential origin status under the UK-EU TCA – in such a case, customs duty would be applied at the correct EU rate when the goods are imported into Ireland (unless a separate relief can be identified in advance of the shipment).

8.a There still seems to be many issues with buying from the UK. If not price, then logistics and administration. Are we better off buying direct from the manufacturer itself if outside the UK? Say buy direct from Germany – Siemens Control Systems.

Irish companies should review their current supply chain and relationship commercially with UK suppliers and consider if it is possible to diversify and acquire the same products from an EU country. However, a number of factors need to be considered such as order lead time, cost of freight, commercial relationship and language barriers. However, from a VAT reporting and Customs perspective it would assist in reducing the burden but needs to be considered in the overall round.

8.b Is diversification still the best advice? Reduce supply or reliance from the UK?

I think the best position is that a new supplier evaluation process (taking into account both direct costs and indirect costs/efforts in acquiring goods directly from an EU manufacturer vs from a UK distributor) be put in place. The effects of Brexit will certainly bring some additional considerations into that evaluation which would not have been necessary pre 31 December 2020.

9. **Looking at our own membership and the top 50 listed each year. A good proportion of sales also contributes to exports. Which I can assume would mean some exports to the UK. Looking at exports, any key issues for construction industry? Typically, sales would include: project management (labour), plant, materials etc. Any new tariffs imposed for the UK buyer?**

There can be new tariffs applied – these would be relating to the tangible goods being shipped into the UK (so not labour etc.). Therefore, it is necessary to consider how to ensure any such tariffs can be, if possible, avoided. It is also key to ensure that the goods are exported out of Ireland and imported into the UK in compliance with the rules of both territories.

From customs perspective, there are 2 key elements: (i) correctly completing export formalities to move the goods out of ROI – for this you need to consider (a) who will be responsible for completing the formalities; (b) if it is your company, will you complete the export declarations yourself or hire a customs broker/freight forwarder – and if so, do you know what instructions to give that party and ; (ii) ensuring that you have all the correct paperwork to minimize the Brexit effect on the importation of the goods into the UK – namely (i) clear invoices that allow the customer (and/or the broker acting on his/her behalf) to complete the import declaration and (ii) proof of preferential origin status (where applicable) to ensure that the goods do not attract import duty on import into the UK.

10. Are there any implications for products that are imported into Northern Ireland, then processed further and sold for projects in ROI? If not clear yet do we have a timeline on when this may be defined?

There are customs duty implications in that goods which are imported into Northern Ireland for further commercial processing are to be considered as "at-risk" goods and as such would be subject to EU tariff treatment. The fact that these goods are then sold for projects in ROI does not change the initial tariff treatment. The next step to be considered is (i) where the goods are being imported from and (ii) the % tariff to be applied to the materials being imported. The answers to these questions will guide as to how the goods should be imported and handled in Northern Ireland from a customs perspective. There are some areas of guidance still to be published with respect to treatment of goods for processing in Northern Ireland and how a proposed rebate scheme for "at-risk" EU tariff collected in Northern Ireland may be applied when goods remain on NI/GB territory. There is no defined timeline on when we can expect publication of same.