VAT refunds in the UK before, during and after Brexit

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No one knows what will happen when the UK exits the EU on March 29, 2019. Consequently, when it comes to VAT reimbursement in the UK, Danish companies should follow the currently most favourable procedure.

By Pernille Rise, prt@bdo.dk

Danish companies incurring expenses subject to VAT in the UK without being registered for VAT in the UK can apply for reimbursement of the VAT paid. Application must be filed electronically at www.skat.dk and must cover a period of at least three months, up to one year or the rest of a calendar year. Refunds cannot be requested for periods spanning over two different calendar years - even if the period applied for covers at least three months.

What kind of expenses?

The expenses, from which the UK VAT can be reclaimed, are primarily travel and subsistence expenses incurred in the UK.

For instance, this covers the costs of renting a car including expenses for fuel, fuel for the company's own car, if it has been driven there, as well as costs for road tolls. Further, travel expenses are covered in the form of expenses for e.g. taxi, train, bus or ferry if VAT has been paid in relation to these expenses.

VAT on hotel and restaurant bills can also be reclaimed. The same applies to expenses for representation, entry tickets for fairs and exhibitions, and expenses for stands at such venues. It is the rules on deduction in the UK that determine the types of expenses where VAT may be reclaimed.

VAT on expenses incurred up to and including 29 March 2019

Currently, many companies have probably not applied for VAT reimbursement in the UK for the calendar year 2018, as the deadline for submitting applications for reimbursement does not expire until 30 September 2019.

Due to Brexit, companies should apply for a VAT refund for expenses incurred in the calendar year 2018 as soon as possible.

No later than 29 March 2019, application for reimbursement of expenses incurred during the period from 1 January 2019 up to and including the date of application should be filed, bearing in mind it is uncertain whether the UK will consider this application, as it does not cover a period of at least three months.

If significant expenses subject to VAT reimbursement are not expected in the last days up to 29 March 2019, it would be a good idea to submit the application a little earlier.

CONTENT

VAT on expenses incurred from 30 March 2019 and beyond

It is unclear how to relate to expenses incurred beyond the Brexit date, e.g. for a journey that begins on 28 March and ends on 31 March 2019.

For expenses incurred after the Brexit date, reclaims should be filed under the rules of third countries (non-EU scheme). However, in a newsletter, the Danish tax authorities have stated that for the time being, the country code GB and the currency GBP will be maintained in the electronic systems in hope that after Brexit it will also be possible to communicate digitally with the UK reimbursement system.

The Supreme Court rules in favour of the taxpayer in a TP case

This marks the third time the Danish tax authorities have been defeated in the same case. Both the High Court and the National Tax Tribunal before it also ruled in favour of the taxpayer.

By Anders Kiærskou, aek@bdo.dk

The case concerned whether a Danish company of a large multinational group had received payment at arm's length from a foreign group company for marketing services rendered. In the opinion of the Danish tax authorities, this was not the case. Consequently, the taxable income of the Danish company was increased by a total of more than DKK 300,000,000 for the income years 2004 - 2007.

The Supreme Court ruled that there was no basis for this increase. The court concluded that there was no basis for a purely discretionary assessment of the company's income just because the company's transfer pricing documentation was not available in sufficient detail at the deadline for filing the tax return.

Income years up to and including 2017

For a number of years, the Danish tax authorities have claimed they can make an entirely discretionary assessment of a company's income, if the company cannot substantiate that its TP documentation was in order at the deadline for filing the tax return.

However, the Supreme Court does not agree. If the documentation is present at the time of assessment, the income cannot be estimated on an entirely discretionary basis. The authorities can (only) correct the pricing for specific transactions, and only if this is deemed tenable. The burden of proof is quite heavy in this context.

It is likely that the ruling will have a significant impact on all pending TP cases, as the companies concerned have now been granted an extended timeframe for providing the documentation requested by the tax authorities.

Income year 2018 and onwards

The requirement that adequate documentation must be available at the deadline for filing the tax return is statutory with effect from 2018. The legal significance of this is not clear, but the tax authorities may take the position that the ruling of the Supreme Court will not set a precedent for income year 2018 and onwards.

No implications with regard to fines

The ruling does not have implications with regard to fines for insufficient or missing transfer pricing documentation.