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Subject matter: VAT - BREXIT PREPARATION**I. Introduction**

On 31 January 2020, the United Kingdom left the European Union (EU), becoming a "third country" from 1 February 2020. However, under the terms of the withdrawal agreement, a transition period was instituted that ends on 31 December 2020, during which Union law is fully applicable to the United Kingdom.

As from the end of the transitional period, EU VAT rules no longer apply to the United Kingdom, in particular Council Directive 2006/112 / EC of 28 November 2006 on the common system of VAT the added value (VAT Directive) and Council Directive 2008/9 / EC of 12 February 2008, which defines the modalities for the refund of value added tax to taxable persons not established in the Member State of refund, but established in another Member State.

There is, however, an exception applicable to Northern Ireland, since this territory, under the terms of the integral Protocol to the Withdrawal Agreement, is treated as part of the EU in relation to transactions in goods, but is considered as a third country in relation to provision of services.

These Instructions are intended to alert taxable persons to changes to be made with regard to the VAT treatment of transfers of goods and services. ¹ arising from the United Kingdom's withdrawal from the Union.

II. Impact on Value Added Tax

Under the terms of the Withdrawal Agreement, the VAT Directive continues to apply until five years after the end of the transition period, with regard to the rights and obligations of taxable persons

¹ It is advisable to consult the information available, and permanently updated, at the following email addresses:

https://info.portaldasfinancas.gov.pt/pt/apoio_contribuinte/Brexit/Paginas/default.aspx

https://ec.europa.eu/taxation_customs/uk_withdrawal_en

transactions between the United Kingdom and a Member State which took place before the end of the transitional period and transactions relating to goods dispatched or transported between the United Kingdom and a Member State, provided that the respective shipment or transport started before the end of the transition period and ended after that period.

Accordingly, the rights and obligations of taxable persons arising under VAT legislation, relating to transactions between the United Kingdom and Portugal which took place before 1 January 2021, including transactions relating to goods whose dispatch or transport started before that date, continue to apply, until five years after the end of the transitional period.

However, there are the following special cases:

- i) Changes to MOSS declarations submitted in Portugal in which the United Kingdom is the Member State of consumption (or vice versa), relating to services provided before the end of the transitional period, must be submitted no later than 31 December 2021;
- ii) The submission of refund requests, under Directive 2008/9 / EC, regarding VAT incurred in the United Kingdom or Portugal during the year 2020, must be done by March 31, 2021 ^{two}.

1. Treatment of the provision of services

The VAT Directive provides, as regards the location of the supply of services, rules on cross-border services between Member States, or between them and third countries or territories, depending on the nature of the service, the status of the purchaser and the place where the it is materially executed. These rules are set out in paragraphs 6 to 15 of article 6 and article

6th-A of the VAT Code (CIVA).

Where services are rendered between taxable persons, their location is, as a general rule, the country where the purchaser is established. This means that, if the buyer is established in the national territory, the services provided by a taxable person established in the United Kingdom are taxed in the national territory. The same is true in the opposite situation, that is, the services are not located in the national territory if the respective acquirer is a taxable person established in the United Kingdom.

In the case of services rendered whose purchaser is a non-taxable person, as a general rule, these services are located in the national territory if the provider has in this territory the headquarters of his activity, a permanent establishment or, failing that, the domicile to be from which the services are provided.

^{two} According to information from the respective tax administration, the United Kingdom will continue to accept requests until 23.00 on 31-03-2021.

In this sense, the end of the transitional period may have an impact on taxable persons established in the United Kingdom who provide services in the national territory and, for taxable persons established in the national territory who provide services in the United Kingdom.

Accordingly, taxable persons established in the United Kingdom have to inquire whether new rules on obligations apply with regard to the provision of services taking place in the national territory after the end of the transitional period.

2. Mini One Stop Shop (MOSS) regime

2.1. Changes to the regime

Also within the scope of the Mini Balcão Único regime, changes occur, so taxable persons established in the United Kingdom who use the Union regime to declare and pay their telecommunications, broadcasting and television services and electronic services, non-taxable customers in the EU must change their MOSS identification, as well as those who are registered in the territory outside the Union, if they wish to continue to benefit from the application of the scheme. In this sense,

- i) Services provided in the United Kingdom until the end of the transitional period must be included in the MOSS declaration for the respective quarter;
- ii) Taxpayers identified for the purposes of MOSS in the United Kingdom and who provide services to customers in the national territory must pay VAT in accordance with the VAT Directive;
- iii) Taxable persons established in a third country and identified under the extra-Union regime in the United Kingdom, must transfer their MOSS identification to any of the EU Member States;
- iv) Taxable persons established in a third country who have a permanent establishment in the United Kingdom and in an EU Member State and who have chosen to be identified for the purposes of the Union regime in the United Kingdom must, with effect from the end of transitional period, transfer your identification for the purposes of the scheme to the Member State where you have a permanent establishment.

2.2. Submission of VAT-MOSS declarations

Declarative and payment obligations, relating to the provision of services covered by the scheme, remain in force after the transitional period, so taxable persons registered with MOSS, in the United Kingdom or in the national territory, must submit declarations relating to the fourth 2020 until January 20, 2021.

3. Provisions of the Withdrawal Agreement relating to goods

After the end of the transitional period, EU rules on the movement of goods are no longer applicable to goods flows between Member States and the United Kingdom, ie there are no more intra-Community transfers and acquisitions of goods and distance selling, for goods originating in or destined for the United Kingdom.

As a consequence, the flow of goods between the national territory and the United Kingdom starts to observe the rules and procedures related to import / export, whose classification in VAT depends on the situation or regime to which the goods are subject.

However, under Article 51 of the Agreement, the provisions of the VAT Directive apply to goods shipped or transported from the United Kingdom to national territory, or vice versa, provided that the shipment or transport has started before the expiry date. transition period and ended after that period.

3.1. Before the end of the transition period

The transfer, followed by the dispatch or transport of a commodity beginning before the end of the transition period, by a taxable person established in the United Kingdom for delivery to a taxable person registered in Portugal is, verified the remaining conditions, considered an intra-Community transfer of goods (TIB) exempt in the United Kingdom, and should be subject to taxation in the national territory, such as intra-community acquisition of goods (AIB).

The same is applicable in the reverse flow, that is, in the movement of goods from national territory to the United Kingdom.

3.2. End of transition period - operations in progress

3.2.1. Shipment or transport of goods between the national territory and the United Kingdom, which began before the end of the transition period, but which ended after that period

The shipment or transport of goods from the United Kingdom to the national (or vice versa) territory may begin before the end of the transitional period (until 31-12-2020) but entry into the EU (or the United Kingdom) occurs after that period (01-01-2021).

Under Article 51 (1) of the Withdrawal Agreement, these transactions continue to be considered for VAT purposes as intra-Community transactions. However, if the goods arrive at the border of the national territory after the end of the transitional period, proof of submission to customs may be required that the transport started before the end of that period.

Provided the date of commencement of transport or if such proof is not necessary, the rules laid down for intra-Community transactions are applicable, including the respective declarative obligations, namely the delivery of the recapitulative declaration

(obligations arising from the application of RITI³ and CIVA for the operations carried out: intra-Community transfers, intra-Community acquisitions of goods or their assimilated operations; transfers of goods to non-taxable persons (B2C) taxable in the destination country as distance sales; intra-Community transfers of new means of transport or goods subject to excise duty).

If the date of commencement of transport is not proven, when required, the customs formalities related to the movement of goods will apply, namely when they are:

- coming from third countries, whose VAT classification depends on the customs regime or situation to which they are subject;
- destined for a third country, also here the classification in VAT depends on the customs regime to which the goods are subjected.

3.2.2. Reintroduction of goods in the national territory, shipped from one of the 27 MS to the United Kingdom during the transition period

To the reintroduction of goods in the EU, through the national territory, after the end of the transition period which, having been dispatched or transported from one of the 27 Member States to the United Kingdom during that period, the VAT exemption for the reimportation of goods provided for in paragraph g) of paragraph 1 of article 13 of the CIVA.

Goods can benefit from the VAT exemption if the interested party proves that:

- they are reimported by the person who dispatched them to the United Kingdom;
- are in the state in which they were dispatched; and,
- benefit from customs relief.

If any of the conditions is not met, the import is taxable in general terms and is not exempt (subparagraph b) of paragraph 1 of article 1 of CIVA in conjunction with article 5, paragraph 1 of the same Code).

To qualify for a customs duty, goods must return to the customs territory of the Union within 3 years and be in the state in which they were dispatched from that territory, as defined in customs legislation (see Articles 203 of Regulation 952 / 2013 (CAU) and 158 of Delegated Regulation 2015/2446 (AD-CAU)).

3.2.3. Transmissions of goods with installation or assembly

The transmission of goods with installation or assembly, if they are dispatched or transported from national territory to the United Kingdom, or vice versa, before the end of the transition period, but arriving in the country of destination after that period,

³ VAT regime for intra-Community transactions

it continues to be considered located in the place where they are installed or assembled (article 9 of the RITI and 36 of the VAT Directive). However, if the goods are presented to customs after the end of the transitional period, the interested party may have to prove their status as an EU commodity (pursuant to Article 199 of Implementing Regulation 2015/2447 (AECAU)) and that their circulation started before the end of the transition period (by means of a transport document, for example) ⁴.

If it is not proven that the shipment occurred before the end of the transition period, the customs formalities for export or import, as well as the corresponding VAT treatment, are applicable to this operation.

3.3. After the transition period expires

The entry and exit of goods into the EU, the dispatch or transport of which begins after the end of the transitional period, from or to the United Kingdom, is subject to the customs controls and formalities provided for goods coming from a third country (in particular the introduction in free circulation) or for goods destined for a third country (export) ⁵, as well as the VAT rules applicable to imports and exports.

A reference guide on the VAT treatment of import and export operations is expected to be published on the Finance Portal soon.

4. Rules applicable to the movement of goods between Portugal and Northern Ireland

The Protocol on Ireland / Northern Ireland, which forms an integral part of the Agreement on the Exit of the United Kingdom from Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, provides that European Union law in VAT, as regards the movement of goods, continues to apply to Northern Ireland after the transition period, which ends on 31 December 2020 ⁶.

The taxable persons established in Northern Ireland, who carry out an activity related to trade in goods, are covered by the Protocol. ⁷

In turn, the provision of services is not covered by the said Protocol, which means that when carried out between a Member State and Northern Ireland, they will be treated as being carried out between the Member State and third countries or territories.

The application of the said protocol has the following consequences:

⁴ On the customs aspects of the circulation of goods see Ofício Circulado No. 15803, of 2020.12.21, of the Customs Regulation Services Department (DSRA).

⁵ Refer to the Union Customs Code (CAU) and its implementing regulations: Commission Delegated Regulation (EU) 2015/2446, of 28 July (AD-CAU) and Commission Implementing Regulation (EU) 2015/2447, of November 24, 2015 (AECAU).

⁶ Article 8 of the Protocol on Ireland / Northern Ireland and section 1 of Annex 3 to the said protocol.

⁷ Relevant NACE codes.

- (i) Taxpayers established in Northern Ireland, recognized by the United Kingdom as covered by the Protocol, now have a prefix “XI” before the respective VAT identification number, remaining valid for the purposes of the VAT Information Exchange System (BIAS);
- (ii) Taxpayers with the prefix “GB”, which the United Kingdom does not consider covered by the Protocol, are terminated in the VIES system on 31 December 2020;
- (iii) Transactions involving the movement of goods between taxpayers in Northern Ireland with the prefix “XI” and national taxpayers are considered intra-Community transactions.

4.1. Treatment of transfers and acquisitions of goods between taxable persons established in Portugal and established in Northern Ireland (prefix “XI”)

4.1.1. Transfers of goods from Northern Ireland to Portugal

A TIB takes place in Northern Ireland if the goods are shipped or transported by the supplier or the purchaser, or by a third party on their behalf, from Northern Ireland, to the purchaser, when he is a natural or legal person registered for the purposes of VAT in Portugal, which has used the respective identification number to carry out the acquisition and here is covered by a tax regime for intra-Community acquisitions of goods. If the conditions are met, intra-Community transfer is exempt from VAT in Northern Ireland⁸.

In turn, there is an IBA in Portugal, under the terms of paragraph a) of article 1 and of 1 of article 8 of the RITI, subject to taxation in national territory.

4.1.2. Transmissions of goods from Portugal to Northern Ireland

There is a place for a TIB in Portugal if they are shipped or transported by the supplier or the purchaser, or by a third party on their behalf, from the national territory to the purchaser in Northern Ireland, when he is a natural or legal person registered with the prefix “XI”, which used the respective identification number to make the purchase.

Once the conditions provided for in paragraph a) of article 14 of the RITI are fulfilled, transmission is exempt in national territory⁹.

In turn, the corresponding AIB, carried out by the acquiring taxable person, is taxable under the conditions applicable in Northern Ireland.

⁸ Articles 138 (1) and 139 of the VAT Directive.

⁹ With regard to proof of dispatch or transport in intra-Community transfers of goods, one of the objective conditions

for the purposes of applying the exemption provided for in article 14 of the RITI, consult Circular no. 30218, of 2020-02-03, from the VAT Tax Management Area, available at:

https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/instrucoes_administrativas/Documents/Oficio_Circulado_30218_2020.pdf

4.1.3. Goods dispatched or transported to or from Northern Ireland before the end of the transition period

When the shipment or transport of goods begins in Northern Ireland before the end of the transition period and arrives in the respective territory at a later date (or vice versa), with the remaining conditions verified, there is no change in the VAT treatment of this movement, which be regarded as an intra-Community operation of goods.

4.2. Intra-Community distance sales of goods

4.2.1. Distance selling from Northern Ireland to Portugal

When goods (excluding new means of transport and goods delivered after assembly or installation by or on behalf of the supplier) are shipped or transported by or on behalf of the supplier from Northern Ireland to Portugal and the respective transmission it is considered a distance sale, the transaction is taxable in national territory, in accordance with the provisions of article 11 of the RITI.

4.2.2. Distance selling from Portugal to Northern Ireland

When goods (excluding new means of transport and goods delivered after assembly or installation by or on behalf of the supplier) are shipped or transported by or on behalf of the supplier from Portugal to Northern Ireland and the respective transfer is considered a distance selling located outside the national territory, under the terms of article 10 of the RITI, the transaction is taxable in Northern Ireland.

4.3. Transmissions of goods with installation or assembly

4.3.1. Goods installed or assembled in Portugal

Transfers of goods dispatched or transported by the supplier, by the purchaser or by a third party on their behalf, from Northern Ireland to Portugal, where they are installed or assembled by the supplier or on his behalf, are taxable in national territory, by application of paragraph 2 of article 9 of the RITI.

4.3.2. Goods installed or assembled in Northern Ireland

Transfers of goods dispatched or transported by the supplier, by the purchaser or by a third party on their behalf, from Portugal to Northern Ireland, where they are installed or assembled by the supplier or on his behalf, are taxable in that territory ¹⁰.

¹⁰ Article 36 of the VAT Directive.

4.4. New means of transport

4.4.1. Transmissions of new means of transport from Northern Ireland to Portugal

Transfers of new means of transport dispatched or transported from Northern Ireland to Portugal are exempt from VAT in that territory ¹¹.

The corresponding intra-community acquisitions of new means of transport subject to registration, license or registration in national territory are taxable in Portugal, pursuant to paragraph b) of paragraph 1 of article 1, combined with paragraph 4 of article 8, both from RITI.

4.4.2. Transmissions of new means of transport from Portugal to Northern Ireland

Transfers of new means of transport dispatched or transported from Portugal to Northern Ireland are exempt from VAT in Portugal, pursuant to paragraph b) of Article 14 (1) of the RITI. The corresponding acquisitions are taxable in that territory ¹².

4.5. Summary Statement

Intra-Community transfers of goods and assimilated transactions, made to purchasers, taxpayers established in Northern Ireland, covered by the Protocol, to whom the United Kingdom has assigned a tax identification number preceded by the prefix "XI", are shown in the Table 04 of the recapitulative statement.

On the other hand, intra-Community transfers of goods under the consignment sales regime, under the conditions set out in paragraphs 2 or 3 of Article 7-A of the RITI, to Northern Ireland, with a view to their later transmission to another taxable person, registered there with the prefix "XI", whose identity is already known at the time of the beginning of the shipment or transport of goods, are shown in Table 06 of the recapitulative statement.

It should be noted that services rendered to taxable persons established in Northern Ireland are not included in the summary statement.

5. VAT refund procedure

5.1. In relations between the United Kingdom (with the exception of Northern Ireland) and Portugal

The refund of the tax incurred in the acquisition of goods and services as from January 1, 2021, by taxable persons established in the United Kingdom, with the exception of Northern Ireland, is carried out in accordance with the provisions of the 13th Directive (Council Directive 86/560 / EEC, of 17 November), corresponding to domestic law to Sections 1 and 3 (Regime applicable to subjects established outside the European Union) of Chapter III of the Annex "Regime of reimbursement

¹¹Article 138 (1) and (2) (a) of the VAT Directive

¹²Article 2 (1) (b), subparagraphs i) and ii), and Article 40 of the VAT Directive.

VAT to taxable persons not established in the Member State of refund ", to Decree-Law no. 186/2009, of 12 August.

Conversely, taxable persons established in Portugal can request the refund of VAT incurred in the United Kingdom under the VAT refund procedure established in that Directive.

5.2. In relations between Northern Ireland and Portugal - from 1 January 2021

Taxpayers established in Northern Ireland, identified with the prefix "XI", can request the refund of VAT incurred in Portugal under the procedure established by Council Directive 2008/9 / EC, as far as VAT is incurred. in the acquisition of goods, entitled by invoices relating only to goods or, in the case of imports, by the documents referred to in paragraph b) of paragraph 2 of article 19 of the CIVA.

For the respective conditions and applicable procedure, see Sections 1 and 2 (Scheme applicable to taxable persons established in other Member States) of Chapter III of the Annex "VAT refund scheme for taxable persons not established in the refunding Member State", to Decree-Law no. 186/2009, of 12 August.

Likewise, taxable persons established in Portugal can request the refund of VAT incurred in Northern Ireland under the procedure established in the aforementioned Directive, insofar as the refund is related only to VAT incurred in the acquisition of goods.

Note that if the refund request concerns services, the refund mechanism provided for in the 13th Directive (Council Directive 86/560 / EEC, of 17 November) applies. The same applies if the request for reimbursement concerns an invoice that simultaneously entitles purchases of goods and services.

You can consult the table in the Annex, under the heading "Reimbursements - Summary table of applicable rules".

6. "E-Tax-free Portugal" regime

Pursuant to paragraph b) of paragraph 1 of article 14 of the CIVA, transfers of goods dispatched or transported outside the Community by an acquirer without residence or establishment in the EU are exempt from tax.

This exemption is regulated in Decree-Law no. 19/2017, of February 14, and in the Ordinance No. 185/2017, of 1 June, and results in the non-payment of VAT on transfers of goods for private purposes made to purchasers whose domicile or habitual residence is not located in the EU, which, until the end of the third next month, carry them in your personal luggage outside this territory.

6.1. Travelers with domicile or usual residence in Northern Ireland

Article 8 of the Protocol provides that the provisions of Union law relating to goods, listed in the respective Annex 3, including the VAT Directive, apply to the United Kingdom and its territory with respect to Ireland. North.

Thus, travelers with domicile or usual residence in Northern Ireland cannot benefit from the exemption provided for in paragraph b) of paragraph 1 of article 14 of the CIVA, when making purchases of goods in Portugal.

6.2. Travelers with domicile or usual residence in the United Kingdom, with the exception of Northern Ireland

Travelers with domicile or habitual residence in the United Kingdom, with the exception of Northern Ireland, can benefit from the exemption provided for in paragraph b) of paragraph 1 of article 14 of the CIVA in the acquisition of goods in Portugal made from 1 January 2021.

Best regards.

The Deputy Director-General

ATTACHMENT
Refunds - Summary table of applicable rules

Subject passive provider	Subject passive buyer	Operations	Refund request
PT	IN as prefix "XI"	Acquisitions of assets	Council Directive 2008/9 / EC, of 12 February Articles 7 to 17 of the Annex to Decree-Law no. 186/2009, of 12 of August
PT	IN as prefix "XI"	Acquisitions of assets <u>and</u> services or Articles 18 and 20 of the	Council Directive 86/560 / EEC, of 17 November 12 services only of August
PT	GB or IN semo prefix "XI"	Acquisitions of goods or services	Council Directive 86/560 / EEC, of 17 November. Articles 18 and 20 of the Annex to Decree-Law no. 186/2009, of 12 of August.
IN	PT	Acquisitions of assets	Council Directive 2008/9 / EC, of 12 February
IN	PT	Acquisitions of assets <u>and</u> services or services only	Council Directive 86/560 / EEC, of 17 November