



Quarterly indirect tax update

August 2022



Focus on VAT implications for Foreign Direct Investment

In recent years Ireland has become an epicentre for Foreign Direct Investment (FDI) for a number of reasons including connected world class research, pro-enterprise policy and an attractive tax regime.

However, one area that is often overlooked is the area of VAT. Foreign businesses investing in Ireland need to be familiar with the intricacies of this complex tax to ensure the benefits of its Irish investment are maximised and compliance oversights do not occur in this ever-evolving sector.

At Grant Thornton, we advise a wealth of such businesses by highlighting opportunities and overcoming challenges that will inevitably arise.

Key areas and questions

Potential Irish VAT obligations for non-Irish established traders, fixed establishments and maximising VAT recovery



1 I am a non-Irish established trader and do not have a fixed place of business in Ireland. Do I need to be registered for VAT in Ireland?



2 I am confused by the concept of a fixed establishment for VAT purposes. What does this mean for my business?



3 What are the FE (fixed establishment) rules surrounding parent companies and their subsidiaries?



4 Does my business need to be registered for Irish VAT to have an entitlement to reclaim Irish VAT incurred on purchases and expenses?

In general, there are a number of circumstances whereby non-established traders have to register for Irish VAT, regardless of turnover. The below are examples only and there are many more circumstances which may create a VAT registration obligation.



I am a non-Irish established trader and do not have a fixed place of business in Ireland. Do I need to be registered for VAT in Ireland?

- Importing goods into Ireland
- Supplying goods in Ireland
- Engaging in the supply of electronic services from outside the EU to a private individual whose usual place of residence is in Ireland
- Engaged in the valuation of movable goods within Ireland

Please talk to us if you are concerned that your business may have triggered an Irish VAT registration obligation.



I am confused by the concept of a fixed establishment for VAT purposes. What does this mean for my business?

A fixed establishment (FE) is any establishment which can be characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

In our experience, it can be difficult to prove the existence of a FE and the need for an Irish VAT registration where there are no employees based in Ireland who can perform the services of the business.

This is a vital concept for determining the place of supply for services (i.e. where the VAT arises), and who is the person responsible for paying VAT to the Irish Revenue. This can be a costly mistake if the VAT is paid in the incorrect jurisdiction. This is a complex area and reliance is placed on EU case law.



What are the FE (fixed establishment) rules surrounding parent companies and their subsidiaries?

There have been a series of recent EU cases which have focused on this important concept.

In one case from April 2022¹, the Court of Justice of the European Union (CJEU) concluded that a subsidiary rendering exclusive marketing and publicity services through the availability of its human and technical resources, to its parent company, does not constitute a VAT fixed establishment of that parent.

In an earlier case², the CJEU was asked to consider the extent to which the existence of a subsidiary in the EU can determine a FE to arise for a parent company established outside the EU. The CJEU ruled that it is possible for a subsidiary to have the status of a FE for the parent company. However, the existence of an FE cannot be inferred from the mere fact of having a subsidiary within the EU.

This is a grey and evolving area. We have developed a short FE questionnaire to obtain an indication on the possible presence and degree of risk of having a FE for Irish VAT purposes. Please let us know if you would like to obtain access to this questionnaire in order to understand the potential FE presence in Ireland for your business.

¹[C-333/20] ²[C-333/20]



Does my business need to be registered for Irish VAT to have an entitlement to reclaim Irish VAT incurred on purchases and expenses?

No – it may be possible to reclaim Irish VAT via an Electronic VAT Reclaim (EVR) or the VAT 60E procedure.

The EVR claim is appropriate for foreign traders established in the EU who have incurred Irish VAT.

For entities engaged in business outside the EU and not engaged in business in Ireland, the VAT 60E procedure may be the appropriate avenue to recover Irish VAT, depending on the type of activities carried out.

We can advise on the most appropriate VAT recovery mechanism to maximise cash-flow for your business. The deadline for an EVR claim is 30 September 2022 for all EU VAT incurred during 2021.

The VAT 60E procedure has a longer repayment period of four years, so this may be an opportunity for your business to reclaim VAT incurred over the last couple of years.



If you would like to discuss more about TAX Implications for Foreign Direct Investment, please contact a member of the Tax team.



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