



11 Raven Wharf, Lafone Street, London, SE1 2LR Tel: +44 (0)20 7403 5959 Fax: +44 (0)20 7403 3111
Email: gba@greenback-alan.co.uk Web: www.greenback-alan.co.uk

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EU Indirect Tax Planning - An Overview

The continuing expansion of the European Union means that more and more enterprises will need to deal with the European Value Added Tax regimes of each member state. Value Added Tax (VAT) is imposed on the consumption of goods and services in all European countries. In theory the abolition of the customs borders between the member states should mean that transactions across them should be tax neutral. However each state has its own legislation and although in theory they are all in accordance with European Union directives, cross-border conflicts can arise.

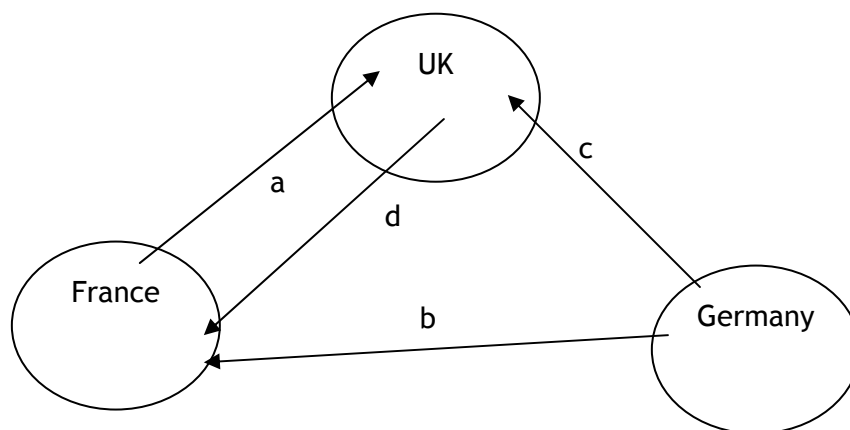
Surveys carried out by the European Commission have confirmed that businesses find VAT compliance and related matters are the most expensive tax to administer. This is especially true for cross-border transactions which can involve registration in several different states. Furthermore with headline VAT rates varying between 15% and 25% the taxation charges can often exceed the gross margins of the business. VAT therefore has a significant impact on cash flow and appropriate planning is recommended to reduce potential double taxation and expedite refunds if appropriate. It has also been shown that active planning can reduce the friction costs significantly over companies that do nothing.

The European Commission recognises the burdens placed on business and has introduced options to help simplify procedures as well as charges. This article is intended to provide a simple overview of what may be achieved and to highlight one of two specific areas.

For example a business may be able to reduce its compliance and administrative costs by reducing the number of registrations required. This may be achieved by using warehousing facilities rather than having a permanent establishment in each jurisdiction. Where goods are being imported from outside the European Union consideration should also be given to using "bonded" warehousing facilities to help cash flow by deferring import duties.

Another example is to utilise some of the simplification procedures available. For example where a UK company buys goods from a German supplier for shipment directly to its customer in France, strictly the legislation would require the UK Company to register for VAT either in France or Germany. Registration in Germany would mean that the German company would need to charge and account for German VAT (MwST) on its supply to the UK company. The UK company would then zero rate the removal of the goods from Germany to France against the French customer's TVA number. Alternatively the UK company could register in France so that the German company could zero rate its supply from Germany to the UK company. The UK company would charge French TVA to the French company. This chain of supplies can be demonstrated by the diagram below.

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Key

- A UK company receives an order from a French company and sources the goods from a German company.
- The goods are sent direct from Germany to the French company.
- The Germany company invoices the UK company for the goods.
- The UK company invoices the French company for the goods.

Intrastat reporting requirements only arise for the French and German companies on the movement of goods i.e. transaction “b”.

The above scenario is known as triangulation. Under the simplification procedures, a common sense approach is taken so that the UK company is able to obtain a zero rated supply from the German supplier and also zero rate its supply to its French customer. The above procedure does require the invoices to state that they are simplification invoices under Article 28. The UK company has no obligation under intrastat reporting requirements, although both the German and French companies will need to make appropriate declarations. It should also be noted that this simplification procedure only applies where there are supplies of goods between three parties all registered within the European Union. It does not apply for example, where one or more of parties is based outside the European Union e.g. Japan.

It will be noted from the above that where goods are being imported into the European Union advantages may be obtained by setting up a company which is VAT registered in a user friendly European jurisdiction. It should be noted that such a company must carry on a business for VAT purposes and thus could not be merely a holding company nor would such a structure lend itself particularly for banking or insurance businesses.

Another area which some business overlook, arises when it does not have a VAT presence in a European country and suffers VAT on expenditure. In such circumstances it is possible for the company to make a claim under the 8th and 13th European Union Directives to reclaim VAT on certain European business expenses incurred. There are strict time limits for making the claim. Normally claims are made on a calendar year basis and must be submitted to the appropriate tax office in each state within six months of the end of the calendar year.

It can be seen from the above that it is possible to structure trading activities efficiently to mitigate imposition of VAT. The key is ensuring that there is an overall management of the position to ensure that the various requirements of each jurisdiction are met and opportunities for simplification and refunds are not missed.