

Update on VAT issues for alternative investment managers

AIMA Fund Manager Briefing

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Agenda

- Changes following the end of the transition period
 - VAT recovery for supplies of financial services
 - Services provided to “passive” holding companies
 - Other VAT issues or changes
- Changes to HMRC policy on termination fees
- Horizon Scanning: VAT grouping consultation and VAT on fund management consultation
- Horizon Scanning: EU consultation on VAT and financial services

Speakers



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Changes following the end of the Brexit transition period

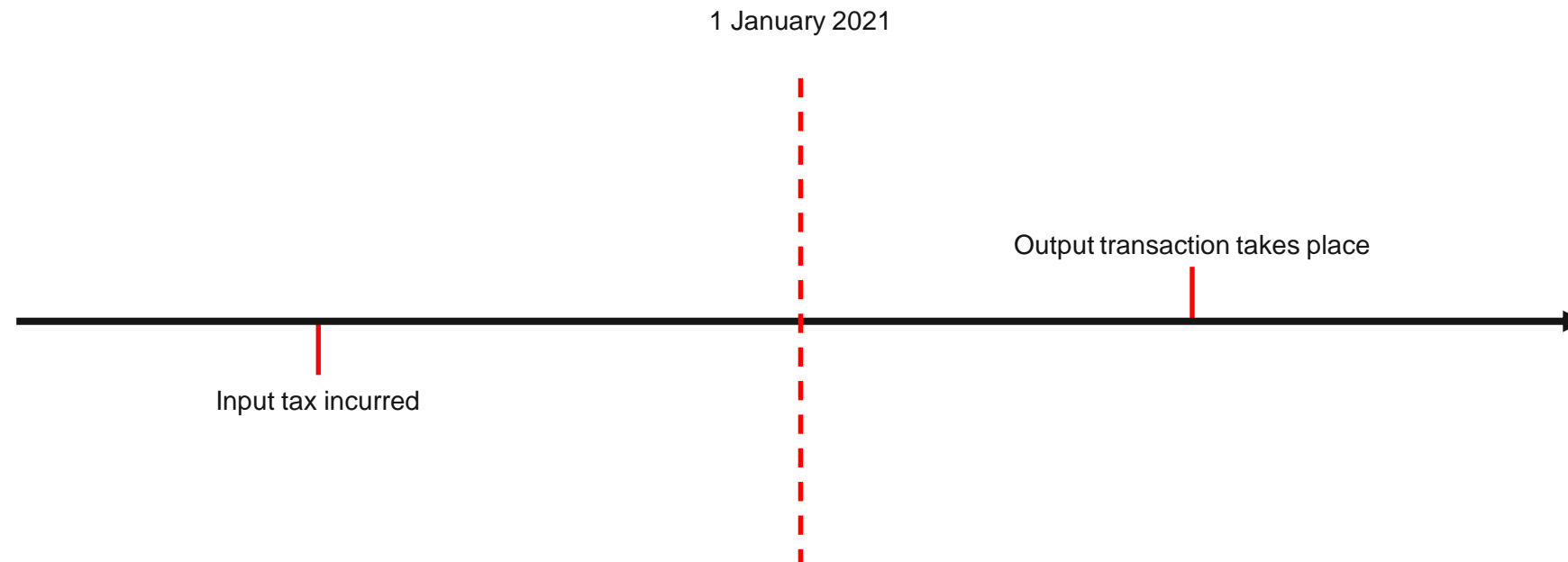
VAT recovery for financial services

- Previously certain 'specified' financial services gave a right to VAT recovery where those services were provided to a non-EU counterparty.
- From 1 January 2021 (IP Completion Day) those same services give the right to VAT recovery when supplied to any non-UK counterparty. Examples include:
 - loans to EU portfolio companies; and
 - disposals of investments to EU counterparties.
- This should result in an increased right to VAT recovery but it may be necessary to revisit partial exemption methods, fee structures etc. in order to obtain the benefit.
- The same should apply in respect of EU VAT recovery for EU suppliers transacting with UK recipients.
- Could take on increasing significance in light to the Asset Holdco consultation.
- Note that this change does not impact VAT-exempt investment management services (e.g. management of certain SICAVs).
 - However the management of an EU-established pension fund now gives a right to VAT recovery.

Changes following the end of the Brexit transition period

VAT recovery for financial services (cont.)

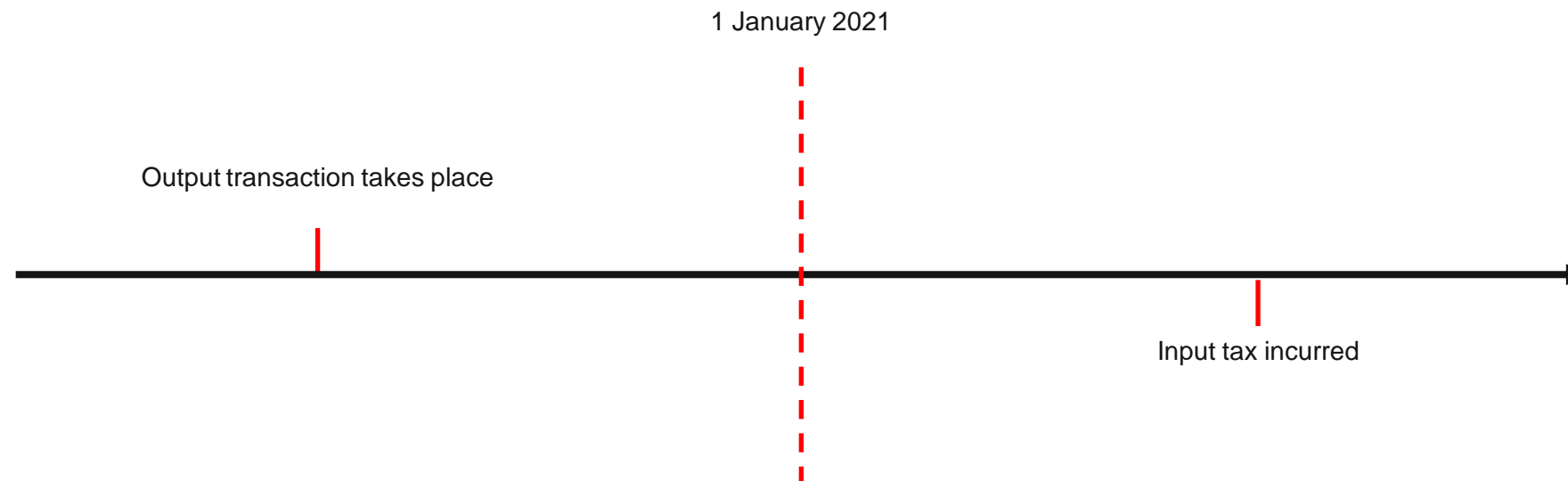
- No explicit or specific transitional provisions.
- HMRC has confirmed its view that input VAT incurred in 2020 relating to a supply to an EU counterparty in 2021 cannot benefit from VAT recovery.



Changes following the end of the Brexit transition period

VAT recovery for financial services (cont.)

- What about the other way around?
- HMRC has asked for views from industry.
- Important for firms with three-year rolling average disposal calculations in their agreed PESM.



Changes following the end of the Brexit transition period

Services provided to passive holding companies

- Previously services provided by a UK supplier to an EU recipient that was not in business (e.g. a passive holding company) were ordinarily subject to UK VAT.
- Most types of services supplied to EU non-business recipients are now outside the scope of UK VAT.
- Note: technically the default position is that such services are subject to UK VAT but the exceptions are so broad that they effectively become the default.
- The same should broadly apply in respect of services from EU suppliers to UK recipients.
- Services provided between the UK and the EU are potentially subject to VAT in neither location.

Changes to HMRC policy on termination fees

- Of particular relevance in relation to property transactions and corporate transactions.
- Previous HMRC policy was that termination or exit fees pre-agreed in the relevant contract were outside the scope of UK VAT whereas fees agreed outside the contract were normally within the scope of VAT.
- Two Portuguese telecoms cases at the CJEU – *MEO* and *Vodafone Portugal* - resulted in the issue of Revenue and Customs Brief 12 (2020) on 2 September 2020 drastically amending previous policy.
 - bringing all termination fees within the scope of VAT with retrospective effect; and
 - including dilapidations, court ordered damages etc.
- Industry pushback has resulted in amended guidance to be issued with effect from 1 February 2021.
 - The draft amended guidance is more aligned with the logic of the cases.

Horizon Scanning: VAT and asset management consultations

VAT Grouping Consultation

- Call for evidence launched 28 August 2020 with responses by 20 November 2020.
- Split into three primary areas of policy:
 - Territorial extent of VAT grouping (effectively asking whether the UK should implement Skandia, so that transactions between branches of the same legal entity are subject to VAT where that entity is a member of a UK VAT group);
 - Compulsory VAT grouping; and
 - VAT grouping of limited partnerships (should we put a stop to it?).

Horizon Scanning: VAT and asset management consultations

VAT on fund management fees consultation

- Announced in the Spring 2020 budget as part of a general review of the competitiveness of the UK in this sector.
- Significant overlap with the consultations on VAT grouping, Asset Holdco and UK funds regime.
- What to expect:
 - a focus on removing the VAT incentive to establish funds offshore (by making UK funds more attractive or by making offshore funds less attractive...?);
 - UK regime currently beneficial to Managers of non-UK AIFs;
 - UK funds currently suffer partial exemption restrictions; and
 - comparison with Irish and Luxembourg regimes and wider EU measures.

EU Financial Services Consultations

- Public consultation on the roadmap took place late 2020.
- Policy objectives:
 - Addressing the lack of VAT neutrality for FS businesses
 - » the possible removal of the FS exemption, or the restriction of the exemption to non-fee based income; and
 - » improved cost sharing/VAT grouping arrangements (including cross-border arrangements).
 - Increased legal certainty
 - » in light of industry changes since 1977 and case law around payment processing.

Any questions?

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