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CUSTOMS AND TAXATION

VAT deferment and fiscal representation

Over the last decades the Netherlands has been able to attract a large number of international companies setting up warehousing and distribution activities in the Netherlands. Besides the more obvious reasons like geographic location close to the main European markets, availability of two mainports (Port of Rotterdam and Schiphol Amsterdam Airport), excellent logistics infrastructure and connectivity to the rest of Europe by road, rail and inland waterways there is one important factor that also played a significant role that might be a bit less known. This is the fact that the Dutch customs authorities are considered to be the most efficient and pro-business in the world. This makes it possible for companies to set up a tax efficient supply chain. Specifically the legislation regarding VAT deferment and fiscal representation are considered to be highly attractive in the Netherlands.

Please note: when a company imports products into the EU two different kind of taxes will be due. Import duties and Value Added Tax. Import duties are harmonised for the EU what basically means that the import duty (as a percentage of the value of the product) is the same for all countries. Moreover, also the way duties are charged are the same throughout the EU.
For VAT the situation is different, VAT is a EU directive which is interpreted different between the different member states.

Benefits of VAT deferment and fiscal representation for foreign companies in the Netherlands:

- **No actual VAT payments: no negative impact on cash flow due to deferral system.**
- **No need to set up a legal entity. Only register for VAT and statistics.**

VAT and import duties

- If goods are imported into one of the 28 countries of the European Union (EU), VAT and import duties become due. These can either be paid the moment the goods arrive in the EU, or when they are discharged from a bonded warehouse and brought into "free circulation" into Europe[1].
- VAT is a consumption tax, what basically means that all (commercial) parties involved with producing or selling a product can forward the VAT to the next party in the value chain. The only party who pays for the VAT is the end user of a product (the consumer). If no specific arrangements are made, all companies in the value chain have to pay VAT and ask for a refund afterwards (the period between payment and refund can be anything between a few weeks but this can also be several months or even a year). It needs no explanation that having funds being "trapped" at national (customs) authorities in several European countries not only has a negative impact on the cashflow of companies but also is quite an administrative burden to apply for refunds for foreign companies.

VAT Deferment in the Netherlands

In order to facilitate trade and bring down the administrative and financial burden for Dutch companies the Dutch government made it possible for Dutch companies to make use of the so called 'postponed accounting' or VAT deferment. Under this system, VAT does not have to be paid at the moment of importation; instead, it can be postponed to the periodical VAT return. On this periodical return, the postponed import VAT is declared, but at the same time can also be deducted. This results in considerable cash flow and interest-earning benefits for companies importing into the Netherlands. In order to give companies who are not registered in the Netherlands but, who make use of the Dutch mainports and logistics infrastructure the same opportunities as companies who are registered in the Netherlands the government has set up the 'Fiscal representation' scheme. By appointing a 'fiscal representative' foreign companies can make use of the VAT deferment and as such also avoid payment of VAT when goods are being imported into the EU. Basically this means that companies that are registered in the Netherlands and companies that are not registered in the Netherlands, but who appointed a fiscal representative, both have the option to make use of the VAT deferment scheme.

[1] The EU will harmonize the VAT legislation in the EU which is foreseen for 2020. At the moment, there are still quite some uncertainties about the implications of the modifications. In this document we describe the actual situation; no changes are expected in this legislation until 2020.

Fiscal representation

In order to benefit from the advantages VAT deferment has to offer, a foreign entrepreneur must appoint a Dutch entity to act on their behalf for fiscal for VAT purposes. There are two kinds of fiscal representation in the Netherlands:

(1)

Limited fiscal representation (LFR): A foreign company can appoint a limited fiscal representative that will take care of VAT formalities connected with importing and distribution in Europe. In practice, the VAT subnumber of the limited fiscal representative is used for the imports, so a foreign company does not have to register for VAT purposes in the Netherlands themselves. Multiple foreign companies can be handled under this VAT subnumber by the limited fiscal representative. Also, a foreign company may have more than one limited fiscal representative in the Netherlands.

In general LFR is used by companies with a relatively straightforward supply chain, meaning that goods are imported into the Netherlands for the European market. The goods need to be shipped directly to clients within the period the VAT entry needs to be done (x-dock).

Application process: the foreign entity uses the VAT registration number of the fiscal representative. Off course there is some paperwork involved, but theoretically setting up LFR can be done within a day. Some companies offering LFR ask for a bank guaranty but this is not mandatory for Dutch authorities.

(2)

<u>General fiscal representation (GFR)</u>: If a foreign company also acquires goods from suppliers who are based in the EU or intends to store products in a warehouse for a longer period of time the GFR scheme would be the preferred solution. In contrast to limited fiscal representation, the foreign company needs to register themselves for VAT purposes and apply for its own VAT identification number in the Netherlands (in most cases the GFR assists the foreign company with the application process). A company is allowed to have one VAT registration number and appoints a general fiscal representative in the Netherlands. <u>Please note</u>: the foreign company only registers for <u>VAT purposes</u> in the Netherlands, this does not mean that the company establishes a business entity in the Netherlands. The company is still a foreign entity without staff or (direct) tax obligations. <u>Application process:</u> the foreign company needs to apply for a VAT registration number at the Dutch authorities, if all paperwork is filled out correctly by the foreign company the application takes approximately 6 weeks. Dutch authorities require foreign companies to deposit a bank guarantee in case they register for GFR.

There are different companies that can act as a fiscal representative (both LFR and GFR), the most common are logistics service providers and customs brokers.

(<u>Frequently asked questions related to VAT and representation:</u>

- <u>Question</u>: How do I take care of the payment of VAT (and/or duties) in Europe if I don't have a legal entity, local bank account or any connections with the VAT authorities in the Netherlands or any other country in Europe? <u>Answer</u>: payment of VAT (and duties) to local authorities in Europe is taken care of by the freight forwarder or customs agent the foreign company works with. The freight forwarder or customs agent will forward these costs to the foreign company (without mark-up). In most cases the freight forwarder or broker requires the foreign company to set up a bank guarantee or deposit a bond to ensure a smooth reimbursement of these costs and avoid any delays due to issues related to the payment of duties or VAT.

- <u>Question</u>: Do I need to appoint my 3PL as my fiscal representative or can I also appoint another company (e.g. a customs broker) to act as my fiscal representative? <u>Answer</u>: It is not mandatory to appoint your 3PL as your fiscal representative. It might be advantageous to do so because it makes it possible to outsource all activities to a single partner (single point of contact). However, it is also possible to appoint a 3rd party (customs agent) to act as your fiscal representative. Possible reason to go for this option would be the increased flexibility and extra guarantees.
  Moreover, not all logistics service providers offer fiscal representation so in this case you would need to appoint a 3rd party as your fiscal representative anyway. Most logistics service providers who don't offer fiscal representation have a preferred 3rd party they work with (but also here it is not mandatory to work with the company the 3PL works with).

- Question: I am having discussions with the 3PL I appointed to take care of my warehousing, outbound transport and also fiscal representation. Some of my clients prefer to coordinate the transport of the shipment from the warehouse themselves instead of the 3PL coordinating the transport. However, the 3PL doesn't accept my clients to coordinate the collection of the products.
  Answer: The Netherlands customs authorities can check the administration of the fiscal representative. If it turns out that PoD's (Proof of Deliveries) are missing or there is a discrepancy between information on the invoice and the information on the PoD the fiscal representative can be (heavily) fined. If the 3PL is in charge of the outbound transport they can make sure that shipments are delivered to the address indicated on the invoice and they can also make sure that they receive back the (signed) PoD from the trucking company.

- Question: Is it always advantageous to set up VAT deferment?
  Answer: No, it is not always needed to set up for VAT deferment, there can be various reasons why setting up a VAT deferment scheme isn't really required, a few examples are:
  - A product has a 0% VAT rate (e.g. in case of certain medical devices or pharmaceuticals).
  - A company is selling (a significant part of) its products directly to consumers throughout Europe (direct cross border sales via a webshop). As consumers need to pay VAT the situation regarding the handling of VAT is different and the VAT deferment scheme works different. In case a company is involved with cross border e-commerce please check out the HIDC factsheet on this topic.

  Quite often companies will have a mixed model, where part of the products are sold to EU customers, part of the products are shipped to non-EU customers and in some cases there are also direct (webshop) sales to end users throughout Europe. In this case it is advisable to reach out to a Tax advisor to assist you to evaluate your supply chain set up and asses if setting up for VAT deferment would be advisable in your specific business case. HIDC would be able to make some introductions to tax advisors.

- Question: I intend to import goods into Europe via a warehouse in the Netherlands, on what value should I calculate the VAT?
  Answer: Normally when you clear goods into free circulation the transactional value between shipper and EU consignee will be used. This is common when you clear under LFR as in most cases the goods will be imported at entry in the EU.
  In case of GFR and the goods are stored (and possibly also other value adding activities will be done to the product). These activities, needs to be added to the value selling price of the product so you need to mark-up the price. It is possible to apply for a so-called ruling with the Dutch authorities for this transaction value which will be the basis for the customs value.