

Technical factsheet

VAT issues with online trading

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ONLINE RETAILERS – GOODS

Introduction

The key aspect for the crossborder selling of goods is initially the location of the goods at the point of sale. Many UK online retailers would be storing their goods in UK warehouses. When a sale is processed through the website, the goods will be dispatched to the customer's location.

Identifying the customer and the delivery address will be crucial to determine the VAT treatment of the sale.

If the goods are dispatched to a UK address, the goods will follow their normal VAT rate, irrespective of whether the buyer is a VAT-registered business or an unregistered individual.

If the goods are exported out of the EU, the goods will be zero-rated provided proof of export is retained. The identity of the customer is not critical for exports.

If the goods are dispatched to an address in the EU, you will need to ascertain whether the customer is VAT registered or not. This can be done at point of sale by requesting the buyer's EU VAT number. If a VAT number is obtained, the sale can be zero rated when dispatched to the customer's EU location. The invoice raised should record the seller's VAT number and include acquisition tax narrative as is required with zero-rated dispatches to EU business customers. The online retailer will also need to retain proof of movement and record the sale on their EC Sales List and Intrastat forms (where applicable).

If the goods are transported to the EU to a non-business customer, UK VAT should be charged at the UK rate applicable to those goods, BUT the sales must be tracked for distance selling purposes (see below).

Distance selling from the UK – goods stored in the UK

Distance selling happens when a UK online retailer is selling goods to EU-resident individuals. The retailer would process the sale through the website and then arrange for the transportation of those goods to the EU customer's address.

S.7(7)a VATA 1994 sets the place of supply as the UK as the UK-stored goods are leaving the UK. As the customer does not have a VAT number, the sale will be subject to UK VAT.

The online retailer must, however, monitor their calendar year distance-selling threshold in the customer's territory. The distance-selling thresholds in Germany, Netherlands and Luxembourg are €100,000, while all other EU countries have a €35,000 threshold.

If the online retailer breaches the local distance selling threshold in any calendar year, they must register in the member state of breach. The registration must take effect from the day after the breach. It is possible to voluntarily register for distance selling if the supplier wishes. Voluntary registration removes the need to keep checking whether the thresholds are breach, but many suppliers would voluntarily register where the VAT rates are lower in the destination state.

Once registered, the place of supply for the sale then shifts to the destination member state under s.7(5) VATA 1994.

The online retailer would then make EU supplies of their goods to those EU individuals and would charge and account for the local VAT rates.

No entry is needed on the UK EC Sales List as the retailer is selling to unregistered individuals, but Intrastat forms would be required where the dispatch limits are breached. The net values should also be included in Boxes 6 and 8 on the UK VAT return.

Illustration 1

A UK VAT-registered online retailer sells sports goods via their own website and UK VAT is charged on their sales. EU sales have never been more than £20,000 per year so UK VAT is correctly charged. During lockdown, they experienced increased demand from the EU. As business to the EU increases, they will need to monitor their sales into each EU country.

If they breach the French threshold (say), they must register for VAT in France. From the date of their French registration they must charge and account for French VAT on sales to French individuals. UK VAT will no longer be charged or accounted for on those French sales.

They will continue to charge and account for UK VAT for sales into other member states until they breach the thresholds in those member states.

Late registration

What if the client missed their French registration obligation and continued to account for UK VAT on sales to French individuals?

The client will need to notify the French authorities and register for VAT in France. They would then need to account for French VAT from the date of their distance-selling registration. There could be penalties in France for late registration, and local advice should be sought to process the registration and deal with any penalties that may arise.

The client would need to reclaim the UK VAT from HMRC, and this would compensate them for the VAT that is due in France. VAT has been accounted but just to the wrong authority, so it is just a case of correcting where the VAT has been accounted for. Any rate differential would be a cost (or benefit) to the supplier.

It should be noted that if the UK had a late distance-selling registration of a German retailer, credit will be given for the German VAT incorrectly accounted for when determining potential lost revenue for penalty purposes. Other member states may have similar provisions and, as such, any late registration penalties may not be significant.

Distance selling from the UK – goods stored in the EU

Many online retailers store goods in EU fulfilment houses to optimise delivery times. Amazon has numerous EU fulfilment arrangements to facilitate online sales.

As the goods are being stored in an EU fulfilment house, the UK retailer would ordinarily have a registration obligation in that member state. Moving UK-sourced goods to the EU fulfilment house is a movement of own goods and, as such, the retailer should be registered in the destination state so as to secure a zero-rated deemed supply from the UK. Acquisition tax will be due on their EU VAT return.

When the goods are sold online, the place of supply will be where the goods are located. So if the goods were stored in a fulfilment house in Belgium, the online sale would be subject to Belgian VAT. Distance selling from Belgium would then need to be considered.

If Amazon (say) was acting as an undisclosed/own-name agent, then your client can avoid an EU registration. In this instance, your client is selling the goods to Amazon from a VAT perspective, so it is a zero-rated dispatch to Amazon for your client. Amazon would have acquisition tax in the country where the goods are stored, followed by a domestic supply when the goods are sold (subject to distance-selling considerations).

And into 2021!

All sales to customers outside the UK will be a zero-rated export of goods. When selling into EU destinations, VAT and customs duty will be payable locally, although consignments <€150 are not subject to customs duty. This limit is per

consignment, not per item. Destination VAT would be payable locally by the customer via variations of our postal import system.

Changes from 1 July 2021 will, however, simplify matters.

From 1 July 2021

An EU commerce directive is being introduced in the EU from 1 July 2021. This was due to come in from 1 January 2021 but it has been delayed because of Covid-19.

From 1 July 2021, destination VAT will be due on all online sales into the EU. This is achieved by scrapping the distance selling limits for EU suppliers. So EU and non-EU sellers must charge VAT at point of sale for consignments up to €150. Sales up to €150 will still be free of customs duty.

Destination VAT can be reported and paid via a new One Stop Shop VAT return (OSS) effectively extending the current Mini One Stop Shop (MOSS) to e-commerce. Non-EU suppliers such as the UK will be able to use the OSS.

Illustration 2

BaseGolf Ltd is a UK VAT-registered online retailer. Francois orders a pair of golf shoes directly from the company's website for £95.

If this sale was in 2020, it would be subject to UK VAT unless BaseGolf breaches the French distance-selling limits.

From 1 January 2021 to 30 June 2021, French VAT is payable by customer. There will be no customs duty as the consignment is <€150.

From 1 July 2021, BaseGolf will need to charge French supply VAT at point of sale. The French VAT collected will be accounted for via the new OSS return.

It is anticipated that UK retailers will be able to register for OSS in a member state of their choosing.

Imports into the UK from 1 January 2021

Reliance on the postal import system is reduced. Import VAT will apply to all imports as the £15 low-value consignment is abolished, but there will be no customs duty if the consignment is <£135 (€150 equivalent).

VAT will be 'supply VAT' rather than 'import VAT'. The supplier would need to register for UK VAT and charge VAT at point of sale.

There will be a simplified import declaration for data collection purposes as no VAT or duty is due at point of import.

Illustration 3

Jim orders five dozen golf balls from a German supplier in 2020 for an online price of £119 (£100 plus 19% German VAT).

The German supplier would need to monitor the UK distance-selling threshold of £70,000 in the calendar year but until they breach that threshold, German VAT is correctly charged.

For sales from 1 January 2021, the online price increases to £120 and UK supply VAT of £20 will be due at point of sale. The German supplier will need to be UK registered to account for the supply VAT. There will be no customs duty as the consignment is <£135.

Illustration 4

What if the golf balls were bought for £100 (net) by a UK business for promotional purposes?

For sales up to 31 December 2020, we will have a zero-rated dispatch from Germany with UK acquisition VAT on the UK customer: so £100 acquisition for the UK supplier with £20 acquisition tax in Box 2 of their VAT return. Input tax of the same amount should be deductible in Box 4 on these promotional items.

From 1 January 2021, no German VAT is charged as goods are being exported from Germany. As the customer is UK registered, the German supplier need not charge UK supply VAT at point of sale. The UK customer will give their VAT registration number at point of sale and the UK customer will account for the reverse charge: so output tax £20 and input tax £20 as before but for different reasons.

Online marketplace (OMP)

An online marketplace is a website advertising goods for sale: Amazon, for example. If goods <£135 are only sold by overseas sellers via an OMP, VAT is accounted for by the OMP. There is no need for the overseas seller to register for UK VAT. The reverse charge will apply where the sale is via the OMP to a UK VAT-registered business. There are similar rules coming into the EU from 1 July 2021.

Goods >£135

Import VAT will be due instead of 'supply VAT'. There will be a more formal entry procedure as VAT and customs duty is due at the time the goods come into the UK.

Illustration 5

George buys a computer from the website of a German company for £500 (net). George is not VAT registered.

Import VAT and duty should be paid under the postal import scheme (although this has yet to be confirmed). The other alternative is for the supplier to register for UK VAT and account for import VAT and customs duty, and then charge UK VAT on the onward supply.

If George is VAT registered and acting as importer of goods, we will have postponed accounting, duty deferment etc.

ONLINE RETAILERS – SERVICES

Electronically supplied services

Websites can be a selling platform for electronically supplied services ie downloads with minimal or no human intervention. Such services would include films, music, software, games and automated distance learning. Essentially, we are looking for an automated service where the customer enters their credit card details to access the download.

If there was some human intervention, we would need to consider whether we have a single or mixed supply but the service is likely to remain electronically supplied if the core service is automated.

Electronically supplied services are supplied where the customer belongs regardless of whether it is supplied to businesses (B2B) or consumers (B2C).

Business to business

B2B supplies are outside the scope of UK VAT with a mandatory reverse charge on an EU business customer. We should obtain proof of business status such as a VAT number.

B2B electronically supplied services are subject to use and enjoyment provisions so care must be taken to identify where the services are enjoyed. The use and enjoyment rules can only shift non-EU supplies to the UK and vice versa, ie EU enjoyment is not relevant.

Illustration 6

A US company downloads software from a UK website.

Initially, this would be categorised as a B2B supply with no UK VAT due as the customer is in the US. However, we do need to check where the US company is using the software. If it is being used in the UK, then UK VAT will be due. The website must address the use point for non-EU business customers at point of sale.

Business to consumer (B2C)

The place of supply for all supplies of B2C electronic services is where the customer belongs.

This will create EU-registration obligations in each EU country of download and this often creates multiple EU registration obligations for online retailers of electronically supplied services.

It should be remembered that throughout the EU, non-established traders do not enjoy the domestic registration threshold that applies to established traders. So €1 of EU income is a registration breach in all cases.

So a UK supplier providing electronic services to individuals in France, Germany and Netherlands would have a registration obligation in those member states

MOSS simplification

Rather than registering in each member state of download, they could register under the Mini One Stop Shop (MOSS) in the UK. This would be under the Union MOSS scheme.

They would still charge French VAT to French individuals but they report and account via their UK MOSS return.

The UK VAT registration is still maintained for UK sales and UK input VAT recovery.

Up to 31 December 2020, there is a £8,818 de minimis for your total EU sales where the EU sales can be treated as supplied in the UK. This avoids a MOSS registration and can even avoid a UK registration if total taxable income does not exceed £85,000.

MOSS practicalities

The MOSS returns are submitted electronically via the HMRC portal on a calendar quarter basis. They must be submitted within 20 days of the quarter end.

The MOSS return has no facility for recovering input tax incurred in the EU. Any EU VAT incurred can be recovered via the crossborder refund scheme.

Post-Brexit, the Union MOSS scheme will not be available to UK businesses. Instead, we will have access to the Non-Union MOSS scheme. This achieves the same end result but we submit our MOSS return via the Irish portal (say).

Current users of Union MOSS should register for Non-Union MOSS on 1 January 2021 to continue with the MOSS simplification.

Human intervention

If the service is subject to human intervention, it would not be regarded as electronically supplied eg live webinars.

In these instances, we would be looking at the basic B2B or B2C rules. The admission-related B2B override is unlikely to apply as that is aimed at physical venues.

If the supply was B2B into the EU, the supply will be outside the scope of UK VAT. The sale would be recorded in Box 6 of the VAT return and on the EC Sales List. The invoice should contain a reverse-charge narrative as a B2B supply is a mandatory reverse charge on EU business customer.

If the supply is B2C into EU (or non-EU), then UK VAT is chargeable.

EU VAT RECLAIMS

What if a member of staff incurs VAT on a business trip to France?

Each member state must make an electronic interface available to its registered traders.

The UK interface enables UK businesses to submit input tax refund claims to other EU member states via the HMRC portal. HMRC verifies the application before submitting to the member state of refund.

The claims are for calendar years but you could send in quarterly claims if practical. Claims must normally exceed €400 unless it is the final claim of the year.

Invoices with a value over €1,000 must be scanned and submitted with the claim.

The latest date for submission is 30 September following the calendar year of claim but we should aim to submit 2020 claims by 31 December 2020 as this system will not be available to the UK post-transition. The more cumbersome paper-based 13th Directive will be available post-transition. 13th Directive claims are for years to 30 June with a 31 December submission deadline.

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