

Technical factsheet

Cross-border VAT in 2020 and beyond

This factsheet will cover three main elements:

- international services
- international goods
- cross-border VAT refunds

The aim is to summarise the rules as they stand in 2020 and then consider the changes that will arise from 1 January 2021 when the transitional period comes to an end.

At the time of writing, a free-trade deal between the UK and the EU is far from certain, so we will assume that customs duty is payable on the movement of goods between the UK and EU post-1 January 2021.

1 INTERNATIONAL SERVICES

1.1 Basic rules

We have two basic rules for services, commonly known as B2B and B2C. These will remain unchanged post-transition.

The basic place of supply of business-to-business (B2B) services will be where the customer belongs. The customer will normally belong where their head office is but this can change to where their branch is if the UK service provider is dealing with that branch.

If the business customer belongs outside the UK, the supply is *outside the scope* of UK VAT.

The Principal VAT Directive Article 196 places a mandatory reverse charge on the business customer in their member state for B2B services.

The UK service provider must include the sale in Box 6 of their VAT return and ensure the invoice has reverse-charge narrative to remind the customer of their reverse-charge obligation. Up to 31 December 2020, the service must also be reported on the supplier's EC Sales List but this administrative requirement will disappear from 1 January 2021.

The UK service provider can recover any related UK input tax provided the service would have been taxable were it made in the UK (or if their service is a specified supply – see 1.8 below).

The basic place of supply of business-to-consumer (B2C) services is where the supplier belongs. This would ordinarily mean that UK VAT is chargeable on the service.

The basic B2B and B2C rules apply in the majority of situations, but we do have overrides within VAT Act 1994 schedule 4A that can change the place of supply. In some cases, this can create overseas registration obligations for the UK service provider.

1.2 Overrides to the basic rules

Schedule 4A VAT Act 1994 lists the overrides in three parts:

- Part 1 – general exceptions (paras 1 to 8)
- Part 2 – B2B overrides only (paras 9 to 9E)
- Part 3 – B2C overrides only (paras 10 to 16)

While the basic rules remain unchanged there are some important changes to the overrides within schedule 4A.

1.3 Electronically supplied services (B2B)

Electronically supplied services are downloads from a website or app with minimal or no human intervention. The downloads are typically films, music, software, games or distance-learning courses. Electronically supplied services are essentially an automated service that the customer pays for and then downloads with minimal human intervention from the service provider.

Electronically supplied services supplied to EU business customers are subject to a mandatory reverse charge on the EU business customer under the basic B2B rule. This avoids any requirement for the service provider to register in the customer's member state.

In the UK we do have a use-and-enjoyment override within schedule 4A para 9 for electronically supplied services to business customers. The use-and-enjoyment rule will shift the place of supply from non-EU to UK where the service is used in the UK by a non-EU business customer.

Illustration

A US company downloads software from a UK website. The place of supply is where the customer belongs, but as they are non-EU we need to consider where they are 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.

From 1 January 2021, the use-and-enjoyment rule will apply where the business customer is outside the UK. So if we change the illustration to a German company downloading the software, then UK VAT should be charged where the German company is using the software in the UK.

Use-and-enjoyment provisions are member state-specific so do not necessarily remove the reverse charge in Germany – but that is not the UK service provider's concern!

1.4 Electronically supplied services (B2C)

The override for electronically supplied services supplied B2C is found within schedule 4A para 15, which shifts the place of supply to where the customer belongs.

This means that supplying electronically supplied services to *consumers* will create a registration obligation in the member state of download. Providers of electronic services will

often have multiple EU registration obligations as one download in any member state will create a registration obligation.

Non-established traders do not enjoy the registration threshold that applies to established traders. So a UK supplier providing electronic services to individuals in France, Germany and the Netherlands would have a registration obligation in those member states.

Service providers can avoid multiple EU registration obligations by taking advantage of the Mini One Stop Shop (MOSS) simplification. Rather than registering in each member state of download, they could register for the union scheme MOSS via the UK portal. This is separate to their existing UK registration.

The service provider would still charge French VAT to French individuals, German VAT to German individuals etc but they report and account for the VAT via their MOSS return. UK VAT registration will still be maintained for their UK sales and UK input VAT recovery.

The MOSS returns are submitted electronically via the HMRC portal on a calendar quarter basis. The return must be submitted within 20 days of the quarter end along with electronic payment of the VAT due. The MOSS return has no facility for recovering input tax incurred in the EU.

From 1 January 2019 to 31 December 2020, there is an £8,818 annual *de minimis* for your *total* EU sales. So if the electronically supplied services into the EU are below this level, the service provider can charge UK VAT. The *de minimis* rule will not be available to UK service providers from 1 January 2021.

From 1 January 2021, the union MOSS scheme will close to UK service providers. If UK service providers wish to continue with the MOSS simplification they will have to register for the non-union MOSS scheme in a member state of their choosing. Many are choosing Ireland or Malta as these portals and returns are in English. The effective date of their non-union MOSS registration would be 1 January 2021. So rather than submitting their MOSS return via the HMRC portal, they will need to submit their MOSS return via the portal where they registered for non-union MOSS. Other than that, the practicalities remain the same.

1.5 Schedule 4A para 16 services to non-EU customers (B2C)

Where para 16 services are provided to non-EU consumers, the place of supply shifts to where the customer belongs. As a result, no UK VAT is chargeable.

Para 16 services include consultants, accountants and lawyers.

Consultancy fees must be for the provision of information and expert advice. Where the services fall short of this or go beyond this, then the basic B2C rule will still be in point and UK VAT should be charged. In the recent case of Gray & Farrar, the courts held that dating agency fees charged to non-EU individuals went beyond the provision of information and advice so UK VAT was chargeable under the B2C rule. In contrast, the career coaching fees charged to non-EU families by Mandarin Consulting were held to fall within the definition of consultancy, so no UK VAT was chargeable.

From 1 January 2021, para 16 is extended to any consumer outside the UK, ie EU and non-EU consumers.

So accountants would *not* charge VAT to *any* overseas client from 1 January 2021. B2B services remain under the basic rule while B2C services are covered by para 16. There would be no EU registration obligation for B2B services as these are covered by the

mandatory reverse charge. And unless the member state has a use-and-enjoyment rule for para 16 services (unlikely), there will be no EU VAT registration for B2C services either.

1.6 Reverse charges

Buying in services from outside the UK will continue to be subject to the reverse-charge procedure as they are now.

UK VAT must be recorded in Box 1 of the VAT return and then recovered in Box 4 of the same return depending on taxable use. The value of the reverse charge should also be included in Boxes 6 and 7.

1.7 Use-and-enjoyment rules

A number of services have a use-and-enjoyment rule:

- hiring of means of transport
- hiring of goods
- broadcasting services
- electronically supplied services (B2B only)
- repairs of goods under an insurance claim (B2B only)
- telecommunication services (B2B only)

So where we have a non-EU place of supply that is enjoyed in the UK, the place of supply will shift to the UK and vice versa. EU enjoyment does not currently shift the place of supply but from 1 January 2021 it will.

A UK supplier hiring goods to a French company for UK use in December 2020 has an outside-the-scope supply with a mandatory reverse charge on the French company. From 1 January 2021, the hire will be subject to UK VAT as the goods are used in the UK.

1.8 Specified services

Currently, input tax is deductible on costs relating to certain financial and insurance services provided to non-EU customers. This enables finance- and insurance-related businesses to recover input tax on their non-EU business.

From 1 January 2021, recovery will extend to finance- and insurance-related services provided to *non-UK* customers, ie EU and non-EU.

The ability to recover more input tax in 2021 is a welcome change for the financial and insurance industry.

2. INTERNATIONAL GOODS

2.1 Goods leaving the UK post-Brexit

All goods leaving the UK from 1 January 2021 will be a zero-rated export.

For larger contracts, one would expect our customer to be the importer of record in the destination country and, as such, it is they that must deal with the import formalities in their own country (entry declarations, VAT and duty).

Some EU customers are insisting that the goods are delivered duty paid (DDP) and this will mean that the UK supplier becomes the importer of record. The UK supplier will need to be VAT registered in the destination country so that they can deal with the import formalities

and then the domestic onward supply to their EU customer. UK clients would be best advised to avoid DDP terms of trade.

If they have no choice but to accept DDP terms, then they should consider appointing a freight agent to deal with the import formalities on their behalf. They will also need to submit a VAT registration request in the destination state and prepare VAT returns in that member state going forward. The VAT returns will be reasonably straightforward as they will only have the destination output VAT they are charging to their customer and input tax recovery in respect of the importation.

2.2 Goods arriving in the UK post-Brexit

Goods entering the UK will be an import from 1 January 2021.

Postponed accounting will be introduced for worldwide imports, ie EU and non-EU imports of goods. This means that VAT is not payable by a VAT-registered business at the time goods arrive in the UK. Entries are instead made by the UK importer on their relevant VAT return:

- Box 1: output tax
- Box 4: input tax – subject to any restriction for non-business or private use, or restriction with partial exemption
- Box 7: inputs – net value of goods.

Postponed accounting will produce a big cash-flow saving for businesses because no VAT is payable at the time of import.

Customs duty will be payable at point of entry, and in the early days of the transition it would be advisable to appoint a freight agent to deal with the formalities. Once matters settle down, businesses can then decide whether they want to deal with the formalities themselves.

There is an e-commerce exception where the consignment is < £135 but we will consider that separately.

2.3 E-commerce supplies for UK clients – UK-stored goods

The key aspect for the cross-border 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.

Up until 31 December 2020

Prior to 1 January 2021, If the goods:

- remain in the UK, the goods will follow their normal VAT rate, irrespective of whether the buyer is a VAT-registered business or an unregistered individual
- 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
- are dispatched to an address in the EU, the sale is zero-rated provided that the EU customer provides their business's VAT number at the point of sale
- are transported to a non-business customer in the EU, UK VAT should be charged at the UK rate applicable to those goods, but the sales must be tracked for distance-selling purposes.

Distance selling from the UK

When selling to non-business customers in the EU, the seller must monitor their calendar year distance-selling threshold in the customer's territory:

- Germany, Netherlands and Luxembourg are €100,000
- all other EU countries have a €35,000 threshold.

The thresholds must be considered on a daily basis.

Where the online retailer exceeds the local distance-selling threshold, the place of supply changes to that member state, requiring the seller to register in that state from the day of breach. The online retailer must then charge and account for the local VAT rates on their sales.

Illustration 1

A UK VAT-registered online retailer sells sports goods via its own website and UK VAT is charged on its sales. EU sales have never been more than £20,000 per year so UK VAT is correctly charged.

During lockdown, the retailer experienced increased demand from the EU.

If it breaches the French threshold (say), it must register for VAT in France. From the date of its French registration, it 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.

The retailer will continue to charge and account for UK VAT for sales into other member states until it breaches the thresholds of those member states.

Selling goods from 1 January 2021

Once we leave the EU, 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 less than €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, or by the UK supplier if they are the importer of record, requiring registration in the destination state.

Simplification from 1 July 2021

The EU commerce directive was due to come into effect from 1 January 2021 but it has been delayed until 1 July 2021 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 suppliers must charge VAT at point of sale at the rate applicable in the customer's member state.

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.

UK and other non-EU sellers must charge VAT at the point of sale for consignments up to €150. Sales up to €150 will still be free of customs duty. UK and other non-EU suppliers will be able to use the OSS to report and account for the destination VAT charged. It is anticipated that UK retailers will be able to register for OSS in a member state of their choosing.

If the consignment is > €150, the non-EU supplier will be relying on the postal import system to avoid the requirement to register in the destination state. Most e-commerce sales will, however, be < €150.

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 via the postal import system. There will be no customs duty as the consignment is less than €150.

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

2.4 E-commerce supplies for UK clients – EU stored goods

It is not uncommon for online retailers to transport goods from the UK and store them in EU fulfilment houses to optimise delivery times. Amazon has numerous EU fulfilment arrangements with sellers 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 its EU VAT return. When the goods are subsequently sold, this is treated as a domestic sale with domestic VAT.

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 Belgium fulfilment house, the online sale would be subject to Belgium 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 this 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).

2.5 E-commerce supplies into the UK for non-UK clients

Reliance on the postal import system will be reduced going forward.

Import VAT will apply to all imports as the £15 low-value consignment is abolished from 1 January 2021, but there will be no customs duty if the consignment is less than £135 (€150 equivalent).

VAT will be 'supply VAT' rather than 'import VAT', and the supplier will need to register for UK VAT from 1 January 2021 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).

Up to 31 December 2020, the German supplier would need to monitor the UK distance-selling threshold of £70,000 in the calendar year. German VAT is correctly charged until the distance-selling threshold is breached.

For sales from 1 January 2021, the online price should increase to £120 as 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.

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.

2.6 Online marketplaces (OMP) – UK rules

An OMP is a website advertising goods for sale, such as Amazon. However, a business that only provides *one* of the following will *not* be an OMP:

- the processing of payments in relation to the supply of goods
- the listing or advertising of the goods
- the redirecting or transferring of customers to other websites/apps where goods are offered for sale, without any further intervention in the supply

Facilitating OMPs have a new role post-transition. An OMP is facilitating where any of the following conditions are met:

- sets the general terms and conditions of the sale
- authorises the charge to the customer for payment
- involved in ordering or delivering the goods

Overseas sellers may be selling goods to UK individuals via a facilitating OMP.

If goods less than £135 are located outside the UK at the point of sale, the overseas supplier would normally charge point-of-sale VAT from 1 January 2021. However, where such goods are sold via a facilitating OMP, VAT is charged and accounted for by the OMP. There is no need for overseas suppliers to register for UK VAT.

The reverse charge will apply where the sale is via the OMP to a UK VAT-registered business.

If goods are located inside the UK at point of sale, the overseas supplier would already be VAT registered and would have dealt with the import procedures prior to sale. If the goods are sold via an OMP to unregistered individuals, the point-of-sale VAT is accounted for by the OMP, with a zero-rated sale from the supplier to the OMP. However, if the goods are sold to VAT-registered customers, then the supplier must charge VAT, with the OMP simply providing the supplier with the sale information.

2.7 Online marketplaces (OMP) – EU rules from 1 July 2021

Similar rules are coming into the EU from 1 July 2021.

Ordinarily, if UK-stored goods were sold for less than < €150 to EU individuals, the UK supplier would charge point-of-sale VAT and use the OSS to account for the EU VAT charged.

Under the OMP rules, if these goods are sold by via an OMP, the OMP will charge and account for point-of-sale VAT, so removing the need for the UK seller to use OSS.

2.8 Dropshippers

Dropshippers are online retailers who order and ship once they receive a customer order. The goods are typically shipped from outside the EU and go direct to customers within the EU. Sales values per consignment are typically < £135.

Dropshippers are normally relying on the postal import system, and, as such, it is their customers that are responsible for any import VAT and duty that may be due.

From 1 January 2021, the dropshippers or facilitating OMP will need to charge supply VAT to UK customers. Where an OMP is not being used, the dropshipper will need to register for UK VAT. The consignments are normally < £135 so no duty is payable.

Dropshippers will continue to rely on the postal import system where the consignment into the UK is > £135.

Dropshippers will continue to rely on the postal import rules for sales to EU customers up until 30 June 2021.

From 1 July 2021, the dropshipper or facilitating OMP will need to charge supply VAT to EU customers at the destination rate. Where an OMP is not being used, the dropshipper will need to register in one member state under the OSS. The consignments are normally < €150 so no duty is payable.

3. CROSS-BORDER REFUND SCHEME

3.1 Cross-border refund scheme to 31 December 2020

Currently, UK-registered traders can recover any VAT incurred in EU member states via the cross-border refund system.

Each member state must make an electronic interface available to its registered traders. The UK interface will enable 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 refund claims are generally submitted for the calendar year but they can be calendar quarter if the business has sufficient costs to recover. Claims must normally exceed €400.

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

The latest date for submission is normally 30 September following the calendar year of claim, but 2020 claims must be submitted by 11pm on 31 March 2021.

The progress of claims can be monitored and refunds must be paid out within an accepted timescale.

3.2 Cross-border refund scheme from 1 January 2021

Post-Brexit, we will have to rely on reclaims via the paper-based 13th Directive. The result will hopefully be the same but the claim process will be more cumbersome. Manual claims will need to be sent into each member state, and these would normally need to be in the language of the member state in which you are claiming the VAT from.

It should be noted that 13th Directive claims are for the year to 30 June with a 31 December submission deadline.

FIND OUT MORE

ACCA's *Saturday CPD Conference Three* webinar series includes a session to accompany this factsheet. This covers:

- dealing with the movement of goods in the 2020 transitional period
- preparing businesses for the movement of goods in 2021
- identifying overseas registration obligations for clients
- planning ideas post-transition
- changes to international services post-transition

The series of four webinars costs £115+VAT and can be accessed at bit.ly/ACCA-cross-web.

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