

Post Brexit VAT rules for services

(Lecture B1229 – 15.39 minutes)

In my previous recordings, I considered how the VAT procedures will change on 1 January 2021 for a GB business trading in goods that involves moving them between EU countries. The good news is that the rules for services will largely remain unchanged but there are some important changes that will take place for many B2C services supplied to EU customers, and also those services affected by the 'use and enjoyment' provisions.

The challenge is knowing what will and will not change – I will consider both questions in this session.

Sales of B2B services

Example - you act for a client who is a management consultant, working for business customers in the UK, EU and non-EU. Since 1 January 2010, the place of supply for VAT purposes has always depended on where his customers are based – where he carries out his work is irrelevant. This outcome applies to the majority of services and is known as the general B2B rule VAT Notice 741A, para 6.3. If the customer is outside the UK and in business, then no UK VAT is charged on the services in question.

There will be just one change when the UK's transitional deal with the EU ends on 31 December – our management consultant won't need to complete EU Sales Lists. But the place of supply will continue to be the EU country where his customer is based. In other words, the status quo is preserved.

Should we still show the EU customer's VAT number on our sales invoices? The practical answer is 'yes' because the customer's VAT number is the best evidence of a B2B deal. It is the B2B outcome, which means the place of supply is the customer's country.

Will we need to register for VAT in other EU countries? – for B2B services, EU customers will continue to deal with the VAT by doing the reverse charge on their own returns.

Buying services from EU suppliers

There has always been some misunderstanding about the rules for a UK business buying services from overseas suppliers. The reverse charge is applied by a VAT registered business that buys services from abroad and not just the EU. This has always raised a few eyebrows: how can the reverse charge apply to bookkeeping services provided by an Indian based supplier when VAT is an EU tax and India is outside the EU? But the commercial reality is that the rules are intended to prevent a UK business with an input tax restriction from gaining a VAT advantage by using an overseas supplier – see Insurance broker using computer services of an Indian business.

Example - Insurance broker using computer services of an Indian business

ABC Insurance Services has received two quotes for computer services. A UK business has quoted £100,000 plus £20,000 VAT; an Indian business has also quoted a fee of £100,000 but will not charge VAT.

ABC is partially exempt, only able to recover 5% input tax on its overheads. It will apply the reverse charge to the invoices from the Indian supplier, accounting for output tax of £20,000 in Box 1 of its VAT return but only claiming input tax of £1,000 in Box 4 i.e. £20,000 x 5%.

If it used the services of the UK supplier, it would charge £119,000 to its profit and loss account and only claim input tax of £1,000. In other words, there is a level VAT playing field for both deals. This example also applies before and after 1 January 2021 if India is substituted for an EU country.

Selling B2C services

The general rule for the supply of B2C services is that VAT is charged based on the location of the supplier. So, if a UK accountant completes a tax return for a private individual living in Spain, the fee will be subject to 20% UK VAT. However, most professional services are not subject to UK VAT if the B2C customer is resident outside the EU. In such cases, the place of supply is based on the customer's location. So, there is no VAT charged if you complete a tax return for a private individual living in America or Australia. The services where this rule applies are listed in VATA1994, Sch 4A, para 16 – and also VAT Notice 741A, section 12.

An important question is whether legislation will be passed before the end of the year to remove the difference between EU and non-EU supplies of B2C services? After all, HMRC's commentary has made it clear that EU and non-EU trading in goods will be the same – will the same principle apply to services? I asked the HMRC press office for clarification. The spokesperson said (23 October, 2020):

“From 1 January 2021, the place of supply of services rules will remain broadly the same as they are now. The general rule for B2C supplies remains as where the supplier is based, with the exception of UK to EU rules changing to the same as those currently for UK to Rest of World.”

In effect, this means that legislation will take effect from 1 January so that no VAT will be charged on B2C services supplied to EU customers in the list at Sch 4A, para 16. So, in my example, the accountant working for their B2C customer living in Spain will no longer charge VAT. There will be no requirement to register for VAT in Spain either. Is this a chance to increase fees, perhaps sharing the VAT saving with the EU customer? The accountant can still claim input tax on his expenses, even though he is not charging output tax on these fees – known in VAT speak as ‘outside the scope with recovery’.

Services where the use and enjoyment override applies

Let us consider an important change that will take place on 1 January for services, namely for those services where the place of supply depends on where they are ‘used and enjoyed’ by the customer. These rules apply where the normal place of supply rules would mean they take place outside the EU and are not subject to UK VAT but are actually used inside the UK. Alternatively, they would be subject to UK VAT under the place of supply rules but are actually consumed outside the UK and EU.

From 1 January 2021, references to 'outside the EU' will change to 'outside the UK' – see main article. The services are as follows:

- Hiring of goods including means of transport
- Electronically supplied and telecommunication services (B2B only)
- Repairs to goods under an insurance claim (B2B only)
- Radio and telephone broadcasting services.
- VAT Notice 741A, section 13

To give an example, if a UK business photographer currently hires a camera in Ireland to take photos there, he will not be charged Irish VAT by the camera shop under the general B2B rule, i.e. the UK photographer applies the reverse charge on his UK VAT return. But when we become a non-EU country on 1 January, the Irish supplier will charge Irish VAT on the fee because Ireland also applies the 'use and enjoyment' rule for hiring goods to non-EU customers. The UK photographer will need to recover the Irish VAT by submitting a non-EU VAT refund claim directly to the Irish tax authorities.

To reverse the situation, consider an American based photographer (in business) who is touring the UK taking photos of our stately homes for an American magazine that has commissioned his services. He has hired a camera from a UK shop for a fee of £2,000. The general B2B rule would mean that no UK VAT is charged on the fee (place of supply being America) but the use and enjoyment rules for the hiring of goods means that the place of supply is the UK where he is using the camera. He will be charged £400 VAT by the shop. However, if the photographer is based in an EU country, he (the photographer) will do the reverse charge on his own VAT return and not be charged VAT by the shop. Will this outcome change after 1 January 2021? The answer is 'yes' - the HMRC press office confirmed: "The current use and enjoyment provisions will continue to apply, the only change being that UK to EU rules will effectively be the same as those currently for UK to Rest of World". In other words, the rules for my example of the American photographer will apply to every country outside the UK, including EU countries.

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