

Brexit VAT rules for e-commerce

(Lecture B1228 – 20.03 minutes)

Goods sold online but stored in the UK at point of sale

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 providing 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' 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 the EU, the seller must monitor their calendar year distance selling threshold in the customer's territory:

- Germany, Netherlands and Luxembourg are Euro 100,000;
- All other EU countries have a Euro 35,000 threshold.

As business to the EU increases they will need to monitor their sales into each EU country.

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 and charge and account for the local VAT rates on their sales.

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.

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 those member states.

What if the goods are stored in the EU at point of sale?

It is not uncommon for online retailers to transport goods from the UK and store them in EU fulfilment houses so optimising 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 states. 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 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) were acting as 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 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).

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 Euro 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. Many UK suppliers are expected to avoid importer of record status.

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 and Non-EU sellers must charge VAT at point of sale for consignments up to Euro 150.

Sales up to Euro 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 UK will be able to use the OSS and it is anticipated that UK retailers will be able to register for OSS in a member state of their choosing.

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 where BaseGolf use the postal import system in France. There will be no Customs Duty as the consignment is less than Euro 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.

E-commerce 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 less than £135 (Euro 150 equivalent).

VAT will be 'supply VAT' rather than 'import VAT' and the supplier will 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 2020 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.

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.

Online market places (OMP)

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 and an OMP is facilitating where any of the following conditions are met:

- Sets the general terms and conditions of the sale; or
- Authorises the charge to the customer for payment; or
- Involved in ordering or delivering the goods.

Overseas sellers into the UK with goods < £135

If goods less than £135 are located outside the UK at the point of sale, ordinarily the supplier would charge point of sale VAT. 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 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.

Overseas seller with goods located in the UK

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 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

Similar rules coming into the EU

Similar rules are coming into the EU from 1 July 2021, the idea being that EU OMPs will charge and account for supply VAT at destination VAT rates.

Ordinarily, if goods were sold for less than < £135, and located in the UK at point of sale, the UK supplier would have charged point of sale VAT and used 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.

Goods costing more than £135

Goods, or consignments of multiple goods, costing more than £135, will be treated as:

- Zero rated exports in country of dispatch;
- Subject to import VAT, rather than supply VAT, in the country of arrival;

Any duty payable will depend on whether the UK and EU have a free-trade deal in place.

There will be an Import declaration at the time of arrival, with the 'importer of record' being responsible for the import VAT. If this is the supplier, they will have an obligation to register in the destination state.