

VAT on professional services (Lecture B1290 – 22.27 minutes)

Basic rule

The majority of services provided to overseas business customers will be supplied where the business customer belongs – the so called B2B supply.

So if you are billing a French company the place of supply is France and the French company has a mandatory reverse charge obligation.

The UK company must ensure they have proof of their customers business status (e.g. VAT number, contracts, letterhead etc).

B2B services are outside the scope of VAT but the UK company must include the sale in Box 6 of their VAT return. From 1 January 2021, there is no requirement to complete an EC Sales List.

It is also good practice (but not mandatory) for the UK company to put the reverse charge narrative on their invoice to remind their French customer of their reverse charge obligation.

There are limited overrides to the basic B2B rule and these can be found in VATA 1994 Schedule 4A. VAT Notice 741A is also very useful.

Services supplied to non-business overseas customers are generally B2C and UK VAT would be charged. Again Schedule 4A and Notice 741A are useful for any overrides to these rules.

Overrides to the basic rules

Schedule 4A VATA 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)

Whilst the basic rules remain unchanged post Brexit there are some important changes to the overrides within Schedule 4A. I will outline the more common overrides below.

Schedule 4A Para 16 services (B2C only)

Para 16 services include consultants, accountants and lawyers.

Up to 31 December 2020 para 16 services provided to non-EU consumers were supplied where the customer belongs. As a result no UK VAT was chargeable when invoicing non-EU consumers.

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 in *Mandarin Consultancy* 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 i.e. EU and non-EU consumers.

So accountants would not charge VAT to any overseas client from 1 January 2021. B2B services remain basic rule whilst 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.

It should be noted that when accountants are invoicing a non-resident landlord for accountancy work (rental accounts, tax etc) we will have a B2B service. As such, UK VAT will only be charged where the non-resident landlord has a UK business establishment or a UK fixed establishment. This would normally involve employing staff in the UK to manage the portfolio.

Land related services (B2B or B2C)

Under Schedule 4A para 1, services relating to specific sites are supplied where the land is situated.

Services relating to the sale of a UK property by an overseas individual would be subject to the standard rate of UK VAT e.g. estate agent commission, lawyers conveyancing fees etc.

Likewise, if a UK individual was selling their Spanish holiday home they would be charged Spanish VAT on similar costs.

UK providers of land related services would need to be careful of requests to undertake land related services on EU sites as this can create an EU registration obligation for the UK provider. For example, an interior designer is engaged by a high worth individual to work on his French, Italian and Austrian homes. These are land related services and as such the interior designer would have registration obligations in France, Italy and Austria.

From 1 July 2021 the designer could register for the non-union OSS (see below) and account for the relevant VAT through their OSS registration. Prior to 1 July 2021 multiple EU registrations would have been required.

If the land related services were provided to an EU registered business we would need to check whether the destination state had a reverse charge rule for land related services. If it did then the reverse charge would take precedence and no OSS reporting would be required.

Non-union OSS

The non-union one stop shop (OSS) was formerly known as the non-union MOSS scheme. For the first six months of 2021 it was used to report and account for EU VAT when UK

businesses supplied broadcasting, telecommunication and electronically supplied services to EU individuals.

Prior to 31 December 2020 UK traders would have been reporting the same via the union MOSS scheme.

The non-union OSS is an optional system and the UK supplier can still VAT register in each Member State in which they make supplies, if they prefer. Where they opt to use OSS, they register in a single Member State and complete a single return to account for VAT due in each Member State. It is submitted electronically, and records all supplies of services to Member States that are taking place there, along with their value and VAT due. A return must be submitted by the end of the month following the tax period covered by the return. Tax periods are calendar quarters. Therefore, for a return covering January to March, it must be submitted by 30 April. Payment should be made at the same time.

If a UK trader was already registered for MOSS in a Member State then they were moved over to the new OSS system from 1 July 2021.

Input VAT incurred in another Member State cannot be recovered under an OSS return. In order to recover any input tax incurred in the EU a UK supplier needs to submit a 13th Directive claim. A supplier is under no obligation to issue an invoice when using OSS.

All supplies of services, where the place of supply is in the EU, are covered under the OSS scheme. Non-union MOSS only covered broadcasting, telecommunication and electronic services.

The types of services that are covered by the OSS scheme include (the list is not exhaustive):

- Broadcasting, telecommunication and electronic services
- Admission to cultural events
- Transport services
- Hiring of means of transport
- Land related services

Reverse charge

There have been no changes to reverse charge rules under Brexit.

If a UK business buys services from an overseas business they must reverse charge the service on their VAT return. The entries are normally made in Boxes 1, 4, 6 and 7 of the UK VAT return. Input tax recovery in Box 4 is dependent on the company using the service for their taxable activity.

company. The agent will invoice the actor for their commission but the commission will be zero rated i.e., the main supply between actor and production company is outside the UK – the provisions within Group 7 apply.

Where the production is filmed is not relevant – it is where the film production company is based that will determine the VAT treatment of the actor's fee and in turn the agent's fee.

Contributed by Dean Wootten