

## **Cross border services - Place of supply of services (Lecture B1074 – 29.17 minutes)**

There are two general rules that will apply unless one of the exceptions covered later applies:

1. If a UK business is selling a service to an overseas business customer (B2B sale) then no UK VAT is charged because the place of supply (country where VAT is payable) is where the customer belongs. If the customer is established in more than one country, it belongs in the country of the establishment most closely connected to the supply. Often this is the establishment the supplier contracts with unless the actual scope of work is agreed and controlled by a different establishment.

This principle applies irrespective of whether the customer is in the EU or otherwise.

If the customer is in the EU, and assuming the service in question is 'taxable' in that country, then the customer will deal with the VAT on its own return by doing a reverse charge calculation if it is VAT registered.

If the customer is not VAT registered, the supplier may well be obligated to register in that country and charge the customer the local rate of VAT.

2. If a UK business is selling a service to a customer who is not in business (B2C) then the place of supply is the UK and we charge the same rate of VAT on our invoice to the customer as we would if we were invoicing someone in the UK. A non-business customer belongs where they are normally resident or where their permanent address is located.

### *Supplies of services – exceptions to the general rule*

There are 3 sets of exceptions. The first applies irrespective of the type of customer, the second only applies if the supply is to a business customer and the third only applies if the supply is to a non-business customer.

1. If a client makes a supply to a foreign customer, you need to identify firstly if it is to a business or non-business customer.
2. If it is to a business customer, look through lists 1 and 2 only. If the supply is listed, use the rule in the list, if not use the general rule.
3. If the supply is to a non-business customer, look at lists 1 and 3 only. If the supply is listed, use the rule in the list, if not use the general rule.

### *List 1- Exceptions to general rule – all services, irrespective of customer*

#### Services relating to land

The following supplies are treated as made in the country in which the land is situated

- (a) the grant, assignment or surrender of any interest in or right over land,
- (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land,
- (c) the grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation (including

beach huts, chalets, caravan, houseboat or tent held out as holiday accommodation or suitable for holiday or leisure use), seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities)

(d) the provision in an hotel, inn, boarding house or similar establishment (whether with or without the provision of facilities) of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering,

(e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and

(f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.

### Passenger transport

The transport of passengers (or luggage and motor vehicles accompanying passengers) is treated as being made in the country where the transportation takes place and in the case of more than one country, in proportion to the distances covered in each. However, transport which takes place outside the territorial jurisdiction of a country takes place wholly in that country if:

- it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
- the means of transport used does not stop (except in emergency) or put into land in another country in the course of that journey.

A pleasure cruise is regarded as transport of passengers and all services provided as part of the cruise follow the place of supply rules given here. This includes a cruise wholly or partly for education or training.

### Short term hiring means of transport

The short term hire of a means of transport is to be treated as made in the country where the transport is put at the disposal of the customer.

Short term is a continuous period not exceeding 30 days, unless the transport is a vessel, in which case 90 days.

Where such a supply is effectively made in the UK but the services are to any extent effectively used and enjoyed in a country that is not a member state, then the supply is treated as made to that extent in that other country. Similarly, where such a supply would be treated as made in a country that is not a member state, but the supply is to any extent effectively used and enjoyed in the UK then the supply is treated as made to that extent in the UK.

### Restaurant and catering services

Supplies of restaurant and catering services, other than EC on-board restaurant and catering services (see below) are made in the place where they are physically carried out.

### EC on-board restaurant and catering services

The provision of restaurant or catering services on board a ship, train or aircraft in connection with the transportation of passengers during an intra EC journey is treated as made in the country where the relevant point of departure (that is the first place in the journey at which passengers can embark) is located.

An intra EC journey is more formally referred to as an “intra EC passenger transport operation” which starts and ends in EC member states, and does not stop in a place outside the EC for embarkation or disembarkation.

A return stage of a return passenger transport operation is regarded as a separate passenger transport operation. A return operation is one that takes place in more than one country but is expected to end in the country in which it began, and the return stage is the stage which ends in the final destination and begins with the last stop in a place at which there has not been a previous stop during the operation.

#### Hiring of goods

Hiring of goods other than means of transport is covered by the basic rule. However, if a supply is treated as made in the UK, but the goods are to any extent effectively used and enjoyed in a country that is not a member state then the supply takes place to that extent in that country.

Similarly, if the supply is treated as made in a non EC state, but the goods are to any extent effectively used and enjoyed in the UK then the supply is treated as made in the UK to that extent.

#### *List 2 - Exceptions for supplies made to a relevant business person*

Some supplies have separate rules for when they are made to a relevant business person.

When made to any other person they fall under the normal rules.

#### Electronically supplied services

This place of supply rule has an effective use and enjoyment adjustment as described above.

The services affected are :

- (a) website supply, web-hosting and distance maintenance of programmes and equipment,
- (b) the supply of software and the updating of software,
- (c) the supply of images, text and information, and the making available of databases,
- (d) the supply of music, films and games (including games of chance and gambling games),
- (e) the supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events), and
- (f) the supply of distance teaching

#### *List 3 - Exceptions for supplies made other than to relevant business persons*

#### Intermediaries

A supply of intermediary services is treated as made in the same country as the supply to which it relates. Supplies affected by this rule are supplies to persons who are not relevant business persons consisting of the making of arrangements for a supply by or to another person or of any other activity intended to facilitate the making of a supply.

#### Transport of goods

The supply of transport of goods to a person who is not a relevant business person is treated as made in the country in which the transportation takes place, or if in two countries, in proportion to the distances travelled in each. If a journey takes place partly outside the territorial jurisdiction of a country takes place wholly in that country if:

- it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
- the means of transport used does not stop (except in emergency) or put into land in another country in the course of that journey.

This rule does not apply to the transport of goods between two member states (see below).

#### Intra- community transport of goods

A supply of the transport of goods from one member state to another to a person who is not a relevant business person is treated as made in the country where the transportation begins.

#### Ancillary transport services

When made to a person who is not a relevant business person, these services are supplied where the service is physically performed. Services covered by this rule include loading, unloading, handling and similar activities.

#### Valuation services

These services are treated as supplied where physically performed, when supplied to a non-business customer. This includes the valuation of goods and the carrying out of work on goods.

#### Electronic services

The supply by a person who belongs in a country which is not a member state (other than the Isle of Man which is treated as part of the UK for VAT purposes) of electronically supplied services (as defined above in list 2) to a person who is not a relevant business person, but belongs in a member state is treated as made in the country where the recipient belongs.

#### Cultural, artistic, sporting and scientific services

Services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions) and ancillary services relating to such activities, including services of organisers of such activities – supplied where activity takes place

#### Long term car hire

Car hire exceeding 30 days is treated as made where the customer belongs.

There is no special rule for B2B long-term car hire, so this follows the general rule for B2B supplies and therefore is also treated as made where the customer belongs.

*Exception for certain services to non-business customers located outside EU*

Some services supplied to non-business customers outside the EU are supplied where the customer is located:

- transfers and assignments of copyright, patents, licences, trademarks;
- the acceptance of any obligation to refrain from pursuing or exercising (in whole or in part) any business activity or any rights within the above paragraph;
- advertising services;
- services of consultants, engineers, consultancy bureaux, lawyers, accountants and similar services; data processing and provision of information (excluding any services relating to land);
- banking, financial and insurance services (including reinsurance), other than the provision of safe deposit facilities;
- the provision of access to, and of transport or transmission through, natural gas and electricity distributions systems and the provision of other directly linked services;
- the supply of staff;
- the letting on hire of goods other than means of transport;
- radio and television broadcasting services; and
- electronically supplied services.

Note – in the case of the final four ‘bullet point’ categories, a UK VAT charge would still apply if an overseas resident was ‘enjoying’ the services in the UK.

Example – an American tourist hiring a camera to use on his UK holiday. Equally, a UK VAT charge would not apply if a UK resident acquired the service in question from a UK supplier but with the intention of ‘enjoying’ the service outside the EU.

*Example – accountancy services*

A UK VAT-registered accountant prepares UK income tax returns for two clients. One is based in Annemasse, France and the other just across the border in Geneva, Switzerland.

Neither client is VAT-registered in their respective countries.

On which of these invoices (if any) should the accountant charge UK VAT?

The supplies are to non-business customers. The customer in France should be charged UK VAT at 20% as they are in the EU.

The supply to the customer in Switzerland is treated as made where the customer is located (based on the exceptions above). It is outside the scope of UK VAT, but the accountant will need to get advice on whether there is an obligation to register in Switzerland and to charge the client Swiss VAT.

*Example – car hire*

One of your clients runs a car hire business. They rent to businesses and individuals.

A French family enquires by email about renting a car for the Summer holidays (6 weeks) which they will pick up in Greater London, drive around the UK (and possibly take it to Eire) then drive back to Greater London to return it before heading back to France.

Where does this supply take place for VAT purposes? Because this is long-term car hire (more than 30 days) it takes place where the customer belongs (i.e. France).

The client would need to register in France (if not already registered there) and charge the client French VAT at the appropriate rate. They may feel that the compliance cost of doing this will outweigh the benefit of accepting the business from this customer.

*Contributed by Malcolm Greenbaum*