

International Business Review

Value Added Tax implications for overseas businesses

Value Added Tax (VAT) is a sales tax which applies to the supply of most goods and services in the UK and to goods imported from outside the EU.

Businesses are required to register for VAT when the level of "VATable" turnover (i.e. sales subject to VAT at 0%, 5% or 17.5% (20% from 4 January 2011)) exceeds, or is expected to exceed, the registration threshold.

When a business is registered for VAT it must account for VAT on the value of its taxable supplies. It may also reclaim VAT on the purchase or importation of goods and services it incurs. The net balance is payable to, or reclaimable from, HM Revenue & Customs (HMRC).

There are a number of important issues that overseas businesses should be aware of when considering establishing a business in the UK, or supplying customers in the UK.

Supply of goods

VAT will be due in the UK where the goods are supplied in the UK. This means that overseas businesses will have an obligation to register if they hold stock in the UK that is for sale to their UK customers. However, an overseas business will not have an obligation to register for VAT in the UK if their customers act as the importer of the goods and account for the import VAT. This is because the supply between the overseas business and the UK customer is deemed to take place outside the UK.

Case study A

A US supplier of goods wishes to sell its products to various UK customers, all of whom are prepared to act as importer. The US supplier will not need to register for VAT in the UK but its customers will pay the import VAT and reclaim this on their UK VAT returns.

However, there are many circumstances where this position is not possible or desirable. For example, where the goods are not assigned to a particular customer at the point of importation or where the customer simply does not wish to take on the responsibility of acting as importer. In these circumstances, or where the goods are supplied directly to

private individuals, the overseas business may be required to register for UK VAT.

The need for a VAT registration does not necessarily require a UK corporate entity. It is acceptable, for example, for a US Inc. or a German GmbH to register in the UK for VAT purposes. Other commercial, structural and direct tax issues will need to be considered separately in order to determine whether a UK corporate entity is required or desirable.

Case study B

A US supplier of wholesale goods wishes to distribute its products to various UK retailers. The goods will be stored in the UK and, at the time of importation, it is not known which retailer will purchase the goods.

The US supplier will therefore be required to act as importer of the goods into the UK and pay the import VAT (and any Customs Duty). It will be required to apply for a VAT registration number (and EORI) in order to reclaim the import VAT and account for output VAT on the subsequent sales.

The UK VAT registration number also acts as the Economic Operator Registration and Identification (EORI) number - previously known as Trader's Unique Reference Number (TURN) and is used on all import documentation to identify the overseas business as the importer of the goods. The VAT due on the imported goods is paid by the importer and then an Import Certificate (C79) is issued and sent to the importer by HMRC. This document is vital as it is often the only document that HMRC will accept as evidence to support the recovery of the import VAT.

Rather than pay import VAT on every individual importation, it is possible to apply for a Duty Deferment Account. Under this arrangement, payment of import VAT (and any Customs Duty) can be deferred until the 15th day of the month following the month of importation. A bank guarantee is required to accompany an application for Duty Deferment.

There are also other facilitation measures such as the use of a Customs Warehouse. The "Call of Stock" procedure can be used to ease the administration of VAT for overseas businesses holding stock for designated EU customers.

Supply of services

With effect from 1 January 2010, most services are generally deemed to be supplied where the recipient belongs. This means that the customer in the UK (or any other EU Member State) takes responsibility for accounting for VAT under what is referred to as the "Reverse Charge". This self assessment procedure avoids the need for overseas suppliers of services to register for VAT. However, there are some exceptions to this rule (which are common throughout the EU) which deem certain services to be supplied elsewhere. These can give rise to overseas suppliers having to register for VAT.

For instance, services relating to land are deemed to take place where the land is physically located, irrespective of where the supplier or customer belongs. Certain services are deemed to be supplied where they are physically carried out. These include performance related services in the cultural, artistic, sporting, educational and entertainment sector. Services relating to exhibitions, conferences or meetings also fall into this category.

There are also special rules that apply to passenger transport services, hire of a means of transport, restaurant and catering services, all of which could give rise to a requirement to register for VAT depending upon the place where they are supplied.

The above examples are not exhaustive, so it is important to establish the precise nature of the service being supplied in order to determine its correct VAT liability.

Services supplied by a UK business to a recipient outside the EU

Services falling within a description set out in Schedule 4A paragraph 16 of the VAT Act are deemed to be supplied where the recipient belongs. This includes services of consultants, engineers, lawyers and accountants; data processing; the assignment of copyright, trademarks and licences, etc; advertising services; banking, financial and insurance services; the supply of staff and telecommunication services.

Where these are supplied to a recipient belonging outside the EU, there is no requirement to charge UK VAT. Therefore, the provision of consultancy, technical support and marketing services (including those provided under a cost plus

arrangement) would not be subject to VAT. It is a common feature for many overseas businesses to set up marketing and support functions in the UK (but where the "trade" is retained by the overseas parent) in order to recover VAT costs incurred in the UK.

Services supplied by an overseas business to a UK business

For most services, there is no requirement for the overseas business to register and account for VAT. The UK business recipient, if VAT registered or as a result of receiving such services becomes liable to register, will account for the VAT under the "Reverse Charge". This means they will add VAT to the value of the service and account for it to HMRC on behalf of the overseas supplier. The same amount of VAT may then be recoverable as input tax, depending upon the status of the recipient's business. For the vast majority of businesses, this process has no net VAT cost.

VAT registration and submission of VAT returns

An overseas business can either deal directly with HMRC or appoint a UK agent to act on their behalf.

When dealing with HMRC directly, the application to register is dealt with by the Aberdeen office of HMRC. They will issue the VAT returns directly to the overseas address. Where a UK agent is appointed, it is possible to use the agent's address both for registration purposes, and for the receipt of VAT returns. The agent then deals with their local VAT office on behalf of the overseas business.

Blick Rothenberg offers a full range of VAT services including:

- advice to overseas businesses relating to their obligation to register for VAT in the UK, and in other EU Member States;
- assisting with the UK application process and obtaining the VAT registration number, EORI and Duty Deferment approval;
- advice in relation to the place of supply of services and the various VAT liabilities that can arise; and
- advice on how to structure your business in the UK to optimise your VAT position.

Through our associate company, BRAL Limited, we also provide a comprehensive compliance service, acting as agents, dealing with the completion of VAT returns on behalf of overseas businesses.

Case study C

A US provider of IT consultancy services has a number of UK corporate customers. It establishes a UK company to market and promote its services in the UK. The US company continues to provide the IT services directly to its UK customers.

The customers will be obliged to account for VAT under the Reverse Charge. The US company has no obligation to register for VAT in the UK. There is also no obligation for the UK company to register for VAT as its supplies to the US parent of marketing support services are deemed to be supplied where the recipient belongs (i.e. the US). However, the UK company may choose to register for VAT in the UK if it wishes to claim back VAT on its costs.

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