Selling services to overseas customers

Indirect Tax



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Neil Warren explains when VAT is charged by a UK business selling services to overseas customers, and considers potential changes when the UK's temporary EU trading deal ends in December

Key Points

What is the issue?

The general B2B and B2C VAT rules apply for most supplies of services but there are important exceptions where they are overridden. The article considers some of these exceptions with practical examples.

What does it mean to me?

If errors are made with the place of supply rules, HMRC will be able to raise an assessment for the last four years to correct any underpayments of VAT. It is important to get the full facts about every transaction if asked by clients.

What can I take away?

The rules for VAT and services will be unchanged in most cases after Brexit but it will be important to note any potential changes for services where the 'use and enjoyment' rules apply.

Time passes very quickly. And somewhat surprisingly, it is now ten years since a radical change was made to EU laws regarding the VAT treatment of services supplied to overseas customers. These changes have stood the test of time but will they still apply when we finally part company with the EU at the end of the year? I'll consider that question in this article but also explain why you can never be complacent when dealing with this tricky subject because there are important exceptions to the general business to business (B2B) and business to consumer (B2C) rules that apply in most cases.

Place of supply

The phrase that is quoted in most guidance on this subject is 'place of supply'. In other words, which country in a transaction must deal with the VAT? If the place of supply is outside the UK, then no UK VAT is charged. But will the place of supply depend on the supplier's country, the customer's country or where the work is performed? And in a final twist, could the place of supply be a fourth country; namely, where the service is being 'used and enjoyed'?

The basic rules since 1 January 2010, and which are relevant in 99% of cases (well, let's say 95% to be conservative) are set out in VAT Notice 741A para 6.2 and 6.3 and are as follows:

- B2B sales: the place of supply is the customer's country; and
- B2C sales: the place of supply is the supplier's country.

Performance services or where the customer is outside EU

It would be fantastic if we could just apply the general rules quoted above to every overseas transaction involving services. However, there are a number of exceptions where they are overridden. As a starting point, there is a list of services in the legislation where B2C supplies are taxed where they take place. These are known as 'performance services' and include cultural, artistic, sporting, scientific, educational, entertainment and similar activities (VAT Notice 741A s 9). See **Example 1: Celebrity birthday bash**.

A key fact is that a business making supplies in EU countries other than its own is not entitled to receive the domestic VAT registration threshold in that country; in other words, a zero threshold applies. Joe in Example 1 would need to register for Italian VAT even if his fee was £1.

As a further twist, there are certain services where B2C supplies are taxed where the customer belongs if the customer is resident outside the EU. These tend to be professional type services and are listed in VAT Notice 741A s 12. The relevant legislation is VATA 1994 Sch 4A para 16. A simple example is an accountant completing a tax return for a private individual living in America. The general B2C rule would make this supply subject to UK VAT but the services of accountants are listed within para 16, so the place of supply is America; i.e. no UK VAT is charged.

Level playing field

The reason for the twist with performance services is to ensure that a level playing field is achieved between domestic and international suppliers. Imagine the outcome if Joe could avoid paying VAT on his £50,000 fee; it would give Mario a big incentive to use a non-Italian performer who would not charge him VAT. You might argue that it would make more sense for the place of supply to follow the general B2C rule; i.e. according to where the performer is based (the UK in Joe's case). However, this

would give Mario an incentive to hire a performer based in an EU country with a low VAT rate, such as Malta, rather than countries with higher rates, such as Denmark and Sweden.

B2B sales

For B2B sales covered by the general rule, the EU customer will deal with the VAT on his own return by doing a reverse charge calculation. As an example, if I invoice a firm of accountants in Ireland for VAT consultancy services, say £2,000, the accountants will account for output tax on their return based on the Irish rate of VAT:

£2,000 x 23% = £460.

They will claim the same amount as input tax because my services relate to their taxable activities as accountants. If my services related to any exempt, private or non-business activities, they would have to restrict the input tax entry in the same way as they would with a domestic purchase invoice.

To continue the level playing field theme, another VAT quirk with international B2B supplies is that the buyer of a service must treat the supply as part of his own taxable turnover as far as the VAT registration threshold is concerned. This rule prevents a business that only makes exempt supplies from gaining a financial advantage by buying VAT free services from abroad. See **Example 2: Insurance company using an overseas computer consultant.**

Land supplies

I sometimes get emails from accountants who ask a question along the lines of: 'We've got a client who is doing some work for a business in Russia. Am I right in saying that he doesn't need to charge UK VAT on his fee?'

My answer will always be: 'It depends. What exactly is the work he is doing?'

An important exception to the general B2B and B2C rules is that the place of supply for a land service depends on where the land or building is based. So, if a UK builder is building an extension for a Russian business on a property that the Russians own in Manchester, the fees will be subject to UK VAT. Land services include both professional and construction services; for example, architects, surveyors and estate

agents, as well as plumbers, electricians and bricklayers.

Brexit issues

Most VAT rules will be unchanged for supplies of services when our transitional deal with the EU ends in December 2020. This will include the general B2B and B2C rules. The major VAT changes will mainly relate to supplies involving goods. This will obviously depend on the terms of any final deal agreed with the EU.

To give the heads up, however, there could be important changes to the rules for services where the place of supply depends on where they are 'used and enjoyed.' See **Box 1: Services where the use and enjoyment override applies.** It is worth noting this list and watching as the EU trading deals unfold.

To give an example, 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 (the place of supply being America); however, 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 must therefore be charged 20% UK VAT.

If the photographer was based in an EU country, however, the general B2B rule would apply. The photographer would apply the reverse charge on his own VAT return and would not be charged UK VAT by the camera shop. This outcome is likely to change after 1 January 2021, however.

To reverse the scenario, 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. However, when our EU deal ends on 31 December 2020, the Irish supplier will charge Irish VAT on the fee because Ireland also applies the same 'use and enjoyment' rule for the hiring of goods to non-EU customers. In this situation, the UK photographer will need to recover the Irish VAT he has paid by submitting a non-EU VAT refund claim to the Irish tax authorities. What a nuisance that will be!

Example 1: Celebrity birthday bash

Mario is a wealthy man living in Italy and is having a big party in Rome to celebrate his 50th birthday. He has asked the top UK-based comedian Joe Best to perform at the party for a fee of £50,000. This is a B2C sale of a performance service, so the place of supply is where it takes place; i.e. Italy. Joe will need to register for VAT in Italy and charge Italian VAT on his fee or treat it as inclusive of Italian VAT.

Example 2: Insurance company using an overseas computer consultant

ABC Insurance Brokers is based in the UK and only makes exempt supplies of insurance related services, so is not registered for VAT. It has decided to use the services of an Indian computer business to help with its IT issues and will pay £20,000 per month for its services from March 2020.

ABC must treat the payments to the Indian business as taxable turnover, meaning that it will exceed the Â£85,000 VAT registration threshold at the end of July 2020. It must register for VAT 30 days later, i.e. from 1 September 2020, and apply the reverse charge to future invoices/payments made to the Indian supplier. This will produce an annual output tax payment of:

£20,000 x 12 months x 20% = £48,000.

However, no input tax can be claimed with the reverse charge because the expense directly relates to exempt supplies and is blocked under partial exemption.

Box 1: Services where the use and enjoyment override applies

These rules apply where the normal place of supply rules would mean they take place outside the EU and escape 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. 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); and
- radio and telephone broadcasting services.