Place of supply rules: countdown time!

Indirect Tax



24 March 2025

We give some practical examples of VAT issues to consider if a business supplies services to overseas customers – and notice of an important change in EU law that took place on 1 January 2025 about live online events.

Key Points

What is the issue?

A UK business that only has sales where the place of supply is outside the UK can still register for VAT and claim input tax if its services would be VATable if the place of supply was in the UK. Sales where the place of supply is outside the UK are ignored as far as the UK registration threshold is concerned.

What does it mean to me?

It is important to be aware of services where the place of supply is not subject to the general B2B or B2C rules. For example, the place of supply for a land service always depends on the location of the landor building; e.g. a plumber fitting a bathroom in a Spanish apartment is making a land supply in Spain.

What can I take away?

A change in EU law on 1 January 2025 means that live online B2C events are now taxed according to where the customer rather than supplier is based. This has created extra administration and complication for a UK business selling to EU customers, including the need to charge local VAT in the customer's country and either register for VAT there or the EU's One Stop Shop scheme.

Why are so many accountants nervous about VAT? The answer, I suspect, is because of the exceptions in the legislation that cause extra layers of complication. An answer might seem simple but then a twist to the tale gives the opposite result to what you thought. Don't get me started about the legislation on food. Is it a cake or biscuit? No, it's superman!

In this article, I will consider some practical examples of the place of supply rules – another topic where exceptions are more plentiful than eggs at Easter – that must be considered if a business provides services to either an overseas customer or performs them in a non-UK country.

I will also consider an important change in EU law that took place on 1 January 2025 about live online events for B2C delegates, a measure which has left HMRC with a major challenge to consider.

Basic rules

There are two basic place of supply rules,which apply in probably 80% of all supplies of services involving overseas customers:

- **B2B service:** The place of supply in most cases is where the customer is resident. A non-UK based customer means that no UK VAT is charged.

- **B2C service:** The place of supply in many cases is where the supplier is based. Other issues such as where the customer is based or the work is performed are irrelevant.

Examples of basic place of supply rules

Bob is a management consultant based in Manchester and has done some work for a Canadian business. The place of supply is Canada because management consultancy services follow the general B2B rule. He will not charge UK VAT but must check if there are any indirect tax issues to consider in Canada.

Jane is VAT registered in the UK and provides secretarial services to wealthy people who live in Switzerland; i.e. B2C customers. She will charge UK VAT on her fees under the basic B2C rule.

Note: the fees earned by Bob from his overseas business customers are excluded from the UK's VAT registration test because these sales are outside the scope of VAT; i.e. they are not taxable.

What about input tax?

There is an opportunity to save VAT if a UK business supplies services where the place of supply is ***outside*** the UK:

- The sale of a service where the place of supply is outside the UK is outside the scope of UK VAT.
- As long as the service would be VATable if the place of supply was in the UK, the UK seller can reclaim input tax on their related expenses.
- A business with no taxable sales can therefore register for VAT on a voluntary basis and claim input tax. In VAT speak, this is commonly known as 'outside the scope with recovery'.

Outside the scope income: voluntary registration

Management consultant Bob from the example above only has income from overseas business customers in Canada and Sweden. His annual UK taxable sales are zero but he can still register for VAT and claim input tax on his expenses; e.g. computer costs, subcontractor fees, telephone costs.

- Bob’s registration will be on a voluntary basis because his annual taxable sales are less than £90,000. He can backdate his registration date by up to four years to gain another input tax windfall.
- There is no difference in the place of supply rules for an EU or non-EU customer.
- Under EU law, Bob’s Swedish customer will account for VAT on his fees by doing a reverse charge entry on their local returns; i.e. accounting for output tax based on the Swedish rate of VAT and claiming the same amount as input tax on the same return. This assumes that the business has no input tax restriction for partial exemption, non-business or private use.
- Bob’s returns will be repayments because he has no output tax to declare and will claim input tax on his UK expenses.

The exceptions

I wrote an article for *Tax Adviser* in July 2020 headed ‘Selling services to overseas customers’ and I covered the most common situations – with examples – of when the basic B2B and B2C rules are overridden. I have just re-read the article and nothing has changed. For a summary of the main exceptions, see below (Place of supply – when are the basic rules overridden?).

A non-EU business making supplies in an EU country does not benefit from any local registration sales threshold; i.e. a zero limit is relevant. This means, for example, that a UK window cleaner cleaning windows for private customers in France must charge French VAT, and either register for VAT in France or – more likely – register for the One Stop Shop (OSS) scheme, where VAT charged on all EU sales is declared on a single quarterly return.

The main disadvantage of the OSS route is that there is no scope to reclaim VAT on expenses incurred in the EU – such as a new bucket for our window cleaner – and this tax must be claimed by submitting a refund claim to the tax authority in the member state where itwas paid. This can sometimes be a complicated process because of language and efficiency issues.

Place of supply: when are the basic rules overridden?

Land supplies: For services that relate to a specific building, the place of supply depends on the country where the land or building is located. This outcome applies to both construction and professional services; e.g. surveyors and architects. (HMRC Notice 741A s 7)

Performance services: For B2C performance services, the place of supply is where it takes place. For example, an opera singer performing at a private party in Germany must consider German VAT. (HMRC Notice 741A s 9)

Professional services B2C: The place of supply will depend on where the customer is based; i.e. the same as for B2B services. VAT enthusiasts will recall the long-running tribunal case of *Gray & Farrar International LLP v HMRC* [2023] EWCA Civ 121, when the Court of Appeal finally confirmed that a dating matchmaking service was not a supply of consultancy services for VAT purposes. For a list of 'professional services', see HMRC Notice 741A s 12.

Use and enjoyment: For certain supplies, the key issue is where they are used by the customer. For example, an Irish photographer hiring a camera in the UK will be charged UK VAT because a use and enjoyment clause applies to the hire of goods under UK law. This subject is complicated by the fact that different EU countries apply use and enjoyment clauses to different services. (HMRC Notice 741A s 13)

Online events: 1 January 2025

I mentioned the place of supply rules for B2C performance services but what happens with an online event? To give an example, a yoga studio might give classes and private lessons in its studio – charging UK VAT because the class is held in the UK– but also organise live online events where attendees can do lots of stretching and downward dog exercises in their lounge and pay a fee for each session.

- These online events are B2C and –under UK law – the place of supply is where the supplier is based with the basic B2C rule.
- Since 1 January 2025, the events are also taxed in the EU country where thecustomer is based under EU law.
- EU legislation – the change was confirmed on 5 April 2022 – is Council Directive (EU) 2022/542.

To cut to the chase, EU law was amended on 1 January 2025 so that any business supplying virtual and streaming services must now charge VAT according to where the customer is resident rather than the supplier; e.g. where a conference is streamed online with a fee charged for viewing, or distance learning is supplied with alive element. The law change is consistent with the EU's objective that VAT is a consumption tax and should be taxed where a service is consumed.

For example, Janet is the sole trader of a yoga studio and registered for VAT. A private individual from Ireland attends her online classes and pays £30 per class. Until 31 December 2024, she declared output tax of £5 per session on her UK VAT return; i.e. £30 x 1/6. Since 1 January 2025, Irish VAT of £5.60 has also been payable, the rate of VAT in Ireland is 23%; i.e. £30 x 23/123.

To pay Irish VAT, Janet can register forthe EU's One Stop Shop (OSS) scheme, which means registering in one member state and then paying the tax collected in all member states on a single quarterly return. It makes sense to choose Ireland because of the common language. Registering for the OSS avoids the need to register in each member state where Janet makes B2C sales.

Double taxation?

HMRC has not indicated if it will amend UK law, although this will be desirable – otherwise there is both UK and EU tax to pay on relevant supplies because of different place of supply rules.

In other words, UK VAT is payable under UK law but local VAT is payable under EU law. In Janet's case, £10.60 of the £30 fee received from her Irish customer will be paid in VAT, with a lot of extra administration work dealing with OSS returns and working out the different VAT rates that apply in each member state.

As a potential planning point, advisers might consider setting up an EU based subsidiary company if double taxation is a risk. A further complication is that there is often a fine line between a supply being classed as admission to an educational event compared to a supply of education; the latter is still taxed according to where the education takes place under both UK and EU law.

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