



UK VAT changes on the sale of goods to customers from 1 January 2021

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The Taxation (Post-transition Period) Act (the Act) received Royal Assent on Thursday 17 December 2020. The Act makes changes necessary to implement the new VAT rules on sales of goods moving into and out of the UK from 1 January 2021 as summarised in Her Majesty's Revenue and Customs (HMRC) guidance, "Changes to VAT treatment of overseas goods sold to customers from 1 January 2021" of 3 December 2020 together with other changes affecting Northern Ireland.

We have produced below for the benefit of our clients and contacts a succinct summary of the new regime, where there has been considerable confusion over the past month or two, with guidance and legislation changing, and political uncertainty surrounding the rules for Northern Ireland. For further details, or assistance on supply chains, please see the contact details below.

There are a number of permutations in the new rules. The rules vary depending whether the goods are inside or outside the UK at the time of the supply, whether the consignment value of the goods exceeds or is below GBP135, whether the sale is to a business or consumer, and whether an online marketplace (OMP), as defined below, is facilitating the sale. These are the critical factors in determining the VAT treatment.

In summary:

- The GBP15 Low Value Consignment Relief on imported goods will cease to apply. VAT will be due on all

consignments of goods arriving into the UK (including Northern Ireland). Goods imported that would otherwise be eligible for VAT relief (reduced rate, or zero-rated) will continue to benefit from such relief.

- Most overseas sellers selling goods located outside the UK at the time of sale valued at GBP135 or less will now have UK VAT obligations.
- Online Market Places (OMPs) that “facilitate” sales of goods will broadly be responsible for the collection and payment of VAT. There are exceptions when OMPs will not be responsible.
- Previously, HMRC guidance was that these rules were not applicable to sales/importations to Northern Ireland. It has now been confirmed that sales to customers in Northern Ireland will generally follow the same treatment as the rest of the UK.

The new rules

From 1 January 2021, the VAT treatment of sales of goods by non-UK established sellers (i.e. sellers established abroad for example, in the EU27, US, China etc) will be treated as follows:

Direct Sales by non-UK established sellers where goods are outside the UK at the time of the sale

Direct sales to UK consumers (B2C sales consignment less than GBP135)

Non-UK established sellers must charge UK VAT on their sales to UK customers at the point of sale and will have ongoing VAT compliance obligations (VAT invoicing, VAT returns, VAT payments). There is no minimum VAT registration threshold for non-UK established sellers. VAT registration will be mandatory for non-UK established sellers from 1 January 2021 who make sales to UK customers. We understand that HMRC is dealing with a high backlog of VAT registration applications as we approach 1 January 2021. However, if you are an EU business already UK VAT registered under the distance selling rules, you can continue to use your existing UK VAT registration.

Direct sales to UK business customers (B2B consignment less than GBP135)

The seller may avoid charging VAT if they hold the UK VAT registration number of the business customer. A VAT invoice should be issued with a notation that VAT is to be accounted by the UK business customer by way of a reverse charge (this replaces acquisition VAT).

Direct sales to UK business customers (B2B consignment more than GBP135)

The overseas seller need not account for UK VAT where the GB or XI (Northern Ireland) EORI number of the business customer is identified in the customs declaration as the consignee. A VAT invoice with the business customer's VAT number should also be issued with a notation that VAT is to be accounted by the business customer by way of a reverse charge.

Under the Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (S.I. 2019/60) which are anticipated to come into force at the end of the implementation period, VAT registered businesses, importing goods of any value, will be able benefit from postponed accounting for import VAT in their VAT return, even if they have no UK establishment.

Sales by non-UK established sellers made via OMPs (goods inside the UK at the time of sale)

Sales to UK consumers via an OMP (B2C via OMP consignment of any value)

The seller will be deemed to have made a B2B zero-rated supply to the OMP. It will eligible to register for VAT to recover any import VAT incurred but will not be responsible for accounting for VAT on the sale in its VAT return. The OMP will also be deemed to have made a B2C supply to the customer and be responsible for collection and payment of VAT. The OMP will be required to register for VAT (if it is not already registered) and issue a VAT invoice to the customer.

Sales to UK business customers via an OMP (B2B via OMP consignment of any value)

The overseas seller will be liable to account for VAT and issue a VAT invoice if it receives the details of the UK VAT number of the business customer. If the VAT registration number of the business customer is not available, the

sale is to be treated as a B2C via OMP supply. The OMP will be deemed to be the supplier and will be responsible for accounting for the VAT and issuing the VAT invoice to the business customer.

Sales made via OMPs (goods outside the UK at the time of sale)

Sales to UK consumers via an OMP (B2C via OMP consignment less than GBP135)

First, the seller will be deemed to have made a B2B supply to the OMP which is outside the scope of VAT. This means that there will not be any UK VAT accounting obligations for the seller. Second, the OMP will be deemed to have made a B2C supply to the customer and be responsible for collection and payment of VAT, along with the requirement to issue a VAT invoice.

Sales to UK business customer via an OMP (B2B via OMP consignment less than GBP135)

First, the seller will be deemed to have made a B2B supply to the OMP which is outside the scope of VAT. This means that there will not be any UK VAT accounting obligations for the seller. Second, if the OMP holds the VAT registration number of the business customer, there will be a deemed B2B zero-rated supply by the OMP to the business customer. The OMP need not charge or collect VAT, but will need to issue a VAT invoice noting that VAT will be accounted by the business customer by way of a reverse charge.

What is an online market place?

Knowing whether an “online market place” is involved in the supply chain is critical, whether or not it is established in the UK, as it impacts who has to account for VAT. These rules for the first time create a deemed supply of goods by the OMP where it “facilitates” a supply. The UK’s definition of an OMP is a website, or any other means by which information is made available over the internet, which facilitates sales of goods to customers by persons other than the operator. HMRC’s guidance on OMPs appears to use similar terminology to that used in the EU 2021 VAT package changes. It goes on to state:

A business will only be classed as an OMP operator “facilitating” a supply of goods if all the following conditions are met. The business is involved in:

- determining terms and conditions applicable to the sale of goods;
- processing or facilitating the processing, of payment for the goods; and
- the ordering/delivery, or facilitating the ordering/delivery, of the goods.

A business which only provides one of the following will not be regarded as an OMP:

- the processing of payments in relation to the supply of goods;
- the listing or advertising of goods;
- the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

Type and value of goods covered by the changes

The changes covered by the guidance apply to goods in consignments valued at GBP135 or less (excluding VAT) with the exception of:

- non-commercial consignments, such as gifts (gift relief for consignments valued up to GBP39 will remain);
- consignments containing any goods that are subject to an excise duty (e.g. tobacco, alcohol, fuel);
- consignments from Jersey and Guernsey that are covered by the Import VAT Accounting Scheme. It will be critical for many businesses to correctly establish whether the consignment is more or less than GBP135 in value. Please note that when calculating the value, for the purposes of GBP135 of threshold, (but not otherwise) it is necessary to:
- exclude transport and insurance costs, unless they are included in the price and not separately indicated on the invoice; and
- exclude any other taxes and charges identifiable by the customs authorities from any relevant documents.

HMRC are clear that the value of two items of goods which may have been sold separately but are combined in a

single consignment and which together exceed the GBP135 threshold will be treated as a single consignment exceeding GBP135 for VAT and customs duties purposes. HMRC's guidance however is silent as to what VAT and customs treatment should apply when multiple overseas goods are purchased in a single transaction which exceed the GBP135 threshold but are sent in two or more consignments each being less than GBP135 threshold.

What has not changed...

The scope of the changes do not affect sales of goods located outside the UK at the time of sale whose value exceeds GBP135. Either the customer or the seller will be responsible for payment of import duties and VAT depending on the terms of sale. Parties are advised to review their contract terms to ensure that responsibilities for customs formalities and payment of duties/import VAT are made clear. It should be noted that HMRC have reiterated their policy that only the owner of the goods is eligible to reclaim import VAT and must include its EORI number in the customs declaration (Revenue and Customs Brief 15, 2020). We anticipate that import VAT recovery and customs valuation will play a key focus in HMRC's compliance activities for 2021.

Ascertaining whether the intrinsic value of the consignment is above or below GBP135 is critical, so that the appropriate method of accounting for VAT is adopted. If the wrong method is adopted, because HMRC disagrees on the intrinsic value being above or below GBP135, the VAT will need to be unravelled and corrected.

Concluding remarks and next steps

The UK changes are the UK's solution, due to equalize the playing field between UK and non-UK businesses, in their obligation to charge VAT on goods sold to UK customers, parallel to the EU 2021 VAT package commencing on 1 July 2021 which was delayed to COVID-19. One of the main objectives of the changes is to improve compliance by imposing collection and payment responsibilities onto the OMPs involved in facilitating sales and making it harder to avoid VAT obligations.

With the new regime, there are important steps and planning considerations that non-UK sellers must now take to ensure that they are ready for the change ahead. These include:

- VAT registration – We understand that HMRC is currently dealing with VAT registrations filed in mid October 2020. If you have not received your VAT registration by 1 January 2021, but are affected by the changes, you will not be able to issue VAT invoices, but you should ensure that you collect VAT on your sales. Once you receive your VAT registration number, you will be able to issue VAT invoices and account for any VAT.
- Contractual terms and price structuring – Existing contracts need to be reviewed to ensure they cater for the new rules, and allocate risk appropriately. It will be important to consider returned goods policies, and ensure the terms deal with VAT and duties in the event of return/refund. Contractual terms and how goods are marketed will also impact on whether the value of the consignment exceeds the GBP135 threshold or not. We expect there will be significant scrutiny around whether consignments are properly valued at or below the GBP135 threshold. If the wrong VAT method of accounting is selected, HMRC will expect the business to unravel the VAT accounting.
- Supply chains and tax structuring – Supply chains and delivery logistic solutions should be reviewed and structured efficiently from both a business and tax perspective. It should be particularly noted that only the owner of the goods including the person with the right to sell the goods, at the time of importation is eligible to reclaim the import VAT.
- VAT compliance – Businesses may require assistance to help navigate VAT accounting requirements. There are solutions which may be available to ease the administrative burdens. We can assist with arranging for VAT representation and VAT Agents to manage VAT compliance.
- General Data Protection Regulation (GDPR) and advertising – Where the business holds the personal data of its customers, and markets goods to UK customers, compliance with GDPR and local consumer legislation will be essential.

Should you have any questions, please do not hesitate to contact us. We would welcome the opportunity to assist you with your VAT, duties and supply chain arrangements.

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