

The UK will leave the EU VAT area at the end of the Transition period on 31 December 2020.

From 1 January 2021, there will be fundamental changes to the VAT treatment of goods arriving into Great Britain.

The changes are intended to ensure that goods imported from EU and non-EU countries are all treated in the same way and that UK producers are not disadvantaged. However, the change means that any business that imports goods from the EU will be significantly impacted.

This alert looks at the basics and highlights, in particular, some of the implications for direct sellers and online marketplaces (OMP).

The “Basics”

There are a myriad of variations. However, in broad outline, with effect from 1 January 2021, the immediate changes to the VAT treatment of the import of uncontrolled (broadly, non-excise) goods are:

- **Consignments of goods exceeding a total value of £135** (i.e. the same value threshold triggering customs duty liability):
 - **Import VAT** will be levied at the UK border
 - **UK VAT-registered importers**, using the Simplified Customs Declaration process or delayed supplementary customs declarations, must account for Import VAT on their normal periodic VAT returns using postponed VAT accounting
 - **UK VAT-registered importers**, not using the Simplified Customs Declaration process or delayed supplementary customs declarations, may account for Import VAT on their normal periodic VAT returns using postponed VAT accounting
 - **Non-UK VAT-registered importers** (and any UK VAT-registered importer not using postponed VAT accounting) must report and pay Import VAT as part of the customs processes; as a result, VAT payments may be deferred (usually for an average period of 30 days) using a Duty Deferment Account (DDA)
- **Consignments of goods not exceeding a total value of £135:**
 - **No Import VAT** will be levied

- Subject to certain facilitation measures, customs declarations will still need to be completed as normal for non-fiscal purposes and existing fiscal compliance border checks will continue and be extended to imports from the EU
- The supply will be treated as taking place in the UK at the point of sale and UK VAT will be chargeable
- **Abolition of Low Value Consignment Relief** (i.e. the current relief that exempts consignments of goods not exceeding £15 from Import VAT)
- **OMP** – Any OMP involved in facilitating any sale of goods will be responsible for collecting and accounting for UK VAT (irrespective of the value of the goods sold and irrespective of where the goods are at the time of sale)

The new rules will apply to any sale of relevant goods where the time of supply (for VAT purposes) is on or after 1 January 2021.

Business-to-Consumer (B2C): Direct Sellers

The effect of the new rules is that any non-UK “direct seller” (i.e. those that sell goods directly to UK customers), that sells goods that are outside the UK at the point of sale, will need to:

- Register for VAT in the UK (if it is not already registered)
- Account for the UK VAT due to HMRC on all of its sales

A new UK VAT registration obligation will arise for sales of goods that are outside the UK at the time of sale and imported in consignments valued below the £135 threshold. The EU “distance selling” rules will no longer apply in the UK and there is no minimum turnover registration threshold applicable in these circumstances.

Non-UK businesses selling goods that are already inside the UK at the point of sale are already liable for UK VAT under current rules, and so should already be UK VAT registered.

B2C: OMP

The position is starker for OMP. HMRC define an OMP as, “any electronic interface (website or mobile application) such as a marketplace, platform, portal or similar that facilitates the sale of goods to customers”.

For UK VAT purposes, from 1 January 2021, for any sales facilitated by an OMP, the OMP will be treated as having made a supply of the goods, in the UK, to the UK consumer. As a result, the OMP will be responsible for collecting and accounting for the VAT on the sale to a UK customer.

There is no *de minimis* provision; the rule will apply irrespective of the value of sales. The OMP will need to ensure it registers for UK VAT (if it is not already so registered). The underlying non-UK seller using the OMP will not be treated as making a supply to a UK consumer. Instead, where the goods are already in the UK (and have, therefore, already incurred Import VAT), it will be deemed to have made a zero-rated supply of the goods to the OMP for the purposes of UK VAT. This allows the non-UK seller to (or ensures that it will) register for UK VAT so that it can recover the Import VAT (if any) incurred when importing consignments of goods (exceeding a total value of £135) into the UK. The neat consequence is that HMRC obtains more data and visibility on cross-border transactions involving overseas sellers.

Practically, the rules mean that OMP will need to calculate and withhold VAT on sales effected via the OMP. While this will may limit the risk of tax avoidance on the transaction itself, the payment splitting may prove troublesome given that the payments by the customer to the online seller via an OMP will often be facilitated by a third-party payment intermediary and not by the OMP itself.

The new rules build on those introduced in 2016 (and expanded in 2018) empowering HMRC to:

- Hold OMP jointly and severally liable for VAT due from overseas (and, in certain circumstances, UK) sellers where the OMP knew (or should have known) that the seller should have been registered for UK VAT
- Mandate OMP to check and display the VAT registration details of overseas sellers

Given the greater compliance burden being created, OMP should be reviewing and, where necessary, updating their contractual arrangements. Particular areas for focus include:

- Pricing and payment provisions
- Standard terms and conditions for both sellers and payment intermediaries, in order to ensure the OMP has the necessary powers to enable it to comply with the new rules without any adverse impact on the operation of its business, covering (among other things):
 - Information gathering and disclosure
 - Payment processing

OMP operators should also be aware that the EU's VAT e-commerce Directive will enter into force on 1 July 2021. Although delayed for six months (as a result of COVID-19), the new Directive includes similar provisions pursuant to which OMP (or, in the phraseology of the Directive, an electronic interface) will, in certain circumstances, be deemed to be the supplier of goods sold to customers across the EU for VAT purposes. The EU rules will also necessitate OMP to collect and pay the VAT due.

It is worth emphasising that if the OMP sells its own goods, it will be treated as a direct seller.

Business-to-Business (B2B)

It is worth noting in passing that the new rules for direct sellers will also apply to certain B2B sales where the imported consignment does not exceed £135 in value.

In effect, a non-UK direct seller (or OMP) must treat such sales as if it were a B2C transaction.

However, a UK business customer will be able to account for any UK VAT due (and reclaim any input VAT recoverable) on the supply under the reverse charge mechanism on their normal VAT return, if:

- The UK business customer:
 - Is registered for VAT in the UK
 - Has provided a valid VAT registration number to the non-UK direct seller (or the OMP)
- The invoice issued by the seller (or OMP) includes an express reference to the reverse charge (e.g. "Reverse charge: customer to account for VAT to HMRC")

In such cases, the non-UK seller (or, as the case may be, OMP) will not be liable to account for the UK VAT due.

In addition, the much wider OMP rules will not apply to B2B transactions where:

- The goods are already in the UK at the point of sale
- The UK VAT-registered business customer has provided the OMP with a valid UK VAT registration number

If a valid VAT registration number has been produced, the supply will be treated as having been made by the non-UK seller business and not by the OMP. Normal VAT rules will apply in such circumstances (i.e. the VAT reverse charge will not be applied). The OMP is obliged to notify the non-UK seller that it is a direct seller and, therefore, must account (and register if it has not already done so) for UK VAT.

If a valid VAT registration number has not been produced, the OMP must treat the supply as a B2C transaction and will, once again, will be treated as having made the supply and will be responsible for accounting for the VAT on the sale (as outlined above).

Exceptions

It is important to note that the rules outlined above do not apply to either:

- **Goods imported to or from Northern Ireland** – Special VAT and excise duties rules will be needed for Northern Ireland to align with the requirements of implementing of the Northern Ireland Protocol of the Withdrawal Agreement. Details of those special rules are eagerly awaited.
- **Goods imported from Jersey and Guernsey** – The existing arrangements, whereby consignments from Jersey and Guernsey are subject to the Import VAT Accounting Scheme, will continue to apply on and after 1 January 2021.

How Can We Help?

The UK leaves the EU Single Market, Customs Union and the VAT and excise duty area on 31 December 2020.

Irrespective of the terms of any agreement negotiated by the UK and EU concerning their new partnership, international businesses in the UK and EU will need to adopt new processes and procedures to adapt to new and complex border formalities and controls on exports and imports. Likely delays will be almost certainly be accompanied by new costs.

Cross-border VAT will see material changes immediately but there will also be other (more subtle but equally significant) tax consequences in the months ahead. In addition, as London and Brussels adjust to their post-Transition relationship, consider their response to COVID-19, the challenges of digitalisation and the threat of climate change, tax policy is likely to experience substantial changes in the near future.

As businesses re-examine and restructure their operations, supply chains and financing arrangements, we have a dedicated team of leading experts around the globe ready to help you understand and anticipate developments in post-Brexit taxation. We can help you navigate the technical tax challenges presented by Brexit but also provide strategic advice on how to anticipate the opportunities that arise from government policy after 1 January 2021.

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