

VAT Alert

HMRC changes policy on Distance Selling

HMRC adopts VAT Committee interpretation on Place of Supply

Summary

HMRC has published a change of policy in relation to the place of supply of delivered goods to consumers located in other Member States.

Currently, under the UK's place of supply rules VAT is due in the Member State of delivery if the supplier supplies and delivers the goods to the customer. This rule means that many suppliers are obliged to register for VAT in each Member State where they deliver goods to customers.

Some suppliers have taken steps to avoid this obligation by arranging the delivery service by a separate entity (either connected to the supplier or a third party). This means that the place of supply of the goods remains in the UK.

HMRC has changed its policy in relation to the place of supply of delivered goods to consumers in other Member States. This change follows discussions with the VAT Committee of the European Union and has immediate effect.

Under UK VAT law, the place of supply of delivered goods is the member state of delivery. For example, where a UK business supplies and delivers the goods to a consumer established in France, the place of supply for VAT purposes is France. Accordingly, depending on the value of such trade, the UK supplier may be obliged to register for VAT in France and account for the VAT due there. What is important is that, in order to be liable under the distance selling rules, the supply of goods in question must also include the supply of transporting the goods to the customer. It is this aspect of the rules that has been adapted by some suppliers in order to ensure that the place of supply remains the UK. Many businesses have made arrangements to split the supply of the goods and the delivery service by allowing the customer to choose to either collect the goods in person or, more likely to arrange transport of the goods by a separate entity (either an entity connected to the supplier of the goods or even a third party). This arrangement ensured that the supplier of the goods was not also supplying the delivery service and, in such circumstances, the place of supply remained in the UK.

The UK has now adopted the VAT Committee's interpretation of what constitutes delivered goods. This interpretation means that the supplier of the goods will be regarded as delivering the goods if it 'intervenes' in the delivery by arranging the transportation by either a connected or third party transporter, is involved in taking payment for the delivery of the goods or if he actively promotes the services of a transport undertaking and gives that undertaking delivery information.

Comment – whilst the VAT Committee interpretation of the rules is not legally binding, it seems likely that it will carry some weight if the matter ever reached the courts. This policy change means that businesses involved with the distance selling of goods to other Member States urgently need to review their VAT arrangements relating to the place of supply.

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