

REMOTE CROSS-BORDER TRADING IN THE POST-COVID LANDSCAPE

By Ruth Corkin



CUSTOMS

The COVID pandemic has opened so many opportunities to trade cross border using technology. However, the ease of trading remotely has also thrown up administrative and tax compliance burdens. For ease, this guide is split between goods and services.

Goods

In terms of visibility, the cross-border trade in goods is easier to monitor but also easier to see from a Tax Authority point of view. The rules are then often different between supplies to businesses and supplies to consumers.

Supplies to consumers

In general, where the supply is to a consumer, there is usually a requirement to register for indirect taxes. This is because there is usually no mechanism to collect the tax due on a direct sale to a consumer.

Outside the European Union ("EU"), the registration may take the form of an in territory registration for each of the countries where the consumers are located.

Within the EU, there are several registration options. A supplier may register in each of the member states where it has customers. This could be costly and the compliance burden high. Alternatively, there are three "one Stop Shop" ("OSS") options:

- Import one stop shop ("IOSS") for goods supplied by non-EU suppliers where the consignment value is less than €150. No customs duty is payable, but VAT is accounted for on the total value of supplies in each member state via a single return. Registration for IOSS is available in a Member State of choice (including Northern Ireland for these purposes.)
- Non-Union One Stop Shop ("non-Union OSS) can be used for goods of any value which are located in the EU at the time of sale to

the consumer. Again, it is a single return and payment in a member state of choice. Unfortunately, registration for the non-union OSS is not available in Northern Ireland at the time of going to print.

- Union one stop shop (Union OSS) is available for all businesses with an establishment in the EU. The OSS registration is in the member state of establishment. Again, the total transactions that have taken place in each member state are recorded on one return and one single payment is made to the tax authority in the member state of establishment. However, the registration is effected, the supplier must know the invoicing rules for each of the member states in which it is trading.

There may also be a requirement to pay or collect customs duty on behalf of the customer, particularly where the delivery terms are delivered duty paid. Where an online market place is used, the burden to account for VAT or other indirect taxes is often shifted to the OMP, rather than the underlying seller.

Supplies to businesses

Registration for indirect taxes where goods are supplied to businesses often depends on the Inco or delivery terms under which the goods are supplied. The problem Incoterms are usually Delivered Duty Paid or "DDP", as these terms will often require the seller to register for VAT and account for VAT and duty on the import.

In the U.S., if the seller is not located in any of the states, sales tax can apply where the customer is not going to resell the goods. It is wise to check the thresholds in each state where a supplier has customers, as the rules vary from state to state. In addition, there may be use tax payable in some locales (often defined by zip/postcodes). Usually, this use tax is withheld by the customer and paid to the relevant tax authority.

Several U.S. states have a “franchise” tax, and this is levied for the privilege of being able to trade in the state, so it is important that suppliers are aware of the various rules on a state-by-state basis. Other countries may not require registration for indirect tax but may require the purchaser to withhold any indirect tax and remit it to the tax authorities. This means that the supplier will receive a lesser amount of funds than perhaps they are expecting.

There are some countries that require the invoices to be notarised and apostilled before funds can be sent to the supplier.

Services

In many respects, the supply of services can be easier from an indirect tax point of view.

Supplies to consumers

Generally, the supply of services to consumers is taxable where the recipient is located and there is a requirement for the supplier to register there.

In the EU, most supplies of services to consumers can be reported via the Union or Non-Union OSS scheme, to avoid the need to register for VAT in every member state.

From a UK perspective, supplies of intangible services such as intellectual property, consultancy services etc., are not taxed in the UK if the recipient is outside the UK. From an EU perspective, many member states have not included the supply of such services within their OSS rules and so they are not taxed anywhere in the EU. One such example of this is the supply of online live training. This is treated as an intangible service in many EU member states and so it is not currently taxed unless the service falls within the “use and enjoyment” rules of a particular member state.

Supplies to businesses

Most supplies of services to businesses are taxed in the country where the recipient is located. In many cases, the recipient will account for any tax under a self-accounting or reverse charge mechanism and the supplier need not register. Other services may have tax withheld by the recipient which is then paid to the tax authority.

Generally, services that are supplied “on the ground” (e.g., land-related services, hotel accommodation, food, and beverage services) will be taxable in the country where the recipient belongs. However, many countries either operate a reverse charge for these services where the recipient is established in a country or will require the recipient to withhold the tax.

Whilst sales tax primarily applies to goods in the U.S., it is becoming more likely that services are also caught, particularly where these are electronically supplied. This could potentially mean registration for U.S. sales tax in several U.S. states.

In the EU, there are often reverse charges where the supplier is not established in a member state, but the recipient is either established or VAT registered in that member state. This is usually for services where the place of supply is in a particular member state because of the place of supply rules. An example of this is commonly construction services where the recipient is either established or VAT registered in an EU member state. This is because construction services are land related supplies and are usually taxed where the land is situated.

Use and enjoyment rules

These primarily exist in the UK and EU. They are designed to tax the supply of services which would normally be taxed elsewhere but are used and enjoyed within the country concerned. They can apply to supplies to businesses or consumers or to both.

An example is where a U.S. lessor leases goods to a person in the UK (or EU), but the invoicing is to another U.S. company. If the normal place of supply rules are used, this transaction would not be taxed. Under the use and enjoyment rules, the overseas lessee is ignored, and the lessor must register for VAT in the UK (or EU) and account for VAT on the supply. This would then be a cost to the U.S. lessee and puts the lessee in the same position as if the goods were leased from a UK (or EU) business.

“Green” taxes

These often fall under the remit of indirect tax and include such taxes as plastic packaging taxes, environmental levies, air passenger duties, etc. It is the direction of travel in most countries for the taxes to be indirectly levied.

Digital services taxation

Increasingly, the provision of digital services is being taxed. For some countries, it is in the form of a corporation or corporate income tax charge, but there is a move to impose these taxes indirectly (i.e., at the point of sale).

Key points to consider when trading cross border:

- What is the status of your customer?
- What are your delivery terms? (For goods)
- Are there any special rules for selling via an OMP?
- Are there any special rules for the types of supplies that you are making in the country or countries where your customer(s) belong?
- Are there any other taxes that may apply?



Ruth Corkin has been involved with VAT for over 30 years. She started her VAT career as a Customs and Excise Officer in Essex and then moved into consultancy with a variety of well-known accountancy firms. She is well known in the VAT world and is the proud author of many articles and technical works.

She took a career break of 12 years to raise her family and also ran her own business during this time, which gave her an insight as to how businesses are run and the support that owners need to help with growth.

Ruth is currently the Technical Chair of the VAT Practitioners Group and, as part of that role, she sits on numerous committees with HMRC representatives at a high level, including the one for the implementation of “Making Tax Digital” relating to VAT. These committees provide a useful forum for learning about legislative and policy issues and changes. She is also responsible for the technical output for the VPG, including consultation responses and was instrumental in ensuring that HMRC did not change its policy on the recovery of VAT on goods and services purchased prior to registration.



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