VAT Registration

Unravelling the Complexities
2nd edition

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3. Defining "supplies"

3.1 Situations regarded as supplies

Since VAT registration is based on "supplies" made by the entity, this begs the question as to how one determines when supplies have been made. The following examples help to illustrate what is or what is not a supply, or what the value of the supply could be. This issue needs to be explored in some depth to avoid a mishap.

3.2 Barter

Barter is where, without using any monetary value, or exchange of money in any form, one party agrees to do something for another party in return for that party doing something for it. This can be a barter of goods, or of services, or a mixture of these.

Example

Garside Ltd agrees to paint the premises of Thurston Ltd, in return for Thurston Ltd providing an interest free loan to Garside Ltd. This is a two-way transaction. Garside Ltd has provided a decorating service which is taxable. Thurston Ltd has provided credit which is an exempt supply.

The position is exacerbated in this case by the fact that Thurston Ltd presumably cannot reclaim VAT, because it is making exempt supplies. It is tempting to ignore the barter and to say that there has been no supply by either party. This is incorrect. There is a value to the painting job, and if that value, together with any other monetary transactions carried out by Garside Ltd, exceeds the threshold, then it must register for VAT and in due course account for VAT accordingly. Thurston Ltd makes an exempt supply so that does not trigger the need for it to register for VAT, but the value of its exempt supply is, objectively speaking, the interest it forgoes in consideration of receiving the "free" decorating service. In theory the value of the decorating service should be identical to the value of the interest forgone on the loan.

The "tax point" for the decorating service would be deemed to be the date on which the service is completed, unless any consideration was paid during the course of the job. That could be the case here

because it may be that the first payment of interest which is not charged would arise part way through the job, thus crystallising a value. However, if that would not be true until after the job was completed, then the time of supply is the date of completion of the job itself.

Accordingly, all of the value of the interest which is not to be charged could be regarded as the proxy value for the decorating service. Since the decorating service would have been completed for VAT purposes at that point in time, it is the entire rolled up value of the interest forgone by Thurston Ltd which would be regarded as the value applicable to Garside Ltd's decoration service at that point in time (or the equivalent net present value). It is possible, however, that Garside Ltd could try to substitute a genuine market value for the decorating service if it believes this is lower than the interest which Thurston Ltd decides to forgo. HMRC might want to know why it would be lower, and why that would be a reasonable bargain for Thurston Ltd to strike, but that, at least, is a point that can be argued in Garside Ltd's favour if it would produce a better result.

However, assuming that either the value of Garside Ltd's services or the value of the interest forgone by Thurston Ltd amounts to something in excess of the VAT registration thresholds (or, does if combined with Garside Ltd's other monetary turnover) then either the "look forward" or the "look back" test may be engaged by this interaction.

The point is extremely easily missed. HMRC did not notice it in the case of *Storer* in which the Tribunal held that two seaside caterers bartered by exchanging alcoholic drinks for portions of fish and chips, thus creating mutual taxable supplies (which HMRC had wrongly thought were mere private use of the goods).

Case: *MG & ND Storer v HMRC* [2017] UKFTT 776 (TC)

3.3 Face value vouchers

This book does not cover the myriad complexities of face value vouchers, but it should be noted that many face value vouchers do not create a "supply" when they are "sold". They are treated as being merely an exchange of cash. The supply comes when they are redeemed. But there are complex exceptions, so any business that is involved in vouchers of this kind will need to refer to guidance on

this topic and then apply those rules to the registration requirements.

3.4 Imported services

A common oversight is the failure to understand the counter-intuitive rule that, where services that are subject to the "reverse charge" are imported, the value of the imported services is treated as a value of taxable supplies made by the importer (at least as regards certain classes of such services). This only applies where the imported services are themselves taxable. This is rooted in the fact that imported services are deemed to be taxable supplies made by the importer.

In practice there are very few services when imported from an overseas entity that are not subject to the reverse charge if imported by a UK entity. However, whilst most services are subject to reverse charge accounting when imported by a VAT-registered entity, the range of services that give rise to the need for their importer to register on the basis that the purchases are deemed to be taxable supplies is narrower.

Law: VATA 1994, s. 8

Excluded imported services

The services that are *excluded* from this regime (when considering the registration rules on their own) are ones listed in VATA 1994, Sch. 4A. These need to be considered in detail in each case, but are broadly as follows:

- land related supplies;
- passenger transport;
- hire of means of transport;
- cultural, educational, and entertainment services;
- catering;
- hiring of goods;
- transport of goods;
- electronic and telecoms services.

Hence, all other services when supplied to a UK established entity, acting in furtherance of its business, are covered by the reverse

charge where the effect is that the supply is deemed to arise in the UK.

Example

A UK business entity which is in start-up mode, or which is largely exempt and thus not registered, imports a service from abroad and is thus not charged UK VAT. The likelihood is that this import value will be considered to be a value of taxable supplies made by the importing entity.

By definition, this cannot apply to non-established entities, since they cannot be deemed to import a service because they do not have an establishment in the UK. It also does not apply where the service is provided by another division of the same legal entity as the importer (subject to a potential exception effective from January 2016 where that overseas division is part of a VAT group in some – not all – EU member states, and which is covered in R&C Brief 18(2015)). Nor does it apply where the service is not to be used for the business purposes of the importer.

Practical example

A common example of this problem might be as follows: a UK entity, Willman Ltd, makes taxable supplies to a value of £60,000 per year and its other supplies are exempt from VAT.

Willman Ltd wishes to license its corporate identity to an overseas operation. By way of preparation, it commissions two services, one a consultancy service from a supplier in the jurisdiction in question and the other a legal service from that same jurisdiction. Both of these service providers will not be charging either UK VAT or local VAT because the services are such as should be self-accounted under the reverse charge.

Assume that the fees in aggregate are £30,000. Willman Ltd thus imports £30,000 of such services, producing an annual aggregate taxable turnover of £90,000 (£60,000 + £30,000) for that year. This exceeds the UK VAT registration threshold (at the time of writing), meaning that Willman Ltd will need to register for UK VAT, probably under the look-back test. The look-forward test could also be engaged, of course, if the figures were higher than this.

Law: VATA 1994, s. 8

Barter interaction with reverse charge

This, of course, can also be combined with the difficulty entailed in "barter". Say the UK entity can provide something of benefit to the overseas lawyer, and they agree to swap services. It is tempting to think that there is no VAT registration connotation here. If the services provided to the overseas lawyer are themselves treated as "outside the scope of UK VAT", or would otherwise be exempt from VAT, then those services of themselves do not give rise to the need to register for UK VAT on the part of their supplier. But imported services, to which no clear monetary value is attached, could do, as they would be regarded as the making of taxable supplies in the UK. Therefore barter, combined with the reverse charge, creates a potential timing problem for VAT registration.

Exceptions to reverse charge registration

However, the exceptions to the reverse charge registration treatment can create scenarios where UK VAT registration does not impact on the importer. For example, if a UK based supplier of residential rental property imports an estate agent's service in relation to a UK property he intends to purchase, then the rule is not engaged, as this service is excluded from the VAT registration remit by being included in Schedule 4A. However, in that case the non-UK established agent has a liability to register for and charge the VAT.

Another exception might be where a business based solely in another EU state, but with residential rental properties in the UK, commissions a non-UK property consultancy to prepare a report on the general UK "property scene" to help inform future choices. The service imported is not one that relates to "land" (being insufficiently precise in its relationship with specific sites) and thus is of the type that might have necessitated registration on importation. However, the business that imports it is actually established outside the UK (assuming that this is the case under the establishment rules), and the result is that it imports the service into the country in which it is established, and not into the UK. Thus, despite the business in question relating to UK sources of income, there is no basis on which the recipient of the services is registerable for UK VAT.