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Readers' forum: Company VAT registration

27 July 2021

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Non UK-based company registering to VAT.

Our client is SerCo, a limited company registered in the UK. The company is run by its sole director and shareholder from his residence in the Netherlands and it provides consultancy services to business customers which are at present all EU-based, although the company expects that UK clients would approach it for services in the future.

SerCo is registered at a virtual address in the UK, where post received is scanned and emailed over, and where the company register is held by the office provider, and it also uses the services of our UK firm for preparing and filing the company's annual accounts and tax returns.

SerCo incurs VAT on services provided to it by some EU suppliers. There is also the accountancy services provided by our firm to consider. The company is able to lease a London office which is available for its use, although in practice it is unlikely to be used at any point.

With no UK presence, can an application to register to UK VAT be made by SerCo and if so, what would be the implications for the company's customers?

Query 19,785 – Gunter.

Company should be entitled to register

To determine SerCo's eligibility to register for VAT in the UK, there are 'place of establishment' rules to consider. *Planzer Luxembourg Sarl v Bundeszentralamt fur Steuern*, (Case C-73/06) [2008] STC 1113 describes a place of establishment as 'place of a company's central administration' with a mention of 'place of residence of the main directors' as being taken into account. Further, it also states that a fictitious presence such as that of a 'letter box' or a 'brass plate company' does not constitute as a place of establishment. Therefore, the director's place of residence in the Netherlands seems likely to be the main establishment.

Given that SerCo may lease a UK premises, it is important to note the 'fixed establishment' rule as defined by *G Berkholz v Finanzamt Hamburg-Mitte-Altstadt* (Case C-168/84). Under this case, a business is regarded as having a fixed establishment separate to its main establishment 'only if the establishment entails the permanent presence of both the human and technical resources necessary for the provision of services'. Therefore, an empty premises may not constitute as a fixed establishment within this definition.

Albeit, under VATA 1994, Sch 1 para 10, a company is entitled to register in the UK if it makes supplies outside the UK which would be taxable if they were made in the UK and has a business establishment in the UK or the usual place of residence is in the UK. Even if the business does not appear to have a 'main' or 'fixed establishment in the UK, para 10(4b) provides that 'usual place of residence for a company is where it is legally constituted'.

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Therefore, SerCo should be entitled to register for VAT in the UK under the given provision.

The querist mentions that VAT is charged to SerCo by some EU suppliers. Under Art 9 of Council Directive 2006/112/EC, there is no registration requirement in order for a business to be regarded as a business-to-business supply. Hence, these supplies would come under the reverse charge rules and subsequently, no VAT is charged on the invoices. Therefore, the querist should seek further clarification with the suppliers.

Under the reverse charge rules, SerCo will not have to charge VAT on the services supplied and the customer will also account for a reverse charge on its own VAT return. This is irrespective of whether SerCo registers for VAT in the UK and still remains the case post Brexit. – [Elman Wall, a Xeinadin company.](#)

The company's limited presence may not be a fixed establishment

From the facts as stated and the EU law in the implementing regulation (282/2011/EU), the company is 'established' in the Netherlands.

The UK is no longer subject to the implementing regulation, but *Notice 741A* also suggests that this would not be a fixed establishment. Paragraph 3.3 closely follows the regulation in defining the main 'business establishment', which would surely be the director's home in the Netherlands.

Without a fixed establishment in the UK, and in the absence of any supplies of goods made here, the company has neither obligation nor right to register for VAT here. While its customers are all elsewhere in the EU, it makes no supplies that are deemed to be in the UK; if it does acquire UK business customers, they will be required to account for a reverse charge on a supply received from abroad.

If the company makes any supplies of consultancy to non-business customers, those supplies would be deemed to be made where the supplier belongs (the Netherlands) and would not be subject to UK VAT; they would also not be subject to Netherlands VAT, because EU law would shift the place of supply to the UK.

The accounting services should be treated as outside the scope of UK VAT. The company should be registered for VAT in the Netherlands and should account for a reverse charge there on its VAT return. I recall hearing of HMRC arguing that services supplied to a UK incorporated company to enable it to comply with UK statutory obligations 'had to be charged to UK VAT', but there is no legal basis for this if the supply is business-to-business and the customer is only established in another country.

It is not clear what is meant by the statement that the company 'is able to lease an office'. If it does, that might incur VAT on rent, which would not be reverse charged as it is a purely UK supply. It could be claimed back from HMRC using the procedures set out in *Notice 723A*. – *Gardener*.



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