

UKVATAGENT LTD

UK Tax Representatives – A view (Summer 2020)

I am writing to express a view on UK Tax Representatives after 31 December 2020.

Here I am concentrating on three aspects: -

- 1 What is a tax representative and when must you have one;
- 2 For EU businesses explaining the current tax representative rules in the UK and providing a view as to whether they will change; and
- 3 Providing an explanation as best I can to UK businesses the circumstances in which they may be required to appoint a tax representative in the remaining EU member states.

My prime assumptions

Right now it looks like we are headed for a “no deal” Brexit (ref Bank Of England, German Chancellor) – I don’t believe that there is any such thing as a “managed no deal” (although I do expect that to be trotted out again in the coming months). Accordingly, my views are based on that assumption. I would add that I will be absolutely delighted if this turns out to be the most useless article I have ever written on the basis that a deal is done including various VAT simplifications so that, at least for a few years, VAT rules on trade between the EU and the UK remain, to all intents and purposes, unchanged.

One of our businesses is UK VAT Agent Limited, and so I write from a position of practical experience, but that only gives me a minimal head start given that like everyone else I am left guessing for the time being.

“Guessing”? Really? Well, not completely. We know the existing VAT regime for third countries and my biggest assumption is that this is what we will be working with from 1 January 2021.

What is a tax representative and when must you have one?

A tax representative, also known as a fiscal representative or a VAT representative, is someone who stands in the shoes of a taxpayer in a foreign country where the taxpayer is required to have a VAT ID (“local VAT ID) in that country.

Until 31 December 2020, a UK business is not required to have a tax representative in another EU member state. Similarly, a business from another EU member state is not required to have a tax representative in the UK. There are exceptions around protecting against avoidance and evasion.

UK VAT Agent Limited, trades as UK VAT Agent Chartered Tax Advisers

Registered office Rhossili 96 Cecily Road Coventry CV3 5LA

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From 1 January 2021 the UK is a third country and UK businesses no longer have the EU exception – so in most countries will be required to have a tax representative for their local VAT ID. The list of instances where a local VAT ID is required will be extended considerably having lost the many EU VAT simplifications for intra-community trade (articles on individual aspects will follow over the coming weeks).

And the reverse is true for EU businesses requiring a local VAT ID in the UK – and again, the instances where one will be required are extended greatly with the loss of EU simplifications.

I guess the best advice for UK and EU businesses is to ask an international VAT specialist sooner rather than later.

For EU businesses explaining the current tax representative rules in the UK and providing a view as to whether they will change

I am assuming “no deal”. So, in theory there is no way of avoiding the requirement for an EU business to appoint a tax representative. It would be a fairly simple process to retain the status quo – the UK entering into reciprocal arrangements with each member state. I am sorry, but right now I just cannot see that happening as the UK co-operating with the EU appears to be politically unacceptable in the UK. But in the words of Harold Wilson (a former UK Prime Minister), a week is a long time in politics.

So that aspect of the current tax representative rules will change.

But in certain circumstances it is possible for a business from a third country (say the United States) to register for VAT in the UK without a tax representative. The first is to appoint a UK VAT Agent. The second is to register direct with HMRC at the Non-established Taxable Person’s Unit (“NETPU”).

Dealing with NETPU first, there are rumours it will become a cost saving – it may go. In addition, it is not a tax adviser or accountant, and therefore it has a limited range of support it can offer.

A UK VAT Agent can do everything a fiscal representative can do. It stands in the shoes of the taxpayer. However, it does not carry joint and several liability – a big downside for the tax representative. To be clear, if the taxpayer does not meet a tax liability, the tax representative must pay it. What follows on UK VAT agents is taken from section 11.6 of Public Notice 700/1: -

“As long as HMRC has not directed you to appoint a tax representative, you can appoint an agent to deal with your UK VAT affairs. Any arrangement you make will be subject to whatever contractual agreement you and your agent decide. We cannot hold your agent responsible for any of your VAT debts. We reserve the right not to deal with any particular agent you may choose to appoint. In some circumstances, if we think it’s necessary, we may still insist that you appoint a tax representative.”

“As with the appointment of tax representatives:

- *you may only appoint one person at a time to act as your agent (although an agent may act for more than one principal)*
- *you must still fill in the appropriate form to apply for registration (see paragraph 4.1)*
- *we’ll need your authority before we can deal with your agent - in the case of agents, the authority should be in a letter. We’ve suggested a form of words at paragraph 11.7*
- *you’ll need to give your agent enough information to allow them to keep your VAT account, make your returns and pay VAT on your behalf”*

There are two points to raise here.

The first is to consider appointing a tax agent before you apply for registration and are told to use a tax representative.

The second is that UK VAT Agents are required to comply with the Trust and Service Company (“TSCP”) provider legislation – despite also being managed by HMRC, the TSCP requirement is not mentioned in the VAT Notice.

In order to be registered as a TSCP, the VAT Agent must satisfy HMRC that it is a “fit and proper person”. What follows comes directly from [the guidance](#) on the Gov.UK website: -

“We’ll ask for evidence of your honesty and integrity to prove you can understand and fulfil your obligations under the regulations.

“To reach a decision we’ll consider a range of information including whether you have:

- *been convicted of or are being investigated for money laundering or other offences involving dishonesty, fraud, or financial crime*
- *been disqualified from acting as a company director*
- *been subject to a confiscation order under the Proceeds of Crime Act 2002*
- *a track record of consistent non-compliance with the Money Laundering Regulations, or with the EU Payments Regulation which applies to money transmission service providers*
- *been disciplined or expelled by another supervisor or professional body for regulatory or professional failings*

Members of certain professional supervisory bodies automatically pass the test – we are supervised by the Chartered Institute of Taxation. We are a fit and proper person and registered for these requirements. Within our professional requirements, we are required to hold an up to date [Disclosure and Barring Service](#) check. All of our team have been checked and we have done so for a number of years primarily because we work with vulnerable people. When seeking to appoint an agent, please check that the provider is TSCP registered.

When it comes to the appointment of a tax representative, in the UK there are also requirements. Once again, what follows is taken from Public Notice 700/1: -

“11.3 When HMRC can make you appoint a tax representative

“HMRC can direct some NETPs to appoint a tax representative who must be:

- based in the UK
- fit and proper (see paragraph 11.4)

“We cannot direct NETPs who are established in EU member states, or who are based in countries where certain mutual assistance arrangements exist. *(Author’s note – the EU exception goes, but as stated earlier a reciprocal arrangement would suffice to avoid the need to appoint a tax representative. Right now that seems to be politically unacceptable in the UK).*

“11.4 What makes a tax representative fit and proper

A tax representative must meet or exceed a particular level of suitability, compliance and integrity in how they conduct, or appear likely to conduct, their tax affairs with HMRC.

“When deciding whether a particular individual is a fit and proper person to act as a VAT representative for an NETP, HMRC will use the following criteria. A person may not be accepted if they:

- have been disqualified as a director under company law
- are or have been involved in crime and or have relevant criminal convictions, for example, conviction involving dishonesty or deception
- have had previous requests for a similar role in VAT or any other tax or duty regime revoked or refused
- have personally received penalties for deliberate wrongdoing
- have any connection with the business they wish to represent, or with key persons involved in that business, or with any non-compliant or fraudulent businesses
- have fraudulent trading history
- hold no assets and have no insurance
- have not fulfilled their own tax responsibilities, for example not paying their own VAT liabilities or not submitting their personal tax returns
- have outstanding, unmanaged HMRC debts or a history of poor payment
- submit or have previously submitted, an application that is inaccurate and incomplete and is an attempt to deceive, for example the hijacking of another person’s name
- are bankrupt or in a IVA (Individual Voluntary Arrangement)

“This list is not exhaustive. HMRC may refuse to register you for reasons other than those listed, if they have justifiable concerns about your suitability to be approved as a tax representative.

“If HMRC become aware of information that suggests a person may not be a fit and proper person, they may refuse to register them as a tax representative.”

So once again two points – a tax representative must be from the UK. Currently many EU businesses use their regular VAT adviser to act for them when preparing and submitting UK VAT returns. That will no longer be possible, and I suggest that you commence to look for a UK based alternative as soon as possible.

Secondly, the fit and proper test must be passed. We are assured that being supervised by a professional body and registered for TSCP means that we are automatically treated as a fit and proper person

Will these rules change?

I think the risk of losing the NETPU is higher than the VAT Agent route being removed. But it is possible that the VAT Agent route may also be scrapped. It will not save HMRC any money in administration, and nor will it make the tax any more secure. But it is possible it could go through a political decision.

I think the most likely change will be to require VAT Agents to be based in the UK – the same as for tax representatives. That is logical given that the mutual assistance legislation will drop away from 1 January 2021 – the UK cannot ask, say, France to enforce a decision or collect a debt.

But, as explained above, the status quo will be disturbed.

UK businesses - the circumstances in which they may be required to appoint a tax representative in the remaining EU member states.

This is my best estimate right now. There may be more circumstances that I have not picked up - so the most important point is to check with an international VAT adviser. The list concentrates on B2B supplies, but there are similar issues with B2C supplies.

- 1 supplies of goods with services;
- 2 installation of goods including also commissioning and training (not identical to above);
- 3 construction or demolition of a building or permanent structure (such as pipelines for gas, water or sewage)
- 4 surveying and assessing property
- 5 valuing property, including for insurance or loan purposes, even if carried out remotely
- 6 providing accommodation in hotels, holiday camps, camping sites or timeshare accommodation
- 7 maintenance, renovation and repair of a building (including work such as cleaning and decorating) or permanent structure
- 8 property management services carried out on behalf of the owner (but not the management of a property investment portfolio)
- 9 arranging the sale or lease of land or property

- 10 drawing up of plans for a building or part of a building designated for a particular site
- 11 services relating to the obtaining of planning consent for a specific site
- 12 on-site security services, even if provided remotely
- 13 agricultural work on land (including tillage, sowing, watering and fertilization)
- 14 installation and assembly of machines which, when installed, will form a fixture of the property that cannot be easily dismantled or moved
- 15 the granting of rights to use all or part of a property (such as fishing or hunting rights and access to airport lounges)
- 16 legal services such as conveyancing and drawing up of contracts of sale or leases, including title searches and other due diligence on a specific property
- 17 bridge or tunnel toll fees
- 18 the supply of space for the use of advertising bill boards - for example the leasing of a plot of land or the side of a building to allow a billboard to be erected
- 19 the supply of plant and equipment together with an operator, where the supplier has responsibility for the execution of the work to the land or property
- 20 the supply of specific stand space at an exhibition or fair without any related services
- 21 restaurant and catering services;
- 22 admission to an event;
- 23 passenger transport;
- 24 freight transport;
- 25 hire of means of transport;
- 26 work on goods (say alterations, repairs or warranty work);
- 27 Consignment stocks;
- 28 Call off stocks;
- 29 Import of goods in your own name into a member state/UK and then sale of those goods;
- 30 Purchase of goods within the EU/UK and distribution of those goods from the point of purchase.

I have not gone into specialist areas such as telecommunications, broadcasting, natural gas and electricity.

Summary

I have tried to set out the issues, will have missed some as that is the nature of the beast.

From 1 January 2021 I can see the need for tax representatives expanding both in the UK and in the EU. This will cause issues for businesses, but it will also cause issues for tax authorities. The B2B simplifications are there for the tax authorities as well as the taxpayers, after all who want tax registration where, effectively, no net tax is collected.

I suspect that within two or three years of a no deal Brexit, efforts will be made by the UK and other countries to clear the ground once again. But I do not see it happening by 1 January 2021. So, businesses will need to get on with the necessary registrations. They will also need to acquire Making Tax Digital compliant computer software for their UK VAT returns – we supply that through our partnership with the international accounting giant Xero.

Contact details

Steve Botham

E steve.botham@covertax.co.uk

T +44 (0) 845 643 5450

W www.ukVATAgent.co.uk

www.covertax.co.uk

M + 44 (0) 7850 050246

Nina Basra

E nina.basra@covertax.co.uk

T +44 (0) 845 643 5450

Bryan Williams

E bryan.williams@covertax.co.uk

T +44 (0) 845 643 5450

Rachel Cody

E rachel.cody@covertax.co.uk

T +44 (0) 845 643 5450

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