

# Bird & Bird

## VAT and e-commerce

e-commerce

### VAT requirements for companies not established in the European Union (“EU”) or Great Britain (“GB”)

Compliance with local VAT rules is key for offerings of goods or services through a website or an online marketplace. Failing to comply can be extremely damaging to your business, ranging from fines, civil claims for breach of contract and reputational damage.

EU/GB VAT compliance requirements are not limited to local companies or local supplies but also apply to non-EU or non-GB companies offering goods or services to EU/GB consumers from outside the EU/GB.

### When are you liable for local VAT?

Companies not established in the EU or GB are liable for local VAT when selling goods or supplying services to consumers in the EU respectively in the GB:

E-commerce activity	EU VAT	GB VAT	
<p>Supplying electronic services</p> <p>Such services range from website supply, web-hosting and accessing or downloading software or content.</p>	YES	YES	<p>The diagram illustrates the VAT flow for electronic services. A 'Foreign supplier' (represented by a bank icon) provides an 'Electronic service' (represented by a cloud icon) to an 'EU/GB consumer' (represented by a person icon). The consumer pays 'VAT payment' (represented by a Euro symbol) to the 'Tax Authority' (represented by a Euro symbol). The supplier also pays '+ local VAT' (represented by a bank icon) to the Tax Authority.</p>
<p>Selling goods at online marketplaces</p> <p>Online marketplaces such as web shops, platforms or portals – that facilitate the supply of “low value” (&lt; EUR 151 / GBP 136) goods being shipped by the foreign supplier.</p> <p>Even though the EU and GB have similar VAT systems, divergence exists since Brexit. In the EU, the declarant (usually the EU consumer or carrier) is liable for EU import VAT unless the Import One Stop Shop (“IOSS”) is used to avoid double taxation. In GB, the import VAT is exempt.</p>	YES	YES	<p>The diagram illustrates the VAT flow for goods sold at online marketplaces. A 'Foreign supplier' (represented by a bank icon) provides a 'VAT-exempt supply' (represented by a laptop icon) to an 'Online marketplace' (represented by a laptop icon). The marketplace then provides a 'Physical flow' (represented by a box icon) to an 'EU/GB consumer' (represented by a person icon). The consumer pays 'VAT payment' (represented by a Euro symbol) to the 'Tax Authority' (represented by a Euro symbol). The marketplace also pays '+ local VAT' (represented by a bank icon) to the Tax Authority.</p>
<p>Shipping goods directly</p> <p>The sale and supply of “low value” (&lt; GBP 136) goods imported in the GB and consigned by the non-GB supplier are subject to GB VAT and exempt from import VAT. A similar scenario in the EU would attract VAT liability on import unless the non-mandatory IOSS is used.</p>	NO	YES	<p>The diagram illustrates the VAT flow for direct shipping to GB. A 'Foreign supplier' (represented by a bank icon) provides a 'Physical flow' (represented by a box icon) to a 'GB consumer' (represented by a person icon). The consumer pays 'VAT payment' (represented by a Pound symbol) to the 'Tax Authority' (represented by a Pound symbol). The supplier also pays '+ GB VAT' (represented by a bank icon) to the Tax Authority.</p>

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## What should non-EU/GB online suppliers do?

- Register for VAT purposes;
- Submit periodic VAT returns, charge and account for VAT;
- Keep records of the sales in your administration.

## How can we assist?

- VAT-registration through the One Stop Shop (“OSS”) and/or IOSS;
- Reviewing your existing website and/or mobile application at a fixed cost for an overall assessment for compliance with local VAT rules;
- The submission of a voluntary self-disclosure in GB and/or in the EU Member State(s) concerned in the event of non-compliance, which is recommended to prevent or mitigate possible penalties.

## Our key experience:

- Assisting a US-based e-commerce company that provides domain name registration services and marketplace services for the buying and selling of domain supplier with VAT compliance related to its sales to consumers and businesses in the EU/GB;
- Providing legal advice to and negotiating with the tax authorities in the EU on behalf of a US-based services supplier of virtual private network related services in view of its VAT exposure in the EU;
- Assistance with reviewing VAT provisions in commercial agreements between foreign suppliers and online marketplaces to ensure VAT compliance as well as a proper balance of responsibilities.



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