

18 December 2014

Rt Hon Sir Gerald Kaufman MP
House of Commons,
London,
SW1A 0AA

Dear Sir Gerald,

I would like some help with an issue I have with HMRC concerning VAT. As I hope you are aware there are new regulations coming into effect on January 1 next year governing the supply of electronic services by small businesses. Such businesses will now have to register for VAT and charge different rates of VAT depending on the “delivery address” of their customers in different EU countries. I have been planning to set up such a business to supplement my pension when I retire within the next few years.

I have looked at the relevant guidance published by HMRC and have found it wholly inadequate. I have attempted to contact HMRC using their web-based enquiry system but I have had no useful response. I know of other people also looking for clarity who have received unhelpful and misleading advice from HMRC. As one of the services I intended to offer via my business is advice on setting up small businesses I am keen to get definitive decisions that I can put forward to others.

I do have the technical knowledge and skills to set up an e-commerce web site and have done so in the past for a medium-sized company. However the information I need to design similar systems under the new rules has not been made available by HMRC.

I would be grateful if you would help me elicit answers to the questions I have enclosed with this letter.

Yours faithfully

Bernard Peek

Annex 1

Questions for HMRC

1. Reference is made to the “delivery address” for electronic services. However as electronic services do not support such a concept this is obviously not possible. Reading between the lines of the guidance notes it appears that it will be sufficient to provide what is usually referred to as a “billing address.” This is the address given to the bank or credit-card company when setting up the account. Is this interpretation correct?
2. Small businesses do not routinely collect this information from their customers and very rarely from purchasers of electronic services. Typically the vendor may only have an email address to identify the customer, perhaps with a “name” which may or may not be their real name. Small and medium-size businesses usually use a payment-processor for credit-card payments. The processor collects the information that HMRC is asking for, verifies its accuracy and passes the result of the verification and only the result of the verification to the vendor. Typically the vendor receives a result indicating the success of the transaction and the last four digits of the customer's credit-card number. Some processors such as PayPal only provide an email address for the customer. The processor may also indicate the country of the customer's billing address. All of this information is delivered to the vendor after the payment is made and so before the correct VAT rate has been established.
 1. Is it sufficient to accept the processor's data on the location of the billing address without further corroboration?
 2. If so will the HMRC data processing systems be prepared to accept this by their January?
 3. Needing to know the transaction value before the VAT is known can be managed by using a single VAT-inclusive price for the services even though that results in different prices to the vendor between sales in different countries. Does this conflict with the free-trade principle of single prices throughout the EU?
 4. If HMRC does not accept the processor's information on the billing address there are some available options. I need to choose between them.
 1. I can ask the customer to enter the address information separately as part of the process of setting up an account. Keeping the information to the minimum required by HMRC will allow me to skirt the requirements of our current data-protection legislation but it means that the data is not verifiable. If the customer gives me an address on Pennsylvania Avenue, Washington DC I may suspect it but I will not be able to verify it. Is this acceptable?
 2. I can request the real information from the processor. This is information covered by the PCI-DSS system and the data protection acts in various parts of the EU and elsewhere in the world. Persuading

the processor to release that information will probably require a court order for each transaction. Who is going to finance an estimated 1,000,000 new court-cases each year in the UK? Is legal aid available to pensioners such as myself? Will it cover actions against non-EU processors such as PayPal?

3. I can ask the customer to register a notional address in their own country, for instance UK customers would all register an address in Whitehall SW1 1AA. This seems more in the spirit of the data-protection legislation. Is this adequate?
4. I could collect the credit-card and bank account data myself, which is what the HMRC guidance notes appear to require. I could register as a PCI-DSS data-processor, and also register with the Information Commissioner. There would be a substantial capital and ongoing cost for doing that. There are estimated to be on the order of 10,000 UK businesses and making them compliant would cost on the order of £500,000 each. There would be ongoing running costs of about £100,000 per year for each business. If this is required can HMRC recommend where I should look for a lender who can offer me a suitable loan at a rate that I can repay from my state pension?
5. I have heard of businesses attempting to register using the new VATMOSS service and being turned away because their business is too small. Is HMRC aware of this ever happening? If there is a lower limit to the size of business what is it? If the limit exists can HMRC confirm that businesses below that limit will not later be prosecuted for failing to register.
6. I have myself attempted to register for VAT using HMRC's online service. The documentation for this is inadequate and if I cannot understand it then the target audience for VATMOSS has no chance. I suggest rewriting the instructions with a reading-age of about 14 as a guide. Will HMRC have a working site ready, of at least genuine beta quality, for the opening of registrations in January?
7. Answers to all of the questions above are necessary before I can begin to design IT systems that I might need if I were to register in 14 days time. Does HMRC have sufficient staff available over the Christmas period for me to obtain further information?
8. Will HMRC provide me with a summary of its communications with the card-processors, or will I have to resort to a Freedom Of Information request?
9. All of the questions so far have been predicated on the business I set up being relatively straightforward. I could opt to set it up using Kickstarter or similar. I know that other potential business owners have asked HMRC for clarification on the tax issues involved. Will HMRC provide me with a copy of its advice to businesses contemplating Kickstarter and similar services?

29 December 2014

Rt Hon Sir Gerald Kaufman MP
House of Commons,
London,
SW1A 0AA

Dear Sir Gerald,

Thank you for the acknowledgement to my letter of 18 December with reference to the new VAT regulations due to come into effect in two days from today. HMRC have not replied directly to me but have published updated guidance notes which answer most of the essential questions I posed. Thankfully a friend was able to inform me that HMRC published new advice today. But even with the new guidance some questions are still unanswered and the new notes give new conflicting advice on some issues. I therefore have further questions.

The advice requires the UK business to request the customer to give an address. However it offers no guidance on what to do if the address is suspicious. If the customer gives their address as 1600 Pennsylvania Avenue Washington DC I will calculate the price for them as VAT-free. After I have completed the sales transaction I may find that their payment-processor believes them to be a resident of the EU, possibly even the UK. To whom should I report this apparent fraud? Should the cost of the fraud be borne by me or by HMRC? If by me can I make a claim for criminal injuries compensation?

Similarly HMRC require me to ask my customers whether they are an individual or a VAT-registered business. If they claim to be a business based outside the UK they will again receive a VAT-free price. They will have to give me a VAT registration number, how do I validate the number they provide? Is there an automated validation service that I can access across the Internet? If so where is it and what service-level guarantees does it offer? Who offers technical support for integrating HMRC systems with mine?

The new guidance notes introduce a new requirement to take into account each EU country's variable VAT rates and VAT exemptions. I can certainly design systems to take those into account but requiring me to implement such a system at two days notice is I feel unreasonable.

Pragmatically the only way this can be implemented is if HMRC provides an automated facility to inform small businesses of the required VAT rate for any given permutation of product and EU country. If HMRC do not yet have such a system set up then I can design such a system and manage its implementation. Although getting such a system designed, tested, implemented, tested, documented and publicised in

time for it to be usable by January 1 is beyond my capabilities. I may be good, but not that good. No doubt HMRC already have this in hand.

The new guidance notes introduces more new requirements based on the current location of the customer. If the customer is domiciled in one country but accesses electronic services from another country it is unclear which rates apply. The guidance notes are inconsistent on this matter. If the customer uses their UK credit-card from a phone box in Spain then different parts of the notes advise me to charge UK and Spanish VAT. Further, if they are on board a boat travelling from Italy to Spain I should charge Italian rates regardless of the customer's permanent or temporary domiciled address. More clarification is required.

I can comply with the requirements if I know the current location of everyone within the EU, residents and visitors. If HMRC can arrange for me to be provided with this information I can endeavour to

The notes are silent on which rates I should apply if an extended transaction is started in one country and finished in another.

I have left the original list of questions attached to this letter. I have highlighted the questions that are still unanswered. At the time of writing we have exactly 49 hours before the new regulations come into effect. I trust that you can persuade HMRC to reply with all due haste.

Yours faithfully

Bernard Peek

Annex 1

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2 February 2015

Rt Hon Sir Gerald Kaufman MP
House of Commons,
London,
SW1A 0AA

CC: vat2015.contact@hmrc.gsi.gov.uk

Dear Sir Gerald,

I have received a reply from HMRC in response to the letter I sent to you just before Christmas. The response from HMRC was sent to me on 16 January and I have only just had time to review it. The answers provided by Jonathan Heath of HMRC seem to be clear but there are some disturbing aspects of the response. I would like some assurance that the instructions given have some statutory basis. I also need further advice on how I should proceed. At this point I have exhausted the capacity of HMRC to provide me with useful information.

The central problem is that HMRC wish me to vouch for the accuracy of data provided to me by customers. Specifically their address details. I can ask the customer to provide me with the requisite two pieces of information that HMRC require; say the customer's post code and phone number. I know of no lawful means that any private individual can use to verify this information from another individual.

Nevertheless HMRC's position is that doing that is part of the 'due-diligence' it requires me to perform when I collect this information from my customers. I am unable to comply for several reasons.

As mentioned above I am a private individual and not a tax-inspector or a police officer. I have no authority to override the data protection laws in other European jurisdictions.

The information that my customer provides to me will be collected automatically at the time the purchase. (These new regulations only apply to automated systems.) Therefore I have no means of pre-validating the information collected. I can automatically check it for internal consistency but not for accuracy. In the case of the example I used in previous letters, if the address given is Pennsylvania Avenue and the phone number starts with the US international code "1" I have no reason to query it. My automated systems will store that information in case HMRC need it later. My assertion is that 'due-diligence' does not require me to even inspect this information let alone verify it.

I believe that I have now exhausted HMRC's capability to answer my questions although I am sending them a copy of this letter out of courtesy. I now need a

definitive opinion on how to proceed if HMRC's instructions do fall within their statutory powers.

There seem to be two options available to individuals to obtain verification of the information provided by the customer.

The simplest option would be for me to deliver a copy of the information provided to the police. If anyone has given false data in order to save paying VAT then presumably a crime has been committed. Could you please obtain a response from the appropriate law-enforcement body as to what the response from the police would be. My suspicion is that their reply might be very similar to the one given in the well-known case of Arkell vs Pressdram.

The other possible option is that I should use a court order to trace the individual from their email address. I understand the technical problems with this approach and if the individual chooses to obfuscate the information this could easily require legal action in a dozen different countries. Could you please find out for me whether legal aid will cover the legal and incidental costs of this approach in the UK and other jurisdictions?

Yours faithfully

Bernard Peek