

Understanding e-commerce - top 10 tips

E-commerce is now a way of life for many businesses and consumers. Your website is a great way to reach existing and future customers in the comfort of their own home. It is your virtual shop front, whether you are promoting your business or selling goods and services.

In 2010 the UK had the biggest e-commerce market in the world when measured by the amount of spend per capita. In 2012, business to consumer e-commerce sales topped \$1 trillion for the first time.

How much do you understand about the tax, commercial or legal implications of e-commerce? Our “top 10 tips” aim to give you a flavour of areas you should be considering.

1. Permanent establishment

You may consider that your business is UK-based and therefore you only have to consider UK taxes. If you have a presence abroad then this can impact on your corporation tax (or income tax) position as well as on VAT.

If you have a fixed place of business or a dependent agent acting on behalf of the company abroad then overseas issues need to be considered. For example, would it be more efficient to operate as a branch or a subsidiary? Factors to consider include use of losses, costs and commercial issues.

A permanent establishment will not necessarily be created where a website can be accessed from overseas, nor where the server is located. Specific advice is usually required on a jurisdiction by jurisdiction basis.

2. Withholding taxes & cash flow

When dealing with transactions overseas an important consideration will be whether any taxes will be withheld. Many countries require that tax is withheld from certain payments to a resident of another country. Consider the impact on your cash flow and increased compliance costs.

One example of this is in America where 30% withholding tax may be deducted. We can assist businesses with the administrative aspects to ensure they receive amounts without this deduction, thus improving cash flow.

3. Transfer pricing

There have been many multi-national companies brought to the public's attention in recent press headlines. Many of us have bought goods over the internet in the UK, but the payment is often made to the retailer offshore, resulting in the profits not being taxed in the UK. This is despite there being huge numbers of staff, depots and resources in the UK.

We can assist businesses in complying with transfer pricing legislation and ensure that structuring and costing decisions make good commercial sense.

4. VAT on exports

If you sell products abroad it may be possible to apply the zero-rate to supplies provided the rules are followed.

Businesses who supply goods to private individuals and non-VAT registered businesses in the EU should normally charge UK VAT on these ‘distance sales’. This is

particularly common with mail order or internet sales. If the distance threshold is exceeded in any calendar year in a particular EU country you will need to register there.

The rules also differ for sales outside the EU so care is needed to ensure VAT obligations are met.

The VAT place of supply rules governing the supply of electronic services to consumers are changing from 1 January 2015. This could lead to an additional obligation to register and account for EU VAT.

5. Understand your margin

When selling online it is important not to lose track of your margins. If you are selling through Amazon or eBay then you need to take their online selling fees into account when setting prices. The ever increasing cost of postage and adjustments for multiple items will all impact on your bottom line.

Stock control is also vital to ensure that you are not selling an item that is out of stock and have good systems to provide timely management information.

Legal Issues

There are a number of legal issues that you need to be aware of when considering e-commerce, including your website, trade marks, consumer rights and personal data.

Elizabeth York of Porter Dodson guides you through some of the key legal issues:

6. Commissioning your website

Do you own the intellectual property rights in your website? Many businesses commission a website developer to design and build their website. If the website attracts copyright protection, you will need to ensure that the copyright, where possible, is assigned to your business once the final payment has been made.

If your website has photographs or images on it, you need the permission of the copyright holder to use the photographs. Do not assume that just because a photograph is already on the internet that you can copy it and use it for your own website. You are leaving yourself open for the copyright owner to pursue you for copyright infringement.

7. Trade marks and business names

Although you own the domain name, and may have registered your company at Companies House, it does not mean that you own the trade mark, or have the benefit afforded to a registered trade mark owner.

You can apply to register a UK trade mark through the Intellectual Property Office. The Intellectual Property Office website www.ipo.gov.uk has a great deal of very useful information about trade marks and other intellectual property rights. You can also run some very basic checks to reduce the risk of your chosen business name infringing the registered trade mark of a third party.

8. Consumer rights

The rights of your customers are increasing with the Consumer Rights Directive 2011/83/EU, along

with various pieces of legislation including the Consumer Rights Bill which is currently in draft form. If you already have terms and conditions on your website that comply with the Consumer Protection (Distance Selling) Regulations 2000, you may want to review them to ensure they are compliant with the Consumer Rights Bill once it becomes law.

Any changes in consumer law can be quite onerous for an SME as they do not have the same resources as a large corporate, with even the increased cost in postage and packaging adding an extra strain on business. Clear and compliant terms and conditions alongside efficient processes can reduce future costs that may arise in disputes with dissatisfied customers.

If your business does not have terms and conditions, then it is advisable to get some drafted. The terms and conditions need to set out, amongst other things:

- who you are
- any limitations on liabilities
- the cancellation policy and returns procedure
- what happens if the goods are faulty or defective, and
- how customers can get in contact with you

9. Collecting personal data

If you are selling online then you are likely to be collecting the personal data of your customers. As a business owner your collection and use of that information must comply with your obligations as a data controller under the Data Protection Act 1998. The business is responsible for the personal data and may be fined up to £500,000 by the Information Commissioner's Office (www.ico.org.uk) for serious breaches of the Act.

Your website will need an appropriate privacy policy to let your customers

know what information you are collecting, why you are collecting it, if you are passing it on to a third party, and how they can contact you if they have any questions.

Your website may set cookies to collect information such as names, e-mail details, passwords and preferences. Enough information should be provided about the cookies in order for the user to provide you with their informed consent to accept or reject them.

10. Emails

You may want to send customers email marketing or a regular newsletter. When customers fill in their details to complete their purchase, provide them with the option of opting-in to receive email communication. This can be done by a tick box. In addition, provide the email recipients with an easy way to unsubscribe from the communications.

Elizabeth York is a commercial lawyer with Porter Dodson in Taunton. She can be contacted on 01823 625887 or email: elizabeth.york@porterddodson.co.uk

Please contact one of our PKF Francis Clark specialists for further help or information:



Damian Lannon

Corporate Tax Partner
07730 219824

damian.lannon@pkf-francisclark.co.uk



Stuart Rogers

Corporate Tax Partner
07730 220138

stuart.rogers@pkf-francisclark.co.uk



Heather Britton

Tax Director
01823 275925

heather.britton@pk-francisclark.co.uk



Richard Staunton

VAT Director
01823 275925

richard.staunton@pkf-francisclark.co.uk

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