



US States have been given the authority to collect sales taxes from Online Retailers – Nexus

The US Supreme Court has ruled that States have the authority to collect State Sales Taxes from online retailers, overturning a 1992 “physical presence requirement” that previously only affected retailers with physical stores, according to Drapers.

Sales tax is charged to US consumers on consumer goods at the till and varies from 0% to over 10% on fashion and accessory products according to the individual states. The move will affect companies in the US selling across state lines and international e-tailers.

According to Drapers, some larger UK e-tailers have already said they will absorb the tax, but companies large and small will need to understand the rules in each state and be prepared to handle the bureaucracy around registering and paying the tax, at different rates, to the state authorities.

According to Reuters, the move will effectively “undercut an advantage many e-commerce companies have enjoyed over brick-and-mortar rivals” and the share price of a number of online retailers dropped after the announcement.

The move could have other implications for overseas brands which are selling into the US. President Trump declared triumphantly “Big Supreme Court win on internet sales tax – about time!” leading UKFT to conclude that sales tax could be only the beginning! There are already concerns within the US about non US retailers undercutting them with products which enter the market on a duty-free basis. It could be only a matter of time before this anomaly is addressed also.

UKFT has expected this move for some time and believes that there could be other changes to US federal and state law on both tax and duty. Indeed, a number of retailers in the US and closer to home in the UK have been protesting loudly about a system which allows brick-and-mortar retailers to be placed at an unfair disadvantage to internet sellers who collect no sales tax (in the US), are not required to pay Rates and, in some cases, use tax avoidance measures, paying their corporate taxes outside the country where the profits have been generated. The movement to ensure that online retailers pay their fair share of taxes and in the right places is gathering pace, in the US and in Europe.

Tax issues are always complicated in the US and the US Inland Revenue Service (IRS) is already known to pursue international tailors for taxes on bespoke clothing they make overseas and ship to US customers on the basis that the transaction takes place on US soil. Some UK companies have been asked to pay US corporation tax on the whole of their global business because the IRS believes they have a substantial footprint in the US, even though they may already have paid corporation tax in their home jurisdiction.



The rules on whether a company has US “**Sales Tax Nexus**” (a requirement to pay tax) are vague, vary from one state to another and are open to interpretation. US companies also struggle to get to grips with federal and state taxation and cross-state issues. Most states regard any physical presence or the presence of personnel for periods of time as “creating nexus” – again these periods vary from one state to another.

Importantly, “Drop Ship” arrangements can be sufficient to create nexus. So too can Trunk shows or proactive direct-contact sales campaigns, especially including Pop Up events, depending on their length and the state in which they take place. Most states already regard warehousing and holding stock in their state as creating nexus. In addition, some states already charge sales tax on shipping charges, while others do not.

If you are selling to the USA, you are advised to look very carefully at the scale of your operation, and take professional advice on whether you are required to collect and/or pay state or federal taxes or duty in the US.

UKFT works with a number of UK lawyers who specialise in this subject. Please ask us for details.

Further reading:

FashionNetwork US (@FNW_US) tweeted at 10:20 am on Wed, Jul 11, 2018:

“Savile Row tailor Huntsman to pay \$250,000 in US tax settlement <https://t.co/az8dtiUvYs>

<https://t.co/iTxRIUIEu0> (https://twitter.com/FNW_US/status/1016975411731935237?s=09)
www.irs.gov

[https://en.m.wikipedia.org/Sales taxes in the United States](https://en.m.wikipedia.org/Sales%20taxes%20in%20the%20United%20States)

[https://salestaxinstitute.com/sales tax faqs](https://salestaxinstitute.com/sales-tax-faq)

<https://quickbooks.intuit.com/r/taxes/need-collect-sales-tax-much/>