

# Amazon and eBay: who is liable for the VAT evasion?

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The [Guardian](#), [BBC](#) and others have covered an unfolding story of massive VAT evasion as a result of distance selling from China (and maybe other locations) into the UK and other EU countries using false VAT numbers or incorrect disclosure of the value of goods on import to evade tax owing in this and other countries.

The story has been disclosed as a result of the work of tireless VAT abuse campaigner Richard Allen. I have seen some of the evidence and it is compelling. Multiple companies appear to be using single VAT numbers and some may not be genuine numbers in the first place. The cost is hard to estimate: it certainly contributes to the massive UK tax gap which the UK's HMRC always refuse to estimate appropriately. The BBC notes an estimate by a trading standards officer that the loss may be as much as £2 billion.

The interesting question is what can be done about this?

First, and most obviously, the question has to be asked as to why such a tiny proportion of trading standards time is dedicated to this task? I gather the sum total of people involved may be just one person.

Second, it has to be asked why, if Richard Allen can find this, HMRC could not? Were they willingly turning a blind eye from on high despite suggesting that on line trading is a particular concern, or is it, despite all recent publicity on Low Value Consignment Relief for VAT from the Channel Islands that they have really not learned their lesson on this issue, or could it just be (as I have long argued) they are so under-resourced they could not do anything even if they wanted to? I am hoping it is the latter.

Third, the question then arises as to whether or not the VAT can be recovered. Since it is highly unlikely that customers of either Amazon or eBay knew or even had any reason to think that they were party to VAT fraud UK law as it has stood since 2006 seems to entirely protect them from liability under what is known as the [Kittel Principle](#). This is complex case law that has developed around the pursuit of missing trader fraud, but the BBC note the following comments:

*"If the scale of the fraud is as big as the anecdotal evidence indicates, then we could be talking about billions of pounds," said Rita de la Feria, a professor in tax law at Durham University.*

*She says that under EU law Amazon, eBay and other online marketplaces could be held jointly liable for all unpaid VAT, along with the offending traders, if action was taken against them.*

*"If you knew that fraud was being committed you are liable," she added. "If you should have known that fraud was being committed, you are liable as well.*

*"This principle means that someone like Amazon, someone like eBay can be de facto tax inspectors. Legally they are obliged to police this."*

I can see where Prof de la Feria is coming from: the obligation to know established in the Kittel Principle is high. Whether it can be extended to Amazon and eBay when they were, presumably making output tax charges to the companies in question rather than claiming deduction for input tax, which is the issue for which the Principle was created is not quite as clear cut, maybe.

An EU opinion does, however, suggest that Amazon's claim to not be required to act as VAT compliance officer for those companies using its platform may not be the defence that they are hoping for. According to the Guardian:

*Brussels sources ... insist[ed] EU rules required that customers be informed of seller details before making a purchase. "In practice, for sales via online marketplaces, the information must be provided on the website," one source said.*

If that is the case then the trading platforms may have a difficult case to answer. As [HMRC say on the Kittel Principle](#):

*The test in Kittel is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in Kittel.*

I stress the point that I have already made that the cases are not directly comparable, but as precedents go that is powerful. Should Amazon and eBay have known some traders using their sites were potentially evading tax, and did their own failure to check their VAT status help this? If so, should they have reasonably known what was going on? And if so, are they liable? The possibility would at least seem to exist.

And if that is the case then at the very least HMRC have a duty to find out. This one may litigate, I think. But there are times when that is the right thing to do, and providing HMRC with the resources to do so in those cases is essential.

I sincerely hope the government do not duck this issue. We cannot afford for them to do so.