



CROSS-BORDER VAT CHANGES

The 2009 Finance Act contains a package of measures introducing the first stages of implementation of EU-wide legislation to counter fraud and to simplify and modernise the VAT system in relation to cross-border supplies of services.

Businesses need to consider whether they will be affected by the changes and, in particular, what changes to their recording and accounting systems will be required to implement the new rules. Most of the new rules are effective from 1 January 2010, with implementation of further EU-wide changes to follow in subsequent years.

At the time of writing, HMRC's definitive guidance on the new rules still appears to be partly in draft and not incorporated in VAT Notices. However, the following provides an overview of the main changes:

1. Place of supply of services

From 1 January 2010:

- a) The general rule for the place of supply of *business to business* services will tax these supplies at the place where the *customer* is established and not, as previously, where the supplier is established.
- b) The general rule for the place of supply of *business to non-business customer* services will continue to tax these supplies where the *supplier* is established.

In the above summary, 'business to business' are supplies to a person to whom one of the following applies:

- A taxable person within the scope of Article 9 of the Principal VAT Directive; or Registered for VAT in the UK; or
- Registered for VAT in another Member State; or
- Registered for VAT in the Isle of Man.

'Business to non-business customer' are all other supplies

There are some exceptions to the general rules – some operative immediately, some to be introduced at a later date. For example, the supply of services in relation to land is treated as made in the country where the land is situated. In addition, VAT-registered businesses will need specific advice if their activities involve supplies of services of the following:

- Passenger transport
- Short-term hire of means of transport
- Cultural, artistic, sporting, scientific, educational and entertainment or similar services, and services ancillary to these, including admission charges
- Restaurant and catering services
- Hire of goods (other than a means of transport)
- Telecommunications services and radio or television broadcasting services
- Electronically supplied services (e.g. website supply or hosting)
- Services via intermediaries
- Transportation of goods
- Ancillary transport services
- Valuation of, or work on, goods supplied to a non-VAT registered person
- Services of tour operators
- Long-term hire of transport and pleasure boats

Suppliers of services will need to establish whether their customers are business customers or not. The best evidence is if they can supply a VAT registration number. If customers cannot provide such evidence of registration they should be asked to provide evidence in other forms such as tax letters or certificates from their Chamber of Commerce or equivalent. Customers should be treated as non-business if they are unable to provide any evidence of business status. The authenticity of a VAT registration number can be checked on-line at:

http://ec.europa.eu/taxation_customs/vies/vieshome.do

If a customer is involved in both business and non-business activities, all supplies of services should be treated as business. Supplies made to a VAT-registered customer to be used wholly for their private purposes or those of their staff should be treated as made to a non-registered person.

Reverse Charge

Where supplies of services are treated as being made where the customer is established and that customer is not established in the same member state as the supplier then the customer will account for VAT in their own country under the reverse charge mechanism.

Therefore, a UK business receiving general rule services from an EC supplier will account for VAT under the reverse charge mechanism in the UK. Similarly, if a UK business provides general rule services to an EC business customer, they will account for VAT under the reverse charge mechanism in their own country.

2. Time of supply of cross-border services

From 1 January 2010, the time of supply of services subject to the reverse charge procedure is:

- For single supplies, the earlier of the time when the service is completed or when it is paid for.
- For continuous supplies, the end of each billing or payment period.
- For continuous supplies which are not subject to billing or payment periods, the earlier of the time of payment and 31 December each year.

This will affect the completion of VAT returns by UK VAT-registered businesses receiving cross-border supplies of services. They will need to ensure that correct information on the time of supply is recorded on the systems from which their VAT returns are prepared.

Businesses making cross-border supplies of services will also need to record these supplies, using the correct time of supply according to UK law, on the new EC Sales Lists.

3. EC Sales Lists (ESL)

From 1 January 2010, EC Sales Lists will be required for intra-EC taxable supplies of services to which the reverse charge applies, in addition to the reports already required of intra-EC supplies of goods. The form used for reporting supplies of goods (VAT 101) will also be used for reporting supplies of these services.

The following information must be entered on the form:

- Customer's country code
- Customer's VAT registration number
- Total value of supplies in sterling
- Code 3 in the Indicator Code Box for a supply of services

Supplies which are exempt from VAT according to the rules in the customer's Member State and supplies to non-VAT registered customers do not have to be reported.

The reporting period for taxable supplies of services is a calendar quarter, although businesses may instead choose a reporting period of a calendar month (the latter may be of help if businesses have to make monthly reports of sales of goods following the changes to the reporting period).

4. New ESL reporting period for taxable supplies of goods

From 1 January 2010 the reporting period for intra-EC supplies of goods will be a calendar month for supplies over a specified threshold. A reporting period of a calendar quarter can still be used for supplies below the threshold, as follows:

1 January 2010 to 31 December 2011: Quarterly value of supplies of intra-EC goods (excluding VAT): not exceeding £70,000 in the current quarter or any of the previous four quarters.

1 January 2012 onwards: Quarterly value of supplies of intra-EC goods (excluding VAT): not exceeding £35,000 in the current quarter or any of the previous four quarters.

The option to submit quarterly ESLs will cease at the end of any month during which the value, excluding VAT, of the intra-EC supplies exceeds the relevant quarterly threshold. Businesses will be required to submit monthly ESLs from the first day of the month following the month in which they exceed the threshold.

5. New timeframe for submitting ESLs

With effect from 1 January 2010, paper ESLs must be submitted to HMRC within 14 days of the end of the reporting period; electronic submission must be made within 21 days of the end of the reporting period.

In addition to ensuring that supplies of services as well as of goods are reported correctly and fully, businesses will need to ensure compliance with the new, shorter, deadlines.

From 1 January 2010, for paper returns, only official VAT 101 forms can be used, to ensure successful capture of information by intelligent character recognition scanning.

6. Cross-border VAT refund system

A business that incurs VAT on expenditure in an EC Member State where it is not established and makes no supplies can recover that VAT directly from that Member State.

From 1 January 2010 the current lengthy paper-based system will be replaced by an electronic system. Rather than the claim being sent directly to the Member State where the VAT was incurred, it will be submitted electronically via the Member State in which the claimant is established, in a simplified format enabling confusion-free transmission of the claim, with the claimant's status confirmed, to the Member State from which repayment is claimed.

The time-limit for submitting claims has been extended to nine months from the end of the calendar year in which the VAT was incurred. HMRC must verify the claimant's status and forward the claim to the appropriate Member State within 15 calendar days of electronic submission. That Member State then has four months to verify the claim and notify its decision whether to repay or to seek further information. A decision to repay must be implemented within 10 working days or interest becomes payable on late payment. If the decision is to seek further information, the four month deadline is extended to eight months.

There are *de minimis* limits to claims:

Claims relating to a period of less than a year but not less than three months must be for at least €400 (or national currency equivalent).

Claims relating to a whole year or the remainder of a year must be for at least €50 (or national currency equivalent).

UK businesses making applications for refunds from other Member States under this scheme must be registered with HMRC for VAT Online Services. To register, go to

www.hmrc.gov.uk/vat/start/register/signup-online.htm.

From 1 January 2010 only electronic applications can be made, even if the claim is for periods before 1 January 2010.

The electronic application will be in a standardised format and it is essential that all information required is input correctly. This will include standard fields for information about the applicant and information in respect of the invoices showing the VAT for which a refund is sought. You may have to submit scanned copies of the relevant invoices and, in any event, the relevant invoices should be retained in case they are requested by the Member State from whom the refund is sought.

Detailed guidance on the information requirements and other procedural guidance is in HMRC's Notice 723A, available online at:

<http://customs.hmrc.gov.uk>

As the refund portal is not yet open, a copy of the electronic input form is not yet available.

7. Intrastat changes

From 1 January 2010:

- the exemption threshold for arrivals is increased from £270,000 to £600,000 and the exemption threshold for dispatches is reduced from £270,000 to £250,000.
- all supplies of goods to British Embassies, Consulates (whether or not benefiting from diplomatic immunity) and British armed forces bases situated in other Member States are excluded from Intrastat reporting (with the exception of the UK Sovereign Base Areas in Cyprus, which must continue to be reported with the partner country CY);
- emergency aid for disaster areas is no longer excluded from Intrastat reporting;
- sales of new means of transport by VAT-registered businesses to private individuals in other Member States are no longer excluded from Intrastat reporting; and
- the reporting Member State (for sales and purchases of vessels and aircraft, goods delivered to them and products of the sea) is determined according to where the entity that has 'economic ownership' of the vessel or aircraft is established.

Note: Intrastat returns still cover only intra-EU trade in goods and have not been extended to cover supplies of services

This fact sheet has been prepared for general guidance only and should not be acted upon without specific advice. Please contact us if you require further information. Created November 2009

If you require further assistance please contact Stephen Fox on 01225 428114 (email: s.fox@robson-taylor.co.uk) or speak to your usual Robson Taylor contact.