

## **There are a number of changes affecting VAT on supplies in the EU from 1 January 2010.**

### **Why are the changes being made?**

The changes are designed to modernise and simplify the current rules relating to cross-border supplies of services and the recovery of VAT on purchases made in other EU countries.

### **When are the changes being implemented?**

The changes will take place between 1 January 2010 and 1 January 2015. The measures being introduced include:

- changes to the rules on the place of supply of services;
- a requirement to complete EC Sales Lists (ESLs) for taxable supplies of services on which a reverse charge applies in the customer's Member State;
- the introduction of an electronic VAT refund scheme;
- increased administrative cooperation between Member States to support these changes; and
- the introduction of an optional One Stop Scheme for supplies of services to non business customers (B2C) of telecoms, broadcasting and electronically supplied services from 1 January 2015.

### **Place of supply of services changes**

From 1 January 2010, the general rule for the place of supply of services will change. For supplies from one business to another

(B2B) it will no longer be the place where the supplier is established but, rather, where the customer is established. This rule applies for business transactions both within and outside the EU.

For business to consumer (B2C) supplies of services, the general rule for the place of supply will continue to be the place where the supplier is established.

However, there have always been exceptions to the general rule for certain services such as consultancy, advertising, copyright etc., and some of these exceptions will continue to apply. For example, the place of supply of land-related services will continue to be where the land is situated.

In certain other cases, previous exceptions will now follow the general rule but the date of implementation may not be 1 January 2010. For example, services such as cultural and sporting activities will only change from the place where services are performed to the new general rule from 1 January 2011. Consequently, depending on the type of international services that they are involved with, businesses will need to review both the liability impact and the timing of such changes.

### **Impact on UK businesses**

In the majority of cases, a UK business customer of non UK services will account for VAT using the reverse charge procedure. This means that the business will have to initially account for the output VAT and then recover input tax under the normal rules. It is effectively neutral overall for a fully taxable business, provided that the services are for business purposes.

Conversely, for a UK business supplying B2B services under the



# VAT Changes

## Cross-Border Supplies

general rule, the responsibility for accounting for any VAT due becomes that of the customer.

## Time of supply changes

From 1 January 2010, the time of supply, otherwise known as the tax point, for cross-border services will be based on when a service is performed, rather than when it is paid. For single supplies, this means that the tax point will occur on the earlier of:

- when the service is completed; or
- when it is paid for.

For continuous supplies, the tax point will be the end of each periodic billing or payment period. For example, if charges for leasing are billed monthly or the customer is required to pay a monthly amount, the tax point will be the end of the month to which the bill or payment relates.

If a payment is made before the end of the period to which it relates or before the end of the billing period, the payment date, rather than the end of that period, will be treated as the tax point.

Continuous supplies that are not subject to billing or payment periods will have a tax point of 31 December each year. If a payment has been made earlier, the payment will create a tax point.

## Changes to the VAT refund procedure

The cross-border refund system allows businesses that incur VAT on expenditure in a Member State, in which they are not established and make no supplies, to recover that VAT directly from that Member State, known as the Member State of Refund (MSR).

The current paper-based system is being replaced with an electronic one, with specific deadlines and interest if these are not met. This new system will apply to all refund claims submitted on or after 1 January 2010.

Requests for refunds will continue to be dealt with by the MSR. The amount of refundable VAT will also continue to be determined under the VAT rules of the MSR and the relevant repayment will be made directly by that Member State to the business.

## Main changes under the new electronic system

Under the new electronic system, the claim will be sent to the MSR, via the business' own tax authority, so eliminating the need for a VAT certificate of status, and the format of the claim will be simplified.

From 1 January 2010, the period in which to submit claims for VAT incurred in the preceding calendar year

will be extended from six to nine months. Once the MSR receives the claim under this new system, it must normally be processed within four months and, if approved, repaid within ten working days. If further information is requested by the MSR, the processing period can be extended up to a maximum of eight months and, if these time limits are exceeded, interest will be paid.

## Extension of EC Sales Lists (ESLs) to include services

An ESL is a declaration that lists supplies made by a UK VAT registered trader to a VAT registered customer in another Member State. ESLs are currently only required for supplies of goods. From 1 January 2010, ESLs will also be required for intra-EC supplies of services to which a reverse charge applies in the customer's Member State.

ESLs will not be required for:

- supplies which are exempt from VAT according to the rules in the customer's Member State;
- B2B supplies where the recipient is not VAT registered; and
- B2C supplies.

## ESL reporting periods

The ESL reporting period for taxable supplies of services will be a calendar quarter, although businesses may choose a reporting period of a calendar month instead.

## Changes to the reporting period for ESLs for goods

The current ESL reporting period for intra-EC supplies of goods is normally a calendar quarter. From 1 January 2010 to 31 December 2011, quarterly ESLs can still be submitted if the total quarterly value of supplies of intra-EC goods, excluding VAT, does not exceed £70,000 in the current quarter, or any of the previous four quarters. Otherwise, from 1 January 2010, the ESL reporting period for goods will be a calendar month. Further changes will be implemented in 2012.

## New time limits for submitting ESLs

From 1 January 2010, the new time limits for submitting ESLs will be reduced from the current 42 days to 14 days from the end of the reporting period for paper ESLs and 21 days for electronic submissions. Penalties for late submission of ESLs will be £5, £10 or £15 per day depending on the number of times you have been late. There will also be penalties for incorrect ESLs.

If you would like any further information on any of the matters raised here, please contact us.

# Advice that stands the test of time

This is intended to provide a guide to current tax issues. It is not a substitute for technical advice. If you have any queries, please do not hesitate to contact us.