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TAX ALERT: VAT CROSS-BORDER CHANGES

On 22 December 2008 HM Revenue & Customs (“**HMRC**”) published a consultation document entitled “VAT: Place of Supply of Services Changes required to implement EC Law”. The stated purpose of the VAT changes is to “modernise and simplify the rules relating to cross-border supplies of services and recovery of input tax”. Most of the cross-border changes are contained in the Finance Act 2009 and have effect from 1 January 2010. However, some of the changes will be contained in secondary legislation which has yet to be laid before Parliament.

To comply with the new rules, businesses will need to make fundamental changes to their current VAT accounting and reporting processes in order to be ready for 1 January 2010. In this Tax Alert we summarise how the changes will impact on businesses and provide links to initial guidance on how HMRC expects these to be implemented. For comparative purposes, we also give a brief outline of the current rules.

OVERVIEW OF CHANGES

Changes to Place of Supply Rules

From 1 January 2010 most cross-border services provided to business customers will be treated as supplied in the country where the business customer is established and the business customer will account for VAT under the reverse charge procedure.

Services provided to non-business customers will still generally be liable to VAT in the country of the supplier.

Changes to the Time of Supply Rules

The time at which VAT must be accounted for under the reverse charge will also change from 1 January 2010. The changes will be introduced by secondary legislation later in the year.

New ESLs for Services and Changes to ESLs for Goods

To allow tax authorities to check that VAT is being accounted for correctly by the business receiving intra-EU supplies of services, UK VAT registered businesses that supply services to EU businesses, where the place of supply is the customer’s country, will have to complete an EC Sales List (“**ESLs**”) for each calendar quarter and submit these within 14 days for paper returns and 21 days for electronic returns.

UK VAT registered businesses that supply goods to other EU countries already submit ESLs. From 1 January 2010 new rules will reduce the time available to submit ESLs in line with the limits above and, as an anti-fraud measure, require the monthly submission of ESLs where the value of the supplies of intra-EU goods (excluding VAT) exceeds £70,000 in the current quarter, or in any of the previous four quarters. This

threshold will be reduced to £35,000 (excluding VAT) with effect from 1 January 2012.

Changes to the procedure for obtaining VAT referrals

A new electronic VAT refund procedure will be produced across the EU for all claims submitted after 1 January 2010 to replace the paper-based system. Businesses established in the UK will submit claims of VAT incurred in other EU countries on a standardised form through the UK Government Gateway rather than direct to the member state of refund as at present.



Who Will be Affected by the Changes?

- Businesses supplying services to overseas businesses;
- Businesses receiving services from overseas businesses;
- Businesses supplying goods to other EC countries; and
- Businesses that want to reclaim VAT incurred in another EC countries.

What Action Should You Take Now?

You should consider whether you will be affected by the changes and if affected what changes to your accounting system will be required to implement these new rules from 1 January 2010, to account for VAT under the reverse charge procedure, and/or to

capture the information needed to submit ESLs. You should also consider obtaining the VAT registration numbers of regular business customers in other EC countries.

CURRENT RULES

Current VAT Treatment of the Supply of Services

In order to establish the VAT treatment of a supply of services, it is necessary to consider where is the “place of supply”, where is the customer established and where is the supplier established.

The “place of supply” will determine where a cross-border supply of services will be subject to VAT.

The basic rule for VAT is that the place of supply of services is the place where the supplier has its business establishment from which the service is supplied. Under this basic rule, where a UK established company provides services to a non-UK company it would charge UK VAT on these services.

However, there are a number of specific exceptions to this general rule. For example, a supply of services consisting of conference, sporting and entertaining services is for VAT purposes made in the country where the services are physically carried out. Accordingly a UK company that provides entertaining services which are physically carried out outside the UK, does not make a supply of services for UK VAT purposes.

Similarly, where a supplier is not established in the UK, and the UK VAT rules provide that such services are supplied in the UK, the recipient (if it is VAT registered) will be obliged to self account for VAT output tax in the UK on those supplies. The mechanism used by the recipient to account for the VAT output tax in these circumstances is referred to as the reverse charge procedure.

It should be noted that as VAT is an EU wide tax, EU member states whilst not

having identical VAT rules to the UK will have similar rules to the UK including rules with regard to the place of supply of services.

How Does The Reverse Charge Procedure Work?

The reverse charge procedure applies where a person who belongs outside the UK supplies “relevant services” to a person who belongs in the UK for the purpose of any business carried on by him and the place of supply of those services is the UK. It should be noted that a UK non-VAT registered recipient of such services may be required to register for VAT if the total value of the “reverse charge services” and turnover from any taxable business supplies exceed the registration limit.

In broad accounting terms, a UK customer who receives any “reverse charge services” will:

- credit his VAT account with the necessary amount of VAT output tax, as if he had supplied the services himself; and
- at the same time, debit his account with the amount of VAT input tax to which he is entitled under the normal rules.

As a result there will be no net tax payable on a transaction, except by businesses that

are not entitled to a full deduction of input tax – e.g. businesses which are partially exempt. The effect of the reverse charge procedure is to put the UK recipient in the same position as if he had received the supply from a UK supplier rather than from outside the UK. The value of all reverse charge services received (whether taxable or exempt) must be included in the “value of sales” and “value of purchases” boxes on the UK VAT return.

The Time of Supply

The time of supply of services (the “**tax point**”) triggers the liability to account for VAT. The basic rule is that services are treated as supplied at the time when they are performed. However, if a VAT invoice is issued or payment is made, before that time, the tax point is the time when the invoice is issued or the payment is made.

HMRC GUIDANCE

For a link to the latest guidance issued by HMRC on place of supply/time of supply, please click [here](#).

For a link to the latest ESL guidance issued by HMRC, please click [here](#).

If you require further information please contact **Conor Brindley** on conorb@rosenblatt-law.co.uk or +44 (0) 20 7955 1424.

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