
CROSS-BORDER VAT CHANGES 2010: PLACE OF SUPPLY OF SERVICES RULES

Who is likely to be affected?

1. Businesses involved in cross border supplies of services, either as a supplier or recipient.

General description of the measure

2. This measure will introduce changes to the place of supply of service rules. The place of supply rules determine the country where a supply of services is made and where any VAT is payable. They also determine whether, if VAT is due on a supply, it should be accounted for by the supplier of a service or their business customer.
3. The new rules aim to ensure that, as far as possible, VAT is due in the country in which the service is consumed (e.g. where the customer is established) rather than where the supplier is established. The result for UK business customers is that they will be liable to account for UK VAT on most services provided by their overseas supplier under the reverse charge provisions, rather than the supplier charging VAT.
4. The measure forms part of a package of changes to simplify and modernise the VAT system for cross-border trading and to counter fraud, that will come into effect from 1 January 2010 across the EU. The package includes:
 - new time of supply rules for services (BN75);
 - European Sales List (ESL) reporting for supplies of cross-border services and changes to ESLs for goods (BN76); and
 - a new electronic refund procedure for VAT incurred in other EU Member States (BN77).

Operative date

5. These changes will be phased in to have effect on 1 January 2010, 1 January 2011 and 1 January 2013, as set out below.

Current law and proposed revisions

6. The current place of supply rules can be found in sections 7, 8 and 9 of, and Schedule 5 to, the VAT Act 1994 (VATA) and the VAT (Place of Supply of Services) Order 1992 (SI 1992/3121). Legislation in Finance Bill 2009 will introduce a new section 7A and Schedule 4A to cover the VAT place of supply of services rules from 1 January 2010. Schedule 5 and the VAT (Place of Supply of Services) Order will be repealed. Sections 7, 8 and 9 of the VATA will be amended.
7. The current basic rule is that VAT is due where the supplier has established their business. That is the case for supplies to both business and non-business customers. From 1 January 2010, the new basic (or general) place of supply rule for business to business supplies will be where the customer is established. The basic rule for supplies to non-business customers will remain unchanged, i.e. it will be where the supplier is established.
8. As now, there will continue to be exceptions to the new general rule.
9. Supplies to both business and non-business customers of cultural, artistic, sporting, scientific, educational, entertainment and similar services, as well as valuation and work on goods, are currently taxed where the service is performed. There will be no change to the taxation of these supplies when made to non-business customers. For supplies to business customers:
 - from 1 January 2010, valuation and work on goods will be taxed where the customer is established under the new general place of supply rule; and
 - from 1 January 2011, most supplies of cultural, artistic, sporting, scientific, educational, entertainment and similar services will be taxed where the customer is established, under the new general place of supply rule. However, supplies of admission to cultural, artistic, sporting, scientific, educational and entertainment events will remain taxable where the event takes place.
10. Land related services are currently deemed to be supplied where the land is situated. This will remain unchanged.
11. Currently there is a single treatment for the place of supply of hire of means of transport for supplies to business and non-business customers. This is where the supplier is established (basic rule). From 1 January 2010, there will be a distinction between short-time hire (no more than 30 days or 90 days for vessels) and long-term hire. For short-term hire, the place of supply will be where the vehicle is put at the disposal of the customer. For long-term hire, the place of supply will fall under the new general rule. However, from 1 January 2013, the place of supply of long-term hire to non-business customers will be where the customer is established (except for long term hire of pleasure boats to non-business customers which will be treated as supplied where the boat is actually put at the customer's disposal if the supplier has an establishment there).

12. There is no current exception for restaurant and catering services. From 1 January 2010 these services will be treated as supplied where they are physically performed. For restaurant and catering services carried out on board ships, aircraft or trains as part of transport in the EC, the place of supply will be the place of departure. This mirrors existing rules for goods sold for consumption on board.
13. Under the current rules the place of supply of intermediary services is in the same place as the service being arranged. This is subject to a simplification measure for supplies to business customers registered for VAT in another EU Member State. From 1 January 2010, the services provided by intermediaries to business customers will fall under the general rule. Supplies to non-business customers will be unchanged.
14. The place of supply of the transport of goods is where the transport takes place, except for intra-Community transport which is supplied in the place of departure. This rule will remain the same for supplies to non-business customers. Supplies to business customers will fall under the new general rule from 1 January 2010.
15. The place of supply of certain intangible services, e.g. legal advice, will continue to be treated as supplied where the customer belongs when provided to non-business customers outside the EC.
16. Ancillary transport services (such as loading, unloading or handling services) are deemed to be supplied where they are physically carried out. From 1 January 2010, these services will fall under the general rule when supplied to business customers. Supplies of these services to non-business customers will continue to be taxed where performed.
17. The place of supply of passenger transport services, the use and enjoyment provisions and electronically supplied services (for non-business customers) will remain unchanged.
18. For cross-border supplies, in most cases, the business customer will account for the VAT using the reverse charge procedure (and recover the tax subject to the normal rules) as happens now for a wide range of non basic rule services.

Further advice

19. These changes were subject to the consultation *VAT Place of supply of services: Changes to implement EC law* that ran from 22 December 2008 until 13 February 2009. A response to the consultation document has been published today on the HM Revenue & Customs website.
20. Further information about all aspects of the Cross-Border VAT Changes 2010 will be available through a Revenue & Customs Brief from 1 May 2009.
21. If you have any questions about this change, please contact the National

Advice Service on 0845 010 9000. Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk