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## **VAT: Place of Supply of Services Changes required to implement EC Law**

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**Consultation Responses Document  
22 April 2009**

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# 1. Introduction

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This document summarises responses to the consultation 'VAT Place of Supply of Services – Changes required to implement EC Law'. The consultation ran from 22<sup>nd</sup> December 2008 to 13<sup>th</sup> February 2009. This was a shorter period than is normal under the Government's Code of Practice<sup>1</sup>. The shortened consultation period was necessary to fit in with the Finance Bill Process and additional means for people to express their views have been made available. These include:

- discussions with a number of representative bodies;
- the creation of a joint Government/Business EC Sales List working group set up with representatives of the finance and insurance sectors;
- two HMRC consultation seminars held on 2<sup>nd</sup> and 6<sup>th</sup> February 2009;
- the provision of a dedicated email address for queries and consultation responses; and
- confirmation that HMRC would continue to welcome comments on interpretation after the end of the consultation period.

## VAT Package measures

The EC VAT Package is a series of measures to modernise and simplify the rules relating to cross border supplies and the recovery of input tax. It includes amendments to the VAT place of supply of services rules to be phased in from 1 January 2010. It also introduces a requirement to complete EC Sales Lists for taxable supplies of services on which a reverse charge applies in the customer's Member State from 1 January 2010.

The aim of the consultation was to:

- expose draft legislation on the place of supply of services rules;
- outline EC sales list requirements for services; and
- invite comments on interpretation and implementation issues that would arise as a consequence of these changes.

HMRC also published a consultation Impact Assessment which can be found at <http://www.hmrc.gov.uk/ria/index.htm#full>. The consultation invited comments on the Impact Assessment.

A total of thirty-six written replies were received from businesses, advisers and representative bodies. A list of the respondents is at Annex A. HMRC also received contributions from the Joint VAT Consultative Committee (JVCC) and the HMT chaired VAT Forum.

## Anti-fraud measures

Further changes to the Directive, to combat tax evasion connected with intra-community transactions (2008/117/EC), although referred to, were not specifically included within the consultation document (as the changes were not adopted by the EC until shortly before its issue). As the proposed changes have a significant impact on both the reverse charge and

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<sup>1</sup> This was approved by the Financial Secretary to the Treasury in accordance with the Code.

production of EC Sales Lists, these issues were covered in consultation discussions and comments made by respondents are included in this summary of responses.

Whilst this document provides a general response to those comments, work continues on interpretation and implementation issues, and it is not possible at this time to give a full response to all comments made. However, up-to-date information on all the Cross-Border VAT Changes 2010 will be available on the HMRC website.

## 2. Consultation Responses - General

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The consultation was generally well received with one response praising HMRC for the 'open and pragmatic approach' that it is taking. HMRC was also congratulated for being one of the first tax administrations in the EU to publish draft guidance on the changes. Some respondents however felt that the eight week consultation period was too short and should have run for at least the normal twelve week minimum. One response considered that it was unacceptable to not already have finalised legislation covering all the various changes.

Most comments indicated that HMRC's interpretation of the EC legislation was clear, although this view was not universal. There were some questions raised on the application of the EC sales list requirement for services and the changes to the time of supply rules for reverse charge services, particularly on how they will be applied in practice.

Some respondents questioned whether they would be able to get accounting systems in place in time to meet the implementation date of 1 January 2010.

The questions asked in the consultation were:

### Draft Legislation

- Do you think that the draft legislation correctly implements the Directive?
- If not, please explain where you consider it is defective and why and whether (and how) this can be rectified?
- Do you consider that the legislation opens up any VAT avoidance opportunities?

### Interpretation

- Do you have any comments on the policy interpretations offered within the document?
- Do you foresee any difficulties arising from these changes and if so for which businesses?
- Do you have any suggestions for how HMRC could help these businesses?
- Do you have any other comments or concerns about the draft legislation or HMRC's interpretation?

### Impact Assessment

- Do you agree with HMRC's analysis of the identified impacts and how they might affect business?
- Are there any other impacts that have not been identified?
- Do you agree with the assumptions that have been made in the Impact Assessment about the categories of affected businesses?
- Are there additional or different categories for how business might be affected by the changes?
- Do you have any feedback on the estimation of costs or benefits to business resulting from these changes?

- Do you have any data and/or other evidence to enable further work to be undertaken on quantifying the benefits to business identified in the Impact Assessment?

There were a total of thirty-six written responses to this consultation. Not all respondents answered all of the questions.

## 3. Place of Supply of Services

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### 3.1 General rule

#### a) Use of the term ‘taxable person’

From 1 January 2010 the new general (or basic) rule for the place of supply of services to business customers will be the place where the customer is established. The general rule for the place of supply of services to non-business customers will remain as it is now; where the supplier is established.

The draft legislation referred to ‘supplies to taxable persons’. Seventeen written responses to the consultation questioned whether this properly implements the EC Directive. Of these fifteen highlighted difficulties with the use of the term “taxable person” as this is defined elsewhere in UK VAT legislation by reference to UK VAT registration and has a different meaning to the EC definition. These comments have been taken into account when making changes to the draft legislation.

#### b) Supplies made to business customers for private use

From 1 January 2010, EC legislation makes clear that for place of supply purposes a business customer will be treated as such even in relation to purchases it makes in relation to its non-business activities. However, this treatment will not extend to purchases for the private use of the customer or their staff. A further point raised on taxable person status was whether private purchases were caught by the reverse charge under draft legislation. One response considered that they were caught but should not be. Two responses suggested that private purchases were not caught but should be in light of the European Court’s decision in *Kollektivavtalsstiftelsen TRR Trygghetsrådet* [C-291/07]. These comments have been taken into account when making changes to the draft legislation and comprehensive guidance will be provided on this issue.

#### c) Determining status of customer

The most frequently raised point on interpretation centred on the use and definition of the term ‘taxable person’ when the business was not registered for VAT. Fourteen responses concerned the need to understand what alternative evidence of business status of their customer would be required in the absence of a VAT number. Going forward, given the EC Sales List requirement for services, obtaining a VAT number should be the normal evidence of business status – this has not been the case to date. However, if the customer is not registered for VAT, HMRC’s Public Notice 741 already gives examples of alternative evidence such as certificates from fiscal authorities, business documents and letterheads, and letters from local chambers of commerce. We intend to expand our guidance on this area.

In determining the status of their customer, suppliers are required to check the validity of VAT registration numbers supplied to them by their customers. This is done via Europa [see section 4.4(c)]. One respondent asked whether HMRC could provide a qualified checking service that would allow businesses to not only check the validity of the number but also the name of the registered entity. HMRC is currently working with other Member States on developing a system that will provide enhanced information (such as partial address and validity) for checking VAT numbers provided by EC customers.

#### **d) Global contracts**

When determining the place of supply it is necessary to decide whether the supply is made to the business establishment or other fixed establishment of the customer. Fourteen written responses raised the issue of how to treat global contracts, in particular how to determine the hierarchy of establishments for the receipt of services. This is an existing issue under the current rules. HMRC has highlighted the need for greater clarity at EC level and will consider if we can provide clearer guidance in the meantime.

#### **e) Dispute Resolution Service**

Two respondents highlighted the need for procedures to address differences in Member States' application of the place of supply rules. Such a procedure already exists. Article 398 of the EC VAT Directive (2006/112/EC) provides for an advisory 'VAT Committee' which comprises delegates from each Member State chaired by a European Commission official. The VAT Committee can consider any questions concerning how EC VAT legislative provisions should be interpreted and applied, as well as any differences in the approach taken by Member States.

#### **f) Other issues**

A number of other specific questions on interpretation were raised. Further information addressing the issues raised during the consultation, and the HMRC position in respect of each will be available through a Revenue and Customs Brief on 1 May 2009.

### **3.2 Services connected with immovable property**

#### **a) Scope**

The only change to the rules, at EC level, for services connected with immovable property (land related services) is that hotel and holiday accommodation is now explicitly covered.

Three respondents highlighted that land related services in the draft legislation are defined in terms of UK land law and pointed out that this restricts the scope of services falling into this category. It was questioned whether the UK legislation should go into the level of detail that it does. This is the same approach as is applied under existing legislation. A further question was raised as to whether the phrase "*involved in matters relating to land*" (UK legislation) has the same meaning as "*connected with immovable property*" (in the EC legislation).

Despite these comments, as the approach adopted going forward largely reflects what is covered by existing legislation, HMRC is not aware of any difficulty in its approach to the place of supply of land related services. If there are specific areas of concern we would welcome further examples or explanation of the difficulties likely to be encountered.

A number of respondents asked for the guidance on the type of services seen as land related to be expanded. There are already a number of examples in existing guidance but we will consider if more detailed guidance is required.

## **b) Travel agents**

The main area of concern regarding land related services concerns travel agents and whether an agent's services when arranging hotel bookings are land related or fall within the general rule. HMRC has sought clarification at EC level on this issue, and will confirm the outcome as soon as possible.

### **3.3 Passenger transport**

Passenger transport is treated as supplied where the transport takes place. This rule is not subject to change and no comments were made on it in the consultation.

### **3.4 Hire of means of transport**

The place of supply changes will see new rules for the hire of means of transport e.g. motor vehicles. The EC law introduces a number of new terms (such as 'put at the disposal of' and 'continuous possession') that might be open to differing interpretations across the EC, as might the distinction between long-term hire and short-term hire. A number of concerns about consistency were raised during the consultation process. These came from the car hire sector, large accountancy firms, and representative tax bodies. They also highlighted potential difficulties where contracts are changed mid-term and where hires span the implementation date.

This is an issue which is being discussed with the European Commission and other Member States with a view to achieving consistent interpretation. Once agreement has been reached, HMRC will provide detailed guidance.

### **3.5 Cultural, artistic, sporting, scientific, educational, entertainment and similar services**

The place of supply rules relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities will remain essentially the same from 1 January 2010. Although the new rule will refer to where the activity takes place HMRC does not see any change in practice from the application of the existing 'where performed' rule.

With effect from 1 January 2011 the scope of this rule for supplies to business customers will be limited to admissions to an event and ancillary services related to admissions. Supplies to business customers of other services (not admissions) within this category will become subject to the general rule. The place of supply of cultural, artistic, sporting, scientific, education entertainment and similar services to non-business customers will remain subject to the specific rule – i.e. supplied where the activity takes place.

The definition of admission was the second most widely raised interpretation issue. This point was raised by ten respondents. The main difficulty highlighted was how to treat educational events or classes which participants pay to attend. This could be classified as either admission to an event or a supply of educational services. These options could result in different places of supply.

This is an issue that is being discussed with the European Commission and other Member States with a view to achieving a consistent approach on interpretation. Comprehensive

guidance will be provided on what constitutes admission to an event once agreement has been reached.

### **3.6 Restaurant and catering services**

The place of supply of restaurant and catering services is not currently specifically identified in UK VAT law. From 1 January 2010 the place of supply rule will be that these services are taxable where performed. No comments were received in relation to these services.

### **3.7 Restaurant and catering on board ships, planes and trains**

There is a new place of supply rule for restaurant and catering services supplied on board ships, planes and trains. This mirrors the place of supply rules for goods consumed on board ships, planes and trains in the same circumstances.

Two respondents felt that there was some inconsistency between the draft law the EC directive and HMRC's interpretation, and that this represented a change from the rules for goods on board ships. HMRC has looked again at this but remains of the view that the VAT treatment of these supplies will remain the same post 1 January 2010 as now.

### **3.8 Use and enjoyment**

Member States will be permitted to apply use and enjoyment provisions set out in Article 59a of the EC Directive to services covered by the general rule, hire of means of transport and EC to non-EC services (which includes electronically supplied services, radio and TV broadcasting services and telecommunication services). However Member States will not be able to apply use and enjoyment to EC to non-EC electronically supplied services for non-business customers.

Eight respondents commented on the difficulty in applying the use and enjoyment provisions in the UK. There were also concerns raised about the different scope and application of the use and enjoyment provisions across Member States and the need for clarity. This is an issue that is being discussed with the European Commission and other Member States to see what scope there is for providing greater clarity for business. In the meantime HMRC will consider if guidance can be clarified in this area.

### **3.9 Intermediaries**

Under current law intermediary services are generally taxed in the same place as the underlying transaction. However, from 1 January 2010 this rule will only apply to supplies to non-business customers. Supplies of intermediary services to business customers will fall under the general rule.

One respondent questioned whether the UK draft legislation goes wider than the EC law that it implements. This is because it includes '*or other activity intended to facilitate the supply*'. HMRC has considered this point but believes that the draft legislation is consistent with EC Law.

### **3.10 Transport of goods**

The place of supply of services rules for the intra-community transport of goods from business to consumers will remain the place of departure of the goods from 1 January 2010. The place of supply of the intra-community transport of goods for business customers will fall under the new general rule.

One respondent felt that Article 52 of the Directive, which allows Member States to not tax part of intra-Community transport taking place outside the EC, should be implemented into domestic legislation by the draft law. HMRC has looked at this and believe this is implicit in the draft legislation.

It was also asked how the place of supply will be determined "*in proportion to the distances covered*". HMRC considers that this will normally involve an apportionment to be carried out based upon the mileage in each Member State.

### **3.11 Ancillary transport services and valuation of work on goods**

From 1 January 2010 ancillary transport services, valuation of and work on goods supplied to business customers will fall under the general rule. Supplies to consumers will continue to be supplied where performed.

No responses were received on this change.

### **3.12 Electronically supplied services**

The place of supply of electronically supplied services to consumers will remain unchanged from 1 January 2010. The only question on this rule concerned the scope of electronically supplied services. This is covered in existing guidance but HMRC will consider if further clarification is required.

### **3.13 Supplies to non-taxable persons outside the EC**

The place of supply of services covered by this provision made by a supplier established in the EC to a non-business customer residing outside the EC will be the non-EC customer's country. These are services currently identified in Schedule 5 of the VAT Act 1994, with the exception of Schedule 5 intermediaries which are now covered by 3.9 above. No comments were received on this rule.

### **3.14 Reverse charge**

Two respondents asked whether the draft legislation had the effect of making unregistered businesses more likely to have to register as a result of buying services from overseas suppliers. Currently services falling within the reverse charge as a result of paragraph 9, Schedule 5 of the Act (i.e. where the EC Directive does not provide for a mandatory reverse charge), only apply the charge where the customer is registered for VAT in the UK. The overseas supplier is potentially liable to register for VAT in the UK when the services are supplied to non-registered businesses. The receipt of these services by a

non-registered business does not count towards the customer's total taxable supplies made for the purposes of the VAT registration threshold.

As the general rule from 1 January 2010 is wider in scope than it is under the current rules, more services will be covered by the mandatory reverse charge, the receipt of which will count towards the registration threshold and could result in more customers being required to register for VAT as a result of receiving these services.

Another respondent asked whether the new legislation would be compatible with a recent European Court decision in *Kollektivavtalsstiftelsen TRR Trygghetsrådet* [C-291/07]. HMRC has taken these views into account in finalising the legislation.

One respondent stated an objection to the widening of the reverse charge and increasing irrecoverable input tax for businesses without the right to recovery.

### **3.15 Force of attraction**

The force of attraction is a principle adopted by some countries whereby VAT is due from a business established in the same territory as their customer even though that business establishment does not play an active role in supplying the services concerned.

Article 192a of the Directive seeks to ensure that the 'force of attraction' principle does not feature in determining the place of taxation and the business customer remains liable for VAT due on general rule services if the establishment of the supplier in his country does not "intervene" in the supply. This point drew a number of comments, mainly on interpretation and business facilitation measures.

Seven respondents sought a common EC definition of the meaning of intervening for the purposes of choosing between fixed and business establishments when making supplies. This is an issue which is being discussed with the European Commission and other Member State with a view to agreeing a consistent approach across Member States. Comprehensive guidance will be provided once agreement has been reached.

Some respondents questioned whether the UK draft law should incorporate Article 192a of the Directive. HMRC believes that the force of attraction principle has never been a feature of UK law or HMRC policy and so there is no benefit in adding this provision into the legislation. We are of the view that the legislation and interpretation of it are sufficient.

### **3.16 Time of supply and the reverse charge**

Fourteen written responses commented on the time of supply changes that were adopted by the EC after the consultation document was prepared.

The new rules will come into effect on 1 January 2010 and provide that the time at which a recipient of a taxable general rule service is required to account for a reverse charge will be the earlier of completion of the services or the date of payment. For continuous supplies, it will be the end of each billing or payment period (or on payment where this is earlier), with a compulsory tax point of 31 December each year in cases where such periods (or payments) do not arise.

The UK law provisions will determine the time when UK VAT registered persons account for a reverse charge on cross-border supplies. In addition the changes at EC level also impact on when the supplier of a taxable general rule service should complete their EC Sales List entry (see Section 4).

A large proportion of responses highlighted the difficulties in determining the performance date using existing systems. Whilst most respondents felt that they should be able to rely on the invoice date, others also requested that business should continue to apply the date of payment.

HMRC recognises the need to minimise burdens on businesses whilst at the same time meeting the requirements of the Directive. We are aware of the difficulties, for example, in determining when a service has been completed. In some cases events such as entry of a transaction into the accounts, receipt of an invoice or date of payment might, be appropriate indicators of when that point is reached. But this will inevitably depend on the precise nature of the supplies and existing commercial procedures. We will be discussing this issue further with business representatives, to try to identify a way forward that will not be too costly or burdensome.

### **3.17 Other issues**

Although not part of the changes, respondents also highlighted existing differing treatments by Member States of certain supplies of goods and services, what supplies are included in Tour Operators Margin Scheme (TOMS), vouchers, tripartite contracts, and third party considerations and how these might be compounded by the changes in the place of supply rules. HMRC is aware of existing difficulties in these areas which are already being reviewed and in some cases part of ongoing European reviews (such as with vouchers). Comments made in response to this consultation will be taken forward as part of that work.

## 4. EC Sales Lists for Reverse Charge Services

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### 4.1 Introduction

From 1 January 2010, EC Law requires that EC Sales Lists (ESLs) must be completed for taxable services which are subject to a reverse charge in the Member State of their customer. Respondents to the Consultation Document had three main concerns about the proposed new ESL arrangements for reverse charge services. First of all, businesses were not being allowed enough time to prepare their IT systems to implement the new reporting requirements. Many respondents reported that most major IT changes have a 24 month design, develop, build, install and test cycle. However, in this case most businesses would only have about 12 months. Secondly, for many intra-EC supplies of services, particularly those in the financial services sector, it would often be very difficult to identify whether a supply was liable to a reverse charge in the customer's Member State. Finally, many businesses thought it would sometimes be difficult to obtain their customer's VAT Registration Number (VRN), or to check its validity.

### 4.2 Legal Interpretation

When the Consultation Document was issued, it included only the adopted EC legislation for ESLs, as the draft UK legislation was not available. Although comments were specifically invited about the clarity of the EC legislation, none were received. Consequently HMRC has now prepared the draft UK legislation on the understanding that there are no substantive issues surrounding how the law should be interpreted and applied. The draft UK legislation has now been circulated to selected business associations for comment and will be published on the HMRC website shortly.

### 4.3 Format of ESL Declaration (VAT 101)

There were several enquiries as to whether there would be any changes to the ESL Declaration (Form VAT 101) to include intra-EC supplies of services. HMRC can confirm that the form will not be changed, as to identify intra-EC supplies of services, businesses will simply be asked to enter Code 3 in the Indicator Box; currently the only code that is used is Code 2 for triangular supplies of goods. HMRC does intend to slightly modify the format of the paper version of the Form VAT 101 so that the declarations can be more easily scanned, but the basic format will not be changed.

Businesses requested early confirmation of changes to the CSV/XML formats for the ESL declarations and also wanted to know if a testing facility will be made available through SDST. Meetings are being held with software developers and the delivery of a test service is expected by early July.

### 4.4 Determining when ESLs are required

#### a) Determining taxable and exempt transactions

ESLs will only be required for taxable services subject to a reverse charge. Fifteen respondents expressed concern at having to determine whether a supply of services is taxable or exempt in the Member State of consumption. This is a particular problem in the financial services sector where the liability position differs from one Member State to another. There are ongoing discussions in EC Council meetings on the Financial Services

Review to seek clarification and agreement as to which supplies are taxable and which exempt, but this may take some time to resolve. HMRC is fully aware of the importance of this issue to businesses and is actively discussing possible ways forward with business representatives in a joint Business/Government ESL Working Group. HMRC will therefore seek to publish agreed guidance at an early date.

#### **b) Business customers who do not provide a VRN**

This was another area of concern, with eleven respondents requesting guidance on how they will deal with business customers who do not provide them with a VAT number. HMRC's view is that only supplies to businesses in other Member States that are VAT registered and can provide a valid VRN should be recorded on the ESL. HMRC said the following in its Place of Supply of Services Consultation Document:

*“Supplies to non-registered business customers - if you make a supply to a business which is not registered for VAT in their Member State because it is below the registration threshold, but which has provided you with evidence that it is in business (for place of supply purposes), you should not include these supplies on your ESL because the absence of a VAT registration number would cause it to be rejected.”*

HMRC stands by this statement, as the amended Article 264 of the VAT Directive makes it clear that the customer's VRN must be included on the ESL. However customers may register between transactions so it should not be assumed that the treatment of later supplies will be the same as the treatment of earlier ones.

#### **c) Checking the validity of a customer's VRN**

A number of businesses said they were unsure about whether and how often they should check the validity of their customer's VRN.

The Europa website provides an electronic number registration checking facility of all Member States VAT registration numbers. The HMRC National Advice Service (NAS) (contact number 0845 010 9000) can validate VAT numbers and verify that names and address belong to that number.

[http://ec.europa.eu/taxation\\_customs/vies/vieshome.do?selectedLanguage=EN](http://ec.europa.eu/taxation_customs/vies/vieshome.do?selectedLanguage=EN)

It is the responsibility of the business making the supply to be satisfied that their customer is VAT registered and that the services will be used for business purposes. As the nature and extent of relationships between businesses can vary extensively, HMRC cannot provide specific advice as to whether, or how frequently, a supplier should validate their customer's VRN.

#### **d) Businesses supplying both goods and services**

Some respondents questioned whether goods and services could be declared on the same ESL form. As indicated above, on the ESL declaration (Form VAT 101), businesses will be able to identify supplies of services by entering Code 3 in the Indicator Box on the relevant lines of the declaration.

#### **4.5 Determining the Time of Supply for ESL purposes**

Fourteen responses commented on the new time of supply (tax point) rules for intra-EC supplies of services. These define the tax point as being the earlier of either the date of performance, or date of payment. These new tax point rules have been introduced to ensure that the supplier of the service declares the supply on their ESL at the same time as the customer records receipt of the service on their VAT return.

As noted at 3.16, HMRC is aware of the difficulties these rules pose for businesses, and is in active discussions with business representatives to try to identify a way forward that will not be too burdensome or costly.

#### **4.6 Reduced timeframes for submission**

Several businesses said they were unclear about the proposed reduced timeframes (i.e. 14 days for paper and 21 days for electronic) for submitting their ESLs to HMRC after the end of the monthly or quarterly reporting period.

These deadlines are necessary because the time allowed for Member States to collect, process and exchange ESL data with other Member States is reduced to one month in total. HMRC is seeking to give businesses as much of the limited available time as possible so that is why we have decided to allow businesses that submit electronic ESLs 21 days after the end of the reporting period. However, we can only allow businesses 14 days to submit their paper ESLs as we will require additional time to either key-in or scan the documents onto the HMRC VAT Information Exchange System (VIES) database ready for transmission to other Member State tax authorities by the month end.

#### **4.7 HMRC Penalty Regime**

There was a request for clear guidance on the penalty process for the new ESL regime, particularly during the transitional phase.

ESLs are not covered by the new HMRC penalties regime. ESL penalties are issued in accordance with separate provisions in the UK VAT Act Sections 65 (Inaccuracies) and 66 (Failure to submit). At least for the time being, these provisions will continue to apply. Under the current ESL penalty regime arrangements, if a business fails to submit an ESL by the due date it may be liable to a penalty of £5, £10 or £15 for each day that the ESL is late. The actual rate applicable will depend on the number of times the business has submitted ESLs late in the past. If a business submits an ESL that contains a material inaccuracy and it fails to tell HMRC, it may be liable to a penalty of £100. But in both cases it will not be liable to a penalty if it can satisfy HMRC that it had a reasonable excuse.

When applying the penalty regime, HMRC will adopt a proportionate approach while the new ESL arrangements bed in across the EC. HMRC will expect businesses to take reasonable and appropriate steps to ensure the completeness and accuracy of their ESL declarations. However, HMRC appreciates that in the early months of the new arrangements some businesses, for valid operational reasons, may face some difficulties. Provided a business can demonstrate that it has taken “reasonable care” to comply, HMRC will not seek to apply a penalty.

#### **4.8 Timeframe for implementing the above ESL system changes**

HMRC fully understands the concerns of UK businesses and recognises that the time allowed to implement these changes to the ESL regime is challenging, particularly in the current business environment. It will therefore do all it can to implement the requirements in a way that keeps administrative burdens and business costs to a minimum.

## 5. Impact Assessment

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Since HMRC published the consultation stage Impact Assessment on the place of supply of services changes, EC legislation covering the measures to combat tax evasion connected with intra-Community transactions has been published. Given that there is significant interaction between the place of supply of services changes (including the introduction of ESLs for services) and the measures to combat tax evasion connected with intra-Community transactions, one implementation Impact Assessment covering all the changes has been published and can be found at:

<http://www.hmrc.gov.uk/better-regulation/ia.htm>

Some of the original proposals for combating tax evasion connected with intra-Community transactions included in the consultation stage Impact Assessment have not been adopted by the Commission and therefore they have not been included in the implementation stage Impact Assessment.

Respondents made a number of comments on the impact of the place of supply of services changes and the measures to combat tax evasion connected with intra-Community transactions.

It was felt that the administrative burden and compliance costs associated with the changes were generally under-estimated in the two consultation stage Impact Assessments. For example respondents commented specifically that:

- the costs did not take into account the education and training of staff which will be required by businesses in order to implement the changes;
- more frequent submission of ESLs for goods, the introduction of ESLs for services and the introduction of the mandatory reverse charge will increase the administrative burden to businesses because additional staff resource will be spent on meeting these requirements; and
- concerns were raised that difficulties in applying or interpreting the new rules and the potential inconsistency between Member States' implementation will all involve potential additional costs for business.

HMRC has reviewed the assumptions made at the consultation stage and has undertaken further work resulting in a number of the original estimates being revised upwards to, we believe, better reflect the expected costs to UK businesses of the various changes. These are set out in detail in the implementation stage Impact Assessment.

Respondents also stated that:

- clear guidance from HMRC will assist business and will help to reduce the burdens placed on business as a result of the changes;
- the changes impose burdens on business at a time when the economic climate places other pressures on businesses;
- there is insufficient time for businesses to implement the changes required to take effect from 1 January 2010;
- intra-EC trade may reduce because of the burdens placed on business in relation to cross-border trade; and

- some respondents consider that without a formal procedure for the resolution of disputes between Member States on the tax treatment of transactions, there could be significant costs to businesses;

HMRC will be working with business to minimise the burdens placed on business as a result of the changes.

## 6. Next Steps

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This document aims to provide a summary of the responses received and what HMRC has decided in light of those responses. However, as indicated, work is still ongoing to try and achieve certainty on interpretation and implement the changes in a way that minimises additional burden on business in so far as is possible.

Going forward:

- legislation will be enacted as part of the Finance Bill 2009 and secondary legislation;
- the UK will be actively involved in discussions at EC level with a view to achieving consistency of treatment across the EC. In the absence of agreement being reached in good time we will issue guidance outlining the approach we expect UK business to take;
- HMRC will continue discussion with business aimed at understanding the practical issues associated with the changes with a view to minimising additional burdens on business;
- information will be provided as issues are finalised. Further information on the Cross-Border VAT Changes 2010 more generally will be available through a Revenue and Customs Brief on 1 May 2009. This will be updated as issues are finalised;
- comprehensive guidance will be available; and
- HMRC will consider holding further seminars covering the changes.

# A List of Respondents

European Community Shipowners' Associations  
Edexcell Limited  
Sony  
Iris Accounting and Business Solutions  
Chartered Institute of Taxation  
Business Application Software Developers Association  
BP  
Ernst & Young  
Caterpillar Inc  
Simmons & Simmons  
Global 3000  
Haysmacintyre  
Lockton Group  
Sage  
British Vehicle Rental and Leasing Association  
The VAT Consultancy  
Berwin, Leighton Paisner  
British Bankers' Association  
CBI  
Schroders  
Aviva plc  
London and International Insurance Brokers' Association  
Institute of Indirect Taxation  
BT  
AVS VAT (on behalf of travel agent association)  
Grant Thornton  
Herbert Smith  
ICAEW  
GE  
International Underwriting Association  
Deloitte  
London School of Economics  
Heuristic Customs  
Sabrix  
Baker Tilly  
The Law Society of England & Wales