

VAT: Draft Anti-forestalling Legislation

Paragraph 1 introduces a supplementary charge to VAT on supplies of goods and services subject to the standard rate of VAT which take place on or after 25 November 2008. The supplementary charge is payable where:

- the supply spans the date on which the standard rate reverts to 17.5 per cent;
- the customer is not entitled to recover all of the VAT on the supply; and
- at least one of the relevant conditions laid down in paragraphs 2 or 3 is met.

Paragraph 2 provides that a supply of goods or services spans the date of the VAT rate change where the supplier raises a VAT invoice or receives payment (or both) prior to the VAT rate change and the basic time of supply takes place on or after the date of the change.

The supplementary charge will apply where at least one of the following relevant conditions is met:

- Condition A - the supplier and the customer are connected with each other at any time during the period from the date of the supply to the date of the VAT change.
- Condition B - the relevant consideration for the supply and any related supply of goods or services amounts to more than £100,000.
- Condition C - the supplier or a person connected with him finances a prepayment by the customer.
- Condition D - the supplier raises a VAT invoice where payment is not due until at least six months from the date of the invoice (applies to the issue of a VAT invoice only).

Paragraph 3 applies to the supply of the grant of a right to receive goods or services at a discount or free of charge where the grant is supplied before the date of the VAT rate change but the basic time of supply of some or all of the goods or services takes place on or after that date. A right for this purpose includes an option or an interest deriving from a right (or option). The supplementary charge will apply where at least one of the following relevant conditions is met:

- Condition A - the grantor and the customer are connected with each other at any time during the period from the date of the supply to the date of the VAT change.

- Condition B - the relevant consideration for the grant of the right and any related supply of goods or services amounts to more than £100,000.
- Condition C - the supplier or a person connected with him finances the customer's payment for the grant of the right.

Paragraph 4 provides that the basic time of supply is as stated in subsection (2) or (3) of section 6 of VAT Act 1994, with an exception for certain listed supplies (see paragraphs 16 and 17).

Paragraph 5 extends the connected persons condition in paragraphs 2 and 3. It applies where there is a series of supplies of, or a series of grants of, the right to receive, the same or substantially the same, goods or services. In these circumstances, if any supplier or grantor in the series is connected to the customer, the supplementary charge will apply to the supply to the customer.

Paragraph 6 defines 'relevant consideration' and 'related supply' for the purpose of Condition B in paragraphs 2 and 3.

Relevant consideration in relation to the supply of goods or services consists of the amount shown on an invoice or the amount of payment received. Relevant consideration in relation to the grant of a right consists of the consideration for the grant of the right. In all cases it is net of VAT.

A supply of goods or services or a grant of a right is related to another such supply or grant where they are both made as part of the same scheme. 'Scheme' includes any arrangements, transaction or series of transactions.

Paragraph 7 sets out the circumstances in which a supplier or a person connected with the supplier is treated as financing the payment for a supply of goods or services or the grant of a right to receive goods or services.

Paragraph 8 provides that section 839 of the Income and Corporation Taxes Act 1988 applies for the purpose of defining 'connected persons'

Paragraph 9 provides that receipt of payment by a supplier includes receipt of payment by a person to whom the right to receive it has been assigned.

Paragraph 10 provides powers for the Treasury to amend the relevant conditions and make other incidental or consequential amendments to the Schedule by order.

Paragraph 11 excludes certain provisions from having retrospective effect back to 25 November 2008 as they were not included in the

Financial Secretary to the Treasury's announcement of that date on the scope of the legislation. Those provisions are:-

- Condition B in paragraphs 2 and 3.
- Paragraph 6 which defines 'relevant consideration' and 'related supply' for the purpose of Condition B.
- References to persons connected to the supplier or grantor in condition C in paragraphs 2 and 3.

Paragraph 12 provides for exceptions to the application of the supplementary charge. Where a supply consists of the lease, hire or rent of any asset, a supplementary charge will not apply if the VAT invoice or payment covers a period of up to one year and this accords with normal commercial practice.

Paragraph 13 provides powers for the Treasury to introduce further exceptions to the application of the supplementary charge by order. Such exceptions may remove supplementary charges falling due on or after the order comes into effect, if the supplies concerned were made at any time from 25 November 2008 onwards.

Paragraph 14 provides that the supplier of goods or services or the grantor of a right to receive goods or services is liable to account for the supplementary charge other than where the supplier or grantor is a member of a VAT group, in which case the representative member of that group is liable to account for the supplementary charge. In the case of goods and services, payment is due on the date that the standard rate of VAT reverts to 17.5 per cent. In the case of the grant of a right covered by paragraph 3, the supplementary charge is due on the date that the right is first exercised on or after the date of the VAT change.

Paragraph 15 provides that the rate of the supplementary charge is the difference between the VAT charged on the supply of goods or services or of a grant (i.e. 15 per cent) and the rate in force when the supplementary charge becomes due (i.e. 17.5 per cent).

Where, under the terms of a grant, some goods or services are supplied before the rate change and some are supplied after it, the consideration should be apportioned to ascertain the amount that is properly subject to the supplementary charge.

Paragraph 16 defines what is meant by 'listed supplies' for the purposes of the Schedule. These comprise supplies of goods or services where payment is made periodically or from time to time and which are treated as having taken place by virtue of either the issue of a VAT invoice by the supplier or receipt of payment.

It also provides powers for the Treasury to amend the list by order.

Paragraph 17 provides that, for the purposes of listed supplies in paragraph 16, the basic time of supply occurs at the end of the period for which a VAT invoice is raised or payment is received.

However, where a supplier has raised a VAT invoice or received payment in respect of a listed supply which is still continuing and issues an invoice for a 'billing period' that ends before the end of the period covered by the VAT invoice or payment, the end of the billing period becomes the basic time of supply for that part of the supply. In such cases, the consideration for the listed supply must be apportioned between the periods on a just and reasonable basis.

Where a listed supply arises as a result of paying or issuing a VAT invoice for a premium for a tenancy or lease, the basic time of supply is the date of the grant.

Paragraph 18 provides that, where a person is required to account for a supplementary charge but deregisters for VAT before the supplementary charge becomes payable, he is required to account for it in his final period return. However, any interest that arises on an assessment in relation to the supplementary charge will run from the date the supplementary charge is due (see paragraph 14), rather than the date when the final return is due.

Paragraph 19 provides for adjustment of contracts where a contract is made for the supply of goods or services before the rate change and a supplementary charge is due on the supply. In such cases, unless the contract provides otherwise, the consideration due under the contract will be increased by the amount of any supplementary charge.

Paragraph 20 provides that regulations may be introduced under the provisions of paragraph 2A of Schedule 11 to the VAT Act 1994 to allow for the replacement or correction of a VAT invoice in relation to a supplementary charge.

Paragraph 21 provides that orders made under the provisions of the Schedule are subject to the negative resolution procedure apart from those made (at least in part) under paragraph 10 which extend the scope of the supplementary charge, which require House of Commons approval within 28 days of being made.

Paragraph 22 provides that expressions used in this Schedule and the VAT Act 1994 have the same meaning as under the Act as well as clarifying certain references used elsewhere in the Schedule.