

Cross-border VAT changes 2010

1 January changes to EC Sales Lists (ESLs)

HMRC guidance

Introduction

This HM Revenue & Customs (HMRC) guidance document sets out how the new regime and procedures for ESLs (or recapitulative statements as they are called in other Member States) will operate in the UK. The guidance is supported by a set of frequently asked Q and A's. This guidance is organised in five parts:

- Part 1 outlines the background to the forthcoming changes
- Part 2 explains how the current ESL regime will be extended to intra-EC supplies of services subject to a reverse charge in the customer's Member State
- Part 3 explains the reduced ESL reporting timeframe for goods
- In Part 4 there are some frequently asked Q and A's
- Part 5 contains the new CSV and XML file formats
- Part 6 contains the draft secondary legislation

Part 1

Background

VAT Package

1. A package of changes to the EC VAT system was adopted by EU Finance Ministers in February 2008. The changes will modernise and simplify the current rules relating to cross-border supplies of services and to the recovery of VAT on purchases made in other EU countries. The changes will take place between 1 January 2010 and 1 January 2015. The package includes
 - Changes to the rules on the place of supply of services for Business-to-Business (B2B) and Business-to-Consumer (B2C) transactions.
 - A requirement to complete ESLs for (taxable) supplies of services covered by the 'general rule' (Article 196 of Council Directive 2006/112/EC), on which a reverse charge applies in the customer's Member State.
 - Enhanced administrative co-operation between Member States to support these changes.
 - The introduction of an electronic VAT refund scheme.
 - The introduction of an optional One Stop Scheme for B2C supplies of telecoms, broadcasting and electronically supplied services.

This document is only concerned with the second and third bullet points.

Anti-Tax Fraud Strategy (ATFS)

2. In December 2008, as part of an EU Anti-Tax Fraud Strategy (ATFS), European Finance Ministers also adopted a Directive on the frequency of the ESL reporting periods. This is separate from the VAT Package extension of the scope of ESLs to services. From 1 January 2010, the standard reporting period for all ESLs, whether for goods, services, or both, will in principle be monthly. But in order to keep administrative burdens for businesses to a minimum, Member States have the option of allowing quarterly reporting periods for supplies of services. The UK intends to take up that option. This means that from 1 January 2010 UK businesses will have to prepare monthly ESLs for supplies of goods, where the value of those supplies exceed certain thresholds, and to prepare quarterly ESLs for supplies of services. Businesses that make intra-EC supplies of both goods and services will be able to choose whether to report all their supplies monthly, or to report just the goods monthly and their supplies of services quarterly.
3. In addition to the above changes to ESL reporting periods, the length of time allowed to Member States tax administrations to collect, process and exchange ESL data with the tax administrations in other Member States

will be reduced to one month in total. In other words, within one month of the end of the monthly, or quarterly, reporting period, businesses will have to prepare and send their ESLs to HMRC, and HMRC will have to collate and process the returns and exchange the ESL data with the authorities in the other Member States. To meet these new targets HMRC proposes to allow businesses up to 14 days following the end of the reporting period to send HMRC their paper ESLs, and 21 days if they submit electronic ESLs. HMRC can only allow 14 days for paper ESLs as additional time will be required to input the data (using scanning technology) into their ESL databases. It should be noted that as at present 'Nil' ESLs are not required by HMRC.

Part 2

VAT Package - Extension of ESLs to include services

When ESLs are required

4. ESLs are currently only required for B2B intra-EC supplies of goods. From 1 January 2010 ESLs will also be required for intra-EC supplies of services, covered by the 'general rule' (Article 196 of Council Directive 2006/112/EC) to which a reverse charge applies in the customer's Member State.
5. They will not be required for:
 - Supplies which are exempt from VAT according to the rules in the customer's Member State.
 - Supplies that fall under the exceptions to the 'general rules' covered by Article 194 of Council Directive 2006/112/EC.
 - B2B supplies where the recipient is not VAT registered.
 - B2C supplies.

Information required on ESLs

6. The ESL form that is currently used for reporting intra-EC supplies of goods (VAT 101) will also be used for services. The following information must be entered on the form:
 - Customer's country code.
 - Customer's VAT Registration Number.
 - Total value of supplies in sterling.
 - Code 3 in the Indicator Code Box if it is a supply of services. No Indicator Code is required for supplies of goods unless it is a triangular supply of goods when Code 2 must be entered.

ESL reporting periods

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

Methods of submission

8. It will be possible to submit ESLs to HMRC either electronically through the 'ECSL Service', or by using the paper ESL Form VAT 101.
9. Electronic methods of submission are:
 - The online form.

- Bulk upload of data using a Comma Separated Variable (CSV) or Extensible Mark up Language (XML) file. The 'Bulk Upload' options will be of particular use to businesses that regularly submit in excess of 20 lines.
- XML channel.
- Using UN-EDIFACT format.

NB. Guidance notes on the file layout for submitting bulk declarations by CSV/XML data files or Edifact, after 1 January 2010, are contained in Part 4 of this guide, at the end of the Q and A's.

Part 3

Anti-Tax Fraud Strategy - Reduced timeframes

Current reporting period for ESLs

10. The current ESL reporting period for intra-EC supplies of goods is normally a calendar quarter.

New ESL reporting period for goods

11. From 1 January 2010 the ESL reporting period for goods will be a calendar month for supplies over a specified threshold (see paragraph 12 below). Where a business makes supplies of goods below the specified threshold, they may use a reporting period of a calendar quarter.

Thresholds for quarterly reporting periods for goods

12. During the period 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.

13. And from 1 January 2012 onwards:

- If the total quarterly value of supplies of intra-EC goods, (excluding VAT), does not exceed £35,000 in the current quarter, or any of the previous four quarters.

14. However, the option to submit quarterly ESLs for goods will cease at the end of any month during which the total value, excluding VAT, of the taxable supplies of intra-EC goods exceeds the relevant quarterly thresholds ie £70,000 or £35,000.

15. Businesses will be required to submit monthly ESLs from the first day of the month following the month in which they exceed the threshold. For example:

- Where a business submitting quarterly ESLs exceeds the quarterly threshold during the month of February, they will be required to submit a final 'quarterly' ESL covering just two months (January and February) and commence submitting monthly ESLs from 1 March.

16. HMRC will notify businesses when they become aware that the total quarterly value of supplies of intra-EC goods has exceeded the relevant threshold figure. Arrangements will be made to change the reporting period to 'monthly' and if you submit by paper monthly ESLs will be issued automatically.

Current timeframe for submitting ESLs to HMRC

17. Businesses currently have 42 days from the end of the reporting period to submit their ESLs to HMRC.

New timeframes for submitting ESLs to HMRC

18. With effect from 1 January 2010 the new timeframes for submitting ESLs to HMRC will be:

- for paper ESLs, within 14 days from the end of the reporting period
- for electronic submissions, within 21 days from the end of the reporting period

Part 4

Questions and Answers

ESLs

1. What is an ESL?

An ESL (EC Sales List) is a declaration that lists supplies of goods and/or services made by a UK VAT registered trader to a VAT registered customer in another EU Member State. These declarations are called 'Recapitulative Statements' in EC VAT legislation.

2. Why do I need to submit an ESL?

Within the EU Single Market there are no frontiers, or borders, between different Member States, even though they are separate fiscal territories. Prior to 1993 goods had to be declared as they moved from one Member State to another. ESLs provide the tax authorities in the different Member States with a post-event declaration, or notification, to alert them to the cross-border supply of goods and services from 1 January 2010. These declarations enable the tax authorities to monitor taxpayer compliance and to fight VAT fraud.

3. What changes are taking place with effect from 1 January 2010 that affect the place of supply rules?

From 1 January 2010, the new basic rule (the 'general rule') for the place of supply of services will tax B2B supplies of services at the place where the customer is established and no longer at the place where the supplier is established, as is currently the case.

For B2C supplies of services, the general rule for the place of supply will continue to be the place where the supplier is established. However, from 1 January 2015, the place of supply of intra-EC B2C supplies of telecoms, electronically supplied services and broadcasting will be where the customer is established or usually resides.

As now, there will be exceptions to the general rule for certain services, with a view to achieving taxation in the place of consumption. In the main these will be implemented on 1 January 2010, with further changes to the 'where performed' rule from 1 January 2011 and for long-term hire of means of transport from 1 January 2013.

As now, the general rule will be the 'fall-back' rule, and a supply of services will be subject to this treatment unless it is described in another specific place of supply rule. In other words, when deciding on the place of supply of a service the supplier is required to look first at the exceptions to the general rule contained in the Schedule 4A and if the supply is not described there it becomes subject to the general rule. From 1 January 2010, the general rule will encompass the majority of the services supplied to businesses, many of

which are currently covered by different place of supply of services rules. The main exceptions to this new arrangement are certain services that will be treated as supplied where they are performed and services relating to land. They will, in the majority of cases, be the same post 1 January 2010 as they are now.

The new general rule for B2B services **includes** the following supplies of services:

- Intermediary services;
- Transport of goods (including intra-Community transport of goods);
- Ancillary transport services (loading, unloading, etc);
- Valuation and work on goods;
- Long-term hire of a means of transport (more than 30 days for all means of transport other than vessels – more than 90 days);
- Electronically supplied services by non-EC suppliers to EC business customers;
- Services currently covered by Schedule 5 of the VAT Act 1994.

However, the new B2B general rule **excludes**:

- Services connected with immovable property (land)
- Passenger transport
- Short-term hire of means of transport
- Services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the supply of services of the organisers of such activities, which are supplied where the activity takes place. However, from 1 January 2011 and where supplied B2B, these services will also become subject to the general rule. B2B supplies of admissions services and services ancillary to admissions will be supplied where the event takes place.
- Restaurant and catering services
- Restaurant and catering services supplied on board ships, planes and trains

Currently EC Sales Lists are only required for intra-EC supplies of goods. From 1 January 2010, EC Sales Lists will also need to be completed for intra-EC taxable supplies of services which are covered by the general rule and are

subject to reverse charge arrangements in the customer's Member State. They will not be required for intra-EC supplies of services which are exempt in the customer's Member State.

4. After 1 January 2010 I expect to be making intra-EC supplies of services covered by the 'general rule' and that are taxable in my customer's Member State. What should I do?

You must notify HMRC about such supplies by completing and submitting to HMRC an ESL form (VAT 101) in accordance with the requirements set out in this guidance. ESLs can be submitted electronically through the 'ECSL Service' (via the 'Online Services' option at www.hmrc.gov.uk) or by downloading a Form VAT 101 from the HMRC website. Alternatively, a form can be requested from the VAT Advice Service on 0845 010 9000. Following receipt of the first paper ESL by HMRC, future forms will be issued automatically.

5. What methods can I use to submit an ESL to HMRC?

ESLs can be submitted to HMRC either electronically through the 'ECSL Service' (via the 'Online Services' option at www.hmrc.gov.uk), or by using a paper ESL Form VAT 101.

6. Will there be any change to the online service?

Yes, the period references for quarterly submissions previously referred to as quarter 1, 2, 3 or 4, will be referred to as 03, 06, 09 and 12 from 24 November 2009.

7. Will there be any change to the file format for bulk upload submissions using CSV /XML data files or Edifact?

The only changes to the existing format will be the introduction of code 3 to identify supplies of services and for CSV and XML only, the period quarter will change to period reference consisting of two-digits (see below).

For quarterly businesses this will be one of:

03, 06, 09, 12 (corresponding to the old quarter identifiers 1,2,3,4)

For monthly businesses this will be one of:

01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12

New CSV and XML templates will be available on the bulk upload page of the ECSL online on 24 November 2009. The new templates should be used for **any** submissions made after this date, including periods prior to 1 January 2010.

The period reference format for Edifact submissions will remain the same as it is currently YY/MM.

Guidance notes on the new CSV and XML file formats, for all submissions after 24 November 2009, are contained in Part 5 of this guidance.

8. Can I use an agent to send in my ESL?

You may use an agent to act on your behalf, but remember the legal responsibility for the accurate and timely completion and submission of an ESL remains with you.

9. Can I submit separate ESLs if I have branches or a group registration?

Yes, if you have:

- individual branches of your business;
- individual companies within a group registration; or
- self accounting branches of a group member;

you should apply to the VAT Advice Service on 0845 010 9000, who will arrange for separate forms and a three digit identifier to be issued, for each branch or company to use when completing its own ESL.

10. How long will I have to submit an ESL?

From 1 January 2010, the deadlines for submitting an ESL to HMRC will be:

- for paper ESLs, within 14 days of the end of the reporting period
- for electronic (online) ESLs, you will be allowed a further seven days, which means it must be submitted within 21 days of the end of the reporting period.

11. Is there going to be a new ESL form for services?

No. We will be using the existing form VAT 101. You should enter a code 3 in the indicator box, on the appropriate line on the ESL declaration, to identify the supply of services.

12. Do I include the value of intra-EC supplies of services in box 8 of the VAT return?

No. The value of services supplied or acquired should not be included in boxes 8 or 9 of your VAT Return. These boxes are only be used to record intra-EC supplies/acquisitions of goods and related costs.

13. Will there be any changes to the VAT 101?

There will be no significant changes to the form but it has been necessary to introduce some minor changes, including a reduction in the number of lines available on the form.

For all paper forms issued after 1 January 2010 there will be two sets of from and to dates, one for goods and one for services. This is necessary for those businesses that supply both goods and services and are required to submit monthly declarations for goods.

The box on the form currently named 'Calendar Quarter' will be changed, to allow for monthly submissions.

For ESLs covering a period from 1 January 2010 onwards, this box will be renamed Period Reference and will consist of a four digit reference, that is MM/YY instead of the existing YY/Q format.

If you submit your ESLs quarterly it will show the last month of the calendar quarter ie 03/10, 06/10, 09/10 and 12/10.

14. Can I use an unofficial form VAT 101 to submit my transactions?

No, because from 1 January 2010, HMRC will change the way it captures data submitted on paper EC Sales Lists (VAT 101), from manual keying to intelligent character recognition scanning. This means that we can only accept submissions on official versions of the form, as any slight deviations from the official form layout could result in the VAT 101 being rejected completely, or some of the data not being successfully captured during the scanning process.

15. Can I submit my EC Sales List for goods and services covering non-standard accounting periods?

No, the changes to the EU legislation require ESLs to be submitted for strict calendar months/quarters and as a result the existing facility for the submission of ESLs, using non-standard accounting periods will be withdrawn. The new provisions are required to take effect from 1 January 2010.

HMRC will take a pragmatic approach in recognising both the impact on businesses that currently use this facility and the short timeframe imposed on 'new' businesses. Any businesses experiencing difficulty with implementing this change should speak to the VAT Advice Service on 0845 010 9000 (opening hours 8.00 am to 8.00 pm Monday to Friday)

16. I supply goods to other Member States to the value of £200,000 per annum; can I still submit quarterly ESLs?

Not necessarily. This will depend on the value of your supplies of goods in any particular quarter; see paragraphs 12 to 15 of this guidance note for details of the thresholds for quarterly reporting of goods.

17. How will HMRC determine if I am required to submit monthly ESLs for goods, with effect from 1 January 2010?

The EU legislation states that Member States may allow taxable persons to submit quarterly ESLs, providing the total quarterly amount (excluding VAT) of the supplies of goods does not exceed the threshold, in the current or any of the previous four quarters.

In line with this, we will be checking which businesses have exceeded the quarterly threshold (£70,000), by reference to the ESLs submitted for each of the calendar quarters in 2009. Businesses that have exceeded the threshold in any one of these quarters will be advised of their requirement to submit monthly lists from 1 January 2010.

A similar exercise will be carried out in 2011, in readiness for the threshold being reduced to £35,000 on 1 January 2012.

18. Do I have to include supplies of goods on the ESL that would be zero-rated if supplied within the UK?

Yes, you must complete an ESL if you make supplies of goods to a trader registered for VAT in another Member State, including transfer of your own goods and including goods that would be zero-rated if supplied within the UK.

19. Is an ESL required if the supply of services is subject to a 'zero rate' in the customer's Member State?

No, ESLs are only required for taxable supplies where the recipient is liable to pay tax under the reverse charge provisions. For zero-rated supplies there is no reverse charge amount to be accounted for, so there is no ESL requirement.

20. I haven't made any supplies this month (quarter) do I still have to submit an ESL?

No. It is not necessary to submit 'nil' returns, this is confirmed on the front of the VAT 101.

21. When can I move back to quarterly ESLs for goods?

As soon as the value of goods (excluding VAT) in the current quarter and the previous four quarters, falls below the thresholds shown below.

For the period 1 January 2010 to 31 December 2011 you can return to quarterly submissions:

- 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.

And from 1 January 2012 onwards:

- If the total quarterly value of supplies of intra-EC goods, (excluding VAT), does not exceed £35,000 in the current quarter, or any of the previous four quarters.

If you wish to apply to move back to quarterly submissions you should email: esl.helpdesk or write to:

HMRC
DMB Banking
Accounting Adjustments
3rd Floor
Queens Dock
Liverpool
L74 4ZY

22. I only supply services, when do I have to submit an ESL?

ESLs for services are required on a calendar quarterly basis. However businesses may opt to submit them monthly. If you want to receive an automatic monthly ESL you should email: esl.helpdesk or write to:

HMRC
DMB Banking
Accounting Adjustments
3rd Floor
Queens Dock
Liverpool
L74 4ZY

23. I supply both goods and services. Can I put them all on the same ESL?

Yes. However you must use Indicator Code 3 to separate supplies of services from supplies of goods for each of your customers.

24. What is the frequency for submitting ESLs if I supply goods and services?

If a business supplies both goods and services and they are **above** the quarterly reporting threshold for goods, they are obliged to submit monthly ESL reports for goods. Businesses may either:

- report only goods in month one, report only goods in month two and report goods in month three **and** services for the whole quarter using indicator 3 to identify supplies of services.

Or

- report both goods **and** services in each month, using indicator 3 to identify supplies of services.

If a business supplies both goods and services and they are **below** the quarterly reporting threshold for goods, all the supplies may be reported to HMRC on a quarterly basis.

25. Is it possible and acceptable for a business to submit both an electronic and a paper ESL declaration for the same reporting period?

Although HMRC would prefer a business to submit their ESL by the same method each period, HMRC systems can and will accept a mixture of electronic and paper ESLs, provided the different submission deadlines are respected.

26. How will UK suppliers know if their customer is in business?

In most cases business customers in other Member States will be able to supply a valid VAT number issued by their tax authorities. This, together with reasonable checks, will normally be sufficient evidence of business status.

27. If I want to check the validity of my customer's VAT registration number how do I do it?

The Europa website below provides an electronic registration number checking facility of all Member States' VAT registration numbers.

[EUROPA site - Validation](#)

The online system now allows any business that quotes its own VRN to obtain a receipt of the date and time it checked the customer's VRN.

The VAT Advice Service (contact number 0845 010 9000 opening hours 8.00 am to 8.00 pm Monday to Friday) can validate VAT numbers and verify that names and address belong to that number.

There is no current facility for 'bulk checking' the validity of VRNs. This issue has been raised with the European Commission.

Provided it is clear that a business has taken all reasonable and appropriate steps to ensure that its customer is VAT registered and that the VRN is valid, HMRC will not seek to impose a penalty if subsequently this does not prove to be the case.

We recommend that you consider regularly checking your EC customer's VAT registration number to ensure that the details are still valid and the number has not been deregistered.

28. In respect of supplies of services, how do I determine the liability of the supply in the customer's Member State?

The law requires that businesses report supplies of services that are taxable in the customer's Member State (from 1 January 2010) and the onus is on businesses to comply with the law. If reasonable attempts, which may include discussing with the customer, or the customer's tax authority, have failed to ascertain what the VAT treatment is in the other Member State(s), businesses may wish to assume that the UK VAT treatment will apply to those supplies, on the basis that this should be consistent with the EC VAT Directive and therefore with the law in other Member States.

If subsequently it becomes clear that a supply categorised and reported as taxable is in fact exempt, or vice versa, the business must submit a VAT 101B EC Sales List Correction sheet. This form can be downloaded from the HMRC website or requested from the VAT Advice Service on 0845 010 9000 opening hours 8.00 am to 8.00 pm.

Once the business has knowledge that a VAT treatment of a supply in a Member State is different to that in the UK, it should adopt this treatment in their reporting of such supplies to that jurisdiction in the future.

For a transitional period until the conclusion of negotiations on the Financial Services Review, HMRC will not penalise businesses where there is genuine uncertainty about the taxable status of a financial services or insurance sector supply.

29. Does a UK business need to consider whether their customer in another Member State may have exercised an 'option to tax' (election to waive exemption)?

No.

30. Must a business record on the ESL declaration supplies to a 'taxable person' in another Member State if they do not have a VRN?

You should only record on an ESL supplies to businesses in other Member States that are VAT registered and can provide a valid VRN. The amended Article 264 of the VAT Directive makes it clear that the customer's VRN must be included on the ESL. 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. However, in some cases receipt of the supply will result in the

business being required to register in their Member State. If this is the case and a VRN is subsequently given to you, an amendment should be made to the EC Sales List using form VAT 101B EC Sales List Correction sheet. This form can be downloaded from the HMRC website or requested from the VAT Advice Service on 0845 010 9000 opening hours 8.00 am to 8.00 pm.

Intrastat

31. Do I need to submit an Intrastat declaration for supplies of services?

No. Intrastat declarations are for goods only.

Further information regarding Intrastat can be found in Notice 60 Intrastat General Guide or on our website, www.uktradeinfo.com

Time of supply

For more information on the changes to the time of supply rules please see the following link [Time of supply for reverse charge services](#)

32. When is a UK business making an intra-EC supply of services, subject to a reverse charge in the customer's Member State, required to include details of that supply on an EC Sales List.

The date on which a transaction should be included on the ESL is dependent on the time of supply rules in the customer's MS. On the basis that other Member States rules are, like the UK's, consistent with the adopted EC legislation, the time of supply will be either the date of payment or performance (completion), whichever is the earlier. There is no requirement for a business to confirm with the customer that the ESL period and the VAT period on which they declare the transaction as a reverse charge match. For the purposes of completing an ESL, where it is evident that for certain types of supply the date of performance or date of payment is almost the same as 'date of invoice', the 'invoice date' may be used.

33. I make continuous supplies of management services to another MS, and issue invoices quarterly. Can I still use the invoice date to complete my ESL?

Yes.

34. If I start making continuous supplies of services in November 2010, and don't issue the first invoice until February 2011, does that mean I will have to show the supply on an ESL at the end of 2010?

No (provided you are operating under periodic billing arrangements).

Errors

35. How do I make a correction to an error?

The Internet service includes front end validation of data, so errors will be identified on screen. If you submit a paper based ESL, HMRC will notify you of any errors that they identify using the form VAT 104 (ESL Error Report). The computer-generated form is sent to you with a copy of our 'Helpful Hints' document. The form will show the error lines and the reasons for the errors. Please correct the errors in the spaces provided and return the form to the address shown. Alternatively, businesses can voluntarily submit a VAT 101(B) at anytime notifying HMRC of errors they have made on their ESL.

Penalties

36. How will the HMRC penalties regime impact on the new ESL requirements?

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 see question 30 for more details.

In terms of their application, HMRC will adopt a proportionate approach particularly while the new ESL arrangements bed in across the EU. 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 they have taken 'reasonable care' to comply, HMRC will not seek to apply a penalty.

37. Will I be penalised if I fail to submit my ESL, send it in late or make mistakes?

If you fail to submit your ESL by the due date (see question 6) you may be liable to a penalty of £5, £10 or £15 per day that you are late. The actual rate applicable will depend on the number of times you have been late. You will remain liable to penalties without notice until 12 months has elapsed without further default.

It is recognised that some businesses may not be ready to submit ESLs by 1 January 2010. However, as long as businesses can demonstrate that steps are being taken to comply with the new legislation at the earliest opportunity, HMRC will not levy penalties.'

If you submit an ESL that contains a material inaccuracy and you fail to tell us, you may be liable to a penalty of £100. Material inaccuracies fall into three main categories:

- data missing from the EC Sales List
- lines on the EC Sales List are factually incorrect

- an invalid Vat number is used

You will not be liable to a penalty if you can satisfy us that you have a reasonable excuse.

38. What is meant by a 'reasonable excuse'?

There is no legal definition of a reasonable excuse but we will look closely at the circumstances of each case. If you can show that your conduct was that of a conscientious business person who accepted the need to comply with VAT requirements, then there may be a reasonable excuse. Genuine mistakes, honesty and acting in good faith are not accepted as reasonable excuses for penalty purposes. The law provides specifically that you do not have a reasonable excuse if you relied on some other person to perform any task for you. In addition, the fact that you have quoted a VAT number for your customer that does not conform to the published format for your customer's EC Member State, or used a VAT number which HMRC has informed you is invalid, will not be accepted as a reasonable excuse for the material inaccuracy.

Legislation

39. When will the UK's ESL legislation be published?

UK legislation for the place of supply of services changes was included in Finance Bill 2009 which has now received Royal Assent and is Finance Act 2009.

Changes to UK secondary legislation (VAT Regulations) will follow in the autumn of 2009. The draft secondary legislation is included at Part 6 of this guidance document.

Reverse Charge

40. What is a reverse charge?

Normally, the supplier of a service is the person who must account, to the tax authorities, for any VAT due on that supply. With effect from 1 January 2010, it is the customer who must account for VAT due on intra-EC taxable supplies. Although called reverse charge, the procedure may also be referred to as tax shift. Reverse charge is not a complicated accounting procedure. Where it applies to services which you receive, you, the customer must act as if you are both the supplier and the recipient of the services.

41. How do I account for reverse charge services on my VAT return?

You should credit your VAT account with an amount of output tax, calculated on the full value of intra-EC taxable supplies of services received from other Member States and at the same time debit your VAT account with the input tax to which you are entitled, in accordance with the normal rules. The partial

exemption implications for reverse charge services are explained in Notice 706 Partial exemption.

You should then include in the following boxes of your VAT return:

- the amount of output tax in box 1 **VAT due on sales**
- the amount of input tax in box 4 **VAT reclaimed on purchases**
- the full value of the supply in box 6 **total value of sales**
- the full value of the supply in box 7 **total value of purchases**

Please note that the value of supplies/acquisitions of **services** must **not** be included in boxes 8 and 9 of your VAT return.

Part 5

Submitting ECSL declarations by CSV

These notes have been designed as a guide to help you submit EC Sales List declarations electronically by uploading a Comma Separated Variable (CSV) file containing your declaration data. A CSV file is basically a file where data is separated by a comma. You may produce a CSV file with common spreadsheet software.

File layout for ECSL CSV bulk upload file

The title record **must** contain: HMRC_VAT_ESL_BULK_SUBMISSION_FILE.

The header record **must** contain:

- your UK VAT Registration Number (nine digit numeric value)
- your subsidiary identifier if you have one (if you do not have a subsidiary ID enter '000')
- the year for your declaration for example '2010'
- the period of your declaration which must be two-digit numeric representing a month.

For quarterly traders this will be one of:

03, 06, 09, 12 (corresponding to the old quarter identifiers 1,2,3,4)

For monthly traders this will be one of:

01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12

- the code 'GBP' (indicating that your declaration is made in pounds sterling)
- your contact name (mandatory) maximum of 35 characters (do not include the ampersand '&' symbol, for example A & N Other Ltd should be changed to A and N Other Ltd)
- the indicator field (this will always be '0').

The schedule line record will include:

- your customer's country code, one of:
AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK
- your customer's VAT Registration Number
- the total value of supplies (**Please note:** If you need to show a negative value of supplies, ie if the value of credit notes is greater than the supplies, prefix the figure with a minus sign '-')
- an indicator code, one of:
'0' (for B2B Goods)
'2' (if the supplier is an intermediary in a triangular transaction)

'3' (for B2B Services)

An example of a small CSV file is:

```
HMRC_VAT_ESL_BULK_SUBMISSION_FILE
123456789,123,2010,04,GBP,Fred Bloggs,0
DE,123456789,1000,0
AT,U12345678,25000,2
IE,1234567X,1250,3
LU,12345678,3760,0
```

Some spreadsheets can re-format your data and cause your CSV file to reject, for example dropping leading zeros from numeric fields such as the branch identifier. If you experience this problem you can take the following steps.

To change the field to a text field:

- highlight the cell
- select 'FORMAT'
- select 'CELLS'
- on the 'NUMBER' screen highlight 'TEXT' and select 'OK'
- retype the data (the zero(s) will then remain)
- save file again
- select 'Bulk Upload' option and re-submit file.

Please note: This method will also work to correct VAT Registration Numbers where the leading zero(s) have been dropped or Excel has converted the number to scientific format eg SE 123456789012 converts to SE 1.23457E+11.

We advise that you retain the working copy of your data as the default file type for your spreadsheet program (eg for Microsoft Excel your filename.xls). When you wish to submit your data use the 'Save As' function and choose .csv. Do not try to open the .csv file in your spreadsheet program as this may corrupt the data. Make any amendments to your data in the working copy, re-save as .csv and re-submit.

When you use the 'Save as' function to create a .csv file you may be prompted that your file contains incompatible features. You should select the option to continue to save your file in CSV. After using the 'Save as' function you should close your file, do not save the changes again if you are prompted. Any further amendments should always be made to the working copy of your data.

Alternatively amendments can be made by opening your file using a text editor such as 'Notepad', or to avoid such problems you may wish to consider using the template provided on the 'Bulk Upload' page.

Validation checks are carried out during the upload of the file and any errors identified will be displayed on the 'Review and Submit' screen annotated by an 'X'. You can make a note of any errors or print off the summary for comparison purposes using 'Ctrl+P'. You will have the opportunity to amend data in your CSV file before resubmitting or you can make an additional declaration of the corrected data at a later date.

An 'Acknowledgement' message, with a unique 'Submission Reference Number', will be displayed which you can print and retain for your records. You will also have the facility to view previous submissions online.

Submitting ECSL declarations by XML Bulk Upload

If your accounting records are set up to use XML you can submit your data by uploading an XML data file.

The XML structure required is as follows:

```
<Submission type='HMRC_VAT_ESL_BULK_SUBMISSION_FILE' >
<TraderVRN></TraderVRN>
<Branch></Branch>
<Year></Year>
<Period></Period>
<CurrencyA3></CurrencyA3>
<ContactName></ContactName>
<Online></Online>
<SubmissionLines>
<SubmissionLine>
<CountryA2>/CountryA2>
<CustomerVRN></CustomerVRN>
<Value></Value>
<Indicator></Indicator>
</SubmissionLine>
</SubmissionLines>
</Submission>
```

Node explanation and contents:

<Submission>

This is the root node of the XML. It must contain a type attribute set to 'HMRC_VAT_ESL_BULK_SUBMISSION_FILE'

<TraderVRN>

Must be a valid UK VAT Registration Number (VRN). The VRN must match the VRN used by the trader on logging into the ECSL Application.

<Branch>

Must be three-digit numeric.

<Year>

Must be four-digit numeric.

<Period>

Must be two-digit numeric representing a month.

For quarterly traders this will be one of:

03, 06, 09, 12 (corresponding to the old quarter identifiers 1,2,3,4)

For monthly traders this will be one of:

01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12

<CurrencyA3>

Must be the letters GBP.

<ContactName>

Must contain at least one alpha or numeric character but no more than thirty-five characters.

<Online>

Must be a one-digit number set to 0.

<SubmissionLines>

Container node of one or more <SubmissionLine> nodes.

<SubmissionLine>

Repeating line can appear one or more times. Must contain the following nodes:

<CountryA2>, <CustomerVRN>, <Value>, <Indicator>

<CountryA2>

Must contain two alpha characters representing the EU Member States.

AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, or SK.

<CustomerVRN>

Must be valid for the Country entered in <CountryA2> as identified in the [EC country codes and customer number formats page](#).

VAT Numbers can be entered on the [European Commission](#) website to check that they are valid for the country code entered.

<Value>

Containing the value of goods in pounds sterling. Must contain numerics. No decimal places, commas or brackets allowed. Minus figures must be prefixed with a '-' minus sign.

<Indicator>

Must be one digit numeric containing either 0, 2 or 3.

Enter code '0' for B2B Goods

Enter code '2' if the supplier is an intermediary in a triangular transaction.

Enter code '3' for B2B Services

An example of an XML data file:

```
<?xml version='1.0' encoding='UTF-8'?>
<Submission type='HMRC_VAT_ESL_BULK_SUBMISSION_FILE'>
<TraderVRN>123456789</TraderVRN>
<Branch>123</Branch>
<Year>2010</Year>
<Period>03</Period>
```

```
<CurrencyA3>GBP</CurrencyA3>
<ContactName>Jim Bloggs</ContactName>
<Online>0</Online>
<SubmissionLines>
<SubmissionLine>
<CountryA2>AT</CountryA2>
<CustomerVRN>U12345678</CustomerVRN>
<Value>2000</Value>
<Indicator>2</Indicator>
</SubmissionLine>
<SubmissionLine>
<CountryA2>DE</CountryA2>
<CustomerVRN>123456789</CustomerVRN>
<Value>10</Value>
<Indicator>0</Indicator>
</SubmissionLine>
<SubmissionLine>
<CountryA2>ES</CountryA2>
<CustomerVRN>A12345678</CustomerVRN>
<Value>75</Value>
<Indicator>0</Indicator>
</SubmissionLine>
<SubmissionLine>
<CountryA2>FR</CountryA2>
<CustomerVRN>12345678901</CustomerVRN>
<Value>50</Value>
<Indicator>3</Indicator>
</SubmissionLine>
</SubmissionLines>
</Submission>
```

Validation checks are carried out during the upload of the file and any errors identified will be displayed by a 'X' on the 'Review and Submit' screen. You will have the opportunity to amend or delete the data before resubmitting. All errors must be corrected and the file saved before uploading again. Only files free of errors will be accepted.

An acknowledgement message, with a unique 'Submission Reference Number', will be displayed which you should print and keep for your records.

Part 6

EC Sales Statements – Draft Regulations

EU Sales Statements

1. For regulation 21 (interpretation of Part 4) substitute—

21. In this Part—

'EU supply of goods' means a supply falling within paragraph 22(1) and 'EU supplies of goods' shall be construed accordingly;

'EU supply of services' means a supply falling within paragraph 22A(1) and 'EU supplies of services' shall be construed accordingly;

'first relevant figure' means, up to and including 31st December 2011, £70,000 excluding VAT and thereafter £35,000 excluding VAT;

'NMT supply of goods' means a supply falling within paragraph 22C(1) and 'NMT supplies of goods' shall be construed accordingly;

'registered in another member State' means registered in accordance with the measures adopted by the competent authority in another member State for the purposes of the common system of VAT and 'registered in that member State' and 'registered in other member States' shall be construed accordingly;

'second relevant figure' means the sum of the amount mentioned in paragraph 1(1)(a) of Schedule 1 to the Act as that paragraph has effect from time to time and £25,500;

'supply of goods' does not include either a supply of gas supplied through the natural gas distribution network or a supply of electricity;

'value' in the phrases 'value of EU supplies', 'value of the taxable person's taxable supplies' and 'value of the taxable person's supplies' means the consideration for the supplies and includes, if the supply is a supply of goods, the costs of any freight transport services and services ancillary to the transport of the goods charged by the supplier to the customer.'

2. For regulation 22 (submission of statements) substitute—

22.—(1) Every taxable person who makes a supply of goods—

(a) to a person who, at the time of the supply, was registered in another member State and those goods were dispatched or transported to that or another member State, or

(b) to which section 14(6) of the Act applies, or

(c) which falls within paragraph 6 of Schedule 4 to the Act to a person who, at the time of the supply, was registered in another member State,

shall submit a statement to the Commissioners.

(2) The statement shall—

- (a) be made on the Form numbered 12 in Schedule 1 to these Regulations,
- (b) contain, in respect of the EU supplies of goods which have been made within the period in respect of which the statement is made, such information as the Commissioners shall from time to time prescribe, and
- (c) contain a declaration that the information provided in the statement is true and complete.

(3) (a) Subject to paragraphs (4) to (6) below, the statement shall be submitted in respect of the month in which the EU supply of goods is made.

- (b) Where during the period specified in sub-paragraph (a) above the taxable person (A)—
 - (i) ceases to be registered under Schedule 1 to the Act, and
 - (ii) no other person has been registered with the registration number of and in substitution for A,

the last day of that period is to be treated as being the same date as the effective date of A's deregistration.

(4) (a) This sub-paragraph applies where, in each of the four quarters⁽¹⁾ preceding the quarter in which the supply is made ('the relevant quarter'), the total value of EU supplies of goods made by the taxable person (A) did not exceed the first relevant figure.

- (b) This sub-paragraph applies where, in the relevant quarter, the total value of EU supplies of goods made by A did not exceed the first relevant figure.

(c) Where sub-paragraphs (a) and (b) above apply, A may submit the statement in respect of the relevant quarter.

(d) Where –

- (i) sub-paragraph (a) above applies, and
- (ii) sub-paragraph (b) above does not apply,

A may submit a statement in respect of the period beginning with the first day of the relevant quarter and ending on the last day of the month in which the total value of EU supplies of goods made by A in that quarter first exceeded the relevant figure.

(e) Where during the relevant quarter specified in sub-paragraph (c) above A—

- (i) ceases to be registered under Schedule 1 to the Act, and
- (ii) no other person has been registered with the registration number of and in substitution for A,

the last day of that period is to be treated as being the same date as the effective date of A's deregistration.

(5) (a) A statement may be submitted in respect of the year mentioned in sub-paragraphs (i) to (iv) below provided that the taxable person making the statement (A) has not, during that year, made a supply of a new means of transport⁽²⁾ and the Commissioners are satisfied either that—

- (i) at the end of any month, the value of A's taxable supplies in the period of one year then ending is less than the second relevant figure, or

(1) Section 96(1) of the Value Added Tax Act 1994 defines 'quarter'.

(2) Section 95 of the Value Added Tax Act 1994 defines 'new means of transport'. Section 95 was amended by article 2 of the Value Added Tax (Means of Transport) Order 1994 (S.I. 1994/3128).

(ii) at any time there are reasonable grounds for believing that the value of A's taxable supplies in the period of one year beginning at that or any later time will not exceed the second relevant figure,

and either that—

(iii) at the end of any month, the value of A's supplies to persons registered in other member States in the period of one year then ending is less than £11,000, or

(iv) at any time, there are reasonable grounds for believing that the value of A's supplies to persons registered in other member States in the period of one year beginning at that or any later time will not exceed £11,000.

(b) Where during a period specified in sub-paragraph (a) above A—

(i) ceases to be registered under Schedule 1 to the Act, and

(ii) no other person has been registered with the registration number of and in substitution for A,

the last day of that period is to be treated as being the same date as the effective date of A's deregistration.

(6) A taxable person (A) who is permitted under regulation 25 to make a return in respect of a period longer than 3 months may submit a statement under paragraph (1) above in respect of a period identical to the period permitted for the making of the return provided that A has not, during that period, made a supply of a new means of transport and the Commissioners are satisfied either that—

(a) at the end of any month, the value of A's taxable supplies in the period of one year then ending is less than £145,000, or

(b) at any time, there are reasonable grounds for believing that the value of A's taxable supplies in the period of one year beginning at that or any later time will not exceed £145,000,

and either that—

(c) at the end of any month, the value of A's supplies to persons registered in other member States in the period of one year then ending is less than £11,000, or

(d) at any time, there are reasonable grounds for believing that the value of A's supplies to persons registered in other member States in the period of one year beginning at that or any later time will not exceed £11,000.'

3. After regulation 22 insert—

'22A.—(1) Every taxable person who has made a supply of services to a person in a member State other than the United Kingdom in circumstances where the recipient is required to pay VAT on the supply in accordance with the provisions of the law of that other member State giving effect to Article 196 of Council Directive 2006/112/EC(3) shall submit a statement to the Commissioners.

(2) The statement shall be—

(a) made on the Form numbered 12 in Schedule 1 to these Regulations,

(3) OJ No L 347, 11.12.06 p 1. Article 196 is amended with effect from 1st January 2010 by Article 2.7 of Council Directive 2008/8/EC, OJ No L 44, 20.02.08 p 11.

- (b) contain, in respect of the EU supplies of services which have been made within the period to which the statement relates, such information as the Commissioners shall from time to time prescribe, and
- (c) contain a declaration that the information provided in the statement is true and complete.

(3) (a) Subject to paragraph (4) below the statement may be submitted in respect of the period of the month or the quarter in which the EU supply of services has been made.

- (b) Where during a period mentioned in sub-paragraph (a) above the taxable person (A)—
 - (i) ceases to be registered under Schedule 1 to the Act, and
 - (ii) no other person has been registered with the registration number of and in substitution for A,

the last day of that period is to be treated as being the same date as the effective date of A's deregistration.

(4) A taxable person (A) who is permitted under regulation 25 to make a return in respect of a period longer than 3 months may make a statement under paragraph (1) above in respect of a period identical to the period permitted for the making of the return provided that A has not, during that period, made a supply of a new means of transport and the Commissioners are satisfied either that—

- (a) at the end of any month, the value of A's taxable supplies in the period of one year then ending is less than £145,000, or
- (b) at any time, there are reasonable grounds for believing that the value of A's taxable supplies in the period of one year beginning at that or any later time will not exceed £145,000,

and either that—

- (c) at the end of any month, the value of A's supplies to persons registered in other member States in the period of one year then ending is less than £11,000, or
- (d) at any time, there are reasonable grounds for believing that the value of A's supplies to persons registered in other member States in the period of one year beginning at that or any later time will not exceed £11,000.

22B.—(1) Where statements are to be submitted under regulation 22 and 22A in respect of periods ending on the same day, the statements may be submitted on a single form.

(2) A taxable person may submit a statement under regulation 22 or 22A on paper or on-line using an electronic portal provided by the Commissioners for that purpose.

(3) A taxable person who is required to submit a statement under regulation 22 or 22A must do so—

- (a) where the statement is submitted on-line, not later than 21 days from the end of the period to which the statement relates,
- (b) in every other case, not later than 14 days from the end of the period to which the statement relates.

22C.—(1) Every taxable person who in any quarter makes a supply of a new means of transport to a person ('the acquirer')—

- (a) for the purposes of acquisition by that acquirer in another member State, and
- (b) where the acquirer is not, at the time of the acquisition, registered in that member State,

shall submit a statement to the Commissioners.

(2) (a) The statement shall be submitted in respect of the quarter in which the NMT supply of goods is made.

- (b) Where during the period mentioned in sub-paragraph (a) above the taxable person (A)—
 - (i) ceases to be registered under Schedule 1 to the Act, and
 - (ii) no other person has been registered with the registration number of and in substitution for A,the last day of that period is to be treated as being the same date as the effective date of A's deregistration.

(3) The statement shall—

- (a) be made on the Form numbered 13 in Schedule 1 to these Regulations,
- (b) contain, in respect of the NMT supplies of goods which have been made within the period in respect of which the statement is made, such information as the Commissioners shall from time to time prescribe,
- (c) contain a declaration that the information provided in the statement is true and complete, and
- (d) be submitted within 42 days of the end of the period to which it relates.'

4. Omit regulation 23 (final statements).