

Time of supply for reverse charge services

Why are the time of supply rules changing?

The changes are intended to harmonise the time of supply rules for reverse charge services throughout the EU. At present Member States are permitted to set their own rules. If this were to continue after 1 January 2010 it could lead to mistiming in the reporting of supplies by the supplier (on their EC Sales List) and customer (on their VAT Return) in their respective Member States.

What supplies are affected?

The new rules apply to cross-border supplies of services received in the UK by businesses that are required to account for the VAT on those supplies as a reverse charge.

Why do the new rules cover all supplies subject to the reverse charge arrangements in the UK?

The UK is required to adopt the harmonised time of supply rules for all supplies subject to a reverse charge under the new general rule for place of supply of services. We have opted to also apply them to supplies covered by the UK extension to the reverse charge arrangements, as this will provide consistency for businesses both in applying the rules and maintaining their accounting systems.

When do the changes come into effect?

The new rules will be implemented by secondary legislation, to come into effect at the same time as other VAT package changes on 1 January 2010.

How will I treat supplies that span 1 January 2010?

The legislation will include measures that take into account supplies that are in progress on 1 January 2010. This will ensure that they not only remain properly liable to VAT, but also that they are not taxed twice. Further information about this will be available in due course.

What impact will these rules have on completion of UK EC Sales Lists?

Supplies reported on UK EC Sales Lists will be governed by the rules as they apply in the customer's Member State. So, for example, the time at which a supply is to be included will be based on the corresponding time of supply rules in that Member State, please see the [ESL Guidance](#) (PDF 89K).

How will the new rules apply to a single supply of services?

The tax point will be completion of the service, with an earlier tax point to the extent that they are paid for beforehand.

How will the new rules apply to continuous supplies of services?

For continuous supplies there will be a tax point at the end of each billing or payment period (or on payment where this is earlier). For this purpose a 'period' will include regular (for example monthly, quarterly, etc) billing/payment programmes of the kind typically adopted by suppliers of telephone services, leasing companies and the like. It will also cover situations in which the billing or payment periods are not pre-ordained but, as they arise, cover specific successive periods. So, for example, where a bill is issued for the period 1 January to 10 February, followed by a bill covering 11 February to 5 April, and so on, each will represent a period for the purposes of applying the time of supply rules.

In the absence of billing or payment periods there will be a compulsory tax point on 31 December. However, this will only apply where a payment tax point does not arise during the previous 12 months. So, for example, if inter-company management charges are applied annually, say to 30 April each year, provided they are paid either wholly, or in part, beforehand a further tax point will not arise on 31 December. Where exceptionally a tax point does arise on 31 December (in which case, because the supply must have been ongoing for more than a year, it will have commenced sometime before 1 January of the same year) VAT will be required to be accounted for on the VAT Return covering December.

What is the difference between a single and continuous supply?

The definition of a continuous supply will follow existing time of supply rules for domestic supplies. So, something like the leasing of equipment or provision of telephone services which are already treated as a continuous supply for time of supply purposes, will be treated as continuous supplies under these new rules. As a general rules supplies of services normally fall within one of the following categories:

- Single supply of services - for example the repair of a lorry for a transport business. The vehicle is left with a garage who will normally undertake the work the same day or within a couple of days. The services are completed when the required repair work has been performed.
- Series of separate supplies - for example, where the transport firm above takes its vehicles to the same garage for repair and servicing as required. This could mean that the garage is undertaking work on a regular basis.

Nevertheless, in the normal course of events, each repair, etc, will amount to a separate discreet supply.

- Single supply of services over an extended period - for example, a consultant preparing a report. The process may take some time given the need to research the issues, followed by the drafting of the report. During that period the client is receiving little in the way of a tangible service. What the client requires is the final outcome i.e. delivery of the written report. Again this is when the service is performed.
- Continuous supply of services - for example something like the provision of telephone services. Here, instead of an outcome, what the customer receives might be described as a recurring stream of supplies, each portion of which carries equal weight in terms of the customer being able to use and consume them. In this case the supplies are never “completed” in the same way as the other categories are. The supply might be terminated but this is more a case of the supply ceasing rather than something finally being accomplished.

My existing accounting system does not recognise completion of a service, so can I use the date of the invoice as being roughly the equivalent?

The time of supply for a single supply of services will be the earlier of payment or completion of the service. There is no scope for these rules being varied, for example by administrative practice. Nevertheless, we believe that, in the vast majority of cases, information already available from existing business systems can be used to achieve broadly the right result.

In fact, ‘performance’ of a service (which is represented by completion) already exists as a time of supply concept. In UK law it represents the basic tax point for a supply of services. Furthermore, our existing guidance already acknowledges that completion can sometimes be difficult to identify accurately, this will be even more the case under these new arrangements where the obligation falls on the customer. It is therefore recognised that it may simply be impossible for some customers to know the exact date on which a service is completed.

The recipient of the service will be expected to utilise information that is available to them to determine the most accurate time of supply. So, where a specific completion date is known (perhaps from the nature of the supply or information provided by the supplier), that date should be used. In many cases, however, the date of the supplier’s final invoice may be appropriate. Equally in others, the invoice might not necessarily represent the most accurate indicator of the date of completion. For example, where a supplier is known to routinely issue final invoices two weeks in advance of completion it would be more accurate to identify completion as the date of the invoice plus two weeks.

As a general principle we will accept reliance on an invoice date or any other reasonable methodology provided it does not produce a manifestly inaccurate overall result. Ultimately it is up to individual businesses to identify the most appropriate methodology for their particular circumstances.

Do I need to consult my supplier to agree when a service has been completed?

You will not need to consult, or notify, your supplier when it comes to judging when a supply has been completed. In the context of the reverse charge, and particularly in the event of disagreement, it will be the customer (as tax payer) whose determination of completion will prevail for the purposes of applying the time of supply rules. Provided you have followed UK time of supply guidance in accounting for the VAT on the reverse charge services you receive, you will not be held responsible for any mis-match in the supplier reporting the supply on their ESL.

It may take time to make full use of the available information. Will HMRC penalise me in the meantime?

It is recognised that the new time of supply rules represent a significant change to current arrangements and that it may take some businesses time to fine-tune their existing accounting systems to produce the most accurate information with which to determine the date for applying the reverse charge. We also appreciate that, in the early stages, some businesses may, for valid operational reasons, face particular difficulties. HMRC will expect businesses to take reasonable and appropriate steps to use the best information available from existing systems to apply the new rules correctly. Provided businesses can demonstrate that they have taken 'reasonable care' to do this HMRC will not seek to penalise them if initial teething problems produce some inadvertent inaccuracies.

In the longer term the expectation will be that any planned enhancement to business systems will, where appropriate, take into account the reverse charge time of supply requirements.

DRAFT TIME OF SUPPLY LEGISLATION

Regulation 82 VAT Regulations 1995

Services from outside the United Kingdom

(1) This paragraph applies to services which are treated as being made by taxable persons under section 8(1) of the Act which are not services to which paragraph (3) applies.

(2) Subject to paragraph (5) the services to which paragraph (1) applies shall be treated as being supplied when they are performed.

(3) This paragraph applies to services which are treated as being made by taxable persons under section 8(1) of the Act which are supplied for a period for a consideration the whole or part of which is determined or payable periodically or from time to time.

(4) Subject to paragraphs (5) and (6) services to which subparagraph (3) applies shall be treated as separately and successively supplied at the end of the periods in respect of which payments are made or invoices issued and to the extent covered by the payment or invoice.

(5) If, before the time applicable under paragraph (2) a payment is made in respect of a supply, or in the case of paragraph (4) a payment is made at a time that is earlier than the end of the period to which it relates, the supply shall be treated as being supplied at the time the payment is made.

(6) if the services to which paragraph (3) applies

(a) are commenced before 1st of January and continue after 31st December of any year; and

(b) during that year no invoice is issued that has effect for the purposes of paragraph (4) and no payment made in respect of that supply

the services supplied during that year shall be treated as being supplied on the 31st December of that year to the extent that the recipient has received the benefit of them.