MILNE CRAIG
chartered accountants

VAT2010

Trading in Europe?

Your guide to the new VAT changes

Big changes to VAT if you sell to Europe

Everyone should know by now that the VAT rate is going back up to 17.5% on 1 January 2010. There is another set of changes on the same day that has received less publicity but which is very important for anyone who deals with customers in the EU. We have prepared this leaflet to alert you to these changes and to make sure that you can plan for any action you need to take. If you think you are affected and would like to discuss what you should do, please get in touch.

What's it all about?

The worst part of the changes is more stringent requirements for filing reports of sales to business customers in other member states. This is an attempt by the EU to crack down on fraud - they hope that getting more information quicker will make it easier to prevent and detect "missing traders" and "carousel operators". We can only hope that it does. In the meantime, it makes life harder for the rest of us.

There are other changes which have been in the pipeline for years. They are supposed to make life easier: you are less likely to have to charge UK VAT to foreign customers, or to pay foreign VAT to foreign suppliers, and if you do have to, then you should find it easier to claim it back.

Liability: goods

The rules on zero-rating the sales of goods to customers in other member states are not changing. You will still need to obtain the customer's VAT registration number and evidence that the goods have left the UK.

The huge losses that the Exchequer has suffered to carousel fraud have led HM Revenue & Customs to take a hard line on the conditions for zero-rating: you need to make sure that you are complying with all the rules, and that you have good reason to believe that your customer is genuine and not involved in a fraud, or else HMRC may deny you the benefit of zero-rating. In that case you would have to pay the VAT on the sale to the authorities, even though you have not collected it from your customer.

Liability: services

If you sell services to business customers in other member states, they are not strictly "zero-rated", but the effect may be the same. Depending on the type of service, you may:

- have to charge UK VAT, which the customer may be able to recover from HMRC;
- have to register for VAT in another member state and charge VAT there;
- charge no VAT, leaving your customer to account for VAT on a foreign VAT return (called a "reverse charge").

The categories of supply for each of these three routes are changing from 1 January 2010, so if you supply any services to foreign businesses it is important to check whether the treatment remains the same. If you buy services from foreign suppliers, you may also find that your liability to a reverse charge on the purchase will change.

Many such supplies will have the same treatment as before. For example:

- supplies of accountancy, consultancy, legal, advertising and data processing services;
- supplies of intellectual property paid for by licence fees; and
- supplies of staff;

are all subject to the reverse charge in 2009, and they will be treated in the same way in 2010. Supplies which are related to land are subject to a possible liability to register where the land is, and this also remains the same.

The main categories for which the rules change are:

- work on goods: moves from "where the work is done" to "reverse charge by customer"
- leasing of cars for more than 30 days: moves from "where the supplier belongs" to "reverse charge"
- management charges: moves from "where the supplier belongs" to "reverse charge"
- services of intermediaries: move from "where the main deal is done" to "reverse charge"
- services related to freight transport: move from "where the journey begins" to "reverse charge"

If you buy these services from foreign suppliers, you are more likely to have to account for a reverse charge.

Paperwork: goods

If you sell goods to business customers in other member states, you should already be used to the European Sales List or ESL. You have had to file these with HM Revenue & Customs once a quarter, showing the value of sales to each of your EU customers, and giving the customer's foreign VAT registration number with its two-letter country code. You have had 42 days after the end of the quarter in which to file.

This is changing significantly. First, quarterly ESLs are allowed only if the total sales of goods to all your EU business customers is no more than £70,000. This limit will fall to £35,000 in 2012. If you exceed the limit in the current quarter or any of the preceding four quarters, you have to file monthly.

Secondly, the time limit is shortening from 42 days to just 14 days for a paper return or 21days for an electronic one. So if you make a lot of despatches, you need to be ready by early February 2010 to make the new report.

Where you move your own goods from the UK to your own foreign branch, you will report those movements on the ESL in the same way as sales. However, if you are registered in another member state under the "distance selling" rules (mainly for mail order sales), you do not report distance sales on the ESL.

Your VAT return will be the same as it is now: zero-rated despatches of goods will be included in Box 6 and Box 8.

Paperwork: services

If you only sell services to customers in other member states, you have not up to now had to file ESLs. That changes from 1 January 2010: returns are required for calendar quarters to 31 March, 30 June, 30 September and 31 December. Even if your sales are more than £70,000 a quarter, you will not have to make monthly reports, but you can choose to do so if you want to (e.g. if you also sell goods and it would be easier to combine the reports).

The ESL will have to show the foreign VAT registration number and value of sales for all customers to whom you have not charged VAT because the supply is treated as "reverse chargeable" – that is, they have to account for the VAT on their own VAT return. You don't have to include sales on an ESL if the customer is neither VAT registered nor in business (in which case you will charge them UK VAT) or if the sale is exempt in the other country (which may require some checking of the local rules, although they are supposed to be consistent across the EU).

So anyone selling taxable services to business customers in other member states needs to be ready to make these reports for the first time in early April 2010.

Your VAT return will be the same as it is now: supplies of services which are "outside the scope of UK VAT" will be excluded from Box 8, because that is only for goods. However, you are supposed to include the sales in Box 6, because that reflects your total business income.

No changes

If you only do the following, these changes to EU sales on 1 January 2010 don't directly affect you:

- make only domestic UK supplies which are charged to UK VAT.
- charge UK VAT on sales of goods or services to non-business customers from other member states.
- make "distance sales" which require you to be registered in another member state for mail order despatches from the UK.

Reclaiming foreign VAT

The procedure for claiming back foreign VAT is also changing from 1 January 2010, and it should be much easier to do so in future. If you incur VAT on business expenses in other member states, please contact us to discuss whether it's worth filling in the new electronic forms to try to recover it.

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