

VAT Agenda

Forthcoming changes to the VAT rate

A number of guidance documents have been released by HMRC's website in anticipation of the standard rate reverting to 17.5% on 01 January 2010. The documents include a "Detailed guide for VAT registered businesses" and guidance on the application of the "anti-forestalling" legislation. All businesses should consider the impact of the increase in the standard rate to them and how best to deal with it, and should take the necessary preparatory steps as soon as possible.

The "Detailed guide for VAT-registered businesses" announces HMRC's "light touch" policy when dealing with errors concerning the change of rate. This means that HMRC will not target change of rate errors when planning audit work that are unlikely to lead to any material net revenue loss, will not seek to adjust errors unless there is reason to suppose that there is an overall revenue loss, and will take into account the difficulties faced by the taxpayer when considering penalties. It also includes guidance on the following topics:

- the effect on taxpayers operating retail schemes (including bespoke schemes) and other special schemes;
- the correct issuing of invoices and procedures for correcting erroneous invoices;
- the treatment of deposits, prepayments, refunds and bad debts;
- supplies that span the rate change and the supplier's option to disregard actual tax points;
- the meaning and treatment of 'continuous' supplies and supplies carried out over a period of time;
- changes that may be necessary to electronic till and accounting systems;
- increasing prices charged to customers;
- completing VAT returns which straddle the change of rate;
- recovering input VAT;
- the treatment of VAT invoices with annual payment schedules and self-billing arrangements;
- cross-border services and the 'VAT' Package changes to the time of supply rules (see also);
- the impact on partially exempt businesses;
- the effects of the change on those within the flat rate or margin schemes, and those making payments on account or on annual or cash accounting;
- the implications for particular types of business, including the construction sector and the legal profession;
- the treatment of particular types of transactions, including those through coin operated machines, hire purchase, conditional sales and credit sales, sales of tickets to events (including season tickets) and international trade in goods; and
- the anti-forestalling provisions (see below for more detail).

The detailed guide (which also includes annexes on HMRC's "light touch" approach, the time of supply rules, and fuel scale charges) can be accessed on the HMRC website via this [link](#).

The guidance document on the anti-forestalling provisions sets out HMRC's views on the application of the new legislation. Salient points include:

- the scope of the legislation is such that it is likely to affect very few businesses;
- even if one of the relevant conditions is satisfied, the "supplementary charge" will only apply if the recipient of the supply cannot recover the VAT in full (NB the test is specific to the VAT on each transaction in question, rather than catching all supplies to partially exempt customers);
- clarification that the extension of the "connected party" test to cover series of supplies of substantially the same goods or services is intended to prevent the insertion of an unconnected intermediary customer into the supply chain;
- the definition of "providing funds" for a prepayment is very wide, and includes situations where part of the prepayment is lent back to the customer or a connected party;
- the "related supplies" provision is intended to catch situations where a business makes a series of supplies to the same customer, each of which is below the £100,000 limit but which exceed it in aggregate;
- the "normal commercial practice" test can be met where the business makes prepayments or issues VAT invoices as part of its own practice (established by evidencing similar transactions in the past) or where such practices are normal in the sector (in accordance with "the industry norms");
- in HMRC's view, transactions entered into by special purpose vehicles (SPVs) set up as part of forestalling arrangements are not in accordance with normal commercial practice;
- the supplementary charge of 2.5% is, in HMRC's view, VAT and must be accounted for as output tax in the VAT return for the period including 1 January 2010 (or the subsequent date on which a relevant right to receive goods or services is exercised); and
- the supplementary charge can be passed on to customers (unless the contract specifies otherwise) and may be partly recoverable as input VAT and the supplier must issue a special "Supplementary charge" VAT invoice to the customer (secondary legislation requiring the supplier to do this will be laid before Parliament later this year).

The anti-forestalling guidance is available on the HMRC website via this [link](#).

The guidance is a useful summary for businesses of the impact of the rate change in a number of different circumstances, and HMRC's announcement of a "light touch" approach to compliance is particularly welcome. However, a number of legal, practical and systems issues remain unresolved. Businesses should consider how best to deal with the change and should start taking the necessary preparatory steps as a matter of urgency.

If you require further information regarding any of the points above please do contact us.

Elysian Associates

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