UKTraining

UK VAT and International Trade – the Complete Guide

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This book is intended to provide an essential guide to the impact that international trade has on businesses that are registered for VAT in the UK.

It is published by UK Training (Worldwide) Limited.

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PREFACE

This book is intended for those who deal with value added tax in businesses, be it in the capacity of directors, company accountants, sales and purchase ledger administrators or external advisers. The objective is to provide, as the title implies, a comprehensive guide to international aspects of VAT most commonly encountered in a business.

In writing the book and selecting topics for inclusion, we have drawn on the many questions put by delegates attending seminars on VAT. We thank those delegates and trust that the book will provide answers to these questions and anticipate many others.

CHAPTER 1

THE PRINCIPLES OF VAT

Introduction

This chapter provides a broad overview of the principles of VAT. The topics covered are:

- The scope of VAT
- VAT rates
- Output tax
- Input tax
- Administration

The scope of VAT

A transaction between two parties falls within the scope of UK VAT if it fulfils all of the following criteria:

- The place of supply is within the UK.
- It is a supply made by a taxable person.
- It is a supply made in the course of business.

Each country within the European Union (EU) has a VAT system. The principles of VAT throughout the EU are broadly consistent. In any transaction involving two parties who belong in different countries, it is necessary to determine the place of supply. The same may apply even when the two parties belong in the same country but the supply is performed in a different country, involves an intermediary, relates to land in a different country or relates to transport.

If the place of supply is determined to be outside the UK, the transaction does not fall within the scope of UK VAT. For these purposes, the UK includes the Isle of Man but does not include the Channel Islands or Gibraltar. The territorial waters of the UK extend twelve nautical miles from the coastline.

A taxable person is defined as any person who is registered for VAT or required to be so registered. This is explained further in chapter 2, as is the concept of a supply made in the course of business.

If a transaction falls within the scope of UK VAT, the supplier potentially has to add VAT to the value of the supply.

VAT rates

A transaction may fall within the scope of VAT and yet VAT need not be charged. There are four types of supply: standard-rated, reduced-rated, zero-rated and exempt.

The standard rate is the rate at which any supply within the scope of VAT must be charged unless it specifically falls into any of the other three categories.

The reduced rate applies to domestic fuel and power and a number of other supplies. Common zero-rated supplies include books, food and children's clothes, while the most

frequently encountered exempt supplies are residential property supplies, insurance and education.

The difference between zero-rated and exempt supplies is that zero-rated supplies fall to be regarded as taxable supplies, whereas exempt supplies do not. This means that a business making only exempt supplies usually need not register for VAT and cannot reclaim the input tax it incurs in the course of making supplies.

Output tax

If a business supplies standard-rated goods, it must add VAT to the net amount of its supply. This is known as output tax and it must be paid over to HMRC with its next return.

There is usually an assumption that, for a supply to take place, one party must provide goods or services in return for a consideration, or payment. The payment need not be in the form of money: for example, an organisation publishes a newsletter which is funded by advertising. It gives certain customers free advertising if they supply it with free goods in return. Both parties have a VAT liability – one has supplied advertising for payment in kind, the other has supplied goods and received free advertising in return. The organisation publishing the newsletter would base its VAT liability on its usual market price for placing advertisements.

There is no supply if the customer has a genuine option as to whether to make payment for the goods or services issued. This principle is best illustrated by gratuities in restaurants, which are not a supply for VAT purposes if they are freely given. In this case, the restaurant would account for VAT only on the amount paid for the meal. This would not be the case with a compulsory service charge, but restaurants which issue a bill specifying an optional service charge need not account for VAT on this service charge provided the customer has a genuine option as to whether or not to pay it.

In some cases, a business must account for output tax even if there is no payment – for example business gifts, samples of goods and private use of the business's own goods and services. Services, as opposed to goods, supplied free of charge do not, however, attract VAT.

Input tax

The output tax charged by a supplier is the customer's input tax which can be reclaimed with the customer's next return, assuming that taxable supplies are made.

Businesses which make a mixture of taxable and exempt supplies are known as partially exempt. Special rules exist for the reclaim of input tax by partially exempt businesses.

Certain input tax cannot be reclaimed – principally on the purchase of cars and on business entertainment.

Administration

VAT in the UK is administered by H.M. Revenue & Customs (HMRC). Until 2005 the responsible body was H.M. Customs & Excise, which also dealt with import and excise duties; this then merged with the Inland Revenue, which had administered other taxes such as income tax, capital gains tax, corporation tax, inheritance tax and stamp duty land tax.

Every registered person must submit a return at pre-defined intervals. VAT periods usually last three months, though some businesses opt to complete monthly returns and small businesses may do so annually. There are penalties for late submission of returns and for underpayment of VAT.

Returns are sent to the VAT Central Unit in Southend-on-Sea. VAT officers deal with the administration of VAT in their own areas, and businesses can expect to be visited from time to time. It is not possible to say how frequently VAT inspections take place, as this varies from business to business according to size, nature and compliance record. Since 1st April 2009, an officer of HMRC has been able to enter a person's business premises and inspect the premises, assets and documents if the inspection is reasonably required to check the person's VAT position. There is no power to enter any part of the premises which is used solely as a dwelling. The inspection may take place at any time agreed to by the occupier, or at any reasonable time provided that the occupier has been given seven days' notice. Visits may be carried out unannounced with the authorisation of senior HMRC officers and a tribunal.

HMRC issue guidance in the form of public VAT notices, and these can be found on its website. It should be borne in mind that these notices, although undoubtedly an excellent source of information, are not themselves the law but are only an interpretation of the law – except where a paragraph is preceded by the words 'The

following paragraph has the force of law.' They are amended from time to time in the light of tribunal decisions. Businesses can keep themselves up to date by reading the regular Revenue & Customs Briefs which announce changes in policy.

CHAPTER 2

REGISTERING FOR VAT

Introduction

This chapter gives guidance to businesses which are not yet registered for VAT and need to familiarise themselves with the rules for registration. The topics covered are:

- How businesses are defined
- Advantages and disadvantages of voluntary registration
- Compulsory registration
- Exemption from registration
- Artificial separation of businesses
- Deregistration – rules and consequences
- Overseas businesses

How businesses are defined

Only businesses can register for and charge VAT. The concept of what constitutes a business is difficult to outline with any certainty, as VAT legislation does not give any comprehensive definition. Hence the term 'business' is based on guidance given by HMRC and by case law.

It is often in the interests of a person to prove that he or she is in business. This is because there are certain potential benefits in registering voluntarily for VAT, as outlined below. HMRC may by contrast argue that a person is not in business and is therefore unable to register and take advantage of the benefits.

An important principle is continuity. A person making one-off supplies would clearly not be in a position to argue that he or she is in business – occasional car repairs for friends, the sale of a stamp collection, the sale of an individual's main residence are examples which come to mind. By contrast, the occasional car repairs may develop from a hobby into a more continuous and businesslike activity, as might the trading in stamps. There may come a point where it can be argued that this is a business, and the business may then become eligible to register for VAT.

There is no requirement for a business to be profit-making. It is sufficient for it to be making taxable supplies for a consideration, be conducted on sound business principles and be a 'serious undertaking earnestly pursued'. This may allow loss-making businesses to register, even if they are viewed from some angles as a hobby. There may be some apparent inconsistency here, as such businesses may be told that their trading losses are disallowable for income tax purposes as they are not carrying on a trade on a commercial basis with a view to realising profits. Nevertheless, they may be able to reclaim their input tax.

The case *Lymington Power Boat Charter* involved a couple who purchased a yacht, ostensibly for charter. But in a three-year period there were only six charters with a gross income of £8,250. In this period the couple personally used the boat for 93 days. It was held that they had simply gone through the motions of setting up a business which was only a device for tax relief, and they were ordered to repay input tax of £213,334.

Non-profit making organisations such as charities may make taxable supplies. A donation freely given is clearly not a taxable supply, but sales of goods from charity shops are taxable. They are zero-rated if the goods were donated to the charity; the sale of purchased goods is standard-rated subject to the nature of the goods being sold. Charities may also make taxable supplies of catering. Members' clubs make

taxable supplies of subscriptions, though it is necessary to look behind the subscription and establish what the members are receiving in return: if, for example, the subscription allows the members to take advantage of educational classes, it is exempt from VAT, education itself being an exempt supply.

Government bodies are generally outside the scope of VAT because they are required by statute to levy taxes and rates and the services they are obliged to perform are therefore not taxable supplies. Nevertheless, not all their activities are covered by their statutory obligations, and taxable supplies may result. A local authority *(Metropolitan Borough of Wirral, 1995)* was required to account for VAT on the charges it levied for an information service, as a private sector company could also have supplied these services. Not to require the local authority to account for VAT would have given it an unfair competitive advantage. Television licences are outside the scope of VAT, but the sale of books and DVDs by the BBC are taxable supplies, albeit zero-rated in the case of books.

A sole trader operating several distinct business activities in his or her own name is covered by one VAT registration. Clearly, if this were not the case, it would be possible to circumvent the registration rules by artificially splitting businesses. Likewise, a partnership requires only one VAT registration.

Advantages and disadvantages of voluntary registration

Many businesses whose turnover falls below the level at which VAT registration is compulsory nevertheless choose to register for VAT. Any business which makes taxable supplies, but not exempt supplies alone, may register voluntarily. The greatest benefit of voluntary registration is the ability to reclaim input tax.

The above also applies to businesses which make supplies outside the scope of VAT under the place of supply rules but which would be taxable supplies if they were made in the UK. For example, a UK business whose activities consisted solely of arranging the purchase of holiday homes in a different country might be liable to register for VAT in the country in which the property were situated, but it would not have to register for UK VAT. Nevertheless, by registering for VAT in the UK it would gain the right to reclaim UK input tax, despite not actually charging any VAT in the UK. Its return would consist of a repayment claim only.

There are other non-quantifiable benefits. Firstly, a VAT number may lend a measure of credibility to the business. A customer or supplier may be more willing to trade with the business if a VAT number is present. Secondly, a VAT registration imposes discipline on

a business. A non-registered sole trader or partnership need bring its books up to date only once a year for the purposes of the income tax return. A non-registered limited company has to file its annual accounts before the filing deadline which is nine months from the balance sheet date for a private company under the Companies Act 2006; there is an obligation under company law for companies to keep accounting records capable of showing the financial position at any time (s386 Companies Act 2006), but in reality very few checks are carried out, and shareholders do not even have an automatic right to inspect accounting records. A VAT registration changes all this and obliges the business to bring its records up to date at least every three months, unless it submits annual returns.

Of course, the obvious disadvantage of registering for VAT is the obligation to charge VAT. This does not matter if all the business's customers are themselves VAT-registered, since they can reclaim the VAT charged. But if any customers are non-registered businesses or private individuals, they have no right of reclaim and consequently suffer an increase of 20% in their prices. If the business makes largely zero-rated supplies, which includes exporters and those making supplies to traders in other countries in the European Union, this will not be an issue.

A further disadvantage of voluntary registration is that the same obligations to submit timely returns and account for the correct amount of VAT apply to all registered businesses whether they registered voluntarily or compulsorily. Likewise, the same penalties apply. This need not be a concern if the business is confident in its procedures.

Compulsory registration

This works in two ways.

Firstly, a business which is not already registered must register if at the end of any month (the 'relevant month') its taxable supplies – the total of any standard-rated, reduced-rated or zero-rated supplies but excluding any exempt supplies – for the last twelve calendar months exceed the registration threshold. It must notify HMRC of this fact within 30 days of the end of the relevant month and will be required to start charging output tax from the first day of the next month but one after the relevant month.

Secondly, a business which has good reason to believe that its taxable supplies in the next 30 days alone will exceed the registration threshold must register. It must notify

HMRC by the end of the thirty-day period, and its registration will be effective from the beginning of that period.

If a business has submitted its application for registration but has not yet received a VAT number by the date on which it must begin charging VAT, it must not send out VAT invoices. Instead, it must charge the gross amount including VAT, but not showing VAT separately on any invoice. Once it has received a VAT number, it can replace the previous invoices with VAT invoices. Given that applications for registration are often not processed within the target period of fifteen days, this means that a business customer is unfairly deprived of the opportunity to reclaim input tax until a VAT invoice is issued. Many suppliers will therefore delay charging VAT until they have a VAT number, thus running the risk that the customer will then be unable to pay, while the supplier still has to pay the VAT over to HMRC.

HMRC will accept an application for registration which is backdated by up to four years. This would be useful if a business had incurred research and development costs and then commenced making taxable supplies. Past input tax would be reclaimable. It is important to specify the wish to backdate the registration at the time of submitting the application, as HMRC will not accept a subsequent revision of the effective date.

Exemption from registration

Businesses whose taxable supplies exceed the registration threshold may nevertheless be able to claim exemption from registration. This may be possible if the business can prove to the satisfaction of HMRC that its taxable supplies in the twelve months beginning on the date it would normally have to register are unlikely to exceed the deregistration threshold which is generally marginally below the registration threshold.

Businesses making only zero-rated supplies may choose not to register for VAT, subject to the approval of HMRC. This course of action is not necessarily advisable, as the business will lose the right to reclaim input tax.

Artificial separation of businesses

HMRC have the power to prevent the artificial separation of business activities carried on by two or more persons. They must consider how closely bound the persons are by financial, economic and organisational links, and if appropriate they may make an order to the effect that the persons are considered to be one for VAT registration purposes.

A sole trader supplying mobile phones makes annual taxable supplies of £12 million to registered customers and gains new non-registered customers to whom he or she intends to make annual taxable supplies of £30,000. He or she sets up a new limited company which will make supplies to these customers and remain below the registration threshold.

HMRC will almost certainly make an order to the effect that the limited company is to be regarded as the same person as the sole trader. It will therefore have to charge output tax on all its taxable supplies.

In the above example, the sole trader retains a controlling influence over the company, and this is a common reason for an order. If the same premises are used by two entities, this would also be taken into account: in one case (*TSD & Mrs M E Williams*), a husband and wife carrying on business as a café and bread shop from the same premises were deemed to be a partnership and not two sole traders although in another (*Trippitt*), the wife of a publican who provided bed and breakfast and paid 35% of her income to her husband was deemed to be running a business in her own right

Deregistration – rules and consequences

A business which ceases making taxable supplies must advise HMRC within 30 days of the date of the last taxable supply, which will normally be the date from which its registration ceases to have effect.

Otherwise, a business which can satisfy HMRC that its taxable supplies in the next twelve months will not exceed the deregistration threshold may opt to deregister.

In either case, the reclaim of subsequent input tax is not necessarily prevented. If an invoice is received for services after the date of deregistration, input tax can be reclaimed provided the services relate to taxable supplies made before deregistration.

A business which deregisters is liable to account for output tax on the market value of its assets, including land, on hand at close of business on the last day of registration. This is because those assets were purchased – and input tax incurred – on the understanding that it would use them in order to make taxable supplies.

Assets on which no input tax was incurred can be excluded from the claim, as can assets on which the input tax was 'blocked'. If the resultant output tax on the remaining assets is no more than £1,000, the business need not account for it.

Overseas businesses

Since 1st December 2012 businesses which are not established in the UK, that is, they do not have a place of business in the UK which has both the technical and the human resources capable of making and receiving supplies, have been required to register for VAT even if the supplies fall below the UK threshold.

CHAPTER 3

SALES OF GOODS WITHIN THE EUROPEAN UNION

This chapter explains the VAT treatment of sales of goods which move from the UK to other countries within the European Union (EU) and outlines the differences between sales to registered and non-registered customers. The topics covered are:

- Conditions of zero-rating
- Transfers of own goods
- Recording of EU sales on the VAT Return
- Distance selling

Conditions of zero-rating

Sales of goods to VAT-registered businesses located in a different EU country are zero-rated if certain conditions are met. It is important to distinguish between goods and services; services are subject to separate rules. 'Related services' are included in the zero-rating even if itemised separately on an invoice: these are commonly insurance, transport and packing.

The benefit of zero-rating is that input tax is available for reclaim. Thus, a business whose only sales are to registered businesses in other EU countries will not charge any output tax and will be able to submit a claim for repayment of input tax on each return. Such a business would be well-advised to submit its returns on a monthly basis.

A zero-rated sale which meets all of the conditions is referred to here as an 'EU sale'.

- Customer's VAT registration number

The first condition is that the supplier must obtain the customer's VAT registration number and state this – including the two-letter country code – on the tax invoice. The supplier's registration number must be prefixed by the letters GB. In other respects, the invoice must include exactly the same information which is required for a standard tax invoice to a UK customer, except that the invoice must be annotated to show that it relates to a zero-rated EU sale. It is sufficient to mark the invoice 'Zero-rated intra-EU supply', 'This is an intra-EU supply', or 'Intra-EU supply subject to VAT in the country of acquisition'. The invoice need not be expressed in sterling.

The inclusion of the customer's registration number is vital, and failure to include it will render the zero-rating invalid with the result that the supplier may be required to account for output tax, calculated at 1/6 of the invoiced amount. It will also be needed for the EC Sales List.

If the registration number supplied by the customer later turns out to be incorrect but the number was obtained by the supplier in good faith, the supplier will not be required to account for output tax. Suppliers should therefore habitually check that registration numbers given to them accord to the standard format for the country concerned (VAT Notice 725 contains the correct formats), or alternatively check the number on a website operated by the VAT Information Exchange System (http://ec.europa.eu/taxation_customs/vies/). If the number does not accord to the format or there are suspicious circumstances, they should contact the National Advice Service of HMRC. It is recommended by HMRC that, even if the initial checks of the registration

number show it to be valid, businesses should regularly re-check the validity of the number.

All supplies to non-registered customers in EU countries must be charged output tax at the rate applicable to the goods under the distance selling rules. If output tax is initially charged because the supplier is unable to obtain the customer's registration number but the customer later provides the number, a credit note may be issued together with a zero-rated EU sales invoice, but only if the supplier is satisfied that the customer was registered for VAT at the time of supply.

- Removal of goods to a different EU country

In order to qualify for zero-rating, the invoiced goods must leave the UK and arrive in a different EU country. It is important to note that this country need not be the one in which the customer is registered.

> A UK supplier invoices a customer registered in France for the sale of goods. The goods are dispatched from the UK to the French company's warehouse in Budapest.
>
> The supplier may quote its customer's French registration number on the invoice and zero-rate the invoice, as the goods have left the UK for a different EU country (Hungary).
>
> It is likely that the French company will in any case have to register for VAT in Hungary under Hungarian rules.

- Evidence of removal of goods

The supplier must hold evidence that the goods have been removed from the UK within certain time limits. The normal time limit is three months from the time of supply, although this is extended to six months for goods involved in processing or incorporation into other goods before their removal.

The definition of the time of supply for EU sales differs from that for domestic sales. It is the earlier of the date of the invoice and the 15th day of the month following the month in which goods are sent to the customer. Payment does not create a tax point but does create an obligation to issue an invoice within 30 days of the payment.

Goods are sent to a customer in Belgium on 25th June and invoiced on 21st July. The time of supply is 15th July.

Goods are invoiced to a customer in Italy on 26th September. The goods have not yet been dispatched. The time of supply is 26th September and the goods must be dispatched by 26th December.

In addition to establishing the deadline for the dispatch of the goods, the time of supply also dictates the VAT Return and EC Sales List period which should encompass the transaction. Additionally, if the transaction is stated in euros, it must be translated for the purposes of returns using the exchange rate on the date of supply.

If a series of invoices is issued relating to the same goods, the time of supply is the date of the last invoice.

A UK business manufactures plant to be supplied to a customer in Slovakia in November 20XX. It issues a series of invoices for stage payments on 15th January, 15th April and 15th June 20XX. The final invoice is issued on 15th August 20XX.

The plant must be dispatched by 15th November 20XX.

The actual evidence of removal required for EU sales is less stringent than that for exports but must by law identify the following:

- the supplier;
- the consignor (where different from the supplier);
- the customer;
- the goods;
- an accurate value;
- the mode of transport and route of movement of the goods; and
- the EU destination.

HMRC suggest that, amongst other documents, a combination of the following will be acceptable provided that between them they show the details above: a customer order; inter-company correspondence; a packing list; commercial transport documents; a receipted copy of the consignment note as evidence of receipt of goods abroad.

If the customer is collecting the goods, the supplier should confirm how the goods are to be removed from the UK and the proof of removal which will be sent to him, and should consider taking a refundable deposit from the customer equal to the VAT which will be payable if evidence of removal is not received. In addition to the documentation outlined above, the evidence of removal of goods collected by a customer should include the following:

- A written order from the customer which shows name, address, registration number and the address where the goods are to be delivered.
- The date of departure of the goods from the supplier's premises and from the UK.
- The name and address of the haulier collecting the goods.
- The registration number of the vehicle collecting the goods and the name and signature of the driver, and, where the goods are to be taken out of the UK by a different haulier or vehicle, the name and address of that haulier, that vehicle registration number and a signature for the goods.
- The route, for example the Channel Tunnel or the port of exit.
- A copy of travel tickets if appropriate.
- The name of the ferry or shipping company and the date of sailing, or the airway number and airport.
- The trailer number if appropriate.
- The full container number if appropriate.
- The name and address for consolidation, groupage or processing if appropriate.

It is not possible to zero-rate a sale of goods delivered to a UK customer at a UK address, or a sale of goods which are to be used in the UK before their removal to a different country.

Failure to obtain suitable evidence and retain it for six years may result in an assessment for output tax at 1/6 of the invoiced value.

If a freight forwarder acts on behalf of several suppliers and consolidates their consignments into one, the forwarder will normally receive only one shipping document from the carrier. A certificate of shipment should be made out and passed to the original supplier.

Goods sent by post may be zero-rated if the supplier holds evidence of posting. The Royal Mail and Parcelforce will supply appropriate evidence, details of which are given in VAT Notice 725.

Transfers of own goods

If a business transfers its own goods from the UK to a location elsewhere in the EU, it is deemed to have made a supply, notwithstanding that there has been no transfer of title. If the business is not registered for VAT in the other country, it will therefore need to account for output tax. In order to avoid this, it should register for VAT in the other EU country – as it will, in fact, generally be required to do under the laws of the country in which it receives the goods.

Transfers of own goods are often in the form of consignment stock: a business transfers its goods to another country to form a stock which it uses to make future supplies. This is treated as a transfer of the business's own goods followed by a taxable supply under the rules of the country where the consignment stock is located.

There is no deemed supply if the movement of the goods is only temporary and with the sole purpose of being used to make a supply of services for which a contract exists at the time of the movement.

> A UK business enters into a contract to provide software training to a company in Poland. Its staff take laptops with them and bring the laptops back to the UK when the training has been completed.
>
> This is seen as a temporary movement of goods and no 'transfer of own goods' for EU sales purposes has taken place.

Likewise, there is no deemed supply for goods transferred for temporary use if the goods would have qualified for temporary importation relief if they had been imported from outside the EU and there is an intention either to export them or to remove them to a different EU country within two years. Nor is there any deemed supply where goods are sent for testing, processing or valuation.

A register of temporary movements of goods must be kept in the case of goods which are to be returned within two years, or where the date of return is uncertain.

- Call-off stocks

Suppliers sometimes transfer their own goods to a location in another EU country and hold the goods there pending call-off by a specific customer. Until the goods are called, the title remains with the supplier. These are known as call-off stocks.

If the customer is not aware that the goods are being held specifically for the benefit of the customer, the transfers of the goods and the onward sale to the customer are treated in the same way as consignment stocks.

However, if the customer is fully aware of the arrangements, which will be the case if the goods are actually held on the customer's premises, the sale to the customer can be treated as a zero-rated EU sale at the time when the goods are dispatched from the UK.

Recording of EU sales on the VAT Return

Provided that they meet the conditions for zero-rating, EU sales must be recorded in boxes 6 and 8. There is no need to enter any amount in box 1 unless the conditions for zero-rating are not met, in which case the rules for distance selling are followed. Related services itemised in the invoice are also included in boxes 6 and 8.

The transfer of a business's own goods should likewise be entered in boxes 6 and 8. Because there has been no exchange of cash on an arm's length basis, the value entered must be the cost of the goods transferred.

Call-off stocks are also recorded at cost in boxes 6 and 8 at the time the goods are dispatched from the UK, even if there is a subsequent sale of the goods at a different price from the cost price.

Distance selling

If a UK business sells goods to a person in another EU country who is not registered for VAT, zero-rating under the EU sales rules is not available. Such customers may not only be private individuals but also government bodies, small businesses and businesses with entirely exempt activities. Distance sales to private individuals are commonly made by mail order or over the internet.

If the customer collects the goods in the UK, the sale is subject to UK output tax in the normal way. However, if the supplier is responsible for the delivery of goods to the customer in the other EU country, the transaction is known as a 'distance sale'.

Businesses making distance sales must keep a cumulative annual total by calendar year of such sales to each different EU country. Initially, the sales are subject to UK output tax in the normal way. However, once the total passes the distance selling threshold for the country concerned, the business must register for VAT in that country, which becomes the place of supply for the sale which takes the total above the threshold and for all future sales. Therefore UK output tax is no longer charged and is replaced by output tax in the other country.

The thresholds vary between countries.

A UK business makes sales over the internet to private individuals in Germany. On 31st August 2013, its sales for 2013 to date are €99,500. It makes the following sales in the first few days of September:

1st September	€250
3rd September	€400
4th September	€100

The sale on 1st September is subject to UK output tax. On 3rd September it must register for VAT in Germany and charge German output tax, but not UK output tax, on the sale. The sale on 4th September is subject to German output tax.

Note that a sale can never be subject to output tax in two countries. There is nevertheless some uncertainty about the position of the sale which actually causes the distance selling threshold to be crossed; the above example treats it as subject to VAT in the customer's country, and this is based on the English translation of the EU VAT Directive. Other translations may cause it to be interpreted differently.

Once the threshold has been passed in a calendar year, the supplier must account for VAT in the other country for the whole of the next year. Foreign businesses registering under the distance selling rules in the UK may deregister only when their distance sales to the UK have fallen below £70,000 in the previous calendar year and are unlikely to exceed £70,000 in the current calendar year.

A French business has registered in the UK under the distance selling rules. Its distance sales to the UK are as follows:

20XX	£80,000
20YY	£65,000
20ZZ	£75,000 (budgeted)

It cannot deregister at the beginning of 20YY, as its sales in 20XX exceeded the registration threshold.

Nor can it deregister at the beginning of 20ZZ, because although its sales in 20YY fell below the registration threshold, they are likely to exceed it in 20ZZ.

It may be wise, once a business knows that it is approaching the distance selling threshold in a particular country, to register voluntarily before the threshold is reached. It must notify HMRC and the tax authorities in the other country at least 30 days before the first sale which is to be taxed in the other country.

Having made a voluntary registration, a business may not withdraw it until at least two calendar years have passed.

A UK business registers voluntarily for distance selling in Italy on 1st September 20XX.

It may not deregister until 1st January 20ZZ.

If a person resident in another EU country and making distance sales to the UK is already registered in the UK for other reasons, the person must account for UK VAT on the distance sales even if the threshold for the UK has not yet been reached.

Distance sales taxed in the UK are entered in box 6 of the return; the output tax is entered in box 1. Distance sales taxed in another EU country are entered in boxes 6 and 8 of the return.

No distance sales are entered on an EC Sales List. Therefore, there may be a difference between the totals in box 8 of the return and on the EC Sales List.

CHAPTER 4

ACQUISITIONS OF GOODS WITHIN THE EUROPEAN UNION

This chapter explains the VAT treatment of goods which are purchased from suppliers in other EU countries. The topics covered are:

- Acquisition tax
- Registration issues
- Goods installed on site

Acquisition tax

When a UK business acquires goods from a business registered for VAT in another EU country, if the goods are dispatched from that country to the UK and the supplier meets the conditions relating to invoicing and documentation then the supply will be zero-rated. In the purchaser's eyes, this is known as an 'EU acquisition'.

Superficially, this makes a purchase of goods from a supplier elsewhere in the EU seem more attractive than a purchase of the same goods from a UK supplier, as the latter will need to charge VAT. The attraction appears even greater to a UK business whose onward supplies are partially or wholly exempt and whose capacity to reclaim input tax is therefore restricted.

In order to remove this advantage, a UK business receiving a zero-rated supply from elsewhere in the EU must account for acquisition tax. It needs to be emphasised that no VAT need actually be paid either to the supplier or directly to HMRC. The purchaser simply makes an adjustment to the return.

- Calculation of acquisition tax

The first step is to establish the rate of VAT which would have been applied to the same goods had they been received from a UK supplier. In most cases this will be the standard rate, but some goods are zero-rated or reduced-rated. It is relatively rare for goods to be exempt, since exemption applies mostly to services.

The second step is to translate the invoice, which will usually be stated in the currency of the supplier's country, into sterling. There are strict rules for the application of an exchange rate. The purchaser must establish the time of the acquisition, which is the earlier of the date of the invoice and the 15th day of the month after the month in which the goods are sent. The exchange rate on that particular day must be applied.

The market selling rate for the currency of the invoice must be used, and the rates published in national newspapers are acceptable. However, HMRC publish exchange rates for all major currencies, and these may be used instead – either for all acquisitions across the business, or for all acquisitions of a particular class. There is no need to seek permission from HMRC to use these rates, but once a business decides to use them, it cannot change unless it is granted permission to do so. A third alternative is to use a different method which has been approved by HMRC; approval is more likely to be granted for rates determined objectively by reference to the UK currency market.

The third step is to apply this rate – 20%, 5% or 0% – to the amount of the invoice. The invoiced amount is deemed to include costs such as transport, packing and insurance for which the supplier is primarily responsible but which the purchaser has agreed to cover.

The resulting figure is the acquisition tax, and it must be entered in box 2 of the return for the period in which the time of acquisition falls. The net invoiced value must be entered in boxes 7 and 9.

A UK business acquires machinery from a supplier in Finland. The invoiced amount is:

	€
Goods	50,000
Transport	500
Insurance	150
Total	50,650

The goods are dispatched on 26th September 20XX and the invoice is dated 20th October 20XX.

The relevant exchange rates for the euro against sterling are:

26th September	1.06
15th October	1.08
20th October	1.10

The invoiced value, expressed in sterling, is £46,898 (€50,650 / 1.08). This figure must be entered in boxes 7 and 9.

The acquisition tax at 20% is £9,397.60, and this must be entered in box 2.

A business which transfers its own goods from the UK to another EU country must treat this as an EU sale. In the same way, a business transferring its own goods from another EU country to the UK must account for acquisition tax. The calculation is based on the cost of the goods.

- Reclaim of acquisition tax

A business which makes fully taxable supplies and which acquires the goods in the course of making those supplies is entitled to reclaim the acquisition tax in full. Thus

the same amount which has been added to box 2 may be added to box 4, and the two amounts will therefore cancel each other out.

If the goods are acquired in the course of making an exempt onward supply (such as by a university which makes exempt supplies of education), or for non-business purposes, no entry may be made in box 4. If the business is partially exempt and the goods are acquired for the general purposes of the business (in other words, they are not directly attributable either to a taxable or to an exempt onward supply), the partial exemption percentage must be applied to the acquisition tax.

> A UK property company acquires computer equipment from Germany at a sterling value of £20,000. Its partial exemption fraction is 60%.
>
> The acquisition tax to be entered in box 2 at 20% is £4,000. Only 60% of this, or £2,400, can be reclaimed in box 4.
>
> Therefore the VAT liability of the business is increased by £1,600.

The increase in VAT in the above example is exactly the same as it would be if goods of the same cost were acquired from a UK supplier. Because acquisition tax is charged at the rate of VAT prevalent in the purchaser's country, suppliers in countries with a low VAT rate cannot gain an unfair advantage.

Registration issues

Businesses which are not already registered for VAT in the UK may make EU acquisitions. This may apply to a business which makes only exempt supplies but purchases goods from other EU countries.

Such a business will be required to register for the purpose of EU acquisitions if its acquisitions in the course of a calendar year exceed the threshold. Note that this works slightly differently from the standard rules for registration in that the standard rules operate on a rolling twelve-month basis, while the rules for EU acquisitions are applied on a strict calendar year basis.

A UK business making only exempt supplies, and therefore not registered for VAT, acquires goods from suppliers in Sweden, Denmark and the Netherlands. Its cumulative acquisitions for 20XX are:

To 31st July	£60,000
To 31st August	£71,000

It must notify HMRC that it has crossed the acquisitions threshold and must do so by 30th September. It must begin accounting for VAT on acquisitions from 1st October.

It must also charge VAT on any taxable supplies made from 1st October.

EU acquisitions and UK taxable supplies are not aggregated for the purposes of establishing whether a business must register for VAT. Thus a business with UK taxable supplies of £60,000 and EU acquisitions of £50,000 in the last twelve months need not register.

Goods installed on site

If goods are sold by a business in one EU country to a business in another under a contract which requires the supplier to install or assemble the goods on the customer's premises, the usual rules for EU sales and acquisitions tax do not apply. Instead, the place of supply moves to the customer's country. The supplier must register for VAT there and charge local output tax, and the customer need not account for acquisition tax.

A UK radio broadcaster acquires recording equipment from a Swedish company. Under the contract, the supplier must install the equipment in the broadcaster's premises.

The Swedish company must register for VAT in the UK and charge UK output tax on this transaction.

The Swedish company need not complete an EC Sales List but must complete an Intrastat declaration.

The same applies if a UK business is to install equipment at its customer's premises in a different EU country – it must register for and charge VAT there. In this case, it must enter the cost of the goods in box 8 of the return and the full contract value in box 6. No EC Sales List entry is necessary, but it must complete an Intrastat declaration.

Some countries, including the UK, operate a simplification procedure to prevent businesses having to register for VAT in numerous different places. Thus a company installing equipment in the UK may opt to treat it as a zero-rated EU sale. In this case, the customer must account for acquisition tax.

In order to take advantage of the simplification procedure, the supplier must notify the customer and HMRC of the intention to do so no later than the issue of the first invoice to this customer. Separate notifications must be made in respect of each customer, but once a notification has been made in respect of one customer, no further notifications need be made for sales to that customer.

CHAPTER 5

TRIANGULATION

This chapter explains the VAT treatment of triangular transactions in goods. The topics covered are:

- Definition and default position
- Simplification procedure
- Reporting

Definition and default position

Businesses may become involved in a chain of transactions in which the first supplies goods to a second but actually sends those goods to a third. In the absence of a simplification procedure, this can cause administrative difficulties to the second of the parties, who may be required to register for VAT in a different country.

> A French supplier invoices a UK intermediate supplier for some goods. The French supplier sends the goods direct to the UK business's customer in Germany.
>
> The default position is that the UK intermediate supplier has to register for VAT in Germany, as there has been an acquisition of goods there. The invoice from the French supplier is zero-rated under the normal rules for EU sales; the UK intermediate supplier accounts for acquisition tax in Germany; and the UK intermediate supplier charges German VAT on the invoice.

Simplification procedure

All EU countries have agreed that a simplification procedure may apply at the intermediary's option. This works as follows:

1. The supplier zero-rates the sale in the normal way, using the intermediate supplier's registration number. A zero-rated EU sale is possible provided that the goods leave the supplier's country and are invoiced to a customer registered in a country other than that of the supplier. The country of the customer's registration need not be the same as the country of destination.

2. The intermediate supplier charges no VAT on the sale to the final customer.

3. The final customer accounts for acquisition tax.

In the previous example, the French business would zero-rate the sale, the UK intermediate supplier would charge no VAT, and the German customer would account for acquisition tax.

If the intermediary wishes to adopt the simplification procedure, the customer has no option but to accept it or to look for an alternative supplier.

If the final customer is in the UK, the intermediate supplier must notify both the customer and HMRC of the intention to adopt the simplification procedure and must do so before

the first invoice is issued. Once notification is given, it is deemed to relate to all future supplies to this customer.

Note that the simplification procedure can be used only where the three parties are registered in different EU countries. It cannot operate when the intermediate supplier is already registered in the customer's country, or when one of the parties is not registered in the EU.

Nor are the goods subject to the triangulation procedure if they do not move from one country to another.

> A UK company buys goods from a supplier in Ireland who dispatches the goods direct to the UK company's customer, who is also in Ireland.
>
> The UK company would normally have to register for VAT in Ireland, charge Irish VAT on its sale and reclaim the VAT it paid to its supplier by entering it on its Irish return.
>
> Note that some EU countries do not require registration for VAT where a business not established in the country makes a supply of goods there. In this case the ultimate customer would account for VAT on the purchase of the goods in a similar manner to the accounting for acquisition tax.

In *Mexcom Ltd*, a UK company bought toilet rolls from an Italian supplier, but they were delivered direct to Spain. The company did not send an invoice to any customer in Spain. The ruling was that the UK company had to account for acquisition tax in the UK, as it had used its UK VAT number to obtain zero-rating from the Italian supplier. This acquisition tax had to be reported in box 2 of its UK return, but no corresponding entry was allowed in box 4. This was because there was no onward taxable supply. Had it invoiced a customer in Spain, the simplification procedure could have been used, and it would have been absolved from accounting for acquisition tax in the UK.

Reporting

The original supplier must record the sale on the return and EC Sales List in the usual way for an EU sale. An Intrastat return must also be completed.

The intermediate supplier must complete an EC Sales List, annotating the line relating to this customer with the code '2'. No entry is necessary in boxes 6 or 8 of the VAT Return or on Intrastat. Thus box 8 of the return will differ from the total on the EC Sales List.

Where an intermediate supplier's only intra-EU supplies are in the form of triangular transactions, the supplier must notify HMRC in order to obtain an EC Sales List. This is because HMRC usually only send EC Sales Lists to businesses which have an entry in box 8 of the return.

The final customer must account for acquisition tax in the usual way and also complete an Intrastat return.

CHAPTER 6

INTRASTAT

This chapter explains the completion of Intrastat returns. The topics covered are:

- General principles
- Thresholds
- Completion of returns
- Reconciliation of Intrastat to VAT Returns

General principles

Intrastat is a system for collecting statistics on goods traded between EU countries. The statistics are used by government departments in the setting of overall trade policy and the generation of initiatives in new trading areas; the volume of goods moving is also assessed to allow the planning of future transport needs. Such information was once available from Customs declarations on movements of goods between countries; but since the finalisation of the European Single Market on 31st December 1992, there exists a complete freedom of movement of goods between countries within the EU (Single European Act, signed by all existing EEC members in February 1986).

Although Intrastat forms are not strictly VAT forms, the system is nevertheless closely linked to VAT and the forms are often completed by staff with responsibility for VAT.

Businesses which are not registered for VAT need not complete Intrastat forms. VAT-registered businesses must do so if they breach the threshold. There are two forms: one for dispatches of goods and one for arrivals of goods. A business completing the forms must record all movements of goods from the UK to other EU countries and vice versa. The forms are completed monthly.

Thresholds

Separate thresholds apply to dispatches and arrivals. Thus, a business which acquires large amounts of goods from other EU countries but whose sales are mainly within the UK may have to complete the arrivals form but not the dispatches form.

The current thresholds are £1.5m for arrivals and £250,000 in respect of dispatches.

For 2009, the thresholds for both dispatches and arrivals were £270,000. The year 2010 saw some significant changes, as the arrivals threshold increased to £600,000 and the dispatches threshold reduced to £250,000. The reason for the discrepancy is that EU law from 2010 requires member states to ensure that statistics on 95% of EC trade relating to arrivals are collected. Previously, this was 97%, and the requirement for dispatches remains at 97%.

A business which does not already complete Intrastat forms must calculate its cumulative totals of dispatches and arrivals for the calendar year at the end of each month. If the total has exceeded the threshold, it must complete the forms for that month and for each subsequent month in that calendar year.

Whether it completes the forms for the following year depends on the threshold for that year. If the threshold for the following year has been increased and its total for the previous year is below the new threshold, it need not complete the forms until it passes the new threshold.

Completion of forms

Intrastat forms must be completed online from 1st April 2012.

Only goods should be included on Intrastat and not services. Businesses must not include goods which leave or arrive in the EU, as the system is designed for movements within the EU. Neither must goods which merely pass through the UK in transit between two other EU countries be included.

The Channel Islands, although not part of the EU for VAT purposes, belong to the UK for Intrastat purposes. Goods moving between the UK and the Islands must not be declared, but goods moving between the Islands and other EU countries must be declared.

Purchases and sales of goods must be included, as well as transfers of a business's own goods, and goods sent for or returned after processing, though not merely for repair. Goods sent free of charge must be included unless they are commercial samples. Goods dispatched which are lost in transit must be included, but not goods which are lost on their way to the UK. There is a list in paragraph 5.4 of Notice 60 which indicates goods which need not be reported such as: goods for temporary use which are not processed and are returned within 24 months; goods used as carriers of information such as CD-ROMs; goods sent only for repair; software downloaded from the internet; and goods which are in transit through the UK.

Overleaf is a sample form.

Notice 60 explains how to complete each box on the form; the more important details are given here.

INTRA EU TRADE STATISTICS — **Intrastat Supplementary Declaration**

ARRIVALS

Period (mm/yy) ☐☐☐☐ Number of lines ☐☐☐

HM Revenue & Customs — INTRASTAT

For Official Use

Trader Name: Address: VAT number (GB) ☐☐☐☐☐☐☐☐☐ Branch ID: ☐☐☐	Agent Name: Address: VAT number (GB) ☐☐☐☐☐☐☐☐☐ Branch ID: ☐☐☐

	Commodity code	Value £s Sterling	Delivery terms	Nature of transaction	Net mass (kg)	Supplementary unit	Goods from (country)	Trader reference
1	☐☐☐☐☐☐☐☐							
2	☐☐☐☐☐☐☐☐							
3	☐☐☐☐☐☐☐☐							
4	☐☐☐☐☐☐☐☐							
5	☐☐☐☐☐☐☐☐							
6	☐☐☐☐☐☐☐☐							
7	☐☐☐☐☐☐☐☐							
8	☐☐☐☐☐☐☐☐							

When complete return to:

HM Revenue & Customs
Sort Section, Alexander House
21 Victoria Avenue
Southend on Sea
SS99 1AA

For general enquiries or to order more forms for Intrastat please contact the National Advice Service on **0845 010 9000.**

It is beneficial to submit nil returns for the months you have no trade. This prevents unnecessary enquiries and reminder letters. You can make your Intrastat declarations electronically, visit **www.uktradeinfo.com** and click on Intrastat.

Financial penalties may be incurred if declarations are late, incomplete or inaccurate.

Name of signatory: _____
(In CAPITAL LETTERS)

Signature: _____

Telephone number: _____

Email address: _____

Date and Place: _____

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Transactions are not grouped by customer or supplier as they are on the ESL. Instead, each transaction must be listed separately, giving the commodity code as stated in the Intrastat Classification Nomenclature which can be found at www.uktradeinfo.com, the rounded up value, the delivery terms, the nature of transaction code, the net mass which is optional for some commodity codes, supplementary units where required for a particular commodity code, and the country of destination or origin.

The most common nature of transaction codes are:

- 10 – transactions involving a change of ownership.
- 16 – credit note values (paragraph 6.1 of HMRC Notice 60 states that code 16 should be used only where there is a credit note with no return of goods, but this is apparently contradicted in the worked example in paragraph 7.2, which uses code 16 when the goods have been returned).
- 17 – transactions declared on Intrastat but not on boxes 8 or 9 of the VAT Return. This includes the movement of goods for which stage payments have previously been made. It also includes distance sales taxed in the supplier's country.
- 18 – transactions which are declared on boxes 8 or 9 of the VAT Return but are only required on Intrastat for reconciliation purposes. This includes stage payments with no movement of goods.
- 20 – returned goods.
- 40 – goods sent for processing.
- 50 – goods returned following processing.

There are two exceptions to the rule of stating each transaction separately. Firstly, HMRC encourage businesses to aggregate transactions where all the details other than value and quantity are identical. Secondly, items with a value of £130 or less may be aggregated into a single commodity code (9950 0000) and analysed out only into the countries to which the goods are dispatched or from which they arrived. This concession may be restricted where large totals are declared or it accounts for the bulk of trade.

Reconciliation of VAT Returns to Intrastat

The totals in boxes 8 and 9 of the VAT Return should agree to the Intrastat totals, but there are complications which are dealt with by the use of the nature of transaction codes.

Goods are dispatched to France in July with a sales invoice of £3,000. The goods are returned in August with a full credit note.

The July dispatches form shows £3,000 with the code 10.

The August dispatches form shows £3,000 with the code 16. The August arrivals form shows £3,000 with the code 20.

The VAT Return will show no entry as the sale and the return cancel each other out.

When comparing the VAT Return and the Intrastat, HMRC ignore the code 20 and recognise the code 16 as a minus.

Goods are sent to Poland in October for processing. They are returned in November.

The October dispatches form shows the value of the goods with the code 40.

The November arrivals form shows the enhanced post-processing value of the goods with the code 50.

The processing work should not be recorded in box 9 of the VAT Return. This is despite the statement in Notice 700/12 (paragraph 5.9) which states that processing work should be included in boxes 8 and 9 – the author has received written confirmation from HMRC that this is incorrect.

A business makes a stage payment of £1,000 in February for goods from Hungary followed by a final payment of £1,500 on receipt of the goods in March.

The February arrivals form shows £1,000 with the code 18.

The March arrivals form shows £2,500 with the code 17 and £1,500 with the code 18.

Assuming monthly returns, the February VAT Return will show £1,000 and the March return £1,500, both in box 9.

A business makes sales to private individuals in Ireland. A sale of £500 in June is taxed in the UK. However, because the distance selling threshold in Ireland is passed in July, a sale of £750 in July is taxed in Ireland.

The June dispatches form shows £500 with the code 17.

The July dispatches form shows £750 with the code 10.

Box 8 is left blank on the June VAT Return but completed with £750 on the July VAT Return.

CHAPTER 7

EXPORTS

This chapter outlines the conditions to be fulfilled before an export of goods to a location outside the EU can be zero-rated. The topics covered are:

- General position
- Direct exports
- Indirect exports
- Exports after consolidation
- Retail export scheme

General position

An export is the dispatch of goods to a location outside the EU. This includes supplies to the Channel Islands, which, while within the EU for customs purposes, are outside it for VAT purposes. Exports are zero-rated provided that certain conditions relating to time limits and documentation are met.

- Time of supply

The time limits vary depending on the type of export, but they are all linked to the time of supply, which is the earlier of the date on which the goods are sent to or collected by the customer and the date on which full payment is received. Note the difference between the time of supply for exports and that for domestic supplies - for exports, a part payment does not create a tax point, nor does an invoice.

Part payments are zero-rated if they relate to goods which will eventually be exported. If, however, the goods are not eventually exported, or the supplier fails to obtain valid evidence of the export, the supplier must account for output tax at 1/6 of the total payments received.

Not only must the goods be exported within the given time limit but the supplier must possess an acceptable proof of export within the time limit. Practically, the only implication is that, if payment is received before the goods are dispatched, the dispatch must occur within the given time limit.

- Proof of export

Evidence falls into three types: official evidence, commercial transport evidence and supplementary evidence. Exporters must retain either official evidence or commercial transport evidence. Whichever they retain must be supported by supplementary evidence.

Official evidence is produced by HMRC, usually in the form of Goods Departed Messages (GDM) generated by the New Export System – an electronic system which enables exporters and their agents to send their export declarations to HMRC electronically. Alternatively, official evidence may be in the form of a Single Administrative Document (SAD) endorsed by HMRC at the point of exit from the EU. This is a standardised document used for imports, exports and goods in transit through the EU.

Commercial transport evidence describes the physical movement of the goods and may be in the form of authenticated sea waybills or air waybills, international consignment notes, bills of lading or certificates of shipment.

Supplementary evidence will usually be held within the exporter's own accounting system. It is not necessary to retain all of the following, provided that they evidence the fact that a supply has taken place:

- customer's order;
- sales contract;
- inter-company correspondence;
- copy of export sales invoice;
- advice note;
- consignment note;
- packing list;
- insurance and freight charges documentation;
- evidence of payment; and/or
- evidence of the receipt of the goods abroad.

All types of evidence must clearly identify the supplier, the consignor where different from the supplier, the customer, the goods, an accurate value, the export destination and the mode of transport and route of the export movement. The description of the goods must be specific, and photocopies of documents are not usually acceptable.

Direct exports

A direct export occurs where the complete export transaction is under the control of the UK supplier. The supplier may carry the goods or transport them by rail, post or courier service. Goods exported by an agent, such a freight forwarder, constitute a direct export only if the agent acts on behalf of the supplier and not the customer.

The time limit for direct exports is three months from the time of supply. If the goods are found in the UK after this time limit, they are liable to forfeiture and VAT may become payable by the person in whose possession the goods are found.

Goods subject to direct export must not be posted or delivered to an address in the UK or anywhere else within the EU. Nor must they be collected by or on behalf of the customer even if it is claimed that they are for subsequent export.

If the customer is an overseas branch of an EU company, it is still possible to zero-rate the export provided that the supplier or the supplier's agent exports the goods and the overseas delivery address is shown on the invoice, even if the invoice is made out to the EU business.

A transfer of a business's own goods to a location outside the EU is not a supply, but the business must nevertheless retain evidence that the goods have left the EU. No entry is made in box 6 of the return. If the goods are subsequently returned to the UK, they must be declared to HMRC under the import procedures.

Indirect exports

An indirect export occurs when the overseas customer or customer's agent collects or arranges for the collection of the goods from the supplier within the UK and then takes them outside the EU. The time limit for export is three months from the time of supply. The most common example of an indirect export is an ex-works sale.

The supplier will not meet the conditions for zero-rating if goods are allowed to be collected by a customer who is resident within the UK, even if the customer claims that the goods will be exported. Likewise, goods collected by an overseas business which has a place of business in the UK from which taxable supplies are made, may not be zero-rated. It follows that, if an export is to be made to a non-EU branch of a UK business, this must be carried out as a direct export. It is possible to treat as an indirect export a supply made to a person established in another EU territory who then takes responsibility for moving the goods outside the EU, but only if this person does not take the goods in personal baggage.

With effect from 1st October 2013 (although traders can apply earlier) indirect exports from the EU via customers registered for VAT in the UK but with no establishment in the UK will also be zero-rated.

A supplier making indirect exports runs the risk of not receiving adequate and timely proof of export from the customer. Therefore the supplier should consider whether or not to take a deposit from the customer equivalent to the amount of VAT; this will be refundable once the documentation is received.

Additionally, the standard of evidence required for indirect exports is higher than for direct exports. Copies of transport documents alone will not be sufficient. The information held must identify the date and route of the movement and the mode of transport involved and should include the following:

- A written order from the customer showing the customer's name and address and the delivery address.
- A copy sales invoice showing the invoice number, customer's name and a description of the goods.
- The date of departure of the goods from the supplier's premises and from the EU.
- The name and address of the haulier collecting the goods, the registration number of the vehicle collecting the goods and the name and signature of the driver.
- Where the goods are to be taken out of the EU by an alternative haulier or vehicle, the name and address of that haulier, the registration number of the vehicle and a signature for the goods.
- The route for example the Channel Tunnel or port of exit.
- Copies of travel tickets.
- The name of the ferry or shipping company and the date of sailing, or the airway number and airport.

If applicable the information held should also include:

- The trailer number.
- The full container number.
- The name and address for consolidation, groupage or processing.

Exports after consolidation

If an exporter delivers goods to a third person in the UK who is also making a taxable supply to the same overseas customer, this is known as an export after consolidation. It is zero-rated provided that the goods are only delivered to the person in the UK and not supplied to him. The goods must then be exported from the EU within six months of the time of supply.

Some of the commercial transport evidence mentioned earlier may not be available in the case of an export after consolidation, since the third person will receive only one bill of lading. The third person should then make out a certificate of shipment which should be forwarded to the supplier as soon as the goods are exported. This will help the exporter to meet the conditions for commercial transport evidence.

Retail export scheme

Retailers who are registered for VAT may make a VAT refund to a person who is departing from the EU and taking the purchased goods with him. This is known as the retail export scheme. The scheme is voluntary, and retailers need not operate it at all or may operate it only for certain lines of goods or for goods above a specified value.

A customer is eligible for refunds only if the person's permanent place of residence is outside the EU. This is evidenced by his or her passport. Students and migrant workers are eligible only if they make their purchases in the last four months of their stay and intend to remain outside the EU with the goods for at least twelve months. Their visa and, if appropriate, work permit will be contained within their passport, and the retailer should inspect these documents.

The goods are subject to the normal rate of VAT at the point of sale that is, standard-rated or reduced-rated – the scheme does not apply to zero-rated items. The retailer must give the customer a VAT refund document. If the customer leaves the EU with the goods by the end of the third month following the month of purchase, the completed refund document may be presented to HMRC at the airport or port of departure and the goods must be made available for inspection. The document is then certified if the goods are in order, and the customer must send it back to the retailer who will make a repayment of VAT to the customer.

The refund is often dealt with at the airport or port by a refund company, which pays the customer the refund immediately, less a handling charge, and reclaims the amount from the retailer.

If the refund has not been made by the time the next return is submitted, the retailer must treat the sale as standard-rated. Assuming that the refund is made in the next return period, the retailer should reduce box 1 of the following return.

Certain goods are not eligible for the scheme – they include new and second-hand vehicles for personal export, goods over £600 in value exported for the customer's business purposes, and goods requiring an export licence, except for antiques. The scheme does not apply to services, and therefore VAT cannot be refunded on hotel accommodation.

CHAPTER 8

IMPORTS

This chapter helps importers of goods from outside the EU to understand their obligations in respect of duty and VAT. The topics covered are:

- The charge to VAT
- Import procedures
- Duty deferment
- Reclaim of import VAT
- Reliefs from import VAT
- Postal imports

The charge to VAT

Goods brought into the UK from a location outside the EU are known as imports. The supplier outside the EU will not have charged UK VAT although a local indirect tax may have been charged. However, most imported goods are subject to import duty and VAT, both of which must be paid to HMRC before the goods are released to the importer. The duty and VAT are chargeable even if the importer is not registered for VAT.

The value of the goods for VAT purposes is calculated by adding together the cost of the goods, the import duty and all incidental costs necessary to bring the goods to their first destination within the EU. The 'first destination' is the first place within the EU mentioned on the consignment note, or in the absence of a consignment note, the first place of unloading in the UK.

The value is multiplied by the VAT rate, which is the same rate that would apply to identical goods supplied within the UK.

There are a number of items which are not subject to import VAT, the most important of which are summarised here.

- Low value consignments

Consignments not exceeding £15 in value are not subject to import VAT.

Alcoholic beverages, tobacco, perfumes and toilet waters attract import VAT even if under £15 in value.

Low value consignment relief does not apply to imports from the Channel Islands from 1st April 2012.

- Capital goods

If a business ceases trading outside the EU and imports capital goods in order to transfer the business to the UK, there is no import VAT provided that the transferred business does not form part of an existing UK business, the goods were used for at least twelve months before their import, and they are imported within twelve months of their ceasing to be used in the old business. HMRC may waive these conditions if the goods are imported from a country suffering from political unrest. This concession is not available if the value of the goods is disproportionate to the business being carried on.

- Commercial samples

Samples imported solely as a means to solicit orders of the same goods are not subject to import VAT; nor are goods of no intrinsic value sent solely for advertising.

- Goods imported for testing

Goods imported for testing to find out their composition, quality or other characteristics for information, or for industrial or commercial research, are not subject to import VAT.

- Charities

Charities may import food, medicines, clothing, blankets, orthopaedic equipment or crutches free of import VAT if these are to be distributed free of charge to the needy. Likewise, goods donated by a person outside the EU for fundraising for the benefit of the needy, and equipment donated to a charity for a non-commercial purpose, do not attract import VAT.

- Works of art

Works of art imported by museums and galleries are, if approved by the National Import Reliefs Unit, not subject to import VAT. This applies only on works of art imported free of charge, or acquired for a payment but not in the course of a business.

If the work of art does not qualify to be imported free of VAT, an effective reduced rate of 5% is charged.

- Personal belongings

A person who has normally been resident outside the EU for at least twelve months and who is moving to the UK need not pay import VAT on bringing his or her personal belongings into the UK, provided that the belongings have been used and owned for at least six months. There are exclusions on alcohol, tobacco, vehicles capable of carrying more than nine persons including the driver, and items used in a business.

Pupils and students who are normally resident outside the EU and who are attending a full-time course in the UK may bring household effects and studying equipment into the UK free of VAT.

Property inherited by a UK resident and imported into the UK is not subject to import VAT.

Travellers entering the EU are relieved from payment of VAT and duty on certain specified amounts of tobacco, alcohol, perfume and toilet water. Other goods which have been obtained outside the EU or in a duty-free shop within the EU on an outward journey and which have a value of up to £390 are also free of VAT and duty.

Goods exported from the EU and reimported within three years by the same person and in the same state are free of duty and import VAT under the returned goods relief provisions.

Import procedures

All goods which arrive in the UK from a non-EU country must be presented within three hours of their arrival. Presentation involves informing HMRC that the goods have arrived, and many importers do this by means of an approved computerised inventory system linked to HMRC.

A summary declaration must then be made within 24 hours of presentation, either on the designated form C1600 or by the production of transport documents such as bills of lading. The presentation and summary declaration may be combined.

Finally, imported goods must be assigned to a treatment approved by HMRC within 45 days for goods imported by sea, or within 20 days for goods imported by other means. The most common procedure is known as entry to free circulation, which gives the importer the unrestricted right to use or sell the goods, but there are other procedures such as inward processing, outward processing and processing under customs control, transit to another EU country, and entry into a customs warehouse.

Before they can be entered into free circulation, goods must be declared. This is generally done by the completion of a Single Administrative Document. At the same time, import duty and VAT must be paid, and the goods cannot be released until the money has been paid over or appropriate security has been given. It is a matter of EU law that all customs debts incurred when goods are cleared must be secured if they are not being paid at that time.

A full guide to import duty is beyond the scope of this book, but nevertheless a short explanation of the principles needs to be given, since import duty needs to be calculated before the amount of VAT can be finalised.

- Import duty

Duty rates are available in the Tariff, which can be purchased from HMRC or is available for inspection in most of their offices and in major public libraries. It is also now available online from Business Link free of charge. The rates are standardised across the EU. It is important to note that duty is paid only on goods arriving from outside the EU and not on trade within the EU. Broadly, a higher rate of duty on a particular product indicates a desire to protect producers within the EU.

The Tariff also gives details of preferences, which are lower rates of duty on certain products from specific countries and are usually the result of reciprocal agreements. Some preferences are limited and are no longer available once the level of imports across the EU of a particular product in a given year has exceeded a specified amount. This is known as a tariff quota.

Preferences are subject to stringent rules on origin – the products must have been wholly produced in a country in order to qualify. Less stringent rules apply to developing countries under the Generalised System of Preferences, whose object is to help these countries gain access to world markets by applying very low rates of duty to their products when exported to the rest of the world.

Duty deferment

Goods cannot be released to the importer until payment of duty and VAT is made or security given. Immediate payment may cause cash flow problems and delays in the release of goods while HMRC wait for payment to clear. Therefore a duty deferment system exists to overcome these obstacles. An importer wishing to take advantage of this needs a Deferment Approval Number (DAN).

The first step is to obtain a guarantee from a bank, building society or insurance company for a given amount, which must cover all deferrable duty and VAT. If the guaranteed amount is exceeded, further duty and VAT must be paid up front, and repeated excesses may lead to withdrawal of the deferment agreement. It is possible to give a supplementary guarantee to cover peak periods.

An agent may request deferment against the principal's deferment number. The agent will then invoice the principal, and the principal will reclaim the VAT in the normal way.

Once the guarantee is in place, duty and VAT are deferred and paid on the 15th day of the following month.

Importers who have been registered for three years or more with a twelve-month record of international trade operations and who have a good compliance history and sufficient financial means to meet any deferred amount may take advantage of Simplified Import VAT Accounting (SIVA). The amount of the guarantee is reduced to cover only the amount of deferrable duty, ignoring any deferrable VAT. This is because most traders will be able to reclaim import VAT in any case and EU law requires security only against deferred duty and not VAT.

Reclaim of import VAT

In order to reclaim import VAT, a business must be registered for VAT and make taxable supplies. A partially exempt business may see its scope for VAT reclaim restricted, depending on the purpose for which the imported goods are used. A business wishing to reclaim import VAT should obtain an EORI (Economic Operator Registration and Identification) Number.

Importers will not receive a VAT invoice either from their supplier or from HMRC. However, form C79 (Import VAT Certificate) will be sent to the importer around the 12th of the month following import. This gives a summary of all the import VAT paid in the previous month and is the only acceptable evidence for an import VAT reclaim. Form C79 must be retained for at least six years.

Importers with a deferment account will receive a weekly deferment statement from HMRC. This is not acceptable evidence for the reclaim of import VAT. Nor is an invoice issued by an agent in respect of import VAT acceptable.

Import duty cannot be reclaimed in the same way as import VAT. See below for various reliefs which cover import duty.

Reliefs from import VAT

- Inward processing relief

If goods are imported with a view to processing and re-export, duty and VAT may be relieved. Processing can be as simple as sorting and re-packing or can be complicated manufacturing.

Importers who intend to re-export an entire consignment of goods after processing should apply for the suspension method, under which all duty and VAT is suspended. Provided that the goods are re-exported, the duty and VAT never become payable.

If an importer does not yet know how much of a consignment will be re-exported then the drawback method should be applied. Duty and VAT are paid in the normal way, and a proportion is reclaimed as the goods are re-exported.

Certain foodstuffs and beverages require an economic test before inward processing relief is allowed. The importer must explain to DEFRA why EU-produced goods cannot be used.

- Temporary importation relief

A range of goods may be imported free of duty and VAT provided that they are re-exported within a given time period which is usually two years and security is given by way of cash deposit or bank guarantee. Processing of the goods is not allowed, though essential repairs to maintain the state of the goods are acceptable.

A full list of goods eligible for this treatment can be found in Customs Notice 200, but the most important ones are:

- Pallets and containers.
- Means of transport.
- Travellers' personal effects such as clothing, jewellery, cameras, musical instruments, laptops, wheelchairs or tents.
- Goods for sports purposes.
- Medical, surgical and laboratory equipment.
- Professional equipment such as equipment for the press, broadcasting materials, tools for repair of machinery or materials used by accountants, doctors, photographers, theatre companies, orchestras and others.

- Outward processing relief

Outward processing relief provides duty relief on goods imported from third countries which have been produced from previously exported EU goods. Businesses can thus take advantage of cheaper labour costs outside EU while encouraging the use of EC materials. Goods may also be exported to undergo processes not available in the EU, and faulty goods can also be returned to a country for repair.

Full relief from import VAT is not available, but the VAT may be reduced and calculated on processing and transport costs and on duty.

- Processing under customs control

Processing under customs control may apply if the duty rate on imported raw materials is higher than that on finished goods. The materials may therefore be processed into finished goods under the control of HMRC and a lower duty rate paid at the end of the process. For example, PVC materials with a duty rate of 8.3% may be processed into film screens with a duty rate of 2.7%.

Import VAT is suspended until the duty is paid.

- Reimported goods

Goods which following export are reimported and released into free circulation within three years may be granted relief from import duty and VAT provided that they are imported by the person who originally exported them and are not processed in any way apart from essential repairs to maintain them in good condition.

- Rejected goods

VAT and duty which have previously been paid on goods which were defective at the time of import may be repaid to the importer. They must be re-exported or destroyed.

- Onward supply relief

If an importer makes an EU sale of imported goods within one month of their importation, duty is payable as normal but relief may be granted from import VAT. The sale is then zero-rated, and acquisitions tax is payable by the customer in the other EU country.

Postal imports

If an importer receives imported goods by post, the treatment depends on the value and the method of sending.

For consignments with a value over £2,000, form C88 will be sent to the importer. Duty and VAT are payable immediately, and a copy of the C88 will be sent to the importer to enable him to reclaim the import VAT.

Consignments under £2,000 sent by International Datapost or EMS require payment of duty and VAT when the goods are delivered. The charge label is retained to support a reclaim of import VAT.

No other consignments below £2,000 require immediate payment of VAT. Registered persons must calculate the import VAT themselves and include it in box 1 of the next return. They may then reclaim it in box 4 to the extent that they are using the goods to make taxable supplies.

CHAPTER 9

INTERNATIONAL SERVICES

This chapter gives details of the VAT treatment of international services - principally those in which the supplier and customer belong in different countries. It explains how to identify the place of supply and proceeds to show how VAT is accounted for. The topics covered are:

- General principles and place of belonging
- The reverse charge
- The general rule
- Services relating to land
- Cultural, artistic, sporting, scientific, educational or entertainment services
- Work on goods
- Intangible services
- Transport services
- Services of intermediaries
- Hire of transport
- Restaurant and catering services
- Time of supply

General principles and place of belonging

International services are those supplied by a person belonging in one country to a person belonging in another. They may also occur, however, where both supplier and customer belong in the same country but the supplies are connected with land in a different country or are performed in a different country. Additionally, they may consist of the hire of transport, the supply of freight or passenger transport or the provision of intermediary services.

The rules for supplies of international services underwent a significant overhaul on 1st January 2010, with further changes in 2011 and beyond. This chapter outlines the rules which apply from 1st January 2011 with brief references to the old rules. Where appropriate, an indication of future changes is given.

The first step in such a situation is to determine the place of supply; the second is to establish the VAT treatment. Under EU law there can only be one place of supply, which is either in an EU country or outside the EU.

Central to this concept is the definition of the place in which a person belongs. Generally, a person belongs in a country in which he or she has a business or a fixed establishment. A business establishment is the principal place of business and most businesses will have only one. A fixed establishment is a place other than the business establishment which has the technical and human resources necessary to carry on a business, and a business may have several.

If a business has more than one establishment, the question arises as to where it belongs for the purposes of the transaction concerned. For suppliers, the place of belonging will be the establishment from which the services are provided; for customers, it will be the establishment at which the services are consumed, used or enjoyed. Other factors may need to be taken into account, such as the address which appears on correspondence and invoices, and the location of directors and management. The case *Zurich Insurance Company* involved a company registered in Switzerland but with a fixed establishment in the UK. Consultancy services supplied by Swiss accountants to the UK office were deemed to have been supplied in the UK. The Swiss accountants correctly did not charge VAT, and the UK fixed establishment should have accounted for UK VAT using the reverse charge procedure. The place where the contract was concluded was found to be of no importance.

The following examples are taken from HMRC's VAT Notice 741A:

A company whose business establishment is in France contracts with a UK bank to supply French speaking staff for the bank's international desk in London. The French company also has a fixed establishment in the UK created by a branch, which provides staff to other customers. The French establishment deals directly with the UK bank without any involvement of the UK branch. The staff are supplied by the French establishment.

An overseas business establishment contracts with private customers in the UK to provide information. The services are provided and invoiced by its UK branch. Customers' day to day contact is with the UK branch and they pay the UK branch. The services are actually supplied from the UK branch which is a fixed establishment.

A UK supplier contracts to supply advertising services. Its customer has its business establishment in Austria and a fixed establishment in the UK created by its branch. Although day-to-day contact on routine administrative matters is between the supplier and the UK branch, the Austrian establishment takes all artistic and other decisions about the advertising. The supplies are received at the overseas establishment.

A UK accountant supplies accountancy services to a UK incorporated company which has its business establishment abroad. However, the services are received in connection with the company's UK tax obligations and therefore the UK fixed establishment, created by the registered office, receives the supply.

A customer has a business establishment in the UK and a fixed establishment in the USA created by its branch. The UK establishment contracts a UK company to provide staff to the USA branch. The supplier invoices the UK establishment and is paid by it. The services are most directly used by the USA branch and therefore are received at the overseas establishment.

The reverse charge

Often in the case of international services, the responsibility for accounting for VAT lies not with the supplier but with the customer. This is the default rule for supplies to businesses whose place of belonging is a different country from that of the supplier. The supplier sends an invoice to the customer which does not include VAT. If the invoice is issued to a business in another EC member state, a UK supplier must annotate the invoice to show that it is subject to the reverse charge. It is sufficient to mark the invoice 'Subject to the reverse charge in the country of receipt' or 'Subject to the reverse charge in another member state'. The registration number of the customer in the other country should be included, if this has been provided, together with the country code of the customer.

However, the supply is recorded in box 6 of the return. If the nature of the supply is such that it would have been standard-rated, reduced-rated or zero-rated had it been the supplier's responsibility to account for VAT, any input tax incurred in making this supply is reclaimable. If the supplier is partially exempt and the supply would have been taxable had the place of supply been the UK, it is included in taxable supplies for the purposes of calculating the partial exemption fraction.

A UK VAT-registered customer in receipt of a supply subject to the reverse charge provisions will receive an invoice on which no VAT has been charged. If the supplier is in another EU country, the invoice should have been marked with wording similar to that outlined above. Given that the reverse charge applies even where the supplier of the services belongs outside the EU, in which case the above wording may not appear on the invoice, registered businesses are expected to understand the rules and to recognise situations in which they must apply the reverse charge.

The reverse charge operates as if the customer had supplied services to himself. It is therefore recorded as a sale and a purchase on the customer's return.

The VAT is calculated by applying the relevant rate (20% for standard-rated items) to the invoiced amount and adding this to box 1. The invoiced amount is placed in box 6.

Assuming that the service is received in the course of making taxable supplies, the VAT is then reclaimed by adding it to box 4. If it is received in the course of making exempt or non-business supplies, there is no right of reclaim. A partially exempt business may have to apply its partial exemption fraction to the VAT. In all cases, the invoiced amount is added to box 7. There is no entry in boxes 8 or 9 as these relate to goods only.

The result is that a fully taxable business will see the figures in boxes 1, 4, 6 and 7 inflated but no overall increase in the VAT payable.

The aim of the reverse charge is to prevent partially exempt businesses from gaining an advantage in obtaining services from countries in which there is a low rate of VAT.

A UK company wishes to have some documents translated from French into English. It notes that the standard rate of VAT in Luxembourg is 15% and therefore engages a company based in Luxembourg to carry out the work in the belief that the VAT charged will be lower. The Luxembourg company carries out the work and charges £2,000.

The UK company is partially exempt with a percentage of 40%.

Since this is a service to which the reverse charge applies the Luxembourg company does not charge VAT. Instead, the UK company must apply the UK VAT rate of 20% (not the Luxembourg rate of 15%) to the invoice of £2,000 and place the VAT of £400 in box 1. It can then reclaim £160 (40% x £400) in box 4.

The result is exactly the same as it would have been if a UK translator had done the work and invoiced £2,000. Therefore the company is mistaken in its belief that it can gain an advantage by engaging a translator based in Luxembourg.

The reverse charge can never apply to services supplied by an entity to its own overseas branch, since this is not a supply for VAT purposes. Nor can it ever apply where the supplier belongs in the country of supply, unless the supplier makes the supply from an overseas establishment.

A Belgian supplier makes a supply of consultancy services to a UK business customer. The supplier has its permanent establishment in Belgium and a fixed establishment in the UK. However, the UK fixed establishment's function is to identify new customers and it does not intervene in this transaction.

The place of supply is the UK because this is where the customer belongs. The supplier does not charge UK VAT as it is making the supply from an establishment overseas, irrespective of the fact that it has an establishment in the UK. The reverse charge applies.

In the case of a partially exempt business as in the example above, reverse charge services received do not affect the partial exemption fraction in any way.

A UK business which is not registered for VAT and receives reverse charge supplies may have to register. This will apply only where it receives supplies which fall under the general rule, and are not land-related or admission services.

A UK business with annual taxable supplies of £65,000 is not registered for VAT. It receives a supply of services from an overseas business for £2,000. Its cumulative taxable supplies are now £67,000 and it need not register for VAT.

Later in the month it receives a further invoice which takes its cumulative taxable supplies above the registration threshold. It must register for VAT within the time limits outlined in chapter 2.

The general rule

Unless a supply falls under one of the exceptions outlined in the remainder of this chapter, it follows the general rule. Before 1st January 2010, the general rule was that the place of supply was the supplier's country. From 1st January 2010, the general rule falls into two parts.

- Business-to-business (B2B) supplies

If a supply is made to a business customer, the place of supply is the customer's country. This is known as a B2B supply.

If the supplier and the customer both belong in the UK for the purposes of this supply, the place of supply is the UK, and UK VAT is charged by the supplier.

If the supplier belongs in the UK and the customer belongs in a different EU country, the reverse charge applies and the supplier does not charge VAT.

If the supplier belongs in the UK and the customer belongs outside the EU, the supply is outside the scope of EU VAT.

If the customer belongs in the UK and the supplier belongs in a different country, whether within or outside the EU, the place of supply is the UK, and the customer must apply the reverse charge.

A UK business receives customised software from a USA business (B2B general rule service). The place of supply is the UK and the UK business must account for VAT under the reverse charge. (HMRC VAT Notice 741A paragraph 18.10.1.)

Note that the principles outlined above (*Zurich Insurance Company* and the examples which follow it) may apply where the supplier or customer has more than one place of belonging.

A UK supplier making supplies to a business in another country must be satisfied that the customer belongs outside the UK and is not receiving the supply for a wholly private purpose. A VAT number is the best evidence that the customer is in business. If the customer cannot give a VAT number, for example, it may be resident outside the EU, or its supplies fall below the VAT registration threshold for the country in which it is resident, alternative evidence should be suggested. This may include certificates from fiscal authorities, business letterheads or printouts of websites.

Even if the customer has both business and non-business activities and the supply is made for the purpose of its non-business activities, it should still be treated as a B2B supply. This changes the practice in force before 1st January 2010. A company (*Diversified Agency Services Ltd*) supplied advertising services to the Spanish Tourist Board and did not make enquiries as to whether it was receiving the services in its capacity as a commercial body or as a state authority. From 1st January 2010, provided that the supplier is satisfied that the customer has business activities, a B2B supply is made. This may affect supplies to charities, which often have business activities (the sale of goods or services) as well as non-business activities (which are funded by donations). It may likewise affect supplies to governments.

Supplies made wholly for a private purpose are, however, not seen as B2B supplies. If a director of a manufacturing company downloaded music for personal use and asked for this to be invoiced to his or her company, it would nevertheless be seen as a B2C supply.

- Business-to-consumer (B2C) supplies

Supplies to private individuals or to charities and government departments which have no business activities are known as B2C supplies. The place of supply is the supplier's country.

If the supplier belongs in the UK, VAT must be charged. If the supplier belongs another EU country, VAT is charged under the regime in that country. If the supplier belongs outside the EU, the supply is outside the scope of EU VAT but may nevertheless fall within the scope of indirect taxation in that country.

- Supplies which fall under the general rule

HMRC no longer give a list in public notices of the type of services which fall under the general rule. This is because, as far as B2B supplies are concerned, the general rule will apply far more often that it did before 1st January 2010. However, many B2C supplies do not fall under the general rule, as will be seen in the remainder of this chapter. There follows, therefore, a list of 'general rule' services which previously appeared in VAT Notice 741 (now superseded by Notice 741A):

- Services described simply as management where the actual services provided are not of a type covered by the exception for intangible services.
- Clerical or secretarial services, or the provision of office facilities. This might also include the services provided by a call centre.
- Archiving services, involving the maintenance of documents and records.
- Veterinary services.
- The services of arranging a funeral.

There follows a list of exceptions to the general rule. Much of the information is taken from VAT Notice 741A. The pattern is to define services falling under the exception and then to outline the VAT treatment in various situations. Note that in some cases a supplier is required to register overseas. Most countries apply their registration thresholds to businesses established in their country and not to overseas businesses. Therefore a UK business supplying services in another EU country may need to register for VAT in that country.

Services relating to land

Services relating to land are deemed to have been supplied where the land itself is situated, even if both supplier and customer belong in a different country. This may involve the supplier in registering for VAT in the country where the land is situated.

Land includes all forms of land and property, growing crops, buildings, walls, fences, civil engineering works or other structures fixed permanently to the land or seabed. It also covers plant, machinery or equipment which is an installation or edifice in its own right, such as a refinery or fixed oil or gas production platform. Machinery installed in buildings other than as a fixture is normally not regarded as 'land' but as 'goods'.

In an unusual situation seen by the author, a sole trader was asked to carry out work on church bells in the US. The conclusion was reached that these were land-related services, as the bells are a fixture within the building.

It is important that the services must relate to a specific piece of land.

The following are examples of land-related services:

- All grants, assignments or surrenders of any interests, rights or licences relating to land.
- Works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work.
- Services of estate agents, auctioneers, architects, surveyors, engineers and other services relating to land, including the management, conveyancing, survey or valuation of property by a solicitor, surveyor or loss adjuster.
- The supply of hotel accommodation.
- The provision of a site for a stand at an exhibition where the exhibitor obtains the right to a defined area of the exhibition hall. If the sites are not defined, this falls under the rules for cultural services etc.
- The supply of plant or machinery, together with an operator, for work on a construction site.
- Services connected with oil or gas or mineral exploration or exploitation relating to specific sites of land or the seabed. See cultural or intangible services below where services do not relate to specific sites.
- The surveying of land or seabed, such as seismic, geological or geomagnetic surveys including associated data processing services to collate the required information.
- Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.

The following are not land-related services:

- Repair and maintenance of machinery which is not installed as a fixture. This is work on goods.
- The hiring out of civil engineering plant on its own, which is the hire of goods; or the secondment of staff to a building site, which is a supply of staff.
- The legal administration of a deceased person's estate which happens to include property. These are lawyers' services.
- Advice or information relating to land prices or property markets as they do not relate to specific sites.

- Feasibility studies assessing the potential of particular businesses or business potential in a geographic area. Such services do not relate to a specific property or site.
- Provision of a recording studio where technicians are included as part of the supply. These are engineering services.
- Services of an accountant in simply calculating a tax return from figures provided by a client, even where those figures relate to rental income.

The VAT treatment of land-related services is as follows:

Situation	**Place of supply**	**VAT treatment**
Non-UK supplier, UK registered customer, land in UK.	UK.	Supplier may choose to register in UK; if not, customer applies reverse charge.
Non-UK supplier, UK unregistered customer, land in UK.	UK.	Supplier must register in UK subject to threshold. See note below.
UK supplier, land elsewhere in EU.	Country where land is situated.	Supplier may be liable to register in other country subject to local rules; alternatively, customer may have to apply reverse charge subject to local rules.
UK supplier, land outside EU.	Country where land is situated.	Outside the scope of UK and EU VAT.
UK supplier, land in UK.	UK.	Supplier must register in UK subject to threshold.

NOTE: Supplies of land received by non-registered persons in the UK do not count towards the registration threshold. Thus a customer with annual taxable supplies of £60,000 receiving a land-related supply of £12,000 from a non-UK supplier would not be required to register for VAT.

Cultural, artistic, sporting, scientific, educational or entertainment services

Until 31st December 2010, certain services were deemed to take place where they were performed. Thus, if supplier and customer belonged in the same country but the service was performed in a different country, the place of supply became that country and the supplier might need to register for VAT under the local rules.

Broadly, the services covered were cultural, artistic, sporting, scientific, educational or entertainment services, and services relating to exhibitions, conferences or meetings.

From 1st January 2011, B2B supplies of such services are subject to the general rule, while B2C supplies continue to be taxed where they are performed. However, see the notes below on supplies of 'admission services'.

The following are specific examples of such services:

- Services of sportspersons appearing in exhibition matches, races or other forms of competition. Note that sponsorship money may be seen as consideration for other services such as advertising.
- Provision of race prepared cars. Such packages include the hire of the car and support services to ensure optimum maintenance and operation of the car throughout a series of races.
- Scientific services of technicians carrying out tests or experiments in order to obtain data. The final compilation of a record of the results, if carried out in the UK, will not make the supply liable to UK VAT provided that the services were otherwise performed outside the UK. However, if the scientific services include a recommendation or conclusion based on those results they will comprise consultancy services. If the services are connected with oil or gas or mineral exploration or exploitation and relate to specific sites of land or the seabed, the services relate to land.
- Services of an actor or singer, and ancillary services at an entertainment event (hairdressing, prompters, lighting, sound technicians). This applies whether the event is live or recorded.
- Services of an oral interpreter at an event, such as a meeting. For other forms of translation, see intangible services.
- The supplies of a representative body assisting exhibitors to attend exhibitions by providing a single package of various services. The package may include exhibition space obtained from the owner, consultancy, design, the provision of displays, transport and stand construction.

- Ancillary services relating to a specific exhibition. This includes carpenters and electricians erecting and fitting out stands at exhibition venues. It also includes organisers making arrangements for an event on behalf of the owner.
- Educational and training services but see notes below on services of admission to educational and training events.

Until 31st December 2010, the supplies outlined above in relation to exhibition services were taxed in the UK if the services were physically performed in the UK, even though the exhibition itself might be held in a different country. However, other EU countries might view this differently and require the supplier to register and charge VAT in the country in which the exhibition was taking place. In this case, VAT would not be due in the UK.

Supplies made by an exhibition owner are treated as supplies of the event itself. They are likely to be supplies of stand sites, visitor admission and advertising services. They will not be supplies of ancillary exhibition services as they are not supplies of organising the event. These supplies are likely to be seen as land-related services.

From 1st January 2011, supplies of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events including fairs and exhibitions are taxed where the event actually takes place. This applies both to B2B and to B2C supplies. Admission covers any payment that gives the right to attend an event even if it is covered by a season ticket or subscription. This includes payment to attend conferences, exhibitions and seminars even if they are of an educational nature.

A training company runs a course in London in November 2010. The attendees include two from Germany, one of whom is a delegate of a company which provides a German VAT registration number, and the other attends in a private capacity.

A similar event is held in London in February 2011.

In November 2010, all attendees are charged UK VAT. The place of supply is the country in which the training is performed.

In February 2011, all attendees are likewise charged UK VAT. This is a supply of admission to an educational event and is again taxed where the training is performed.

However, if the training company provides an ongoing supply of education to a German company in London in 2011, this is seen as a supply of educational services and is taxed under the general rule where the customer belongs. The place of supply is Germany and the customer accounts for VAT using the reverse charge procedure.

Work on goods

Supplies of valuation of or work on goods are taxed where they are performed for B2C supplies. However, B2B supplies of such services follow the general rule.

Note that work on goods which are to be exported may qualify for zero-rating.

Goods include all forms of tangible moveable property but not fixtures, for which see services relating to land above. Work carried out on goods includes processing, manufacturing or assembling; repairs, cleaning or restoration; alterations, calibrations, insulating, lacquering, painting, polishing, resetting of jewellery, sharpening, varnishing and waterproofing. Mere inspection is not seen as work on goods, though it can be valuation, or alternatively consultancy. Likewise, testing and analysis will normally be seen as part of a consultancy service.

Ancillary freight transport services follow the same rule. They may include loading and unloading, stowing, opening for inspection, cargo security services, the preparation of bills of lading, packing prior to transportation, or storage.

Intangible services

Intangible services fall under the general rule if they are B2B supplies. However, they constitute an exception to the general rule if they are B2C supplies made to a customer who belongs outside the EU. The place of belonging for a B2C customer is the country in which he or she usually resides. This will be the country where the customer has set up a family home and is in full-time employment. A B2C customer can only have one usual residential address at any one time.

The following services fall to be seen as intangible services:

- Copyrights, patents, licences, trademarks and other similar rights

This includes:

- Royalties.
- The assignment of rights in a cinematographic film to a distribution company.
- The assignment of rights by a performer for a performance to be exploited, for example, on record, film or television.
- The granting of a licence to use computer software.

- The granting of a right to carry on a particular business activity within a defined territory such as within some franchise agreements, or the right to carry on filming on another person's land.
- The transfer of permission to use a logo.
- The granting of a right by a photographer for a photograph to be published in a magazine article.
- Trading in emissions allowances.

- Advertising

This covers all means of publicising products and services with a view to encouraging their sale. It includes the display of a sponsor's name and website advertising.

- Consultants

This category covers engineers, consultancy bureaux, lawyers and accountants as well as other services which are similar to them; data processing services, and the provision of information.

Specific consultants' services include:

- Research and development.
- Market research.
- Written translation services or interpreters' services which do not take place at an event, such as interpreting services for a telephone conference.
- Testing and analysis of goods like drugs, chemicals and domestic electrical appliances. The essential nature of such services is analysis by experts who use the results of the testing to reach a professional conclusion, such as whether goods meet specified standards.
- Writing scientific reports.
- Production of customised, bespoke or specific computer software, including digitally downloaded software, as well as the services of adapting existing packages. However, some 'off-the-shelf' software packages are treated as supplies of goods.
- Software maintenance, involving upgrades, advice and resolving any problems. The place of performance is not relevant as solutions may be provided by telephone conversations, remote links or attending a mainframe site. However, a contract for simply maintaining computer hardware relates to work on goods.

Services carried out by a consultant which are not consultancy services, such as joinery carried out by a scientist.

Other similar services include:

- Services of loss adjusters and assessors in assessing the validity of claims except when these services relate to land. Such services may include examination of goods to establish a value for damage or deterioration as well as negotiating a settlement amount.
- Services of surveyors providing opinions which do not relate to specific sites.
- Architects' services where there is no specific site of land.
- Services of fiscal agents in completing VAT Returns and documentation for overseas businesses.
- Design services.
- Services of specialists or technicians which are essentially creative or artistic in nature.
- Services described as management services which comprise the exercise of corporate or strategic guidance over the running of another, usually associated, company.

The provision of information includes:

- Tourist information.
- Weather forecasts.
- Information supplied by a private enquiry agent.
- Telephone helpdesk services such as for computer software.
- Satellite navigational and locational services.
- Provision of on-line information.
- Digitised publications where the content is essentially non-fiction.

- Relinquishing rights

Most commonly, this includes an agreement by the vendor of a business not to compete with the purchaser.

- Banking, finance and insurance

Many of these services are exempt when supplied in the UK.

- Staff

This involves the placing of personnel under the general control and guidance of another party as if they become employees of that other party. The secondment of a typist to a company is a supply of staff. The supply of typing services for a company is not a supply of staff.

- Hired goods

This includes the hire of mobile telephone handsets, freight containers, computer and office equipment, but not means of transport.

- Telecommunications

Telecommunications services involve the sending or receiving of material by electronic or similar communications systems. They include e-mail and internet access.

- Broadcasting services

Included are radio and television broadcasting. Satellite and cable subscriptions are seen as broadcasting services.

- Electronically-supplied services

These are services delivered over the internet and essentially automated with little or no human involvement. They include:

- Website hosting.
- The accessing or downloading of software.
- Subscriptions to on-line newspapers.
- The downloading of music onto mobile phones.
- Automated distance teaching.

The physical repair of computer equipment, telephone helpdesk services, and teaching services involving correspondence courses are not included as they all reply on human intervention.

Intangible services follow the general rule if they are B2B supplies. A B2C supply of an intangible service follows the general rule if the customer belongs in the EU. However, if

the customer belongs outside the EU, the services are supplied in the customer's country and are outside the scope of EU VAT.

> A UK solicitor supplies legal services to private individuals and Austria and Switzerland.
>
> The supply to the Austrian client falls under the general rule for B2C supplies. The place of supply is the UK, and UK VAT is charged.
>
> The supply to Swiss client is an exception to the general rule for B2C supplies, as the customer belongs outside the EU. The place of supply is outside the EU and no VAT is charged.

Special rules apply to goods let on hire, telecommunications services, broadcasting services and electronically-supplied services. If, using the rules in the table above, the place of supply is deemed to be the UK, it will not be the UK if the services are actually consumed outside the EU. Likewise, if the place of supply is deemed to be outside the EU, it will be the UK if the services are actually consumed in the UK.

> A Canadian tourist hires a mobile telephone handset during a stay in the UK.
>
> Since this will be used and enjoyed in the UK, the place of supply is not Canada but the UK.

> A UK business downloads information from another UK business for use in its New York office.
>
> Since this will be used and enjoyed outside the EU, the place of supply is not the UK and the service is outside the scope of UK and EU VAT.

Transport services

Passenger transport services are supplied in the country in which the transport takes place, and to the extent that the transport takes place in that country.

Freight transport services fall under the general rule if they are B2B supplies. However, B2C supplies of freight transport do not necessarily follow the general rule. They are in principle taxed where the transport takes place. In the case of transport which starts in the UK and ends outside the EU, this may involve an apportionment between the countries through which the transport passes.

Intra-EU freight transport supplied to B2C customers is a special case. It is defined as transport which starts in one EU country and ends in another EU country, even if it passes through a non-EU country on the way. It is taxed in the country in which the journey starts when supplied to B2C customers. B2B supplies of intra-EU freight transport follow the general rule.

From 15th March 2010, freight transport between two locations which are both outside the EU is outside the scope of UK VAT.

Freight transport involving the export or import of goods from or to the EU is zero-rated. This means that UK VAT on a B2B supply of freight transport is due only on the transport of goods between two locations within the EU regardless of whether it is charged by the supplier or via the reverse charge procedure.

A UK haulier transports goods from Berlin to London for a UK customer. UK VAT is charged.

A German haulier transports goods from Frankfurt to Hull for a UK customer. The customer must account for VAT using the reverse charge procedure.

A UK haulier transports goods from Newcastle to Bergen (Norway) for a UK customer. The supply is zero-rated.

A Norwegian haulier transports goods from Oslo to Edinburgh for a UK customer. The place of supply is the UK, where the customer belongs, but no reverse charge is due as the supply is zero-rated.

A US haulier transports goods from the US to Haiti for a UK customer. The place of supply is outside the EU, and the reverse charge procedure is not necessary.

In ascertaining whether freight transport constitutes and export or import and therefore qualifies for zero-rating, regard must be had to the place to or from which the goods are consigned.

Goods are transported from Birmingham to Dover. The goods will then be exported to Algeria by another haulier.

This is part of an overall export movement of goods and is zero-rated. The haulier who moves the goods from Birmingham to Dover must hold satisfactory evidence that it is providing a service connected with a specific export of goods. This should be in the form of commercial documentation such as bills of lading, consignment notes or a single administrative document.

Services of intermediaries

An intermediary arranges a supply of goods or services without being party to the actual supply. Intermediaries are often referred to as brokers or agents, and the payments they receive are usually in the form of commission.

B2B supplies of intermediary services fall under the general rule. However, a B2C supply of intermediary service is taxed in the country in which the underlying supply of goods or services is deemed to take place.

The place of supply of goods is the place where the goods are located when the transport of the goods begins. There are special rules for imports of goods from outside the EU. If the supplier acts as importer of the goods, the place of supply is the member state into which the goods are imported. However, if the customer acts as importer, the place of supply is outside the EU.

A UK intermediary arranges the import of goods from Russia by a private individual in the UK. The individual is responsible for all the import formalities. The intermediary's supply is outside the scope of VAT.

If the customer were in business, the general rule for B2B supplies would apply. The place of supply would be the UK, the customer's country, and UK VAT would be charged.

Where the place of supply of an intermediary's service is the UK, it is zero-rated if it consists of the making of arrangements for the export of goods or for any supply of services made outside the EU.

Hire of transport

The place of supply of letting on hire of a means of transport, including cars, ships, caravans and bicycles, depends on the length of the hire period.

Where the hire period exceeds 30 days or 90 days for vessels the supply is one of long-term hire and falls under the general rule for both B2B and B2C supplies. However, from 1st January 2013 the place of supply for B2C supplies of long-term hire of transport is where the customer belongs, unless the supply is of a pleasure boat, in which case the place of supply will be where the boat is put at the customer's disposal.

Where the hire period does not exceed 30 days or 90 days for vessels, this is seen as short-term hire. For both B2B and B2C supplies, the place of supply is where the transport is put at the disposal of the customer. This is the place where the customer takes actual physical control of the transport.

Restaurant and catering services

The place of supply of restaurant and catering services is where the services are physically carried out.

Where, however, the services are carried out on a ship, aircraft or train on an intra-EU journey, the place of supply is the country where the journey starts. This does not extend to road transport, and therefore any catering services supplied on a bus or coach travelling between two EU countries will need to be apportioned between the countries in which the catering is carried out.

Time of supply

Reverse charge supplies do not follow the usual rules for the time of supply. Instead, the time of supply is the earlier of the date on which the service is completed and the date on which it is paid for.

For continuous supplies, there is a tax point at the end of each billing period, which will be overridden by the payment date if this is earlier.

CHAPTER 10

VAT MOSS

This chapter explains the provision coming into force on 1st January 2015 implementing the VAT Mini One Stop Shop mechanism.

From 1st January 2015 the place of supply and country of taxation of e-services (telecoms, broadcasting and electronically supplied services) supplied to final customers (B2C) switches to the country in which the customer is resident.

Telecoms include fixed or mobile telephone services for voice, data and VOIP services. Broadcasting means radio or television on programmes provided over a TV network or the internet.

Electronic services are paid for services delivered over the internet or other electronic networks which cannot be delivered without IT. It includes screensavers, music, films, online games and e-books.

Under simplified arrangements, referred to as 'mini one stop shop' mechanisms, suppliers of e-services can elect to register with the VAT authority of their country of identification and file a single VAT return and pay tax due in all the countries in which they do not have a physical presence.

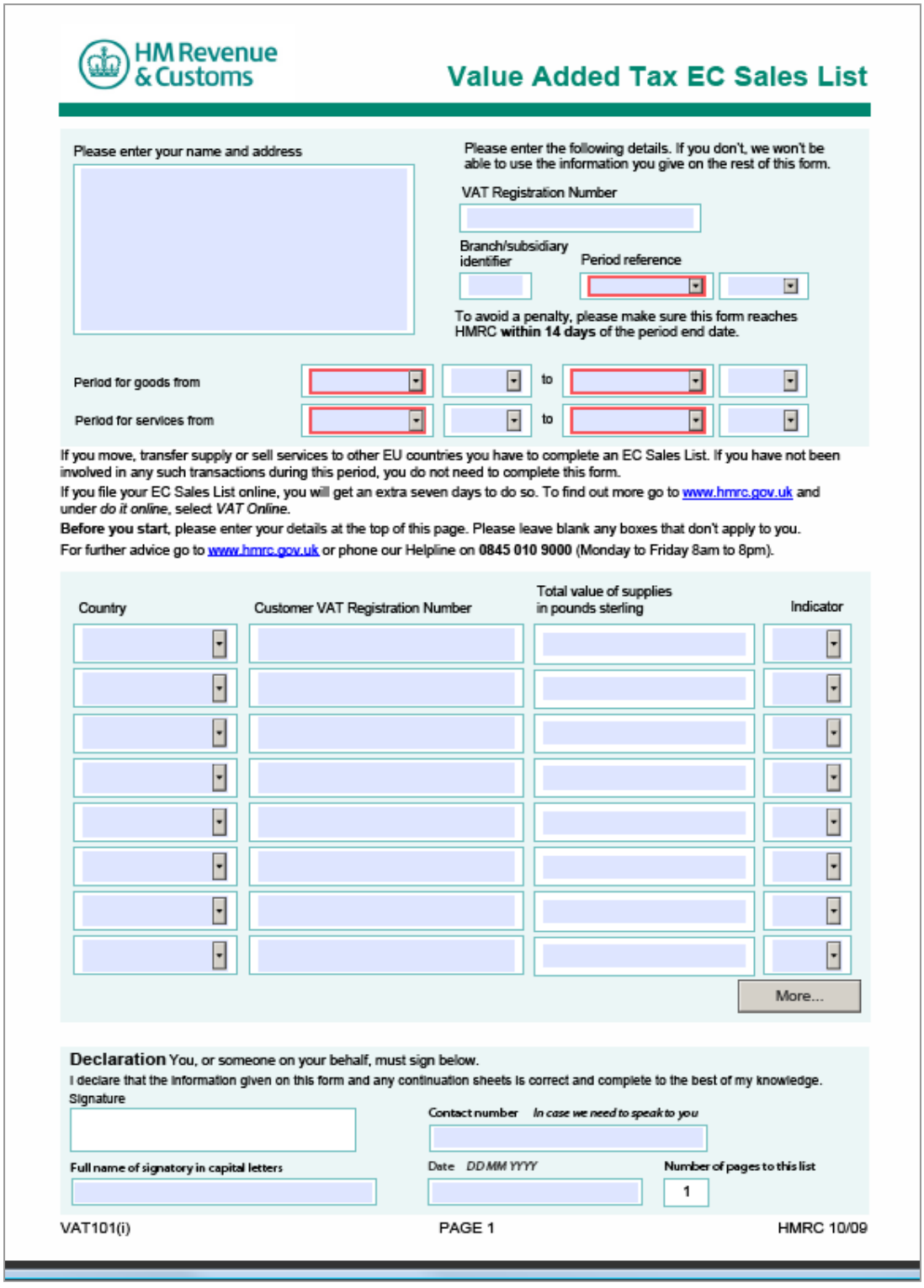
CHAPTER 11

EC SALES LISTS

This chapter explains which businesses must complete EC Sales Lists and how to complete them. The topics covered are:

- Sample EC Sales List
- Obligation to complete an EC Sales List
- Supplies to be included
- Submission periods and deadlines

Sample EC Sales List



HM Revenue & Customs

Value Added Tax EC Sales List

Please enter your name and address

Please enter the following details. If you don't, we won't be able to use the information you give on the rest of this form.

VAT Registration Number

Branch/subsidiary identifier

Period reference

To avoid a penalty, please make sure this form reaches HMRC **within 14 days** of the period end date.

Period for goods from ... to ...

Period for services from ... to ...

If you move, transfer supply or sell services to other EU countries you have to complete an EC Sales List. If you have not been involved in any such transactions during this period, you do not need to complete this form.

If you file your EC Sales List online, you will get an extra seven days to do so. To find out more go to www.hmrc.gov.uk and under *do it online*, select *VAT Online*.

Before you start, please enter your details at the top of this page. Please leave blank any boxes that don't apply to you.

For further advice go to www.hmrc.gov.uk or phone our Helpline on **0845 010 9000** (Monday to Friday 8am to 8pm).

Country	Customer VAT Registration Number	Total value of supplies in pounds sterling	Indicator

More...

Declaration You, or someone on your behalf, must sign below.

I declare that the information given on this form and any continuation sheets is correct and complete to the best of my knowledge.

Signature

Contact number *In case we need to speak to you*

Full name of signatory in capital letters

Date *DD MM YYYY*

Number of pages to this list: 1

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Obligation to complete an EC Sales List

Businesses which make EU sales of goods and B2B supplies of services to VAT-registered customers in other EU countries under the general rule must complete an EC Sales List (ESL). These lists provide information to HMRC which can then be used by tax authorities elsewhere in the EU to ensure that their own taxpayers are accounting for VAT correctly.

> A UK business completes an EC Sales List showing sales of goods to a customer in Portugal.
>
> The Portuguese customer should have accounted for acquisition tax. The Portuguese tax authorities may check the appearance of this customer on EC Sales Lists in the UK.

ESLs are known as 'recapitulative statements' elsewhere in the EU.

Any business which has made EU sales or transferred its own goods to a different EU country and therefore completed box 8 of a VAT Return will automatically be sent an ESL.

Businesses which are intermediate suppliers in triangular transactions should also complete an ESL. However, if such businesses have not made any EU sales other than triangular transactions in which they are an intermediate supplier, they will have no entry in box 8 of the VAT Return and must therefore request an ESL from HMRC.

Businesses which have supplied only services and no goods to other EU countries will likewise have no entry in box 8 of the VAT Return and must also request an ESL from HMRC.

Supplies to be included

One line is required for each VAT-registered customer in another EU country to which the business has supplied goods or services. However, if the same customer has received more than one of the following three types of supply, separate lines are needed. The line commences with the customer's country code and VAT number, and it shows the total value of supplies made to that customer during the ESL period.

For EU sales of goods which do not involve triangulation, the indicator box in the final column is left blank.

For EU sales of goods in which the business is the intermediate supplier in a triangular transaction, the indicator box must be completed with the figure 2.

For supplies of services which fall under the general rule the indicator box must be completed with the figure 3.

Services which are zero-rated or exempt in the customer's country must not be included on the ESL. The rules for zero-rating and exemption are not identical in every EU country, and if in doubt a business should enquire of its customer whether the service is exempt. Certain supplies are consistently zero-rated – for example the transport of goods involving an export from or import to the EU.

Transfers of own goods and goods supplied free of charge must be included on an ESL at the cost of the goods. Temporary movements of the business's own goods need not be included. Distance sales are excluded, as are exports to locations outside the EU.

Submission periods and deadlines

Forms are completed on a calendar month basis for goods and a calendar quarter basis for services, even if this does not coincide with the business's VAT return period. Given that supplies of goods and services are included on the same ESL, it is necessary to include, for example, January's supplies of goods on the January ESL, February's supplies of goods on the February ESL and March's supplies of goods on the March ESL, with services supplied in the whole quarter also included on the March ESL.

Businesses which find this cumbersome may opt to include services monthly.

There is a *de minimis* level which applies to goods. A business whose EU sales of goods has not exceeded this figure in the current or any of the previous four quarters is entitled to submit quarterly ESLs.

ESLs must be submitted within two weeks of the period end, or three weeks if the ESL is submitted online.

The penalty for material inaccuracies is £100. A material inaccuracy occurs where an error exceeds £100, an incorrect VAT number has been quoted, or a business has incorrectly stated that a supply was part of a triangular transaction. Penalties will be charged only where two material inaccuracies have been discovered within two years and have each been followed up by a warning. A third material inaccuracy will result in a penalty. Late ESLs attract daily penalties of between £5 and £15 subject to a minimum of £50 and capped at 100 days.

In addition to an ESL, businesses making EU sales of goods must complete a Supplementary Declaration under the Intrastat system.

CHAPTER 11

RECLAIMING INPUT TAX INCURRED IN OTHER EU COUNTRIES

This chapter gives guidance to businesses which incur and wish to reclaim input tax under the VAT regime of a different EU country. The topics covered are:

- Principles of reclaim
- Procedure
- Non-EU businesses

Principles of reclaim

Businesses registered in the UK may incur input tax under the regimes of other EU countries. If the business is registered for VAT in that country, it may reclaim the input tax on its local VAT Return. If it is not so registered, special procedures apply.

If a business acquires goods from another EU country, there is normally no VAT under the EU sales rules. However, a condition of zero-rating for EU sales is that the goods must not be used before their departure from the seller's country. If the UK business acquires goods in another country with the intention of using or selling them in that country, it will be charged VAT under the local regime.

Certain supplies of services are not taxed in the country in which the customer belongs. These include land-related, admission and passenger transport services, and the short-term hire of transport. A UK business receiving such supplies may incur VAT charged in another EU country. Alternatively, the staff of the UK business may travel within the EU and incur input tax on expenses such as hotel accommodation, travel and meals.

The scheme set up under what was formerly the Eighth Directive, which has been superseded by Directive 2008/9/EC on 1st January 2010, may be used to reclaim input tax in a country if the business is registered for VAT in another country, is not registered in the country concerned, has no place of business there and does not make taxable supplies there. If a business does have a presence in the country or makes taxable supplies there, the only method by which it can reclaim input tax is to register for VAT under the local rules.

Input tax in the UK is 'blocked' on certain expenditure, meaning that it cannot be reclaimed. This applies to most cars, business entertainment and non-building materials incorporated into buildings. The rules for reclaim of input tax vary within the EU – input tax on subsistence, for example, is not reclaimable in a number of countries – and if input tax is not reclaimable for businesses registered in a country, neither will it be reclaimable under the refund scheme.

Procedure

A UK business makes an electronic application to HMRC which then forwards the application to the tax authorities in the country in which the VAT has been incurred – known as the Member State of Refund (MSR). A separate application must therefore be made in respect of each MSR.

The electronic application contains standard fields which are listed in Notice 723A. They include details of the applicant and of the invoices on which VAT was charged. A partially exempt business must ensure that it claims the correct proportion of the VAT charged. The MSR may require an invoice to be scanned if it exceeds €1,000 in value, €250 in the case of fuel.

Some member states allow English to be used in the application, but it cannot be assumed that this will always be the case.

The deadline for submission of applications is 30th September in the year after the calendar year in which the VAT was incurred. For claims in respect of 2009 only, the deadline is extended to 31st March 2011 (Directive 2010/66/EU). The minimum amount claimable is €50 or the local currency equivalent. If interim claims are submitted during the year in which the VAT is incurred, the minimum amount claimable is €400. Interim claims cannot usually be less than three calendar months unless they cover the remainder of a calendar year.

The MSR must process the application within four months of the date of receipt. If additional information is requested, it must be provided by the applicant within one month. The MSR then has a further two months in which to notify its decision. If further additional information is requested, the final deadline can be extended up to eight months from the date on which the original application was received. Payment must be made within ten working days of the appropriate decision deadline, and interest may become payable in the case of late payment.

Non-EU businesses

Under the EU Thirteenth Directive, businesses established outside the EU which do not make taxable supplies within a particular EU country may reclaim input tax incurred in that country. Businesses qualify only if they belong in a country which has a similar indirect tax to VAT. Australia, for example, has a 'goods and services tax' which is a broad-based tax of 10% on goods and services giving registered businesses the right to reclaim the tax which they incur.

Claims are based not on calendar years but on the year ended 30th June. The deadline for submission of a claim is six months after the period in question. This is a paper-based system. Claims cannot be made for less than £16, or £130 if the claim relates to a period of less than a year.

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