

# VAT Newsletter

## Welcome

2011 has been a busy and difficult year for many sectors and VAT is no exception in this regard. Whilst in general VAT rates across the EU have tended to stabilise there are continually signs of authorities looking at ways of extracting further revenues by re-defining and changing existing legislation.

The 2010 changes to the place of supply seem to be generally working well, but subsequent changes have caused issues to certain sectors as is considered below. The emphasis on on-line filings continues to provide efficiencies to business, but there remains issues with processing VAT registrations in the UK, with HMRC being forced to concede that the majority of applications exceed the 10 day turnaround. Our experience shows this figure to be in excess of 15 weeks on average.

For those of you in Switzerland I look forward to catching up in Lugano, Zurich or Geneva as part of our annual Swiss conference.



I hope you enjoy our newsletter.

Peter Duchars  
Director of VAT Services

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## Fallback provisions

The UK announced suddenly at the end of May that the domestic legislation relating to the so called "fallback" provisions was to change with effect from 1 June 2011. The scope of this change is limited, but will have a significant effect on those businesses that move goods around the EU.

Previously where goods were supplied from a supplier in one country to a customer in the UK it was not necessary for the goods to come to the UK. Zero rating was generally available for the supplier when they could demonstrate the goods left their country, but under the fallback the UK customer could account for UK VAT even if the goods went directly to a third EU country.

With effect from 1 June 2011 credit for the acquisition tax will only be available in the UK where the goods actually go to the UK, or evidence is provided that acquisition tax has been accounted for where the transport of the goods ceases.

This will be particularly significant in the yachting and aircraft sectors, but many other businesses involved in the movement of goods will be affected.

## Zero rating of qualifying aircraft

Following the changes to the zero rating provisions on 1 January 2011 guidance has been issued in a new leaflet 744C issued in July. This includes an emphasis on the use to which individual aircraft are put and introduces a suggestion that an Air Operators Certificate will be required to ensure the business is an airline. All of which are already leading to further complexities and a reduction in those aircraft that are able to benefit from the zero rating provisions.

## Intrastat filings

In common with recent policy HMRC have announced that with effect from April 2012 all Intrastat filings will be on line. Additionally the filing dates will change such that all returns will be due by the 21st day after the end of the month to which the trade relates.

## Salary sacrifices

The ECJ case of Astra Zeneca has now been considered by HMRC, with the conclusion being that a salary sacrifice or a deduction from salary could require the employer to account for VAT on the value of the benefit provided.

The case centred around VAT being due on the provision of high street vouchers by the employer to employees. HMRC have always taken the view that a deduction from salary is in respect of a supply of goods or services on which VAT may be due. However, they now state that where a salary sacrifice is made VAT is due on the goods or services supplied in return (provided the supply would otherwise be liable to VAT).

These revised provisions are due to take effect on 1 January 2012 and will only apply where the employee provides a consideration for the benefit, ie by a salary reduction.





## Low value import relief

The value on which VAT is charged on the import of goods reduces from £18 to £15 with effect from 1 November 2011. This is in part in response to the growth of the procurement businesses that have established in the Channel Islands to import CDs, DVDs and similar into the UK. Further changes to this threshold are also being considered.

## EC Sales List penalties

HMRC adopted, throughout 2010, a light touch approach to penalties for failure to file EC Sales Lists on time. This was due to the uncertainty over the new regime coupled with the need to also file supplementary declarations in respect of services supplied to EU customers. HMRC have now announced the period of grace is over and will recommence applying penalties for failing to submit ESLs by the due date.

## Online VAT return submission

HMRC have reaffirmed their stance that from 1 April 2012 all VAT returns will have to be filed on line.

# VAT news from the Isle of Man

## UK/Isle of Man Revenue Sharing Agreement

Readers may remember that in 2009 the UK sought a renegotiation of the revenue sharing agreement between the UK and Isle of Man, which saw the Isle of Man ultimately relinquish some £140m per annum of VAT revenue. Further negotiations have recently seen further changes enforced to the basis under which the Agreement is calculated.

The new basis has protected the Isle of Man's position as part of the EU for VAT purposes and will ensure free movement of goods and services within the EU for VAT purposes. However, the basis of allocating the revenues is to be based in future on the relevant industry sectors and the extent to which they generate VAT revenues. The fact that the key industries within the Isle of Man make mainly exempt supplies, eg funds, banking, finance, insurance and gaming is not helpful in this regard and as a consequence the Isle of Man's revenue is expected to further decrease, ultimately by some £70m per year.

## Yacht sector discussions

Discussions with HMRC continue to determine the parameters under which yacht leasing can be conducted from the Isle of Man. The basis under which charter businesses can be conducted was considered early last year, but no decision was taken at that time regarding leasing pending the outcome of the Weald Leasing case. Subsequently it was held that leasing per se is not “abusive” and provided the terms are on open market terms leasing can be considered an acceptable business activity.

It is hoped that an acceptable leasing offering can be agreed with IoMC&E and HMRC within the next few weeks.

As a consequence the Isle of Man should be able to offer both charter and leasing structures for yachts, but the impact of the loss of the fallback provisions (see UK News) is likely to have a significantly impact on this sector.

## Online filings

The Isle of Man continues to encourage businesses to file on line, but they have stopped short of enforcing a compulsory on line filing; instead they have now withdrawn the practice of issuing prepaid envelopes!

# VAT news from the EU

## EU case Law

The VAT treatment of chain transactions has been confirmed in the recent ECJ case of Euro Tyre Holding, albeit some issues remain. Euro Tyre (based in the Netherlands) supplied goods to a customer in Belgium, who prior to the goods leaving the Netherlands supplied the goods to a customer, also in Belgium. The goods were supplied by Euro Tyre on an ex-works basis and the first customer was responsible for delivery to the final customer.

The issue was which part of the chain was the intra-Community supply and thus “free” of VAT. In this case the supply by Euro Tyre Holding was considered the VAT free sale, but the position could be different if the final customer were responsible for collecting the goods.

As such it is necessary to take care when a chain, whether in the same or different countries is involved.





## Changes to the invoicing provisions

The European Commission (“EC”) has released a set of explanatory notes on changes to the invoicing provisions which are due to come into effect on 1 January 2013, which will simplify, modernise and harmonise the VAT invoicing rules around the EU.

## UK VAT grouping infringement

The EC has announced infringement proceedings against the UK in respect of their VAT grouping provisions. The UK currently allows non taxable companies within a group, which although providing useful planning opportunities and administrative efficiencies is considered contrary to the EC provisions.

## Use of EU VAT numbers for zero rating

In order to zero rate a supply of goods or services when supplied on an intra-EU basis it is necessary to quote the VAT number of the customer to evidence they are in business. Certain countries have introduced changes to their registration process in support of such requirements. As such, in an increasing number of cases what were previously accepted VAT numbers are now no longer acceptable for such purposes.

Suppliers should verify the VAT number of all customers to ensure the supply can qualify for zero rating, which can be undertaken from the EU website; [http://ec.europa.eu/taxation\\_customs/vies/vieshome.do](http://ec.europa.eu/taxation_customs/vies/vieshome.do). Without this number the supply cannot be zero rated and domestic VAT must be charged.

## Yachting sector

The EC continues to look at the yachting sector and have formally asked both France and Italy to review their provisions in this area. In each case the need for yachts to be able to operate on the high seas is not being respected. Subsequently, in the face of a limited response from France more formal proceedings are now being taken by the EC.

## Monaco 8th Directive reclaims

Cross border refunds of VAT incurred in Monaco should now be addressed to the Monaco Tax Administration and not to the French Administration.

## Financial transaction tax

The high profile the finance sector has been subject to has now taken a new turn with the EC considering that it should pay its fair share of taxes. Across the EU the sector is considered to enjoy some €18 billion of VAT exemptions. A proposal announced in September envisages a financial transaction tax to be levied on the exchange of shares and bonds (at a rate of 0.1%) and on derivatives (at a rate of 0.01%) where at least one of the parties is within the EU.

## VAT rate increases

The rates of VAT across the EU have shown volatility over the past 18-24 months, rather than detailing the increases the current standard rates applying in some key Member States are detailed below:

<b>Belgium</b>	<b>21%</b>	<b>Netherlands</b>	<b>19%</b>
<b>Czech Republic</b>	<b>20%</b>	<b>Poland</b>	<b>23%</b>
<b>Denmark</b>	<b>25%</b>	<b>Portugal</b>	<b>23%</b>
<b>France</b>	<b>19.6%</b>	<b>Romania</b>	<b>24%</b>
<b>Germany</b>	<b>19%</b>	<b>Slovakia</b>	<b>20%</b>
<b>Greece</b>	<b>23%</b>	<b>Spain</b>	<b>18%</b>
<b>Ireland</b>	<b>21%</b>	<b>Sweden</b>	<b>25%</b>
<b>Italy</b>	<b>21%</b>	<b>UK</b>	<b>20%</b>

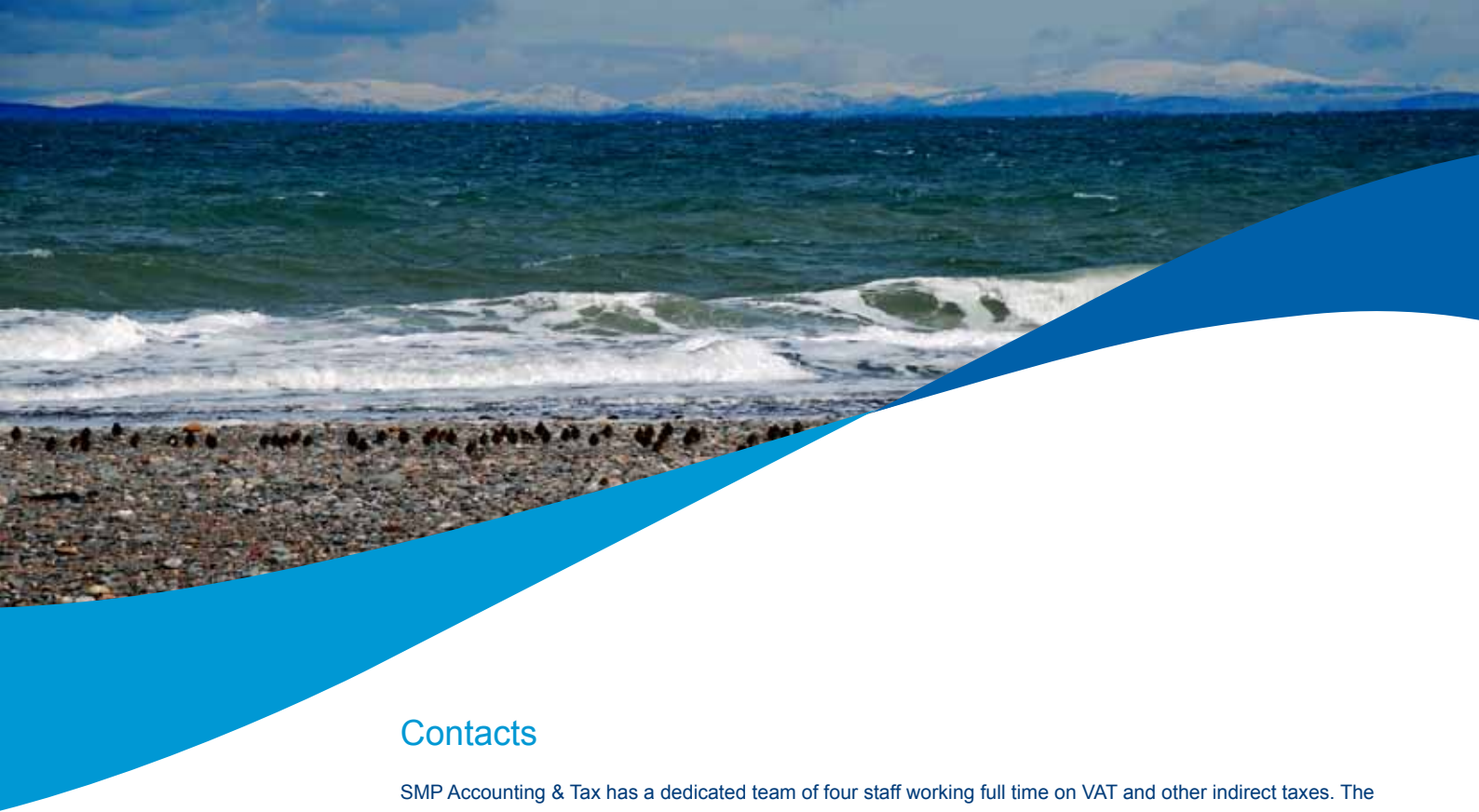
This though doesn't tell the whole story as many countries have also made significant changes to their lower rates and exemptions.

## VAT news from elsewhere

### Jersey GST

Jersey introduced a GST system in 2008, the standard rate of which increased to 5% in June 2011. Included is a carve out from the provisions for certain businesses, under the International Services Entity ("ISE") provisions, whereby those businesses involved in international trade could pay a fee and be exempt from the GST provisions. A review of the provisions has recently been announced by the States of Jersey, which seeks to achieve equality between the various levels of ISE fees payable, reduce the compliance burden and raise further revenue.





## Contacts

SMP Accounting & Tax has a dedicated team of four staff working full time on VAT and other indirect taxes. The VAT team are able to provide VAT compliance services for businesses based in the Isle of Man, UK and Ireland. In addition, VAT consultancy can be provided in respect of any situation from structuring a business, to advice on particular transactions or dealing with the relevant Revenue authorities.

For further detail on any VAT related matter please contact:

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