

Trusted to deliver...

October 2009

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## Welcome

Welcome to the second edition of the SMP Accounting & Tax VAT newsletter.

The summer is generally a quiet time in the world of VAT, as the European Court of Justice is closed and the domestic Tribunals have been quiet. However, over that period much attention has been focused on the changes due to be introduced across the EC on 1 January 2010 under the so called "VAT Package". This has the effect of changing the place where VAT may be due, but also brings into force enhanced reporting requirements for those businesses involved in cross border transactions. To meet the reporting deadlines businesses may have to change their accounting systems and processes.

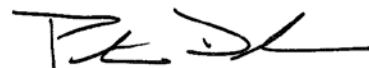
The UK reduced the standard rate of VAT to 15% in December 2008. This short term reduction was a measure designed to stimulate spending, and was contrary to many other jurisdictions that increased the VAT rate in an attempt to increase revenue. More details are included in the newsletter, but it may be worth considering whether paying or invoicing before the rate change may provide a benefit.

Finally, clients and contacts should by now have received an invitation to our annual Swiss conferences to be held in the middle of November. I hope as many of you as possible will be able to attend and if you wish to register please contact your usual SMP advisor or visit our website at [www.smppartners.com](http://www.smppartners.com) for more details.

I will be attending this year and look forward to meeting you then. In the meantime if there are any issues of interest within the newsletter please contact one of the VAT team, details of whom are provided at the end of the newsletter.



I hope you enjoy our newsletter.



Peter Duchars  
Head of VAT Services

## UK News

### Aircraft

The last newsletter advised that the UK had been requested by the EC to change the domestic VAT legislation relating to the zero rating of aircraft and related supplies. HMRC have now indicated that they will change the legislation relating to such supplies, but ahead of such a change HMRC have now undertaken an informal consultation with industry in an attempt to minimise the impact.

### Developments in tackling VAT fraud

So called “carousel” or MTIC (Missing Trader Intra-Community) fraud has, for a number of years, been a major concern of the VAT authorities throughout the EU. Traditionally fraud was perpetrated in goods such as computer games and mobile phones. To combat this type of fraud the sales of such items, subject to certain conditions, became zero rated with the customer accounting for any VAT due.

Whilst this was the usual treatment for goods moving between suppliers and customers in different member states of the EU, this zero rating is now in place for the movement of such goods within the same country.

The UK Government, in response to an escalating threat in respect of the trading emission allowances (also known as “carbon credits”) changed the VAT liability of such trades to zero rated, in line with the above provisions, under a derogation provided by the EC. In this way the customer now accounts for VAT rather than the supplier charging it.

### VAT rate change wef 1 January 2010

The UK Chancellor temporarily reduced the standard rate of VAT from 1 December 2008. This reduction ceases on 31 December 2009 and with effect from 1 January 2010 the rate reverts to 17.5%. Forestalling legislation has been introduced to prevent businesses creating tax points, ie the date on which the VAT is due, prior to the rate change, where the supply of goods or services is not due to take effect until after that date.

The anti-avoidance provisions announced apply where the customer is not registered for VAT or is not able to recover all VAT charged and one of the following is met:

- the supplier and customer are connected parties; or
- the supplier funds the purchase of the goods/services; or
- a VAT invoice is issued by the supplier where payment is not due for at least six months.

In addition, the anti-avoidance provisions will also apply where a pre-payment in excess of £100,000 is made before the rate rises in respect of goods or services to be provided on or after the date of the rate increase. If the pre-payment is in accordance with normal commercial practice the anti-avoidance provisions will not be applied.

The effect of the anti-avoidance provisions will be to apply a 2.5% supplementary charge, which will be due for payment on 1 January 2010. This charge will be treated as VAT and will have the effect of increasing the VAT rate to 17.5%,

Subject to the above conditions, a business is still able to apply normal business practices and issue invoices at the reduced rate in advance of the change to 17.5%.



## Yachting

On 26 August 2009 HMRC issued a Business Brief (56/09), which reiterates their concerns about the number of private individuals who have acquired yachts using a variety of structures that have meant that a reduced, or even zero, rate of VAT is applied.

The revised guidance takes account of the ECJ case involving Halifax, which introduced into VAT the concept of an "abusive" transaction. In this way, notwithstanding a transaction has all the hallmarks of a supply, where one of the principal reasons for the creation of the structure was to obtain a VAT benefit, the transaction would be set aside and re-written as if the abusive element did not exist.

In addition, HMRC have also considered whether such assets are used for business purposes, for mixed pleasure and business purposes or whether solely for pleasure purposes. Clearly VAT is only due for recovery to the extent a cost is for the purposes of a business.

The Brief includes suggested indicators of abusive practices within the yachting industry, which could give rise to an enquiry into the structure by them.

## Relocation of telecom providers

HMRC have recently announced a move to review arrangements where a UK based business has purportedly relocated its business away from the UK to avail of lower VAT rates available elsewhere.

Luxembourg provides a lower rate of VAT for many telecom, ISP and broadcasting services which vary in liability from 15% to as low as 3%. HMRC have announced they will consider whether such businesses have the necessary level of infrastructure in the other jurisdiction for that establishment to be considered the principle place of business for VAT purposes. This may require such businesses to review their method of operation as HMRC have indicated they will mount a "robust challenge" to such structures.

## EC Sales Lists for goods

With effect from 1 January 2010 the filing requirements for EC Sales Lists (or Recapitulative Statements) will change. Currently quarterly returns are filed within 42 days of the period end, but from 2010 monthly returns will be required where the value of such supplies exceeds £70,000 in a quarter. In each case returns will be required within 14 days for paper returns and 21 days for electronic submissions.

## VAT news from the Isle of Man

### Yachting

In response to the Business Brief issued by HMRC (see above) Isle of Man Customs & Excise have announced that the guidance letter they issued in January 2000 relating to the charter and lease of yachts has been withdrawn.

At this time IoMC&E are still considering the impact of the Brief on Isle of Man based charter and lease companies and further guidance is expected. It is likely that certain types of lease and charter arrangements will come under scrutiny following the revised interpretation applied following the Halifax case, which may require certain structures being amended.

IoMC&E have not, at this stage, indicated that they will be undertaking a specific review of yacht and lease structures, but such structures will become subject to a review in due course as a matter of routine.

### EC Sales Lists

The Isle of Man Customs & Excise will be following the UK in the requirement for EC Sales Lists to be filed for both goods and services with effect from 1 January 2010. At this stage though it seems unlikely that they will have the necessary software in place, immediately, to receive electronic submissions.

As such, and until online filing is available, they will permit the submission of paper returns up to 21 days after the end of the relevant period.



## 2010 VAT package changes

Significant changes to the workings and administration of VAT are due to be introduced in 2010. Details of the basics of the changes were announced in the first edition of the Newsletter, but now further details have been announced by HMRC concerning how such provisions will be adopted in the UK and, consequently into the Isle of Man.

The intention of the changes is that VAT will, increasingly, be accounted for based on where a service is received, rather than where it is supplied, in a business to business transaction. Consequently, the basic rule to determine who accounts for VAT will be that the customer will account for VAT, rather than the supplier charging VAT if and when relevant. In the following cases, however, VAT will be due in the jurisdiction of consumption of the service:

- Land related services will be liable to VAT where the land is located.
- Supply of the carriage of passengers which will be taxed where the transport takes place.
- Hire of a means of transport, will depend on whether the supply is "short" or "long" term hire. Short-term hire is for a period of 30 days, or 90 days in the case of vessels, with VAT being due where the means of transport is put at the disposal of the customer. For long term hire VAT will be due where the customer is established.
- Initially the supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services will be taxed where such services are performed, but this will change (wef 1/1/2011) to being taxed where the customer is located, with the exception of admissions to an event, that will be taxed where the event takes place.
- Restaurant & catering services will be taxed where they are physically carried out.
- Restaurant & catering services on board ships, planes and trains during EU transport will be taxed where the journey commences.

In most of the above cases the VAT will be accounted for by the customer where they are established in the relevant country. However, where this is not the case the supplier will be obliged to register for VAT in that country.

In addition, the date on which such supplies should be accounted for by the customer is to change. Currently VAT on such services is accounted for on the date of payment. However, from 2010 the date on which VAT is due will become the date when the service is performed, or when it is paid if this is earlier. For continuous supplies of services the tax point is the date of the end of the billing or payment period, or date of payment if earlier, but if there is no billing or payment period VAT will be due on 31 December each year.

The majority of such changes will be introduced with effect from 1 January 2010, except where noted above where the changes will take effect from 1 January 2011.

Also, the rules applying where the customer is not in business or registered for VAT will change in certain situations and further details will be provided in due course.

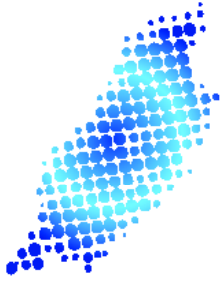
The above will give rise to an increased compliance cost in many situations, which will be added to by the need to file quarterly or monthly EC Sales Lists or Recapitulative Statements. Previously such reports have been filed for the supply of goods, but from 1 January 2010 an obligation will exist to report EU supplies of service supplied to businesses. The reporting requirements will vary from country to country, but for the United Kingdom and Isle of Man EC Sales Lists for services will be required on a quarterly basis.

## News from the EU

### VAT Package

The changes outlined above relating to the so called VAT Package are common throughout the whole of the EU. As such, the same principles are being applied in each country. Whilst the basic changes are as outlined above each country may have slightly different provisions within their domestic legislation. However, the basic provision applying in each country is that for a business to business transaction most supplies of services will now be liable to tax where the customer is based rather than in the country where the supplier is located.

The exceptions detailed should, again, be applied by each Member State.



## Reverse charging and fraud

The UK has now introduced the reverse charge provisions (where the customer accounts for VAT rather than the supplier charging VAT) to the supply of carbon credits, as detailed above, under an EC derogation. The EC has now published proposals to further extend the scope of the reverse charge to other areas. Traditionally the type of fraud that this type of anti-avoidance is aimed at is high value easily transportable goods and the proposed extension into mobile phones, computer chips, carbon credits, perfumes and precious metals is a natural progression in this respect, such that no derogation would be required.

## Postal services

Currently postal services provided by the main nominated postal provider in each country are exempt from VAT; other providers of, essentially, the same service levy VAT on such services. This matter has been the subject of discussion at EC level for many years and, following the recent Postal Directive, obligations on Member States to nominate a main provider have been relaxed.

As such, the VAT implications are again being revisited as to whether exemption is relevant for any provider, or indeed for all providers, of certain postal related services. The relaxations under the Postal Directive take effect on 31 December 2010, although some countries may defer for two years.

## Ireland

A recent case involving Ireland and the ECJ will have a significant impact on certain services provided by State sector providers. The case considered the differing treatment applied by such providers compared with public sector businesses, where businesses charged VAT whereas the State sector did not.

As a consequence State providers will now have to charge VAT on such services as car parking, refuse disposal, leisure facilities and property letting. This will give rise to an inevitable increase in costs for consumers.

## VAT news from elsewhere

### Switzerland

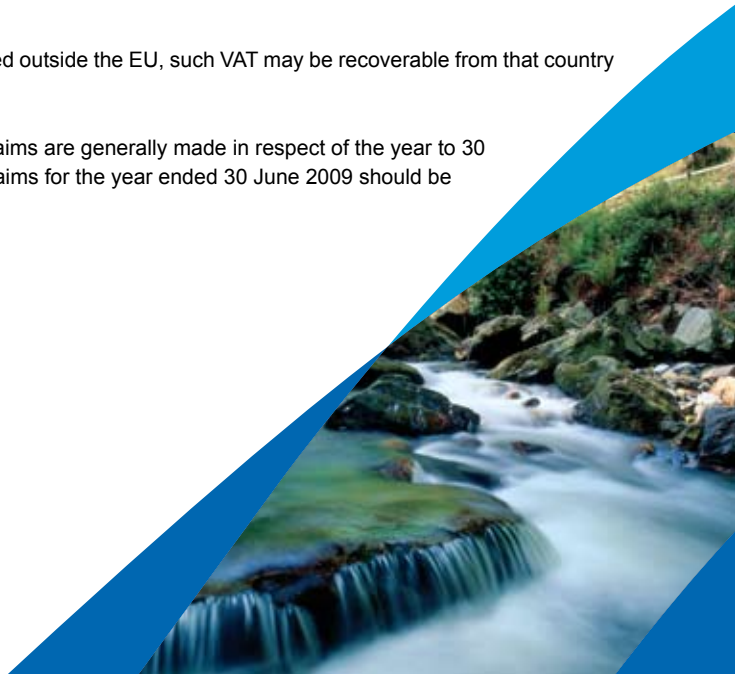
Switzerland has announced plans to increase its rate of VAT with effect from 1 January 2011

In a national referendum, more than half of the Swiss voters approved the VAT increase from 7.6% to 8%, which will be in force until 2017. The change is necessary to help counteract the SwF13 billion shortfall in Switzerland's invalidity insurance system.

### 13th Directive reclaim of VAT

If you or your clients have incurred VAT in an EU jurisdiction, and are established outside the EU, such VAT may be recoverable from that country under the 13th Directive reclaim process.

Whilst the regulations relating to such claims differ in each jurisdiction, such claims are generally made in respect of the year to 30 June and should be made within six months of the end of the year. As such, claims for the year ended 30 June 2009 should be made before 31 December 2009.



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## Contacts

SMP Accounting & Tax now have a dedicated team of four staff working full time on VAT. 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:

**Peter Duchars**

Head of VAT Services

Tel: **+44 (0)1624 683283**

Email: [peter.duchars@smppartners.com](mailto:peter.duchars@smppartners.com)

**Steve Glynn**

VAT Manager

Tel: **+44 (0)1624 683207**

Email: [steve.glynn@smppartners.com](mailto:steve.glynn@smppartners.com)

**David Booker**

VAT Manager

Tel: **+44 (0)1624 683249**

Email: [david.booker@smppartners.com](mailto:david.booker@smppartners.com)

**For further information on SMP Accounting & Tax please contact:**

SMP Accounting & Tax Limited

P.O. Box 227

Clinch's House

Lord Street

Douglas

Isle of Man IM99 1RZ

Tel: **+ 44 (0)1624 683 229**

Fax: **+ 44 (0)1624 612 624**

Email: [info@smpaccountingandtax.com](mailto:info@smpaccountingandtax.com)

[www.smpaccountingandtax.com](http://www.smpaccountingandtax.com)

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