



VAT Bulletin regarding the  
changes to EC Sales list  
requirements

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**SMP**

Accounting & Tax

## VAT Bulletin regarding the changes to EC Sales list requirements

1 January 2010 sees a number of changes to the VAT legislation which have been introduced across the European Union as a result, in part, of the so called VAT Package. The purpose of this VAT Bulletin is to concentrate on one area, namely the revised requirements for the filing of EC Sales Lists (“ESLs”) or “recapitulative statements”. These changes will be of relevance to those businesses that supply goods or services from one EU country to a VAT registered business customer in another EU country.

### Background

EC legislation has provided for the filing of ESLs for a number of years in a limited number of circumstances. The domestic provisions applying in individual Member States vary slightly, but the general principle remains that for certain supplies of goods from one member state to another an ESL is required.

In the United Kingdom ESLs have been required for a number of years for those businesses that are registered for VAT in the UK and making supplies in the following situations:

- supplying goods to a VAT registered business in another EU country;
- transferring its own goods from the UK to another EU country; or
- acting as an intermediary in triangular transactions involving VAT-registered purchasers and sellers in other EC countries.

The ESLs are filed separately from VAT returns and are generally issued as a consequence of making a declaration in the VAT return that intra-EC sales of goods have been made. Generally ESLs have been required for calendar quarters, with filing being due within 42 days of the end of the period, although it has in certain circumstances been possible to file monthly or annual ESLs.

### The changes – summary

The changes have been introduced in response to two key areas of concern. In part the changes were aimed at modernising and simplifying the current rules relating to cross border supplies of services and also as part of the EU Anti-Tax Fraud Strategy. The key changes that will take effect from 1 January 2010 are:

- the filing frequency for ESLs for goods will change to monthly in certain cases;
- ESLs will be required where services are supplied to EU VAT registered business customers who account for the VAT under the reverse charge provisions; and
- the filing dates for ESLs for both goods and services will be significantly shortened.

### The changes – for those businesses supplying goods

The current ESL reporting period is currently, generally, calendar quarters. With effect from 1 January 2010 this will change to monthly for those businesses whose turnover of such supplies exceeds a specified threshold. The threshold for which quarterly reporting remains relevant is that the value of supplies of goods made must be less than £70,000 per quarter for the period to 31 December 2011 and then from 1 January 2012 the threshold reduces to £35,000 per quarter.

Any business that has exceeded the £70,000 threshold in any of the four quarters in 2009 will be obliged to file monthly ESLs from 1 January 2010. Similar provisions will apply ahead of the reduction in the threshold in 2012.

If the threshold is exceeded during the course of a quarter, post 1 January 2010, the option to file quarterly ESLs will cease at the end of that month, such that monthly ESLs will then be required. So, if the threshold is exceeded during February a “quarterly” ESL will be required for January and February and then a monthly ESL for March.

Businesses currently have a period of 42 days after the period end in which to submit ESLs. With effect from 1 January 2010 this period will reduce to 14 days for paper returns and 21 days for electronic submissions.

## The changes – for those businesses providing services

Currently there are no provisions for the filing of ESLs for those businesses providing services to other VAT registered businesses in other EU countries. With effect from 1 January 2010 this changes and any business providing services where the customer accounts for VAT under the reverse charge will be obliged to file an ESL. In the case of the UK and Isle of Man such ESLs will be due on a calendar quarter basis with the ESL being submitted in the same time frame as for goods, ie 14 or 21 days.

Those supplies not covered by the new provisions will include:

- Supplies that are exempt from VAT according to the provisions in place in the customer’s Member State;
- B2B supplies where the customer is not registered for VAT; and
- B2C supplies.

The same form as for goods will be used to report intra-Community supplies of services and whilst the UK and Isle of Man permit the filing of quarterly ESLs businesses have an option of filing ESLs on a monthly basis, which may be beneficial perhaps where a business files an ESL for goods.

Those businesses that supply both goods and services to EU VAT registered businesses will be able to report both on the same form, but the indicator “3” will be used to identify the supply of services. No indicator is required for the supply of goods other than where the business is involved in triangular supplies where an indicator “2” is required.

## Time of supply for services

Changes have also been announced to the date on which the VAT is accounted for under the reverse charge provisions for intra-Community supplies of services. This will also impact the time on which such supplies should be included on the ESLs.

Currently VAT is generally due under the reverse charge provisions on the date on which the service is paid for, but with effect from 1 January 2010 the date will change as follows:

- the time of supply of such services will be the earlier of when the service is completed or when payment is made; but
- for continuous supplies of services, the time of supply will be linked to the end of each billing or payment period, but where no invoice or other accounting document is issued or payment made during the year, the time of supply will be the end of each calendar year.

Accounting for VAT by reference to the completion of the service is already accepted practice in the UK, as VAT is generally due based on the date of completion of the service. Accounting for the reverse charged VAT and including the supply in an ESL based on the date of completion of the service is bound to create some uncertainties and inconsistencies. The UK VAT authority, HMRC, have now confirmed that there is no need for the supplier to confirm with the customer the date on which the supply is considered to have been completed.

## Penalties

HMRC have indicated that they expect businesses to take reasonable and appropriate steps to ensure the completeness and accuracy of ESLs. Furthermore they have accepted that there will be operational issues to contend with in the early stages of the adoption of these new policies. As such, provided necessary care has been taken HMRC will not seek to apply penalties in the early stages of the new ESL regime.

However, once the initial period of grace is past HMRC will seek to levy penalties at a rate of £5, £10 or £15 per day for each day an ESL is late, depending on the number of times a business has been late in submitting their ESLs.

In addition, where an ESL contains a material inaccuracy a penalty of £100 will be applied. Material inaccuracies will fall into three categories:

- data missing from the ESL;
- lines on the ESL are factually incorrect; or
- an invalid VAT number is used.

VAT numbers have a preset format according to the Member State of the supplier or customer and will contain a country code prefix. These registrations can be checked by reference to the EC website, which can be located at [http://ec.europa.eu/taxation\\_customs/vies/vieshome.do](http://ec.europa.eu/taxation_customs/vies/vieshome.do). Penalties will not be charged where a business has reasonable excuse, but providing an invalid VAT registration number is not considered “reasonable”.

Furthermore, “reasonable excuse” does not include reliance on a third party to complete and file the ESL. As such, whilst SMP Accounting & Tax may be agent for the completion and submission of VAT returns and ESLs the business remains legally responsible for the accurate and timely completion and submission of ESLs.

## Our and your responsibilities and actions

Clearly, whilst it remains the responsibility of the business to ensure the accurate and timely submission of the ESL SMP Accounting & Tax will wish to ensure the ESLs are submitted correctly and on a timely basis. In order to do so we will require the necessary information to complete the filings within 14 days of the end of the period end. Should online submissions not be possible the information will be required within 7 days of the period end. Whilst we cannot guarantee submission of the ESLs where information is provided after that date we will endeavour to file by the due date.

Where we are responsible for the filing of ESLs we will contact you at or towards the end of the period advising that an ESL is due for filing. Unless we hear from you to the contrary we will file ESLs according to the greatest time period available, ie quarterly ESLs for services and for goods, until the threshold of £70,000 or £35,000 is exceeded. We will then require confirmation that there has been no activity during the period or, alternatively, details of any relevant sales made during the period, supported where possible by relevant sales invoices. The information that should be declared on the ESL will be:

- customer’s country code;
- customer’s VAT registration number; and
- total value of the supplies to each customer in the period expressed in £sterling.

In order to speed up the process, given the deadlines for filing it is imperative that we have email access wherever possible to you so we can contact you quickly to obtain the necessary information and to deal with any queries.

If you have any further queries on this matter at this time, or if we can be of any further assistance, please do not hesitate to contact one of the VAT team, details of whom are shown below.

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