



VAT and Indirect Tax Bulletin

Issue 6: May 2009

Welcome to the May issue of the BTG Tax VAT and Indirect Tax Bulletin. This Bulletin focuses on VAT news, highlighting the changes announced in the recent Budget.

Oh Darling! How did it come to this?

In an historic Budget speech on 22 April 2009, Chancellor Alistair Darling revealed the extent of the UK's borrowing requirements over the coming years to respond to the current economic crisis and announced, or re-announced, a raft of measures intended to help the UK out of the current downturn. There were the normal announcements regarding increases in the duties on alcohol, tobacco and road fuel.

In addition to the high profile income tax measures, there were a number of important VAT and indirect tax announcements. In this VAT Bulletin we summarise the key points.

We have broken our commentary and analysis into 3 areas:

1. VAT update
2. 2010 VAT package changes
3. Environmental taxes

1. VAT UPDATE

Standard VAT Rate reverts to 17.5%

As previously announced, the UK's standard rate of VAT will revert to 17.5% from 1 January 2010.

However, HM Revenue and Customs ("HMRC") has confirmed the details of the anti-forestalling measures announced in the Pre-Budget Report ("PBR") when the temporary VAT rate was introduced, the draft of which was published in March. These measures are intended to stop taxpayers who cannot recover all their VAT (partly exempt taxpayers), from gaining an advantage through advanced invoicing or prepayment arrangements for goods or services, or the grant of a right to receive goods or services, provided after the rate rise date.

Normally, an advance invoice or payment crystallises a VAT accounting liability, so making payment before a rate change will crystallise a VAT charge at the rate in force on the payment date.

HMRC has introduced conditions where a supplementary 2.5% VAT charge will be due. This extra VAT charge will be due on 1 January 2010 if one of the following conditions applies where one of the recipients cannot recover all of their VAT:

- The supplier and the customer are connected parties; or
- The supplier funds the purchase of the goods or services (or grant of a right); or
- A VAT invoice is issued by the supplier where payment is not due for at least six months

These conditions have effect from 25 November 2008.

The 2.5% supplementary VAT charge must also be accounted for on 1 January 2010, where a pre-payment of more than £100,000 has been made before the rate rise. This applies where the pre-payment is for goods or services (or the grant of a right to receive goods or services) to be provided on or after the rate rise date, unless such a pre-payment is the commercial norm. This is effective from 31 March 2009. An example of this could be a lease premium.

BTG Tax viewpoint: *Despite widespread speculation, the rate reverts to 17.5% for now. UK retailers' calls for a longer reduced rate period appear to have been ignored. Clearly, HMRC had to take action to prevent pre-payment planning when the Treasury is looking to maximise tax take. Whilst there should be a cautious welcome to the recognition that pre-payments can be the commercial norm, care will be needed to ensure that you are not inadvertently caught by the provisions. It is worth remembering that the anti-forestalling provisions should not apply to supplies genuinely made before the rate rise date.*

VAT Registration Thresholds increase

As expected, the VAT registration threshold will increase to £68,000 from 1 May 2009. In addition, the de-registration threshold increases to £66,000 from the same date.

VAT Fuel Scale Charges changed

The VAT fuel scale charge, which takes account of the private use of fuel in cars, has been changed for VAT return periods starting on or after 1 May 2009. This is a decrease on the current fuel scale charges reflecting a reduction in fuel prices.

Details at:

<http://www.hmrc.gov.uk/budget2009/bn69.htm>

BTG Tax viewpoint: *Another regular Budget change. The twist this year is in ensuring your calculations reflect the two standard VAT rates when the rate reverts to 17.5%.*



Whilst scale charges are often seen as a minor issue, care will be needed to ensure they are correct and that you use the right VAT fraction in your calculations.

Changes to the Option to Tax

HMRC has announced the withdrawal of two informal concessions and the introduction of a new automatic option to tax condition ("APC"), replacing an existing APC with one that HMRC says has wider application.

Normally, where a taxpayer has generated VAT exempt income in respect of a commercial property interest, it must ask HMRC's permission to opt to tax the interest unless one of four automatic permission conditions is met. Opting to tax enables the taxpayer to recover VAT on associated costs but means that VAT must be charged on the rental income or on disposal proceeds.

From 1 May 2009 the new APC replaces condition 3 in the option to tax Notice, which relates to an option following the surrender of a lease. Details of the new APC have now been published in VAT information sheet 06/09.

In addition, two informal concessions applying where a taxpayer VAT registers as the result of an option and where VAT is incurred on capital expenditure below the capital goods scheme adjustment level prior to an option are being withdrawn. HMRC considers them to be *ultra vires* UK law. These two informal concessions will continue to apply until 30 April 2010, though the second one will continue, in part, beyond that date whilst the relevant area of the law is being reviewed (capital goods scheme).

BTG Tax viewpoint: *In principle, any change that reduces compliance and facilitates business should be welcomed. However, the new APC requires careful study as the information sheet runs to 13 pages!*

Child Seat Bases to be subject to 5% VAT

From 1 July 2009, sales of children's car seat bases (including combinations of a safety seat and related framework, booster seats and booster cushions) will be subject to the reduced rate of VAT.

BTG Tax viewpoint: *A welcome reduction of VAT costs for families and the resolution of an anomaly which had previously excluded these from the reduced rate.*

VAT Exemption for Bingo Participation Fees

Participation fees for bingo and other games of chance will be VAT exempt from 27 April 2009. In addition, there are a range of changes to bingo duty including an increase in the rate to 22%.

BTG Tax viewpoint: *A range of measures affecting bingo and games of chance. The removal of VAT on participation fees is interesting; whilst it means the removal of double taxation – VAT and bingo duty – the increase in the duty, plus a restriction of VAT recovery because of exemption, probably means the benefit may not be as great as it appears.*

Withdrawal of Second Hand Vehicle Margin Scheme Concession

As part of a wider review of extra-statutory concessions ("ESC"), HMRC are withdrawing an ESC from 1 April 2010 for margin scheme participants who have failed to keep the necessary scheme documentation.

Second hand vehicle sellers account for VAT on the margin or difference on the buying and selling prices of second-hand cars. However, they must keep the necessary records. HMRC currently operates a concession allowing dealers to account for VAT on half the selling price where they do not have the necessary records.

BTG Tax viewpoint: *Following a recent case, HMRC have had to review their ESCs as its ability to grant concessions is not as wide as previously thought. At least the withdrawal of this concession has been notified a year in advance to allow vehicle dealers to prepare for the change.*

2. 2010 VAT PACKAGE CHANGES TO EU CROSS BORDER SERVICES

Under the "EU VAT Package", HMRC is introducing changes to the place of supply of cross-border services for **business to business** ("B2B") transactions from 1 January 2010.

The changes see a new "general rule" that B2B cross-border services will be taxed where the recipient is established and not, as currently, where the supplier is established. The customer will be required to account for VAT under a reverse charge in their own EU member state.

There is no change to the general rule for business to consumer services ("B2C"), which will still be subject to VAT where the supplier is established.

The current exceptions to the general rule for B2C services will mostly continue.

There will be some exceptions to the new general rule for B2B suppliers which include:

- Admissions to cultural, artistic, sporting, scientific, educational and entertainment events supplied to business customers will be taxed where the event takes place (from 1 January 2011);
- Land related services will take place where the land is situated (as now);
- Restaurant and catering services will be taxed where they are physically performed;
- Short-term hire of means of transport will be taxed where the vehicle is put at the disposal of the customer;
- Passenger transport services, the use and enjoyment provisions and electronically supplied services for non-business customers will remain unchanged.



In addition, long-term hire of means of transport to non-business customers will be taxed where the customer is established (other than pleasure boats) from 1 January 2013.

A number of services do not change their place of supply e.g. legal and consultancy services and passenger transport services.

The changes are part of a range of measures to the place of supply rules over the next few years.

The following related changes are also introduced from 1 January 2010:

Time of Supply for Reverse Charges

The point at which a reverse charge must be accounted for changes to:

- For **single** supplies e.g. discrete projects, when the supply is completed or when it is paid for, if earlier.
- For **continuous** supplies e.g. ongoing consultancy retainers, the tax point will be at the end of the billing or payment period or the date of a payment for the services if earlier. If there is no billing or payment period, the tax point will be 31 December each year – unless a payment is made beforehand when the payment date prevails!

These changes are intended to harmonise the reverse charge rules with the time of supply rules on the seller's VAT return.

EC Sales Lists (ESLs)

Quarterly ESLs are introduced for services supplied that are subject to the reverse charge under the prevailing rules in the **customer's** country.

In addition, monthly ESLs will be required for goods where the value of supplies exceeds £70,000 per quarter.

The time limit for submission will reduce to 14 days for paper ESLs and 21 days for electronic submission.

New VAT Refund Procedure for Intra-EU VAT

From 1 January 2010, an electronic VAT refund procedure is being introduced across the EU for 8th Directive claims, which will be welcomed by business. Note this does not apply to 13th Directive claims by non-EU businesses.

Changes to the current paper-based system include:

- Claims are to be submitted to HMRC, rather than the local tax authority concerned;
- The deadline for submission of claims will be extended from six months to nine months after the calendar year end;
- The Tax Authorities must make repayment within four months, rather than the current six months;
- Interest will be payable by the Member State of Refund where the refund is paid late; and
- Claimants will be allowed to appeal against refusal to repay a claim.

BTG Tax viewpoint: *These measures, probably the most important since the introduction of the Single Market, are intended to modernise and simplify the VAT system for Intra-EU trade. Whilst many of the changes should be welcomed, some taxpayers will lose out – partly exempt business receiving management services from overseas for example. There is also the question of UK taxpayers knowing which services will be reverse chargeable in their customer's country. However, any taxpayer involved in receiving or supplying services cross-border must start to address the systems and practical issues in the next 7 months – time is short.*

3. ENVIRONMENTAL TAXES

Land Fill Tax ("LFT") Changes

As previously announced, the standard rate of LFT will increase by £8 per tonne to £48 per tonne from 1 April 2010.

There will also be changes to LFT legislation to address the issues arising from the decision in the Waste Recycling Group case which confirmed that material used at a landfill site is not a taxable disposal and not subject to LFT. In addition, it called into question the tax free area provisions which appear redundant.

BTG Tax viewpoint: *The rise in the LFT standard rate continues to try to encourage the UK to waste less and we can expect the rises to continue. The consultation to modernise and update LFT legislation should be welcomed. However, there are some changes which will increase the scope of the tax e.g. ash may no longer be inert and taxed at the lower rate.*

Climate Change Levy ("CCL")

Whilst there are no changes to the rates this year, from 1 April 2009, HMRC will have the ability to recover a proportion of CCL relief claimed under a climate change agreement where a facility (and the sector concerned) fails to meet its climate change targets. In addition, subject to state aid approval, the Government restated its commitment to combined heat and power generation by renewing the exemptions for such generation.

Finally, low value solid fuel (£15 per tonne and below) will be subject to CCL from 1 January 2010.

BTG Tax viewpoint: *More changes to encourage less carbon emissions. The ability to recover relief claimed if targets are not met will drive carbon efficiency.*



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