



## Legal Update

January 2010

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### **The New Year and VAT changes**

#### **Vat Rate changes**

The standard rate of VAT was temporarily reduced to 15% on 1 December 2008 and it will return to 17.5% on 1 January 2010.

#### **How to account for the VAT rate changes**

The way that you and your client should account for the change in the VAT standard rate depends upon the type of business you have.

#### **Retailers**

If you are a retailer you must use the 17.5 per cent rate for all takings that you receive on or after 1 January 2010. But if your customer pays after 1 January for something they took away (or you delivered) before 1 January 2010, your sale took place before 1 January 2010 and you should use the 15 per cent rate. If the invoice or payment is made before 1 January 2010 the rate of VAT will be 15%. If after, the rate of VAT will be 17.5%.

#### **Businesses that issue VAT invoices**

You must use the 17.5 per cent rate for all VAT invoices that you issue on or after 1 January 2010.

However there are special rules if you provide goods or perform services where various tax points span the date of change. There is also anti-forestalling legislation to stop deliberate avoidance.

#### **Sales that span the date of change – Supplies of goods**

For a supply of goods, there is a “basic” tax point at the time that the goods are delivered to/collected by, or are in some way “made available” to, the customer. However this basic tax point will, in normal circumstances, be overridden by an “actual” tax point, which will be:

- the date of payment (where the customer makes payment in advance); or
- the invoice date (where the supplier issues a tax invoice either before, or within 14 days after, the basic tax point).

But where the basic and actual tax points occur on either side of 1 January 2010, the supplier can elect (on a transaction by transaction basis) to determine the VAT liability by reference to the basic tax point, if this produces a VAT charge @ 15%, rather than 17.5%, for the customer.

#### **Sales that span the date of change – Supplies of services**

For a supply of services, in general the same tax point rules as above apply (with a basic tax point being created on completion of the service). The same election as above is available where the tax points span 1 January 2010. However a further concession exists where both the basic tax point and actual tax point occur after 1 January 2010, but the relevant work began before that date. The supplier may choose to adopt the normal rules and simply

charge the 17.5% rate on the entire invoice value, or can instead charge output VAT at the 15% rate on that part of the work completed before 1 January 2010, and at the 17.5% rate on the part completed after the rate change.

Where an invoice is raised after 1 January 2010 to a non VAT-registered customer for a period which spans the change in VAT rate the customer is likely to request that the apportionment procedure should be applied to the invoice as described above.

If you choose to do this you will have to be able to demonstrate that the apportionment is fair for example by reference to your work in progress records.

#### **Continuous supplies of services**

If you provide a continuous supply of services, such as leasing of photocopiers, you should account for the VAT due whenever you issue a VAT invoice or receive payment, whichever is the earlier. You must charge 17.5 per cent on invoices you issue and payments you receive on or after 1 January 2010. You may, if you wish, charge 15 % on the services you have provided in the period up to 31 December 2009 and 17.5 % on the remainder. If you choose to do this you will have to be able to demonstrate that the apportionment is fair.

#### **Businesses operating beyond midnight on 31 December 2009**

Special arrangements have been set up to help you account for the change in the VAT standard rate, if you are:

- a pub, club, restaurant or similar establishment
- a retail shop
- a provider of telecommunications

and your business will be operating beyond midnight on New Year's Eve you will be allowed to charge VAT @ 15% on sales until you close, or until 6am on 1 January, whichever is the earlier. Similar arrangements apply to telecommunications provided in respect of calls and texts made up to 6am on 1 January.

#### **Anti-forestalling legislation**

These rules are not likely to affect many businesses, but may affect you where the supply of goods or services is made on or after 1 January 2010, your customer cannot recover VAT on the transaction in full, and the following circumstances apply:

- A connected person pre-pays you for future supplies;
- You issue a VAT invoice to a connected person for future supplies;
- You facilitate funding for a customer enabling them to pay in advance for goods or services you provide;
- You issue a VAT invoice that does not require payment for at least six months
- You issue advance VAT invoices or receive a prepayment for more than £100,000 when this is not normal practice for you; or
- You receive payment prior to 1 January 2010 for a supply after this date.

#### **Flat Rate Scheme**

On 1 January 2010, the flat rates will broadly return to their November 2008 levels. HM Revenue & Customs will be reviewing the rates to check that they accurately reflect the VAT paid by businesses in each sector. The flat rates will be finalised and published towards the end of 2009.

#### **Fuel scale charges**

New rates effective from 1 January 2010 are included in the appendices at the end of the HM Revenue & Customs guidance: <http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf>

#### **Further guidance**

HM Revenue & Customs have issued a guide which can be obtained from their website: <http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-changes.htm>

Please do take the opportunity to refer to our website and in particular the Solicitors section of the Professional Services sector which contains our dedicated Newsletter and e-shots already produced in this calendar year to assist you and your business.

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