

Changes to the VAT Act

RSM! Malta

Main Amendments

New registration obligations for persons currently not required to be VAT registered

Recapitulative statements to cover cross-border supplies of services

New definition of taxable person in terms of the place of supply rules

New place of supply rules differentiating between B2B and B2C supplies



INTRODUCTION

Changes to the VAT Act have been enacted recently to bring the Act in line with European VAT legislation and are applicable as from 1 January 2010. The changes affect mainly the determination of the place of taxation for the supply of services, but also include additional reporting obligations and registration obligations for certain non-registered taxable persons.

NEW REGISTRATION OBLIGATIONS

The VAT Act requires the following persons to be VAT registered as from 1 January 2010:

A taxable person not currently registered for VAT purposes and **who supplies** services to a customer established in another Member State and for which that customer accounts for the payment of VAT himself.

A taxable person established in Malta but not currently required to be VAT registered, who receives services for which he is liable for the payment of the VAT in Malta. Registration in this case is required under article 12 of the VAT Act. Currently, such taxable persons are not required to be registered for VAT purposes but they account for VAT subject to reverse charge by the filing of a form accompanied with payment. Businesses falling within the ambit of this new registration obligation include remote gaming licensed operators and financial services providers (i.e. namely persons providing solely exempt without credit supplies).

NEW COMPLIANCE OBLIGATIONS

Recapitulative statements shall, as from 1 January 2010, in addition to details of acquirers of intra-community supplies of goods, include also details of the taxable persons to whom services are provided, which are subject to reverse charge, i.e. the recipient is liable to pay the tax, and not exempt in the Member State of establishment of the customer.

NEW DEFINITION OF A TAXABLE PERSON (FOR THE PURPOSES OF THE PLACE OF SUPPLY RULES)

The definition of a taxable person has been widened for the purpose of applying the rules concerning the place of supply of services.

The amendment contemplates the following:

- A taxable person who also carries out activities that are not considered to be taxable supplies in accordance with the VAT Act shall be regarded as a taxable person in respect of all services rendered to him;
- A non-taxable legal person who is VAT registered shall be regarded as a taxable person.

In view of the above, when the client provides a VAT number, that supply will be treated as a business-to-business supply and the supplier has no obligation to decide whether his client will be acquiring the service for the purposes of his economic activity or otherwise. The client has to apply the reverse charge, and it is the latter that has to assume responsibility of disallowing or otherwise any input VAT recovery in cases where the service acquired is not used for the purposes of his economic activity.

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NEW PLACE OF SUPPLY RULES OF SERVICES

The fundamental change to the place of supply rules is the new default rule for the place of supply of services between businesses.

Currently, the place of supply of services (whether supplied to taxable or non-taxable persons) is where the supplier is established for VAT purposes, unless an exception applies.

As from 1 January 2010, business to business (B2B) supplies (i.e. supplies to taxable persons or to non-taxable legal persons registered for VAT purposes) of services should be taxable where the customer is established. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of both a place of establishment and a fixed establishment, the place of supply of services shall be the place where the customer has his permanent address or usually resides.

In respect of cross border transactions, the customer will thus be required to account for VAT under the reverse charge mechanism. Thus, for example, a Maltese taxable person acquiring foreign consultancy services has to account for the 18% VAT in his VAT return. On the other hand, if the Maltese taxable person is acquiring foreign financial services, he will not be required to account for any VAT on the basis that such services are exempt without credit supplies in Malta.

Exceptions from the new default rule are made for certain services (e.g. restaurant services, services linked to cultural, sports, scientific and educational events, short term hire of means of transport) which in all cases shall be taxable in the Member State of consumption.



Business to consumer supplies of services (B2C) shall, in principle, continue to be subject to VAT where the supplier is located.

Appendix A gives a detailed overview of the new place of supply rules applicable to services. The changes to our VAT legislation are likely to affect a large array of businesses. It is therefore important to review any existing cross-border contracts and intercompany agreements as these are two areas on which the new place of supply rules will impact.

Please contact our taxation department for further guidance on the amendments discussed in this newsletter.

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Appendix

New place of supply rules in detail

Services supplied to taxable persons or to non-taxable legal persons registered for VAT (B2B supplies)

The general rule in this case is where the customer is established. Examples of services that will be affected are management services which did not previously fall under the reverse charge mechanism, such as day to day administrative functions, provision of payroll services, and centralised cost functions.

The VAT package provides for a number of exceptions (some of which existed prior to the changes) from the new default rule. These mainly relate to the following supply of services:

Passenger transport services

Place of supply will be where the transport takes place, proportionate to the distances covered.

Supply of restaurant and catering services for consumption on board ships, aircrafts or trains

The place of supply will be the point of departure of the transport operation.

Supply of other restaurant and catering services

Place of supply will be where the service is physically carried out.

Hiring of means of transport

Place of supply for short-term hiring will be where the means of transport is actually put at the disposal of the customer. Short term hiring is defined as hiring of not more than 30 consecutive days or, in the case of vessels, 90 days.

Services connected with immovable property

Place of supply will remain where the immovable property is located.

Cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including ancillary services)

Place of supply will remain where the activity is physically carried out.

Services supplied to non-taxable persons (B2C supplies)

The place of supply of services to non-taxable persons remains where the supplier is established. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment, the place of supply will be where the supplier has his permanent address or usually resides.

The VAT package provides for a number of exceptions (some of which existed prior to the changes) from the default rule. These mainly relate to the following supplies of services:

Passenger transport services

Place of supply will be where the transport takes place, proportionate to the distances covered.

Intra-Community transport of goods

Place of supply shall be the place of departure.

Other transport of goods

The place of supply of other transport of goods shall be where the transport takes place, having regard to the distances covered.

Ancillary transport activities, such as loading, unloading, handling and similar activities

The place of supply is where the ancillary service is physically carried out.

Supply of restaurant and catering services for consumption on board ships, aircrafts or trains

The place of supply will be the point of departure of the transport operation.

Supply of other restaurant and catering services

Place of supply will be where the service is physically carried out.

Electronically supplied services

In this case, the place of supply varies according to the place of establishment of the supplier:

- a) electronically-supplied service provided by a taxable person established outside the EU - place of supply is where the customer is established.
- b) electronically-supplied service provided by a taxable person established in the EU - place of supply is where the customer is established if the customer is established outside the EU, otherwise the place of supply is where the supplier is established (i.e. Default rule applies).

Telecommunication services and radio and television broadcasting services

The place of supply varies according to the place of establishment of the supplier:

- a) Service provided by a taxable person established outside the EU - place of supply is where the customer is established if the customer is established outside the EU. If the customer is established in the EU, the place of supply will be where the service is effectively used and enjoyed.

- b) Service provided by a taxable person established in the EU - place of supply is where the customer is established if the customer is established outside the EU, otherwise the place of supply is where the supplier is established .

Hiring of means of transport

Place of supply of short-term hiring will be where the means of transport is actually put at the disposal of the customer. Short term hiring is defined as hiring of not more than 30 consecutive days or, in the case of vessels, 90 days.

Services connected with immovable property

Place of supply will remain where the immovable property is located.

Cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including ancillary services), and valuations of and work on movable tangible property

Place of supply will remain where the activity is physically carried out.

Services by intermediaries

The place of supply of services by intermediaries is deemed to be where the underlying transaction is supplied.

Other Services

The place of supply of the following services is deemed to be where the customer is established if the customer is established outside the EU, and where the supplier is established, if the customer is established in the EU:

- a) Transfer and assignment of copyrights, patents, licences, trade marks and similar rights;
- b) Advertising services;
- c) Services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- d) Obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this paragraph;
- e) Banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;
- f) Supply of staff;
- g) Hiring out of tangible movable property, with the exception of all means of transport;
- i) Provision of access to, and of transport or transmission through, natural gas and electricity distribution systems.

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