

THE RETURN OF THE 17.5% RATE



In the run up to Christmas, business will pick up for some and tail off for others. With staff either frantically busy or taking their holidays, the return of VAT to 17.5% from 1 January could creep up unexpectedly on the unwary. However, HMRC have been actively promoting the change - you may have received some colourful stickers from them in the post recently. Businesses should now take the time to put a plan in place that will result in a smooth transition.

As companies get ready for the change, one question that will require careful consideration is what VAT rate should be applied to transactions around the change-over date of 1 January. The rate will be determined by the tax point associated with the transaction. Subject to some inevitable complications which are outlined below, where the tax point is on or before 31 December, 15% will apply. Where it falls on or after 1 January, 17.5% will apply.

Determining the tax point

In general the tax point is the earliest of:

1. the date the goods are made available to or removed by the customer or the services are completed; or

2. the date invoice issued or payment received.

There is one general exception to this and that is where an invoice is raised within 14 days of (1) above. Under those circumstances the tax point is the invoice date.

Supplies of services – the detail

Supplies of continuous services, such as rent, also fall within the above tax point rules but as there is no date of completion as such, the tax point is determined by the date of invoicing or payment alone. However continuous supplies are also subject to special provisions. Where a continuous supply spans 1 January 2010 and is invoiced in 2010, the supplier may if he wishes apportion the supply into periods before and after the change. Naturally with the rate increasing, suppliers of continuous services will look to take advantage of this provision.

The same option is available to single supplies of services where the service is started before the end of 2009 but completed, invoiced and paid after.

Where suppliers invoice in advance for continuous services and the period concerned ends on or after 1 January, then the current rate of 15% applies.

Anti-forestalling provisions

As ever when tax rates change, HMRC are keen to prevent the bending of rules to save tax at the expense of the Government's coffers. The VAT rate increase is no exception and the 2009 Finance Act introduced anti-forestalling provisions to combat the artificial creation of tax points prior to 1 January where in reality the transaction took place in 2010.

The provisions potentially levy a supplementary VAT charge of 2.5% on the supplier where:

1. the customer cannot recover all the VAT (generally non-business customers but will also include partially exempt businesses); and
2. services are invoiced or paid for before the VAT rate change but received after.

However one of a further four conditions must be satisfied for the supplementary charge to be applied. The conditions are:

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

- a prepayment in excess of £100,000 is made before 1 January, unless it is made on normal commercial terms for a transaction of that type.

The supplementary charge must be accounted for on 1 January 2010 by the supplier.

VAT Schemes

Businesses that operate Flat Rate, Second Hand Goods, and Retail or other approved schemes will need more detailed advice on how they are affected by the change.

Conclusion

Where the tax point falls before or, in the case of services, the supply commenced before 1 January, it should be possible, subject to the anti-forestalling provisions, to apply the 15% rate to some or all of the transaction. It is particularly important to note that the anti-forestalling regulations apply only where the customer is either not registered or partially exempt. A significant proportion of business to business transactions will therefore fall outside the scope of the rules. Further advice may need to be taken to apply the rules to the intricacies of differing industries.

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