



Saffery Champness
CHARTERED ACCOUNTANTS

VAT BRIEFING



October
2009

RETURN OF STANDARD RATE TO 17.5% - ARE YOU PREPARED?

As has been widely publicised, the standard rate of VAT will return to 17.5% with effect from 1 January 2010.

The relatively recent experience of managing the change from 17.5% to 15% will be fresh in most people's minds, and for most the return to the 17.5% rate will simply mean the operation of the special tax point rules in reverse. However, an important difference this time is that there is special anti-forestalling legislation to prevent abuse of those rules.

Tax points - a reminder

The VAT tax point rules are set out in summary in the panels in this briefing. In cases where a supply can be treated as taking place either before or after the date of the rate change, suppliers will have a choice as to what to do. Where the customer can reclaim the VAT there is probably no benefit in adopting the special rules that apply on a change of rate.

In most other cases people will wish to take advantage of the lower rate to the fullest extent they can and apply that rate to the whole of the supply (whereas, when the rate went down, people were anxious to split supplies to take advantage of the part to which the lower rate applied).

Typically, therefore, the question will be: "What happens if I receive payment or issue an invoice before 1 January 2010, but deliver goods or perform a service afterwards?" In most cases, the supplier will be able to opt for the lower rate.

Anti-forestalling

This special legislation works by applying a supplementary charge of 2.5% in specific circumstances, to transactions entered into on or after 25 November 2008.

The supplementary charge is designed to operate (a) when a customer is not entitled to reclaim in full VAT charged to him, and (b) where the basic tax point occurs after the rate change but there is an actual tax point before that date. In addition, one of the following conditions must be met:

- the supplier and customer are connected, directly or indirectly,
- payment is not due until more than 6 months after the supplier's invoice date,
- the payment is financed by the supplier (or someone connected with him), or
- where the ATP is after 31 March 2009 and the value of the relevant supplies (which can include schemes) exceeds £100,000 (unless it can be shown this is normal commercial practice).

Similar provisions apply to grants of rights as an avoidance mechanism. The supplementary charge will also apply to some services that do not have a BTP, or where the BTP is preceded by periodic billing or payment. These "Listed supplies" include construction services, water, fuel and power, and rentals under a long lease (but not premiums).

This briefing cannot give a complete description of these complex measures. If you think you might be affected you should take further advice.

Types of Tax Point		
	Basic	Actual
Goods	Delivery	Invoice
		Payment
		14 day rule
Services	Performance	Invoice
		Payment
		14 day rule

A **Basic Tax Point (BTP)** occurs when goods are delivered or made available to the customer or, in the case of services, when the work is actually performed (which generally means all the work being completed apart from invoicing). There are some supplies that do not have a BTP - rent is a common example.

In the absence of any other tax point, the BTP determines when the tax should be accounted for and therefore the prevailing rate of VAT.

However, there are frequently situations where an invoice is issued before the sale takes place, or a payment such as a deposit is made in advance. These are **Actual Tax Points (ATPs)** which supersede the BTP.

Also, if an invoice is issued within 14 days of the BTP (which can be extended up to 30 days by agreement with HMRC) that date becomes the ATP. HMRC can also agree other types of ATP.

Tax points on an upward change of rate

15% (before 1 Jan)		17.5% (1 Jan and after)	Result
BTP + ATP	1 January 2010		Charge at old rate
		BTP + ATP	Charge at new rate
BTP		ATP	New rate is default position, but seller can opt for old rate
ATP		BTP	Old rate is default position, but seller can opt for new rate (but check anti-forestalling rules)

Transaction examples

Rent

There is no BTP for standard rate rent. If you would normally invoice rent before 1 January for later periods you can charge 15%, or apportion payments received after 31 December for periods spanning the change.

The anti-forestalling provisions will not apply in the case of rent if the invoice is for not more than one year in advance, provided that is in accordance with your normal commercial practice when no VAT rate increase is expected.

Professional services

Accountants, solicitors, and barristers can provide either continuous supplies of services, or one-off supplies. The normal rules should be applied accordingly. Solicitors receiving legal aid payments (SMPs), or barristers using receipted fee notes as invoices, after 31 December can apportion these and apply 15% to work done before 1 January.

Construction services

Work completed before 1 January but paid for or invoiced afterwards can be supplied at 15%. Work in progress on 1 January can be apportioned, based on measurable work or normal costings. Work paid for or invoiced before 1 January but done afterwards can be charged at 15% subject to anti forestalling.

Asset leasing

Where you issue an invoice for periodic payments up to 1 year in advance, some of which fall due on or after 1 January 2010, you will need to reinvoice at 17.5% the payments that fall due after 31 December 2009.

Pubs & clubs

The Treasury has announced a special easement for businesses, such as pubs and clubs, that will carry on trading past midnight on 31 December 2009 in a single session. They will be allowed to account for VAT at 15% on the 1st January income.

Continuous supplies of services

Where there is an ATP prior to 1 January for services provided afterwards the seller should account for VAT at 15% (subject to anti-forestalling). Where the ATP arises on or after 1 January the rate will be 17.5%. However, if some of the work was performed before, the charge may be apportioned (see also Asset Leasing).

Other services

Where there is a single supply of a service which is nonetheless provided over a period spanning the date of the change, there will be a basic tax point falling after 31 December. If all tax points fall on or after 1 January but some work was performed before then the seller may still treat that part of the work as liable to 15%.

Example

An individual customer asks a landowner to invoice him before January 2010 for a day's shooting that will take place during October 2010, so that the whole amount can be charged at 15%. Assuming the other conditions are met, anti-forestalling will not apply in this case provided that full payment is due to be made within 6 months of the invoice date.

Acquisitions

If you acquire goods from other EU member states the tax point is the date of your supplier's invoice or the 15th day of the following month. VAT should be at 17.5% on that basis on or after 1 January.

VAT Accounting

If you have provided goods or services before 1 January but do not raise an invoice until later you may be able to apply the old or the new rate.

If you invoice later at 17.5% you can still subsequently re-invoice at 15%, provided this is done within 45 days of the rate change (i.e. by 14 February 2010). Buyers should take care to ask for credit notes within that time limit, as it will be too late to correct it afterwards.

Goods

Generally the same rules apply to goods as to services. However, it is important to ensure that any pre-payment for goods is for specific rather than generic items.

Special situations

If your business operates a flat rate scheme, or a retail scheme, or a second hand scheme or any other scheme or approval such as self-billing affecting the time at which transactions are recognised, you will need more detailed guidance.

Also, the rate change generally will have a consequence for fuel scale charges and possibly the Payments on Account Scheme.

There are some supplies or businesses that require special consideration and which are beyond the scope of this briefing. These include:

- Coin operated machines
- Investment gold
- Goods in warehouse
- Hire purchase
- Royalties
- Clubs and associations

Saffery Champness

CHARTERED ACCOUNTANTS

Offices in: Bournemouth | Bristol | Edinburgh | Geneva | Guernsey | Harrogate | High Wycombe | Inverness | London | Manchester | Peterborough



LION HOUSE RED LION STREET LONDON WC1R 4GB

T 020 7841 4000 F 020 7841 4100 E douglas.gordon@saffery.com W www.saffery.com

For the VAT Department ring extension 4032 and ask for Douglas, Gary or John

The firm is regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. Saffery Champness is a member of Nexia International, a worldwide network of independent accounting and consulting firms. Saffery Champness Corporate Finance Limited is authorised and regulated by the Financial Services Authority. No responsibility for loss occasioned to any person acting on or refraining from action as a result of the material in this leaflet can be accepted by Saffery Champness.