

VAT Amendments

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Newsletter highlights:

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Introduction

The changes to the VAT Act enacted by means of Act II of 2009 and by Legal Notices 132 and 133 of 2009, which shall come into force on 1 January 2010, implement the amendments to the EU VAT Directive. The changes affect mainly the place of supply rules, as well as introduce additional registration and compliance obligations to taxable persons as well as non-taxable legal

Additional Registration Requirements

Any taxable person established in Malta, who, under the current rules is not required to register for VAT since services are provided to customers established within the EU and for which that customer is liable to pay VAT under the reverse-charge mechanism, must be registered under Article 10 of the VAT Act.

The new amendments also require that taxable persons (unless registered under Article 10 of the VAT Act) established in Malta and in receipt of services for which VAT is due under the reverse-charge mechanism must apply to be registered under Article 12 of the Act. This also applies to non-taxable legal persons in receipt of services for which the place of supply is Malta.

New Compliance Obligations

Companies previously not required to be registered under Article 12 shall be liable to pay VAT on services received under the reverse charge mechanism.

Suppliers will also be required to submit a recapitulative statement which includes details of services supplied to customers established in another EU Member State where the customer is responsible to pay VAT.

Changes in the Place of Supply Rules

For the purpose of determining the place of supply of services, the definition of a taxable person will also include taxable persons not considered to make taxable supplies but are in receipt of services being rendered to them, as well as non-taxable legal persons.

The main change in the place of supply rules is that the supply of services by a taxable person to another taxable person (i.e. business-to-business (B2B) supplies) will be the place where the customer is established.

If, however, the services are provided to a fixed establishment of the customer which is different from the place where the customer's business is established, the place of supply shall be the place where that fixed establishment is located.

The place of supply of services provided to non-taxable persons (i.e. business-to-customer (B2C) supplies) will remain where the supplier is established.

The current exceptions to the general rule for determining the place of supply have also been amended. The new place of supply rules are summarised in page 2. The place of supply for the following services will change with effect from 1 January 2010:

- The place of supply of transport of goods (other than intra-community transport of goods) to taxable persons will shift from where the transport takes place to where the customer is established.
- The place of supply of short-term hiring (not exceeding thirty days for transport and ninety days for vessels) of means of transport has changed to the place where the means of transport is put at the disposal of the customer. The general rule applies for the supply of long term hiring of means of transport.
- The place of supply of restaurant and catering services (other than those on board ships, aircraft or trains) shall now be the place where the services are physically carried out and no longer where the supplier who is providing the service is established.
- The supply of restaurant and catering services for consumption on board ships, aircraft or trains during journeys affected within the community shall now be the point of departure of the passenger transport operation.

New Place of Supply Rules

Place of supply rules according to the revised Schedule 3 of the VAT Act as from 1 January 2010

Part 2 of Schedule 3 to the VAT Act	Business to Business	Business to Customer
General Rule *	Where the customer is established	Where the supplier is established

Exceptions to the general rule - type of supply

Services by intermediaries	General Rule Applies	Place where transaction is supplied
Services connected with immovable property	Where immovable property is situated	Where immovable
Passenger transport	Where transport takes place	Where transport takes place
Other transport of goods (excluding intra-community transport of goods)	General Rule Applies	Where transport takes place
Intra-community transport of goods	General Rule Applies	Place of departure
Services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions	Place where activities are carried out	Place where activities are carried out
Events, services ancillary to transport, work on goods	General Rule Applies	Place where those services are physically carried out
Restaurant services (excluding those on board ships, aircraft of trains)	Place where services are carried out	Place where services are carried out
Short term hiring of means of transport *	Place of disposal of means of transport	Place of disposal of means of transport
Restaurant services on board ships, aircraft, trains during intra-Community passenger transport	The place of departure	The place of departure
Electronic services supplied by a taxable person situated outside the EU to a non-taxable person in the EU	General Rule Applies	Place where customer is established
Provision of Intangible services (see list on page 3) *	General Rule Applies	EU customer - where supplier is established Non EU customer - where the customer is established

* Effective use and enjoyment override



Intangible services are defined as follows:

- a. Transfers and assignments of copyrights, patents, licenses, trade marks and similar rights;
- b. Advertising services;
- c. The 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 item;
- e. Banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- f. The supply of staff;
- g. The hiring out of movable tangible property, with the exception of all means of transport;
- h. The provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- i. Telecommunications services;
- j. Radio and television broadcasting services;
- k. Electronically supplied services.

The Effective Use and Enjoyment Override

If, according to Part 2 of Schedule 3 to the VAT Act (applicable for 1 January 2010), the place of supply of a service is deemed to be in Malta but the service is effectively used and enjoyed outside the Community, then, the place of supply of such service is considered to take place outside the Community. On the other hand, if the place of supply, according to Schedule 3 of the VAT Act, is deemed to be outside the Community but the service is effectively used and enjoyed in Malta, then, the place of supply of such services is considered to take place in Malta. The effective use and enjoyment override applies to the general place of supply rule, to the supply of short-term hiring of means of transport as well as to the provision of intangible services.

New Procedures in Cross Border VAT Refund Procedures

The refund mechanism for companies registered in one Member State applying for VAT refunds from another Member State has been facilitated through the 2008/9/EC Directive. The application for refund will be done through the Member State of establishment of the company applying for the refund. The latter will check the applicant's registration and a decision on whether the refund application is accepted or not must be communicated to the applicant within four months from the date of application.

Conclusion

Taxable persons registered as such under the current rules (applicable until 31 December 2009), will find that the changes in the VAT legislation will have a limited effect in their operations and VAT treatment. Apart from the increase in administrative burden imposed by the changes in the recapitulative statement, very few businesses in Malta will be affected by the change in legislation. The major changes will affect taxable persons providing exempt without credit services and non-taxable legal persons, who, after 1st January 2010, are in receipt of services which are deemed to take place in Malta. Apart from the obligation to register for VAT purposes, they will also be liable to pay VAT in Malta and in certain circumstances may find that their cost base will increase as a result of the change in the VAT legislation.

