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Indirect Tax network

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Amendments to VAT legislation

The Value Added Tax Act (VAT Act) has recently been amended. The amendments fall into two main categories, being those mentioned in the Government Budget for 2009 and those arising from amendments to the VAT Directive (Directive 2006/112/EC) – and on which we had issued a newsletter in August 2008.

Amendments announced in the Government's Budget for 2009

The interest rate applicable to late payments and late refunds has been reduced from 1% per month to 0.75% per month. Furthermore, a number of amendments have been made to the administrative penalty charged in various circumstances. Such amendments mainly refer to a reduction in the capping of the various applicable administrative penalty amounts.

Amendments as a consequence of new EU VAT legislation

The VAT Act has been amended in line with the provisions of Council Directive 2008/8/EC. Such amendments, which are effective from 1 January 2010, include:

1. **Additional registration obligations in the following cases:**

- A taxable person who is not registered under article 10 or 11 of the VAT Act and who provides services to a customer established in another Member State and for which that customer is liable for the payment of VAT, must register for VAT under article 10.
- A taxable person established in Malta who is not registered under article 10, who receives services for which he is liable for the payment of the VAT must, with effect from 1 January 2010, register for VAT under article 12. To date, no registration obligations existed and the reverse charged VAT was payable by means of Form 06.

2. **Additional administrative obligations**

Taxable persons must, as from 1 January 2010, also submit a recapitulative statement in respect of services, other than services that are exempt from tax in the Member State where the transaction is taxable, for which the customer is liable for the payment of the tax. The format of such statement and whether such additional information will be integrated with the statement already due in respect of exempt intra-Community supplies of goods has not yet been confirmed.

Amendments to VAT legislation



3. New place of supply rules for services

The new place of supply rules (which do not impact the place of supply of goods) are effective as from 1 January 2010. We set out below a table showing a summary of the new rules as compared to those applicable in terms of the current provisions of the VAT Act. The rules vary depending on the type of service being provided, the status of the person receiving the service and, in some instances, the place where the supplier is established. In the table, the term “taxable person” refers to that term as defined in the VAT Act i.e. “a person who carries on an economic activity, whatever the purpose or result of that activity”.

Given the wide purport of the amendments and the material impact that they may have on current business operations, you may wish to carefully consider the implications of these new rules e.g. in terms of increased administrative obligations, VAT leakage if input tax incurred is not fully deductible, etc.

TYPE OF SUPPLY		SUPPLIED TO A NON-TAXABLE PERSON OR A NON-TAXABLE LEGAL PERSON NOT REGISTERED FOR VAT		SUPPLIED TO A TAXABLE PERSON	SUPPLIED TO A NON-TAXABLE LEGAL PERSON REGISTERED FOR VAT	SUPPLIED TO A TAXABLE PERSON OR A NON-TAXABLE LEGAL PERSON REGISTERED FOR VAT
		Current place of supply	Place of supply from 01/01/2010	Current place of supply		Place of supply from 01/01/2010
Provision of services not mentioned below		Where the supplier is established	Where the supplier is established	Where the supplier is established	Where the supplier is established	Where the customer is established
Transport and related services	Passenger transport	Where the transport takes place, having regard to the distances covered	Where the transport takes place, proportionate to the distances covered	Where the transport takes place, having regard to the distances covered	Where the transport takes place, having regard to the distances covered	Where the transport takes place, proportionate to the distances covered
	Intra-Community transport of goods	The Member State of departure	The place of departure	The Member State of VAT registration of the customer	The Member State of VAT registration of the customer	Where the customer is established
	Other transport of goods	Where the transport takes place, having regard to the distances covered	Where the transport takes place, proportionate to the distances covered	Where the transport takes place, having regard to the distances covered	Where the transport takes place, having regard to the distances covered	Where the customer is established
	Ancillary transport activities, such as loading, unloading, handling and similar activities	Where the service is physically carried out	Where the service is physically carried out	The Member State of VAT registration of the customer in the case where the services are ancillary to intra-Community transport	The Member State of VAT registration of the customer in the case where the services are ancillary to intra-Community transport	Where the customer is established

Amendments to VAT legislation



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		Current place of supply	Place of supply from 01/01/2010	Current place of supply		Place of supply from 01/01/2010
Catering services	Supply of restaurant and catering services (other than on board ships, aircraft or trains)	Where the supplier is established	Where the service is physically carried out	Where the supplier is established	Where the supplier is established	Where the service is physically carried out
	Supply of restaurant and catering services for consumption on board ships, aircraft or trains during the part of passenger transport effected in the Community	Where the supplier is established	The point of departure of the transport operation	Where the supplier is established	Where the supplier is established	The point of departure of the transport operation
Telecommunication services and Radio and television broadcasting services	Provided by a taxable person established outside the Community	Where the supplier is established if the customer is established outside the Community; Where the service is effectively used and enjoyed if the customer is established in the Community	Where the customer is established if the customer is established outside the Community; Where the service is effectively used and enjoyed if the customer is established in the Community	Where the customer is established	Where the supplier is established if the customer is established outside the Community; Where the service is effectively used and enjoyed if the customer is established in the Community	Where the customer is established
	Provided by a taxable person established in the Community	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established
Electronically supplied services	Provided by a taxable person established outside the Community	Where the supplier is established if the customer is established outside the Community; Where the service is effectively used and enjoyed if the customer is established in the Community	Where the customer is established	Where the customer is established	Where the supplier is established if the customer is established outside the Community; Where the service is effectively used and enjoyed if the customer is established in the Community	Where the customer is established
	Provided by a taxable person established in the Community	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established

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		Current place of supply	Place of supply from 01/01/2010	Current place of supply		Place of supply from 01/01/2010
Supply of the following services	Transfer and assignment of copyrights, patents, licences, trade marks and similar rights;	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established	Where the customer is established if the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the customer is established
	Advertising services;					
	Services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;					
	Obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this paragraph;					
	Banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;					
	Supply of staff;					
	Hiring out of tangible movable property, with the exception of all means of transport;	Where the supplier is established	Where the means of transport is actually put at the disposal of customer	Where the supplier is established	Where the supplier is established	Where the means of transport is actually put at the disposal of the customer
	Short-term (as defined) hiring of means of transport	Where the supplier is established	Where the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the supplier is established	Where the supplier is established	Where the customer is established
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;	Where the supplier is established	Where the customer is established outside the Community; Where the supplier is established if the customer is established in the Community	Where the supplier is established	Where the supplier is established	Where the customer is established	

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		Current place of supply	Place of supply from 01/01/2010	Current place of supply		Place of supply from 01/01/2010
Supply of the following services	Services by intermediaries	Where the underlying transaction is carried out	Where the underlying transaction is supplied	The Member State of VAT registration of the customer	The Member State of VAT registration of the customer	Where the customer is established
	Services connected with immovable property	Where the immovable property is located	Where the immovable property is located	Where the immovable property is located	Where the immovable property is located	Where the immovable property is located
	Cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including ancillary services)	Where the activity is physically carried out	Where the activity is physically carried out	Where the activity is physically carried out	Where the activity is physically carried out	Where the activity is physically carried out
	Valuations of and work on movable tangible property	Where the service is physically carried out	Where the service is physically carried out	The Member State of VAT registration of the customer in the case where goods are transported out of the country where service is physically performed	The Member State of VAT registration of the customer in the case where goods are transported out of the country where service is physically performed	Where the customer is established

These notes are designed to keep readers abreast with financial and tax developments. They are not intended to be a definitive or comprehensive analysis of the subject and should not be acted upon without prior consultation with the Partners or Senior Consultants of the firm. For further details please do not hesitate to contact Neville Gatt or David Ferry at: