

VAT international newsletter*

The VAT Package –
New place of supply rules for services

Issue 9, September 2009

Prepared for the VAT Package?

The VAT Package will come into effect on 1 January 2010 and brings significant changes to key areas of VAT legislation that impact all international businesses, including both EU and non-EU businesses. By the time of introduction, businesses will need to be compliant with the new regulations to avoid potential penalties for incorrect accounting. Affected companies need to start addressing the issues arising from the introduction of the VAT Package quickly to ensure that there is sufficient time to reconfigure accounting systems, ERP-systems, VAT reporting procedures to minimise the business disruption that these changes may cause.

The VAT Package is going to affect the following key VAT elements:

1. Place of supply of services

The rules for determining the VAT treatment of international services will change. The principle of taxation at the place of consumption will be introduced as a main rule. This means that the place of supply will shift towards the country where the recipient is located.

2. Reporting obligations

Filing requirements will be introduced for businesses making intra-EU supplies of services. This will add significant compliance burdens on businesses and failure to comply may result in severe penalties

3. 8th Directive refunds:

A new set of rules for EU businesses under which they can reclaim VAT incurred in Member States where they are not established for VAT purposes will be reformed. The new system will include electronic filing, a detailed timetable for processing refund applications and the right to interest on overdue refunds.

4. Electronically supplied services

The special scheme for electronically supplied services applicable too non-EU businesses will be expanded to include telecommunication and broadcasting services. This may have a substantial impact on EU and non-EU businesses (expected to come into force from 1 January 2015).

Contact

For more detailed information, please do not hesitate to contact your local PwC contact:

Espen Qvist
+47 95 26 04 07
espen.qvist@no.pwc.com

The information contained in this publication should not be relied on as professional advice and should not be regarded as a substitute for advice in individual cases. No responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this publication is accepted by the author or the publisher.

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. *connectedthinking is a trademark of PricewaterhouseCoopers LLP.

1. Place of supply of services

The new rules will mainly imply changes to the VAT treatment of international services, involving in particular cross-border business-to-business (B2B) supplies, including but not limited to the following type of services:

- Supplies of services by intermediaries
- Transport of goods
- Intermediary for intra-EC transport of goods
- Cultural, artistic, sporting, scientific, educational, entertainment and similar services (From 1 January 2011, but not including the admission or admission-related services)
- Ancillary transport services (loading, unloading, handling and similar)
- Valuation and work on movable goods (repair services)
- Restaurant and catering services other than on board ships, aircraft or trains (NB! New rule: Where the services are physically carried out, includes also B2C supplies)
- Restaurant and catering on board ships, aircraft and trains within the Community (NB! New rule: Point of departure, includes also B2C supplies)
- Short-term hiring of means of transport (90 days for vessels, 30 days for other)(NB! New rule: Where the means of transport is actually put at the disposal of the customer)
- Long-term" hiring of means of transport

The principle of taxation at the place of consumption as a main rule implies that the recipient should report VAT according the legislation in the recipient's country by the reverse charge procedure.

The following areas may be affected by the new place of supply rules:

- Inter-company transactions
- Management and administrative services
- Supplies of services to headquarter or fixed establishments
- determining customer status and location, and how to deal with global contracts;
- how the B2B rules will apply in relation to business customers receiving supplies for a non-business activity;
- hire of means of transport, where the key issues are what is meant by the terms "put at the disposal" and "continuous possession or use";
- the definition of restaurant and catering services, in particular what is the level of service that turns a supply of goods into one of services;
- cultural, artistic, educational, entertainment services, in particular what is covered by "admission to an event";
- how the provision to deal with 'force of attraction' will be applied (i.e., how the term "intervene" in new article 192a Principal VAT Directive will be interpreted by Member States);
- transparency in relation to how Member States will apply the 'use and enjoyment' provisions; and
- for telecoms, e-services and broadcasting services, how to determine customer location for B2C supplies when the rules change in 2015.
- Non-EU businesses which provide or receive services to or from other non-EU entities may also be affected where the new rules deem such services to be "effectively used and enjoyed" in the EU.
- The Member States has an option to change the time of the supply rules (tax point)
 - no later than the time the invoice is issued;
 - no later than the time the payment is received;
 - where an invoice is not issued, or is issued late, within a specified period from the date of the chargeable event.

The main rules for the VAT treatment of the supply of services for cross-border business-to-customer (B2C) supplies maintain.

2. Reporting obligations

A new obligation to report in an EC Sales List (ESL, or recapitulative statement) will take effect for services rendered between EU businesses where the recipient is liable to pay VAT in its country. The ESL for services is based on the same reporting system as the current system for Intra-Community supplies and Intra-Community acquisitions of goods.

Reporting through ESL may have the following implications:

- Additional compliance burden
 - Both the supplier and the customer have an obligation to report ESL for services.
 - The supplier has to receive information about whether services supplied are VAT taxable or VAT exempt in the country of the recipient
 - Electronic sales listing must state country code, customer VAT numbers, value of supplies and an indicator for services
- There is no requirement to report supplies that are 1) VAT exempt in customer's Member State, 2) B2B if the customer is not VAT registered or 3) B2C supplies.
- Reporting periods may be introduced on a monthly basis
- Failure to comply can result in penalties

3. 8th Directive refunds

From 1 January 2010 the 8th VAT Directive procedure is to be replaced implying changes for businesses established in the EU when applying for VAT refund of incurred costs in an other Member State. This will have an impact for non-EU businesses if they are registered for VAT in a Member State and occur costs with VAT in an other Member State.

The changes will in principle imply the following changes:

- New electronic procedure which takes place in the country of establishment of the applicant (simplifying)
- There are a pre-defined set of information to be provided in the refund application
- No refund could be the result if,
 - VAT has incorrectly been charged
 - Charges are VAT exempt,
 - Member State of establishment will forward this request to Member State of refund (first check done)
 - Entitlement to refund according to the legislation in the Member State of refund
 - Pro-rata according to Member State of establishment
 - Correction of refund application according to modification of pro-rata
 - Tighter timeframes for processing and payment of refunds

4. Actions to be taken

- Businesses need to undertake a full impact assessment of the changes to identify the transactions, processes and controls affected by the new rules, and assess whether their billing, accounting and ERP systems are able to cope with the changes.
- Businesses need to keep track of how the new VAT Package rules are being implemented across the EU Member States in which they operate, and how these will affect them.
- In order to meet the compliance obligations, mitigate commercial risk and minimise disruption to business, for services provided businesses will need to implement solutions to ensure they:
 - identify services that need to be included in their ESL;
 - will not wrongly include services in their ESL;
 - issue correct invoices to their customers; and
 - have obtained and verified the VAT numbers of their business customers.

- For services received, businesses will need to ensure:
 - their service providers will not wrongly include the supply in their ESL;
 - their service providers will not charge foreign VAT where they should not;
 - that invoices are received where the reverse charge applies; and
 - provide VAT registration number to the foreign service providers

- The following should be further considered in this respect:
 - What is the new VAT liability of your supplies?
 - VAT taxable supply according to the legislation in the country of the recipient?
 - Do you have sufficient data about your customers?
 - Who is the recipient if a customer has multiple “fixed establishments”?
 - What impact will this have on your positive rated services eg. repairs?
 - What will impact of new ‘use and enjoyment’ rules be?
 - Understand current ERP set-up
 - Identity additional VAT codes required (AP/AR)
 - Review master data (AP/AR)
 - Obtain and verify VAT numbers of customers
 - Define products as being goods or services
 - Determine requirements for change across all systems
 - Set up ESL for intra EC services
 - Implement and test changes

- The VAT Package changes will have implications for a business's existing billing, accounting and/or ERP systems and processes. Both sales (AR) and/or purchases (AP) may be affected by these changes and work will need to be undertaken to amend tax code structures/ tax configuration tables and invoicing details to make sure that systems are compliant with the new rules as well as being able to produce the new reports (ESLs) required.

- Businesses may need to review the way in which their international business is structured, including their global contracts, if they are to ensure continued competitiveness as from 1 January 2010.

- The changes to the place of supply rules and extension of the reverse charge for B2B services may lead to absolute costs (in addition to compliance issues) for exempt/partially exempt businesses (e.g. the financial services, education, healthcare and real estate sectors) if appropriate steps are not taken. This will be most relevant for those businesses which have implemented offshoring, outsourcing or other arrangements where the recipient of the services is currently in the EU and receives those services VAT-free at present.

- The VAT Package changes may also have an impact on businesses which have implemented global contracting arrangements, particularly where consumption takes place primarily/exclusively in one Member State. Further, multinational companies operating in the EU (particularly those groups whose ultimate parent is based outside the EU) typically have complex group structures and supply chains which have evolved over the years in response to a number of tax and non-tax considerations. For both, consideration may be needed to determine how they may best take advantage of the opportunities, and minimise any adverse impact, that will result from the rule changes.

5. How PwC can help

PwC VAT specialists can review the international services and associated VAT treatments that you use to understand the impact of the package on your business.

- Do you know what transactions your business undertakes that may be affected by these new rules?
- Do you have a clear plan to ensure compliance by 1 January 2010?
- Have you established the scope of the changes to systems and processes that the VAT Package will require?
- Have you identified the resources you will require to make the necessary changes?
- How will your business processes, in particular the accounting systems, actually deal with the changes to the VAT treatment of transactions described in the VAT package?

- How will your financial accounting systems ensure that the correct place of supply for services continues to be determined correctly?
- How will your system produce the recapitulative statement of supplies of services to which the reverse charge applies?
- We have Enterprise Resource Planning (ERP) expertise, developed through process mapping and ERP reviews of major international businesses, and our experts can work together with our VAT specialists and your IT function to identify how your systems and process will need to adapt. Our teams are also available to work with you during implementation and testing to ensure that you have the processes and systems in place to meet all your requirements.

PwC may assist with:

- Mapping to assess how, if, and where the new legislation will have an impact on your business model, which adjustments are required, and/or which opportunities are linked to the new legislation, including
 - Identity additional VAT codes required (AP/AR)
 - Review master data (AP/AR)
 - Obtain and verify customer VAT numbers
 - Define products as being goods or services
 - Determine requirements for change across all systems
 - Set up ESL for intra EC services
- Collaborating and co-working on any in-house project teams.
- Designing a bespoke change strategy to ensure that your business continues to be VAT compliant after 1 January 2010.
- Implementing and rolling out this strategy with regard to business policies, personnel, processes, and systems.
- Making changes to any system based tax logic and building new reports needed to make recapitulative statements.
- Monitoring the implementation of legal provisions — including those with direct compliance impact — in the Member States of your choice to shape your VAT strategy and anticipate systems changes.
- Providing in-house training / workshops (standard or tailored to specific needs) to explain in-depth the tax and legal aspects of the new legislation to achieve a high standard of in-house awareness and know-how.
- Assisting in making your voices and interests heard at both the EU level and the local level in respect of the implementation and interpretation of the VAT Package.

6. Why PwC

Our Norwegian VAT group has individuals with experience from handling VAT issues in various countries within and outside Europe. We are therefore very well positioned to coordinate international VAT assignments from Norway in a very efficient way. We have the competency and experience to see issues, raise questions and find solutions.

Our approach combines the specialist expertise of experienced VAT professionals with experienced systems specialists and specialists in indirect tax function effectiveness. This allows us to take an integrated and holistic approach that can be adapted to our client's needs in terms of changes to the business, systems, process and/or operating structure. Having clarity around our client's challenges helps us put ourselves in our client's shoes, and together achieve a successful transformation strategy, one which will ensure our client is left in the best position to ensure compliance, reduce risk and maintain competitiveness leading up to 1 January 2010 and beyond.

The TNS Global Tax Monitor recognises PricewaterhouseCoopers as the leading firm globally for tax advice, by reputation. Our reputation as global market leader extends to the various tax service areas, including indirect taxes/VAT, where we have a strong lead over the competition. These results are based on the year-ending Q1 2009 figures, with a sample size of 3,202 primary buyers of tax services globally.

As such, we have the expertise and experience to help clients respond to the significant changes and additional compliance obligations that the VAT Package will bring from 1 January 2010.