



Value Added Tax

Consultancy Services

photo courtesy of the European Court of Justice

What is the Tax Point?

December 2008

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What is the Tax Point?

You cannot fail to know that the new standard rate of VAT of 15% applies to sales of standard rated goods and services made on or after 1 December 2008. The "tax point" is the time when a sale takes place for VAT purposes. So if the "tax point" is on or after 1 December 2008 the new rate will apply.

This guidance note describes the effect of the change on various types of transactions, beginning with stage payments under a construction contract or fee agreement related to a construction project, and moving on to "normal" transactions and others that you may encounter less frequently.

Where the client cannot recover VAT then it will be important to ensure that they pay the lower rate where appropriate. Clients in this category include those in the education (private, charitable, further and higher), financial, insurance and healthcare sectors, government departments, housing associations and private individuals.

The change does not affect sales of goods or services that are charged at the zero or reduced rates of VAT or are exempt.

Construction Services

There are special "tax point" rules that apply to the supply of construction services, including design, advisory and supervisory services

The typical construction contract involves the client in making stage payments to the contractor. The tax point is normally the time the contractor issues a VAT invoice; or a payment is received, whichever happens first.

Where work is ongoing under a stage payment contract on 1 December any VAT invoices issued or payments received on, or after, that date will be liable to VAT at 15%, even if some of the work was actually performed before 1 December.

It is important to note this last point. The "tax point" is not the date the valuation was completed or the date the architect's certificate was issued. It is when the contractor issues a VAT invoice or payment is received, whichever is earlier.

Contractors will often use "authenticated receipts" for stage payments. A contractor may

issue an "invoice" requesting payment but this will not be a VAT invoice. When the contractor receives payment he must issue within 30 days what is known as an "authenticated receipt" which is used in place of a VAT invoice. The tax point is in consequence only fixed when payment is received.

Should you be dealing with a contract, such as a demolition contract, that only involves a single payment (excluding any agreed retention), perhaps when the work has been completed or is nearing completion, the supply is liable to the normal tax point rules including a final (basic) point when the work is completed. Tax points that occur on or after 1 December for construction services that are covered by the normal rules will be liable at the new rate. Any retention payment is treated separately.

Optional change of rate rules

There are optional changes of rate rules that may apply in the following circumstances:

(i) Stage payment contracts

Where, before 1 December, a contractor has issued a VAT invoice or received a payment which covers work performed on or after 1 December then the contractor can apportion the amount involved (based on measurable work or normal costing or pricing structures) and recalculate the VAT at 15% on the work performed on or after 1 December.

(ii) Other (single payment) construction contracts

Where, in the case of construction work completed on or after 1 December, a VAT invoice was issued or payment received for the work, when the VAT rate was still 17.5%, then provided the work was completed on or after 1 December you can recalculate the VAT on the full contract price using the 15% rate in force when the work was completed.

In both cases the contractor may need to issue a credit note.

Supplies Subject to the Normal Rules

The basic tax point for goods is usually the date when they are sent to the customer or the customer takes them away, including supplies under hire-purchase, credit sale or conditional sale agreements. In some circumstances it may be the date they are made available for the

customer to use. The basic tax point for services is usually the date when the service is performed, i.e. completed.

The basic tax point for goods and services is overridden by an actual tax point. Where the supplier either issues a VAT invoice or receives a payment before the basic tax point, the tax point for the amount invoiced or received is the date the invoice is issued or payment is received, whichever happens first, i.e. the tax point is earlier. Where the supplier issues a VAT invoice up to 14 days after the basic tax point (or a longer period where this has been allowed by HMRC), the date when the invoice is issued becomes the tax point, i.e. the tax point is later.

By concession, HMRC has agreed that the normal 14 day limit can be extended to 30 days for all businesses where goods or services to be invoiced were provided between 18 November 2008 and 30 November 2008 inclusive. Businesses that have previously agreed an extension to the 14 day limit with HMRC can continue to use that time limit but where it is less than 30 days they can opt to use the 30 day limit.

STATUTORY INSTRUMENTS

2008 No. 3020

VALUE ADDED TAX

The Value Added Tax (Change of Rate) Order 2008

| | | |
|----------------------------------|---------|--------------------|
| Made | - - - - | 24th November 2008 |
| Laid before the House of Commons | - - - - | 24th November 2008 |
| Coming into force | - - - - | 1st December 2008 |

The Treasury make the following Order in exercise of the powers conferred by sections 2(2) and 21(7) of the Value Added Tax Act 1994(a).

1. This Order may be cited as the Value Added Tax (Change of Rate) Order 2008 and comes into force on 1st December 2008.
2. The Value Added Tax Act 1994 shall be amended as follows.
3. In section 2(1) (rate of VAT)(b), the rate of tax charged by virtue of that section shall be decreased by 14⁷/₁₀ per cent.
4. In section 21(4) (value of imported goods)(c) for "28.58" substitute "33.34".

24th November 2008
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order, which comes into force on 1st December 2008, reduces the rate of Value Added Tax by 14⁷/₁₀ per cent to effect a reduction from 17.5 per cent to 15 per cent and makes a consequential change to the Value Added Tax Act 1994. This Order will have effect from 1st December 2008 to 30th November 2009.

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from H M Revenue and Customs, 100 Parliament Street, London SW1A 2BQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

(a) 1994 c.23, section 2(2) was amended by paragraph 2 of Schedule 31 to the Finance Act 2001 (c.9), section 21(7) was inserted by section 6 of the Finance Act 1995 (c.4).
(b) Section 2(1) was amended by section 21(2) and (3) of the Finance Act 1995 (c.4) and section 9(2) and (3) of the Finance Act 2001 (c.9).
(c) Section 21(4) was inserted by section 23 of the Finance Act 1995 and was amended by section 12 of the Finance Act 1999 (c.16).

The new rate applies to all VAT invoices issued on or after 1 December 2008, except where the goods or services were supplied more than 14 (or by concession 30) days before the issue of the VAT invoice. For example, if a VAT invoice was issued on 1 December for goods or services provided before 18 November 2008, or payment was made before 1 December, the sale takes place before 1 December and the old rate of 17.5% must be used. On the other hand, if a VAT invoice was issued on 1 December for goods or services provided between 18 November 2008 and 30 November 2008 inclusive the new rate of 15% must be used.

Under the normal rules, all payments received before 1 December 2008 and VAT invoices issued before 1 December 2008 for standard rated sales will be liable to the old rate of 17.5%.

The rate of VAT to be used for credit notes is the one which was in force at the time of the original supply. If the supply was in November 2008 and VAT was charged 17.5%, the credit note must show VAT at 17.5%.

In other situations, there can be two or more tax points. For example, a deposit may be paid for goods to be delivered later. A deposit received before 1 December 2008 will be liable to VAT at 17.5%. However, if the goods are not delivered (and the balance of the price is not invoiced or paid for) until on or after 1 December 2008, the 15% rate will apply when it comes to accounting for the remaining VAT that is due. However, it is also necessary to consider the special change of rate rules which are described in the next section.

Advance Payments

Where a part payment was made before 1 December, the old rate applies to the part payment. VAT must be accounted for on a deposit at the rate in force when it is received. Where a deposit has been paid before 1 December 2008 for goods or services that will be supplied after the rate change the supplier will have the option of applying the 15% rate of VAT.

The optional change of rate rules apply to pre-payments and deposits received before a change of rate, but relating to goods or services to be provided after a change of rate. They also apply when VAT invoices are issued before a change of rate which relate to goods or services to be provided after a change of rate.

So, if a supplier received a payment before 1 December 2008, or issued a VAT invoice before 1 December, for goods that they will provide, or services that they will carry out after 1 December 2008, they have the option of applying the 15% rate, subject to complying with some conditions including providing a credit note in cases where they have previously issued a VAT invoice. There will be little or no benefit in doing so where the customer can recover all the VAT charged to them.

Continuous Supplies of Services

Where services are supplied on a continuous basis and payments are received regularly or from time to time, there is a tax point every time the supplier issues a VAT invoice; or receives a payment, whichever happens first.

If payments are due to be made at regular intervals, then it is possible to issue a VAT invoice at the start of any period of up to one year (provided that more than one payment is due in the period) to cover all the payments due in that period. For each payment the invoice should set out the VAT-exclusive amount, the date on which the payment is due; the rate of VAT; and the VAT payable.

The supplier then accounts for the tax on any payment on the earlier of the date on which it is due; or the date it is received. The recipient cannot reclaim, as input tax, any VAT shown on the VAT invoice until the date on which the payment is due; or the supplier has received the payment, whichever happens first.

VAT invoices covering periods up to one year ahead, giving the amounts and dates when payments are due, are no longer valid for any payments due after the change of rate. The invoices cannot be used to support claims for input tax deduction.

The supplier must issue replacement VAT invoices for the payments due after the change, showing tax chargeable at the new rate. Replacement VAT invoices issued in these circumstances must refer to and cancel that part of the original VAT invoice which has been superseded.

The same procedures apply to continuous supplies of goods, but these are largely restricted to supplies of water, gas and electricity which are not always subject to the standard rate of VAT.

Once again, the supplier has the option of accounting for tax at the new rate on that part of the supply made after the change, even though the normal tax point occurred earlier (for example, where a payment is received in advance of the supply). The supplier should account for tax on the basis of the value of the services actually supplied or performed, before or after, the change as appropriate

Imported Services Subject to the Reverse Charge Provisions

Where services are received from abroad that are subject to the reverse charge, the tax point is the date payment is made for the services. The special change of rate rules can be used in cases where payment has been made before 1 December 2008 for single supplies of services completed after, or for continuous supplies that span that date. For single supplies the VAT can be recalculated at 15% on the full amount and for continuous supplies on the part of the payment that covers the services supplied on or after 1 December.

Acquisitions

A business will be required to account for acquisition VAT where they acquire goods from other EC Member States. The tax point is the 15th day of the month following the one in which the goods were sent, or the date the supplier issued their invoice. Acquisitions taking place on this basis after 1 December 2008 will be subject to VAT at 15%.

However, if the supplier issued an invoice to before 1 December 2008 for goods that were not sent until after that date, the VAT previously accounted for at 17.5% can be recalculated using the new rate of 15%. However, this will probably only be necessary if the business is unable to recover the full amount of VAT already accounted for as input tax.

Imports

For import VAT purposes goods are generally treated as imported when they arrive in the UK and are entered to "free circulation". This can be either by direct import (from a place outside the customs territory of the EC) or indirect import (removal to the UK via another Member State within the EC).

Leasehold Property

The tax point for standard rated property rentals is the date a VAT invoice is issued or payment is received, whichever happens first. The special change of rate rules will apply in cases where rentals are invoiced or paid in advance. So where the landlord has issued a VAT invoice or received payments before 1 December 2008 for rental periods that span 1 December, they can apportion the rent involved and recalculate VAT at 15% on the part that applies to the period from 1 December. They may also need to issue a credit note.

The rules described above relating to continuous supplies of services and invoices covering all payments in a period of up to one year may also be relevant.

Freehold Property

The basic tax point for a freehold sale is the date of the completion of the conveyance. An earlier tax point is created where (for a standard rated supply) a VAT invoice is issued beforehand or the seller receives all, or part of, the purchase price before completion. In England the payment of a deposit to a stakeholder does not create a tax point.

The special change of rate rules can be applied in cases where a VAT invoice has been issued, or payment is received, before 1 December for property on which completion does not take place until after that date. The seller can recalculate VAT at 15% on the amount invoiced or paid, but may need to issue a credit note to the buyer.