

CHAPTER 22

INTERNATIONAL ASPECTS: SERVICES

22.1 Introduction

For VAT purposes, the “place of supply” is the place where the supply is liable to VAT.

Where the place of supply of services is in an EU country, that supply is liable to VAT (if any) in that country and in no other country. If that country is not the UK, the supply is outside the scope of UK VAT.

Where the place of supply of any services is outside the EU, that supply is not liable to VAT in any EU country (although local taxes may apply). The significance for a UK business is as follows.

- **If a UK business supplies services and the place of supply is in the UK**, any VAT due must be accounted for to HMRC. This applies regardless of where the customer belongs.
- **If a UK business supplies services and the place of supply is in another EU country**, either the UK supplier or the customer is liable to account for any VAT due to the VAT authorities in that country.

22.2 New rules from 1 January 2010

New rules on intra community supplies of services came into force on 1 January 2010, as a result of an EC wide alignment of the VAT rules. This has necessitated a number of involved changes to the VAT place and time of supply rules, and will also entail suppliers of cross border EC services making EC Sales list reports from 1 January 2010. The changes are mainly in S.7A VATA 1994 and Schedule 4A VATA 1994.

VAT Notice 741A also provides useful guidance on the new services rules.

VAT
Notice
741A

Basic place of supply rule

Under s.7A VATA 1994 a supply of services is made:

- In the case when the recipient of the services is a relevant business person, in the country in which **the recipient belongs**, and
- Otherwise in the country in which **the supplier belongs**.

[VATA
1994, s.7A](#)

The first indent is commonly referred to as a “Business to Business” or “B2B” supply whilst the second indent is commonly referred to as “Business to Consumer” or “B2C” supply.

A relevant business person is a person who is

- A taxable person within the meaning of Art 9 of Council Directive 2006/112/EC;
- Is registered for VAT;
- Is identified for VAT in accordance with the law of a member state other than the UK, or
- Is registered under an Act of Tynwald for the purposes of any tax imposed by or under an Act of Tynwald which corresponds to value added tax,

[VATA
1994,
s.7A\(4\)](#)

and who receives the services **otherwise than wholly for private purposes.**

Under Art 9 of Council Directive 2006/112/EC there is no registration requirement in order for the trader to be regarded as a taxable person and consequently businesses which are not registered can be regarded as a "relevant business person" for these purposes.

A supplier should obtain commercial evidence which shows that their customer is outside the UK and does not receive their supply for a wholly private purpose.

VAT registration numbers are the best evidence that the supply is not received for a wholly private purpose and should be requested. If the customer is unable to provide a VAT number, the service provider can accept alternative evidence. This includes certificates from fiscal authorities, business letterheads or other commercial documents indicating the nature of the customer's activities. Such evidence should be kept as part of the service provider's records. Where VAT numbers are available, they should be shown on the service provider's invoice.

Some customers may be VAT registered but have non-business as well as business activities. Examples of such customers are government departments and municipal authorities or similar bodies. In such circumstances provided the customer receives the services for the purpose of their business or non-business activities (such as statutory duties or charitable activities) the place of supply is determined by where the customer belongs. If the services are being used for a wholly private purpose, it is not a "business to business" supply. Instead you will need to decide whether the "business to consumer" general rule or one of the other place of supply rules applies.

Illustration 1

UK Parent Co charges its EU subsidiary and its non EU subsidiary a quarterly fee for management services.

From 1 January 2010 both invoices will be outside the scope of VAT as the services are business to business and therefore supplied where the recipient belongs.

Reverse charge

Under s.8 VATA 1994 the reverse charge on services received from abroad legislation is amended. It now requires a reverse charge to be accounted for by the recipient of a supply of services (as if he had made a supply of those services) when the supply is made by a person outside the UK to a recipient who is a relevant business person belonging in the UK and the place of supply of those services is the UK. However, this provision does not apply to any of the services listed as exempt in Sch 9 to VATA 1994.

[VATA 1994, s.8](#)

Illustration 2

An overseas Parent Co charges its UK subsidiary a quarterly fee for management services.

From 1 January 2010 there will be a reverse charge in the UK subsidiary as the services are business to business and therefore supplied where the recipient belongs. This would be the case irrespective of whether the parent company was EU or non EU.

Belonging

Section 9 of VATA 1994 is replaced in its entirety. This covers the "belonging rule", and now provides the following rules to determine where either the supplier or the recipient of a service belongs.

[VATA 1994, s.9](#)

A relevant business person is treated as belonging in the relevant country. This means:

- If the person has a business establishment, or some other fixed establishment in a country and none in any other country, that country;
- If a person has business establishments or other fixed establishments in more than one country, the country in which the relevant establishment is (that is, the establishment most concerned with the supply or receipt of the services), and
- Otherwise the country in which the person's usual place of residence is.

A person who is not a relevant business person is treated as belonging in a country in which their usual place of residence is - this would include VAT registered individuals acting in a wholly private capacity.

22.3 Special rules (B2B and B2C)

As under the old rules there are a number of overrides to the normal rules. The overrides which apply to B2B and B2C supplies are detailed in Part 1, Schedule 4A VATA 1994.

[VATA 1994, Sch 4A Part 1](#)

[VATA 1994, Sch 4A Part 1](#)

Services relating to land

This rule follows the existing rule by placing the supplies in the country in which the land is situated. Para 1(2) sets out the services affected by this rule as follows:

- (a) the grant, assignment or surrender of any interest in or right over land,
- (b) the grant, assignment or surrender of a personal right to call for or be granted any interest in or right over land,
- (c) the grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to land (including the provision of holiday accommodation (including beach huts, chalets, caravan, houseboat or tent held out as holiday accommodation or suitable for holiday or leisure use), seasonal pitches for caravans and facilities at caravan parks for persons for whom such pitches are provided and pitches for tents and camping facilities),
- (d) the provision in an hotel, inn, boarding house or similar establishment (whether with or without the provision of facilities) of sleeping accommodation or of accommodation in rooms which are provided in conjunction with sleeping accommodation or for the purpose of a supply of catering,
- (e) any works of construction, demolition, conversion, reconstruction, alteration, enlargement, repair or maintenance of a building or civil engineering work, and
- (f) services such as are supplied by estate agents, auctioneers, architects, surveyors, engineers and others involved in matters relating to land.

Passenger transport

The transport of passengers (or luggage and motor vehicles accompanying passengers) is treated as being made in the country where the transportation takes place and in the case of more than one country, in proportion to the distances covered in each. However, transport which takes place outside the territorial jurisdiction of a country takes place wholly in that country if :

[VATA
1994, Sch
4A Para 2](#)

- it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
- the means of transport used does not stop (except in emergency) or put into land in another country in the course of that journey.

A pleasure cruise is regarded as transport of passengers and all services provided as part of the cruise follow the place of supply rules given here. This includes a cruise wholly or partly for education or training.

Hiring means of transport

The short term hire of a means of transport is to be treated as made in the country where the transport is put at the disposal of the customer. Short term is a continuous period not exceeding 30 days, unless the transport is a vessel, in which case 90 days.

[VATA
1994, Sch
4A Para 3](#)

Where such a supply is effectively made in the UK but the services are to any extent effectively used and enjoyed in a country which is not a member state, then the supply is treated as made to that extent in that other country. Similarly, where such a supply would be treated as made in a country which is not a member state, but the supply is to any extent effectively used and enjoyed in the UK then the supply is treated as made to that extent in the UK.

Cultural, educational and entertainment services

A supply of such services is treated as supplied in the country in which the services are physically carried out. This applies to:

[VATA
1994, Sch
4A Para 4](#)

- (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and
- (b) ancillary services relating to such activities, including services of organisers of such activities.

The rules within Para 4 are set to be replaced with Para 9A and Para 14A with effect from 1 January 2011 (see 22.6 below).

Restaurant and catering services

Supplies of restaurant and catering services, other than EC on-board restaurant and catering services (see below) are made in the place where they are physically carried out.

[VATA
1994, Sch
4A Para 5](#)

EC on-board restaurant and catering services

The provision of restaurant or catering services on board a ship, train or aircraft in connection with the transportation of passengers during an intra EC journey is treated as made in the country where the relevant point of departure (that is the first place in the journey at which passengers can embark) is located.

[VATA
1994, Sch
4A Para 6](#)

An intra EC journey is more formally referred to as an "intra EC passenger transport operation" which starts and ends in EC member states, and does not stop in a place outside the EC for embarkation or disembarkation.

A return stage of a return passenger transport operation is regarded as a separate passenger transport operation. A return operation is one that takes place in more than one country but is expected to end in the country in which it began, and the return stage is the stage which ends in the final destination and begins with the last stop in a place at which there has not been a previous stop during the operation.

Hiring of goods

[VATA
1994, Sch
4A Para 7](#)

Hiring of goods other than means of transport is covered by the basic rule. However, if a supply is treated as made in the UK, but the goods are to any extent effectively used and enjoyed in a country which is not a member state then the supply takes place to that extent in that country.

Similarly, if the supply is treated as made in a non EC state, but the goods are to any extent effectively used and enjoyed in the UK then the supply is treated as made in the UK to that extent.

Telecommunication and broadcasting services

[VATA
1994, Sch
4A Para 8](#)

This supply again follows the basic rule, with an "effectively used and enjoyed modification" as above.

Broadcasting includes both radio and television broadcasting.

Telecommunication services means services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including :

- (a) the related transfer or assignment of the right to use capacity for such transmission, emission or reception, and
- (b) the provision of access to global information networks.

22.4 Exceptions in relation to supplies made to a relevant business person (B2B only)

[Part 2
Sch 4A
VATA
1994](#)

Under Part 2, Schedule 4A VATA 1994 some supplies have separate rules for when they are made to a relevant business person. When made to any other person they fall under the normal rules.

Electronically supplied services

[VATA
1994, Sch
4A Para 9](#)

This place of supply rule has an effective use and enjoyment adjustment as described above. The services affected are :

- (a) website supply, web-hosting and distance maintenance of programmes and equipment,
- (b) the supply of software and the updating of software,
- (c) the supply of images, text and information, and the making available of databases,
- (d) the supply of music, films and games (including games of chance and gambling games),
- (e) the supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events), and
- (f) the supply of distance teaching

Where the parties to a supply communicate by email, this does not of itself make it an electronically supplied service.

22.5 Exceptions in relation to supplies made other than to relevant business persons (B2C only)

Under Part 3, Schedule 4A VATA 1994 some supplies have separate rules for when they are made other than to a relevant business person. When made to any other person they fall under the normal rules.

Intermediaries

A supply of intermediary services is treated as made in the same country as the supply to which it relates. Supplies affected by this rule are supplies to persons who are not relevant business persons consisting of the making of arrangements for a supply by or to another person or of any other activity intended to facilitate the making of a supply.

Transport of goods

The supply of transport of goods to a person who is not a relevant business person is treated as made in the country in which the transportation takes place, or if in two countries, in proportion to the distances travelled in each. If a journey takes place partly outside the territorial jurisdiction of a country takes place wholly in that country if:

- it takes place in the course of a journey between two points in the country (whether or not as part of a longer journey involving travel to or from another country), and
- the means of transport used does not stop (except in emergency) or put into land in another country in the course of that journey.

This rule does not apply to the transport of goods between two member states (see below).

Intra- community transport of goods

A supply of the transport of goods from one member state to another to a person who is not a relevant business person is treated as made in the country where the transportation begins.

Ancillary transport services

When made to a person who is not a relevant business person, these services are supplied where the service is physically performed. Services covered by this rule include loading, unloading, handling and similar activities.

Valuation services

[VATA 1994, Sch 4A Para 11](#)

[VATA 1994, Sch 4A Para 12](#)

[VATA 1994, Sch 4A Para 13](#)

These services are treated as supplied where physically performed, when supplied to a non business customer. This includes the valuation of goods and the carrying out of work on goods.

[VATA 1994,
Sch 4A Para
14](#)

Electronic services

The supply by a person who belongs in a country which is not a member state (other than the Isle of Man) of electronically supplied services (as defined above) to a person who is not a relevant business person, but belongs in a member state is treated as made in the country where the recipient belongs.

[VATA 1994,
Sch 4A
Para 15](#)

Other services supplied to non-EC recipients

Any of the services listed below are treated as made where the recipient belongs when made to a recipient who is not a relevant business person who belongs in a country which is not a member state (other than the Isle of Man).

[VATA 1994,
Sch 4A Para
16](#)

- (a) transfers and assignments of copyright, patents, licences, trademarks and similar rights,
- (b) the acceptance of any obligation to refrain from pursuing or exercising (in whole or in part) any business activity or any rights within paragraph (a),
- (c) advertising services,
- (d) services of consultants, engineers, consultancy bureaux, lawyers, accountants, and similar services, data processing and provision of information, other than any services relating to land,
- (e) banking, financial and insurance services (including reinsurance), other than the provision of safe deposit facilities,
- (f) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other directly linked services,
- (g) the supply of staff,
- (h) the letting on hire of goods other than means of transport,
- (i) telecommunication services (as defined above),
- (j) radio and television broadcasting services, and
- (k) electronically supplied services (as defined above)

These rules, taken together obviate the need for Schedule 5 (and the Place of Supply of Services Order SI 1992/3121) which are not required for post 1 January 2010 supplies.

Illustration 3 & 4

A UK accountant is about to invoice 6 different clients.

1. An overseas charity (which has a mixture of business and non-business activity)
2. An American company
3. A British client who has now retired and lives in Switzerland
4. A French company (VAT registered in France)

5. An Irish farmer (not registered in Eire)
6. A British client who has now retired and lives in Spain

None of the six clients have any UK presence.

Supplies 1, 2, 4 and 5 are all business to business and the place of supply is where the customer belongs. No VAT should be charged on these invoices as the supplies are outside the scope of UK VAT.

Supply 3 will also be outside the scope of UK VAT under the exception within Schedule 4A, para 16(d).

Supply 6 will be made in the UK as the client is not a relevant business person. Standard-rated VAT will be due.

22.6 Changes coming into force on 1 January 2011

Schedule 4, Para 4A will be repealed on 1 January 2011. After that date the normal rules will apply **unless** the supply falls within Schedule 4A Para 9A or Para 14A which are effective from 1 January 2011.

Admission to cultural, educational and entertainment activities etc (B2B only)

[VATA 1994, Sch 4A Para 9A](#)

When supplied to a relevant business person, these are treated as made in the country in which the event takes place. This affects:

- (a) services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events (including fairs and exhibitions), and
- (b) ancillary services relating to admission to such events

Cultural, educational and entertainment services etc (B2C only)

[VATA 1994, Sch 4A Para 14A](#)

When supplied to a person who is not a relevant business person, the following are treated as supplied in the country where the activities take place. This affects:

- (a) services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities (including fairs and exhibitions), and
- (b) ancillary services relating to such activities, including services of organisers of such activities."

22.7 Changes coming into force on 1 January 2013

Long term hire of means of transport (B2C only)

[VATA 1994, Sch 4A Para 13A](#)

The supply to a person who is not a relevant business person of services consisting of the long term hire of means of transport is treated as taking place in the country in which the recipient belongs, unless the means of transport is a pleasure boat.

In the case of a long term hire of a pleasure boat to a non business person, where the boat is put at the disposal of the recipient at the suppliers place of business, the supply is treated as made in that place.

Long term hire is defined by reference to the definition of short term hire above - that is it exceeds 30 consecutive days (90 for vessels).

22.8 EC sales lists: supplies of services

To enable tax authorities to check that VAT is being accounted for correctly by the business receiving intra-EU supplies of services, UK VAT-registered businesses that supply services to EU businesses, where the place of supply is the customer's country, will have to complete ESLs for each calendar quarter and submit these within 14 days for paper returns and 21 days for electronic returns.

UK VAT-registered businesses that supply goods to other EU countries already submit ESLs. From 1 January 2010 new rules will:

- Reduce the time available to submit ESLs in line with the limits above.
- As an anti-fraud measure, require the monthly submission of ESLs where the value of the supplies of intra-Community goods (excluding VAT) exceeds £70,000 in the current quarter, or any of the previous four quarters. This threshold will be reduced to £35,000 (excluding VAT) with effect from 1 January 2012.

Further guidance is now available in the ESL guidance and in Revenue & Customs Briefs 53/2008 and 02/2009.

ESL guidance
53/2008 and
02/2009