

VAT – A guide for Advertising Agencies

**Prepared for the IPA by Kingston Smith W1
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VAT Introduction

The previous editions of the IPA VAT guide were produced in 1994 and 2000. There have been many important changes to VAT laws and regulations since 2000 particularly from the beginning of this year and the IPA's Finance Policy Group has decided it is now time to update and revise this booklet. It has been extended to cover further aspects of VAT to the extent that they are thought to be relevant to members; it also deals with the recent changes to the supply of services rules which apply from 1 January 2010-but the Finance Act following the second budget in 2010 has not been enacted and there may be other changes that take place following publication of this guide.

The booklet is not intended to be a definitive guide on VAT, but a useful source of reference material to deal with some of the everyday issues that arise. Similarly, it does not specifically cover planning opportunities. Where there is any doubt, we would always recommend you contact your VAT adviser on liability or planning issues. Your local HM Revenue & Customs (HMRC) office may also be able to help you on queries as they arise, although the circumstances under which you can rely upon their advice are tightly drawn.

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1. Basics of VAT

Value Added Tax (VAT) systems operate in many countries throughout the world. All European Union (EU) Member States have a VAT system, governed by EU wide directives which are intended to make the rules in each Member State broadly similar.

EU Member States as at July 2010

Austria
Belgium
Bulgaria
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
United Kingdom

The Channel Islands are not in the EU but Isle of Man is treated as part of the UK for VAT purposes.

What is VAT?

At its simplest, VAT is a transaction tax borne by the ultimate consumer; it was never intended to be a cost on business. It is a tax, which is normally charged by businesses at different stages of the production process and is then recovered by the next person in the chain until it is charged to the final consumer. Therefore, VAT should not be a cost to any business. However, the reality is that, to many businesses, VAT is a cost.

Who should register for VAT?

There is a liability to be VAT registered if the taxable supplies of a business exceed the current registration limit. Registration is mandatory if taxable turnover in the last 12 months exceeds the limit, from 1 April 2010 - £70,000, or in the next 30 days is expected to exceed the limit. If a business fails to recognise its liability to register, pitfalls include:

- Penalties imposed by HMRC;
- Inability to recover VAT on any input VAT, i.e. VAT on purchases and overheads thus placing the company at a commercial disadvantage.

What is a group registration?

This is an arrangement to assist with company accounting and to ease cash flow. It reduces the burdens on businesses by allowing two or more associated corporate bodies to account for VAT under a single registration number. This may ease administration by centralising the group accounting function. In particular, supplies of goods and services made by one member of the group to another are disregarded for VAT.

The anti-avoidance legislation permits HMRC to undo any transaction involving a VAT group where the purpose is the avoidance of VAT.

- HMRC have the power to remove a company from a group where it ceases to meet any of the eligibility requirements or presents a risk to the revenue;
- Overseas companies are no longer able to be members of UK VAT groups simply by meeting the UK resident director test. They now need to be established or have a fixed establishment in the UK to qualify for grouping;
- Group applications will automatically be approved from the date of receipt by HMRC although they will have 90 days to revoke the approval if the companies subject to the application do not meet all the eligibility criteria or represent a risk to the revenue.

It should be noted that HMRC possess extensive powers under anti-avoidance legislation - Schedule 9A VATA 1994. The anti-avoidance relates primarily to three areas and to situations where a group member is unable to recover all the VAT it incurs:

- Entry schemes whereby a company buys goods or services and then joins the VAT group and the goods/services are consumed by an exempt or partly exempt company within the group;
- Exit schemes whereby a supply contract is entered into and paid between two group members; one fully taxable, the other exempt. The exempt company leaves the group and delivery of the goods/services occurs after the exempt company leaves the group;
- Use of an overseas group member to obtain goods/services VAT-free overseas which are consumed in the UK by exempt/partly exempt group companies.

What are the rates of VAT?

Taxable supplies are subject to VAT at either the standard rate of 17.5% (20% from 4 January 2011), the lower rate of 5% or 0%. Some supplies are exempt or outside the scope of UK VAT (described in further detail below).

EU VAT rates vary between countries. There is a minimum standard rate of 15%; the current highest rate within the EU is 25%. Reduced rates also exist for certain supplies. These vary from country to country but generally include items such as food, books and medicines.

What are taxable and exempt supplies?

A taxable supply is a supply made in the course of business in the UK or deemed to be in the UK, which is not designated by UK legislation as an exempt supply. Taxable supplies include supplies liable to VAT at the standard rate (17.5%), the lower rate (5%) and the zero-rate (0%). VAT incurred on costs, which are attributable to taxable supplies, are fully reclaimable. An exempt supply is defined in the law and whilst VAT is not charged on exempt supplies, the VAT on costs attributable to them is not reclaimable.

Examples

<i>Taxable standard rated supplies (17.5%) and from 4 January 2011 20%</i>	Any supply not designated as either zero rated or exempt.
<i>Taxable lower rate supplies (5%)</i>	Domestic heating fuel, children's car seats.
<i>Taxable zero rated supplies (0%)</i>	Food, books, children's clothing, certain transport services and exports of goods.
<i>Exempt supplies</i>	Most financial services, land and buildings, healthcare, charities, trade unions, education and insurance.
<i>Outside the scope supplies</i>	Supplies made outside the UK, or activities not done in the course of business.

What exempt supplies is an advertising agency likely to make?

In particular, care should be taken by an advertising agency that undertakes transactions in property. Further details are given in section 11 but as a brief warning note, this is particularly likely to occur where an agency sublets unutilised parts of its building or sells an existing property.

Businesses are advised to review all sources of exempt income and the VAT on associated expenditure to assess the potential risk of suffering irrecoverable input VAT.

What is output tax?

This is VAT charged on sales. All businesses are obliged to provide a customer with a tax invoice where output tax is charged except for retail sales of not more than £250 where less detailed invoices can be issued, e.g. supermarkets.

When should VAT be charged?

VAT should be charged and accounted for at the time of supply. This is known as the 'tax point'. In general, goods are supplied when they are removed by or made available to the customer. This is known as the 'basic tax point', and for a one-off supply of services it is the date on which performance is completed.

The basic tax point is overridden when an 'actual' tax point is created. For a one-off supply of goods or services, if a tax invoice is issued or payment is received before the basic tax point an actual tax point is created. If a tax invoice is issued within 14 days of the basic tax point an actual tax point is also created. An extension to this 14 day period can be agreed with HMRC. If an invoice is not issued within 14 days of the extension period the basic tax point must be used.

Where services are supplied over a period of time and paid for periodically, a tax point is created each time a payment is received or an invoice issued, whichever is earlier. As an example, where a media buying contract provides for periodic payments, a tax point is created each time a payment is received and a tax invoice must be issued for each payment received.

Billing expenses and disbursements

It is often the case that an agency incurs costs in the course of producing an advertisement or campaign; for example, film crews, studio and production

facilities. In most cases, these costs will represent part of the cost of providing services to its client and will be billed as part of the overall fee. In VAT terms, such costs are regarded as expenses and should be included in the value when VAT is calculated.

It is important to recognise the distinction between an expense and a disbursement. Unlike an expense, a disbursement is a payment which is not a cost to you, of providing the service but which is paid by you to a third party as an agent for the client. There are a number of criteria which need to be met before a payment may be treated as a disbursement:

- You acted for the client when paying the third party;
- The client actually received and used the goods or services provided by the third party;
- The client was directly responsible for paying the third party;
- You were authorised to make the payment on your client's behalf;
- The client understood that the goods or services were provided by a third party;
- The amounts disbursed must be separately itemised when invoicing the client;
- Only the exact amount disbursed is recovered from the client; and
- The goods or services must be clearly additional to your supplies to the client.

For VAT purposes, a disbursement can be treated as either:

- Supplied to and by you. You recover any VAT charged and charge the same amount of VAT to the client; or,
- You recover **no** VAT on the disbursement and pass it on to the client as a VAT- inclusive amount.

In practice, it is unlikely that an advertising agency will receive what HMRC accept as a disbursement. The expenses charged will almost certainly simply follow the liability of the main supply.

Billing in a foreign currency

Where an agency issues a tax invoice to a person belonging in the UK or issues an invoice attracting a positive rate of VAT to a person belonging outside the UK and this invoice is issued in a currency other than sterling, the sterling equivalents must also be expressed on the invoice for the net, VAT and gross amounts. The currency conversion can be undertaken by one of the following methods:

- Market rate at the time of supply (tax point) as published in the national press (e.g. FT);
- The period rate of exchange as published by HMRC; or
- Any other method agreed in writing by HMRC.

Invoices that do not charge VAT expressed in a foreign currency do not need to be converted to Sterling on the actual invoice.

Can I recover output VAT on bad debts on sales?

Where an invoice remains unpaid a bad debt claim may be made 6 months after the later of:

- The date payment becomes due; or
- The date of the supply.

Amounts to be recovered as bad debts must be included in Box 4 of the VAT return. In order to claim bad debt relief you must:

- Hold a copy of the tax invoice raised for the original supply;
- Be able to prove the VAT has been paid to HMRC;
- Have evidence that the bad debt has been written off to an internal bad debt account.

The provision applies to all debt and not only to debts that have been confirmed as bad by a liquidator/receiver or where the debt has been written-off to the profit and loss account.

If the customer does then make payment, the VAT reclaimed must be repaid to HMRC.

The mirror image of bad debt relief is that if you have not paid your supplier 6 months of the due date, you are required to repay any input tax you have claimed.

What is input tax?

Input tax is VAT incurred on expenses. It includes purchases, imports and acquisitions of EU goods/services.

Input tax incurred on goods and services supplied for the purpose of the business may be recovered. VAT may not be reclaimed on:

- The purchase or hire purchase of motor cars, including the fitting of accessories except where the car is used “wholly for business purposes”;
- Business entertainment expenses (other than staff entertaining and subsistence);
- Items not solely used for the purpose of a business;
- Luxury or amusement items (this might include items such as race horse or yacht not used solely for business purposes);
- Only 50% of VAT is recoverable on car leasing payments and contract hire payments as long as there is some business use.

If goods and services are only partly used for the purpose of the business, you can only claim VAT on the proportion of these items used for business purposes. In some very limited situations you can reclaim all the VAT and then pay back the proportion of VAT used for non-business purposes

Staff entertainment

Full input tax deduction is available to companies where the purpose of the event is to entertain staff. If guests attend, the VAT incurred must be apportioned based on the total number of employees attending divided by the number of attendees. If clients are in attendance then VAT is not recoverable.

Input tax recovery is restricted when exempt supplies are made, e.g. sales or lettings of commercial property (see Section 11).

Other staff expenses

If you are treating as input tax the VAT on goods/services supplied to you, the invoice can be made out to an employee for subsistence expenses, where the business pays the actual cost and also for petrol which is subject to special rules. The European Commission are not satisfied that the UK's tolerance of invoices in the names of employees complies with EU law. You should therefore be aware that this may change.

When may I recover input tax?

Input tax is eligible for recovery in the VAT period in which it is incurred. If you are not using cash accounting, it is not necessary to have paid the invoice before

recovering the VAT but see below for invoices not paid within 6 months. Receipt and retention of a valid tax invoice or import VAT certificate is sufficient evidence to justify input tax recovery.

If you are unable to claim input tax on the correct period because you have not yet received the necessary evidence, you can claim it on a later return provided you make that return within 4 years (3 years before April 2009) of the date of the correct period.

In a similar way to bad debt relief, if you have not paid the invoice within 6 months you must repay any input VAT you have claimed.

Relevant reference material

- HMRC VAT Notice 700 – the VAT Guide;
- HMRC VAT Notice 706 – Partial Exemption;
- HMRC VAT Notice 700/1 – Should I be registered for VAT;
- HMRC VAT Notice 700/2 – Group and divisional registration;
- HMRC VAT Notice 700/65 – Business entertainment.

2. THE ROLE OF THE ADVERTISING AGENCY

Services provided by advertising businesses are wide-ranging, including the creation of advertising, planning and supply of such in all forms of media, market research, public relations, exhibition and conference organisation.

The supplies of advertising time or space are normally made by advertising agencies. Although called 'agencies' it is an established practice in the UK advertising industry that they act as principal in supplying advertising, media and production services to their clients. The rules on liability for VAT therefore cover their full supply, and not just the commission or profit element.

The VAT implications of certain aspects of the scenarios described above are dealt with in this booklet. However, it may be helpful at this stage to consider what the basic position is.

What is the basic VAT position in the advertising sector?

The supply of any services or goods made in the course of advertising is standard-rated, so VAT is chargeable at 17.5% (20% from 4 January 2011).

Can I always add VAT when I bill my customer?

No. If your contract is silent on VAT, the amount stated as consideration is treated as including the VAT. Your contract may have specific clauses that allow you to add VAT to the consideration. You should take advice for land and property transactions that have specific rules.

Are there any cases in which I should not charge VAT on advertising services?

Yes. There are special Zero-rating reliefs for supplies of certain printed matter, and on some supplies to charitable organisations. Further details are given in Sections 4, 5 and 6.

Goods exported to overseas customers, i.e. outside the UK and Isle of Man are also Zero-rated; however, you have to show your customer's VAT identification number on your invoice. Proof of export must be retained as evidence that goods have left the UK.

Some services supplied, are outside the scope of UK VAT. This is primarily in the area of specific international services i.e. services supplied to overseas customers. Some of these may also involve you having to register for VAT in other EU Member States. Please refer to Section 9 for further details. Further help on this complex area can also be found by referring to the decision tree at Appendix I.

Can I recover VAT I incur relating to all these different categories of supplies?

Yes. If you incur VAT on purchases made in the UK, or on goods or services imported into the UK, you can recover the VAT, provided it relates to standard-rated, Zero-rated or outside the scope supplies that would be taxable if made in the UK. The main situation in which you may not be able to recover VAT is exempt property supplies (Section 11) and other exempt supplies. Further details on recovery of input tax are given in Section 1.

You may also be able to recover VAT incurred overseas – see Section 9 and Appendix II for further details.

Relevant reference material

- HMRC VAT Notice 700 The VAT Guide;
- Sections 4, 5, 6, 9, 11 of this guide.

3. WHERE VAT IS PART OF THE CLIENT BUDGET

Which clients of advertising agencies cannot recover input tax?

Businesses which only make exempt supplies or those which register for VAT cannot recover input tax. Some organisations make a mixture of exempt and taxable supplies or, in the case of charities, may have activities which are “non-businesses” for VAT purposes and can recover only a portion of their input tax.

These include the following examples:

- Banks;
- Building societies;
- Insurance companies;
- Stockbrokers and dealers
- Unit trusts and other financial service providers;
- Healthcare providers;
- Property companies;
- Post Office and related companies;
- Charities; however, certain advertising is eligible for Zero-rating (see section 6);
- Certain Government departments (see Section 7: Government departments, the NHS and local authorities);
- Private individuals;
- Small businesses that are not VAT registered;
- Trade unions;
- Certain clubs and associations.

4. PRINTED MATTER AND MAILSHOTS – ZERO-RATING

Can printed matter or similar items be Zero-rated?

Reliefs exist to Zero-rate types of printed matter in certain circumstances. Whether printed matter can be Zero-rated depends on its physical characteristics but also, to a lesser extent, on its content.

Printed matter which suppliers may be able to Zero-rate:

- Books/booklets;
- Brochures;
- Catalogues;
- Circulars;
- Company reports;
- Leaflets;
- Mail order catalogues;
- Pamphlets;
- Programmes;
- Travel brochures.

See comprehensive lists at Appendix IV.

Zero-rating is not restricted to products of the printing trade. It may in some cases include goods which are photocopied or typed.

The volume of brochures, pamphlets or leaflets printed must be sufficient for distribution. A charge for a report which is identical to the main supply, for instance, of market research will be standard-rated (unless supplied to overseas customers – see Section 9).

Items not eligible for Zero-rating are subject to VAT at the standard-rate. These include envelopes, stationery, etc (although special reliefs exist for charities – see Section 6).

As a planning point any customer unable to recover all of the VAT it incurs should ensure that contracts it enters into for the supply of printed matter should be an all inclusive contract with the printer. This means the printer is responsible for the design services that would otherwise attract VAT if supplied separately.

An invoice for a supply of Zero-rated printed matter may, if desired, be itemised to show how the total charge is made up without affecting the entitlement to Zero-rating. However, separately invoiced charges for artwork, etc, as work in progress

are standard- rated unless these amounts are billed as ‘payments on account’ to be offset against the final invoice on the completion of the work.

Are there any specific requirements to Zero-rated printed matter?

Leaflets

There are certain conditions necessary to Zero-rate leaflets. They must:

- Be on un laminated paper;
- Be a single sheet of paper not greater than A4 or A2 printed on both sides and folded to A4 size or less;
- Be primarily aimed to be held in the hand for reading;
- Convey information;
- Contain a significant proportion of text;
- Be supplied in sufficient quantity to permit general distribution (50 or more);
- Be complete in themselves;
- Have limited parts for completion (see below).

Printed sheets where more than 25% of the total area is intended for completion are standard-rated. Where a sheet has a portion to be detached and returned, that portion must be less than 25% of the total area for the leaflet to be Zero-rated. A sheet which is returned whole after completion is always standard-rated whatever the area for completion.

Letters

Individual manuscript or typed letters are standard-rated, as are collections of such letters if they are unbound or loosely bound. Permanently bound collections of letters are Zero- rated.

If a ‘stock’ or basic letter is supplied with an individual name or address of the recipient added (by whatever means) that supply is standard-rated. But the supply of uncompleted ‘stock’ or basic letters is Zero-rated, if the portion for completion consists of no more than the recipient’s name and address, a reference number and a signature.

Are promotional items in magazines Zero-rated?

Promotional items (e.g. CDs, packs of seeds etc) supplied free in magazines are zero-rated as part of the magazine even if they would normally be taxable at the standard-rate so long as:

- They are not included as regular features;
- No separate charge is made;
- The cost of the promotional item must not exceed £1; and

- The total cost of all the promotional items included in issues during a year does not exceed 20% of the total selling price of all those issues.

Is it possible to maximise the Zero-rating of an advertising pack or mail shot?

An advertising pack may comprise a mixture of standard-rated and zero rated items. If this is the case and one single price is charged, then you must normally apportion the price between the items and account for VAT on the standard-rated items. HMRC allow this to be done by reference to the number of items in the pack (see below), but it can also be done by reference to cost (Notice 700, Section 32, deals with other methods of apportionment).

The Package Test

The package test is a concession offered to the printing trade where standard and Zero-rated goods are supplied together for a single price. The liability of the package of printed matter may be calculated according to the liability of the articles that predominate within it, irrespective of their value and cost.

In considering the liability of a package you should ask the following questions:

- Does the article truly constitute a package, e.g. a package contained in an outer polythene or paper envelope?
- Has the liability of each item been correctly judged?
- Has the liability of the whole package been correctly decided i.e. does it consist of primarily zero or standard rated items.

If I deliver the leaflets, can I also Zero-rate that supply?

HMRC accept that, where the service provided is of leaflets and associated delivery, then there is one overall supply of delivered goods. If the goods themselves are eligible for Zero-rating, the delivery may also be Zero-rated (see Section 5).

Relevant reference material

- HMRC VAT Notice 701/10 – Zero rating of books etc;
- HMRC VAT Notice 700 – The VAT guide;
- Group 3, Schedule 8, VATA 1994 (Books etc).

5. DELIVERY AND POSTAGE

What happens if I sell delivered goods?

If you have to deliver goods to your customer as part of your supply to him, and you remain responsible for them until they have been delivered, then the VAT liability of the charge made for delivery follows the VAT liability of the main supply, whether or not it is separately itemised. HMRC accept that this extends to the delivery of printed matter to target customers via inserts into the press – this then enables the entire supply to be Zero-rated if the material itself is capable of Zero-rating.

If, however, you make charges for handling goods that you are not selling, for example, if you charge a cosmetics manufacturer for mailing free samples to households, you are making a standard-rated supply of services to the cosmetics company.

What are the rules for direct mailing services?

If you provide the services of posting publicity or advertising material on behalf of your clients, you can treat the postal charge as a disbursement for VAT (i.e. exempt from VAT) but only if all the following points are met:

- i. Your clients specify the recipients or have access to their names before the goods are sent.
- ii. You pass on the exact amount of postal charges to your client without alteration, and these are identified separately on any invoices, requisitions or other documents you issue to the client.
- iii. You pass any Post Office discount or rebate to your clients in full. Where a discount or rebate is obtained for posting mail for various clients at the same time, a fair apportionment must be made.

If these conditions are not met, you must include the full amount of the postage charge in the value of your direct mailing service to your customer. This is standard-rated, unless the mail is sent to addresses outside the EU.

For direct mailing printed matter see Section 4.

Relevant reference material

- HMRC VAT Notice 700/24/03 – Postage and Delivery charges.

6. CHARITIES – ZERO-RATING

Supplies of advertising services to charities.

The supply of advertising services and goods closely related to advertising services to charities are Zero rated. The relief covers all types of advertisements on any subject including staff recruitment. The name or logo of the charity does not need to be included for relief to be allowed. However, charities are expected to only place advertisements which comply with their charitable objects.

However, excluded from relief are: -

- Advertising on a charity's own web-site. Advertisements on another organisation's web-site will qualify for relief;
- Services of distribution;
- Supplies connected with advertisements produced by a charity itself;
- Exhibition stands and space;
- General marketing and promotional material addressed to selected individuals or groups (such as direct mailing or telemarketing).

As with all VAT reliefs, it is the supplier's responsibility to ensure that relief is only given in appropriate cases. Suppliers are expected to ask charities for evidence where there are any doubts about the conditions for relief being met. Charities seeking to benefit from the relief must be prepared to provide appropriate evidence of charitable status.

Appendix III is a suggested form of declaration, which HMRC strongly recommend to be completed. However, other types of declaration whether in paper form, faxed or electronic that contains sufficient verifiable information accurately identify the customer are acceptable.

Relevant reference material

- HMRC VAT Notice 701/58 – Charity advertising etc;
- Group 15, Schedule 8, VATA 1994;
- Appendix III recommended declaration of eligibility for Zero-rating relief.

7. GOVERNMENT DEPARTMENTS, THE NHS AND LOCAL AUTHORITIES

Are any special reliefs available to UK government-type bodies?

Public bodies are not usually deemed to be in business and therefore different VAT recovery rules apply. These apply to:

- Government departments and bodies such as a quango;
- The NHS (both Trusts and Area Health Authorities);
- Local authorities.

(i) Government Departments/NHS

VAT should be charged on supplies of advertising to all of the above under the normal rules. The VAT is only recoverable if two criteria are satisfied:

- It is an eligible supply;
- Purchased by an eligible department.

Most Government departments/health authorities and NHS trusts are eligible to recover VAT on the following services:

- Advertising services;
- Filming and production services;
- Publicity services;
- Radio services;
- Services of printing;
- Conference and exhibition services;
- Delivery services.

(ii) Local Authorities

Local authorities are governed by different rules. They are essentially able to recover all VAT, unless it relates to exempt business activities above an input tax threshold.

This relief applies to:

- All local authorities;
- Police authorities;
- Development corporations;
- The BBC.

Relevant reference material

- HMRC Notice 749 – Local Authorities.
- Section 33, VATA 1994 (for local authorities and similar bodies).
- Section 41, VATA 1994 (for government departments) and Treasury Directions as reproduced in the London, Edinburgh and Belfast Gazettes from time to time.

8. ASBOF, COMPETITIONS, AND PRIZES

ASBOF/BASBOF Levy:	Outside the scope of VAT where charged at the same time as the advertising space, and separately identified as the Advertising Standards Board of Finance (or ASBOF) levy.
Cash prizes:	These are outside the scope of the tax.
Competition entry fees:	In some circumstances these may be exempt, e.g. if the competition is in sport or physical recreation and the fees are used wholly to provide prizes (Group 10, Schedule 9) or if the competition is a lottery or game of chance (Group 4, Schedule 9 VATA 1994). Many competitions do not, however, come within these provisions and fees for competitions such as “spot the ball” bear tax at the standard rate.
Competition Prizes	There may be an obligation to account for tax in some cases (see VAT notices 701/5 – Clubs & Associations, 701/26 – Betting & Gaming, 701/27 and Bingo and 701/41 - Sponsorship).

9. INTERNATIONAL SERVICES

Changes to the VAT treatment of International Services

From 1 January 2010 significant changes in the VAT treatment of supplies of services made to and received from overseas have come into force.

The principle behind these changes is to reduce the number of cross-border VAT charges and reclaims being made by businesses across the European Union (EU).

What has changed?

It is important to remember that only the rules on supplies of services, not goods, have changed. This is because the changes to the law bring the rules for intra-EU supplies of services more in line with those already in existence for intra-EU supplies of goods.

The fundamental change has been made to the deemed place of supply for intra-EU services.

As part of the changes, businesses making intra-EU supplies of services are required to complete quarterly EU Sales Lists.

Business to Business Supplies (B2B)	Intra EU
Business to Consumer Supplies (B2C)	Intra EU
Business to Business/Consumer Supplies	To outside EU

Business to Business Supplies (B2B) Intra EU

The new basic rule from 1st January 2010 is that the place of supply for business to business (B2B) services will be where the customer belongs.

Where the place of supply is deemed to be where the customer belongs and if the customer is in the EU or has a similar VAT system, it will be required to account for the VAT under the reverse charge principles.

As with any general rule there are exceptions as follows:

The Main Exceptions

Type of Service	Treatment from 1 January 2010
Services relating to land including those of estate agents, auctioneers, architects, surveyors and engineers	An exception to the new rule and remain treated as supplied where the land is situated.
Restaurant and catering services	An exception to the new rule and are treated as supplied where the services are physically carried out, i.e. where the restaurant is located.
Cultural, artistic, sporting, scientific, educational, and entertainment, and similar services together with those that are ancillary thereto.	An exception to the new rule and are treated as supplied where the performance takes place. Some of these services may change from 1 January 2011 and will be subject to the general rule.
Hire of short term means of transport, i.e. up to 30 days or 90 days for vessels.	An exception to the new rule and treated as supplied where the means of transport is made available to the customer.
Hire of long term means of transport i.e. more than 30 days or 90 days for vessels.	Not an exception to the new rule and treated as supplied where the customer is based. No further changes are due 1 January 2013
Passenger Transport	An exception to the new rule and treated as supplied where the transport takes place and if in more than one country in proportion to the distance covered in each.
Hire of goods	There are several rules covering these supplies so you should consider each situation based on the facts.

Business to Consumer Supplies (B2C) Intra EU

Subject to the main exceptions to the general rule, supplies of services from a UK business to a consumer in the EU are treated as supplied in the UK and subject to UK VAT.

Business to Business/Consumer Supplies to Outside EU

The rule from 1 January 2010 for services supplied to anyone outside the EU is unchanged. Namely, the place of supply of the following (which is not an exhaustive list) is where the customer belongs.

- Advertising;
- Consultancy;
- Engineering;
- Legal and accountancy services;
- Data processing and the provision of information;
- Supplies of staff;
- Copyrights, patents, licences etc;
- Telecommunication services.

How are advertising services defined?

There is no definition in either UK or EU law as to what is meant by an advertising service. However, the European Court of Justice has recently defined that advertising services should be seen as the spreading of a message in order to inform consumers of the existence and qualities of a product or service with the objective of increasing sales. Any means employed to do this should thus fall within the scope of advertising services. In the light of HMRC's published guidance and the findings of the European Court on certain specific items, advertising services should thus cover the following items:-

- Direct advertising costs (e.g., media advertisements);
- Advertising agency fees/commissions;
- Public relations work;
- Market research;
- Services forming part of an advertising or PR campaign (e.g. press conferences, cocktail parties, seminars);
- Website advertising;
- Rental of advertising sites;
- Sales of physical objects to a client by an advertising agency if part of an advertising campaign;
- Supplies of promotional leaflets inserted into media, including their delivery;
- Associated expenses (e.g. travel and subsistence costs incurred in providing the main service).

Items that may not be included:

- Film production and shooting costs;
- The provision of space or stands at a trade fair or exhibition.

What are the VAT implications if my supplies are treated as supplied where the recipient of the service belongs?

Most advertising related services provided to overseas customers are outside the scope of UK VAT. Input tax incurred by a UK business in making these outside the scope supplies is recoverable where the supplies would have been taxable if made in the UK. The value of these sales must be included in the sales figure on your VAT return. In general VAT on such services is always recoverable.

What requirements must I meet for advertising services to be treated as outside the scope of UK VAT?

The following conditions must be complied with:

- (i) You must be providing services to a customer located outside the EU in his business or his private capacity; or,
- (ii) Your customer must belong elsewhere in the EU (and outside the UK and Isle of Man) and receive the services in his business capacity, and not as a private individual. In addition, you must possess: evidence that the recipient is engaged in business activities. Normally, commercial evidence such as letterheads or other corporate literature will be acceptable.

Beware of supplies made to government departments, tourists boards etc. which may not be seen as being in businesses – VAT should normally be charged to such bodies.

Where the customer belongs in the UK or Isle of Man, the supply is subject to VAT under the normal rules.

Can we recover VAT if our supplies are outside the scope of UK VAT?

Yes, on the basis that they would be taxable if they were made in the UK. An agency making supplies that are all outside the scope can register for VAT on a voluntary basis.

Please refer to Appendix I for a decision tree to assist you in establishing the VAT liability of your supplies.

How do I decide the liability on European/World-wide Advertising Contracts?

Where an agency has been contracted by a multinational company to provide a worldwide advertising campaign, great care needs to be taken in determining whether VAT needs to be charged. It is particularly important to be careful where the multinational is the type of business that would be unable to recover VAT if charged in the UK, e.g. a bank, credit card company, insurance company etc, as HMRC are likely to be particularly vigilant on the VAT position in relation to these.

The following questions must be considered before concluding that no VAT is chargeable:

(i) Which legal entity is the contract with?

To support the case for supplies being made to an entity outside the UK, the contract must also be with a legal entity outside the UK. Where, for instance, the contract is with a bank with branches around the world thus being one single legal entity, it is very important that the contract is with one of the branches outside the UK to avoid VAT being chargeable.

(ii) Who controls the contract?

This must be an entity outside the UK or Isle of Man. To demonstrate that there is control, it is important to establish where the key decision making in relation to the contract takes place. It is also important to establish who holds the budget and pays for the services provided. It may be that there is a liaison person in the UK but who has to refer all important matters to an overseas head office. This all supports there being control outside the UK. Particular caution should be exercised when it is obvious that actually the main business activity is in the UK and the overseas entity is very much just a post box or shell company.

(iii) Are the services being used in the UK?

This is a particularly important question where there is a branch structure so that one single legal entity is buying the services. If, for instance, the contract is with a US head office but all the services are quite clearly used in promoting its UK branch then this indicates that the services are being used in the UK and VAT could therefore be chargeable.

(iv) What is the legal entity?

It is essential to be sure what kind of legal entity is buying your services i.e. is it a multinational corporate structure or a single legal entity with branches in the various territories. A corporate multinational structure is less likely to give problems than a branch one.

(v) Does the contract enable the agency to charge VAT if necessary?

It is essential that all contracts enable VAT to be charged at the standard rate, where applicable.

VAT should not be charged if all indicators are that the services are controlled from outside the UK and, in the case of a branch structure, the services are used outside the UK.

There is a further important point to consider in the case of EU customers. In this case, you also have to be satisfied that your customer is 'in business'. This is unlikely to be an issue in terms of providing services to private individuals. However, a problem may arise in providing services to tourist boards and charities who will generally not be 'in business' for VAT purposes. In general VAT should be charged on such contracts.

How are general B2B services treated?

Where a general B2B service is imported by a UK business, it must apply the "reverse charge". This means accounting for output tax on the value of the services received, whilst at the same time recovering this VAT as input tax, to the extent that it relates to taxable supplies. This is to avoid distortion of competition by buying overseas services on a VAT free basis. Similar rules apply in other Member States, where businesses import services from overseas.

An example of how to undertake the reverse charge calculation is set out below:

A bank, which is only able to recover, for example, 20% of VAT incurred, buys in advertising services from a French agency. As the services received fall within the general B2B category the bank must undertake the following calculation:

- It must self account for output tax based on 17.5% of the value of the imported service – the amount is to be entered in Box 1 of the VAT Return; and
- Recover 20% of the amount calculated in Box 4 of the VAT Return.

This may appear unfair but arrives at the same position as if the advertising services had been bought in from a UK agency.

How are excepted services to the general B2B rules treated?

(i) Services relating to land

These are taxable in the country where the land is physically situated. This would apply to site charges for advertising hoardings. UK companies, which make such supplies, may therefore be registerable for VAT in other EU countries.

(ii) Services supplied where performed

Certain services are supplied where they are physically carried out. These include:

- Cultural, artistic, sporting, education, training, scientific or entertainment services;
- Services relating to exhibitions, conferences and meetings;
- Services ancillary to, including organising, any supply of the above.

These services are taxable in EU state where the services are physically carried out (outside the scope if performed outside the EU).

This may create a liability to register in the EU country where the service is performed. If this is the case, the UK business must follow all local VAT compliance rules and charge VAT at the local rate (this may be higher than in the UK). Fiscal representation may be required in order to submit the relevant tax returns.

Where the services being performed actually involve the installation or assembly of goods, these are taxed in the country of installation or assembly, and again VAT registration may be required.

(iii) Services to the EU Commission/OECD

These are accepted by the UK authorities as Zero-rated for VAT purposes under a provision in the EU Sixth VAT Directive.

Overall Summary; but what if?

(i)	The recipient of the services belongs in the UK.	taxable at 17.5%
(ii)	UK advertising agency renders an invoice for advertising services to a business client in Belgium with no establishment in the UK	outside the scope
(iii)	UK advertising agency renders an invoice for advertising services to a client in the US with no business establishment in the UK.	outside the scope
(iv)	UK advertising agency renders an invoice for advertising services to a private EU individual	taxable at 17.5%
(v)	UK advertising agency renders an invoice for advertising services to an EU Government organisation	taxable at 17.5%

Can I recover VAT incurred in other countries?

All EU Member States have a mutual recovery claim system to enable recovery of VAT incurred in that Member State. Different rules apply in each country, and some have particular restrictions, for instance on travel and entertainment costs. Non-EU businesses can also submit claims for VAT incurred in the EU on a similar basis. You can claim refunds of VAT paid in other EU countries, electronically, on a standardised form through the UK Government Gateway or HMRC's VAT online system.

Please refer to Appendix II for details on the recoverability of selected items.

Are there any time limits?

The EU VAT claims must be made at the latest 30 September of the calendar year following the refund year. Thus a claim for VAT suffered in the period from 1 January 2009 to 31 December 2009 must be made by 30 September 2010.

Relevant reference material

- HMRC VAT Notice 741 – International Services;
- HMRC VAT Notice 723A – Refunds of VAT in the European Union (from January 2010);
- HMRC VAT Notice 741A – Place of Supply of Services (from January 2010);
- Schedule 4 VATA 1994.

10. THE EU AND THE EURO

Since 1 January 1993 a system of accounting for VAT on goods moving between Member States of the EU has been operating. The terms “imports” and “exports” for intra-EU movements of goods no longer exists – they are now known as acquisitions and despatches respectively. From 1 January 2010 a similar system of accounting operates for business to business services between member states.

“Intrastat” is the name given to the system used for collecting statistics on the trade in goods (ie services are excluded) between the 27 EU members.

What are the reporting and statistical implications for this?

VAT on goods traded between Member states is not collected at the frontier. In brief, the following requirements apply:

- (i) **Acquisition tax:** Acquisition VAT is included on VAT returns by accounting for VAT on the value of EU acquisitions in box 2 and recovering an appropriate amount as input tax under the normal rules in box 4.
- (ii) **VAT returns:** Additional information is required on the VAT returns, including intra-EU sales and purchases of goods and related services. Box 8 and 9 of the VAT Return must be completed.
- (iii) **European Sales Listings (ESLs):** ESLs have to be completed to provide information on the total value of goods and related services supplied to EU customers in each calendar quarter. Details of the customer are also required. From 1 January 2010, ESLs also need to be completed for services supplied to EU Customers where reverse charge applies.
- (iv) **Supplementary Statistical Declarations:** Businesses have to complete intrastat forms, known as Supplementary Statistical Declarations (SSDs), to provide further information on intra-EU trade. These are required where either the dispatch of goods exceeds £250,000 or acquisition of such goods exceeds £600,000. These limits are effective from 1 January 2010.
- (v) **A register:** Records must be kept of goods temporarily moved to and from EU States, for instance, for exhibitions. However, HMRC take the view that normal business records will usually suffice.

Note that statistical reporting requirements (SSDs) apply to **goods** only and **do not** apply to **services**. Where goods moved are incidental to services supplied, HMRC will normally accept that they can be ignored for statistical purposes – e.g. CDs incidental to advertising production services.

Are there any special rules?

Special rules apply for the following:

- Freight transport and associated services;
- New means of transport;
- Distance selling (basically mail order selling);
- Purchases by exempt and non-taxable organisations.

What are the rules for distance selling?

The distance selling rules apply where businesses sell goods by mail order to private individuals or non-registered bodies within the EU. Sales do not qualify for Zero-rating as exports. Instead, VAT is levied in the country of despatch, unless the distance selling thresholds in the member state are exceeded. These thresholds vary from Member State to Member State - between €32,000 and €100,000 in 2010. If the threshold is breached, or if an option is made to register in another EU Member State, VAT must be accounted for in that State at the prevailing rate.

Where distance sellers advertise their goods throughout the EU, this can give rise to further problems both from the aspect of statistical reporting, and from having acquisitions in the Member States where the advertising literature is despatched which may mean registering for VAT in the country of acquisition. The rules are too complex to cover here, and we suggest that you seek advice, if you think this may affect you.

What are the VAT impacts of the Euro?

On 1 January 1999 eleven European countries adopted the Euro as a single currency. Although the UK was not one of these countries, if you deal with businesses that use the Euro you may need to adapt your systems.

Can we issue invoices in Euro?

Invoicing in euro must be treated in the same way as invoicing in any currency other than sterling. This requires euro values shown on the invoices to also show a sterling equivalent. (HMRC's approved exchange conversion methods are details below). The only concession to this is that HMRC will not insist on the sterling equivalent of each description of goods on a line by line basis.

Receiving invoices in Euro

All VAT invoices raised in euro must show sterling equivalents as explained above in order that the supplier and customer declaring the same amounts as output tax and input tax respectively.

If you receive an invoice in euro from a UK supplier that does not show sterling equivalents, the supplier should be requested to reissue the invoice with the appropriate details. An invoice without sterling values is not a valid tax invoice and HMRC may disallow the deduction of input tax.

Maintaining VAT accounting records

UK businesses may keep records and accounts in euro, but they are required to prepare their VAT and duty accounts in sterling.

Where businesses have previously only traded in sterling but are “encouraged” or choose also to trade in euro, it will be necessary to ensure that any accounting software used to prepare VAT returns is able to cope with the dual currency implications. Businesses must ensure that their accounting software meets their own accounting needs in addition to the HMRC requirement to maintain a sterling VAT account.

Converting Euro to Sterling

As mentioned above there are three conversion methods approved by HMRC:

- Market rate at the time of supply (tax point) as published in the national press;
- The period rate of exchange as published by HMRC; and
- Any other method agreed in writing by HMRC.

Completing and paying VAT returns

VAT returns must be completed in sterling but may be paid by euro or other currencies

Due to exchange fluctuations, when a VAT liability is paid in euro, the sterling equivalent actually received by HMRC may differ from the liability declared on the VAT return. Businesses will be credited with the sterling amount received by HMRC which may be more or less than the actual sterling VAT liability.

In these circumstances, HMRC will refund overpayments, in sterling, and have said that underpayments will be dealt with using existing debt management procedures. This means that businesses may expect a demand for the immediate payment of outstanding sums. Rather more worrying is that businesses will technically be in default and liable to surcharges for not paying their full VAT liability by the relevant due date.

EC sales lists, intrastat returns and Customs declarations

EC sales lists and intrastat returns must be completed in sterling.

On Customs declarations for exports, sterling must continue to be used. For imports, box 22 (invoice value) on the SAD form must be completed in currency

of invoice, but this is required for declaration above a statistical value of £100,000. Box 46 (statistical value) must be completed in sterling but there is no requirement to change the currency for bulk low value declarations.

Relevant reference material

- HMRC VAT Notice 725 – The Single Market (December 2009);
- HMRC Intrastat General Guide, Notice 60;
- HMRC VAT Notice 702 – Imports.

11. PROPERTY AND VAT

Introduction

All but a few businesses need to understand the basic rules associated with VAT and property. VAT will affect any advertising company that owns or leases its own property or sublets property, and it is an aspect no business can afford to ignore.

How does VAT affect commercial land and buildings?

Most supplies relating to commercial land and buildings are generally exempt from VAT. Included in the exemption is the grant of the right to occupy a particular room or office under terms that fall short of a formal lease.

The following supplies are also exempt supplies:

- All premiums and rents;
- Freehold/leasehold sales of interests in existing buildings (except new freehold buildings);
- Freehold/leasehold sales of land.

All of the above are subject to the option to tax (see later).

Are there any standard-rated supplies relating to commercial property?

All supplies of commercial buildings are either exempt or standard-rated. The following supplies are always standard-rated:

- Sales of freeholds in new (less than three years old) or partly-completed buildings;
- Works relating to the construction, alteration, extension or repair of any commercial property;
- The grant of an interest in 'opted' properties (see below);
- Grants of rights to use non-specific parts of a building;
- Professional fees.

What is 'option to tax'?

Input VAT attributable to an exempt supply of land is normally irrecoverable. However, an election can be made to change an exempt supply of "non-dwelling" land or buildings into a taxable one thus allowing input VAT attributable to the property to be recovered. Where the option to tax is made in relation to a property, all future supplies of interest in that property by the person who made the election become chargeable to VAT at the standard rate.

Why choose to opt to tax?

By opting to tax input VAT incurred by a developer, landlord or vendor may be recovered, in so far as it is attributable to a taxable supply of land. However, the recipient may not be able to recover VAT charged and, once made, the election is essentially irrevocable. In principle, it can be revoked within 3 months of it having been made, provided no VAT has been charged or recovered and after 20 years. Both cases require HMRC's written permission.

The election is particularly important if your landlord has opted to tax and you are subletting parts of the building. If you do not opt to tax supplies to your sub-tenant, you probably cannot recover the VAT paid to the landlord relating to the parts you sublet.

What does the option to tax cover?

The option to tax will cover all the interest owned or thereafter acquired by the person making the election in that particular building. Therefore, if several leases have been granted in the building, the election applies to all the leases.

How to opt to tax?

The first stage is making the decision to opt. Keep a written record of the decision such as Board meeting minutes or a less formal note.

The second stage is to notify HMRC of your decision in writing. If you have previously made exempt supplies of the land/building you may need HMRC's permission to opt to tax.

From the date of the option, the landlord must always charge VAT to the tenant. However, you may need to check the lease agreement, especially where VAT has not been mentioned in the contract and your tenant cannot recover the input tax.

Additional areas requiring careful consideration

1. Surrenders

There are two types of surrender for VAT purposes:

- Surrender;
- Reverse surrender.

A surrender occurs when a tenant surrenders a lease to the landlord before the term of the lease has expired and the landlord pays the tenant for the surrender. Such a supply is exempt for VAT purposes but taxable where the option to tax has been exercised by the tenant.

A reverse surrender occurs where a tenant surrenders a lease to the landlord before the term of the lease has expired and pays the landlord to accept the

surrender. A reverse surrender is exempt but taxable where the option to tax has been exercised by the landlord.

2. Lease assignment

This arises where a tenant assigns his interest in the property to another party. This is an exempt supply but again subject to the option to tax.

3. Sub letting of property

A sublet arises where a tenant permits a third party to occupy all or part of the tenant's space. This is an exempt supply by the tenant but subject to the option to tax. However, where the tenant is charged VAT by the landlord he should consider opting to tax the rent paid by the sub tenant otherwise some or all of the VAT charged by the landlord will not be deductible.

4. The Capital Goods Scheme

The capital goods scheme may affect an agency where it has acquired an interest in a building post 1 April 1990 where the purchase price amounted to £250,000 plus VAT. If so the building is deemed to be a capital item. Post 2 July 1997 a building can be reclassified as a capital item if it was subject to a refurbishment or fit-out where the value is £250,000 or more excluding VAT. Due to the complex nature of the capital goods scheme rules, guidance should be sought from your advisers. In practice, most agencies are fully taxable and will not be affected by the scheme if they occupy a building for their own business purposes.

5. In-house entertaining facilities

If the organisation has entertaining facilities such as a dining facility and this facility is used both for staff dining and client entertainment, that proportion of the VAT incurred which relates to client entertainment cannot be recovered.

6. Inducements

The majority of inducements are payments from a landlord to a tenant to take leases and to observe the obligations in them. HMRC accepts that such inducements are likely to be outside the scope of VAT. If the inducement is linked to benefits that a tenant provides outside normal lease terms, e.g. the tenant has to renew all the doors, there will be a taxable supply by the landlord and to the landlord.

7. Service charges

Generally service charges charged by a landlord to a tenant follow the liability of the rent i.e. exempt if no VAT is charged on the rent and standard rated if the property is opted to tax.

8. Sharing premises

Where premises are shared by a number of tenants there are frequently informal arrangements for sharing the running costs and overheads of the building, or perhaps for collecting the rent. The VAT consequences depend on the precise terms of the arrangements between the parties. The three most commonly encountered scenarios, and the VAT treatment of sharing rent and costs treated as rent, are as follows:

- Joint tenants/licensees

Where a building contains a number of joint tenants or licensees who occupy the building under an agreement entered into with the landlord, either separately or together, one of the tenants may be responsible for collecting from the other occupants their share of the rent and rates (and service charges relating to the common parts) and then passing this on to the landlord. For VAT purposes, the sums collected from the other occupants should be treated as 'disbursements'. There is no taxable supply between the rent collector and the other tenants. Such payments are outside the scope of VAT. The 'paymaster' merely collects the individual rents due and pays them over to the landlord in one cheque. For VAT purposes all the individual tenants are regarded as paying individual rent to the landlord. The paymaster is merely acting as their agent.

- Sole tenant/licensee

Where only one person in the building is the actual tenant and the other occupants do not get the right to occupy a distinct or specific area of the building under a sub-lease or a licence to occupy the share of rent paid by all the other users to the tenant or licensee is taxable at the standard rate. It cannot be treated as rent.

- Sub-tenants/sub-licensees

Where a person is the owner, tenant or licensee of a building and grants other occupants a lease, sub-lease or licence to occupy a specific or distinct area of the building, any consideration for this in the form of periodic payments or rent or licence fees will be exempt unless the property is opted to tax. This treatment applies not only to the rent or licence fees but also to recharged costs of maintaining the structure and common parts of the premises.

Relevant reference material

- HMRC VAT Notice 742 – Land and Property;
- HMRC VAT Notices 742A – Opting to tax land and building;
- Group 1, Schedule 9, VATA 1994;
- Schedule 10, VATA 1994.

12. PENALTIES AND ASSESSMENTS

What happens if I pay VAT late?

A VAT return must be submitted to HMRC by the “due date” for each VAT accounting period, i.e. normally the end of the month immediately following the end of the VAT return period. This deadline is extended by 7 days for businesses who file their VAT returns online, pay VAT electronically and who do not need to make monthly payments on account. If HMRC have not:

- (i) received the return and/or payment by due date; or
- (ii) for large VAT payers, received the monthly payment on account by the due date.

then the business will be in “default”.

If a business defaults at any time, HMRC may serve a Surcharge Liability Notice (SLN). This notice remains in force for 12 months after the end of the accounting period in which the default arose, and is extended for another 12 months each time a further default occurs in the period of the SLN.

If, during the surcharge period, the company defaults again, a penalty of 2% of the tax due is levied. Following a further default, the penalty is increased to 5% of the tax due. This rises by 5% for each further default to a maximum of 15%. Surcharge assessments will not be issued, in cases where a surcharge is payable at the 2% or 5% level for amounts below £400 except where persistent defaults occur.

Example

VAT Return period	When paid	Tax due	Consequences
31 March 2009	Late	£2,000,000	First default – SLN issued
31 June 2009	Late	£2,500,000	2% surcharge (£50,000)
30 Sept 2009	Late	£2,000,000	5% surcharge (£100,000)
31 Dec 2009	On time		No action
31 March 2010	Late	£1,500,000	10% surcharge (£150,000)
30 June 2010	Late	£3,500,000	15% surcharge £525,000)
30 Sept 2010	On time		No action
31 Dec 2010	On time		No action
30 Mar 2011	On time		No action
30 June 2011	Late	£1,600,000	15% surcharge (£240,000)

There will be no liability to surcharge if:

- (I) a nil or repayment VAT return is submitted late; or
- (II) the VAT due is paid on time but the return is submitted late.

Although there is no liability, these do represent defaults which HMRC will take into account when calculating the surcharge liability period and the percentage surcharge applying to any further defaults in the liability period.

Penalties for errors

Finance Act 2007 created a single framework (in respect of most taxes) for penalties have been imposed for errors in documents sent to HMRC or for failure to take reasonable steps to report errors in assessments made by HMRC. This provision came into force on 1st April 2008 in relation to VAT. The penalties are geared to the “potential lost revenue” (PLR). The table below shows how easy it would be to incur a substantial penalty.

Penalised Behaviour	Maximum penalty, without disclosure, based on PLR	Minimum penalty with prompted disclosure based on PLR	Minimum penalty, with unprompted disclosure, based on PLR
Careless	30%	15%	Nil
Deliberate but not concealed	70%	35%	20%
Deliberate and concealed	100%	50%	30%

Is there any scope for avoiding surcharges?

No surcharge arises if the business concerned can satisfy HMRC, or a Tax Tribunal, that there is a reasonable excuse for such conduct.

HMRC need to be convinced that both the reason and the excuse for the error leading to the penalty could not have been foreseen.

Depending on the exact nature of the circumstances, examples of acceptable reasonable excuses could include:

- Loss of key personnel at short notice;
- Loss of records;
- Computer breakdowns.

Insufficient funds due to late payments by customers are not considered a reasonable excuse.

What is default interest?

If a VAT registered business makes an underdeclaration of VAT, it will be assessed for the VAT due and will also be charged interest known as default interest on the underdeclaration. This interest is not a penalty but is designed to achieve commercial restitution.

The business must pay the outstanding amount in full within 30 days or a further interest charge will be levied. At the time of writing interest is charged at 2.5%.

Assessments

HMRC have wide powers to issue assessments to recover tax over-claimed or underpaid. Unless HMRC consider the error to be fraudulent, they may only assess for any VAT due to them going back 4 years. Similarly, a tax payer who has overpaid VAT can only claim retrospectively for the last 4 years.

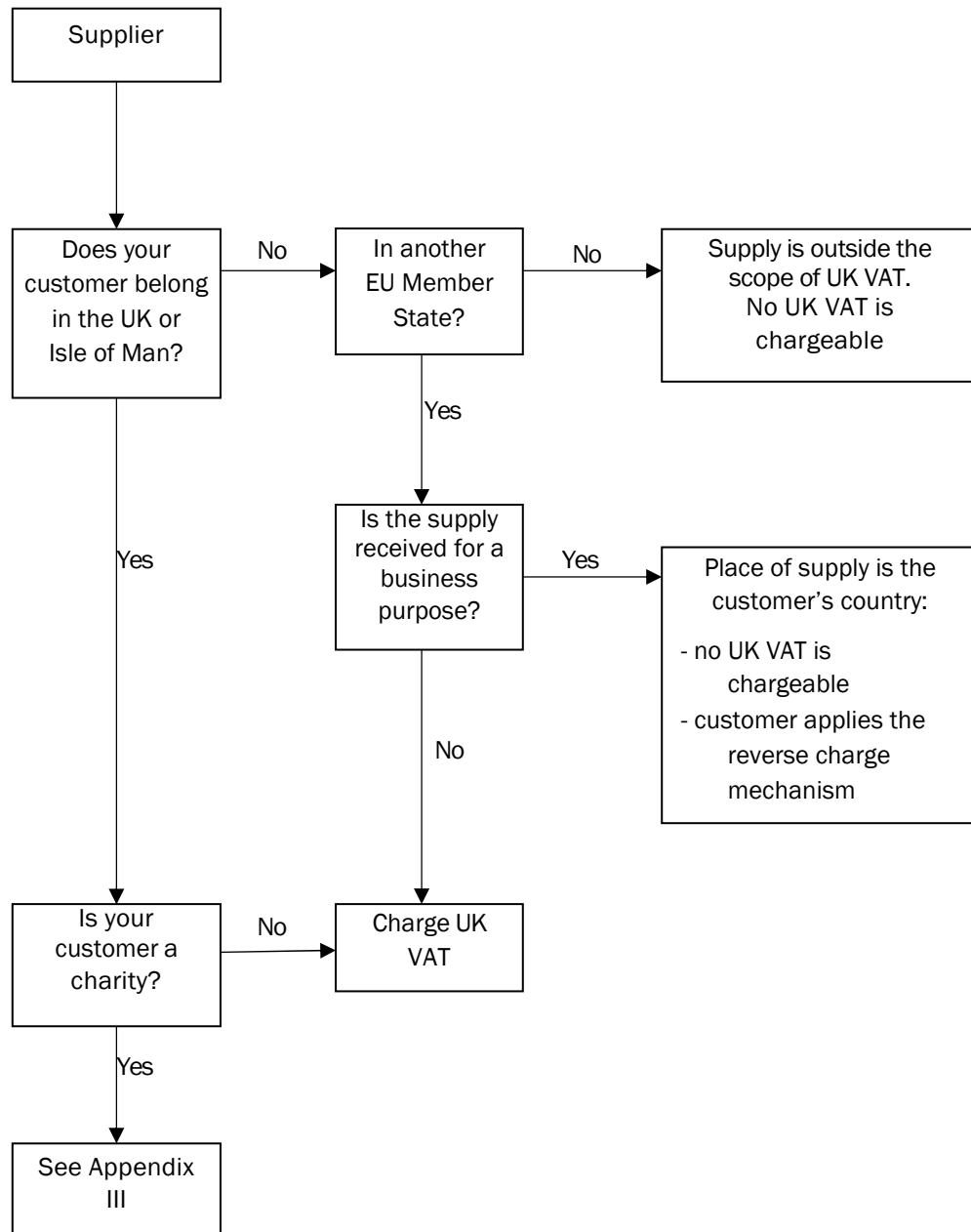
Do HMRC pay interest on payments they make late?

HMRC must pay a 'repayment supplement' where a business submits a return claiming a refund and HMRC do not make repayment within 30 days of receiving the VAT return. However, the clock will not start until the end of the period, if the relevant accounting return is received before the end of the accounting period, and it stops in the 30 day period if HMRC are making 'reasonable' enquiries associated with the return.

Relevant reference material

- HMRC VAT Notice 700/50 – Default Surcharge;
- HMRC VAT Notice 700/42 – Misdeclaration Penalty.

APPENDICES
Appendix I - VAT liability of advertising services



EUROPEAN RECOVERABLE VAT EXPENSES TABLE

	Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Denmark	Estonia	France	Finland	Germany	Great Britain	Greece	Hungary	Iceland	Ireland	Italy	Latvia	Lithuania	Luxembourg	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden
VAT Abbreviation	UST/MWST	TVA/BTW	DDS	VAT	DPH	MOMS	KM	TVA	ALV	UST/MWST	VAT	FPA	AFA	VSK	VAT	IVA	PVN	PVM	TVA	BTW	VAT	IVA	TVA	DPH	DDV	IVA	MOMS
Hotel/Accommodation	✓	✓	✓	✓	X	X	✓	✓	✓	✓	✓	X	✓	✓	X	X	✓	✓	✓	✓	✓	X	?	X	X	✓	✓
Restaurant Meals	✓	✓	X	✓	X	✓	X	✓	X	✓	✓	X	X	X	X	X	✓	✓	✓	✓	✓	X	?	X	X	✓	✓
Exhibitions/Trade Fairs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Conferences	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓
Marketing	✓	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	X	✓	✓	✓	✓
Car Rental	✓	✓	✓	✓	✓	X	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓	✓	✓	✓	✓	X	?	✓	X	X	✓

Key

- ✓ Recoverable but restrictions apply in some countries, and are subject to change
- X Irrecoverable

Appendix III
Charity Advertising Request for Zero-Rating
Part 1 – to be completed by the charity

{tick boxes as appropriate}
[*delete as appropriate]

I(full name)

.....Status in organisation)

Of(Name and address of

.....organisation)

.....

declare that the above named charity is *buying from/importing from:

.....(Name and address of

.....supplier)

The following which *is/are eligible for relief from VAT under item

8 or 8A 8B or 8C of Zero-Rate Group 15:

Or qualify as

<input type="checkbox"/>	Printed appeal letters
<input type="checkbox"/>	Printed envelopes for use with appeal letters
<input type="checkbox"/>	Printed monetary donation collecting envelopes
<input type="checkbox"/>	Monetary donation collecting boxes
<input type="checkbox"/>	Lapel stickers or badges or component parts

.....(Signature and date)

Note: it is the supplier's responsibility to ensure that goods or services supplied are eligible before Zero-rating them.

Part 2 – for use by the supplier

I have read the guidance in Customs and Excise VAT Notice 701/58 and agree that the goods/services described come within the category indicated.

.....(Signature and date)

This certificate should be retained by the supplier for production to his VAT officer.

NOTES (for example any steps taken to verify the declared particulars)

NOTE: It is the supplier's responsibility to ensure that the goods or services supplied are eligible before Zero-rating them

Appendix IV - Liability of some common items of printed matter

These are examples of standard-rated items. You should not assume that an article is zero-rated just because it is not in this list. See also examples of zero rated items on the next page.

Account books	Invitation cards
Address books	Invoices
Appointment cards	Labels
Autograph albums	Letter headings
Badges	Letters (handwritten)
Ballot papers – Folders	Lottery tickets
Bankers' drafts	Manuscript paper
Bingo cards	Memo pads
Book tokens	Microfiche/film
Bookmakers' tickets	Note books
Business cards	Order books
Calendars	Parts of books
Certificates	Photographs
Cheque books	Photograph albums
Cloakroom Tickets	Playing cards
Complement slips	Post Cards (whether completed or not))
Correspondence cards	Posters
Coupons	Printed pictures
Coupon books	Questionnaires
Credit cards	Receipt books
Delivery notes	Record books
Diaries (unused)	Record labels
Dividend warrants	Record sleeves
Draft forms	Registers
Duplicator matters	Rent books
Engineers' plans	Reply-paid coupons
Envelopes	Scrap books (blank)
Exercise books	Stationery
Fashion drawings	Stationery books
Forms	Tickets
Football pool coupons	Tags
Games	Vouchers
Greeting cards	Wall Charts
Index cards	Wills
Insurance cover notes	

These are examples of zero-rated items. You should not assume that an article is standard rated just because it is not in this list.

Accounts (fully printed)	Mail order catalogues
Advertising leaflets	Manuals
Agendas (fully printed)	Maps
Annuals	Memoranda of association (complete in booklet form)
Articles of association (complete in booklet)	Menu cards (fully printed)
Atlases	Music
Autograph books (completed)	Newspapers
Bibliographies	Pamphlets
Books	Part works
Booklets	Periodicals
Brochures	Picture books
Bulletins	Poll cards
Catalogues	Poster magazines
Cigarette cards	Prayer books
Circulars	Price lists (fully printed)
Comics	Programmes
Company reports	Race cards
Diaries (completed)	Recipe books
Dictionaries	Road maps form)
Fixture lists	Scrap books (completed)
Football programmes	Ships' logs (completed)
Handbills	Sports programme
Holiday & Tourist guides	Staff journals
Hydrographical charts	Theses
Instruction manuals	Timetables (in book or leaflet form)
Journals	Trade catalogues
Leaflets	Trade directories
Looseleaf books	Travel brochures
Luncheon programmes (fully printed)	Wine lists (fully printed)
Magazines	