

CROSS BORDER VAT CHANGES 2010

CHANGES TO THE PLACE OF SUPPLY OF SERVICES RULES AND TIME OF SUPPLY RULES IN RELATION TO CROSS-BORDER SUPPLIES OF SERVICES

HMRC GUIDANCE

Introduction

This HMRC guidance document sets out how the place of supply of services rules will change from 1 January 2010 with further changes taking effect from 1 January 2011 and 1 January 2013. The guidance takes account of questions raised during the formal consultation which ran from 22 December 2008 until 13 February 2009. It is organised into five parts.

- Part 1 outlines the background to the forthcoming changes.
- Part 2 provides a brief overview of how the main place of supply of services rules are changing (including the time of supply for cross-border supplies of services subject to the reverse charge).
- In Part 3 there is more detail on how the new place of supply rules will operate.
- Part 4 provides further details on the time of supply changes.
- Part 5 sets out the draft time of supply legislation.

This is initial guidance aimed at helping business to prepare for the changes. Although it contains the latest position on interpretation, a number of issues are still under discussion with other Member States and the European Commission with a view to achieving clarity and consistency of treatment across the EU. These issues are identified and this initial guidance will be updated as issues are resolved. This guidance highlights the changes so does not replicate information contained in existing guidance (but cross-refers to it where appropriate).

Departmental guidance and VAT Notice 741 will be updated to reflect these changes.

PART 1

BACKGROUND

1.1 VAT Package

A package of changes to the EC VAT system was adopted by EU Finance Ministers in February 2008. The changes will modernise and simplify the current rules relating to cross-border supplies of services and to the recovery of VAT on purchases made in other EU countries. The changes will take place between 1 January 2010 and 1 January 2015. The package includes:

- changes to the rules on the place of supply of services for Business-to-Business (B2B) and Business-to-Consumer (B2C) transactions
- a requirement to complete EC Sales Lists (ESLs) for (taxable) supplies of services (covered by Article 196 of Council Directive 2006/112/EC), on which a reverse charge applies in the customer's Member State
- enhanced administrative co-operation between Member States to support these changes
- the introduction of an electronic VAT refund scheme
- the introduction of an optional One Stop Scheme for B2C supplies of telecoms, broadcasting and electronically supplied services from 1 January 2015.

This document is only concerned with the first point and covers changes coming in between 1 January 2010 and 1 January 2013. Further information on the ESL requirement for services can be found in the [ESL Guidance](#). Information on the electronic VAT refund scheme can be found in the [Refund Scheme Guidance](#).

1.2 Anti-Tax Fraud Strategy

In December 2008 as part of an EU Anti-Tax Fraud Strategy (ATFS), European Ministers adopted legislation relating to EC sales lists and the time of supply of cross-border services subject to the reverse charge. This document covers the time of supply changes in relation to accounting for a reverse charge in the UK. Further information on the changes and ESL requirements can be found in the [ESL Guidance](#).

PART 2

PLACE OF SUPPLY OF SERVICES AND TIME OF SUPPLY CHANGES

OVERVIEW

2.1 Place of supply

From 1 January 2010, the new basic rule (the 'general rule') for the place of supply of services will tax B2B supplies of services at the place where the customer is established and no longer at the place where the supplier is established, as is currently the case.

For B2C supplies of services, the general rule for the place of supply will continue to be the place where the supplier is established. However, from 1 January 2015, the place of supply of intra-EU B2C supplies of telecoms, electronically supplied services and broadcasting will be where the customer is established or usually resides. The Commission will report on the feasibility of the new B2C rules before entry into force.

As now, there will be exceptions to the general rule for certain services, with a view to achieving taxation in the place of consumption. In the main these will be implemented on 1 January 2010, with further changes to the 'where performed' rule from 1 January 2011 and for long-term hire of means of transport from 1 January 2013.

In the majority of cases, business customers will account for VAT using the reverse charge procedure (and recover tax subject to the normal rules) as is currently the case.

More detail on the changes, which takes account of frequently asked questions during consultation, is at Section 3.

2.2 Time of supply

From 1 January 2010 the time of supply (or tax point) for reverse charge services will be based on when a service is performed. For single supplies, this means that the tax point will occur when the service is completed or when it is paid for, whichever is the earlier.

In the case of continuous supplies, the tax point will be the end of each periodic billing or payment period. For example, if leasing charges are billed monthly or the customer is required to pay a monthly amount, the tax point will be the end of the month to which the bill or payment relates. Again, if a payment is made before the end of the period to which it relates or before the end of the billing period then that payment date, rather than the end of the period, will be treated as the tax point.

Continuous supplies that are not subject to billing or payment periods will have a tax point on 31 December each year unless a payment has been made beforehand. In that case the payment will create a tax point.

Further information about the impact of the time of supply changes can be found in Part 4. Draft legislation to implement the changes can be found at Part 5. Any comments on these parts should be sent to vat.package@hmrc.gsi.gov.uk.

PART 3

PLACE OF SUPPLY OF SERVICES – CHANGES POST 1 JANUARY 2010

3.1 GENERAL RULE

3.1.1 How is the basic rule changing?

The current basic rule for the place of supply of services is that VAT is due where the supplier belongs. Under the new basic rule (or “general rule” as it will be known):

- The place of supply of services to a relevant business person will be where the customer belongs.
- The place of supply of general rule services to a person who is not a relevant business person will be where the supplier belongs. This is the same as under the existing basic rule. The supplier will be required to charge UK VAT, as required, even if their customer belongs in another Member State.

As now, there will be exceptions to the general rule.

3.1.2 What is a ‘relevant business person’?

In the majority of cases, the revised legislation uses the term relevant business person to determine how the rules apply. A relevant business person is a person to whom one of the following applies:

- is a taxable person within the scope of Article 9 of the Principal VAT Directive
- is registered for VAT in the UK
- is registered for VAT in another Member State
- is registered for VAT in the Isle of Man.

For the purposes of this guidance we will refer to business to business (B2B) supplies for supplies to a relevant business person and business to consumer supplies (B2C) for all other supplies.

3.1.3 How will UK businesses know if their customer is in business?

In most circumstances business customers in other Member States will be able to supply a valid VAT number issued by their tax authorities. This, together with reasonable checks, will normally be sufficient evidence of

business status. If the customer is not VAT registered then alternative evidence may be used. This could be in the form of letters from their tax authority or Chambers of Commerce.

If you have regular customers but do not yet have their VAT number, you might want to start collecting them now in advance of the changes.

3.1.4 What if customers don't provide evidence that they are in business?

If your customer cannot provide sufficient evidence to show that they are in business, or if you have concerns about whether the evidence relates to your customer, you should treat them as a non-business customer. If the evidence is subsequently provided then an adjustment should be made.

3.1.5 What if my customer is involved in both business and non-business activities?

From 1 January 2010, if your customer is engaged in both business and non-business activities (for example, a charity or government department) general rule supplies to that customer will be treated as a B2B supply for the purposes of the place of supply rules. This means, for example, that general rule supplies by UK businesses to overseas charities will be outside of the scope of UK VAT, even if the services relate to the charity's non-business activities, providing that the charity has some business activities. Similarly, where a UK charity which is engaged in both business and non-business activities receives general rule services, it will always be required to account for reverse charge VAT on those supplies, even if they relate solely to its non-business activities.

3.1.6 What if supplies are received wholly for a private purpose?

If a supply of services is made to a business customer who will use it wholly for their own private use or the private use of their staff, then the supply will be treated as a B2C supply.

For example, a VAT registered builder may send a domestic appliance - that is not used in his business – away for repair. This would be regarded as wholly for a private purpose.

A company, charity, or government body cannot act in a private capacity.

3.1.7 How are the establishment rules changing?

There are no changes to the approach for determining where a company is established or whether there is a fixed establishment. This is covered in [VAT Notice 741](#) Section 3.

3.1.8 How should I determine which establishment is receiving a service?

The test to determine which establishment of a business receives a supply mirrors that for determining from which establishment the supply is made. This takes into account whether the establishment has sufficient human and technical resources to make/receive the supply, although the level of human and technical resources required for receiving a service may be different to that required to make a supply - see [Public Notice 741](#) Section 3.

3.1.9 How should global contracts be treated?

In order to determine the place of supply of a 'global contract', it is important to first of all distinguish between a global contract that forms a single supply for VAT purposes and a global framework agreement, often between the business head office and a supplier, that sets the terms for a number of individual supplies.

For example, a business could enter into a contract for a single supply of consultancy services. The consultancy services analyse the global set-up and business practices at the head office and overseas branches. HMRC would regard this as a global contract with a clear direct benefit to the business as a whole, including a number of establishments. In this scenario the services would be supplied to the main business establishment.

Where a framework agreement exists it is important to look at the individual transactions which, as separate supplies, will have separate treatments for VAT purposes. For example, a head office of a business could enter into a framework agreement with a global firm of consultants. The agreement specifies the fees, terms and conditions. Individual branches then draw up and purchase work from the local branches of the consultant under the terms of the framework. These services will be viewed as supplied to the branches even if the head office dictates the terms and receives an indirect benefit.

3.1.10 What is the VAT treatment of supplies of service from/to a virtual office?

Our understanding of a virtual office is the situation where a business has no central office and all functions are carried out by remote workers. In this case, the business establishment is usually where the key decisions of the business are made, where the central policy is determined, and where business administration is carried out. If a business has no such place then it will be considered to be established where it normally resides. This is normally where the company is incorporated. This guidance may be reviewed or enhanced once we have further details of how virtual offices operate in practice.

3.2 LAND RELATED

3.2.1 How are services related to land changing?

The place of supply of land related services will remain unchanged, and will continue to be where the land is situated. Hotel and holiday accommodation

will be explicitly included but this is for clarification only as these supplies have always been treated as land related services.

3.2.2 Travel agents and hotel booking – land related service or general rule?

There is currently some uncertainty as to whether the services provided by travel and hotel booking agents should be treated as land related or intermediary services covered by the general rule. We are aware of the burdens likely to be caused by treating these as land related supplies and have raised the issue at EU level for discussion with other Member States and the European Commission. We will provide further guidance in due course.

3.3 PASSENGER TRANSPORT

3.3.1 How are passenger transport services changing?

The place of supply of passenger transport services will remain unaffected by these changes - see [Notice 744A](#) Section 3.

3.4 HIRE OF MEANS OF TRANSPORT

3.4.1 What is the place of supply of the hire of a means of transport?

The place of supply of the hire of a means of transport depends upon whether it is a short-term or long-term hire. A short-term hire is where there is continuous possession of the vehicle for up to 30 days, or 90 days in the case of vessels.

The place of supply of a short-time hire will be the place where the vehicle is put at the disposal of the customer.

The long-term hire of a means of transport will fall under the general rule (i.e. supplier location for B2C supplies, customer location for B2B supplies). However, from 1 January 2013 for B2C supplies on long-term hire, the place of supply will be where the customer is established, except for pleasure boats where the place of supply will be where the vessel is put at the disposal of customer if the supplier has an establishment there.

3.4.2 What is meant by “put at disposal”?

HMRC’s view is that the term ‘put at the disposal of’ means the place where the vehicle is located at the time it is physically made available to the customer. This is an issue being discussed with other Member States and the European Commission with a view to achieving consistency of treatment.

3.4.3 What is meant by “continuous possession”?

The definition of ‘continuous possession’ is being discussed with other Member States and the European Commission with a view to achieving

consistency of treatment across the EU. Following those discussions HMRC will discuss application with the relevant trade bodies in advance of providing comprehensive guidance on this issue.

3.4.4 What are the reasonable checks of a hirer to determine the place where a non-business customer belongs?

Evidence to prove that a hirer has made reasonable checks of where a customer belongs include a driving license, utility bill or credit card billing address.

3.5 CULTURAL, ARTISTIC, SPORTING, SCIENTIFIC, EDUCATIONAL, ENTERTAINMENT AND SIMILAR SERVICES

3.5.1 How are the rules for cultural, artistic, sporting, scientific, educational, entertainment and similar services changing?

From 1 January 2010 the place of supply of cultural, artistic, sporting, scientific, educational, entertainment and similar services will be where the activity takes place. This is essentially the same as under the existing rules, i.e. taxed where performed.

However, from 1 January 2011 supplies of cultural, artistic, sporting, scientific, educational, entertainment and similar services will fall under the general rule. Only supplies of admissions to an event and services ancillary to admissions will be taxed where the event takes place. Supplies to consumers will remain unchanged.

3.5.2 What is meant by admission to an event?

In its strictest sense, admission means right of entry. However, there are clearly some borderline issues, in particular between whether a supply is admission to an event or an educational activity, for example in-house training seminars where costs are shared between different businesses within a group. This is an issue under discussion with other Member States and the European Commission with a view to achieving consistency of treatment across the EU. We are aware of business views on this and will issue comprehensive guidance as soon as agreement has been reached.

3.5.3 When is a supply ancillary to admission to an event?

A service is ancillary to admission to an event when it is necessary for the event to take place. In most circumstances it will also be performed at the same place, for example washroom and cloakroom services (if they form a separate supply). This is an issue being discussed with other Member States and the European Commission with a view to achieving consistency of treatment across the EU.

3.5.4 Are ticket agents to be treated as ancillary to an admission or as intermediaries?

HMRC's view is that the services of ticket agents will be treated as an intermediary service and will fall under the new general rule when supplied to business customers, but for non-business customers the place of supply will be where the event takes place. This is an issue being discussed with other Member States and the European Commission with a view to achieving consistency of treatment across the EU.

3.5.5 How should organisers' services be treated?

The services of organisers are supplied where the person carries out their role. This is not necessarily in the same place as where the event is held. This treatment will remain unchanged on 1 January 2010. From 1 January 2011 B2B supplies of organisers' services will fall under the general rule.

3.5.6 What are similar services?

A supply is similar to cultural, artistic, sporting, scientific, educational, or entertainment services if it is in connection with a meeting or event and the supplier is required to attend in order to carry out their obligations.

3.6 RESTAURANT AND CATERING SERVICES

3.6.1 What is the place of supply of restaurant and catering services?

Restaurant and catering services will be treated as made in the country in which they are physically carried out. There will be separate rules for restaurant and catering services carried out on board ships, planes and trains during EU journeys.

3.7 RESTAURANT AND CATERING SERVICES ON BOARD SHIPS, PLANES AND TRAINS

3.7.1 What is the place of supply of restaurant and catering services on board ships, planes and trains as during part of transport in the EU?

The place of supply of restaurant and catering services during part of a transport within the EU will be the place of departure. This will mirror the rules for supplies of goods for consumption on board. There will be no change to the existing treatment in the UK for these supplies.

3.8 USE AND ENJOYMENT

3.8.1 How are the use and enjoyment provisions changing?

The use and enjoyment provisions, as applied by the UK, remain unchanged after 1 January 2010. They will still apply to the hire of goods,

telecommunications, television and radio broadcasting and electronically supplied services to business customers.

3.8.2 At what stage does use and enjoyment apply?

The use and enjoyment takes place where a service is consumed. Whilst this will normally be at the final stage of supply (in particular for telecoms, broadcasting, and e-services), it can occur at earlier stages in the supply chain.

3.8.3 How should use and enjoyment be measured?

Determining the level of use and enjoyment will depend very much upon the exact circumstances surrounding the particular supplies. It is important to identify where the customer is physically using the service and where the benefit is felt.

3.8.4 How do other Member States apply the use and enjoyment provisions?

From 1 January 2010 Member States may, if they choose, apply use and enjoyment provisions to general rule services, hire of means of transport, EU to non-EU services other than electronically supplied services to non-business customers.

We are aware that there is concern amongst UK business about the inconsistency of application, both in terms of scope and interpretation.

3.9 INTERMEDIARIES

3.9.1 How is the place of supply of intermediary services changing?

The services of an intermediary, i.e. where a person arranges or facilitates a supply between two parties, will fall under the general rule from 1 January 2010 when it is performed for a business customer. The place of supply of B2C intermediary services will remain unchanged, i.e. in the same place as the underlying supply that is being arranged.

3.10 TRANSPORT OF GOODS

3.10.1 How is the place of supply of the transport of goods changing?

The place of supply of the transport of goods, including intra-community transport of goods, made to business customers will fall under the general rule from 1 January 2010.

For B2C supplies, the place of supply will remain where the transport takes place, in proportion to the distances covered within each country. However, the place of supply B2C supplies of intra-community transport will be the place of departure.

3.10.2 How is 'in proportion to the distances covered' to be calculated?

To determine the extent that a supply takes place in another Member State an apportionment is usually made by dividing the distance travelled with that country by the total distance covered.

3.11 ANCILLARY TRANSPORT, VALUATION AND WORK ON GOODS

3.11.1 How is the place of supply of ancillary transport, valuation and work on goods changing?

From 1 January 2010 supplies of ancillary transport services, valuation and work on goods to business customers will fall under the general rule. B2C supplies of these services will remain taxable where performed.

3.12 SUPPLIES OF SERVICES TO NON-TAXABLE PERSONS OUTSIDE THE EU

3.12.1 What services are supplied to non-taxable persons and what is the place of supply?

From 1 January 2010, the place of supply of B2C supplies of certain specified services will be where the recipient belongs when supplied to customers outside the EU. The services covered are those currently covered by Schedule 5 of the VAT Act 1994, with the exception of intermediaries arranging such a service [see [VAT Notice 741](#)].

3.13 REVERSE CHARGE

3.13.1 How is the reverse charge changing?

The reverse charge is a simplification measure designed to avoid overseas businesses needing to register in a Member State when it is possible for the customer to account for the VAT on a supply. The mechanism itself is not changing, however there are a few consequential changes.

The reverse charge currently only applies insofar as the customer receives the supply for a business purpose. From 1 January 2010, an organisation that is involved in both business and non-business activities will have to account for VAT on a supply via the reverse charge even if the service is received in connection with its non-business activity. However, supplies received wholly for private purposes will be treated as B2C supplies.

In addition to the mandatory reverse charge for general rule supplies to business, the UK will continue to apply an extension to the reverse charge. This is where an overseas supplier provides non-general rule services to a UK VAT registered customer and the place of supply of those services is the UK.

Details of how the reverse charge currently operates can be found in [Notice 741](#) Section 16.

3.13.2 Does the reverse charge apply even if the overseas supplier has a UK VAT registration?

The reverse charge is mandatory in relation to B2B general rule services made cross-border. However, if the overseas supplier is making the supply from a fixed establishment in the UK, they will need to charge UK VAT on the supply.

3.14 FORCE OF ATTRACTION

3.14.1 What is meant by force of attraction?

The force of attraction is a principle adopted by some countries whereby VAT is due from a business established in the same territory as their customer even though that business establishment does not play an active role in supplying the services concerned.

The EC legislation will include a new Article [192a] from 1 January 2010 stating that a VAT is not due from a fixed establishment within the territory of a Member State unless that establishment intervenes in the supply.

3.14.2 What is meant by the term intervenes in a supply?

HMRC's view is that a fixed establishment of a business can only intervene in the making of a supply when there is a substantive involvement. This is an issue being discussed with other Member States and the European Commission with a view to achieving consistency of treatment across the EU. We are aware of business concerns that an inconsistent approach will lead to double taxation.

3.14.3 Why has Article 192a not been enacted in UK VAT legislation?

The statement that a fixed establishment is not making a supply unless it intervenes in the services has been included in European law to address concerns over the 'force of attraction' principle. The UK has never adopted this principle. Although not explicitly covered in legislation, we believe that the overall UK legislation together with interpretation achieves the right result.

3.15 DISPUTES

3.15.1 How will disputes between Member States be dealt with?

Article 398 of the EC VAT Directive (2006/112/EC) provides for an advisory 'VAT Committee' which comprises delegates from each Member State chaired by a European Commission official. The VAT Committee can consider any questions concerning how EC VAT legislative provisions should be

interpreted and applied, as well as any differences in the approach taken by Member State.

3.16 TRANSITIONAL ARRANGEMENTS

3.16.1 What are the transitional arrangements for these changes?

In cases where:

- VAT is correctly charged on a supply in another Member State under the existing rules in force and
- VAT becomes due in the UK on or after 1 January 2010/2011/2013 under the new rules.

HMRC will not seek to collect the UK VAT, if evidence is available to demonstrate that VAT has been charged and paid for in another Member State. This will avoid double taxation.

PART 4

TIME OF SUPPLY FOR REVERSE CHARGE SERVICES

4.1 Why are the time of supply rules changing?

The changes are intended to harmonise the time of supply rules for reverse charge services throughout the EU. At present Member States are permitted to set their own rules. If this were to continue after 1 January 2010 it could lead to mistiming in the reporting of supplies by the supplier (on their EC Sales List) and customer (on their VAT return) in their respective Member States.

4.2 What supplies are affected?

The new rules apply to cross-border supplies of services received in the UK by businesses that are required to account for the VAT on those supplies as a reverse charge.

4.3 Why do the new rules cover all supplies subject to the reverse charge arrangements in the UK?

The UK is required to adopt the harmonised time of supply rules for all supplies subject to a reverse charge under the new general rule for place of supply of services. We have opted to also apply them to supplies covered by the UK extension to the reverse charge arrangements, as this will provide consistency for businesses both in applying the rules and maintaining their accounting systems.

4.4 When do the changes come into effect?

The new rules will be implemented by secondary legislation, to come into effect at the same time as other VAT Package changes on 1 January 2010.

4.5 How will I treat supplies that span 1 January 2010?

The legislation will include measures that take into account supplies that are in progress on 1 January 2010. This will ensure that they not only remain properly liable to VAT, but also that they are not taxed twice. Further information about this will be available in due course.

4.6 What impact will these rules have on completion of UK EC Sales Lists?

Supplies reported on UK EC Sales Lists will be governed by the rules as they apply in the customer's Member State. So, for example, the time at which a

supply is to be included will be based on the corresponding time of supply rules in that Member State, please see the [ESL Guidance](#).

4.7 How will the new rules apply to a single supply of services?

The tax point will be completion of the service, with an earlier tax point to the extent that they are paid for beforehand.

4.8 How will the new rules apply to continuous supplies of services?

For continuous supplies there will be a tax point at the end of each billing or payment period (or on payment where this is earlier). For this purpose a “period” will include regular (for example monthly, quarterly, etc) billing/payment programmes of the kind typically adopted by suppliers of telephone services, leasing companies and the like. It will also cover situations in which the billing or payment periods are not pre-ordained but, as they arise, cover specific successive periods. So, for example, where a bill is issued for the period 1 January to 10 February, followed by a bill covering 11 February to 5 April, and so on, each will represent a period for the purposes of applying the time of supply rules.

In the absence of billing or payment periods there will be a compulsory tax point on 31 December. However, this will only apply where a payment tax point does not arise during the previous 12 months. So, for example, if inter-company management charges are applied annually, say to 30 April each year, provided they are paid either wholly, or in part, beforehand a further tax point will not arise on 31 December. Where exceptionally a tax point does arise on 31 December (in which case, because the supply must have been ongoing for more than a year, it will have commenced sometime before 1 January of the same year) VAT will be required to be accounted for on the VAT return covering December.

4.9 What is the difference between a single and continuous supply?

The definition of a continuous supply will follow existing time of supply rules for domestic supplies. So, something like the leasing of equipment or provision of telephone services which are already treated as a continuous supply for time of supply purposes, will be treated as continuous supplies under these new rules. As a general rules supplies of services normally fall within one of the following categories:

- Single supply of services – for example the repair of a lorry for a transport business. The vehicle is left with a garage who will normally undertake the work the same day or within a couple of days. The services are completed when the required repair work has been performed.

- Series of separate supplies – for example, where the transport firm above takes its vehicles to the same garage for repair and servicing as required. This could mean that the garage is undertaking work on a regular basis. Nevertheless, in the normal course of events, each repair, etc, will amount to a separate discreet supply.
- Single supply of services over an extended period – for example, a consultant preparing a report. The process may take some time given the need to research the issues, followed by the drafting of the report. During that period the client is receiving little in the way of a tangible service. What the client requires is the final outcome i.e. delivery of the written report. Again this is when the service is performed.
- Continuous supply of services - for example something like the provision of telephone services. Here, instead of an outcome, what the customer receives might be described as a recurring stream of supplies, each portion of which carries equal weight in terms of the customer being able to use and consume them. In this case the supplies are never “completed” in the same way as the other categories are. The supply might be terminated but this is more a case of the supply ceasing rather than something finally being accomplished.

4.10 My existing accounting system does not recognise completion of a service, so can I use the date of the invoice as being roughly the equivalent?

The time of supply for a single supply of services will be the earlier of payment or completion of the service. There is no scope for these rules being varied, for example by administrative practice. Nevertheless, we believe that, in the vast majority of cases, information already available from existing business systems can be used to achieve broadly the right result.

In fact, ‘performance’ of a service (which is represented by completion) already exists as a time of supply concept. In UK law it represents the basic tax point for a supply of services. Furthermore, our existing guidance already acknowledges that completion can sometimes be difficult to identify accurately, this will be even more the case under these new arrangements where the obligation falls on the customer. It is therefore recognised that it may simply be impossible for some customers to know the exact date on which a service is completed.

The recipient of the service will be expected to utilise information that is available to them to determine the most accurate time of supply. So, where a specific completion date is known (perhaps from the nature of the supply or information provided by the supplier), that date should be used.

In many cases, however, the date of the supplier's final invoice may be appropriate. Equally in others, the invoice might not necessarily represent the most accurate indicator of the date of completion. For example, where a supplier is known to routinely issue final invoices two weeks in advance of completion it would be more accurate to identify completion as the date of the invoice plus two weeks.

As a general principle we will accept reliance on an invoice date or any other reasonable methodology provided it does not produce a manifestly inaccurate overall result. Ultimately it is up to individual businesses to identify the most appropriate methodology for their particular circumstances.

4.11 Do I need to consult my supplier to agree when a service has been completed?

You will not need to consult, or notify, your supplier when it comes to judging when a supply has been completed. In the context of the reverse charge, and particularly in the event of disagreement, it will be the customer (as tax payer) whose determination of completion will prevail for the purposes of applying the time of supply rules. Provided you have followed UK time of supply guidance in accounting for the VAT on the reverse charge services you receive, you will not be held responsible for any mis-match in the supplier reporting the supply on their ESL.

4.12 It may take time to make full use of the available information. Will HMRC penalise me in the meantime?

It is recognised that the new time of supply rules represent a significant change to current arrangements and that it may take some businesses time to fine-tune their existing accounting systems to produce the most accurate information with which to determine the date for applying the reverse charge. We also appreciate that, in the early stages, some businesses may, for valid operational reasons, face particular difficulties. HMRC will expect businesses to take reasonable and appropriate steps to use the best information available from existing systems to apply the new rules correctly. Provided businesses can demonstrate that they have taken 'reasonable care' to do this HMRC will not seek to penalise them if initial teething problems produce some inadvertent inaccuracies.

In the longer term the expectation will be that any planned enhancement to business systems will, where appropriate, take into account the reverse charge time of supply requirements.

PART 5

DRAFT TIME OF SUPPLY LEGISLATION

Regulation 82 VAT Regulations 1995

Services from outside the United Kingdom

(1) This paragraph applies to services which are treated as being made by taxable persons under section 8(1) of the Act which are not services to which paragraph (3) applies.

(2) Subject to paragraph (5) the services to which paragraph (1) applies shall be treated as being supplied when they are performed.

(3) This paragraph applies to services which are treated as being made by taxable persons under section 8(1) of the Act which are supplied for a period for a consideration the whole or part of which is determined or payable periodically or from time to time.

(4) Subject to paragraphs (5) and (6) services to which subparagraph (3) applies shall be treated as separately and successively supplied at the end of the periods in respect of which payments are made or invoices issued and to the extent covered by the payment or invoice.

(5) If, before the time applicable under paragraph (2) a payment is made in respect of a supply, or in the case of paragraph (4) a payment is made at a time that is earlier than the end of the period to which it relates, the supply shall be treated as being supplied at the time the payment is made.

(6) if the services to which paragraph (3) applies

(a) are commenced before 1st of January and continue after 31st December of any year; and

(b) during that year no invoice is issued that has effect for the purposes of paragraph (4) and no payment made in respect of that supply

the services supplied during that year shall be treated as being supplied on the 31st December of that year to the extent that the recipient has received the benefit of them.