Grant Thornton

VAT Matters

VAT Matters November 2008

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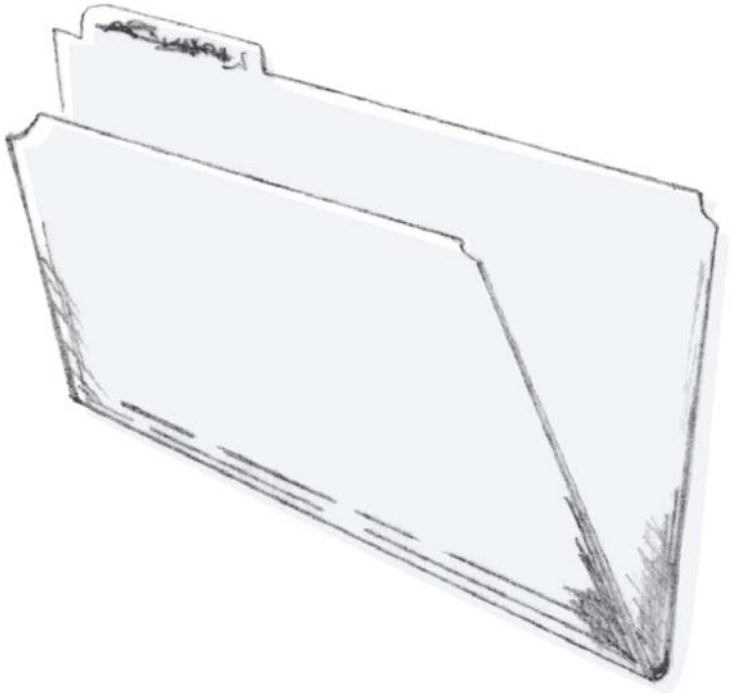


Change in VAT rate

The Minister for Finance has increased the standard rate of VAT from 21% to 21.5% with effect from 1 December 2008. Set out below are some of the main administrative issues that need to be considered as a result of the increase.

Invoices

VAT invoices issued by a VAT-registered person (who is not on the cash receipts basis) to another VAT-registered person on or after 1 December 2008 should show VAT at the 21.5% rate. This is so, even if the goods or services were supplied before that date.

A trader on the cash receipts basis who is required to issue a VAT invoice to another VAT registered person should show the VAT rate which applies on the date of the supply, not on the date of receipt of payment.

VAT liability in respect of goods or services supplied to an unregistered person is normally determined by the date of supply and not the date of issue of the invoice, if any. Goods or services which are actually supplied to unregistered persons prior to 1 December 2008 are taxable at the 21% rate even though they may be invoiced on or after 1 December.

Credit notes

Any VAT credit note or debit note relating to a supply of goods or services which contains a VAT adjustment and which is issued to a VAT-registered person, a Public Body or an exempt person on or after 1 December 2008 should show VAT at the rate in force at the time the original invoice was issued.

Any credit note or debit note relating to a supply of goods or services which is issued to an unregistered person on or after 1 December 2008 should show or include VAT at the rate in force at the time of the supply.

Advance payments

If goods/services are supplied on or after 1 December, any advance payments, including deposits, received from VAT-registered persons can be categorised as follows:

1. Those who account for VAT on an invoice basis:

   The appropriate VAT rate is the rate in force at the time the invoice relating to the advance payment is issued.

Change in VAT rate

2. Those who account for VAT on cash receipts:

   The rate is the rate in force at the time of the advance payment.

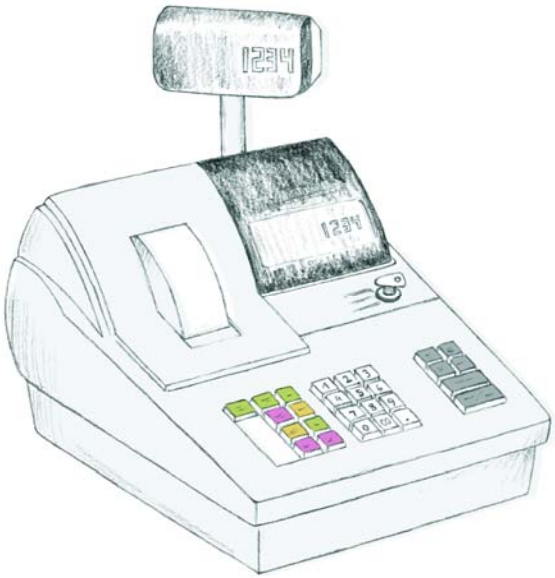
   An advance payment received from an unregistered person is subject to VAT by reference to the rate in force at the time of the advance payment.

Contracts

In a situation where a contract has been entered into, and the contract is not completed before 1 December, an adjustment to account for the increased VAT rate may be necessary.

Stock

Where a supply is made on or after 1 December, VAT must be accounted for at 21.5% even though the trader may have originally been invoiced with VAT at the 21% rate by their supplier.



VAT on forfeited deposits

Following the European Court of Justice (ECJ) ruling in the case of Société thermale d'Eugénie-les-Bains, measures were introduced in the 2008 Finance Act to provide for the repayment of VAT accounted for on deposit payments where the underlying transaction is later cancelled.

Prior to ECJ ruling

In Ireland, a deposit received in advance of the supply of goods or services as a form of prepayment was liable to VAT where the goods/services were taxable. If the deposit was forfeited, it was Revenue's view that the company was not entitled to VAT relief.

After ECJ ruling

The VAT treatment of when the deposit is paid remains the same; i.e. the deposit is still subject to VAT.

However, where the following criteria are met, the supplier may recover VAT already accounted for on the deposit in the relevant VAT return:

- the deposit is forfeited due to the cancellation by the customer
- a supply does not subsequently occur
- the cancellation is recorded by the supplier in the appropriate books and records
- the deposit is not refunded to the customer, and
- the customer does not receive any consideration, benefit or supply in lieu of the deposit.

VAT refund claims for prior years

Although the new measures only came into effect on 13 March 2008, taxpayers are entitled to claim similar treatment for previous years, subject to the 4 year time-limit for repayment claims.
Where VAT is refunded to a taxpayer, interest will be calculated from the tax periods to which the claims relate up to the date of refund. Claims for such refunds should be submitted to the taxpayer's local district.

Where the taxpayer's income tax or corporation tax liability took into account VAT paid on retained deposits, the income/corporation tax liability will need to be adjusted for the relevant years where a repayment of VAT is received.

For ease of administration the amount of the VAT repayment should be reduced by the amount of the additional liability arising to income/corporation tax.

Where a taxpayer wishes to make such a claim to Revenue, the following information should accompany the application:

1. evidence of the terms on which the deposits were paid and retained, and
2. confirmation that such deposits were not applied to any other taxable supply

Other matters

Service charges in hotels and restaurants

Readers are reminded that, from 1 September 2008, VAT is due on service charges included in hotel and restaurant bills at 13.5%. Tips which are freely given by customers that are not included on the bill remain outside the scope of VAT.

VAT reverse charge

To reiterate, with effect from 1 September 2008, a subcontractor in the construction industry will no longer charge VAT on supplies to the principal contractor. Instead, the principal contractor will be liable to self-account for the VAT due on the subcontractors' supply of construction services under the reverse charge mechanism. Haulage services will be outside the scope of this change.

Letting of residential property by property developers

Readers will be aware that new VAT rules relating to property transactions were introduced with effect from 1 July 2008. The VAT treatment associated with the letting of residential properties by developers is determined by the date of completion of the property. Lettings of such properties completed after 1 July 2008 are not subject to a full VAT claw-back. Instead, the developer must make an annual payment to Revenue each year for the period that the property is let (to a maximum of twenty years).

Under the old VAT rules, such developers would have been required to make a larger VAT repayment to Revenue upon letting the property.

For the purposes of this section, Revenue is prepared to accept that a property is 'completed' when it is first let by the developer. Therefore, if a developer first lets a property after 1 July 2008 (which was completed and in stock on 1 July 2008), the developer can avail of the new rules which should result in a cash-flow benefit.

Other matters

VAT treatment of Factoring & Invoice Discounting

Following the High Court ruling in relation to the Hagemeyer case, Revenue has confirmed that it will implement the judgement. Revenue acknowledges that the fee charged for debt factoring and invoice discounting is taxable consideration upon which VAT is liable at the time the fee is charged by the Factor. Other fees charged by the Factor for the advanced drawdown of payment are however exempt.

In its recent e-Brief [No. 52/2008] Revenue provides several examples in relation to the above but accepts that they are general in nature and that each case should be determined on its own facts and circumstances.

Change to UK VAT Rate

In his Pre-Budget Report on 24 November 2008 the UK Chancellor announced that the standard rate of VAT in the UK will be reduced to 15% on 1 December 2008.

This means that, for any sales of standard-rated goods or services that take place on or after 1 December 2008, providers should charge VAT at the new rate of 15%. Only standard-rated sales are affected.

There are no changes to sales that are zero-rated or reduced-rated for VAT. Similarly, there are no changes to the VAT exemptions. The 15% rate will remain until 31st December 2009, and from 1 January 2010 it will revert to 17.5%.

Finally, please note that a separate TAX MATTERS will issue shortly to outline updates and changes in the Finance Bill 2008 No. 2, including VAT changes.

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