

# VAT Brief

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**VAT Brief - your resource for information, insights and contacts to keep you updated on Irish and International VAT changes**

### **In this edition....**

of VAT Brief, we take a look at the fundamental changes adopted by the ECOFIN Council in respect of the place of supply rules for services, the additional reporting and compliance obligations as a result of same and highlight the new procedures involved in 8<sup>th</sup> Directive refund claims. Such changes are collectively referred to as the “VAT Package”, the majority of which become effective from **1 January 2010** (unless otherwise stated).

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### **Previous editions**

- VAT Brief - Managing VAT in a downturn
- VAT Brief - Finance Act 2008 VAT on property change

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### New rules for services

The VAT Package will extend the range of services that will be deemed to be supplied where the recipient is established. Since the changes impact both business-to-consumer (B2C) and business-to-business (B2B) transactions, they have the potential to affect all businesses.

### B2B services

Under the VAT Package, the general rule for B2B services will switch from the place where the supplier is established to the place where the recipient is established. If the recipient has another fixed establishment elsewhere and the services have been provided to that establishment, then the place of supply is where that establishment is located. There are a number of exceptions to this general rule, including for example services in connection with immovable property (taxed where property located), cultural, artistic, sporting, scientific, educational and entertainment services (taxed where physically carried out) and passenger transport (taxed where service occurs).

Overall, the changes will reduce the need for businesses to make 8<sup>th</sup> and 13<sup>th</sup> Directive claims to recover VAT currently incurred on services in Member States in which they are not established.

### B2C services

For B2C services, the general rule will continue to be that the place of supply of services is the place where the supplier has established its business. There will continue to be a number of exceptions to this general rule, including for example short-term car hire (place of supply is the place where the means of transport is actually put at the disposal of the customer - subject to optional 'use and enjoyment' rules); intermediary services (the place of supply of the underlying transaction); and electronically supplied services (ESS) received from outside the EU (the place where the customer is established).

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### Use & Enjoyment

Member States will be given the option of introducing 'use and enjoyment' provisions to override the place of supply rules in relation to a wide range of services where;

1. the place of supply is outside the EU but the 'use and enjoyment' is within the EU, or
2. the place of supply is within the EU but the 'use and enjoyment' is outside the EU

The introduction of such rules will be optional for Member States. In addition it is possible that each Member State may use different tests for determining where a service is used and enjoyed. This is likely to add another layer of uncertainty and complexity for businesses.



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### Additional Changes

From **1 January 2011**, B2B supplies of cultural, artistic, sporting, scientific, educational and entertainment services (other than admissions to same) will be deemed to be supplied where the recipient is established.

From **1 January 2013**, there are certain changes in relation to the short-term hire of "means of transport" i.e. motor vehicles, vessels, aircraft etc.



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### New reporting requirements

Those involved in supplying goods to businesses established in other Member States will be familiar with the Intrastat and VIES systems. The major shift in the place of supply of services creates a need for the extension of this information sharing system to supplies of services. For many service-orientated businesses, which are unfamiliar with such reporting, this change is likely to represent a substantial additional compliance burden.

All businesses should begin considering how the additional accounting and compliance obligations can be successfully integrated into their current business processes and systems.



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### New 8<sup>th</sup> Directive refund procedure

If a taxable business incurs VAT in another Member State in which it is not established and in addition does not make any taxable supplies in that Member State, it is entitled to reclaim the foreign VAT incurred through the 8<sup>th</sup> Directive refund mechanism. The VAT Package replaces the existing refund mechanism and introduces the following key changes:

- A detailed timetable for processing (and paying) refund applications;
- The right for businesses to receive interest on overdue refunds;
- A simplified, new electronic procedure for the submission and processing of refund applications which must be submitted to the [Irish](#) Revenue Commissioners.
- A new deadline for the refund application – up to 9 months following the period in question.

While not as pressing as the changes in the place of supply rules, all businesses reclaiming foreign VAT on a regular basis should be aware of the changes and familiarise themselves with the new procedures involved.

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### Telecoms and ESS

Both EU and Non-EU businesses that supply telecommunication services, radio or television broadcasting services or ESS within the EU will be significantly affected by the changes introduced by way of the VAT Package. However, such changes will not come into effect until **1 January 2015**.

The following businesses will be affected:

- Non-EU broadcasters & telecoms businesses which supply their services (B2C) into EU Member States;
- EU broadcasters & businesses supplying telecoms services & ESS (B2C) into EU Member States.

In particular, those businesses which supply such services directly to EU consumers (B2C) from establishments in Member States with a low VAT rate (e.g. Luxembourg) or in Member States who apply a reduced rate or a particularly advantageous VAT treatment to a certain category of supplies will, upon implementation of the VAT Package, have a five-year window in which to continue to benefit from such advantages i.e. until 31 December 2014. From 1 January 2015, the advantages will be removed.

The current special scheme for B2C supplies of ESS is an optional scheme i.e. a Non-EU established supplier can register for VAT in a single EU Member State of choice instead of multiple EU jurisdictions but nonetheless charges VAT at the rate applicable in the customer's country. Such a scheme reduces the supplier's VAT compliance obligations to one EU Member State and therefore reduces the administrative burden. This scheme will continue in its current form for non-EU businesses providing B2C supplies of ESS and, from 1 January 2015, will be extended so that it also covers:

- Non-EU businesses supplying telecommunications and broadcasting (B2C) into EU Member States, and
- EU businesses making intra-Community B2C supplies of telecommunications, broadcasting and ESS.

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### Practical Difficulties

Having reviewed the relevant EU legislation, we have noted a number of practical difficulties which suppliers are likely to encounter, for example, in respect of B2B supplies – What will be the level of evidence required to establish that a customer is a taxable person? Will there be onerous conditions for the supplier to establish that the customer is in fact the recipient? What place of supply rules are applicable in the case of a bundle of services supplied together, possibly for a single consideration?

As we can see, unless clear guidance issues at national and at EU level, a number of practical difficulties will exist causing uncertainty amongst the parties involved. We are currently liaising with the Revenue Commissioners with a view to removing, in so far as is possible, such uncertainties.



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The above commentary is a brief outline of some of the key changes coming down the line. All businesses providing (or receiving) services cross-border are likely to be affected by the new rules. While there are still some 12 months until the initial implementation, assessing the practical impact of the VAT Package on business processes and systems should start now. At this stage, the first action should be to perform a rapid assessment of the scale of impact on your business. This will enable you to make further informed decisions as to the next steps in preparation for 1 January 2010. There is a clear case for preparing for the changes quickly, and implementing the solutions necessary to deal with the business consequences of the VAT Package.

The above changes have yet to be enacted into Irish VAT legislation, we are expecting such legislative changes to be incorporated into the Irish VAT Act within the next few months.

This publication has been prepared as a guide only. In the interests of brevity and clarity, detailed information may be omitted which may be directly relevant to an individual's or an organisation's circumstances. Professional advice should always be taken before acting on any information contained in this publication. Re-publication and dissemination (other than brief quotations with appropriate attribution) is expressly prohibited without prior written consent.

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