

# VAT – A guide for Event Suppliers and Organisers

Prepared for Event Supplier & Services  
Association (ESSA) by Kingston Smith  
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## VAT Introduction

This is the second edition of the ESSA VAT guide. ESSA has decided to issue this booklet as a general guide for ESSA members.

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 or the national helpline 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.

The booklet has been prepared by specialists from Kingston Smith who have expertise in both VAT and the event, exhibition and conference sector. Our thanks in this respect go to Adrian Houstoun, VAT Partner, at the City of London office of Kingston Smith, 60 Goswell Road, London EC1M 7AD.

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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. Many other countries outside the EU also have a VAT system.

EU Member States as at January 2011

Austria  
Belgium  
Bulgaria  
Croatia  
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, and Monaco is treated as part of.

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 most traders. 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 1st April 2014 - £81,000, 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.
- Payment of VAT to HMRC on sales that the business may not be able to recover retrospectively from its customers.

Those that make taxable supplies but do not reach the registration limit may voluntarily register.

#### 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 purposes. Members of a VAT group are jointly and severally liable for VAT liabilities arising whilst they are members of the VAT group.

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 collection of 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 (unless a different date is requested and accepted) although they 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 collection 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; three key areas are:

- 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 20%, or the lower rates 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 27%. 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 (20%), the lower rate (5%) and the zero-rate (0%). VAT incurred on costs, which are attributable to taxable supplies, is 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 (20% from 2011)</i>	Any supply not designated as either zero rated, lower rate or exempt.
<i>Taxable lower rate supplies (5%)</i>	Domestic heating fuel, children's car seats, specified building work.
<i>Taxable zero rated supplies (0%)</i>	Food, books, children's clothing, certain transport services, export of goods, and the first qualifying supply of new dwellings.
<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 eg charitable activities

### What exempt supplies may arise in the event industry

In particular, care should be taken by businesses that undertake transactions in property. Further details are given in section 7 but as a brief warning note, this is particularly likely to occur where a conference organiser lets sites at an event or at a show and has not opted to tax the site.

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 stand design and construction 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 a business incurs costs in the course of a client project; for example, sub contracted stand construction services. 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 part of the main supply and should be included in the sales 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 your own liability 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 liable 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 you 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 a business 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 equivalent 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. If you recover part payment the VAT reclaimed must be repaid in the same proportion.

The mirror image of bad debt relief is that if you have not paid your supplier within 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 costs and 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 only available **“wholly for business purposes”**;
- 50% of VAT is recoverable on car leasing payments and contract hire payments as long as there is some business use, although 100% can be recovered on repairs etc. that are 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 a race horse or yacht not used solely for business purposes).

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.

## Staff entertainment

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

## 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 above 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.

## VAT Returns

The standard return period is 3 months, but monthly returns are normally allowed for regular repayment traders. There is provision in the regulation for the Commissioners to vary the length of the tax period; Traders may be compulsorily directed to submit monthly or annual returns where it is considered necessary to secure the revenue.

On each return, a trader must:

- account for the total tax due for the return period and at the same time remit the net tax payable;
- supply full information on all other matters specified in the return form;
- sign a declaration that the return is true and complete; and
- return the form not later than the last day of the month following the end of the return period, although there is an extra 7 days for certain traders using electronic payment methods. For annual returns it is the last day of the second month following the end of the return period.

Online filing of VAT returns and electronic payment of VAT is now required for all businesses, subject to an allowance for those who for religious or similar reasons are not permitted to use the internet etc.

#### 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 EXHIBITION ORGANISER

Services provided by exhibition organisers are wide-ranging, including the creation of exhibition stands and exhibition and conference organisation.

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?

The supply of any services or goods made in the UK is standard-rated, so VAT is chargeable at 20%.

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 should have specific clauses that allow you to add VAT to the consideration. You should take advice for land and property transactions which have specific rules.

Are there any cases in which I should not charge VAT on the provision of exhibition services?

Yes. There are special rules concerning international services – see Section 4.

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 in respect of exempt property supplies (Section 7) 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 but not through your UK VAT return – see Section 4 and Appendix I 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 exhibition organisers cannot recover input tax?

Businesses which only make exempt supplies or those which are not registered 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, ie, they may have some supplies that do not allow recovery.

- 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 4);;
- Private individuals;
- Small businesses that are not VAT registered;
- Trade unions;
- Certain clubs and associations.

## 4. INTERNATIONAL SERVICES

### Changes to the VAT treatment of International Services

From 1st January 2010 significant changes in the VAT treatment of supplies of services made to and received from overseas came into force. Additionally there were changes from 1st January 2015 to intra EU supplies of Broadcasting, Telecommunications and E Services but only where the customer is a consumer. As it is unlikely that ESSA members will supply this sort of service to consumers it will not be covered in this booklet.

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 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 most intra-EU services.

As part of the 2010 changes, businesses making intra-EU supplies of services are required to complete quarterly EU Sales Lists.

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

### Business to Business Supplies (B2B)

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.

The place of supply for most B2B supplies is deemed to be where the customer belongs and if the customer is in the EU or has a similar VAT system, the customer 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	Special Treatment
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.
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 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.
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.
On board a trip or aircraft catering services	Treated as supplies at the relevant point of departure
Hire of goods	There are several rules covering these supplies so you should consider each situation based on the facts.
Telecommunication services	If they would otherwise be treated as supplied outside the EU but enjoyed in the UK they are supplied in the UK.

### 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 Consumer Supplies to Outside EU

The rule from 1st January 2010 for services supplied to an individual 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 do I decide the liability on European/World-wide Contracts?

Where a contractor has been contracted by a multinational company to provide services worldwide, 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.

### (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 can be 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 on an exhibition for the 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 you 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 supplied to someone 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 as individuals are clearly not in business. However, a problem may arise in providing services to tourist boards and charities that **will generally not be 'in business'** for VAT purposes. In general VAT should be charged on such contracts but if a tourist board in another EU state can provide you with a VAT number you need not charge VAT.

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 UK bank, which is only able to recover, for example, 10% of VAT incurred, buys in exhibition services from a French company. 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 the full value of the imported service – the amount is to be entered in Box 1 of the VAT Return; and
- Recover only 10% of the amount calculated in Box 4 of the VAT Return.

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

## Overall Summary; what if?

(i)	The recipient of the services belongs in the UK	taxable at 20%
(ii)	UK company renders an invoice for advertising at a UK show to a business client in Belgium with no establishment in the UK	outside the scope. Belgium VAT number required RC statement
(iii)	UK company renders an invoice for exhibition service to a client in the US with no business establishment in the UK.	outside the scope
(iv)	UK company renders an invoice for exhibition services to a private EU individual	taxable at 20%
(v)	UK company renders an invoice for exhibition services to an EU Government organisation	taxable at 20%

RC statement means that on your sales invoice you must state: It is your obligation to consider and if appropriate account for VAT and on the reverse charge procedure or something similar.

### 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 I 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.

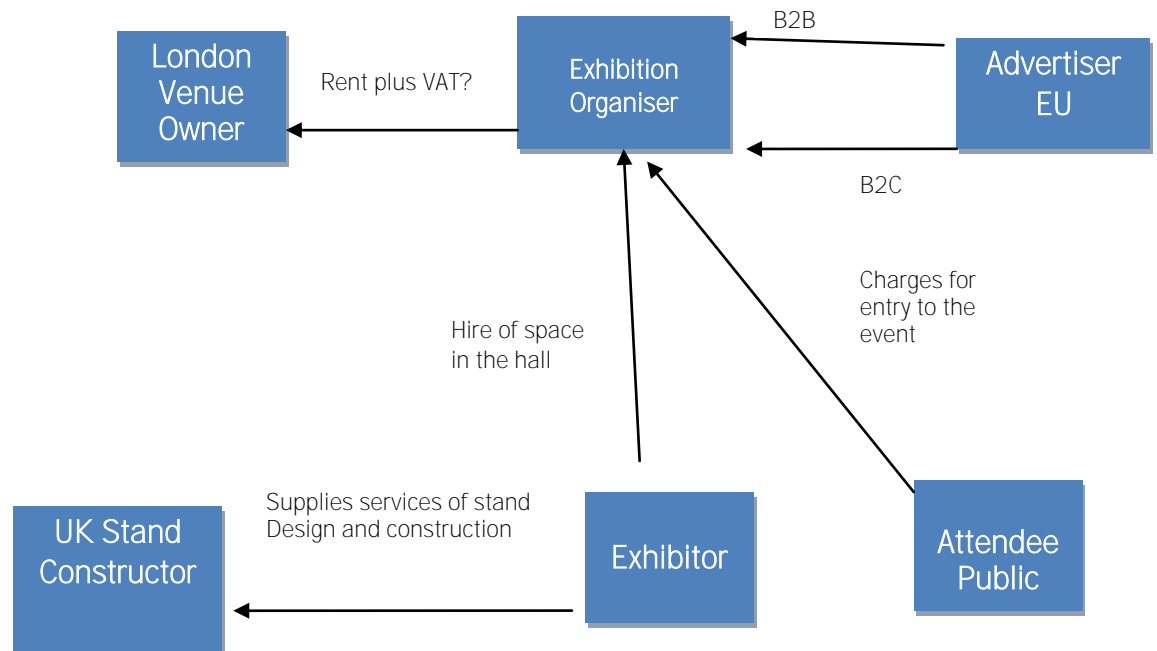
### Non UK Businesses

VAT incurred in member states where you are not present can be recovered under the relevant EU refund procedures. The type of costs on which VAT can be recovered are shown in Appendix 1

### 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 4a VATA 1994

## 5. Example of Service involving UK venue



Supply By:	Nature of Supply	VAT Treatment
Venue Owner	Supply of right to use its venue for three days.	The venue owner has opted to tax and charges VAT.
Exhibition Organiser	Lets a particular plot to an exhibitor	The conference organiser also opts to tax and charges VAT on the hire fee. <b>If it doesn't opt to tax the vat on rent paid is irrecoverable.</b>
Exhibition Organiser	Agrees with a French Motor manufacturer to be the lead sponsor throughout the venue.	An intra EU supply B2B. No VAT charge. Require the advertisers VAT no and make reverse charge statement on the invoice.
Exhibition Organiser	An Italian individual agrees to advertise in the programme.	An intra EU supply B2C. UK VAT is charged.
Exhibition Organiser	The conference organiser charges admission to the general public.	Rights of admission are supplied where the event takes place. UK VAT is chargeable.
Stand Constructor	Agrees to build a stand for the exhibitor	If both SC and E are in the UK, VAT is charged. If they are in different EU states then B2B rules apply to exhibition services and no UK VAT is chargeable.

## 6. THE EU AND THE EURO

Since 1st 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 known as acquisitions and despatches respectively. From 1st 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 (i.e. services are excluded) between the 28 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. Quarterly returns can be prepared for up to £35,000 per quarter and monthly ones above that threshold.
- (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.

From 1<sup>st</sup> April 2012 intrastat declarations have to be submitted online by 21<sup>st</sup> of the following month.

- (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 earlier 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 earlier 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.

## Relevant reference material

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

## 7. PROPERTY AND VAT

### Introduction

All but a few businesses need to understand the basic rules associated with VAT and property. VAT is a consideration for any company that owns or leases its 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 option 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 12 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. Certain tenants e.g. qualifying charities can disapply an option which could impact on your VAT recovery. Care is therefore required when negotiating with a potential tenant.

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 or buyer. 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 business 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.

### **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.

## 8. 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 2013	Late	£2,000,000	First default – SLN issued
31 June 2013	Late	£2,500,000	2% surcharge (£50,000)
30 Sept 2013	Late	£2,000,000	5% surcharge (£100,000)
31 Dec 2013	On time		No action
31 March 2014	Late	£1,500,000	10% surcharge (£150,000)
30 June 2014	Late	£3,500,000	15% surcharge (£525,000)
30 Sept 2014	On time		No action
31 Dec 2014	On time		No action
30 Mar 2014	On time		No action
30 June 2014	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.

### 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.

### 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%

### What is default interest?

If a VAT registered business makes an under-declaration of VAT, it will be assessed for the VAT due and will also be charged interest known as default interest on the under-declaration. 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 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

## 9. QUESTIONS FROM ESSA MEMBERS

1. What are the new 2011 VAT rules?  
*Please see section 4.*
2. How do they affect my company?  
*Please see section 4.*
3. How do I know if my customer belongs in an EU country?  
  
*The customer should provide you with a (non-UK) EU VAT number. If the customer has any presence in the UK (such as an office or personnel), you should seek advice from HMRC or your adviser.*
4. Why do we need the EU VAT number of the company purchasing goods or services from us?  
*You need to show this on your invoice in order to zero rate your supply to the customer (provided all of the other conditions are met).*
5. What happens if the VAT number is not supplied?  
*UK VAT at the standard rate (20% from 4 January 2011) should be charged unless you have alternative evidence but seek advice.*
6. Why do countries outside of the EU not have to pay VAT and don't have to provide their VAT number?  
*The EU is a single market for VAT purposes. Supplies in countries outside the EU are outside the Scope of UK and EU VAT.*
7. Does the customer's VAT number need to be shown on the invoice I produce?  
*For supplies of goods it is required and for supplies of services it is strongly recommended.*
8. Why do I need to supply my VAT number when making purchases from EU countries?  
*In order that the supplier can zero rate its supply to you when appropriate.*
9. Why do I still pay VAT on some items (such as hotels) within the EU?  
*It depends on exactly what is being provided. You may be able to claim it back if you do not make supplies in the particular country. You should contact HMRC or your adviser.*
10. Where is the best place to get advice from regarding VAT?  
*Professional advice is recommended, however, there is an HMRC helpline and website too.*

## Appendix 1

## EUROPEAN RECOVERABLE VAT EXPENSES TABLE

	Austria	Belgium	Bulgaria	Cyprus	Croatia	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	PDV	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	X	✓	✓
Exhibitions/Trade Fairs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Conferences	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓
Marketing	✓	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	X	✓	✓	✓	✓	X	✓	✓	✓	✓
Car Rental	✓	✓	✓	✓	X	✓	X	✓	X	✓	✓	✓	X	✓	X	✓	✓	✓	✓	✓	✓	✓	X	?	✓	X	X	✓

## Key

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

X Irrecoverable