Electronically supplied services: supplementary information on the Special Scheme for non-EU businesses

VAT Information Sheet 10/03

August 2003

This Information Sheet explains further details about the special electronic registration and VAT accounting scheme for non-EU businesses which provide electronically supplied services to EU consumers.

It should be read in conjunction with VAT Information Sheet 07/03 Electronically supplied services: Special Scheme for non-EU businesses.

You will also need to read the following VAT Information Sheets:

01/03 Electronically supplied services and broadcasting services: new EU place of supply rules

04/03 Electronically supplied services: a guide to interpretation

05/03 Electronically supplied services: evidence of customer location and status.

Introduction

What is this Information Sheet about?

This Information Sheet provides further information about the new Special Scheme for non-EU businesses supplying electronically supplied services to EU consumers (that is, private individuals and non-business organisations). It includes guidance on:

- VAT registration thresholds
- penalties
- use of agents
- currency conversion
- declaration and payment errors
- audits
- appeals.

The Special Scheme provides an optional, simplified means of registering and accounting electronically for VAT that is due in the EU with effect from 1 July 2003, following implementation of the VAT on E-Commerce Directive.
Law


Registration for the Special Scheme

General

If you apply for the Special Scheme, you are required to comply with its conditions. These include electronically registering, accounting for, and paying the VAT that is due at the correct time. There are no penalties which apply under the Special Scheme. However, if you persistently fail to comply with its conditions, your registration may be cancelled. In that event, you would be required to register under the normal rules which apply in the various Member States where your customers belong. You could then be subject to any penalties which those Member States apply. In the UK this includes the misdeclaration penalty for large or repeated errors, interest charged on underdeclarations and the penalty for evasion involving dishonesty.

Similarly, if you are supplying electronic services to UK consumers and fail to register for VAT (either under the Special Scheme or under the normal rules), you may be compulsorily registered in the UK under the normal rules and may incur a late registration penalty. This varies from between 5 per cent to 15 per cent of the tax due, according to how late you were in registering.

My sales of electronic services to EU consumers are small. Do I need to register for the Special Scheme?

There is no threshold for registration under the Special Scheme. Although your sales of electronically supplied services to EU consumers may be small or even occasional, the Special Scheme enables you to register, submit declarations and pay VAT in the single EU Member State of your choice. If you choose not to register under the Special Scheme, the normal rules will apply. In contrast to the Special Scheme, these require you to register and account for VAT in most Member States where your customers belong.

Am I required to register if my services qualify for a VAT Exemption in the EU?

Under the terms of the VAT on E-Commerce Directive, most electronically supplied services are subject to VAT. However, some Member States apply an exemption to some electronically supplied services, such as gambling. If you think that your services may qualify for an exemption you should check with the Member State(s) concerned. However, unless your services are exempt from VAT in all Member States where your customers belong, you will still be required to register and account for VAT in the EU either under the normal rules or under the Special Scheme.
Can I use an agent to deal with my VAT affairs?

Only a business may register for the Special Scheme. An agent, even an authorised one, is therefore not allowed to register for the Special Scheme on your behalf.

You may authorise an agent to submit declarations and, if necessary, payment on your behalf under the Special Scheme. However, rules regarding agents vary between the Member States and such authorisation may render the agent jointly and severally liable for VAT in some Member States.

VAT rates and exchange rates

What VAT rates apply in the Member States?

From 1 July 2003, non-EU businesses supplying electronic services to EU consumers are required to charge VAT at the rate which applies in the customer’s Member State. These rates are published on the Commission’s webpage VAT on digital services - frequently asked questions.

What exchange rate must I use when converting into sterling?

Paragraph 4.5 of VAT Information Sheet 07/2003 Electronically supplied services: Special Scheme for non-EU businesses explains that businesses registered for the Special Scheme in the UK are required to submit declarations and payments to Customs and Excise in sterling (GBP). Conversions from other currencies into sterling must be made using the exchange rates published by the European Central Bank (the ECB):

- for the last day of the reporting period to which the declaration relates
- if no such rate is published for that day, for the next day for which such a rate is published.

To avoid the need for businesses to calculate a conversion from the currency of sale into Euros and then from Euros into sterling, Customs will publish online the exchange rates for some leading currencies direct into sterling. This will include dollars (USA, Canadian and Australian), rupees and yen.

Alternatively, you may calculate the conversion yourself using the exchange rates shown at the ECB’s website.

What are Customs’ bank account details?

We will publish our bank account details on our dedicated website before 30 September 2003, the end of the first accounting period. You should not use any other bank account.
Dealing with errors

What do I do if a business customer requests a refund of VAT?

The Special Scheme is intended for supplies to consumers who cannot recover VAT. Thus, a business customer who fails to provide a valid VAT registration number at the time of the transaction and is charged VAT, cannot deduct that VAT as input tax. However, if he subsequently produces a valid VAT registration number and requests a credit, you may refund the VAT.

What do I do if I discover I’ve made an error in the VAT declared on the declaration?

If you submit a declaration and subsequently discover that you have made an error, for example, entering French VAT in the line for Spain or underdeclaring UK VAT, you should contact us at voes@hmrc.gsi.gov.uk quoting your declaration acknowledgement number (paragraph 4.6 of VAT Information Sheet 07/2003 refers) and advise us of the correct amount(s) due for the Member State(s) concerned. You do not need to submit a supplementary declaration.

If you owe additional VAT as a result of your mistake, we will either ask you to send the payment to us or advise you that the Member State(s) concerned will contact you to explain how you should pay the VAT due.

What do I do if I have paid an amount different to the VAT declared?

If you have declared the correct amount of tax, but discover that you have paid us more or less than that amount in error, you should contact us at voes@hmrc.gsi.gov.uk and we will advise you what action to take.

Audits

General

From time to time Customs carry out routine audits on businesses which are registered for UK VAT under the normal rules. The reason for this is to ensure that the correct tax is accounted for at the right time. From 1 July 2003 the new rules allow the UK to audit businesses which are, or have been, registered for the Special Scheme.

The EU Member States have agreed that although the Member State where the tax is due is entitled to carry out an audit, in practice they will normally liaise with the Member State in which you registered for the Special Scheme.
If Customs decide to audit the records of your business, we will contact you by email and provide you with details of the records you will need to provide. We will also discuss with you how these can be provided electronically.

In the course of an audit, we may discover that you have underdeclared or overdeclared UK VAT. Paragraphs 5.2 and 5.3 below explain what action we will take in these cases. If we discover that you have underdeclared or overdeclared VAT due to another Member State, we will advise that Member State which may then contact you to explain what you should do.

**What action will you take if you find I have underdeclared VAT?**

If you have declared less UK VAT than you are liable for, we will normally send you a formal notice by email stating:

- the accounting period (that is, the calendar quarter) in which we consider the underdeclaration was made
- the amount by which we consider you have understated your tax liability.

We will also request you to pay that amount to us within 30 days of the date of the notification.

There are no penalties for underdeclaring the amount of VAT due under the Special Scheme. However, failure to declare the full amount due may render you ineligible for the Special Scheme (paragraph 2.1 refers).

**What action will you take if you find I have overdeclared VAT?**

If you have declared more UK VAT than you are liable for, we will normally send you a formal notice by email stating:

- the accounting period (that is, the calendar quarter) in which we consider the overdeclaration was made
- the amount by which we consider you have overstated your tax liability.

We will then normally pay that amount to you within 30 days of the date of the email.
Appeals to VAT Tribunals

What are VAT Tribunals?

VAT Tribunals in the UK exist to give taxpayers a way of getting a hearing in court where Customs have given a decision with which they disagree. They are completely independent of Customs and Excise. They aim to provide a fairly informal method of dealing with disputes.

What aspects of the Special Scheme can I appeal about?

Under paragraph 20(1) of Schedule 3B to the VAT Act 1994, you have the right to appeal to a VAT Tribunal about any decisions we give on the following aspects of the Special Scheme:

- registering or cancelling the registration of any person
- a decision to give a formal notice of an amount underdeclared (paragraph 5.2 refers)
- the amount of VAT stated as over or underdeclared in a formal notice under paragraphs 5.2 or 5.3 above.

What if I have a dispute with another Member State?

UK VAT Tribunals cannot deal with VAT matters which fall within the jurisdiction of other Member States. If you disagree with a decision taken by a Member State about any aspect of the Special Scheme, for example the amount of VAT owed to you, you should raise the matter with them.

Who can I contact for further information?

If you have a query for which you have been unable to find the answer within this VAT Information Sheet, please contact our National Advice service on 0845 010 9000 (+44 208 929 0152 for International callers). The National Advice Service is available from Monday to Friday, 8.00am to 8.00pm (GMT), and will be able to answer both general queries and deal with enquiries relating to the Special Scheme.

If you have hearing difficulties, please ring the Textphone service on 0845 0000200.

Alternatively, international enquirers may email us at voes@hmrc.gsi.gov.uk.

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