

VAT Grouping Extra-Statutory Concession

Who is likely to be affected?

This measure legislates for an Extra-Statutory Concession (ESC) and preserves the existing treatment.

The ESC applies to partially exempt VAT groups with overseas members that make charges to the UK group. Affected bodies will mainly be in the financial or insurance sectors.

General description of the measure

Legislation will be introduced in Finance Bill 2012 to replace a concession that allows reverse charges (which obliges the recipient of a supply to account for VAT on that supply as output tax) to be based on the cost of services purchased by the group members established overseas.

Policy objective

The concession ensures affected taxpayers pay a fair amount of tax where services are purchased by overseas members of the VAT group and subsequently supplied within the group. This measure seeks to preserve this status quo by providing for the calculation of the charges in legislation.

Background to the measure

It was announced at Budget 2011 that this concession will be legislated for in Finance Bill 2012 and HM Revenue & Customs (HMRC) consulted interested parties in summer 2011.

Detailed proposal

Operative date

The new legislative rules will apply to the valuation of the charges from the date of Royal Assent to the Finance Bill 2012, and the concession will continue to apply until that date.

Current law

Sections 43(2A) to 43(2E) of the VAT Act 1994 provide for reverse charges to be applied within VAT groups in certain circumstances. The valuation of such charges is subject to a concession that prevents excessive charges arising. That concession is set out at 3.2.2 of Notice 48: Extra-Statutory Concessions. Changes to the VAT place of supply of services rules were made on 1 January 2010. HMRC set out the impact of these changes on the concession in Revenue and Customs Brief 16/11.

Applied together, the current law and the concession ensure a fair VAT charge on services purchased outside the UK and used within the UK.

Proposed revisions

Changes will be made through Finance Bill 2012 to amend Schedule 6 of the VAT Act which sets out the valuation rules applicable to reverse charges.

The amended law will confirm how a reverse charge due under sections 43(2A) to 43(2E) is valued.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.				
Economic impact	The measure has no economic impact.				
Impact on individuals and households	There is no direct impact on individuals and households as the ESC only affects VAT Business groups.				
Equalities impacts	There are no impacts on people with protected characteristics.				
Impact on business including civil society organisations	There will be no impact on business, including civil society organisations. This measure will have benefits for VAT registered businesses by putting the existing concession on a statutory basis.				
Operational impact (£m) (HMRC or other)	There will be no operational impacts.				
Other impacts	The reverse charge, which is maintained by this measure prevents offshore tax avoidance arrangements by larger firms and thus preserves the competitiveness of smaller firms.				

Monitoring and evaluation

The measure will be kept under review through regular communication with taxpayer groups and industry representatives affected.

Further advice

If you have any questions about this change, please contact Phil Mattacks on 020 7147 0538 (email: phil.mattacks@hmrc.gsi.gov.uk).

1 Group supplies using an overseas member

- (1) VATA 1994 is amended as follows.
- (2) In section 43 (groups of companies), in subsection (2C)(c), after “above” insert “and paragraph 8A of Schedule 6”.
- (3) In section 83 (appeals), in subsection (1)(v) for “or 2” substitute “, 2 or 8A”.
- (4) In section 97(4) (orders requiring Parliamentary approval within 28 days of being made), in paragraph (f), after “1A(7)” insert “or “8A(7)””.
- (5) Schedule 6 (valuation: special cases) is amended as follows.
- (6) In paragraph 1 (cases where Commissioners may direct value is open market value), in sub-paragraph (5), after “paragraph”, in the second place it occurs, insert “8A or”.
- (7) After paragraph 8 (value of supplies of services treated as made by person by whom they are received) insert –
 - “8A (1) This paragraph applies where –
 - (a) a supply (“the intra-group supply”) made by a member of a group (“the supplier”) to another member of the group is, by virtue of section 43(2A), excluded from the supplies disregarded under section 43(1)(a), and
 - (b) the representative member of the group satisfies the Commissioners as to the value of each bought-in supply.
 - (2) “Bought-in supply”, in relation to the intra-group supply, means a supply of services to the supplier to which section 43(2A)(c) to (e) refers, so far as that supply is used by the supplier for making the intra-group supply.
 - (3) The value of the intra-group supply shall be taken to be the total of the relevant amounts in relation to the bought-in supplies.
 - (4) The relevant amount in relation to a bought-in supply is the value of the bought-in supply, unless a direction is made under subsection (5).
 - (5) If the value of a bought-in supply is less than its open market value, the Commissioners may direct that the relevant amount in relation to that supply is its open market value.
 - (6) A direction under this paragraph must be given by notice in writing to the representative member, but no direction may be given more than 3 years after the time of the intra-group supply.
 - (7) The Treasury may by order vary the provision made by this Schedule about the value of supplies of the kind mentioned in sub-paragraph (1)(a).
 - (8) An order under subsection (7) may include incidental, supplemental, consequential and transitional provision (including provision amending section 43 or 83).”
- (8) The amendments made by this section have effect in relation to supplies made on or after the day on which this Act is passed.

EXPLANATORY NOTE

GROUP SUPPLIES USING AN OVERSEAS MEMBER

SUMMARY

1. This clause puts on a statutory footing a long standing concession on how the reverse charge on an intra-group supply (which arises when a partly exempt VAT group buys in services through an overseas group member) should be valued. It applies where the representative member of the group satisfies the Commissioners as to the value of the bought in services. It sets out how the charge is to be calculated and allows HMRC to direct that the value of the bought in services is to be an open market value. It also provides a power for subsequent amendments to be made to the valuation provision.

DETAILS OF THE CLAUSE

2. Subsection (2) inserts a provision into section 43(2C)(c) of the Value Added Tax Act 1994 (VATA). Section 43(2C)(c) provides that the value of intra-group supplies falling within section 43(2A) are to be treated as a reverse charge in accordance with section 8 of VATA. The inserted provision provides that the supplies may be subject to the valuation provisions in new paragraph 8A of Schedule 6.
3. Subsection (3) provides for a right of appeal for the taxpayer against an open market valuation direction.
4. Subsection (4) provides for any subsequent order varying the valuation provisions to be subject to the affirmative resolution procedure.
5. Subsection (6) provides that paragraph 1 of Schedule 6 does not apply to supplies valued in accordance with new paragraph 8A of that schedule.
6. Subsection (7) inserts new paragraph 8A into Schedule 6
7. New paragraph 8A applies where two conditions (set out in new paragraph 8A(1)) are met. Firstly a supply giving rise to the reverse charge is made and secondly the representative member of the VAT group satisfies the Commissioners as to the value of bought in supplies.
8. New paragraphs 8A(3) to (5) make provisions as to how the intra-group supplies shall be valued. Where the value of the bought-in supply or supplies is at least open market value, the value of the intra-

group supply is the value of the bought-in supply or supplies (or the element thereof that is a cost component of the intra-group supply in question). Where the value of any bought-in supply is less than its open market value, the Commissioners may direct that the intra-group supply be valued taking an open market value for that bought-in supply (or the element thereof that is a cost component of the intra-group supply in question).

9. New paragraph 8A(6) provides that any direction must be given by notice in writing and must be within 3 years from the date of the intra-group supply.
10. New paragraphs 8A(7) and (8) allow the Treasury by order to amend the valuation provision and make any consequential provisions necessary.
11. Sub-section (8) provides that the changes will have effect from Royal Assent. The current concession will continue to apply until that point.

BACKGROUND NOTE

12. A reverse charge is a mechanism for taxing supplies of services bought by businesses from outside the UK but consumed within the UK.
13. Supplies made by one member of a VAT group to another are disregarded (section 43(1) of VATA). Therefore no VAT would be chargeable when supplies from outside the UK are brought into a UK VAT group by a member belonging overseas. Sections 43(2A) to 43(2E) of VATA are anti-avoidance provisions preventing reverse charges from being avoided by buying in services, ultimately for consumption within the UK, via a VAT group member belonging overseas.
14. This valuation provision is necessary (as was the concession it replaces) to restrict the impact of sections 43(2A) to 43(2E), in appropriate circumstances, to the bought-in services introduced into the UK via an intra-group charge. Without this provision the charge would apply to the use of the overseas group member's own resources included in the intra-group charges as well as the bought in services.
15. If you have any questions about this change, or comments on the legislation, please contact Phil Mattacks on 020 7147 0538 (email: phil.mattacks@hmrc.gsi.gov.uk).