

VAT: Online Registration and Removal of the Threshold for Non-UK Established Businesses

Who is likely to be affected?

Businesses who wish to use online services to register for VAT or notify a variation of their registration details (such as a change of address or to deregister).

Businesses without a UK establishment who make taxable supplies of goods or services in the UK will be affected by the removal of the VAT registration threshold.

General description of the measure

In October 2012 HM Revenue & Customs (HMRC) will introduce an enhanced and streamlined online service for VAT registration, deregistration and variations of business details. The measure will remove the requirement to prescribe 20 VAT forms in secondary legislation. Instead the particulars of these forms will be determined by the Commissioners for HMRC and made available publicly. The measure will also enable the use of electronic communications for registration, deregistration and variations.

The measure will require non-UK established businesses to register for VAT regardless of the value of taxable supplies they make in the UK. These businesses will no longer benefit from the UK VAT registration threshold.

Policy objective

This measure will provide incentives for customers to use online services by offering quicker and more accurate processing in line with the Government's digital agenda. Smart forms will reduce the scope for error, driving down costs for businesses and HMRC. This will contribute to the UK's goal of improving its international ranking in terms of 'ease of doing business'.

The process of amending existing forms will be simplified, as it will no longer be necessary to go through the lengthy process of amending secondary legislation. This will allow HMRC to respond more quickly to customer concerns and address potential risks.

The removal of the UK VAT registration threshold for non-UK established businesses will bring UK law in line with that of other Member States, following the recent Court of Justice of the European Union (CJEU) case on Schmelz C-97/09.

Background to the measure

This measure was announced at Budget 2011, and a consultation document entitled 'VAT: Consultation on the next steps for moving online' was published on 8 August 2011.

HMRC has considered all responses received to the consultation, as detailed in the summary of responses published on 6 December 2011, available on the HMRC website.

Detailed proposal

Operative date

VAT online registration, and the removal of certain forms from the law, will have effect from October 2012. The removal of the registration threshold for non-UK established businesses will take effect from 1 December 2012.

Current law

The current law on the requirement to notify VAT registration, deregistration and changes to registration details is contained in the VAT Act 1994, Schedules 1 to 3A and Schedule 11 paragraph 7(1). Where a notification or other communication is required, the form of that requirement is required to be prescribed in regulations. Sections 132 and 133 of the Finance Act 1999 provide for legislation to enable the use of electronic communication. Regulations 5(4) to 5(14) of the VAT Regulations 1995 provide for notification by electronic means.

The VAT Regulations 1995 (SI 1995/2518) require communications to be in the form set out in Schedule 1 to those regulations.

The current VAT Act 1994 allows non-established businesses to use the UK VAT registration threshold. Schedules 1 to 3A, Schedule 11 paragraph 7(1), and VAT Regulations 1995 (SI 1995/2518) regulation 5 and Schedule 1 to those regulations, apply equally to UK and non-UK established businesses. All businesses are subject to the same law on notifying VAT registration, deregistration and changes to VAT registration details.

Proposed revisions

Secondary legislation will amend the VAT Regulations 1995 to enable the use of electronic channels for online registration, de-registration and variation of registration details where existing provisions are inadequate.

Legislation will be introduced in Finance Bill 2012 to allow the forms contained in Schedule 1 to the VAT Regulations 1995 to be determined by the Commissioners for HMRC rather than provided for in regulations. Schedule 1 to the VAT Regulations 1995 will therefore be omitted and the provision for the form will be determined by tertiary legislation.

Legislation to be introduced in Finance Bill 2012 will also remove the threshold for non-UK established businesses making taxable supplies in the UK. A new registration Schedule 1A will be created, and existing Schedules will be amended where appropriate.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer. This also supports the Exchequer in its commitment to protect revenue.				
Economic impact	No significant economic effects are expected from VAT online registration and the changes to forms. The cost of goods or services provided by non-UK established businesses that register for VAT may be higher than comparable UK non-registered businesses, if they are unable to absorb the increase caused by inclusion of VAT on their products. Whilst this is less likely to affect business to business sales where the recipient is VAT registered, it could distort other competition in favour of non-registered UK businesses. There is a risk that non-compliance may occur, but we will make sure that the change is well publicised and will monitor the position. The changes are not expected to have any effect on the OBR's macro-economic forecast.				

<p>Impact on individuals and households</p>	<p>VAT online registration will have no impact on individuals and households, since any impact will be on businesses.</p> <p>The removal of the VAT threshold for non-UK established businesses will have no direct impact on individuals and households as only non-UK businesses are affected. However the cost of goods and services provided to individuals by previously unregistered non-UK businesses will be increased by the inclusion of VAT on their products. As the number of businesses affected by these changes is expected to be negligible, the overall effect on individuals is also expected to be negligible.</p>
<p>Equalities impacts</p>	<p>Use of the new online channel will not be mandatory, therefore paper channels will remain available for those unable to use the online system, including the disabled.</p> <p>Consultation also identified a potential impact on those customers where English is not their first language. HMRC does not consider that translation into foreign languages would be cost effective for online VAT registration. The vast majority of businesses will require a working knowledge of English to set up bank accounts, contract with suppliers, meet legal obligations to employees etc or will apply through agents/ tax representatives. Therefore we plan to follow existing HMRC practices and provide online and paper services in English and, upon request, provide a Welsh language option in respect of guidance and public notices.</p> <p>No other impacts have been identified on any other group with protected characteristics.</p>
<p>Impact on business including civil society organisations</p>	<p>The measure will potentially affect all businesses registering for VAT, deregistering from VAT or changing their registration details using online services. There are 395,000 applications for changes to the VAT register each year, and around 210,000 new applications for VAT registration.</p> <p>The measure will make access to HMRC systems quicker and easier and reduce the cost to HMRC of providing their services. It is not yet possible to quantify the impact on business as the specification for the new system has not yet been finalised.</p> <p>For the same reason, it is also not currently possible to quantify the impact of the removal of the VAT threshold for non-UK established businesses. However, as the number of businesses that are affected by this change is believed to be negligible, the overall impact on the compliance cost for business is also estimated to be negligible.</p> <p>An updated table of impacts with estimated costings and savings will be issued in 2012.</p>
<p>Operational impact (£m) (HMRC or other)</p>	<p>It is not yet possible to quantify the cost to HMRC of delivering the changes to the online system, as the specification for the new system has not yet been finalised. Similarly any staff efficiencies arising as a result of greater automation of the online registration and variation process cannot be quantified at this time. However introduction of the online system is expected to drive down costs for HMRC.</p> <p>The cost to HMRC of removing the VAT threshold for non-UK established businesses is estimated to be negligible.</p>

Other impacts	<u>Small firms impact test:</u> Small businesses that are or are likely to be registered may be affected by this measure if they choose an online rather than a paper route. Responses to consultation with small businesses that was launched by HMRC in March 2005 indicated that small businesses are willing to conduct business with HMRC electronically provided that online services are reliable, easy to access and simple to use. Research conducted during summer 2008 showed that even among the smallest VAT businesses and employers around 90 per cent have access to a computer at work or home. Since then, of course, there will have been a further expansion in business ownership of, or access to, computers/ the internet.
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Monitoring and evaluation

Successful implementation of the changes to VAT online registration will be assured through performance data obtained from ongoing monitoring of the automated system.

Successful implementation of the removal of the VAT threshold for non-UK established businesses will be assured through data identifying an increase in registration of non-established businesses with a turnover below the UK registration threshold.

Further advice

If you have any questions about this change, please contact Gareth McDonnell (email: gareth.mcdonnell@hmrc.gsi.gov.uk) or Craig Benn (email: craig.benn@hmrc.gsi.gov.uk) or ring 0151 703 8656/8302.

1 Non-established taxable persons

Schedule 1 contains provision about non-established taxable persons.

SCHEDULE 1

Section 1

NON-ESTABLISHED TAXABLE PERSONS

New Schedule 1A

1 In VATA 1994, after Schedule 1 insert—

“SCHEDULE 1A

REGISTRATION IN RESPECT OF TAXABLE SUPPLIES: NON-UK ESTABLISHMENT

Liability to be registered

- 1 (1) A person becomes liable to be registered under this Schedule at any time if conditions A to D are met.
- (2) Condition A is that—
 - (a) the person makes taxable supplies, or
 - (b) there are reasonable grounds for believing that the person will make taxable supplies in the period of 30 days then beginning.
- (3) Condition B is that those supplies (or any of them) are or will be made in the course or furtherance of a business carried on by the person.
- (4) Condition C is that the person has no business establishment, or other fixed establishment, in the United Kingdom in relation to any business carried on by the person.
- (5) Condition D is that the person is not registered under this Act.
- 2 (1) A person does not become liable to be registered by virtue of paragraph 1(2)(b) if the reason for believing that taxable supplies will be made in the 30-day period mentioned there is that a business, or part of a business, carried on by a taxable person is to be transferred to the person as a going concern in that period.
- (2) But if the transfer takes place, the transferee becomes liable to be registered under this Schedule at the time of the transfer if conditions A to D in paragraph 1 are met in relation to the transferee at that time.
- (3) In determining for the purposes of sub-paragraph (2) whether condition B is met, the reference in paragraph 1(3) to a business is to be read as a reference to the business, or part of the business, that is transferred to the transferee.
- 3 A person is treated as having become liable to be registered under this Schedule at any time when the person would have become so liable under paragraph 1 or 2 but for any registration that is subsequently cancelled under—

- (a) paragraph 11,
 - (b) paragraph 13(3) of Schedule 1,
 - (c) paragraph 6(2) of Schedule 2,
 - (d) paragraph 6(3) of Schedule 3, or
 - (e) paragraph 6(2) of Schedule 3A.
- 4 (1) A person does not cease to be liable to be registered under this Schedule except in accordance with sub-paragraph (2).
- (2) A person who has become liable to be registered under this Schedule ceases to be so liable at any time if the Commissioners are satisfied that—
- (a) the person has ceased to make taxable supplies in the course or furtherance of a business carried on by the person, or
 - (b) the person is no longer a person in relation to whom condition C in paragraph 1 is met.

Notification of liability and registration

- 5 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(a) or 2(2) must notify the Commissioners of the liability before the end of the period of 30 days beginning with the day on which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the day on which the liability arises.
- 6 (1) A person who becomes liable to be registered by virtue of paragraph 1(2)(b) must notify the Commissioners of the liability before the end of the period by reference to which the liability arises.
- (2) The Commissioners must register any such person (whether or not the person so notifies them) with effect from the beginning of the period by reference to which the liability arises.

Notification of end of liability

- 7 (1) A person registered under paragraph 5 or 6 who, on any day, ceases to make or have the intention of making taxable supplies in the course or furtherance of a business carried on by that person must notify the Commissioners of that fact within 30 days beginning with that day.
- (2) But the person need not notify the Commissioners if on that day the person would otherwise be liable or entitled to be registered under this Act (disregarding for this purpose the person's registration under this Schedule and any enactment that prevents a person from being liable to be registered under different provisions at the same time).

Cancellation of registration

- 8 (1) The Commissioners must cancel a person's registration under this Schedule if –
- (a) the person satisfies them that the person is not liable to be registered under this Schedule, and
 - (b) the person requests the cancellation.
- (2) The cancellation is to be made with effect from –
- (a) the day on which the request is made, or
 - (b) such later day as may be agreed between the Commissioners and the person.
- (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement to be registered under this Act.
- 9 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person has ceased to be liable to be registered under this Schedule.
- (2) The cancellation is to be made with effect from –
- (a) the day on which the person ceased to be so liable, or
 - (b) such later day as may be agreed between the Commissioners and the person.
- (3) But the Commissioners must not cancel the registration with effect from any time unless they are satisfied that it is not a time when the person would be subject to a requirement, or entitled, to be registered under this Act.
- 10 In determining for the purposes of paragraphs 8 and 9 whether a time is a time when a person would be subject to a requirement, or entitled, to be registered under this Act, so much of any provision of this Act as prevents a person from becoming liable or entitled to be registered when the person is already registered or when the person is so liable under any other provision must be disregarded.
- 11 (1) The Commissioners may cancel a person's registration under this Schedule if they are satisfied that the person was not liable to be registered under this Schedule on the day on which the person was registered.
- (2) The cancellation is to be made with effect from the day on which the person was registered.
- 12 Paragraphs 8 to 11 are subject to paragraph 18 of Schedule 3B (cancellation of registration under this Schedule of persons seeking to be registered under that Schedule etc).

Exemption from registration

- 13 (1) The Commissioners may exempt a person from registration under this Schedule if the person satisfies them that the taxable supplies that the person makes or intends to make –
- (a) are all zero-rated, or

- (b) would all be zero-rated if the person were a taxable person.
- (2) The power in sub-paragraph (1) is exercisable only if the person so requests and the Commissioners think fit.
- (3) If there is a material change in the nature of the supplies made by a person exempted under this paragraph, the person must notify the Commissioners of the change –
 - (a) within 30 days beginning with the day on which the change occurred, or
 - (b) if no particular day is identifiable as that day, within 30 days of the end of the quarter in which the change occurred.
- (4) If it appears to the Commissioners that a request under this paragraph should no longer be acted upon on or after any day or has been withdrawn on any day, they must register the person who made the request with effect from that day.
- (5) A reference in this paragraph to supplies is to supplies made in the course or furtherance of a business carried on by the person.

Supplementary

- 14 Any notification required under this Schedule must be made in such form and must contain such particulars as the Commissioners may by regulations prescribe.”

Other amendments of VATA 1994

- 2 VATA 1994 is amended as follows.
- 3 In section 7 (place of supply of goods), in subsection (4)(c)(ii), after “Schedule 1” insert “or 1A”.
- 4 In section 54 (farmers etc), in subsection (2), after “Schedule 1” insert “or is, has become or has ceased to be liable to be registered under Schedule 1A”.
- 5 In section 55 (customers to account for tax on supplies of gold etc), in subsection (1) –
 - (a) for “Schedule 1” substitute “Schedules 1 and 1A”, and
 - (b) for “that Schedule” substitute “Schedule 1”.
- 6 In section 55A (customers to account for tax on supplies of goods or services of a kind used in missing trader intra-community fraud), in subsection (3), for “Schedule 1” substitute “Schedules 1 and 1A”.
- 7 In section 69 (breaches of regulatory provisions), in subsection (1)(a), after “Schedule 1,” insert “paragraph 7 of Schedule 1A,”.
- 8 In section 73 (failure to make returns etc), in subsection (3)(b), after “Schedule 1,” insert “paragraph 9 or 11 of Schedule 1A,”.
- 9 In section 74 (interest on VAT recovered or recoverable by assessment), in subsection (1)(c), after “Schedule 1,” insert “paragraph 13 of Schedule 1A,”.
- 10 In section 77 (assessments: time limits and supplementary assessments), in subsection (4C), after paragraph (a) insert –

- “(aa) paragraph 5, 6 or 13(3) of Schedule 1A,”.
- 11 (1) Paragraph 1 of Schedule 1 (registration in respect of taxable supplies) is amended as follows.
- (2) In sub-paragraph (1)–
- (a) in paragraph (a), after “if” insert “the person is UK-established and”, and
- (b) in paragraph (b), after “if” insert “the person is UK-established and”.
- (3) In sub-paragraph (2), for “and the transferee is not registered under this Act at the time of the transfer” substitute “, the transferee is UK-established at the time of the transfer and the transferee is not registered under this Act at that time”.
- (4) After sub-paragraph (2) insert –
- “(2A) In determining the value of a person’s supplies for the purposes of sub-paragraph (1)(a) or (2)(a), supplies are to be taken into account (subject to sub-paragraphs (3) to (7)) whether or not the person was UK-established when they were made.”
- (5) In sub-paragraph (4)(a), after “below,” insert “paragraph 11 of Schedule 1A,”.
- (6) In sub-paragraph (5), after “below,” insert “paragraph 11 of Schedule 1A,”.
- (7) At the end insert –
- “(10) A person is “UK-established” if the person has a business establishment, or some other fixed establishment, in the United Kingdom in relation to a business carried on by the person.”
- 12 In paragraph 3 of that Schedule, at the end of paragraph (b) insert “; or
(c) is not at that time UK-established (see paragraph 1(10)).”
- 13 Accordingly, in the heading of that Schedule, at the end insert “: UK ESTABLISHMENT”.
- 14 In paragraph 1 of Schedule 2 (registration in respect of supplies from other member states) –
- (a) in sub-paragraph (1)(b), after “Schedule 1” insert “or 1A”, and
- (b) in sub-paragraph (4), after “Schedule 1,” insert “paragraph 11 of Schedule 1A,”.
- 15 In paragraph 1 of Schedule 3 (registration in respect of acquisitions from other member states) –
- (a) in sub-paragraph (1)(b), after “Schedule 1” insert “, 1A”, and
- (b) in sub-paragraph (3), after “Schedule 1,” insert “paragraph 11 of Schedule 1A,”.
- 16 In paragraph 1 of Schedule 3A (registration in respect of disposals of assets for which a VAT repayment is claimed) –
- (a) in sub-paragraph (1), after “Schedule 1” insert “, 1A”, and
- (b) in sub-paragraph (2), after “Schedule 1,” insert “paragraph 11 of Schedule 1A,”.
- 17 In paragraph 18 of Schedule 3B (supply of electronic services in member States: special accounting scheme) –

- (a) after “Schedule 1”, in the first place it appears, insert “or 1A”, and
- (b) after “Schedule 1”, in the second place it appears, insert “or, as the case may be, 1A”.

Amendments of other Acts

- 18 In Schedule 41 to FA 2008 (penalties: failure to notify and certain VAT and excise wrongdoing), in the Table in paragraph 1, after the entry for the obligations under Schedule 1 to VATA 1994 insert the following entry –

“Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 1A to VATA 1994 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).”
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Application

- 19 The amendments made by this Schedule have effect in relation to supplies made or to be made on or after 1 December 2012.

EXPLANATORY NOTE

VALUE ADDED TAX - NON-ESTABLISHED PERSONS

SUMMARY

1. This clause amends the Value Added Tax Act 1994 ('VATA') to insert a new Schedule 1A. New Schedule 1A changes the rules for determining when a business which makes taxable supplies in the UK but has no establishment here has to register for VAT. Non-UK established businesses will no longer be able to benefit from the UK VAT Registration threshold. The clause also makes consequential changes to other parts of VATA and the Finance Act 2008.

DETAILS OF THE CLAUSE

Details of the new Schedule 1A to VATA

2. New Schedule 1A applies to any person who makes taxable supplies in the UK but has no establishment here and requires that person to register and account for VAT on those supplies irrespective of their value.
3. New paragraphs 1 and 2 provide that the liability to register arises when a person reasonably anticipates making taxable supplies within the next 30 days, does in fact make such supplies or a business is transferred to that person as a going concern.
4. New paragraphs 5 and 6 provide that the person must notify liability to register within 30 days of the liability arising and the Commissioners must register that person with effect from the date when the liability arises.
5. New Schedule 1A also specifies when a person will cease to be liable to be registered under the new schedule (new paragraph 4) and makes provision for various matters that may arise in connection with registration such as wrongful registration under another Schedule (new paragraph 3), cancellation of registration (both compulsory and by election) and the effective date of such cancellation, (new paragraphs 7 to 12). These provisions also specify the timescales for the notification and execution of various matters relating to cancellation of registration.
6. New Schedule 1A makes particular provision for the possibility that a person may be liable to be registered under the new Schedule and also entitled to be registered under Schedule 3B to VATA (special

accounting scheme for the supply of electronic services in member States) (new paragraph 12).

7. New Paragraph 13 provides that a person liable to registration under the new Schedule may, on request and subject to HMRC's approval, be exempted from registration if that person intends to or makes only zero-rated supplies (and so would, if registered, be entitled to a VAT refund but not liable to pay VAT).

Other amendments of VATA 1994

8. Paragraphs 2 to 17 of this Schedule make amendments that are consequential on the inclusion of the new Schedule 1A.
9. Paragraphs 3 to 17 ensure that VATA applies to Schedule 1A as it applies to Schedule 1 for the following contexts:
 - place of supply of goods rules (paragraph 3);
 - schemes for farmers (paragraph 4),
 - accounting for gold (paragraph 5);
 - reverse charge provisions for missing trader intra-community (MTIC) trading activities (paragraph 6);
 - regulatory breaches (paragraph 7);
 - powers of assessment and related matters (paragraphs 8 to 10);
 - and
 - interaction with other registration schedules (paragraphs 14 to 17).
10. Paragraphs 11 to 13 ensure that the relevant parts of Schedule 1 apply only to persons established in the UK.
11. Paragraph 11(4) provides that the value of the taxable supplies of a person established in the UK for the purposes of determining that person's liability to register under Schedule 1 shall include supplies made prior to that person becoming established.
12. Paragraph 18 provides that Schedule 41 to Finance Act 2008 applies to New Schedule 1A as it applies to Schedule 1 for the context of obligations to notify a liability to register and for material changes in the nature of supplies made by exempt persons.

BACKGROUND NOTE

13. These amendments to VATA bring UK law into line with the judgement of the Court of Justice of the European Union in *Schmelz C-97/09*. The judgement confirmed a business without an establishment in a member State is prohibited from benefiting from that State's VAT registration threshold.

14. Member States are permitted to apply VAT registration thresholds by the provisions of Chapter 1 of Title XII of Council Directive 2006/112/EU, the Principle VAT Directive ('PVD'). The provisions enable member States to relieve small businesses from the burden of VAT registration. Article 283 (1)(c) of the PVD prohibits a threshold being applied to '*a taxable person who is not established in the Member State in which the VAT is due*'.
15. There is an establishment in the UK if:
 - The place where essential management decisions are made and the business's central administration is carried out is the UK and/or
 - The business has a permanent physical presence with the human and technical resources to make or receive taxable supplies in the UK.
16. The Court in *Schmelz* confirmed that although the restriction of the application of a threshold to domestically established businesses was discriminatory (in that it interfered with the freedom to provide services under article 49 of the EC treaty) it was justified by the need for effective fiscal supervision of the threshold and proportionate to that need. It was therefore a lawful restriction on the application of the threshold.
17. If you have any questions about this change, or comments on the legislation, please contact Craig Benn on 0151 703 8302 (email: craig.benn@hmrc.gsi.gov.uk).