

1. Changes to the 'Lennartz' VAT mechanism

Following a recent ECJ decision, (Vereniging Noordelijke Land-en Tuinbouw Organisatie v Staatssecretaris van Financiën (C-515/07) – (VNLTO)), and a meeting of the EU Council, it has been announced by HMRC that from 22 January 2010, the use of the Lennartz mechanism will be restricted to circumstances where goods/services are to be put to both business and private use or use outside of the taxpayers normal activities. The previous UK application of Lennartz for non-business activities of taxpayers (including NHS bodies) will no longer be available and strictly speaking, has never been available.

By way of background, where a taxable person/taxpayer (including an NHS body) uses goods or services for both taxable business and non-business purposes (e.g. NHS healthcare), the normal course of action would be to apportion the VAT and recover only the amount which relates to taxable business use. The Lennartz mechanism (named after a 1992 ECJ decision) is an alternative procedure whereby the taxable person may, in some circumstances, choose to recover all of the VAT incurred, but consequently pay output tax on every VAT return to reflect the cost of the non-business use in the return period over the life of the asset.

As NHS bodies have mainly non-business activities (i.e. NHS healthcare), use of the Lennartz mechanism has been available in circumstances where there was a genuine and ongoing taxable business use of the goods in question in addition to non-business use.

From 22 January 2010, Lennartz accounting will only be available where:

- the goods are used in part for making taxable supplies, ; and
- they are also used in part for the private purposes of the trader or his staff, or, exceptionally, for other uses which are wholly outside the purposes of the taxpayer's enterprise or undertaking

Taxpayers for whom Lennartz accounting has, strictly speaking, never been available would normally be expected to unravel the mechanism and adjust both any input tax claimed and any output tax accounted for accordingly. However, where a taxpayer has already applied Lennartz accounting on the basis of HMRC's pre-VNLTO understanding

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of the law, the taxpayer may opt to continue using Lennartz accounting in respect of the assets concerned.

Those taxpayers who do not exercise this option must unravel the Lennartz accounting mechanism by adjusting both their output tax and corresponding input tax.

Taxpayers who are not permitted to use Lennartz accounting must apportion VAT incurred for both economic and non-economic activities on the basis of use and intended use from the date of this announcement. However, HMRC will consider claims from taxpayers who have already entered into binding commitments for projects on the understanding that Lennartz accounting will be available.

Following this decision, HMRC are now likely to reject Fleming/Conde-Nast VAT claims submitted using the Lennartz mechanism where these relate to business/non-business activities on the basis that the Lennartz mechanism has never been available in these circumstances.

2. VAT on services purchased from overseas

NHS bodies should already be aware that when certain services are purchased from an overseas supplier, VAT must be accounted to HMRC (in Box 1 of the VAT Return) under the 'Reverse Charge' Procedure.

Recent changes have been made to the VAT Place of Supply rules of cross border services to business customers from 1 January 2010. The general rule used to be that the place of supply was the country in which the supplier belonged. Now, the place of supply is determined by the location of the customer.

There are still some exceptions to the general rule, but this procedure now applies to almost all services purchased from overseas.

The changes do not involve a new compliance procedure, but it is in the interests of NHS bodies to re-familiarise themselves as to how the Reverse Charge should be accounted for on the VAT return.

Depending upon the nature of the service, there may be scope to recover the equivalent amount in box 4 of the VAT return, if the VAT on the supply received is an eligible contracted-out service (COS). If the VAT is not COS VAT, a proportion of it may be recovered as input tax, dependent on the extent to which the supply relates to a taxable business activity (e.g. non-NHS equipment sales, catering, etc).

If you would like further detail regarding the Reverse Charges procedure or the impact of the Place of Supply rule changes, please do not hesitate to contact us.

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3. Online VAT return filing

Although online VAT return filing and payment will become compulsory from 1 April 2010 for businesses with an annual business income turnover of £100,000 or more, these new procedures are not yet available to the NHS. You should therefore continue to receive and submit the paper returns until further guidance is announced for the NHS.

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