

VAT change practice note - 11 December 2008

1. Introduction

1.1 Who should read this practice note?

Solicitors dealing with invoicing, making and receiving payments which include VAT.

1.2 What is the issue?

In his Pre-Budget Report on 24 November 2008, the Chancellor of the Exchequer announced a cut in the standard rate of value added tax (VAT) from 17.5 per cent to 15 per cent, as of 1 December 2008. This new rate will apply until 31 December 2009, after which HMRC has advised that it will revert to 17.5 per cent on 1 January 2010.

This practice note provides an overview of the changes with advice on applying the correct rates.

1.3 Legal and other requirements

[Value Added Tax Act 1994 Section 2 \(2\)](#)

1.4 Status of this advice

Practice notes are issued by the Law Society for the use and benefit of its members. They represent the Law Society's view of good practice in a particular area. They are not intended to be the only standard of good practice that solicitors can follow. You are not required to follow them, but doing so will make it easier to account to oversight bodies for your actions.

Practice notes are not legal advice, nor do they necessarily provide a defence to complaints of misconduct or of inadequate professional service. While care has been taken to ensure that they are accurate, up to date and useful, the Law Society will not accept any legal liability in relation to them.

For queries or comments on this practice note contact the Law Society's [Practice Advice Service](#).

1.5 Terminology in this advice

Must – a specific requirement in the Solicitor's Code of Conduct or legislation. You must comply, unless there specific exemptions or defences provided for in the code of conduct or relevant legislation.

Should – good practice for most situations in the Law Society's view. If you do not follow this, you must be able to justify to oversight bodies why this is appropriate, either for your practice, or in the particular retainer.

May – a non-exhaustive list of options for meeting your obligations. Which option you choose is determined by the risk profile of the individual practice, client or retainer. You must be able to justify why this was an appropriate option to oversight bodies.

HMRC – Her Majesty's Revenue and Customs

1.6 Acknowledgements

The Society acknowledges the contributions of Her Majesty's Revenue & Customs CT & VAT Directorate, and the Tax Law Committee in developing this practice note.

1.7 More information

1.7.1 Practice Advice Service

The Law Society provides support for solicitors on a wide range of areas of practice. Practice Advice Service can be contacted on 0870 606 2522 from 9am to 5pm on weekdays.

1.7.2 HMRC

[VAT rate change guide \(PDF\)](#) – PDF

[Business Payment Support Service](#)

[HMRC website](#)

1.7.3 Other Law Society materials

[Practice note on legal aid VAT](#)

2. VAT rates and tax points

You should apply the following tax rates when raising an invoice for VAT purposes:

Matters completed before 1 December 2008 will be charged at the old rate of 17.5 per cent.

Matters completed on or after 1 December 2008 will be charged at the new rate of 15 per cent.

A VAT invoice is normally raised when the service is completed. However, in circumstances where work is yet to be completed, the rate of VAT to be charged will depend on the date at which the supply of service, the tax point, occurs.

2.1 The basic tax point

The basic tax point for the supply of service is the date the service is performed. The basic tax point can be overridden by the actual tax point.

2.2 The actual tax point

The actual tax point occurs **earlier** than the basic tax point when a VAT invoice is raised or payment is made before the performance or completion of a service. The actual tax point is the date at which either:

- the invoice is issued, or
- payment is received,

whichever occurs first.

The actual tax point occurs **later** than the basic tax point when an invoice is issued or payment received after the basic tax point. This is known as the 14-day rule.

2.3 The 14-day rule for all services

The 14-day rule enables you to issue a VAT invoice within 14 days of the basic tax point. The date of the invoice is the tax point, and this overrides the basic tax point.

HMRC has agreed, by concession, to extend the 14-day period to 30 days for the supply of services made between 18 November and 30 November. See below for illustrative examples.

2.3.1 Further extension for legal services only

A further extension applies when the fee for a legal service was not ascertained or ascertainable at the time the service was performed. This extends the 14-day period to three months. You may issue the VAT invoice no later than three months after completion of your services. The date of the invoice will be the tax point.

You should be aware that failure to issue a VAT invoice within the extended period will cause the actual tax point to revert to the basic tax point.

See the HMRC website for further information on [VAT invoice extensions](#).

2.3.2 Illustrative examples

1. Work completed from 18–30 November 2008

You must charge VAT at 17.5 per cent if an invoice is issued or payment received for this work before 1 December 2008.

You should charge VAT at 15 per cent if no invoice is issued nor payment received until 1 December or after. The VAT invoice must be issued no later than 30 days following completion of the work.

2. Work completed on or before 17 November 2008

The VAT rate is 17.5 per cent if:

- the fee was agreed with the client on or before 17 November, and
- the work is completed by this date.

However, if the fee has not been agreed at the time the work is completed, VAT will be payable at 15 per cent, provided the VAT invoice is issued no later than three months after completion of the performance of the service.

3. Applying the correct rate

3.1 Disbursements

The rate of VAT charged in respect of disbursements depends on the tax point. This is the date on which the invoice is issued, regardless of when the disbursement was incurred.

3.2 Work in progress

A tax point is created each time:

- an invoice is issued, or
- a payment is received.

You must recalculate the VAT at 15 per cent for interim invoices issued by your office for work that is ongoing and due to be completed on or after 1 December.

For interim invoices sent out prior to 1 December, you can elect to charge either:

- 17.5 per cent, or
- 15 per cent.

If you elect to charge 15 per cent, you should issue a new invoice. If the client has already paid 17.5 per cent, you must issue the client with a VAT credit note. This must be issued within 45 days of 1 December. You must adjust your VAT return.

Interim invoices may be resubmitted at your discretion. HMRC has advised that there is no requirement to apportion pre and post rate changes for continuous supplies.

3.3 Counsel's fees

The tax point for supplies of legal services by barristers is the earliest of the following:

- the date of receipt of payment
- the date of issue of a VAT invoice
- the date the barrister ceases to practise

You will be charged VAT at 17.5 per cent if you pay counsel's fees before 1 December 2008.

You must charge your client the precise amount if you treat counsel's fees as a disbursement for VAT purposes. This includes VAT that you pay to counsel. You must not:

- charge your own client VAT on the disbursement
- recover as input tax the VAT that you pay to counsel

3.4 What happens if I make a mistake?

HMRC recognises that this change could lead to errors or mistakes in the first VAT return following the change, and they will take this into account when assessing the VAT return.

You should, however, refer to HMRC for further guidance on specific issues. For the latest information see the [HMRC website](#).

4. Legal Services Commission

The Legal Services Commission (LSC) makes payments to providers using fixed fee and non-fixed fee charging schemes on the following basis:

- All claims for work with a case concluded date before 1 December will attract a 17.5 per cent VAT rate
- All claims for work with a case concluded date on or after 1 December will attract a 15 per cent VAT rate

This applies to:

- claims
- claim forms
- all areas of LSC funded work.

4.1 Standard monthly payments (SMP)

The VAT treatment of SMP from the Legal Services Commission (LSC) for legal aid work depends on the extent to which each payment relates to completed cases. The tax point for regular payments is the date the payment is received.

SMP may create tax points before 1 December for uncompleted cases or work that has not commenced. These may be recalculated with VAT at 15 per cent if the cases to which the payments are eventually allocated are completed on, or after, that date.

For more information on SMP, please refer to the Law Society's [VAT guide for legal aid work](#).

4.2 LSC Online

LSC Online users who enter cases individually should not include those that concluded on or after 1 December in their December submission. Any which are included will be incorrectly credited with VAT at 17.5 per cent.

This does not apply where:

- you have yet to relaunch LSC online, or
- you load your monthly submissions directly from your case management or bulkload system.

For more information, please refer to the [LSC website](#).

4.3 Advocate Graduated Fee Scheme and Solicitor Standard Fee claims

The VAT rate change applies to cases that conclude on or after 1 December in respect of:

- litigators' claims, and
- payments made on or after 1 December, for barristers' and solicitor advocates' claims

The CREST IT system calculates and adds VAT automatically to VAT-registered claimants. The system will be upgraded to reflect the new rate, but this will not be in place for 1 December.

Pending the upgrade courts will continue to process and pay claims at the former rate of 17.5 per cent. Individual payees may resolve overpayments of VAT with HMRC where necessary. Following the upgrade CREST will apply 15 per cent VAT to all claims.

Crown Court managers have been made aware of the situation.

5. VAT on leases for the purposes of Stamp Duty Land Tax (SDLT)

The changes will affect calculation of the net present value (NPV) of rent payable under a lease, where VAT is charged on the rent.

In calculating VAT, the tax point for rental payments is either:

- the date on which a VAT invoice is issued, or
- a payment is received,

whichever is the earlier.

The rate that is in force at the tax point will be the rate that applies.

5.1 Calculating NPV

If the effective date of the grant of a lease is on or after 1 December 2008, VAT will be 15 per cent up to and including 31 December 2009.

When the rate changes back to 17.5 per cent on 1 January 2010 it will apply to all leases with an effective date on or after 1 January of that year.

5.2. Repayments of tax paid on rent

HMRC will view the effect of the VAT changes as rendering such rents variable or uncertain. HMRC will treat such rent as becoming certain when the VAT rate returns to 17.5 per cent again on 1 January 2010.

HMRC will therefore consider repayments of overpaid tax in light of the Finance Act 2003 Schedule 17A paragraph 8, which deals with cases where rents cease to be uncertain. You may submit a claim for an overpayment due to the VAT rate being calculated at 17.5 per cent, if the amount of rent payable becomes certain within the first five years of the term of the lease.

5.2.1 Making an SDLT claim

HMRC do not intend to make any repayments before 1 January 2010.

However, if the end of the fifth year of the lease falls on or before 31 December 2009, any claim for repayment of overpaid tax should be made within 30 days of the date when the rents for the first five years of the term become certain.

It is unlikely that claims for SDLT repayment will be for large sums, for example, an estimate repayment on an annual rent of £1m would be less than £250. Interest will be paid on such repayments on the usual basis. Claims should be made in writing to the Birmingham Stamp Office.

For further information see [the HMRC website](#).