

FROM: Head of Taxation, Taxation Department
LOCATION: TAX/58/323
EXTENSION: 5228
DATE: 16 December 1999
REFERENCE: TAX/NG/ln/Y2193
SUBJECT: CHANGES IN THE VAT TREATMENT OF CHARGES
MADE TO MEMBERS RESIDENT IN OTHER EU MEMBER
STATES

ATTACHMENTS:
ACTION POINTS: **Review VAT treatment of charges made to members resident
in other EU member states**
DEADLINE: **As soon as possible**

1. Introduction

- 1.1 Market Bulletin Y2158 of 3 November 1999 and market bulletin Y2166 of 11 November 1999 noted that the Lloyd's VAT Arrangements (LVA) have been reviewed by Customs & Excise (Customs). This review primarily concentrated on the Lloyd's Market VAT registration arrangements, however, it extended to all aspects of the VAT treatment of the Lloyd's Market. One such area was the VAT treatment of certain charges made to members.
- 1.2 The purpose of this Bulletin is to communicate the correct UK VAT liability of these charges. There has been a change in treatment as regards services supplied to "active" members who are resident in other EU members states. This bulletin should enable those making such charges to determine whether any changes to their present systems are necessary.

2. Background

- 2.1 Customs' review of the LVA was driven by several VAT cases relating to the concept of "establishment". These cases prompted changes to the Lloyd's Market VAT registration arrangements but also led Customs' to the conclusion that 'active members' (defined below) can be treated as being in business in the country in which they are resident with effect from 28th January 1998.

- 2.2 The effect of Customs' change in policy is that certain charges made to members (both corporate and natural) that have previously been treated as being subject to UK VAT, should be treated as being outside the scope of UK VAT with effect from 28th January 1998. The change in policy applies to services falling within Schedule 5 VAT Act 1994 (explained in paragraphs 3.1 and 3.2.)

3. Implications of the revised policy

- 3.1 For VAT purposes, where a service falling within VAT Act 1994, Schedule 5 is made to a recipient:

- who is in business in a member State (other than the same state as the supplier);
or
- to any recipient belonging outside the EU;

then the place of supply for VAT purposes is where the recipient, rather than the supplier, belongs.

- 3.2 Services falling into Schedule 5 typically include legal, accountancy and consultancy services, as well as certain advertising, banking and insurance services. For example, the supply of tax advisory services to a member resident in France will normally be outside the scope of UK VAT. Full details and examples of the services falling within Schedule 5 are given in Customs' VAT Notice 741.

- 3.3 Copies of Customs' VAT Notice 741 can be obtained from:

The Insurance Helpdesk
City VAT Office
Thomas Paine House
Torrens Street
London EC1V 1TA

Telephone	020 7865 3072
Fax	020 7865 3062

- 3.4 The effect of this ruling for those suppliers making 'outside the scope of UK VAT charges' (see 2.2 above) to members is that they should no longer add VAT to their fees. However, suppliers' entitlement to recover input tax relating to these supplies should not be affected by this change.

- 3.5 A table summarising the way in which charges to members should be treated for UK VAT purposes is set out in Appendix A.

4. Status of members

- 4.1 When a supplier is determining the place of supply of a service to a member that falls within VAT Act 1994, Schedule 5, then he must take into account the status of that member.

- 4.2 Customs have ruled that while 'active' members should be treated as being in business for VAT purposes, 'inactive' members are not. A member is "active" for these purposes until the date on which the last year of account on which he is writing

would normally close. In other words, a member whose final Year of Account is 1999 will become “inactive” on 1st January 2002.

- 4.3 It is important to note that it is the member’s status at the tax point for the services in question which is determinative of the VAT treatment, and not when the services were actually performed.
- 4.4 For VAT purposes, the time of supply for ongoing services, such as advisory services, will normally be the earlier of the date that payment is made or when an invoice is raised by the supplier.
- 4.5 For distinct assignments, such as the completion of a tax return, the time of supply is the time that all the work has been completed by the supplier except invoicing. However, if the supplier issues an invoice prior to the work being completed, or within 14 days of its completion the time of supply will be the invoice date, except in cases where payment has been received prior to this invoice being issued; in such cases the time of supply will be the date that payment is received.

5 Determining where a recipient of a supply belongs

- 5.1 The place where a supplier or a recipient of services belongs should be determined in accordance with VAT Act 1994, Section 9.
- 5.2 Under this Section, if a member who usually resides outside the UK does not have any business or other fixed establishment, then, for VAT purposes, he is deemed to belong where he resides.
- 5.3 A corporate body with no business or fixed establishment is deemed to belong where it is incorporated.
- 5.4 If a member has a business or other fixed establishment, then for VAT purposes he is deemed to belong where he has that establishment.
- 5.5 If a member has an establishment in a country other than the one in which he resides, or has more than one establishment, then further advice should be sought from Customs as to the place of supply of a particular service.

6 Implementation Date

- 6.1 Customs have notified Lloyd’s that the date from which the above treatment can be applied for all supplies other than those which are the subject of the centralised Lloyd’s VAT agreement is 28th January 1998 (the date of the judgement in *The Chinese Channel (Hong Kong) Ltd* case - a VAT case concerned with establishment). For any charges which fall under the LVA the implementation date is 1 January 2000.
- 6.2 Customs have indicated that suppliers of Schedule 5 services who have charged VAT on services to members resident in other EU member states since 28th January 1998 may correct the position by issuing credit notes and reissuing the invoices with no VAT added. Repayments of VAT will accordingly need to be made to clients.

- 6.3 It is likely that the above procedure will result in queries being raised by local VAT offices. Any questions should be referred to the City VAT Office whose address is provided in paragraph 3.3.
- 6.4 A further bulletin will shortly be issued by Members' Services Unit in respect of MSU's Schedule 5 charges which have been made since 28th January 1998 to non-UK resident members.
- 6.5 It is possible that the receipt by EU (excluding UK) resident members of Schedule 5 services will give rise to an obligation to register and account for VAT under the local reverse charge procedure in the EU member state in which they reside. Members in this position should therefore check the status of this supply with the tax authorities in their country of residence.

7 Readership and contact details

- 7.1 This bulletin is being sent to all managing agents, members' agents, recognised auditors, corporate members and members' accountants.
- 7.2 The content of this bulletin has been agreed with Customs.
- 7.3 If you would like any further details regarding this changes, please contact Nick Godden on Lloyd's extension 5396 or David Clissitt on Lloyd's extension 5228.

David Clissitt
Head of Taxation
Taxation Department

APPENDIX A**VAT TREATMENT OF SERVICES FALLING WITHIN VAT ACT 1994,
SCHEDULE 5**

VAT Treatment of a supply of services made to a name belonging in:-	UK	EU Member State (Other than the UK)	Non - EU
Supply to an active name	UK VAT applicable	Outside the scope of UK VAT	Outside the scope of UK VAT
Supply to an inactive name	UK VAT applicable	UK VAT applicable	Outside the scope of UK VAT