These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 76Schedule 36: Vat: Place of Supply of Services Etc

Details of the Schedule

2. Paragraph 2 makes a consequential amendment to section 6(14A) of VATA arising from the amendment made to section 7 of VATA by paragraph 2 of Schedule 36.

3. Paragraph 3 amends section 7 of VATA so that the section only applies to the place of supply of goods.

4. Paragraph 4 amends VATA by inserting after section 7 a new section 7A to determine the place of supply of services.

5. New section 7A(1) provides that new section 7A determines the country in which services are supplied for the purpose of VATA.

6. New section 7A(2) determines the place of supply for services.

7. New section 7A(3) determines the place of supply for the right, option or priority with respect to a supply of services.

8. New section 7A(4) defines the term a 'relevant business person' for the purposes of VATA.

9. New section 7A(5) provides that subparagraph 7A(2) has effect subject to Schedule 4A to VATA.

10. New section 7A(6) provides that HM Treasury may by Order amend section 7A(4) of and Schedule 4A to VATA or make provision for exceptions to section 7A(2).

11. New section 7A(7) provides that an order under subsection (6) may include incidental, supplemental, consequential and transitional provisions.

12. Paragraph 5(2) substitutes section 8(1) and (2) of VATA so that where the circumstances in section 8(2) apply, services received by a relevant business person who belongs in the UK from a person who belongs in a country other than the UK are treated as if they were a taxable supply made in the UK by the recipient in the course or furtherance of a business carried on by the recipient.

13. Paragraph 5(3) amends section 8 of VATA by inserting a new subsection (4A) so that section 8(1) does not apply to supplies described in Schedule 9 of VATA.

14. Paragraph 5(4) amends section 8(5) by removing reference to Schedule 5 of the VATA and provides that HM Treasury may, by Order, amend new subsection 4A by altering the descriptions of services within that subsection.

15. Paragraph 5(5) removes section 8(6) of VATA.

16. Paragraph 5(6) amends section 8(7) by removing reference to Schedule 5 of the VATA and provides that HM Treasury may by Order amend new Section 8(4A) by making further provisions to that subsection as they see fit.

17. Paragraph 5(7) amends section 8(8) of VATA by replacing "addition to or variation of that Schedule" with "amendment of subsection (4A) and "the Schedule" with "that subsection".

18. Paragraph 6 substitutes section 9 of VATA which determines, for the purposes of section 7A, Schedule 4A and section 8 of VATA whether a person who receives a supply or makes a supply (including a supply treated as made by virtue of the reverse charge mechanism in section 8) belongs in one country or another.

19. Paragraph 7 makes consequential amendments to section 43 of VATA and replaces references to Schedule 5 with the new section 7A(2)(a).

20. Paragraph 8 amends section 96 of VATA (interpretation) to provide that the term relevant business person has the meaning given by section 7A(4).

21. Paragraph 9 adds orders made under section 7A(6) to the list of Orders requiring Parliamentary approval.

22. Paragraph 10 amends Section 97A to apply to supplies of services which become treated as made in the UK by virtue of any order made under section 7A(6).

23. Paragraph 11 inserts a new Schedule 4A to VATA which deals with special rules in relation to the place of supply of services.

24. Paragraph 1 of Schedule 4A provides that a supply of services made in relation to land is to be treated as made in the country where the land is situated.

25. Paragraph 2 of Schedule 4A provides that a supply of services of passenger transport is to be treated as made in the country and/or countries in which the transportation takes place, in proportion to distance covered.

26. Paragraph 3(1) and (2) of Schedule 4A provides that the place of supply of services consisting of the short-term hire of transport is the country in which the transport is put at the disposal of the person by whom it is hired but this rule is qualified by

    - paragraph 3(3) which provides that where, under the general rule in section 7A, the place of supply of such services would be treated as occurring in the UK, then, to the extent that they are so used and enjoyed, the services will be treated as made in the country in which they are used and enjoyed if that country is not a Member State; and

    - paragraph 3(4) which provides that where, under the general rule in section 7A, the place of supply of such services would be treated as occurring in a country that is not a Member State, then, to the extent that they are so used and enjoyed, the services will be treated as made in the UK if they are used and enjoyed in the UK.

27. Paragraph 4 of Schedule 4A provides that the place of supply of cultural, artistic, sporting, scientific, educational and entertainment or similar services is the country where the services are physically carried out.

28. Paragraph 5 of Schedule 4A provides that general restaurant and catering services are to be treated as occurring in the country where they are physically carried out, other than those services that are provided for by paragraph 6 of Schedule 4A.

29. Paragraph 6 of Schedule 4A provides that the place of supply of restaurant and catering services provided on board a ship, aircraft or train in connection with the transportation of passengers within the EC is the country in which the relevant point of departure is located.

30. Paragraph 7 of Schedule 4A provides an exception from the general place of supply rules in section 7A of VATA in relation to supplies comprising the hire of goods (other than a means of transport) so:

- where, under the general rule in section 7A, the place of supply of such hire of goods would be treated as occurring in the United Kingdom, then, to the extent that they are so used and enjoyed, the services will be treated as made in the country in which they are used and enjoyed if that country is not a Member State; and
- where, under the general rule in section 7A, the place of supply of such hires would be treated as occurring in a country that is not a Member State, then, to the extent that they are so used and enjoyed, the services will be treated as made in the UK if they are used and enjoyed in the UK.

31. Paragraph 8 of Schedule 4A provides an exception from the general place of supply rules in section 7A of VATA in relation to the telecommunications services defined in paragraph 8(2) and radio or television broadcasting services so:

- where, under the general rule in section 7A, the place of supply of such services would be treated as occurring in the UK, then, to the extent that they are so used and enjoyed, the services will be treated as made in the country in which they are used and enjoyed if that country is not a Member State; and
- where, under the general rule in section 7A, the place of supply of such services would be treated as occurring in a country that is not a Member State, then, to the extent that they are so used and enjoyed, the services will be treated as made in the UK if they are used and enjoyed in the UK.

32. Paragraph 9 of Schedule 4A provides an exception from the place of supply rules in section 7A(2)(a) of VATA in relation to electronically supplied services to a relevant business person (examples of which are given in paragraph 9(3) provided, as paragraph 9(4) makes clear, they are more than a mere communication between a supplier and customer by electronic mail) so:

- where, under the rule in section 7A(2)(a), the place of supply of such services would be treated as occurring in the UK, then, to the extent that they are so used and enjoyed, the services will be treated as made in the country in which they are used and enjoyed if that country is not a Member State; and
- where, under the general rule in section 7A(2)(a), the place of supply of such services would be treated as occurring in a country that is not a Member State, then, to the extent that they are so used and enjoyed, the services will be treated as made in the UK if they are used and enjoyed in the UK.

33. Paragraph 10 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that supplies made to a person who is not a relevant business person via intermediaries is treated as made in the same country as the related supply.

34. Paragraph 11 of Schedule 4A provides for an exception from the general rule in section 7A(2b) so that supplies comprising the transportation of goods made to a person who is not a relevant business person occur in the country in which the transportation takes place in proportion to the distances covered but this exception does not apply where the transportation begins in one Member State and ends in another.

35. Paragraph 12 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that supplies made to a person who is not a relevant business person that comprise a transportation of goods that begins in one Member State and ends in another are treated as made in the Member State in which the transportation begins.

36. Paragraph 13 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that supplies made to a person who is not a relevant business person

that comprise ancillary transport services are treated as made where the services are physically performed.

37. Paragraph 14 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that supplies made to a person who is not a relevant business person that comprise the valuation of, or carrying out of work on, goods are treated as made where the services are physically performed.

38. Paragraph 15 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that a supply comprising electronically supplied services as described in paragraph 9 of Schedule 4A by a person who belongs in a country which is not a Member State (other than the Isle of Man) to a person ("the recipient") who, is not a relevant business person and belongs in a Member State, will be treated as made in the country in which the recipient belongs.

39. Paragraph 16 of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that a supply falling within one of the descriptions listed in paragraph 16(2) made to a person ("the recipient")who is not a relevant business person and belongs in a country which is not a Member State (other than the Isle of Man), will be treated as made in the country in which the recipient belongs.

40. Paragraph 12 omits Schedule 5 to VATA (services supplied where received).

41. Paragraph 13 is a consequential amendment to ensure the continuation of the special place of supply rule in Article 5 of the Value Added Tax (Tour Operators) Order 1987 (S.I. 1987/1806) in relation to supplies of services by tour operators.

42. Paragraph 14 provides for the times from which the changes made by the Schedule have effect.

43. Paragraphs 15 and 16 amend Schedule 4A to VATA in relation to supplies made on or after 1 January 2011 by omitting paragraph 4 of Schedule 4A and inserting into that Schedule paragraphs 9A and 14A.

44. Paragraph 9A of Schedule 4A provides an exception from the place of supply rule in section 7A(2)(a) of VATA so that services in respect of admission to cultural, artistic, sporting, scientific educational, entertainment or similar events and ancillary services relating to the admission to such event made to a person who is a relevant business person will be treated as made in the country in which the events actually take place.

45. Paragraph 14A of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that a supply comprising cultural, artistic, sporting, scientific, educational, entertainment or similar activities (and ancillary services relating to such activities) which is made to a person who is not a relevant business person is to be treated as made in the country in which the activities take place.

46. Paragraphs 17 and 18 amend Schedule 4A to the VATA in relation to supplies made on or after 1 January 2013 by inserting into that Schedule paragraph 13A.

47. Paragraph 13A of Schedule 4A provides for an exception from the general rule in section 7A(2)(b) so that a supply comprising the "long-term hire" of transport to a person who is not a relevant business person is treated as occurring in the country where the recipient belongs, (but there is an exception from this rule in relation the long-term hire of a pleasure boat).

48. Paragraph 19 introduces a transitional provision to avoid double taxation on services which are subject to the changes covered by this Schedule.