

# Contents, Issue 107

## **VAT in Practice - 3**

**HMRC's** explanation of how the new place of supply of services rules will operate from 1 January 2010, with additional detail in relation to new EC Sales List requirements.

## **News from HMRC - 6**

**Stephen Banyard**, HMRC's Business Customer Unit Director and Senior Responsible Officer for the Carter Programme, updates his article from last year on changes HMRC is making to the VAT Online project.

## **Excise - 7**

**Ernest Grayston** also updates an article from last year, this time bringing readers up to speed with the implementation of the Excise Movement and Control System and in particular quoting at length from a newsletter produced by HMRC in April 2009 but not yet made available on the HMRC website.

## **News from the Courts - 11**

**Chris Reece** summarises several recent indirect tax decisions from the European and United Kingdom Courts, including the final (so far) word on whether Pringles are subject to VAT at the standard or zero rate and on whether interest can be awarded on HMRC's preferred simple basis.

*The Institute's 2009 **Indirect Taxes Conference** will be held on 17 September at the London Hilton on Park Lane Hotel, 22 Park Lane London W1K 4BE.*

*Speakers will be: Michael Conlon QC, Temple Tax Chambers; David Goy QC, Grays Inn Chambers; Rob Jenkins, International Trade Solutions; Peter Jenkins; Robert Maas, Blackstone Franks; Juliet Roche, HMRC; David Southern, Temple Tax Chambers; Nick Warner, PKF; Dan Warren, Ernst & Young; Jeremy White, Pump Court Tax Chambers.*

*The conference agenda and delegate registration form will be available in July.*

# Cross-border VAT Changes from 2010

It was confirmed in the 2009 Budget on 22 April that the UK will go ahead with the so-called VAT Package, a description of which was given in the last issue of *Indirect TaxVoice* (see page 6). HMRC subsequently issued the following explanation of what that will mean in practice.

This article provides further information on the changes announced in Budget Notes 74, 75, 76 and 77 [see <http://snipurl.com/ih8x1>] on 22 April 2009 on the cross-border VAT changes being introduced from 1 January 2010. It should be read in conjunction with Revenue & Customs Briefs 53/08 and 02/09 relating to EC Sales Lists (ESLs) [both of which are reproduced below].

## Background

The changes to the cross-border VAT rules announced at Budget represent a significant reform of the VAT regime applying to services and introduce important changes to the intra-EU reporting regime for goods. These changes, adopted by EU Finance Ministers in February 2008 and December 2008, will:

- \* modernise and simplify the current rules relating to cross-border supplies of services
- \* make the recovery of VAT on purchases made in other EU countries more efficient
- \* help to counter VAT fraud.

To comply with the new rules, businesses will need to make fundamental changes to their current VAT accounting and reporting processes in order to be ready for 1 January 2010. Whilst some issues of interpretation and implementation of the new rules, which need to be consistently applied across the EU, remain under discussion, HM Revenue & Customs (HMRC) recognise that business needs certainty at the earliest possible stage in order to be ready for January 2010. This article summarises how the changes will impact on business and provides links to initial guidance on how HMRC expects these to be implemented in the UK, highlighting those areas where uncertainty remains. This guidance will be updated as outstanding issues are resolved with changes being highlighted. Departmental guidance and the relevant Public Notices will be updated to reflect the changes.

## Who will be affected by the changes?

- \* Businesses supplying services to overseas businesses.
- \* Businesses receiving services from overseas businesses.

\* Businesses supplying goods to other EC countries.

\* Businesses that want to reclaim VAT incurred in another EC country.

## What are the changes, and when will they be introduced?

### Changes to the place of supply rules

From 1 January 2010 most services provided to business customers will be treated as supplied in the country where the business customer is established, and the business customer will account for VAT under the reverse charge mechanism [for more information on which see <http://snipurl.com/ih91p>].

Services provided to non-business customers will still generally be liable to VAT in the country of the supplier.

As now, there will be changes to these general rules.

The changes will be phased in on 1 January 2010, 1 January 2011, 1 January 2013 and 1 January 2015.

For further guidance on these changes and how they impact on business see Place of Supply/Time of Supply guidance [at <http://snipurl.com/ih941>].

Draft legislation was published with a consultation document on 22 December 2008 [see <http://snipurl.com/ih965>] and the responses to the consultation were published on 22 April 2009 [see <http://snipurl.com/ih972>].

### Changes to the time of supply rules

The time at which VAT must be accounted for under the reverse charge will change on 1 January 2010. The changes will be introduced by secondary legislation later in the year. For draft legislation and further guidance see Place of Supply/Time of Supply guidance [at <http://snipurl.com/ih941>]. HMRC are aware of the practical difficulties the new rules may present and are informally consulting with business groups to minimise additional burdens while remaining consistent with EU obligations. Comments on this are welcome and should be addressed to the email address given at the end of this article [link at <http://snipurl.com/ih9ig>].

*New ESLs for services and changes to ESLs for goods*  
To enable tax authorities to check that VAT is being accounted for correctly by the business receiving intra-EU supplies of services, UK VAT-registered businesses that supply services to EU businesses,

*HMRC's description of the changes that will take place when the VAT Package is implemented*

## VAT IN PRACTICE

where the place of supply is the customer's country, will have to complete ESLs for each calendar quarter and submit these within 14 days for paper returns and 21 days for electronic returns.

UK VAT-registered businesses that supply goods to other EU countries already submit ESLs. From 1 January 2010 new rules will:

- \* reduce the time available to submit ESLs in line with the limits above

- \* as an anti-fraud measure, require the monthly submission of ESLs where the value of the supplies of intra-Community goods (excluding VAT) exceeds £70,000 in the current quarter, or any of the previous four quarters. This threshold will be reduced to £35,000 (excluding VAT) with effect from 1 January 2012.

Further guidance is now available in the ESL guidance [see <http://snipurl.com/ih9ai>] and in Revenue & Customs Briefs 53/08 and 02/09 [reproduced below].

### *Changes to the procedure for obtaining refunds of VAT paid in other EU Member States*

A new electronic VAT refund procedure will be introduced across the EU for all claims submitted after 1 January 2010 to replace the current paper-based system. Businesses established in the UK will submit claims for VAT incurred in other EU countries on a standardised form through the UK Government Gateway, rather than direct to the Member State of Refund as at present.

For a guidance note including draft legislation see the Refund scheme guidance [at <http://snipurl.com/ih9c2>] and an impact assessment is also available [at <http://snipurl.com/ih9f9>].

### **What do businesses need to do now?**

Businesses need to consider whether they will be affected by the changes and what changes to their accounting system will be required to implement these new rules from 1 January 2010, to account for VAT under the reverse charge, and/or to capture the information needed to submit ESLs. They should also consider obtaining the VAT registration numbers of regular business customers in other EC countries.

Any comments or queries should be addressed to HMRC [email link at <http://snipurl.com/ih9ig>]. If an individual response is not appropriate these will be used to inform future guidance.

### **HMRC Brief 53/08**

#### **VAT – new requirement from 1 January 2010 that businesses provide EC Sales Lists for taxable supplies of services to which the reverse charge applies**

This article publicises a new requirement that businesses provide us with EC Sales Lists for certain taxable supplies of services from 1 January 2010. This requirement affects all UK businesses that make taxable supplies of services to business customers in other EU countries where the cus-

tomers is required to account for VAT under the reverse charge procedure.

### *Background*

A package of changes to the EC VAT system was agreed by EU Finance Ministers in December 2007 and adopted in February 2008. The changes will modernise and simplify the current rules relating to cross-border supplies of services and to the recovery of VAT on purchases made in other EU countries. The changes will take place between 1 January 2010 and 1 January 2015 and we will consult on the UK implementing legislation later this year. The package includes:

- \* changes to the rules on the place of supply of services for business-to-business (B2B) and business-to-consumer (B2C) transactions

- \* a requirement to complete EC Sales Lists for supplies of taxable services to which the reverse charge applies

- \* the introduction of an optional One Stop Scheme for B2C supplies of telecoms, broadcasting and electronically supplied services

- \* the introduction of an electronic VAT refund scheme

- \* enhanced administrative cooperation between Member States to support these changes.

### *Action required now*

This Brief is only concerned with the second item above. Currently EC Sales Lists are only required for B2B intra-EC supplies of goods. However, from 1 January 2010 EC Sales lists will also be required for intra-EC taxable supplies of services to which the reverse charge applies. They will not be required for:

- \* supplies which are exempt from VAT according to the rules in the Member State where the supply takes place

- \* B2B supplies where the recipient is not VAT-registered

- \* B2C supplies.

We wish to ensure that UK businesses are fully aware of this requirement so that they can start considering what arrangements or systems they may need to put in place to gather the information needed to complete EC Sales Lists, particularly if these are, or will need to be, electronic systems that will require change. At the present time we anticipate using the same form that is used for reporting goods (VAT 101) and to require the following data:

- \* country code

- \* customer's VAT registration number

- \* total value of supplies in sterling

- \* an indicator will also be required to identify services.

Under the VAT Package legislation that was adopted in February, from 1 January 2010 businesses will have to submit EC Sales Lists for taxable supplies of services subject to the reverse charge on a quarterly basis. However, Member States are currently discussing a European

Commission anti-fraud proposal which includes a provision that from 1 January 2010 all EC Sales Lists should be submitted on a monthly basis. We have received a number of comments from UK businesses objecting to the introduction of a monthly requirement in respect of supplies of services. We are feeding those responses into the European discussions and we will report the outcome of the negotiations as soon as we are able.

We will be discussing the above changes with software developers and will issue further detailed information on this and other aspects of the VAT package as we are able. In the interim, any queries on this Revenue & Customs Brief or the VAT package in general should be made by email [link at <http://snipurl.com/ih9ki>].

### HMRC Brief 02/09

#### **VAT package and anti-fraud measures implementation update: adoption of EU Council Directive and Regulation relating to EC Sales Lists and time of supply of services (update to Revenue & Customs Brief 53/08)**

On 16 December 2008, the EU Council adopted a Directive 2008/117/EC and a Regulation (37/2009) relating to EC Sales Lists (ESLs) and the time of supply of services subject to the reverse charge.

The implementation date for these new measures is 1 January 2010. This Revenue & Customs Brief gives some information about how these measures will be implemented in the United Kingdom. It should be read in conjunction with Revenue & Customs Brief 53/08.

The main changes relate to the submission of ESLs. In principle, the new Directive provides that these should normally be submitted monthly, but it allows Member States to offer their businesses certain options. The United Kingdom intends to implement these as follows:

- \* ESLs relating to services may be submitted quarterly, relating to calendar quarters

- \* from 1 January 2010, ESLs relating to goods may be submitted quarterly, relating to calendar quarters, provided that the value (excluding VAT) of supplies of goods to other Member States has not exceeded £70,000 in any of the previous four quarters

- \* a business entitled to submit quarterly ESLs for goods can continue to do so unless the value of supplies of goods to other Member States exceeds £70,000 (excluding VAT) per quarter from 1 January 2010 to 31 December 2011 or £35,000 (excluding VAT) per quarter from 1 January 2012 onwards

- \* if a business exceeds the quarterly goods threshold by the end of the first or second month in a quarter, an ESL must be submitted at the end of that month, covering the month or months in that quarter; lists must be submitted monthly from then

- \* once a business is on a monthly cycle, because it has exceeded the threshold in any quarter, it must continue to submit monthly ESLs for

goods until the value of its intra-Community trade in goods has been below the threshold for five consecutive quarters – it may then revert to quarterly submission if its trade remains below the threshold

- \* a business required to submit monthly ESLs relating to goods may still submit ESLs relating to services quarterly

- \* any business may submit ESLs for goods and/or services monthly, if it wishes.

The other change to ESLs is that the time, within which both UK businesses and then HM Revenue & Customs (HMRC) must carry out their respective ESL obligations, has been reduced from three months to one. We intend to discuss this issue with business to explore how implementation can balance the needs of business and HMRC. Our current thinking is that businesses that submit paper ESLs would have 14 days from the end of the (last) month to do so. This period would be extended to 21 days for electronic submission of ESLs.

Finally, the Directive makes changes to the time of supply of services rules for services supplied to businesses in another Member State where the customer has to account for VAT under the 'reverse charge'. The changes are:

- \* the time of supply of such services will be the earlier of when the service is completed or when payment is made

- \* for continuous supplies of services, the time of supply will be linked to the end of each billing or payment period, but where no invoice or other accounting document is issued or payment made during the year, the time of supply will be the end of each calendar year.

These changes will determine not only when the customer has to account for VAT under the reverse charge when the service is received from a supplier in another Member State, but also when a supplier is required to include the transaction on an ESL.

We intend to discuss implementation of the new time of supply rules with businesses, to understand their current accounting practices and their concerns about the changes likely to be needed. Our objective in implementing the rules will be to do so in a way which is as easy as possible for businesses to apply, and minimises additional burdens, while remaining consistent with the provisions of the Directive.

A consultation document covering changes to the place of supply rules for services being phased in from 1 January 2010 and the introduction of a requirement to complete ESLs for reverse charge services was issued on 22 December 2008. The deadline for comments on the draft legislation contained in the consultation paper is 13 February 2009. We will be holding consultation seminars in Central London on 2 and 6 February 2009 and intend to cover the issues arising from the changes set out in this Brief at those events. If you are interested in attending please email [link at <http://snipurl.com/ih9lc> although, clearly, this deadline has now passed].

*The Institute of Indirect Taxation's 2009 Annual General Meeting will be held on Thursday, 17th September in the Wellington Ballroom, London Hilton on Park Lane Hotel, 22 Park Lane, London W1K 4BE*

# VAT Online: a Second Update

**S**tephen Banyard is HMRC's Business Customer Unit Director and Senior Responsible Officer for the Carter Programme, which leads on developing HMRC's online services. Last year he wrote an article which appeared in *The Tax Journal* and, in shorter form, in Issue 98 of *Indirect TaxVoice*. Recently Stephen provided an update for *The Tax Journal* on what is in store for VAT-registered businesses and agents who will be required to file online from April 2010. What follows is a summary of that article.

In my previous article in *Indirect TaxVoice* I talked about the improvements being introduced to HMRC's online services for VAT. The VAT Online return service will move to the new HMRC portal in autumn 2009, when we also hope to introduce a number of enhancements to the existing VAT Online service. The new portal will provide a more robust and reliable service, with greater flexibility to share additional capacity across all of our online services. It builds on investment HMRC has made in our online services and makes use of their improved usability and accessibility standards.

It will enable businesses, including those who use the Flat Rate Scheme, to file online their return (VAT 100) and their final return (VAT 193). This includes all businesses and agents (whether or not the agent is VAT-registered) on behalf of their VAT clients. Users will be able to print off an html version of the VAT return before submission and a clear pdf version afterwards.

HMRC has invested heavily in its IT systems and this has really paid off. April 2008 saw the successful delivery of the largest online IT release in HMRC's history, including a new self-assessment return. The number of self-assessment tax returns filed online broke all records, with 5.8 million having been received by the deadline of midnight on 31 January, an increase of more than 50% on the year before. Online filing hit a peak on 30 January 2009, with more than 395,000 returns submitted – 185,000 more than last year's highest day total. The busiest hour was between 4pm and 5pm, when 38,000 returns were filed, just over 10 a second.

Turning now to the coming VAT changes, here is a quick reminder about those customers who will be required to file VAT returns online and pay electronically from April 2010:

\* businesses with an annual turnover of £100,000 or more – this is VAT-exclusive turnover, so a business with a VAT-exclusive annual turnover of £99,000 made up of standard-rated and zero-rated sales, plus £10,000 of exempt sales (a total

VAT-exclusive turnover of £109,000) would be required to file its VAT return online and

\* all businesses registering for VAT on or after 1 April 2010, regardless of turnover.

HMRC is planning how best to provide help and assistance to make the switch online as easy as possible for businesses. Late last year we commissioned research into VAT customers and their attitudes and behaviours regarding computer use, especially in relation to financial and other transactional services.

We have just finished the first-stage research. The ideas that found most favour with customers have now gone on to more extensive research. At present, it looks as if most businesses want factual information about what online filing will achieve for them (focusing on security, acknowledgement messages, arithmetic checks, etc); and reassurance that the online forms will be the same as the paper versions, so that they will not have to change their bookkeeping processes or convert them to electronic format (unless, of course, they want to). The kinds of support tool that are under research are a step-by-step guide to filing online and a new online demonstrator.

One of the issues for HMRC is VAT businesses without access to the Internet. Our recent research, however, indicates that businesses lacking the necessary computer access and skills now form only a small and diminishing minority of our total customers. Most micro businesses and employers have Internet access, even if they do not yet use it for online filing, and micro businesses that do not use computers tend to be more likely to be using an accountant or other intermediary to submit returns on their behalf. Furthermore, mandation in April 2010 will not apply to businesses which are registered for VAT before that date and which have a turnover of below £100,000. Nevertheless, we are exploring the possibility of targeted support for mandated businesses, however few they may be in number, which do not have Internet access. We may be able to offer an online filing service in selected Enquiry Centres, just as we did for self-assessment customers in January this year.

HMRC wants to provide help and support to assist businesses make the transition online. Our aim is to encourage and help customers to use the VAT Online service, not to penalise them for not doing so. There will eventually be penalties for those who are required to file online but who fail to do so but these will be implemented with a 'light touch'. There will be a transitional year, from April

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2010, in which we will issue only warning letters explaining where businesses have failed to meet the new requirements and offering them help. The focus during this transitional period will be on alerting businesses to the requirement to file online and to the advice and support available – not on penalising them.

### Refunds of VAT incurred in the EU

Some readers will also be aware that from 1 January 2010 any UK businesses reclaiming VAT incurred in another Member State will be required to do so electronically (see Council Directive 2008/9/EC, which lays down the detailed rules for refunds provided for in Directive 2006/112/EC). This change will considerably reduce the burden of making paper claims to individual Member States, which had to be in their different languages; and will, together with other changes, enable a reduction in the time in which repayments are

made to the business. Our communications plan will reflect this reform and other IT issues generated by the cross-border VAT changes (the 'VAT Package') so that businesses and agents get a complete picture of the changes being made to the way they interact with HMRC in the coming year.

### Consultation

During all of this we will continue to consult closely with customers and representatives of VAT businesses and agents, including the HMRC Joint VAT Consultative Committee, in order to firm up our plans accordingly.

If you are a tax agent representing smaller businesses which are likely to be required to file VAT returns online and you have suggestions about the type of support they will need from HMRC, we would be particularly interested in hearing from you directly. Would you please get in touch with us at [auriel.smith@hmrc.gsi.gov.uk](mailto:auriel.smith@hmrc.gsi.gov.uk).

# EMCS Newsletters Update for 2009

This is an update on the article 'Excise Movement and Control System (EMCS) Newsletter – Update May 2008' that was printed in the June 2008 issue of *Indirect TaxVoice*. Some material from that article is reprinted here, because it has changed in a significant way – such as having moved from where it was found in 2008, or because the wording has been updated. There have also been some changes to the timetable and in April 2009 HMRC published 'Issue 4 EMCS External Newsletter'. To date this has not appeared on the HMRC website as, evidently, publication has to go through a complicated and lengthy bureaucratic process.

There are several UK and EU documents covering the subject matter, and this article will attempt to summarise the overall picture. References are given to the relevant documents and websites to enable those readers who require more detail to find it. I will go through the documents in chronological sequence.

### What is EMCS?

EMCS is an electronic system which will capture and process AAD (Accompanying Administrative Document) information in respect of all movements of excise goods in duty suspension, from one approved warehouse to another within the European Union (EU). It will provide validation of data and real-time notification of dispatch and

receipt of goods. The system will also provide Members States with real-time notification about consignments under way and timely information on the discharge of the AAD.

There are now 27 Members States and about 150,000 traders using EMCS. The EU Commission will design the specification and set up a 'central domain' in Brussels. The Customs authorities of each Member State will have to provide a computer link to the central domain. For some traders there will be a simple online link to EMCS, whereas large-volume traders will probably want to use a link via electronic data interchange, using XML.

### Why is EMCS being introduced?

The original intention was that all duties would be harmonised before the creation of the Internal Market. This was not possible and the Member States agreed that the Internal Market would be created on 1 January 1993. The circulation and control of intra-community movements of excise goods in duty suspension can only take place between authorised economic operators and must be accompanied by a paper-based document – the AAD – and a guarantee financially securing the movement, both of which can only be discharged when the goods arrive at their destination. The system was put in place to monitor intra-community movements of excise goods in order to ensure payment of duty in the Member State where they are

by Ernest  
Grayston

## EXCISE

released for consumption, whilst at the same time respecting the free movement of goods within the Internal Market. Before 1993 these movements were monitored through customs controls at the borders between Member States. Readers will be aware that there is a similar problem with VAT.

Due to the high levels of fraud in the Member States and the corresponding loss of national revenues, especially in the field of tobacco and alcohol, the EU Council of Economic and Finance Ministers (ECOFIN) endorsed, on 19 May 1998, a High Level Group report recommending the setting up of a computerised trader-to-trader link via the national Member States administrations, which has now become known as EMCS.

Excise traders in all the Member States agreed to computerisation and hoped it would soon be introduced. The Commission and Member States were required to start introducing EMCS by 2009, with completion in 2011.

### How is EMCS being introduced?

The task of bringing EMCS to life is a matter for the EMCS Computerisation Project (ECP). ECP will specify, develop, deploy and support the operation of EMCS across all the Member States. EMCS is introduced in '1+3' phases from 2002 to 2011.

Phase 0 (2002 – ongoing) encompasses the operational support, maintenance and improvement of existing systems used in the excise field, pending the operational phase of EMCS; Phase 0 ensures that these systems are aligned with the overall objective of EMCS.

Phase 1 (2002 – ongoing) prepares and encompasses the launching of ECP and the production of the EMCS System Specifications (ESS).

Amongst the various specifications produced during Phase 1, the most important are:

- \* the functionally covered by EMCS and
- \* the phased implementation of EMCS.

Phases 2 (2006 – 2009) and 3 (2007 – 2011) are development and implementation phases, covering the detailed design of the national excise applications, the development of the central and national applications, as well as their implementation.

\* Phase 2 will focus on the essential functionality necessary to ensure the successful introduction of EMCS.

\* Phase 3 will add the link with customs procedures (such as the movement under suspension of excise goods between the place of importation and an excise warehouse) and extend the range of possibilities offered to administrations.

### January 2008

HMRC's EMCS Newsletter 01/08, dated January 2008, is on the HMRC website and covers the then latest position with regard to the UK EMCS, and a link to the Europa website. It is not user-friendly, however.

First go to [www.hmrc.gov.uk](http://www.hmrc.gov.uk). On the home page click on 'Excise' under the 'quick links' list on the left-hand side. In the page which follows click on 'Excise Movement & Control System (EMCS)' in the main body of the page. Then click on the highlighted 'EMCS' in the paragraph of text on the next page. The left-hand column on that page gives you access to the EU and HMRC documents relating to EMCS. Clicking 'UK communications' will lead you to a page where you can access EMCS newsletter 01/08. Clicking on 'EU Commission documents' will take you to a page where you can click the highlighted 'Europa website' on the fifth line of the text. That takes you to the EU page relating to EMCS, headed 'What is EMCS?'. I suggest you read this.

At the end there are further links:

#### EMCS info services

There is a link here to the two EMCS Newsletters that have so far been published.

Towards the bottom of the page there is a link to the 'FESS information paper', in which there are 20 pages covering the functionality of FESS (Functional Excise System Specification). More detailed information is provided below.

#### EMCS in practice

There is an excellent diagram here showing how EMCS will work in practice.

#### EMCS Computerisation Project

I have already outlined above the main component parts of this project. The remainder is self-evident.

#### FESS

FESS analyses and documents all business functions and processes that will be part of the EMCS. The FESS information paper mentioned above illustrates in details the proposed business processes and information exchanges which will be the basis of the EMCS system.

For example, the EMCS standard scenario:

- 1 – the consignor submits a draft e-AAD
- 2 – the Member State of dispatch automatically validates and sends back the e-AAD to the consignor; this is an instantaneous step, matter of a few seconds
- 3 – the consignor dispatches the excise goods
- 4 – the Member State of dispatch transmits the e-AAD to the Member State of destination;
- 5 – the Member State of destination forwards the e-AAD to the consignee
- 6 – the excise goods arrive at destination
- 7 – the consignee submits a report of receipt
- 8 – the Member State of destination validates the report of receipt and sends it back to the consignee
- 9 – the Member State of destination transmits the report of receipt to the Member State of dispatch
- 10 – the Member State of dispatch forwards the report of receipt to the consignor.

**UK communications**

This states that HMRC has started to deliver a series of overview presentations to various trade associations to advise on EMCS project developments and explain the basic functionality. It is planned to continue to meet with all trade associations over the coming months.

HMRC ran a series of workshops in early 2008 to look at the new online channel and the electronic data interchange using XML. These workshops were intended to give excise businesses the opportunity to influence and shape the developments of these options.

**EMCS newsletter 01/08**

This is as detailed in my previous article.

**EU Commission communications**

The EU Commission has advised that it intends to publish new information on the Europa website. This will include new versions of the following:

- \* FESS (now updated)
- \* Phasing and Scope Specification, including an information leaflet (the latest version of this is dated 2007)
- \* Fallback and Recovery Specification (the latest version of this is dated 2005)
- \* The Business Prototype and
- \* Issue 3 of EMCS News.

**EMCS newsletter 4**

As I mentioned at the beginning of this article HMRC has now issued a fourth EMCS external newsletter, dated April 2009 (although not yet available on the website). The remainder of this article (save for the conclusion) will consist of a reproduction of the contents of the newsletter, for those who have no access to it.

**Contents**

The EMCS project team will now issue the newsletter bi-monthly. [Contents list follows.]

**1. UK Initial Member State Position**

The UK will not be adopting 'Initial Member State' (IMS) status in relation to the implementation of EMCS at the 'go live' date of April 2010. IMS status required the delivery of both Functional Stage 0 (FS0) and Functional Stage 1 (FS1) concurrently.

The UK will now implement FS0 from 1 April 2010.

FS0 contains the functionality required to handle the destination side of electronic movements, enabling the quick return of the 'report of receipt' (copy 3 equivalent) to discharge the movement.

The UK will now implement FS1 with effect from 1 November 2010.

FS1 contains all the functionality of FS0 plus the dispatch side of electronic movements, predominately the submission of the electronic AAD (eAD

[referred to as 'e-AAD' in the FESS example above]), the ability to cancel the movement and change the destination. It also contains the functionality associated with imports and exports.

In the news release of 12 August 2008, HMRC informed traders of the EU decision to delay the original EMCS FS0 implementation date of April 2009 by twelve months to 1 April 2010. HMRC said at that time that they were planning on the basis that the delay would enable the UK to adopt IMS status at April 2010. Since then they have continued to work closely with their technical suppliers, the European Commission and trade representatives. It has become clear that the technical complexity of adopting IMS status within the given timeframe is significantly greater than originally envisaged. In addition there are some key elements of the

*The EMCS Project team have therefore taken an early, cautious decision to phase the implementation of Functional Stages 0 and 1*

delivery requirements that have yet to be confirmed by the EU.

The EMCS Project team have concluded that together these issues present too great a risk to the safe delivery of both FS0 and FS1 by 1 April 2010. They are determined to avoid announcing very late changes to the delivery timetable. They have, therefore, taken an early, cautious decision to phase the implementation of FS0 and FS1. This will ensure the delivery of FS0 for April 2010, which is absolutely essential. It will also enable them to plan with certainty for the implementation of FS1 on 1 November 2010.

They appreciate that this decision will give rise to a number of concerns and questions about the implications for businesses. This will, therefore, be one of the main agenda items at the next JATCG meeting on 4 June 2009, and the SMCS Working Group meeting on 5 May 2009. Please contact your relevant Trade Association Representative with details of your concerns so that they can be addressed at the meetings. Alternatively, please email them at: EMCS2@hmrc.gsi.gov.uk.

**2. System for the Exchange of Excise Data (SEED) Update**

At the end of January 2009, the first stage of the new UK SEED application was delivered in line with EU timescales. SEED now includes new trader types, data fields and an automated upload and download facility. The UK delivered the majority of the changes. However, there are a number of trader records which failed data migration and are not available on the SEED-on-Europa website. This temporary fault is urgently being looked at and it appears that other Member States are experienc-

## EXCISE

ing similar problems. If you are experiencing problems having your excise number approved on SEED-on-Europa please contact the National Verification Centre in Glasgow.

Further information about what you need to do if you are experiencing any problems as a result of this temporary fault is available on <http://www.hmrc.gov.uk/emcs/latest-news.htm>.

### 3. EMCS Technical Developments

The technical development of the two electronic channels is progressing and this is the latest position:

#### EMCS Online Services (web interface)

The technical development of the EMCS online services application for FS0 and FS1 is progressing. For FS0 we have designed and published User

*Whether the introduction of EMCS will drastically reduce the amount of fraud is not known. As with the introduction of the New Computerised Transit System, though, at least traders will know promptly of any diversions.*

Interface Specification 'screen shots' for the Launch EMCS Service and Submit Report of Receipt. These screen shots give you an opportunity to see how the online services pages will look. We are planning to publish business scenarios to help you navigate the screenshots by the end of May 09.

In parallel, the technical development of FS1 continues and following consultations with trade representatives, we will publish additional screenshots as soon as they are available. We expect to start the release of the screens for business flows such as 'creating a movement' in summer 2009.

#### Electronic data Interchange using XML

Our Software Developers Support Team (SDST) have published the EMCS Technical Pack which includes the Local Test Service (LTS - a set of technical documents designed to allow software developers to build and test their systems to EU specifications) for FS0 and we expect LTS for FS1 to be released in Oct 2009.

#### 4. Trade Consultations

##### EMCS Working Group

We have continued to meet with the EMCS Working Group (made up of various trade association representatives) to discuss EMCS project and policy developments. At the last meeting, an overview of the online services prototype was presented providing attendees with an opportunity to see screenshots of the web interface.

Key policy issues were discussed including the new Directive (008/118/EEC) replacing 92/12 and the introduction of Registered Consignor (Article 4). The Policy Team have advised that they will publish any relevant information over the coming weeks about the impact of this change in the legislation.

Discussions about the inclusion of a Vehicle Registration Number (VRN) being mandatory proved to be a key issue; a number of trade representatives registered their objection to this requirement as it will have a major impact on their day-to-day business. We explained that this is an EU requirement but will provide them with further explanations on the reasoning behind this decision.

#### Technical Developers Group

To progress the technical development (Electronic data Interchange using XML) we met with software developers and although plans to meet the Technical Working Group again have been postponed, we expect a meeting to take place mid 2009. This will provide developers with an opportunity to speak to the technical team directly and an update on the progress on the development of the LTS for FS1.

A feedback questionnaire was issued to registered developers and feedback indicates that to date, few developers have used the Technical Pack and LTS. It has been suggested that additional reference material may be useful and we are exploring options with the SDST with a view to producing additional material if it is necessary.

#### 5. EMCS and Exports Update

Ongoing discussions are taking place between EMCS and the Export Control System (ECS) project teams to explore the options available to streamline the two processes. Although there will be a link between EMCS and ECS this will not be an automated link in April 2010.

Further updates about the link between EMCS and ECS will be provided over the coming months.

#### 6. General Communications

For more information on the development of EMCS please check our website at [www.hmrc.gov.co.uk](http://www.hmrc.gov.co.uk) or call our national contact centre on 0845 010 9000 (+442089290152 outside UK). Alternatively, please email us at [EMCS2@hmrc.gsi.gov.uk](mailto:EMCS2@hmrc.gsi.gov.uk) if you have a query about the project.

#### Conclusion

This article has given a summary of EMCS to date and how to access the relevant parts of the Europa and UK websites. Whether the introduction of EMCS will drastically reduce the amount of fraud is not known. As with the introduction of the NCTS, at least traders will know promptly of any diversions. One benefit, though, should be the prompt discharge of guarantees.

# Pringles and potatoes

## **Mitsui & Co Deutschland GmbH v Hauptzollamt Dusseldorf**

*ECJ, Case C-256/07, 19 March 2009*

Under Article 29(1) and (3)(a) of Council Regulation (EEC) 2913/92 and Article 145(2) of Commission Regulation (EEC) 2454/93, when defects affecting goods become apparent after the goods have been released for free circulation but it can be demonstrated that the defects existed before such release, and those defects give rise under a warranty obligation to subsequent reimbursements (which correspond to the costs of repairs invoiced by the buyer's own distributors) by the seller/manufacturer to the buyer, such reimbursements can result in a reduction of the transaction value of the goods and, as a result, of their customs value (as declared on the basis of the price initially agreed between the seller/manufacturer and the buyer).

The ECJ also held that Article 145(2) and (3) do not apply to imports in respect of which the customs declarations were accepted before 19 March 2002.

## **Hauptzollamt Bremen v JE Tyson Parketthandel GmbH hanse j**

*ECJ, Case C-134/08, 2 April 2009*

The Hauptzollamt sought to impose an additional duty on products imported to Germany by Tyson. However, the ECJ held that the additional duty did not apply where it could be shown that the goods were already in transit when the provision applying the additional duty came into force.

## **Puffer v Unabhängiger Finanzsenat, Aubenstelle Linz**

*ECJ, Case C-460/07, 23 April 2009*

The ECJ held that the *Lennartz* principle does not offend against the principle of equal treatment in permitting those who use an asset partly for business purposes different treatment from those who use an asset for private purposes only.

The ECJ also held that it is permissible for the *Lennartz* principle to be refused to those who carry out exempt transactions only.

## **Accenture Services Ltd and Barclays Bank plc v HMRC**

*Queen's Bench Division, 28 April 2009*

The applicants sought judicial review of a decision by HMRC to deny them the benefit of the so-called 'staff hire concession'. The application was refused, since HMRC's decision was not perverse. Moreover, had the Court been faced with the decision it would not have found that the concession applied, because the phrase 'comes under the direction of' did not, as contended for by the applicants, mean 'come under a degree of direction,

however small' but meant 'comes under the predominant practical power of that party to direct'.

## **PARAT Automotive Cabrio Textiltetoket Gyarto Kft v Ado - es Penzugyi Ellenorzesi Hivatal Hatóság Főosztály Eszak-magyarországi Kihelyezett Hatóság Osztály**

*ECJ, Case C-74/08, 23 April 2009*

PARAT received a subsidy of 47% of its costs when it entered into a production investment. PARAT then sought to deduct the VAT it had incurred on those costs. The ECJ held that Hungary was permitted to refuse PARAT a VAT deduction in respect of the 47% of the costs which PARAT had not in fact borne.

## **FJ Chalke Ltd and another v HMRC**

*Chancery Division, 8 May 2009*

The High Court has held that under EU law a trader is entitled to compound interest when receiving a repayment of overpaid VAT. However, it is for national law to prescribe how that interest is calculated – the point being that an award of simple interest at one rate will give an equal result to an award of compound interest at a specific lower rate. Moreover, on the facts of this case the appellants did not qualify for a refund, having made their claims too late.

## **Insurancewide.com Services Ltd v HMRC; HMRC v Trader Media Group Ltd**

*Chancery Division, 15 May 2009*

The High Court has corrected what many commentators saw as an anomalous decision of the VAT Tribunal by holding that Insurancewide's services of introducing potential customers to insurance companies qualified as exempt services of an insurance intermediary. The Court noted the difficulty in some cases of distinguishing advertising services from introductory services but held specifically that HMRC was wrong to contend that an insurance intermediary must have a direct relationship with both the customer and the eventual insurer.

## **Procter & Gamble UK v HMRC**

*Court of Appeal, 20 May 2009*

The VAT Tribunal held that Pringles are similar to potato crisps and therefore standard-rated but the High Court reversed that decision, on the basis that Pringles are not made from the potato.

The High Court has now allowed HMRC's appeal. This was not a matter for complicated legal reasoning but something to be better left to the impression of the Tribunal, which had reached a rational and defensible decision. Since the taxpayer was unable to show that the Tribunal's decision was wrong, it must be reinstated.

*Chris Reece summarises the latest indirect tax decisions from the UK and Europe*