

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

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

Transposition Note: Articles 2(1), (6) and (7), 3 and 4 of Directive 2008/08/EC: Amending Chapter 3 of Title V, Section 1 of Chapter 1 of Title XI and Article 196 of Directive 2006/112/ EC as regards the place of supply of services

A table setting out how the various Articles are transposed into UK law is below.

The proposals for the changes to the place of supply of services for supplies to business customers contained in Directive 2008/8/EC were originally submitted to the EU Scrutiny Committee in January and February 2004 (EM and SEM 5051/04) with a RIA. The proposals were passed by the House of Commons on 16 March 2004 and the House of Lords on 25 May 2004. Subsequent amended proposals were submitted to the Committee on 30 September 2005 (EM 11439/05) in relation to supplies to business and private consumers. These were passed by the House of Commons on 28 February 2006 after a standing committee debate on 16 February 2006 and by the House of Lords on 15 March 2006.

The proposals were adopted by Finance Ministers in the February 2008 ECOFIN

References to Articles in the table below relate to the amended Articles of Directive 2006/112/EC.

Article	Objective	Implementation
		(of the VAT Act 1994)
Article 43	Article 43 provides that a taxable person who also carries out activities or transactions that are not taxable supplies of goods or services within Article 2(1) is regarded as a taxable person in relation to all services rendered to him for the purposes of the place of supply rules and further extends the meaning of taxable person in this context to include a non-taxable legal person who is identified for VAT purposes in a Member State.	Section 7A(4)
Article 44	Article 44 provides that the general place of supply rule for services made to business customers is where the customer belongs.	Section 7A(2)(a)
Article 45	Article 45 provides that the general place of supply rule for services made to non-business customers is where the supplier belongs.	Section 7A(2)(b)

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Article 46	Article 46 provides that the place of supply of services by intermediaries to non-business customers is where the supply being arranged takes place.	Schedule 4A, paragraph 10
Article 47	Article 47 provides that the place of supply of services connected with land is where the land is situated.	Schedule 4A, paragraph 1
Article 48	Article 48 provides that the place of supply of passenger transport is where the transport takes place, proportionate to the distances covered.	Schedule 4A, paragraph 2
Article 49	Article 49 provides that the place of supply of the transport of goods to non-business customers, other than the intra-Community transport of goods, is where the transport takes place, proportionate to the distances covered.	Schedule 4A, paragraph 11
Article 50	Article 50 provides that the place of supply of intra-EC transport of good to non-business customers is the place of departure.	Schedule 4A, paragraph 12
Article 51	Article 51 defines the meaning of the term "intra-EC transport of goods" and the term "the place of departure".	Schedule 4A, paragraph 12
Article 52	Article 52 provides that Member States need not apply VAT on the element of intra-EC transport of goods to non-business customers that takes place over waters that do not form part of the Community.	Schedule 4A, paragraph 12
Article 53	Article 53 provides that the place of supply of services and ancillary services related to cultural, artistic, sporting, educational, entertainment and similar services as well as organising such activities is where the activities are physically carried out.	Schedule 4A, paragraph 4
Article 54	Article 54 provides that the place of supply of ancillary transport services and valuation and work on goods supplied to non-business customers is where the services are physically carried out.	Schedule 4A, paragraphs 13 and 14
Article 55	Article 55 provides that restaurant and catering services, other than those performed on board ships, aircraft, or trains during a section of transport within the Community, are supplied where physically carried out.	Schedule 4A, paragraph 5
Article 56	Article 56 provides that the short time hire of a means of transport is supplied where the means of transport is actually put at the disposal of the customer.	Schedule 4A, paragraph 3
Article 57	Article 57 provides that the place of supply of restaurant and catering services onboard ships, aircraft or trains during a section of passenger transport within the Community is at the point of departure of the passenger transport.	Schedule 4A, paragraph 6

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Article 58	Article 58 provides that the place of supply of electronically supplied services supplied to non-business customers that belong in a Member State by a taxable person that belongs outside of the Member States is the place where the customer belongs.	Schedule 4A, paragraph 15
Article 59	Article 59 provides that the place of supply of certain specified intangible services when supplied to non-business customers that belong outside of the Member States is where the customer belongs.	Schedule 4A, paragraph 16
Article 59a	Article 59a allows Member States discretion, in relation to supplies whose place of supply is governed by Articles 44 (supplies to business customers), 45 (supplies to non-business customers), 56 (short-term transport hires) and 59 (intangible services to non-business customers (but excluding electronically supplied services)) and which, under those rules, would otherwise be treated as occurring in the Member State concerned or outside the Member States, to be treated as occurring where they are used and enjoyed if that use and enjoyment occurs in the Member State concerned or outside the Member States as appropriate.	Schedule 4A, paragraphs 3, 7, 8 and 9
Article 59b	Article 59b requires Member States to treat telecommunications services and radio and television broadcasting services supplied by taxable persons belonging outside the Member States to non-business customers belonging in the Member State concerned as occurring in that Member State to the extent that such services are used and enjoyed there.	Schedule 4A, paragraph 8
Article 192a	Article 192a states that a supplier that has a fixed establishment within the territory of the Member State where tax is due on a supply shall be regarded as not established in that Member State if the fixed establishment does not intervene in that supply.	Section 9
Article 53 (from 1 January 2011)	Article 53 introduced on 1 January 2010 is modified from 1 January 2011 so that it governs only the place of supplies comprising admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events made to business customers and fixes the place of such supplies as the place where such events actually take place.	Schedule 4A, paragraph 9A (from 1 January 2011)
Article 54 (from 1 January 2011)	Article 54 is modified from 1 January 2011 so that, in addition to the services governed by it with effect from 1 January 2010, it will also govern the place of supply of cultural, artistic, sporting, educational, entertainment and similar activities supplied to non-business customers by fixing their place of supply as the place where those activities actually take place.	Schedule 4A, paragraph 14A (from 1 January 2011)

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Article 56 (from 1 January 2013)	Article 56 introduced on 1 January 2010 is modified from 1 January 2013 so that the place of supply of the hire (other than a short-term hire) of a means of transport to a non-business customer is where the customer belongs, unless it is a pleasure boat; the place of supply of such pleasure boat hires will be the place where it is actually put at the disposal of the customer if this takes place at the supplier's place of business or fixed establishment.	Schedule 4A, paragraph 13A (from 1 January 2013)
Article 196 (from 1 January 2010)	Article 196 provides that business customers and non-business customers that are identified for VAT purposes must account for VAT chargeable on supplies made to them by suppliers who do not belong in the same Member State as them if the supply is treated as made in the Member State where the customer belongs by virtue of Article 44.	Section 8