



Standard Rate VAT Increase Bar Council Guide

[4 January 2011]

1. On 4th January 2011 the standard rate of VAT will increase to 20%. This guide sets out key points of law of which barristers and their clerks will need to be aware. This is summarised at paragraph 16 below. It also responds to typical questions which the Bar Council has been asked, in order to show how the change will affect the administration of a barrister's practice.
2. HMRC has issued guidance ("VAT – Change of the Standard Rate to 20 per cent"). This covers barristers (and advocates) at section 9.2 as follows:

9.2 Barristers and Advocates

If you are a barrister or advocate and you follow the arrangements under which fee notes do not become VAT invoices until they are receipted, then the tax point for your fees is normally the date you receive payment. Fees received on or after 4 January 2011 will be liable to VAT at 20 per cent. If you receive fees on or after 4 January 2011 for cases completed before that date, you can declare VAT at 17.5 per cent... Similarly, if a fee received after 4 January 2011 includes services partly performed while the 17.5 per cent VAT rate applied, you can apportion your fees ...

This guidance is available online at <http://www.hmrc.gov.uk/vat/forms-rates/rates/rate-rise-guidance.pdf>.

Background

3. Although VAT on services generally becomes due at the earliest of (a) provision of the service (b) payment and (c) issuing of an invoice, there is a special rule for barristers. VAT on supplies made by barristers is chargeable at the earliest of the following times¹:
 - (a) when the fee for the barrister's services is actually received;
 - (b) when the barrister issues a VAT invoice;

¹ See VAT (General) Regulations 1995, S.I. 2518, Regulation 92

(c) the day when the barrister ceases to practice.²

4. Whichever of these dates applies to any set of circumstances is called the “tax point”. It is crucial to note that the actual provision of services by a barrister is irrelevant when determining when a tax point crystallises.

5. It is also crucial to note that fee notes need not be, and those generated by standard software packages generally are not, VAT invoices³. Issuing a fee note does not, therefore, create a tax point. Usually the tax point is the receipt of the fee (which is followed by the issue of a VAT invoice/receipt).

The change in rate

6. The rate of tax on a service is generally the rate in force at the tax point so (subject to the exception below) the VAT change which comes into effect from 4th January 2011 will have the following effects for barristers:

- (a) If the tax point for a particular supply of services arises before 4th January 2011, the standard rate of VAT which must be charged is 17.5%;
- (b) If the tax point for a particular supply of services arises on or after 4th January 2011, the standard rate of VAT which must be charged is 20%.

7. There is, however, a special rule that applies on a change of rate⁴. This applies where a service is provided *before* the change of rate but, under the special rules above, the tax point falls *after* the change of rate. The barrister may then elect for VAT to be applied at the original rate (i.e. at the rate in force when the work was done). There is no particular form of election required so simply issuing a VAT invoice showing the amount of VAT calculated at the relevant rate should suffice. In other words, a barrister who receives a fee on or after 4th January 2011 for work done before that date can choose whether to charge the rate that applies at the date of charge (20%) or the rate that applied at the date the work was done. The rates of VAT also changed on 1st December 2008 (from 17.5% to 15%) and 1st January 2010 (back up to 17.5%).

8. In practice, therefore:

- (a) For work done on or after 4th January 2011, VAT must be charged at 20%.

² With an option to defer to date of receipt: see section 5.16.4 of the Bar Council’s *Taxation and Retirement Benefits Handbook* (5th ed), a copy of which was supplied to every chambers. More copies can be ordered via the Bar Council website: <http://www.barcouncil.org.uk/guidance/taxationandretirementbenefitshandbook4thedition/>. It is also reproduced in its entirety in *The Bar Handbook* <http://www.barcouncil.org.uk/memberservices/BarHandbook2010-11/>

³ See section 5.18 of the *Taxation and Retirement Benefits Handbook* (5th ed).

⁴ VATA 1994 s 88(2) applied to reg 92 and therefore barristers by reg 95. See section 3.2 of the HMRC guidance.

- (b) For work done between 1st January 2010 and 3rd January 2011, VAT can be charged at 17.5% (or 20 % if received on or after 4th January 2011).
- (c) For work done between 1st December 2008 and 31st December 2009, VAT can be charged at 15% (or 17.5% if received before 4th January 2011, or 20% if received on or after 4th January 2011);
- (d) For work done before 1st December 2008, VAT can be charged at 17.5% (or 20% if received on or after 4th January 2011).

9. From the barrister's point of view, there would be a slight cashflow advantage in charging the higher rate. It will generally be in the client's interests for the barrister to make the election to charge at the lower rate, however, either because the VAT is a real cost (because it is irrecoverable) or at least for cashflow reasons (because the VAT will have been paid out before it can be claimed as input tax).

Apportionment of fees

10. Where a supply of services spans the change of rate (i.e. some services are performed before and some after 4th January 2011), it is possible to apportion a fee received after 4th January 2011 so that so much of the fee as relates to work done before 4th January 2011 is charged at 17.5%⁵.

11. In practice, for ongoing matters, it may be simplest to issue fee notes in immediately before Christmas 2010 (or very early in January 2011), covering the work done to date with VAT shown at 17.5%. Even if the client does not pay immediately, the barrister and his clerk will have a contemporaneous record rather than having to perform the apportionment months or even years later. A separate fee note can be issued with VAT at 20% for all work done after on or after 4th January 2011.

Flat-rate scheme

12. The flat rate percentage will increase from 13% to 14.5% with effect from 4th January 2011.

13. Those using the flat-rate scheme will generally account for VAT quarterly and some will have a quarter that spans the rate change (e.g. one covering December 2010, January 2011 and February 2011). Such barristers should apply the 17.5% and 13% rates to receipts before 4th January 2011 and the 20% and 14.5% rates to receipts on or after 1st January 2010 (assuming they use the cash-based turnover method). In other words, those on the flat rate scheme (and using the cash-based turnover method) cannot elect to apply the rates in force at the time the work was done.

⁵ See section 3.4 of the HRMC guidance.

Pre-payments and anti-avoidance

14. In the normal course of things, barristers are paid after the work has been done, and issue VAT invoices after payment has been received. This means that the usual “tax point” for work done after 4th January 2011 will be the date of payment, and the rate of tax will be 20%. If, however, a barrister had been paid *before* 4th January 2011 for work to be done *after* that date, the rate of tax would be 17.5%. Similarly, if the barrister had issued a VAT invoice (not just a fee note) before 4th January 2011 for work to be done after that date, the rate would be 17.5% (although in this case the barrister might have to account for the VAT before receiving payment).

15. This result is subject to anti-avoidance rules introduced in Finance (No 2) Act 2010⁶. These apply in various situations including where:

- (a) the barrister issues a VAT invoice that does not have to be paid in full within six months; or
- (b) the payment or VAT invoice is in excess of £100,000, and this is not normal commercial practice.

16. At first glance, it might seem that these would apply to relatively few barristers. However, (a) since invoices are generally issued by barristers after receipt they will not generally show a date for payment and (b) it may be difficult to show that large pre-payments (let alone invoices) are normal commercial practice. A normal payment on account (i.e. one that would be made regardless of the change of rate) should not be caught.

Summary

17. In general, barristers can choose to charge and account for VAT at either the rate in force when the work was done or the rate in force when the fee is received. Assuming barristers will wish to charge the lowest rate (and ignoring prepayments and flat-rate scheme), this means:

- (a) Work before 1st December 2008 can be charged with VAT at 17.5%;
- (b) Work between 1st December 2008 and 1st January 2010 can be charged with VAT at 15%.
- (c) Work done on or after 1st January 2010 and 3rd January 2011 can be charged with VAT at 17.5%.
- (d) Work done on or after 4th January 2011 must be charged at 20%.

⁶ See Schedule 2. Detailed guidance on the legislation can be found at www.hmrc.gov.uk/vat/forms-rates/rates/anti-forestall-guidance.pdf

- (e) Where work on a single matter spans a change in rate, the fee can be apportioned.

FAQs

Note 1: In these questions, it is assumed that "fee notes" are not VAT invoices.

Note 2: These questions are being asked on or after 4th January 2011 and relate to work done on or after 1st January 2010.

1. *I am just about to send out a fee note for work done before 4th January 2011– what rate of VAT should I charge?*

You can choose which rate to apply. The client will generally prefer the 17.5% rate (see paragraph 8).

2. *Do I have to reissue fee notes for work done before 4th January 2011?*

No, there is no need to reissue fee notes, although you could do so if convenient or on request.

3. *I have just been paid for work I completed before 4th January 2011. The payment includes VAT at 17.5% as on the fee note. What rate of VAT should I include on the VAT invoice? Do I have to seek a payment of the 2.5%.*

You should issue a VAT invoice showing VAT at 17.5% and account for that amount as VAT.

4. *I have an ongoing case with some work before and some work after 4th January 2011. I have not yet been paid. Do I have to issue separate fee notes and/or invoices (some charging VAT at 17.5%, others at 20%)?*

You are entitled to apportion the work between periods before and after 4th January 2011 and charge the different rates of VAT as appropriate but you do not have to issue separate fee notes. You could show difference rates on the same fee note (and invoice).

5. *I am being paid in instalments for an ongoing case. The first instalments have been billed and paid with VAT at 17.5%. The most recent fee note sent out showed VAT at 17.5%. Do I need to reissue the fee notes? Or is it OK to switch to 20% for future fee notes only?*

Provided the most recent note relates to work done before 4th January 2011, you do not need to reissue the fee notes but should switch to 20% for future fee notes (but only if they relate to work done after 4th January 2011).

Software suppliers to chambers

The major software suppliers are also providing advice to their customers.

IRIS: <http://legalportal.iris.co.uk/>

LEX: <http://www.barsquared.com>