Croner-i HR • Tax • H&S • Audit & Accounting — e-CPD®

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VAT Registration

1. Past turnover test

A UK-established person is must notify HMRC of the liability to register in the UK for VAT if, at the end of any calendar month, the value of his 'taxable supplies', which were made in the UK in the course or furtherance of a business during the year (or period of less than 12 months since starting in business) then ending, exceeded £85,000. This threshold applies from 1 April 2017.

1.1. Disregarded supplies

For this purpose, exempt supplies are disregarded.
'Taxable supplies' includes not only positive-rated supplies, i.e. standard-rated and reduced-rated supplies, but also zero-rated supplies.

1.2. Notify HMRC

The figure for the year is based on a rolling calculation, i.e. after the end of any rolling 12-month period add the value of the taxable supplies for month 13 and deduct the value of supplies made in month 1.
Thus, if a person's past supplies exceeded the limit by the end of January, HMRC must be notified by 2 March in that year being 30 days from the end of January (but 1 March in a leap year) and registration takes effect from midnight on the last day of February and in practice on 1 March in that year.
If a person's past supplies exceeded the limit by the end of February, HMRC must be notified by 30 March in that year and registration takes effect from 1 April in that year.
If a person's past supplies exceeded the limit by the end of March, HMRC must be notified by 30 April in that year and registration takes effect from 1 May in that year.

1.3. Penalty for late notification

New businesses should usually check the value of their taxable supplies (turnover) at the end of each calendar month. Small businesses generally present their records to an accountant a while after the end of their financial year and taxpayers have found that the registration threshold had been exceeded months before the end of the financial year. A failure to notify a liability to register at the right time can attract a penalty.
Case law indicates that HMRC enforce registration even when a threshold is exceeded by a small amount. Although they may be lenient in a 'deserving' instance, such occurrences usually do not feature in the published case decisions.
Because registration concerns persons who make taxable supplies in the course or furtherance of a business, a person who makes taxable supplies by way of a mere hobby need not register. However, an activity can start as a hobby, but become a business and then the registration threshold is breached, so that notification of registration is necessary.

1.4. Exception from registration: low future turnover

A person is not liable to be registered merely because his supplies in the UK in the year then ending exceeded the threshold, if he can satisfy HMRC that the value of his taxable supplies, over the year starting from when he would be liable to be

registered, will not exceed £83,000, i.e. £2,000 below the registration threshold (£85,000 from 1 April 2017).
The burden is on the taxpayer to prove to HMRC's satisfaction why mandatory registration should not prevail. The standard of proof is the civil standard, i.e. on the balance of probabilities.

2. 30-day look-ahead test

A UK-established person is immediately liable to register if at any time there are reasonable grounds for believing that the value of his taxable supplies, which will be made in the UK in the 30 days then beginning, will exceed £85,000 (from 1 April 2017). This is sometimes known as the 'future-prospects rule' or the '30-day-look-ahead test' and aims to stop a large business from having a month's grace before accounting for output tax. This test usually catches a large business from its first day of trading, e.g. an overseas retailer starting in the UK. This test also catches large or one-off transactions, e.g. the sale of a new commercial building. The effective date of registration is backdated, because otherwise there is scope to avoid VAT on large transactions by unregistered persons.
The 30 days do not start at the beginning of each month, they start at any time.
Reasonable belief does not mean a mere desire or an unsubstantiated hope, but something nearer to certainty, e.g. a contract signed for the sale of a new commercial building or a large contract for services for (say) £50,000 each month.
In predicting the value of the supplies, consider the rules which fix both the place and the time of supply and the results of any form of research or enquiry (e.g. projected accounts and cash-flow statements). A self-employed unregistered person could fail to obtain another order and may face considerable uncertainties.
The 30-day look-ahead test, as its name implies, takes account only of future supplies.
If a person is liable to be registered under the 'future-prospects' rule, he cannot be excepted from registration. Thus, a person who arranges a one-off event, which makes him liable for registration where the turnover exceeds the specified limit, cannot be excepted from registration because his anticipated future turnover for the 12 months after the event, will be under the limit.

3. Transfer of a going concern

Where a business, or part of a business, carried on in the UK by a taxable person is transferred as a going concern (a TOGC) to another UK-established person, and the transferee is unregistered at the time of the transfer, the transferee becomes liable to be registered at that time (i.e. there is no period of grace) if:
(1) the value of his taxable supplies at the time of the transfer, for the period of one year then ending, has exceeded £85,000 (from 1 April 2017), subject to possible exception based on future turnover as discussed below. If a business is transferred as a 'going concern', the transferee is deemed to have made the transferor's supplies for the purpose of determining whether he must register; or
(2) there are reasonable grounds for believing that the value of his taxable supplies in the period of 30 days beginning at the time of the transfer will exceed £85,000.
Because the transferee is treated as running the business before and after the transfer for the purpose of registration, the transferee is liable to registration on the basis of the sum of:

(1) the value of taxable supplies from any existing business; and

(2) the value of taxable supplies made by the transferor in running the business that is transferred.

3.1. Examples of a TOGC

Examples of a TOGC include:

(1) a partnership or a sole proprietor transferring a business to a limited company;
(2) a company is disincorporated or becomes dormant while a sole proprietor or a partnership takes over the business; and
(3) a person sells a business to a third party.

3.2. Exception from registration: future turnover

A person is not liable to be registered, because he has taken over a business as a going concern and consequently breached the past turnover limit, if he can satisfy HMRC that the value of his taxable supplies, over the year starting from when he would be liable to be registered, will not exceed £83,000, i.e. £2,000 below the registration threshold (£85,000 from 1 April 2017).

Example

Past turnover rule
The partnership Snodgrass & Co started in business from scratch in the UK on 1 May 2017 as jobbing decorators (i.e. a going concern was not taken over). The partners were not registered for VAT.
Their taxable supplies in their first month, i.e. 1 to 31 May 2017, amounted to £3,000.
Their taxable supplies in their first year in business, i.e. the year to 30 April 2018, amounted to £57,000, which is under the then past turnover limit.
They obtained a large contract for redecorating houses in May 2018. The contract provided that, at the end of each calendar month, commencing at the end of May 2018, they should receive £40,000. The contract was for three months and the total price agreed was £120,000.
When the partners received payment at the end of May 2018 they became liable to register for VAT, because their 'past' taxable supplies for the 12 months to 31 May 2018 amounted to £94,000 (being £57,000 plus £40,000 less £3,000) and this exceeded the then past annual threshold (from 1 April 2017) of £85,000.
The firm made no 'capital' supplies and did not breach the threshold for future prospects.
(a) Time limit for notifying HMRC
The partners should notify HMRC by 30 June 2018 (being 30 days from the end of May 2018).
(b) Effective date of registration
The partners should apply to be registered from 1 June 2018, unless an earlier date is agreed between them and HMRC.

Example

Registration: Future prospects rule
John Bell, a computer technologist, left his employment and started his own business on 1 February 2018. In the first three months of the business, his turnover (i.e. taxable supplies) amounted to £11,000.

On 4 May 2018, he signed an agreement to provide a computer system for Biggss Group plc for £250,000. The agreement stipulated that he should be paid an advance of £90,000 within seven days of the signing of the agreement.

(a) Time limit for notifying HMRC

By 3 June 2018 (being 30 days from 4 May 2018), Bell must notify HMRC of his liability to register.

(b) Effective date of registration

He is registrable from 4 May 2018, because on 4 May 2018 there were reasonable grounds for believing that his taxable supplies in the next 30 days would exceed the then registration limit (from 1 April 2017) of £85,000.

Example

Registration: Transfer of a going concern (TOGC)

Mr and Mrs Slogg operated a successful hotel in partnership in Bolton and VAT-registered many years ago.

In November last year, they formed another partnership with Mr Slogg's brother and purchased:

- the freehold of a guest house in Manchester;
- the goodwill; and
- the fixtures and fittings,

i.e. it was a transfer of a going concern, because the new partnership ran the same kind of business as previously carried on and there was no break in the normal trading pattern.

The transferor (vendor) of the guest house in Manchester started that business on 1 February last year from scratch (i.e. a going concern was not taken over) and later VAT-registered having exceeded the registration threshold during the summer of last year. Each partnership is a separate person for VAT purposes.

A 'person' need not register until his turnover in the last 12 months exceeded the registration limit, but a transferee (purchaser) of a going concern is 'treated' as having carried on the business before the transfer (sale) and is liable to be registered from the time of the transfer.

Thus, the transferee (purchaser) cannot wait until his own supplies have exceeded a threshold. The new owner must register for VAT or, at the time of transfer, becomes liable to register. If the taxable turnover of the business (or part business), which is being transferred, exceeded the current registration limit immediately before the transfer, the new owner normally becomes liable to be registered when the business is transferred, unless the new owner plans to reduce trading significantly, e.g. by opening fewer hours.

Where a business is transferred as a going concern, the purchaser is deemed to have made the vendor's supplies for the purpose of determining whether he must register.