

# VAT treatment of the Hiring or leasing of Means of Transport

This document should be read in conjunction with section 35 of the VAT Consolidation Act 2010. (VATCA 2010)

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## 1. Place of Supply of Services

Revised VAT Place of Supply of Services rules came into effect from 1 January 2010. Further changes in the VAT treatment of Long Term Hiring of Means of Transport come into effect on 1 January 2013, see Paragraph 3.1 below.

Full details of the 2010 changes are contained in Revenue's information on the Place of supply of services.

In the case of the Hiring of Means of Transport, which is a service, the VAT treatment depends on a number of factors including the period of time for which the Means of Transport is hired, the VAT status and location of the customer, and in certain cases where the Means of Transport will be used and enjoyed. Hiring is often described as Leasing but the term Hiring is used throughout this leaflet.

## 2. What are Means of Transport

Means of transport are defined in Article 38 of Council Implementing Regulation of 15th March 2011 (282/2011/EU) as the following;

**Means of transport shall include vehicles whether motorised or not and other equipment and devices designed to transport persons or objects from one place to another which can be pulled, drawn, or pushed by vehicles and which are normally designed to be used and actually capable of being used for transport.**

Means of transport shall include, in particular, the following vehicles;

- Land vehicles such as cars motor cycles, bicycles, tricycles, and caravans
- Trailers and semi- trailers
- Railway wagons
- Vessels
- Aircraft
- Vehicles specifically designed for transport of sick and injured persons
- Agricultural tractors and other agricultural vehicles
- Mechanically or electronically propelled invalid carriages.

Means of transport shall **not** include the following;

- Vehicles which are permanently immobilised
- Containers.

### 3. VAT treatment of transactions involving the Hiring of Means of Transport

1. Different VAT treatment apply to the following transactions involving the Hiring of a Means of Transport
2. Long term involving the continuous possession or use of the Means of Transport throughout a period of more than thirty (30) days and in the case of vessels, more than ninety (90) days
3. Short term involving the continuous possession or use of the Means of Transport throughout a period of not more than thirty (30) days and in the case of vessels, not more than ninety (90) days
4. Where a Means of Transport is hired to a customer within the EU but used and enjoyed outside the EU.

These transactions are covered in more detail below.

#### 3.1 Long Term Hiring

The VAT treatment applicable to the long term (more than thirty or ninety days as applicable) hiring of Means of Transport is covered by the normal Place of Supply of Services rules that came into effect on 1 January 2010. See Paragraph 1 above.

In accordance with those rules the Place of Supply of transactions involving the long term hiring of Means of Transport to a taxable person is the place where that taxable person has established his business. In the case of cross border transactions within the EU the taxable person receiving the hiring service will account for the VAT on the reverse charge. Where the taxable person is based outside the EU there are no VAT implications.

**Up to 31 December 2012** the Place of Supply of long term Hiring of Means of Transport to a non- taxable person is where the supplier of the hiring service is established.

**From 1 January 2013** however it should be noted that Place of Supply of the long term hiring of a means of transport (excluding a pleasure boat) to a non- taxable customer is where that customer is established, has his permanent address or usually resides.

Where the Means of Transport consists of a pleasure boat the Place of Supply of the long term hiring shall be where that pleasure boat is put at the disposal of the customer, where this service is actually provided by the supplier from his place of business or a fixed establishment situated in that place.

While the term "put at the disposal of the customer" is not defined it is taken as meaning that more than simply collecting a vehicle or vessel is involved. For the condition to apply other elements such as production of identification, signing contracts, finalising any paperwork, handing over of keys etc should be involved.

The term fixed establishment has been considered by the European Court of Justice and it has laid down the key principle that an establishment must contain a permanent presence of human and technical resources necessary to supply a service as well as having an office where contracts would be signed and facilities to store vehicles and vessels.

If either condition is not met then the place of supply of the pleasure boat will be where the non- taxable customer is established, has his permanent address or usually resides, which is the rule applicable in the case of all other Means of Transport.

The European Union (Value Added Tax) (No. 2) Regulations 2012 , SI 429 of 2012 provide for the amendment of the VAT Consolidation Act 2010 at Sections 33(4A) and 34 (ka) and (kb) covering the changes relating to the long term hiring of means of transport that come into effect on 1 January 2013.

The text of the Regulation is contained in S.I. No. 429 of 2012 - European Union (Value Added Tax) (No. 2) Regulations 2012.

See also examples 4 and 5 under the heading, Long Term Hiring, in Annex 2 to this leaflet.

### **3.2 Short Term Hiring**

The place of supply of short term hiring of means of transport is the place where the means of transport is actually put at the disposal of the customer. This applies whether the customer is a taxable or non - taxable person.

As mentioned above Short Term hiring involves the continuous possession or use of the means of transport throughout a period of not more than thirty (30) days and, in the case of vessels, not more than ninety (90) days.

As is the case with Long Term Hiring (see Paragraph 3.1) while the term "put at the disposal of the customer" is not defined it is taken as meaning that more than simply collecting a vehicle or vessel is involved. For the condition to apply other elements such as production of identification, signing contracts, finalising any paperwork, handing over of keys etc should be involved.

The duration of the contract for the continuous possession of the Means of Transport will be determined by the contract between the parties involved. The fact that the period of the contract is exceeded on the grounds of force majeure shall have no bearing on the determination of the duration of the continuous possession and use of the Means of Transport.

Force Majeure is a common clause in contracts that essentially frees both parties from liability obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot crime etc., or an event described by the legal term act of God (flood, hurricane etc), prevents one or both parties from fulfilling their obligations under the contract.

In a short term contract, where the thirty or ninety day period is exceeded on the grounds of force majeure, it will not change the contract from a short term contract to a long term contract.

Where the hiring of the same Means of Transport between the same parties is covered by consecutive contracts i.e. one 30 day or 90 day (vessels) contract is followed by another 30 day or 90 day (vessels) contract the consequent contract will be treated as a long term contract. Unless there is evidence of abusive practice the first contract will continue to be treated as short term.

### **3.3 Hiring of Means of Transport to a customer in the State but used and enjoyed outside the EU**

Section 35 (2) VAT Consolidation Act 2010, which has been transcribed from Article 59 a of the 2006 VAT Directive, provides that the place of supply of the Hiring of a Means of Transport by a lessor in the State is outside the EU where the Means of Transport are to be effectively used and enjoyed outside the EU. The hiring, for example, of railway rolling stock by a lessor established in Ireland to a lessee established in Ireland would normally be subject to Irish VAT. However where the rolling stock is to be used and enjoyed outside the EU, such as in the United States of America, then no Irish VAT would apply.

Where there is doubt that the use and enjoyment takes place outside the EU a lessor should charge VAT. In addition while the use and enjoyment of a means of transport at the start of the leasing agreement may be outside the EU, a lessor is responsible for ensuring that the correct VAT treatment is applied to the leasing service for the full period of the lease. If during the period of the lease agreement the lessee transfers the means of transport to a Member State the normal VAT treatment should be applied.

## **4. Input Credit**

Hiring of Means of Transport is a taxable activity and suppliers will qualify for input credit, subject to the usual restrictions, on expenses incurred in connection with that activity. Where the place of supply of the hiring is outside the state it is treated as a qualifying activity which also gives rise to an entitlement to claim an input credit.

## **5. Rates of VAT**

The general rate of VAT applicable to the hiring of Means of Transport where the place of supply of the hiring is the state is the standard rate. In certain circumstances, as provided for in the VAT Consolidation Act 2010, the zero rate or the reduced rate can apply to the hiring. Full details are set out in Appendix 1.

## **6. Examples**

Practical examples covering the VAT treatment of short term and long term hiring of means of transport are included in Appendix 2.

## Appendix I

Application of the Zero and Reduced rates of VAT to the Hiring of Means of Transport. Zero Rate – See Paragraph 4. (2) (a) and (b) of Schedule 2 VAT Consolidation Act 2010.



4. (2) The supply, modification, repair, maintenance, chartering and hiring of -

1. sea-going vessels of a gross tonnage of more than 15 tons being vessels used or to be used -
  1. for the carriage of passengers for reward,
  2. for the purposes of a sea fishing business,
  3. for other commercial or industrial purposes, or
  4. for rescue or assistance at sea, or
2. \*aircraft used or to be used by a transport undertaking operating for reward chiefly on international routes.

\*Please note that the application of the zero rate is not dependant on whether the aircraft can be used on international routes. The requirement is that the transport undertaking hiring the aircraft must be operating chiefly for reward on international routes i.e. the majority of its business must be derived from international transport.

### Reduced Rate - See Paragraph 19. Schedule 3 VAT Consolidation Act 2010

19. Hiring -

1. a vehicle designed and constructed, or adapted, for the conveyance of persons by road
2. a vessel  designed and constructed for the conveyance of passengers and not exceeding 15 tonnes gross
3. any kind of sports or pleasure boat, or
4. a caravan, mobile home, tent or trailer tent  
to a person under an agreement (other than an agreement of the kind referred to in section 19(1)(c))  for any term or part of a term that, when added to the term of a previous hiring (whether of the same goods or of other goods of the same kind) to the same person during the 12 months ending on the date of the beginning of the existing hiring, does not exceed 5 weeks.

Please note that for the purposes of the Place of Supply rules short term hiring of motor vehicles is defined as hiring for periods of 30 days or less in a period of 12 months. However where the Place of Supply is the state and Irish VAT is chargeable the reduced rate of VAT will apply where the period of hiring of the motor vehicle does not exceed 5 weeks i.e. 35 days.

## Appendix 2

### Examples

#### VAT treatment of Hiring of Means of Transport

##### 1. Long term hiring. (Period in excess of 30 days or 90 days in the case of vessels).

###### Example 1

Supplier based in the state hires a commercial vehicle to a customer who is a taxable person established in another MS of the EU.

No Irish VAT charged and customer will account for VAT on the reverse charge.

###### Example 2

Supplier established in the state hires, before 1 January 2013, a car to a non-taxable customer in the UK.

The place of supply is the state and Irish VAT must be charged.

###### Example 3

Supplier established in the state hires, on or after the **1 January 2013**, a vessel (not a pleasure boat) to a non- taxable customer established in the UK.

As the non- taxable customer is established in the UK the place of supply is in the UK and the supplier must register and account for VAT on the service there.

###### Example 4

Supplier established in the state hires, on or after 1 January 2013, a pleasure boat to a non- taxable customer established in France. The pleasure boat is actually put at the disposal of the customer in Italy and the supplier has a place of business or a fixed establishment in that location. As the pleasure boat is put at the disposal of the customer in Italy and the supplier has a place of business or an establishment located in that MS the place of supply of the hiring service is Italy and the supplier must register and account for VAT in that MS.



**Example 5**

Same as Example 4 except the supplier does not have a place of business or an establishment in Italy. Therefore the place of supply is the MS where the customer is established and that is in France. The supplier will have to register and account for VAT in that MS.

**Example 6**

Supplier established in the state hires rolling stock to a customer also established in Ireland but the rolling stock are to be used outside the EU.

Subject to clear evidence being available to show that the rolling stock is to be used outside the EU then the place of supply will be regarded as being outside the EU and no Irish VAT charge will apply.

The above treatment will also apply where the hiring is on a short term basis.

**Example 7**

A supplier hires a car to a customer for a period of 30 days and then renews the contract for a further 30 days.

For Place of Supply purposes, as the combined period exceed 30 days the second contract will be treated as a long- term contract. Provided there is no evidence of abuse the first contract will continue to be treated as short term.

For VAT rate purposes, as the combined periods of hiring exceed 5 weeks i.e. 35 days the rate of VAT applicable will be the standard rate.

**2. Short Term Hiring. (Period of 30 days or less, 90 in the case of vessels)****2.1 supplier and customer established here and means of transport put at the disposal of the customer here.****Example 1**

Vehicle is hired to a customer for a 28 day period.

The place of supply of the hiring service is the state and the supplier will account for Irish VAT.

The rate of VAT applicable is the reduced rate as the period of hire is less than 5 weeks i.e. 35 days.

**Example 2**

Vehicle is hired to customer for a 35 day period. While for Place of Supply purposes the hiring is now considered long term (it exceeds 30 days) the reduced rate of VAT will still apply as the period of hire does not exceed 35 days.

**Example 3**

Vehicle is hired to customer for a 42 day period. While for Place of Supply purposes the hiring is now considered long term (it exceeds 30 days) the standard rate of VAT will apply as the period of hire exceeds 35 days.

**Example 4**

Vehicle is hired to customer for a 29 day period but due to unforeseen emergency circumstances the customer extends the hire period to 37 days. Provided there is evidence to show that the contract was extended due to force majeure circumstances (See Paragraph 3.2 above) the contract will continue to be treated as a short term contract and will not be treated as a long term contract for a period in excess of 30 days.

Although, due to the force majeure circumstances, the hire period exceeds 5 weeks i.e. 35 days in a period of 12 months the rate of VAT applicable will still be the reduced rate.

**Example 5**

A supplier hires a car to a customer for a period of 30 days and then renews the contract for a further 30 days.

As the combined period exceed 30 days the second contract will be treated as a long- term contract. Provided there is no evidence of abuse the first contract will continue to be treated as short term.

The rate of VAT applicable will be the standard rate as the hire period exceeds 5 weeks i.e. 35 days in a period of 12 months.

**2.2 Supplier and customer established in the State and means of transport put at the disposal of the customer outside the state.**

**Example 1**

A supplier established in the State hires a car to a customer also established here but the car is put at the disposal of the customer in France.

The place of supply of the hiring is in France and the supplier must register and account for VAT on the hiring service there.