

# VAT 2010

## VAT Package:

### European Commission:

- modernising and simplifying European VAT system
- in principle, VAT should be due in the country of consumption, “...unless this leads to additional obligations for entrepreneurs and tax administrations which could be regarded as disproportionate, burdensome or impractical...”



## Agenda:

- What is going to change?
  - ▶ cross-border services
  - ▶ simplification of refund procedure for foreign VAT
  
- Administrative implications
  - ▶ invoicing
  - ▶ return and listings
  - ▶ refund procedure for foreign VAT
  - ▶ VAT identification



# VAT 2010: what's new?

## Main changes in VAT rules as from 2010:

- new rules for cross-border services between taxable persons (B2B)
- change of refund procedure for foreign VAT

## General rule for cross-border services (2010) in 'business to business' transactions (B2B):

- cross-border B2B services are taxable with VAT in the country where the customer / entrepreneur has established his business or where he has a fixed establishment to whom the services are provided (article 44 VAT Directive)
  
- VAT payable by the recipient via 'reverse charge': customer must account for (and deduct) the VAT in its regular VAT return ('self assessment') (article 196 VAT Directive)
  
- Currently already applicable (as an exception) to:
  - ▶ services of consultants, engineers, lawyers and accountants ('intellectual services')
  - ▶ advertising services
  - ▶ e-commerce
  - ▶ telecommunication services

## Exceptions to general rule (B2B):

1. services connected with immovable property
2. cultural, artistic, sporting, scientific, educational, entertainment and similar services
3. restaurant and catering services
  - ditto, on board
4. short-term hiring of means of transport

## (Re 1.) **Services connected with immovable property (B2B):**

taxable with VAT in the country where the immovable property is located  
(application of 'reverse charge' => domestic law to be checked)

### *Examples:*

- execution of construction work
- preparatory services for this, such as services of architects
- services of valuers and estate agents
- provision of accommodation in hotel sector etc.
- granting of rights to use immovable property



## (Re 2.) Cultural, artistic, sporting, scientific, educational, entertainment and similar services (B2B):

taxable with VAT in the country where the activities are physically carried out

change from 2011: taxable with VAT in the country where the customer is established, with the exception of providing admission to such activities



## (Re 3.) Restaurant and catering services (B2B):

- Taxable with VAT in country where service is physically carried out
- Restaurant and catering services for consumption on board ships, aircraft or trains during transport within the EU: taxable with VAT in country of departure of the passenger transport



## (Re 4.) Hiring of means of transport (B2B)

- currently:

taxable with VAT in country where hire business is established



- 2010:

short-term hiring (max. 30 days, for ships max. 90 days):

taxable in country where means of transport is put at customer's disposal

long-term hiring:

general rule applicable, so VAT is due in country of customer

## *What else is going to change?*

### **Management services**

- currently:

Place of supply of the service = place where the service provider has established his business

Domestic VAT is charged on the management fees, even if customer is established in another country

- 2010:

Place of supply of the service = place where the customer is established (= new general rule)

VAT liability is shifted (“reverse charge”) to recipient in cross border situation

## *What else is going to change?*

### Transport services (B2B)

- currently:

taxable with VAT in country where transport begins, unless recipient of service has a VAT identification number of another EU country

- 2010:

service is taxable with VAT where customer is established  
(new general rule)

domestic transport on instruction of foreign business:  
taxable with VAT where customer is established

domestic transport preceding or following intra-  
Community transport (+ intra-Community transport):  
taxable where customer is established



## Business to Consumer:

- general rule: taxed in country of supplier/service provider
  
- exceptions:
  - ▶ intermediary services
  - ▶ services connected with immovable property
  - ▶ intra-Community transport of goods
  - ▶ other goods and passenger transport
  - ▶ cultural, artistic, scientific, educational, entertainment and similar services
  - ▶ ancillary transport services
  - ▶ work on movable tangible property
  - ▶ restaurant and catering services
  - ▶ short-term hiring of means of transport
  - ▶ long-term hiring of means of transport
  - ▶ electronic services
  - ▶ intellectual services with customers outside the EU



## Other points of attention (1)

- Permanent establishment

if the services qualifying for the new general rule are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where the fixed establishment is located.

- 'Use and enjoyment' rule to prevent double taxation or non- taxation

Member states may consider:

- the place of supply of any or all of the services, if situated within their territory, as being situated outside the EU if effective use and enjoyment of the services takes place outside the EU
- the place of supply of any or all of the services, if situated outside the EU, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory

## Change of refund procedure for foreign VAT

- electronic refund procedure from 1 January 2010
- via national tax administration (electronic portal)



## What are the benefits of the new rules?

- rules are simpler than current rules
- less 'paperwork'
- usually no longer necessary to apply for a refund of foreign VAT in foreign country
- fewer situations where foreign VAT registration is necessary
- refund procedure is simpler



# Administrative implications of new VAT rules

## Essence of the changes:

- VAT liability is shifted in a number of cross-border B2B services from service supplier to customer
- change in tax point – when is VAT due?
- change in refunding of foreign VAT

## Administrative implications:

- consequences for invoicing
- consequences for the VAT return
- new: European VAT listing for cross-border services
- change: European VAT listing for cross-border supplies
- change: refund procedure for foreign VAT
- New rules regarding obligation to register for VAT



## Consequences for invoicing:

For B2B services that will be reverse charged under the general place-of-supply rule:

- notification of the relevant provision regarding place of supply and “reverse charge” on the invoice;
- VAT identification number of the customer (validation !!)

### **NB:**

the service supplier must apply the invoicing rules of the Member State in which the VAT is due.

Advice: with regard to the “reverse charge” regulations, refer to the relevant provisions of the European VAT Directive rather than to domestic law

## VAT return

- New box 44 for reporting the intra-Community services supplied to VAT liable persons established in another Member state of the EU
- (Old) box 48: credit notes related to transactions reported in box 44
- New box 88 for reporting the services that are supplied by VAT liable persons established in another Member state of the EU and that are located in Belgium according to the new general rule for B2B services, and for which the VAT is payable by the recipient/customer
- (Old) box 55: VAT payable on services reported in box 88
- (Old) box 84: credit notes related to services reported in box 88

## New tax point – when is VAT due? (1):

- up to 1 January 2010:  
VAT becomes liable at the time of completion of the service or, if earlier in time, at the date of the invoice or the date of payment
- from 1 January 2010 (*only for B2B services that benefit from the new general rule and for which the VAT is payable by the recipient in accordance with article 196 of the VAT Directive*)

### VAT becomes liable:

- at the time at which service is completed or paid for (if earlier); date of invoice is no longer relevant
- at the time of the interim settlement/statement for continuous services
- at the end of the calendar year for services that are not yet completed and for which no interim statement, settlement or payment have been received

## New tax point – when is VAT due? (2):

### ■ *Practical example:*

you supply two B2B general-rule services to a customer in another EU country:

- ▶ one on 28 March
- ▶ one on 5 April
- ▶ you produce one single invoice on 15 April

### **From 2010:**

- ▶ first service is taxable in March; the second in April
- ▶ first service must be accounted for in the VAT return for March / 1st quarter;  
second service must be accounted for in the VAT return for April / 2nd quarter

## New tax point – when is VAT due? (3):

### Significance:

- ▶ entrepreneurs must adapt administrative systems to the new time at which VAT becomes liable (new software)
- ▶ entrepreneurs that supply not only B2B general-rule services to foreign customers but also other services will need to have different systems operating alongside each other
- ▶ if the time at which the service is performed cannot be automated, manual processes will have to be introduced
- ▶ it would be wise for entrepreneurs to take measures to ensure that services that are performed in different months are not stated on one single invoice: make arrangements between service supplier and customer(s)

## New: European VAT listing for services (1):

- in addition to intra-Community supplies, intra-Community services will also need to be listed on a recapitulative statement
- Only for IC services for which the reverse charge applies (VAT payable by the recipient in accordance with article 196 of the VAT Directive)(see services qualifying for the new general rule)
- Also for exempt VAT taxable person such as lawyers
- Supply of services and goods on the same listing/recapitulative statement

## European VAT listing for supplies (2):

- listing of intra-Community supplies per month
- unless:
  - IC supply of goods value < € 100,000 per quarter; the reporting *can* then be per quarter
  - Exception does not apply if turnover threshold has been exceeded in the four preceding quarters
  - If the turnover threshold is exceeded during the course of a quarter, the listing must then take place immediately for the past months
- Belgium: same periodicity as the VAT return (month or quarter), unless amount of IC supply of goods has exceeded 100.000 EUR in the four preceding quarters

## Refund of VAT of other EU countries, from 1 January 2010 (1)

- New rules for refund requests filed after 31 December 2009
- Electronic filing via tax administration of country in which the VAT taxable person is established (no certificate of tax liability)
- Nature of the expenses need to be coded
- Copy of invoices can be requested if taxable base exceeds 1.000 EUR (250 EUR for fuel)
- per quarter or per (part of) year
- each country has own restrictions
- each country can determine language
- threshold amounts to EUR 400 for quarterly requests, and to EUR 50 for annual requests
- latest date of submission: 30 September
- handled within 4 months

## Refund of VAT of other EU countries, from 1 January 2010 (2)

### ■ Points for attention:

- ▶ correct invoice
- ▶ performances at 0% rate also give right to refund
- ▶ payment < 10 days after handling period or date of handling
- ▶ interest paid if payment late
- ▶ submit notice of objection to Member State of refund

## Refund of VAT of other EU countries, from 1 January 2010 (3)

- Refund of VAT of EU country, contents of application:
  - ▶ name and address details of applicant
  - ▶ electronic address
  - ▶ description of business activity
  - ▶ refund period
  - ▶ declaration of no VAT obligation in country of refund
  - ▶ VAT identification number
  - ▶ bank details (IBAN and BIC)

## Refund of VAT of other EU countries, from 1 January 2010 (4)

- Refund application EU, info per invoice:
  - ▶ name and address details of service provider / supplier
  - ▶ VAT identification number of service provider / supplier
  - ▶ country code number of Member State of refund
  - ▶ date and number of invoice
  - ▶ criterion of levy and VAT amount
  - ▶ deductible VAT (and if applicable, the pro rata percentage used)
  - ▶ nature of received goods and services (10 codes)

## New rules regarding obligation to register for VAT

- Following persons need to be identified for VAT purposes:

(1) every taxable person (total, partial or exempt) who within their respective territory receives services for which he is liable to pay VAT pursuant to article 196 of the VAT Directive (services qualifying for the general rule)

(2) every taxable person established within their respective territory, who supply services within the territory of another Member state for which the VAT is payable by the recipient pursuant to article 196 of the VAT Directive

- Examples:
  - Belgian VAT exempt lawyers receiving intellectual services from suppliers established in another Member State or outside the EU
  - Belgian VAT exempt lawyers supplying services to taxable persons in another Member State

- ❑ Simplification of VAT system in a B2B environment can be questioned
- ❑ Increasing importance of compliance with formal requirements (invoice requirements, periodic listings); non compliance will trigger severe penalties and/or VAT assessment in reverse charged situations
- ❑ Non due VAT is not deductible
- ❑ Non performance of 'self assessment' ('reverse charge') in VAT return can trigger penalties and interests



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