

## **VAT anti-avoidance: the Baltic angle**

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A couple of weeks ago I attended a meeting we regularly have with VAT experts from other EU countries and once again I realised how different the implementation of the 6th VAT Directive is. The Baltic States in that respect do not differ.

This time the meeting was dedicated to VAT anti-avoidance provisions in each of the member states and the new Directive which amends the 6th VAT Directive concerning VAT evasion or avoidance (Directive). The deadline for the implementation of the Directive is January, 1 2008, and as of now, not one of the Baltic States has introduced national laws to implement it.

### **What the Directive offers?**

The most radical changes of the Directive are suggestions to introduce a reverse charge mechanism, making the person liable to pay VAT to the treasury the taxable person to whom supplies are made. Those supplies concerned include: construction works, supply of real estate where the supplier has opted for taxation of the supply (the option to tax still has not been introduced in Latvia), used material (scrap, recyclable waste, etc), supply of goods during the execution of a security, cession (assignment), etc. For instance, in Latvia historically there has been a problem with VAT fraud in companies exporting timber and timber materials, as a result of which the reverse charge has been applied in combination with special way bills for those supplies.

The next novelty the Directive introduces is a more detailed definition of “open market value” for adjusting the value of supplies between connected persons. *Inter alia*, the Directive refers to the transaction value being not less than the cost of goods or full cost of services supplied. The practice in the Baltic States differs in such cases.

Lithuania has the strictest provisions in the Baltics in this respect with restrictions being sometimes unnecessarily burdensome, because VAT avoidance is generally possible, if the recipient of a supply or the supplier is not entitled for a full VAT deduction.

### **Current anti-avoidance provisions**

During the meeting I noticed a trend that the 10 new member states and 2 new countries joining the union next year have in common. They have less developed domestic law and court practices than in the 15 old member states.

However, at the meeting it was interesting to note where the Baltic’s have questionably “excelled” in combating fraud. Latvia, for instance, has a requirement for specific numbers to be obtained from the authorities to be used on way bills for deliveries of goods within the country. Lithuania has an extensive list of cases when a VAT payer must submit a letter of guarantee. Estonia has the creative approach of requiring tax authorities to be notified, if the storage of the invoice is outside the country.

Compared to elsewhere in Europe, the court practice throughout the Baltic is unfavourable to tax payers because it sometimes puts an unreasonably high burden of proof on them. Such practice happens to a large extent thanks to a comparably wide-

spread practice of people purchasing required supporting documents on the input side without a transaction in fact taking place, and so called “carousel fraud.”

### **Conclusions**

In the context of other EU member states it is very important that the Baltic States introduce more exact rules in order to make competition better for honest players. For that reason, the most urgently required amendments relate to anti-avoidance criteria already long-lasting in other EU countries, such as: whether there is a purpose for the transaction other than VAT advantage (abuse); whether the recipient knew that the supplier is not going to pay VAT to the state; requiring more defined values in transactions between connected persons, etc.