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Talking tax*By Janis Taukacs [Sorainen Law Offices]***VAT litigation in Latvia 2005: "the black spots"**

As running a business becomes more and more complex, so does tax legislation, which follows trends in the business environment. Needless to say, indirect tax systems had been undergoing major changes when the Baltic countries entered the European Union. Systems that, by the way, are under constant evolution. This is especially true as regards litigation in VAT cases as of May 1, 2004 when Latvia, as a result of joining the EU, faced piles of European Court of Justice case-law based on the EU 6th VAT directive.

Over the last year or so Latvia has experienced difficulties in resolving VAT disputes that ended up on the highest level – i.e. in the Supreme Court. We would highlight several of them.

1) Interpretation of the Administrative Procedure Act – which become effective as of February 2004. The APA is important in determining the procedure of disputes between an individual (including corporations) and the state. As practical implementation of the Act is considerably new, the Act has been a cause for inconsistency, especially VAT litigation.

2) Accessibility of court judgements. Despite court practice being one of the main indicators of applying VAT law, even now it is difficult to get access to Latvian court practice (as opposed to ECJ court practice) – not only in VAT cases but in general. This is a problem not only for businesses and their in-house lawyers, but also for professionals working specifically with VAT issues. It has been announced that the problem should be solved this year.

3) Inconsistency of judgements. The initial tendency in Latvian courts was to support taxpayers and place the burden of proof on tax authorities. But beginning in 2005 the tables turned, and now the burden of proof is swinging more toward taxpayers. This is especially true when the parties are arguing whether the supply of goods or services that implies a right for input VAT deductions has actually happened. In particular, the inconsistency of court practice is attributable to types of documents regarded as sufficient to prove the fact of supply. Where timber products have been involved, most often the disputes are decided in favor of the state. Court judges admit the inconsistency but declare that they will stay consistent with the latest practice. We must admit that such an approach is close to the interpretation by the ECJ: the burden of proof is shifted to the taxpayer, because only the taxpayer is able to evaluate whether he is entitled to the input VAT deduction.

4) Lack of application of ECJ rulings in Latvia. Under Latvian law, courts and tax authorities must in their rulings apply ECJ case law. In practice, that does not happen, or happens rarely. We have experienced formal excuses by tax authorities and avoidance of in-depth analysis in this matter. Therefore, it is a serious battlefield for tax lawyers to make the authorities obey the new system especially in VAT law.

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