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The “VAT package”- new VAT obligations that businesses should start to prepare

On February 12, 2008 the European Council adopted what has been called the “VAT package”. This introduces important changes to the EU VAT directive that will be applicable to all Member States. The changes will directly or indirectly affect many businesses. The majority of the changes come into operation from 1 January 2010.

It is important to note that it is compulsory for these changes to be incorporated in the VAT laws of all EU Member States. However, as far as we are aware only Germany has so far done so. As these changes are substantial, businesses must even now start planning how they will amend their processes, accounting and reporting systems to comply with the changes. In this Tax News Flash we would like to draw your attention to some of the most important changes introduced by the “VAT Package”.

New place of supply of service rule

For VAT purposes, the place of supply of goods or services determines the country entitled to impose VAT on the transaction. Currently, the default rule for place of supply of a service is where the supplier is established, though exceptions were applied in most cases.

Business to business (B2B)

From 1 January 2010, when a service is supplied between EU businesses (B2B), a new default rule will apply which deems a taxable service as supplied in the country where the customer is established or has an establishment which receives services. In the absence of a place of establishment, a permanent address or usual place of residence should be taken into account.

Some exceptions will still apply, such as the supply of services related to immovable property at the location of the immovable property. However, the new rule will now create a larger group of services that will be subject to VAT in the country of the customer whereas previously they were taxed in the country of the supplier (e.g. long-term hiring of means of transport, transport of goods, work on movable property).

Business to consumer (B2C)

In regard to services supplied to non-business clients (consumers; B2C) these will be considered supplied where the service supplier is located or has an establishment that supplies the services. To distinguish non-business clients from business clients, all clients with a valid EU member state VAT number will be considered business (B2B) clients, if the purchaser operates as a business, not as a consumer. In other words, in order to qualify for a B2B service, purchases by a business cannot be made for its non-business needs (e.g., windsurfing training for the manager).

Practical implications

The place of supply changes mean that services will more often be provided to businesses on a cross-border basis within the EU without the supplier's domestic VAT appearing on the invoice. These new provisions will thus reduce the number of situations when a company registered in an EU Member State pays VAT of another MS and therefore has to apply for a refund in that foreign EU MS. The change in the location of the place of supply for B2B transactions will result in customers having more transactions subject to "reverse charge" VAT with no VAT actually payable.

However, as the scope of taxable persons will now be wider (including, e.g. holding companies, more governmental and municipal institutions, schools, charities) some of these customers will face:

- 1) VAT registration requirement; and
- 2) non-deductibility of VAT on the reverse charge, so that VAT will actually be payable.

Recapitulative statement also for services

From 1 January 2010, taxable persons will have to report all their intra-Community services supplied in a recapitulative statement similar to the statement currently used for reporting intracommunity supplies of goods. The purpose of the recapitulative statement is to ensure that B2B intra-Community services are reported by the supplier so that this information can then be checked against transactions declared by the customer in another EU MS.

VAT payers who are providing services to other EU registered businesses, must now start examining their business operations and planning how they will amend their accounting and reporting systems. They will inter alia have to extract the required data from invoices issued for services provided to EU registered businesses that have to be reported in the recapitulative statement.

Amendments to the refund procedure regarding VAT paid in another EU MS

Among other changes, the "VAT package" also introduces amendments to the procedure for recovery of VAT paid in another EU State (the current Eighth Directive will be replaced as of 01.01.2010). As of 01.01.2010 inter alia it will be possible to apply for a VAT refund:

- 1) using electronic means; and
 - 2) through a portal site established by the taxation authorities of their own Member State.
- The application will then be forwarded to the Member State from which the refund is sought.

Further details of the "VAT Package" can be obtained with Sorainen tax lawyers.

More detailed information on changes in tax laws and regulations from Sorainen tax lawyers:

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