

# European VAT Brief

Welcome to EVB's second edition of 2002.

Our focus in this issue is on supply and install contracts. Updates on individual countries appear in alphabetical order on pages 2-5.

Issue 2 2002

## Supply and install transactions

In this issue we examine briefly the VAT treatment of supply and install transactions in the various EU Member States.

Some EU countries have implemented a simplification which means that the supplier of installed or assembled goods does not have to register for VAT in the Member State where the goods are installed. The responsibility to declare VAT is shifted to the customer using the reverse charge.

### Belgium

Under new Belgian VAT legislation, the reverse charge mechanism is applicable to supply and install contracts, provided certain conditions are fulfilled. (See the Belgian section of this publication for further details.)

### Denmark

Provided the customer is registered for VAT, the reverse charge is applicable to supply and install transactions. There is no need for the customer to have a permanent establishment in Denmark.

### Finland

The reverse charge mechanism is applicable to supply and install contracts, provided the foreign supplier does not have a fixed establishment in Finland and has not registered voluntarily for VAT purposes in Finland. The customer must be a Finnish taxable person, a Finnish legal entity, a foreign company with a

fixed establishment in Finland or a foreign company registered for VAT purposes in Finland.

### Germany

The reverse charge procedure does apply to supply and install contracts in Germany. However, the responsibility for accounting for German VAT always shifts to the recipient, regardless of whether the recipient is located in Germany. Thus the customer will have to register for VAT in Germany if it does not already have a German VAT registration.

### Italy

The reverse charge mechanism is applicable to supply and install contracts. The disadvantage of this is that the foreign supplier will not be entitled to any refund of VAT incurred.

### Netherlands

The reverse charge mechanism is applicable to supply and install contracts in the Netherlands unless the customer is only registered in the Netherlands for VAT purposes without having a permanent establishment.

### Portugal

The reverse charge mechanism can in principle be applied to supply and install transactions into Portugal where the acquirer is a VATable entity in Portugal. However, when goods are sourced from Member States other than where the supplier is VAT registered, VAT registration in Portugal would be required in order for Portuguese acquisition VAT to be accounted for.

The whole supply and install contract would then have to be invoiced under the supplier's Portuguese VAT registration.

### Spain

The reverse charge is applicable to supply and install contracts in Spain, provided the supplier is not established in Spain. Furthermore, the customer must be registered in Spain and have a permanent establishment.

### Sweden

Currently it is not possible to use the simplified procedure. However, as of 1 July 2002 a reverse charge mechanism will be applicable to supply and install contracts, provided the customer is VAT registered in Sweden.

### United Kingdom

The reverse charge is applicable to supply and install contracts in the UK. The supplier must notify both the customer and UK Customs and Excise of his intention to use the simplified procedure in writing. There are certain requirements relating to the details to be included in the notification.

### Other Member States

A reverse charge mechanism is not applicable to supply and install contracts in Austria, France, Greece, Ireland and Luxembourg. Therefore, VAT registration will be required when a supplier established in another EU Member State carries out a supply and install contract in these countries.

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VAT in the European  
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## European Union

### Agreement reached on electronic commerce directive

Formal agreement was reached on the digital goods directive at the ECOFIN meeting on 7 May 2002. It is expected that the directive will come into force on 1 July 2003. This means that non-EU businesses supplying certain electronic and broadcasting services to private individuals or non-business organisations will be required to register electronically in the Member State of their choice and account for VAT, at the rate due in the customer's Member State, on an electronic return. The Member States themselves will take responsibility for sharing information and revenues. The scheme will not apply to businesses that provide radio and TV broadcasting or other services.

This transitional scheme will be replaced on 1 July 2006 with a fully electronic system, which will automatically charge, collect and allocate the tax between the Member States.

### Austria

The Austrian government's proposal to reform its VAT system, which involved a scheme whereby no VAT would be paid or recovered by taxable persons, has been rejected by the European Commission. The proposed reform was designed to prevent VAT fraud and simplify collection of the tax, but did not comply with existing EU legislation. As an alternative, the Austrian government is considering extending the scope of the reverse charge procedure.

### Belgium

#### Filing of VAT returns

It has been possible to file Belgian VAT returns by electronic means since February 2002.

### Direct registration - changes now implemented

Belgium has implemented the EU directive which abolished compulsory fiscal representation for taxpayers from other EU Member States. Non-EU taxpayers must still always appoint either an individual or global fiscal representative.

EU taxpayers now have the following registration choices in Belgium:

- direct registration (no fiscal representative), or
- individual or global fiscal representative.

A global fiscal representative is generally a party such as a freight forwarder. Their disadvantage is that they cannot obtain an import licence to defer import VAT and cannot obtain a licence for monthly VAT recovery.

The advantage of direct registration is that there are no fiscal representative costs (although it is still possible to appoint a fiscal agent with no liability). However, a Belgian bank account is necessary for VAT refunds to be paid to businesses with a direct registration and it is only possible to correspond with the Belgian tax authorities in Dutch, French or German.

Direct registration for EU suppliers whose Belgian transactions are subject to the reverse charge is only possible if their Belgian input VAT exceeds €10,000. Below this level of input VAT, registration by fiscal representative is not allowed, as the supplier is not liable for payment of VAT. The Belgian input VAT must be reclaimed via the Eighth Directive.

#### New reverse charge mechanism

Belgium has now introduced a reverse charge scheme for EU and non-EU taxpayers not established in Belgium who

perform a local Belgian taxable supply of goods or services. The reverse charge is applicable provided that the recipient is:

- a taxpayer with a VAT number and filing periodical VAT returns, or
- a foreign taxpayer (non-established) registered through an individual fiscal representative.

The reverse charge is not applicable when the recipient is:

- a Belgian taxpayer unable to deduct VAT (e.g., an insurance company), or
- a non-taxable legal body or individual, or
- an overseas taxpayer with a global fiscal representative, a direct VAT registration, or no Belgian tax identification at all.

Special rules apply when the supplier (i.e., overseas taxpayer) has a permanent establishment in Belgium, even when the permanent establishment does not intervene in a Belgian transaction of the overseas head office. In this case the reverse charge does not apply, Belgian VAT is due on the sale invoice of the foreign head office and must be included as output VAT in the VAT return of the Belgian permanent establishment.

#### Reduced rate for renovation works

The reduced (i.e., 6% VAT rate for renovation works will be extended from December 2002 until the end of 2003. Several conditions must be fulfilled in order to benefit from the reduced rate.



## Czech Republic

### Branch funding from head office reduces recovery rate

An amendment to the Czech VAT Act which came into force on 1 January 2001 has meant that there has been a substantial reduction in the entitlement of a branch to recover input VAT. When a branch receives any "contributions" (e.g., capital or other financial means) from its overseas head office it must treat them in the same way as income from exempt supplies. This can lead to a substantial reduction in a branch's VAT recovery rate. However, the Czech Finance Ministry has recently conceded that if there is a Double Tax Treaty between the Czech Republic and the country where the branch's parent is established, and the treaty considers this to be discriminatory against a foreign company, the treatment will not apply.

### VAT on bus transportation operated by Austrian firms

The Czech Republic's Finance Ministry announced on 26 March 2002 that it will impose VAT on bus transportation operated by Austrian firms as a retaliatory measure for a similar tax that Austria is intending to collect from Czech bus operators.

## France

### 8th and 13th Directive refunds - minimum threshold

The French government has changed the minimum threshold for taxable persons established outside France to recover VAT under the 8th and 13th Directive procedures. Refund claims may now be filed for a particular quarter if the VAT to be recovered is at least €200. Claims may be filed for a particular year if the VAT to be recovered is at least €25.

## Germany

### New VAT audit powers

New legislation has empowered the German tax authorities to arrive unannounced during normal working hours to perform a VAT audit, regardless of whether there is any suspicion of a criminal or civil offence. Information uncovered in the course of such an audit can also be used in relation to other taxes.

### Newly registered businesses - compliance requirements

Newly registered businesses must now submit monthly periodical VAT returns in the first and second calendar year of activity. This applies to both newly founded companies and foreign companies registering for VAT in Germany for the first time.

### Provisions to combat carousel fraud

In order to combat carousel fraud more effectively, the German government has introduced changes to the law, whereby recipients of a supply (for which there is an invoice with VAT shown separately) will be held liable for unpaid tax if they knew of the fraud. If this affects several businesses in a chain of transactions the recipients will be held jointly liable.

It is recommended therefore that businesses document that adequate transaction checks have been performed in order to demonstrate that as recipient they did not know at the time of signing of any contract that the supplier would not pay the VAT.

### Penalties due from date of recovery of input tax

A recent court decision may have important implications in certain cases. In a situation where a supply has been treated incorrectly as outside the scope of VAT, the German tax authorities have always applied

the rule that VAT and interest were due from the date of the supply to the date of the VAT audit at which the error was discovered. The recipient of the supply has no VAT invoice and is therefore unable to recover the VAT.

However, when a corrected invoice is provided to the customer, VAT can be recovered. The court found that output VAT is due at the same time that input VAT is recovered. This ruling means that it may be possible for interest previously charged to be reclaimed from the tax authorities.

## Greece

### Implementation of EU directive

A law has recently been passed implementing the European directive which abolished compulsory fiscal representation for businesses established in other EU Member States. However, it is still a requirement for businesses not established in the EU wishing to register for VAT to appoint a fiscal representative with respect to certain transactions.

## Italy

### IT services in banking - VAT exemption

The Italian tax authorities have issued a resolution clarifying the VAT exemption of outsourced IT services provided to banks on the basis of the 1997 ECJ decision in *Sparekassernes Datacenter*. The exemption is applied to services such as the provision of front office and computer systems, risk management and the maintenance of inter-bank relationships, among others.

In addition, transactions such as money changing, tax payments and information services to consumers are exempted provided they are objectively

connected to and utilised to carry out exempt transactions. These exemptions have been granted because the provider of outsourced services is fully responsible to the bank for the services the bank provides to its customers, guaranteeing the standard of service provided by the bank and paying out compensation, even if limited, in the event of any damage resulting from its actions.

The resolution also outlines a number of transactions which are not considered exempt, such as the provision of safe deposit boxes.

### VAT accounting reform enacted

A major reform aimed at simplifying formal tax obligations has now been enacted in Italy. One of the most significant simplifications is the abolition of periodic VAT returns and the introduction of an annual VAT summary statement, in addition to the annual VAT return. However, since the periodic return also served as a means for claiming quarterly VAT credit repayments, the Italian tax authorities have also had to introduce a special application form for reimbursement of VAT.

The reform also introduces a number of other record keeping simplifications. For example, it is now optional to keep a separate VAT account and the obligation to record periodic VAT payments has been abolished.

### 8th and 13th Directive refunds

The Italian tax authorities have transferred the responsibility for processing 8th and 13th Directive claims from a tax office in Rome to a new office in Pescara. The new office will be responsible for all VAT claims submitted from 1 July 2002.

## Luxembourg

### Fiscal representation

Luxembourg's legislation has now been amended, such that the tax authorities no longer require the appointment of a VAT representative. However, businesses established outside the EU must provide a bank guarantee.

VAT registration is now therefore in the name of the foreign business, who will be liable for local VAT due, as well as any penalties or interest. Foreign taxpayers may still appoint a "deemed representative" to prepare VAT returns and deal with correspondence from the tax authorities.

These changes will have an impact on foreign importers established in Luxembourg and making onward exempt intra-Community supplies: such businesses are no longer exempted from a VAT registration in Luxembourg, but may still nominate a third party and authorise that third party to fulfil their formal obligations and make payments.

Luxembourg has not introduced a reverse charge associated with the abolition of fiscal representatives.

## Poland

### Licences

As of the end of March 2002, licences are subject to VAT in Poland.

### VAT reclaims to foreign businesses

The list of countries for whom Poland will pay VAT reclaims to businesses has finally been agreed. Refunds of input VAT are possible for businesses established in Austria, Belgium, Bulgaria (from 1 January 2002), Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary,

Ireland, Italy, Japan, Latvia, Macedonia, the Netherlands, Portugal, Slovakia, South Africa, Spain, Switzerland, Sweden and the United Kingdom.

## Portugal

### Electronic invoicing

The Portuguese tax authorities set in motion legislative and practical changes aimed at the introduction of electronic invoicing in August 1999.

However, the Portuguese proposals are under review by the European Commission. The Commission is concerned that Portugal's rules breach the electronic invoicing directive by imposing additional requirements on businesses who wish to issue invoices electronically.

It is expected that Portuguese legislation will be revised in line with the directive in the next few months. In the meantime, the electronic invoicing regime has been temporarily suspended.

## Spain

### Refunds to non-established businesses

The Central Administrative Court has ruled that the timely filing of a VAT refund claim by a non-established taxpayer in an incorrect format should not be considered as not requested in due time. In certain cases this ruling may permit non-established taxpayers to request retrospective refunds of input VAT considered as not requested in due time through the 8th and 13th Directive procedure.

## Switzerland

### Electronic invoicing

From 1 March 2002 a legal framework for invoices to be transmitted and archived electronically, without the recipient losing his entitlement to input tax deduction, has been introduced.

The authenticity and integrity of electronic invoices must be guaranteed by means of a digital signature. Further, the audit trail must be preserved (i.e., from the archive, through the invoice and accounts, to the VAT statement, and back again).

There are particular requirements for digital signatures, one of which is that they must come from a recognised certification provider. At present there are no such service providers in Switzerland, but certificates will also be recognised if they are issued by foreign certification providers recognised abroad on the basis of similar requirements to those in Switzerland (for example, Germany).

It will now be possible to outsource the billing operation completely to a third party, provided the recipient is aware of this and the complete and unchanged relaying of the data transmitted is assured. However, the principal remains responsible for the payment of taxes.

Finally, electronic data sent or received must be archived in the original format on machine-readable data carriers; storage exclusively in printed form or on microfilm is not permissible. Storage abroad is possible, provided the archive is accessible and readable from Switzerland at all times.

### Cross-border supplies of electricity - VAT treatment

The Swiss VAT authorities have officially clarified the VAT treatment of electricity. As in the EU, electricity is defined as "goods" (in the case of Switzerland, by technical concession) and is basically subject to the place of supply rules for goods.

The VAT authorities' bulletin generally defines the place of supply to be where the voltage transformer is located. For



example, the place of supply of electricity delivered to Switzerland is outside Switzerland, provided the voltage level remains the same upon importation. (Most international electricity traders involved in Swiss triangular transactions have a Swiss VAT registration.)

On the other hand, the transportation of electricity is treated as the grant of a right to use a network, which is taxable in the place where the recipient is established. Swiss companies providing networks do not therefore charge Swiss VAT to companies not established in Switzerland.

The control and reporting of cross-border supplies is also governed by special rules, detailed in the bulletin. Companies exporting electricity declare the quantity exported each month to the Federal Department for Energy (and to Etrans for statistical purposes). These declarations serve as an export document, allowing the exporter to secure zero rating; additionally, the place of destination needs to be shown on the invoice. Imports of electricity are declared in the company's VAT return and treated as an import of services; the VAT which the company charges itself can then be deducted in the same VAT return.

## United Kingdom

### Employee expenses - Commission takes UK to court

The European Commission has decided to refer the matter of VAT recovery on employee expenses in the UK to the European Court of Justice. The Commission states:

*"UK law allows an employer who is a taxable person to deduct either part of an allowance paid to an employee for businesses use of a private car, or VAT on the fuel costs actually incurred by the employee. However, under Community law VAT cannot be deducted in this case because the transactions concerned are supplies to the employee rather than the taxable employer. The interpretation has been confirmed by a recent Court ruling - the judgment delivered on 8 November last year in Case C-338/98 Commission v Netherlands. The Commission has therefore decided to refer the matter to the Court."*

It is understood that the UK is to contest the infraction proceedings. In the meantime, there is no change to the UK's existing policy on VAT recovery.

### **Marks & Spencer - Advocate General gives opinion on capping provisions**

The Advocate General has given his opinion in the case of Marks & Spencer plc. The UK's Court of Appeal made a reference to the ECJ only on one aspect of the case, asking whether it was compatible with the Community principles of effectiveness and legitimate expectation to impose with retrospective effect a three-year limitation on VAT overpaid in circumstances where a Member State has failed to implement a European directive. The Advocate General stated that "the retrospective shortening of the limitation period laid down for recovery of such overpayment is incompatible with the principle of effectiveness and with the principle of the protection of legitimate expectation".

However, this is merely an opinion - the final outcome and its effect on output tax claims which were believed to be capped will depend on the decision of the full court.

On a related issue, the High Court has held that claims for under-declared input tax were not capped until 1 May 1997. Customs issued a Business Brief following the University of Sussex High Court case on the three-year cap, in which they indicated that they would now pay such similar claims, subject to businesses agreeing to repay the amount, if Customs are successful in their appeal to the Court of Appeal. A hearing was scheduled for 28-31 May 2002, but has been stood over pending the ECJ's decision in *Marks and Spencer plc*.

### **Change in VAT liability of sub-contracted fund management services**

Customs have changed their policy on the VAT treatment of management services provided by sub-contracted fund managers to an Authorised Unit Trust or similar trust-based scheme and sub-contracted services provided to the operator of an Open-Ended Investment Company. Two recent Tribunal cases, *Prudential Corporation plc* and *Abbey National plc*, found that exemption should be extended to third-party providers of such management services. Customs have accepted these decisions, and UK VAT law will be amended in due course to reflect this change in policy.

Exemption for sub-contractors' services will depend on the actual nature of the services provided - where the management of the fund is outsourced in full, the services will be treated as VAT exempt, but where only particular elements of the management function are sub-contracted, VAT exemption will only apply if the nature of the predominant service being supplied fulfils the specific and essential function of managing the fund.

This change in policy will in the future mean a reduction in VAT costs for fund managers, but will result in increased costs for their sub-contractors.

### **UK Budget changes**

The Chancellor of the Exchequer delivered his Budget on 17 April 2002. Some of the major VAT changes are summarised below.

### **Partial exemption standard method override**

Partly exempt businesses using the standard partial exemption calculation and with residual input tax of over £50,000 per year (or £25,000 for a group undertaking) will have to undertake an annual calculation based on usage in order to determine whether their level of input VAT recovery differs "substantially" from the result given by the use of a cost-based method. If there is a substantial difference (i.e., exceeding £50,000, or 50% or more of the value of the residual input VAT, but not less than £25,000) the business will have to apply an annual inputs-based adjustment. This change applies to VAT incurred on or after 18 April 2002.

### **Bad debt relief simplification**

From a date to be announced, any VAT-registered supplier will automatically be able to claim bad debt relief six months after payment becomes due without the need to notify the debtor in writing that bad debt relief is being claimed. Businesses who have reclaimed the VAT on an invoice, but do not settle it within 6 months of its issue (or the date for payment, if later) must now always repay such VAT to UK Customs by way of an adjustment on the VAT return for the period covering the date on which the six months expires.

### **Phased implementation of EC invoicing directive**

A package of changes implementing the invoicing directive will be phased in between now and 1 January 2004, with the first changes to come into effect no earlier than March 2003, following consultation with business. It is anticipated that the first changes will introduce the right to outsource self-billing without prior approval and the conditions for electronic invoicing and storage without the current requirement to obtain prior approval from UK Customs.

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