

Obligation to Use SAF-T for VAT in Luxembourg - Update December 2010

Obligation deferred for certain taxable persons

Taking into account observations and questions raised from businesses working in collaboration with PwC, the Luxembourg VAT Authorities have issued complementary information regarding the launch of the FAIA (Luxembourg equivalent of the SAF-T for VAT).

The guidance paper published by the VAT Authorities at the end of 2009 has been updated. Accordingly, the FAIA obligation has been deferred for certain taxable persons and sanctions for non-compliance have been made clearer. Compulsory fields of the FAIA will for their part be clarified early next year.

Progressive entry into force of the FAIA

Further to the 2009 recommendation introducing the FAIA, businesses of different sectors of activity have raised numerous questions and observations which have been shared with the Luxembourg VAT Authorities. As a result, the Luxembourg VAT Authorities have reviewed the scope of the project.

Taking into account changes that businesses must face (especially the introduction of the VAT package and the introduction in Luxembourg of a Standard Charts of Accounts, "SCA"), but also taking into account similar aspects between the SCA and the FAIA, the Luxembourg VAT Authorities temporarily limit the scope of the FAIA to businesses that will be subject to the SCA.

Businesses entering the scope of the SCA but listed below are however relieved to meet the FAIA obligation:

- Taxable persons with simplified compliance obligations
- Taxable persons with a turnover not exceeding EUR 112.000 per calendar year
- Taxable persons with a limited amount of transactions. In this respect, an informative threshold of +/- 500 transactions has been introduced, with no definition of the term "transactions". The rationale for this decision is that it is more sensible for the VAT Authorities to carry out manual controls in such cases rather than imposing an export of the accounting under a FAIA electronic file.

It should be noted that although the scope of the SCA is wide, it has some exceptions. Most notably the following businesses are neither subject to the SCA, nor the FAIA:

- entities subject to the supervision of the CSSF
- insurance and reinsurance companies
- companies publishing statutory accounts according to IFRS or benefiting from a derogation as per Article 27 of the Accountancy Law of 19 December 2002.

For businesses subject to the FAIA obligation, the first reporting period will be the year 2011. This means in practice that the first FAIA files will have to be submitted after the closing of the year 2011, i.e. during the year 2012.

Later on, the obligation to produce a FAIA file will be extended to all VAT taxable persons.

Next steps

The Luxembourg VAT Authorities announced a forthcoming update on compulsory fields of the FAIA. The new structure and fields of the FAIA will be disclosed on the FAIA's internet website beginning of next year. This update will take into account several requests formulated by businesses in collaboration with PwC.

Furthermore, the VAT Authorities envisage that the FAIA might replace the filing of VAT returns in a more distant future to the extent that the FAIA should include the relevant details concerning the economic activity of businesses.

Penalties for non-compliance

The Luxembourg VAT Authorities gave more details as to the nature of penalties to be imposed on non complying businesses. On the basis of article 77.1 and 77.2 of the Luxembourg VAT Law, penalties could be imposed either on a lump sum basis (up to EUR 5,000 per infraction) or daily penalties.

The spirit of this evolution would however suggest that these penalties are wisely applied, taking into account both burdens that businesses face and their best efforts to comply with the FAIA requirements.

In case of doubts, we remain at your disposal to ease your understanding of the FAIA environment.

Contact

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