

VAT News for Multinational Companies

Luxembourg News

VAT and the implementation of a Standard Audit file for Tax, named "FAIA"

The Luxembourg VAT authorities intend to adopt FAIA for VAT purposes. FAIA is a file containing reliable accounting data used for control purposes as from 2011.

The first recommendation from the Luxembourg VAT authorities was released in 2009. Pursuant to this recommendation, as from January 2011, any taxable person keeping its accounting electronically will have an obligation within the framework of a VAT audit, to provide its data to the VAT authorities under the FAIA, format preferably using XML.

A second recommendation has been released taking into account observations and questions raised by businesses in collaboration with PwC. Accordingly, the FAIA obligation has been deferred for certain taxable persons and sanctions for non-compliance have been made clearer. In the first instance, it will be applicable to companies subject to the obligation to adopt the new standard chart of accounts. Compulsory fields of the FAIA will be clarified early in 2011. For further information, please refer to the dedicated newsletter stored on our website <http://www.pwc.com/lu/en/tax-consulting/docs/pwc-tax-201210.pdf>

Reorganization of the Luxembourg VAT offices

The Luxembourg Government recently published a regulation to reorganize the VAT offices as from January 1, 2011. The previously strict geographical repartition of the files will be abandoned in favor of four specialized VAT offices (in addition to the existing five "classic" VAT offices, the current office for foreign taxable persons and the two existing offices of reimbursement).

The four new specialized VAT offices will be as follows:

- Real estate sector (tax office Diekirch II)
- Financial sector including: insurance and reinsurance companies, investment

- funds, and holding companies (tax office Luxembourg III)
- Automobile sector (tax office Esch II)
- Large accounts (tax office Luxembourg IV).

Focus on:

Central Billing Entity ("CBE") platforms and the benefit of forming them in Luxembourg

Groups with companies established in different EU member states, which receive taxable services from suppliers established in the same EU Member State as establishment may want to implement a CBE platform in another country to avoid the pre-financing of VAT.

In principal, the CBE platform would receive all invoices from EU service providers of the group and would dispatch them to the recipients of the services. Local supplies where VAT must be pre-financed would thus be replaced by intra-Community supplies where the reverse-charge mechanism applies, resulting in no cash flow consequences (the recipient declares and recovers the VAT in the same return.)

The same principles can also be used by businesses supplying services to customers established in various countries and who suffer import and VAT pre-financing costs on local purchases.

Locating a CBE in Luxembourg makes particular sense given:

- The small size of the territory, which results in cross-border transactions;
- Its central location in Europe.

In addition, Luxembourg CBE platforms benefit from the lowest VAT rates in the EU (applicable to purchases), direct tax advantages, accessible tax authorities and a central geographic location within Europe.

<http://www.pwc.com/lu/en/invest-in-luxembourg/docs/pwc-lux-treasury-centre.pdf>

Issue 2

Hot off the press

New Luxembourg Free Trade Zone

The Luxembourg government has adopted a new law to introduce a free trade zone. Operations such as sales, related services and storage within the zone will not be subject to Luxembourg VAT and related customs duties (suspension regime). More information on the products that will benefit from this special regime and the implementing measures in our next newsletter.

Luxembourg business headlines

- Luxembourg has been designated as the country with the lowest tax pressure within the EU, and the 18th in the world with a pressure of 21.1% (as compared to an average of 44.2% in the EU and 47.8% in the world). In addition, the number of yearly hours spent to comply with tax rules is significantly lower than the average (59 hours as compared to an average of 222 hours in the EU and 282 hours in the world).
- Luxembourg was designated as the country with the highest national productivity levels in the world, as released by the publication "The Conference Board"
- The EU Commission has an optimistic forecast of Luxembourg's GDP increase. After recording a decrease of 3.7% in 2009, an increase of 3.2% is expected in 2010.
- ICBC (International Bank of China) the world's leading Chinese Bank will run its European headquarters from Luxembourg.
- The Brazilian bank Bradesco has chosen Luxembourg as its European headquarters for commercial banking. Some of the reasons of this choice are the central location of Luxembourg in Europe, the business friendly environment and the proactivity of the Luxembourg government.
- The Compagnie de Banque Privée merged with the investment Company Quilvest. This merger, which performs under the name Compagnie de Banque Privée Quilvest, creates a new major actor for asset management in Luxembourg.
- The global net asset value of Luxembourg investment funds (UCIs and SIFs) in 2010 should exceed the previous record reached in 2007.

EU VAT News

The Agenda of the EU Presidency

Topics of the new Hungarian Presidency agenda relating to VAT mainly aim at modernizing VAT rules and combating tax fraud. In this respect, the previous work

performed in relation to insurance and financial services, as well as the overhaul of the implementation regulation for the directive regarding a common VAT system has been continued.

With respect to combating fraud concerning duties on certain types of goods the reverse charge mechanism will be examined.

Finally, the minimum standard VAT rate of 15% has been extended until 31 December 2015.

Implementing regulation has been adopted

On January 18, 2011, the European Council has reached a political agreement on the implementing measures for the VAT Directive, which will clarify European VAT rules. It has been announced that the draft regulation will now be adopted at a forthcoming Council meeting.

This regulation is meant to ensure uniform application of the current VAT system and takes into account ECJ case law. It provides important guidance as a response to the recent substantial changes to the VAT Directive. In particular, the implementing measures lay down rules in respect of:

- The status of taxable persons and their place of business,
- The role of fixed establishments in the determination of the place of taxation of supplies,
- The obligation of the supplier related to the identity of the customer (taxable status and place of establishment).

The implementing provisions contain specific rules in response to selective questions of application. We have pointed out a few of the clarifying areas of interest in our Flash News (link below).

These measures provide important guidance for the taxpayer and clarify VAT interpretations used throughout the EU. There are potential implications for every business, which may provide opportunities, compliance obligations or practical changes.

<http://www.pwc.com/lu/en/vat/docs/pwc-vat-0111.pdf>

VAT Refunds - Extension to 8th Directive filing deadline

The EC Council has formally adopted the Commission's proposal to extend

the deadline to March 31, 2011 for the submission of the 2009 8th Directive VAT refund claims.

Please note that in case of late VAT refunds, article 26 of Directive 2008/9/EC foresees that interest shall be due to the applicant by the refunding Member State based on the amount of the refund to be paid.

Increase in the UK VAT rate

The UK VAT rate has increased from 17.5% to 20% since January 4, 2011. The increase impacts supplies of goods and services subject to the standard VAT rate made on or after January 4, 2011. Goods and services, zero-rated and certain exempt services remain unaffected.

As a reminder, Luxembourg's standard VAT rate is 15%, i.e. the lowest VAT rate in the EU. Reduced rates are also applicable in Luxembourg, such as the 3% rate which applies among others to radio and TV broadcasting services.

ECJ case Law

Weald Leasing case (C-103/09): Cash flow arrangements not of themselves abusive

The Advocate General concludes that purposely interposing a third party in a transaction that would otherwise be eligible for transfer pricing checks could be seen as an abuse of law allowing the EU Member States to disregard the unconnected third party. Besides the intent to circumvent the verification that transactions must occur under open market value conditions, arrangements performed for the sole purpose of obtaining a cash flow advantage (e.g. delay of the effective VAT cost) are not of themselves abusive, unless those arrangements seek absolute VAT savings and the principles of the VAT Directive are violated.

In the recent case of RBS, the ECJ rejected the UK's submission that an arrangement was 'abusive', as it was a commercial transaction which reflected economic reality.

Businesses should carefully monitor their activities in the light of the decisions. The court reminds that a business can structure its operation so as to benefit from the most favorable tax treatment but careful planning is necessary.

Nidera Handelscompagnie BV (C-385/09): Input tax deduction on goods consumed prior to VAT registration

The ECJ has held that a person does not lose the right to input tax deduction on goods consumed prior to him notifying the authorities that he is a taxable person (at the hearing on July 1, 2010, the Commission supported the view that a taxable person shall be entitled to deduct VAT in so far as the goods and services purchased are used for taxable activities, even where the supplies are zero-rated).

The ECJ considered that the principle of VAT neutrality requires deduction of input tax if the substantive requirements are fulfilled, even if the taxable person has failed to comply with some of the

formal requirements. Importantly, the ECJ emphasized that whilst there is an obligation on the part of taxable persons to state when their [economic] activity commences, changes or ceases, that obligation in no way authorizes Member States to deprive a taxable person of the right to deduct.

AXA UK plc case (C-175/0): Operation of a payment plan is not a VAT exempt financial service

The case concerns a payment of plan arrangement where AXA's activities included collecting periodic payments from individuals and passing them on to dentists, net of a commission. AXA argued that the service it provided was an exempt financial service on the basis that it was "transferring funds ... entail[ing] changes in the legal

and financial situation" of the dentists and patients.

The Court decided that the VAT exemption for transactions concerning payments, debts and transfers did not cover the services provided by AXA. The Court stated that the services provided by AXA were considered to be in the nature of "debt collection" rather than transferring payments and the transactions should be therefore excluded from the VAT exemption.

This case can also impact the services of cash management entities, alternative payment service providers, banks, etc.

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