

VAT News for Multinational Companies

Luxembourg VAT News

CO2 emission rights

Extension of reverse charge mechanism for domestic transactions

On February 12, 2010, the Luxembourg government approved a draft law modifying the Luxembourg VAT law in relation to transactions in greenhouse gas emission allowances (established by Directive 2003/87/EC). Besides, the reverse charge mechanism will now be also applicable for domestic transactions in cross-border situations. Luxembourg customers (VAT taxable persons) will be liable to self-account 15% Luxembourg VAT on their purchases of greenhouse gas emission allowances.

The extension of the reverse charge mechanism is seen as a means to combat "carrousel" fraud, in particular in domestic transactions that have been detected in several EU Member States.

Please note that further to this rule, new boxes have been introduced in the periodic VAT returns: one on the income exemptions side (box 419) and two on the input reverse charge VAT side (boxes 420 and 421).

Luxembourg VAT Return Change

New obligation to specify services provided to/received from outside Luxembourg

Luxembourg (periodic and annual) VAT return forms for the year 2010 contain new entries in which taxable persons need to specify services provided to foreign EU taxable customers, split in services that are taxable in the customer's Member State and services that are exempt in that Member State, as well as services provided to non EU customers. The same distinction should be made for services received from non Luxembourg service suppliers (i.e. distinction in taxable services under the reverse charge mechanism and VAT exempt services, each for services received from EU and non EU service providers).

Where services are reverse charged (provided to foreign EU taxable customers and taxable in their local country), a new form should be additionally

filed with the VAT authorities. This form is known as the European Sales Listing for services.

The new VAT return forms should, together with the new sales listing procedure, facilitate Member states' checks on the payment of VAT on cross-border services.

Circulars VAT package

The Luxembourg VAT authorities issued new Circulars outlining their interpretation of certain measures in relation to the implementation of the VAT package legislation (as from 1 January 2010).

These are important guidelines related the determination of the place of establishment of service providers (fixed establishment, permanent address, usual residence) and the status and location of a customer (proof of taxable status via VAT number verification and other security measures and the determination of the place of establishment).

SAF-T (Standard Audit File for Tax or FAIA "Fichier Audit Informatisé AED")

SAF-T is an OECD initiative. It is a result of discussions of the OECD Tax E-Audit group with governments and businesses and aims to reduce costs of compliance for business and administrative costs for tax administrations, and also to improve cooperation between the different tax administrations.

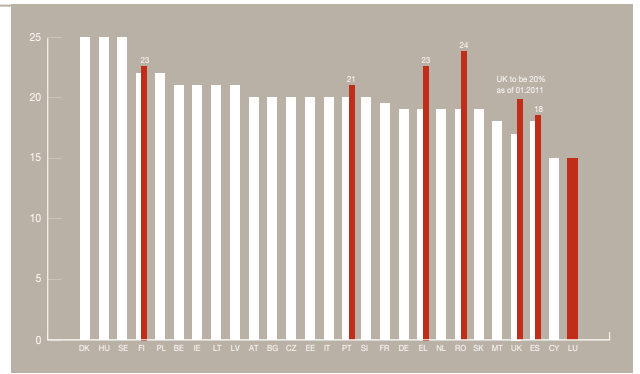
In Luxembourg, it is intended to implement SAF-T (FAIA) as from January 2011 for any audit carried out by the VAT authorities (Administration de l'Enregistrement et des Domaines). Any taxable person keeping its accounts electronically will have the obligation, within the framework of a VAT audit, to provide the VAT authorities with its data under the SAF-T format, preferably using XML. Data can also be provided electronically under a similar format but with a detailed accompanying notice.

Issue 1

VAT Rate Changes

There have been the following recent VAT rate changes:

- Portugal – increase from 20% to 21% effective July 1, 2010
- Romania – increase from 19% to 24% effective July 1, 2010
- Spain – increase from 16% to 18% effective July 1, 2010
- Greece – increase from 19% to 21% effective March 15, 2010 and increased a second time from 21% to 23% effective July 1, 2010
- Finland – increase from 22% to 23% effective July 1, 2010
- United Kingdom – will increase from 17.5% to 20% as of January 4, 2011



EU VAT News

Invoicing Directive

The Council of the European Union has adopted on July 13, 2010 the new VAT invoicing Directive (10859/10 amending Directive 2006/112/EC).

Aim of the invoicing Directive

The aim of this new Directive is to simplify VAT invoice requirements, especially in electronic invoicing, and to ensure the acceptance by tax authorities of electronic invoices (e-invoices) under the same conditions as for paper invoices.

These new measures were necessary as e-invoicing has become more prevalent in Europe and it was necessary to remove existing burdens and barriers to the transmission and storage of e-invoices. It also comprises measures to help tax authorities verify that tax is paid so as to better tackle VAT fraud.

Current EU provisions on VAT invoicing have led to a less-than-harmonised set of rules. The new Directive introduces more harmonisation, which will ensure the proper functioning of the internal market. Businesses will also be able to organise their e-invoicing process in accordance with their own needs using processes and systems that meet their needs, in order to reduce costs and be more competitive.

Transposition date

Member States shall adopt and publish internal laws, regulations and administrative

provisions necessary to comply with this Directive by December 31, 2012 at the latest and the new rules shall apply as from January 1, 2013 at the latest.

Compliance with e-invoicing requirements

Compliance with e-invoicing requirements will require that:

- The recipient of the invoice agrees to use electronic invoicing; and
- Authenticity, integrity and legibility are guaranteed from the moment of issue until the end of the storage period.

The Directive provides two examples of technological means that could be used (other means could also be used):

- Advanced electronic signatures, or
- EDI (electronic data interchange).

Other new provisions in the invoicing directive relate to the:

- Optional scheme to cash account for VAT,
- Chargeable event of continuous supplies of goods and services,
- When an invoice should be issued,
- Which Member State's legislation is applicable in case of invoicing and in case of self-billing,
- Content of invoices,
- Simplified invoices, and
- Storage requirements.

Implementing Regulation

The Commission adopted on 17 December 2009 a proposal to recast Council Regulation

N°1777/2005, which included a number of elements clarifying the application of the new rules which apply starting January 1, 2011 and in particular the new place of supply rules for services. This implementing regulation is still under discussion but should be implemented by the end of this calendar year. The adoption of common provisions implementing Directive 2006/112/EC aims at ensuring that no divergences in application may arise.

Topics which will be clarified by the implementing regulation include:

- Definition of restaurant and catering services, the distinction between the two and the corresponding VAT treatment of these services;
- Correct application of the place of supply rules introduced by the VAT Package (determination of the place of establishment of a business, notion of fixed establishment, ...);
- Determination of the status of the customer in accordance with the VAT Directive and information about what the supplier should be required to obtain as evidence from his customer;
- Clarifications where services are supplied to a customer established in more than one place;
- The Luxembourg authority issued a circular in the end of 2009, which already anticipates the command of the VAT committee.

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