

New VAT rules on VAT representation: Adoption and publication of the Law and Grand-Ducal Regulation

Further to the publication on February 28, 2008 of the law dated February 23, 2008, a new article 66bis introduces the system of tax representation for VAT purposes into Luxembourg VAT legislation.

The Grand Ducal Regulation, that includes practical provisions in order to implement the new mechanism, has also been published on February 28, 2008.

Bill 5797, which we commented on in our recent Flash News, has been adopted without any amendment as regards the VAT representation. However, transfer pricing provisions have been postponed until after the European Directive on financial services has been implemented and also until after the European Commission has announced new measures to fight VAT fraud.

The system of tax representation for VAT purposes is applicable in Luxembourg with immediate effect.

What's in it for you?

Under VAT representation system, a foreign entrepreneur can, for all eligible transactions, appoint a third party in Luxembourg to carry out the necessary VAT formalities and pay the VAT due in Luxembourg on his behalf, without having to register for Luxembourg VAT himself.

As described below, the scope of VAT representation in Luxembourg is very broad compared to the scope of similar regimes that already exist in France, Germany and Belgium. Companies using the VAT representation regime will, like companies that are directly registered and have their own VAT number, not have to make any cash payment of import VAT. The system therefore makes Luxembourg more attractive as importing country.

However, the tax representative's obligations are quite complex (see below), which may make Luxembourg less competitive than other countries, unless greater flexibility is afforded by the administrative practice.

Thus, the success of the regime will largely depend on how it is implemented in practice.

Scope

Only foreign traders (whether established in the EU or outside the EU) who are neither established nor registered for VAT purposes in Luxembourg can apply for this regime.

VAT representation will only be allowed for a limited number of transactions, i.e. for the importation of goods of non-EU origin into Luxembourg, for the subsequent processing, storage and deliveries of these imported goods as well as for services (such as handling and warehousing services) performed on these goods in Luxembourg after import.

Appointment of a VAT representative:

The appointment of a VAT representative is optional: the foreign trader can, also for eligible transactions, still directly register for VAT purposes. Foreign traders are also allowed to designate several VAT representatives, each one being responsible only for the transactions for which he acts as representative.

Certification of the VAT representative:

Only a certified operator may operate as a VAT representative. The granting of such status is subject to a certification process, the practical procedures of which will be introduced by grand ducal regulation.

Obligations of the VAT representative:

The VAT representative acts in lieu of the foreign trader for all transactions for which he has been appointed as representative.

He will receive a specific VAT identification number under which he will have to submit the VAT returns and sales listings for all the foreign traders he represents. The VAT returns should include the costs and related input VAT incurred by the foreign trader in Luxembourg related to the transactions covered by the representation, including import VAT that will be calculated and self-assessed by the tax representative. The VAT returns and recapitulative statements must be filed electronically. The records and supporting documents must also be stored electronically and an online access must be provided to the authorities.

The VAT representative will have the obligation to issue the invoices relating to the transactions for which he represents the foreign trader on behalf of the trader, obligation which he can not delegate. He must also keep the necessary records enabling the tracking and tracing of the imported goods from the moment of their import in Luxembourg. He must maintain actual control over the goods declared under the tax representation scheme.

Finally, the VAT representative is required to set-up a bank guarantee to ensure the payment of the taxes, interest and fines due. This guarantee, calculated on the basis of 50% of the VAT balance due for the last three monthly returns shall not be below 10,000€.

What can PwC do for you?

The dedicated VAT team of PricewaterhouseCoopers Luxembourg offers advice on indirect tax matters in Luxembourg and abroad. More particularly, in the context of VAT representation we can:

- Help you understand the tax representation regime
- Assist with the registration process
- Help you implement tax representation processes
- Provide your teams with training courses

Contacts

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