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VATtrends

Issue 2 2012



Belgium

Threshold for quarterly European Sales Listing

The Belgian Administration announced that from the 1st of January 2012, the intra-community supplies threshold for the submission of a quarterly European sales listing is reduced from € 100,000 to € 50,000. This means in practice that a taxable person who reached the threshold of € 50,000 during a quarter after this date, must file monthly European sales listing.

Should you require any further information please [e-mail info@meridianglobalservices.com](mailto:info@meridianglobalservices.com).



France

Application of reverse-charge for supplies of electronic communication services between taxable persons established and registered in France

The French Administration published an instruction (Bulletin Officiel des Impôts 3-A-3-12 dated 04 04 2012) which provides the application guidelines for the reverse charge applicable since 1 April 2012 for the supply of services of electronic communications between “wholesale” suppliers. This would apply where those services are not supplied directly to consumers but are acquired with the aim of resale to final consumers or from one supplier to another operator.

The aim of the application of the reverse charge on such services is to avoid carousel type fraud in the field of electronic communications.

The reverse charge will apply to, amongst others, the following services when provided to recipients that are established and identified for VAT purposes in France:

- wholesale landline services (e.g. subscription to landline telephones and internet), including supplies of services of telecommunications with prepaid cards or recharges;
- wholesale mobile services (voice and message services, internet, text messages, multimedia messaging services, e-mail etc.), including supplies of services of telecommunications with prepaid card or recharges;
- wholesale capacity services (e.g. rented links and data transport);
- supplies of connection and access services;
- supplies of roaming services.

Recent VAT rulings published by the French Authorities

[How to determine the place of taxation of supplies of services of professional training provided to several taxable persons?](#)

(RES N° 2012/27 published 10/04/2012)

Since 1 January 2010, pursuant to the new place of supply rule for services, the place of supply of professional training provided to taxable persons is where the recipient is established. However, where an admittance fee is paid for entrance to an educational event e.g. to a conference or seminar, the place of supply is where such an event take place.

Therefore, in order to determine the place of supply, it is necessary to determine if the payment made by the recipients (attendees) constitutes admission fees to



France

Recent VAT rulings published by the French Authorities (cont)

an event. An event is considered by the French Authorities to be a punctual unusual occurrence.

As this definition may be subject to differing interpretations, a question will be submitted shortly to the VAT Committee to obtain a standardized interpretation between the EU Member states.

In the meantime, it has been ruled by the French Authorities that training supplied to several taxable persons, which does not last more than 7 consecutive (not Saturday and Sunday) days, constitutes an event, and as a consequence, the payments of the supplies of this training are admittance fees taxable where the event/training takes place.

Should the payments retained by tour-operators in case of cancellation by a client be subject to VAT?

(RES N° 2012/26 published 10/04/2012)

Under this ruling the French Authorities stated that an amount is only taxable when it is made as a result of a supply of services to a person making such a payment. Therefore, as a result an amount paid for which the sole aim is as reparation of a loss should not be subject to VAT.

The ECJ judgement (ECJ C-277/05, Société thermale d'Eugénie les Bains) held that deposits retained by suppliers as fixed cancellation charges constitutes compensation and is therefore not subject to VAT.

Per the above analysis, the French Authorities confirmed that deposits retained by tour-operators in the case of cancellations of trips by clients, which have no direct connection with the supplies of services for consideration, are not subject to VAT.



Germany

Harsher penalties in store for tax evasion – serious fraudulent behaviour to be punishable with a prison sentence.

Taxpayers should take warning from a recent decision made by the German Bundesgerichtshof (BGH - Federal Crown Court) that a suspended sentence previously imposed on a German businessman who had withheld taxes were not strict enough.

The Augsburg based businessman had been found guilty of failing to declare over € 1.1 million in taxes by falsifying documents, and had been given a suspended 2 year prison sentence. Based on the recent ruling by the BGH, his sentence is to be reviewed, and the 60 year old could now face imprisonment.

The leading decision on such rulings was passed in December 2008, when the BGH decided that in cases where taxes of over € 1 million had not been declared, that the guilty party could face a prison sentence. The message being given to taxpayers who fail to correctly declare taxes due is that this is no longer to be treated so leniently and offenders withholding more than € 1 million in tax can expect a prison sentence to be imposed, unless there are exceptional mitigating circumstances.



Germany

Harsher penalties in store for tax evasion – serious fraudulent behaviour to be punishable with a prison sentence (cont)

In their drive to bring those that fail to pay taxes in Germany to justice, the German Tax Authorities have recently signed an agreement with Switzerland, with effect from 2013, which will allow access to bank accounts of German residents. Anyone found to have unpaid taxes can expect substantial fines, plus interest of 6% to be calculated on the last 10 years' accounts. Those wishing to escape penalties have until the agreement takes effect to voluntarily disclose unpaid taxes. Through this method, the Swiss banks will mediate on behalf of the concerned parties and will pay any taxes due to the German Treasury on behalf of their clients who will remain anonymous.

In these difficult financial times, all measures possible are being taken to recuperate taxes, with Swiss banks informing on American account holders, the OECD blocking offshore tax havens, and informants anonymously tipping off tax authorities.

Proposed changes to the Certificate of Entry

In January of this year, we advised that the German Government was to introduce new documentation requirements relating to zero-rated exports and the intra-community supply of goods. New guidelines (which may still be subject to further changes) were recently issued in this regard.

The documentation as previously mentioned, known as a Certificate of Entry

(Gelangensbestätigung), is still to be the main form of proof for the intra-community supply of goods. Certain simplifications are however to be allowed. The new guidelines detail the possibility of customers being allowed to issue one singular Certificate of Entry for all supplies carried out within a month, or within a period of less than 3 months.

The guidelines also allow for an easing of the rules relating to chain supplies, i.e. where a third party physically receives goods in the country of destination, rather than the supplier's customer. In such an instance, the German Government would permit a document, signed and dated by the actual third party recipient of the goods, to be used as long as this contains all the information required on the Certificate of Entry. As such, a CMR waybill may be accepted, provided it shows all necessary details and box 24 is completed. Further allowances are to be made in relation to courier transportation and to certain postal service providers.

No exact release date for the final version of the guidelines has been given as yet, but it is likely that this may be available next month.

Special VAT audits in 2011 result in almost € 2 billion additional VAT to be paid

According to the statistical records of the highest German finance authorities, almost € 2 billion in additional unpaid VAT was uncovered due to special VAT audits carried out in 2011. The results from VAT auditors taking part in general audits or in tax fraud investigations have not been included in this figure.

Special VAT audits are carried out regardless of the normal frequency of



Germany

Special VAT audits in 2011 result in almost € 2 billion additional VAT to be paid (cont)

general VAT audits, or of the size of the business. In 2011, 93,144 special VAT audits were undertaken, involving an annual average of 1,937 VAT auditors.

Each auditor carried out approximately 48 audits which meant that each auditor uncovered an average of almost € 1 million in unpaid VAT.

It is clear from the above that it is important to ensure that any German VAT compliance is in order due to the focus on VAT audits in Germany.

Changes to the electronic submission of EC Sales Lists

The portal for the electronic upload of EC Sales Lists will no longer be available as of 1 January 2013 due to the change in the legislation relating to the transmission of VAT data. A new secure process is to be used from the aforementioned date for the electronic transmission of EC Sales Lists, which will authenticate the person submitting the data, and should furthermore guarantee the integrity and confidentiality of the electronically forwarded data.

From then on it will only be possible to upload the information with a pre-existing access code via the German Federal Tax Office's online portal (the Elster online portal which is used for the submission of tax declarations in Germany).

The Federal Tax Office has indicated that EC Sales Lists are to be submitted on a

monthly basis from 1 January 2012, where the value of the taxable base amount for the intra-community delivery of goods and services exceeds € 50,000 in the current, or in one of the 4 preceding quarters. The previous threshold of € 100,000 is no longer applicable.



Ireland

Implementation of Stage 4 of the mandatory filing and payment plan by the Irish Revenue

All VAT registered taxpayers will be required to submit their tax returns and make payments electronically from 1 June 2012.

Relevant regulations will be published shortly and the Irish Revenue will also issue letters to taxpayers to advise them of the new compliance obligations from 1 June 2012.

It may be possible to be excluded from submitting returns and making payments electronically if Revenue is satisfied that a taxpayer does not have the capacity to file returns and make payments electronically, i.e. due to insufficient access to the Internet.

Should you require any assistance or further information please e-mail info@meridianglobalservices.com.



Luxembourg

New freight transport' use and enjoyment rule

The new rule in relation to use and enjoyment of transportation services took effect from the 1st of January 2012.



Luxembourg

New freight transport' use and enjoyment rule (cont)

Previously, the transport of goods when supplied to a taxable person was subject to VAT where the customer was established. As a result where the customer was a taxable person established in Luxembourg, the customer was liable to account for VAT on the reverse charge basis in Luxembourg. This was the case even where the transport took place outside the EU. This could have resulted in double taxation if the transport of goods created VAT obligations for the customer in the country where the transport actually took place.

The purpose of this new rule is to tax the supply of freight transport, when supplied to a taxable person, where the transport is effectively used and enjoyed, when such place is outside the EU.

Should you require any assistance or further information please e-mail info@meridianglobalservices.com.

Changes regarding the cancellation of VAT numbers and the new decreased threshold for filing EC Sales listings quarterly.

The Luxembourg administration has published a new Law, dated 18 February 2012 and its implementation regulation (Règlement Grand Ducal du 18 février 2012). The aim of this is to clarify the right for the administration to cancel a VAT number where accurate and concurring elements show that there is a lack of economic activity carried out independently by a trader.

The second part of the newly adopted Law brings Luxembourg legislation in line with

the EU legislation and decreases the threshold for filing EC Sales Listings on a quarterly basis from €100,000 to €50,000.

This latest provision is applicable from the 1st of January 2012.

Should you require any assistance or further information please e-mail info@meridianglobalservices.com.



Slovak Republic

Introduced a new Tax Procedure Act (TPA) that included a number of changes to the VAT legislation

The Slovak Republic has introduced a new Tax Procedure Act (TPA) that included a number of changes into the VAT legislation. This new TPA took effect on 1 January 2012.

The changes highlighted in the TPA include mandatory electronic filing of returns for VAT payers, advisors, and attorneys. These changes will not be effective until 1 April 2012 to allow for possible implementation issues with the new system.

A supplementary VAT return will now have to be filed where corrections need to be made even where the actual VAT obligation does not change, i.e. where input and output VAT is adjusted by the same amount (e.g. when purchasing services from abroad and as a result of receiving the respective invoices late).

The tax authorities have also clarified the position in relation to the right to seek out non-registered taxpayers when reviewing evidence connected to investigations involving VAT taxpayers.



Slovak Republic

Introduced a new Tax Procedure Act (TPA) that included a number of changes to the VAT legislation (cont)

Furthermore, the tax authorities also have a “potential” obligation to inform taxpayers of any findings during an audit so that taxpayers may prepare in order to defend their positions.

A welcome change has also been introduced in relation to the importation of goods from non-EU countries. Subject to certain conditions, import VAT will now not be due on importation but will be treated in the same way as intra-EU acquisitions of goods. This will no doubt have positive cash flow benefits for Slovak importers. This change will take effect on 1 January 2013.

Should you require any additional information please do not hesitate to contact Meridian Global Services.



Spain

Permanent establishment

Background

A Swiss principal company manufactured and distributed its pharmaceutical products in Spain through a Spanish subsidiary. The Swiss company and the Spanish subsidiary concluded contracts under which the Spanish company would manufacture the pharmaceutical products and would also promote the sale of the products in the Spanish market region as the agent for the Swiss company. The Swiss company sold the products directly to its customers, determined the sale prices and the Spanish entity did not have the capacity to negotiate contracts with purchasers.

The Spanish Authorities assessed the Swiss company for the years 1999 and 2000 on the ground that it was the Swiss pharmaceutical company which carried out taxable activities in Spain through a permanent establishment, i.e. the Spanish subsidiary.

Legal procedure

The Spanish Authorities assessments were confirmed by the Central Tax Court and later by the National High Court in 2008. The National High Court held that the Spanish company was to be viewed as a dependent of the Swiss company.

The Swiss principal company subsequently appealed this judgment.

In 2012, the Supreme Court in Spain arrived at the same conclusion, that is to say that the Swiss company did have a permanent establishment in Spain to which all Spanish sales should have been attributed.

Conclusion

From this decision certain factors need to be taken into account to determine whether a company has a permanent establishment in Spain, e.g. the conditions of intercompany manufacturing and agency contracts, including the pricing conditions, the client base of the local entity etc.

Therefore, it is important to determine whether a company has a permanent establishment on a case by case basis, i.e. companies with similar operations in Spain should assess their position in light of this decision.

Should you wish to know more about this judgment, please do not hesitate to contact us.



Spain

Budget 2012

Recently, in its Budget announcement, the Spanish government stated that it intends to impose significant spending cuts, structural reforms and corporate tax increases in its austerity budget package.

VAT is unaffected and the Spanish VAT rates will remain at 18% (standard rate), 8% and 4% (reduced rates).



Swaziland

Replaces Sales Tax with the Introduction of VAT

Despite strong opposition, VAT has been introduced in Swaziland from 1 April 2012 with a standard VAT rate of 14%. A zero per cent VAT rate and exemptions would also be applied to certain supplies, examples include:

- Zero rated - exports, certain food supplies, prescription drugs and medicines, animal feeds
- Exempt - passenger transport, education, financial, insurance and medical services

Businesses with an annual turnover of over E500 000 (Swaziland currency Lilangeni (E)) will be obliged to register for VAT.

Should you require any assistance or further information please e-mail info@meridianglobalservices.com.



United Kingdom

HMRC launch a new cyber crime team to tackle organised tax fraud

A new cyber crime team to tackle tax fraud by organised criminals more proactively was launched in March by HM Revenue and Customs (HMRC).

Please follow this link for further information: [HMRC - New Cyber Crime Team](#).

Budget 2012 - VAT specific announcements

Correcting VAT anomalies and closing loopholes

Since VAT was introduced in the UK, the legislation determining the tax treatment of goods and services has largely remained the same. As a result, some anomalies have arisen either due to the way businesses have evolved and become more sophisticated when carrying out transactions or from litigation decisions. This has challenged the boundaries of relief available for certain transactions within the UK zero-rating and exemptions provisions. Of course, these provisions have also been subject to abuse by fraudulent and non-compliant businesses.

Therefore, HMRC is introducing a number of measures to simplify and clarify those anomalies. In particular, measures will be introduced in 2012 to:

- clarify the treatment of catering to ensure that all hot takeaway food is taxed and to clarify the meaning of premises;
- tax sports nutrition drinks to ensure that all sports drinks receive the same tax treatment;



United Kingdom

Budget 2012 - VAT specific announcements (cont)

- remove exemption from self-storage to ensure all supplies of storage receive the same tax treatment and to counter avoidance;
- remove the anomaly whereby approved alterations to certain listed buildings are zero-rated whilst alterations to other buildings, and repairs and maintenance to all buildings are standard rated;
- put beyond doubt the fact that VAT applies to the rental of hairdressers' chairs; ensure that holiday caravans are taxed consistently at the standard rate of VAT.

Previous draft legislation to be finalised

The draft legislation for the following measures will be finalised and introduced in the Finance Bill 2012:

- low value consignment relief
- cost sharing exemption
- tackling VAT fraud on imported road vehicles
- online registration
- grouping extra statutory concession
- supplies of goods or services by public bodies

Minor changes

A series of changes of less importance to most larger businesses include:

- With effect from 1 April 2012, raising of the VAT registration annual turnover threshold from £ 73,000 to £ 77,000, the

deregistration threshold from £ 71,000 to £ 75,000, and the registration and deregistration threshold for relevant acquisitions from other EU Member States from £ 73,000 to £ 77,000;

- new, slightly higher, VAT fuel scale charges;
- introducing a VAT relief for European Research Infrastructure Consortia in autumn 2012;
- formalising the temporary arrangements under which supplies of freight transport and related services taking place wholly outside the EU are not liable to UK VAT when performed for UK businesses and charities, also in autumn 2012.

Other upcoming changes in 2013 include:

- following the new EU Invoicing Directive, UK VAT invoicing rules will be simplified;
- extend the Section 41 VAT Refund Scheme to include certain NHS bodies;
- dropping the VAT rate from 20% to 5% on the carriage of passengers on small cable-based transport;
- reviewing the VAT treatment of certain educational services.

Way Forward

The above is a summary of the changes announced recently and presents a number of challenges as well as opportunities to businesses. For more details and guidance on how to deal with these changes, please contact your Meridian Client Service Team or e-mail info@meridianglobalservices.com.



Fiscalis meeting on VAT on electronic services, telecommunication and broadcasting services in 2015.

A meeting that commenced on 7 March 2012 was held in Luxembourg, and was part of the EU FISCALIS 2013 initiative which aims at improving tax systems in the internal market. The attendees included representatives from 28 European tax administrations and key players in this industry sector such as Apple, Amazon, ebay, Kabam, Rovio, Skype, etc.

The main aim was to discuss the challenges created by the implementation of the new place of supply rules for supplies to non-taxable persons as per the destination principle that will become effective from 1 January 2015.

The Commission is launching an infringement procedure against France

An infringement procedure has been initiated as France is currently applying a reduced VAT rate of 2.1% to the attendance of first performances of concerts and theatrical events. By applying such a low rate to these particular supplies since 2007, France has failed to fulfil its obligations under EU VAT Law by applying a VAT rate that is lower than the allowed limit for reduced VAT rates, i.e. of 5%.

Commission v France regarding the services of a “répondant fiscal”

The result of this ECJ case will impact both foreign suppliers and French clients.

Foreign businesses currently VAT registered in France using the services of a “répondant fiscal”, will now have to reconsider how they operate in France, as a result of a recent ECJ judgement, finding that such a system is incompatible with EU law.

This procedure is now under review by the French authorities and an administrative instruction could be published in the coming weeks, advising of the cessation of the procedures.

The suppression of this regime will have an impact for both foreign suppliers and French clients, as follows:

Foreign companies, without an establishment in France will have to determine if they still have to be VAT registered in France and if not, consider how to recover French VAT. Such companies engaged in domestic sales in France, to customers who are registered for VAT in France, may have to cancel their existing VAT registrations and may have to recover French input VAT through either the Refund Directive or 13 Directive procedures.

French customers will have a legal requirement to account for French VAT on supplies received from foreign suppliers under the reverse charge mechanism.

Should you require any further information please contact your local Meridian office or e-mail info@meridianglobalservices.com.

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Meridian's desktop VAT application has been designed to keep our users informed and up to date without having to go searching for the information. It will provide you with the following benefits straight to your desktop:

News: all the latest VAT developments and news delivered daily to your desktop

Country profiles: access to key information on VAT in all EU countries and beyond. Each country profile will provide information such as VAT rates, format of VAT numbers, invoicing requirements etc.

Ask the expert: a facility that will allow posing questions to one of our International VAT consultants, directly from the desktop application.

For further information or to install please follow this link:

[Meridian Desktop VAT Application](#)

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