



meridian

VAT trends

November / December 2009





AUSTRIA

Changed filing deadlines for EC sales lists

Austria has reduced the filing deadlines for the submission of EC sales lists with effect from 1 January 2010 effectively by two weeks for reporting periods commencing on or after 1 January 2010. The electronic sales list is now due on the last day of the month following the month or calendar quarter in which the supply was made.

For example, an EC sale of goods that takes place on 29 January 2010 will need to be reported by the end of February 2010 if the taxpayer is submitting monthly EC sales lists.

Note that for supplies made to 31 December 2009, the deadline is still 15th February 2010.

This information was first published in the *"Bundesgesetzblatt fuer die Republik Oesterreich"* and can be viewed in German language using the following [link](#).



AUSTRALIA

Review of GST charged on cross-border transactions

The Board of Taxation is recommending the simplification of the rules relating to cross-border transactions and the reduction of the number of non-residents registered for GST purposes.

Some options suggested in connection to non-residents that do not have a business presence in Australia are as follows:

- Imposing a reverse-charge liability on supplies made to Australian businesses;
- Simplifications to registration requirements and processing;
- Allowing direct refunds;
- Reduction of low value import threshold.

The review also considers making supplies of services taxable, instead of GST-free, when made between two Australian GST entities, even though one is outside of Australia.

The Board is expected to report to the Australian Government by the end of February 2010.

Draft legislation released on GST administration

The draft legislation is intended to make GST law more transparent and reduce compliance costs for businesses.

Important changes include:

- A four year cap on input tax credits and fuel tax credits;
- Broadening the agency provisions to allow access to simplified accounting procedures;
- GST-free supplies between associates will not be subject to GST;
- Recovery of overpaid GST is due and payable from the date of overpayment for the purposes of imposing interest and penalties correctly;
- An adjustment note is not required in relation to a decreasing adjustment if the value of the taxable supply is less than \$75.

Forex transactions not GST-free

The Court considered the treatment of the sale of foreign currency at Sydney Airport to a passenger who had passed through the Customs barrier.

The taxpayer appealed that it was supplying rights, the right to spend it by tendering it in discharge of debts that the passenger incurred in Fiji and a right of exchange as against the bank.

The Court held that the currency supplied by the taxpayer not to be a supply of rights (which would then allow for the supply to be GST-free) in the most complete sense, but a supply of foreign currency, i.e. money, and therefore the supply would be input-taxed.



CROATIA

Amendments of the VAT Act with effect from 1 January 2010

The amendments to the Croatian VAT Act will be effective from 1 January 2010, unless otherwise indicated. Croatia implements changes to their VAT legislation order to align this further with EU Community VAT law.

In summary, the changes are:

1. Commissionaires

The EU principal commissionaire structure has been introduced to Croatian VAT legislation. Therefore, a supply of goods or services will be treated as made to and, subsequently by, the commissionaire.

2. Place of supply of services

Telecommunications and electronically supplied services, television and radio broadcasting services are deemed to be supplied where the customer is established.

3. Refunds of VAT

Non-resident persons that have no legal seat, fixed establishment or place of residence in Croatia, are entitled to a refund of Croatian VAT, provided that they have not made taxable supplies for which they are liable to account for VAT in Croatia, and that there is a reciprocity principle for Croatian business.

4. Standard rate of VAT

The standard rate of VAT been increased to 23%. This increase has been in force from 1 August 2009. This rate applies to all supplies of goods and services that do not fall within any of the exemptions from VAT.

5. Tax representatives

Non-resident taxable persons that have no a legal seat for their business in Croatia or have no fixed establishment, or place of residence there, are responsible to make payments of VAT in Croatia when they supply goods or services in this country. In these circumstances the reverse charge mechanism is not applicable. When a registration is required, the non-resident persons must appoint a tax representative to fulfill all entities' VAT obligations. The tax representative must be a local entrepreneur,

which will be jointly and severally liable for VAT payments of the non-resident entity.

6. Financial services and exemptions

Financial services are exempt from VAT, despite of the status of the service provider.

7. Second hand margin schemes

Dealers in second-hand goods, works of art, collectors' items or antiques can now opt to use the margin scheme regulation, provided that certain conditions are met. If the option has been made, this should be maintained for at least two calendar years.

8. Samples and gifts

New provisions regarding the value of gifts or samples have been introduced.

9. Import value

The base value of goods imported into Croatia, and on which Croatian import VAT will be levied, will now also include expenses such as commissions, packing and transport charges, as well as insurance costs incurred up to the first destination within Croatia.

IF you would like to learn more about VAT in Croatia, or are interested in recovering your business VAT there please contact your Meridian Client Services Manager, or the contact details at the end of this publication.



FINLAND

Changes in the Finnish VAT Payment & Reporting Procedures

VAT return

The appearance or the VAT return will change and the following need to be disclosed:

- Tax on services that were purchased from other EC member states
- Revenue that is 0 % rated for VAT
- Business operations that are VAT exempt
- Services that were sold to other EC member states
- Services that were purchased from other EC member states



FINLAND

Changes in the Finnish VAT Payment & Reporting Procedures (cont.)

Return deadlines brought forward

Paper returns must be submitted by the 7th of the relevant month instead of the 15th, and electronically submitted returns should be submitted by the 12th of the relevant month. Please note that if those days fall on a weekend or a national holiday, then the deadline will be the following working day.

Payment deadlines backdated

Payment should be received by the tax office by the 7th or 12th of the relevant month depending on whether the return is submitted in paper format or electronically, respectively. Businesses should check with their banks to on how long it takes for monies to be transferred and initiate payments accordingly.

Registering for electronic VAT returns & Tax Account Reference Numbers

The Finnish Tax Authorities require separate power of attorneys, but the system does not allow foreign companies to sign for these. Meridian will receive further information in respect of foreign companies registering in February.

When paying any VAT due, the taxpayer must use the Tax Account Reference Number.

VAT Credits to be paid out to the taxpayer

Excess VAT credits may be left on the account and used to balance future payments, but a separate application is required for this. Small interest will be paid on the excess money on the account.

Consequences for late VAT payments

Interest has to be paid every time a payment is made late and will be calculated at 7% for 2010. If there are unmade payments on the tax account, the authorities will send two notifications regarding these. If the payments are still not made, they will be transferred to collection and the extra costs will be charged from the taxpayer.

Account statements

Paper statement of accounts will be sent after the 20th of each month, which will be phased to electronic statements in due course.

These changes will come into force in March 2010, when the first VAT return for 2010 is due.



GERMANY

7% VAT rate on hotel accommodation

The German Parliament accepted the new Growth Acceleration Law on 18 December 2009, which includes a reduction of VAT on accommodation from 19% to 7% with effect from 1 January 2010.

Therefore, any supply in relation to short term accommodation is now subject to the reduced VAT rate. Short term means the provision of accommodation for up to six months in accordance with Art. 12, para. 2 no. 11 UStG.

However, any supplies not directly linked to accommodation services continue to be subject to 19%. This includes subsistence services, such as breakfast, other meals, or the supply of drinks from the mini bar.

Providers of accommodation services are now required to itemize the supply of accommodation and the supply of subsistence or other services on their invoices, as these items are now subject to different VAT rates, unless the total bill is less than EUR 150.



IRELAND

New legislation released

The Irish Tax & Customs authority have published European Communities (Value Added Tax) Regulations 2009 (S.I. No. 520 of 2009) amending Value-Added Tax Regulations 2006 (S.I. No. 548 of 2006) which:



IRELAND

New legislation released (cont.)

- Detail the new place of supply rules for services;
- Outline the requirement to submit VIES statements (EC Sales Lists) for B2B cross-border supplies that are subject to the reverse charge;
- Provide details of the new refund system for foreign traders under Council Directive No. 86/560/EEC;
- Clarify the time period in which the “connected parties” rule for Bad Debt Relief arises; and
- Detail the requirements for invoices issued in the transitional period (1 January-30 June 2010) for second hand means of transport.

The new regulations are effective from 1 January 2010.

New Electronic VAT Refund (EVR) procedure

Claims for refunds of VAT across the EU will need to be made via the new EVR system from 1 January 2010 which is only available to Irish taxpayers new and existing agents provided they:

1. Have a TAIN number (Tax Advisor Identification Number);
2. Are registered with Revenue Online Services; and
3. Have been linked to their client for an electronic VAT refund.

The Irish Tax and Customs authority have provided further information on this in their eBrief No. 90/09.



LITHUANIA

Change to Intrastat thresholds

A new Intrastat threshold, which came into effect from 1 January 2010, has been set by the Department of Statistics on 29 October as follows:

Intrastat Exemption Threshold:

Arrivals: LTL 450,000 (lowered from current threshold of LTL 500,000)

Dispatches: LTL 500,000 (lowered from current threshold of LTL 650,000)

Intrastat Statistical Value Threshold:

Arrivals: LTL 8,000,000 (lowered from current threshold of LTL 10,000,000)

Dispatches: LTL 24,000,000 (lowered from current threshold of LTL 25,000,000)

If you require assistance with doing business in Lithuania, please contact your Meridian Client Services Manager.



MALAYSIA

Introduction of GST likely in 2011

Malaysia announced in December 2009 that it expects to introduce the Malaysian Goods and Services Tax (GST) system in 2011.

The proposed rate is 4% on all taxable supplies of goods and services, and it is expected that businesses with an annual revenue below MYR 500,000 will not need to register for GST purposes.

The current sales and services taxes will be replaced with the GST upon introduction.



NEW ZEALAND

Proposed changes in GST reforms that will affect many businesses

The New Zealand Government has released a discussion document with the key proposals being the introduction of a domestic reverse charge on certain transactions (land, transfers going concerns and high value supplies of goods and services), and reforms to



NEW ZEALAND

Proposed changes in GST reforms that will affect many businesses (cont.)

the rules governing input tax deductions and change-in-use adjustments so that it now reflects the relative use of the goods and services.

We will keep our readers informed of any further developments.



NORWAY

New VAT Act

On 6 November 2009, the implementation of the new VAT Act received Royal Assent by the Norwegian King in Council. The new VAT Act has been in force since 1 January 2010, and is only a technically revised version of the existing VAT Act. Only some minor amendments have been introduced with the aim to modernize, and in some cases simplify, the structure and wording of the current VAT Act.



POLAND

New filing frequencies and submission deadlines for recapitulative statements from 1 January 2010

Further to the new EU requirement to report supplies of services by taxpayers to business customers in the EU on recapitulative statements (also called European Sales List), Poland has additionally amended its national VAT legislation in regards to the frequencies and deadlines to file these with effect from 1 January 2010.

Currently, ECSL are filed on a quarterly basis by the 25th day of the month following the given quarter.

Since 1 January 2010, the basic rule in Poland will be to file the ECSL on a **monthly** basis.

However, taxpayers **may** continue to submit ECSLs on a **quarterly** basis provided that:

- The net value of intra-Community dispatches and triangular sales (where the taxpayer is the intermediate in the chain) has not exceeded in a given quarter (any previous 4 quarters) PLN 500,000 (PLN 250,000 from 1 January 2012);
- The net value of intra-Community acquisitions has not exceeded in a given quarter PLN 50,000.

If the ECSL will be **submitted in paper format**, the deadline will be the **15th** day of the month following the reporting period (month or quarter).

If ECSLs are **submitted electronically**, the deadline will be the **25th** day of the month following the reporting period (month or quarter).

If you require assistance with Polish VAT compliance, please do not hesitate your Meridian Client Services Manager.



SPAIN

Update on VAT Package implementation

There have been delays in implementing the 1 January VAT Package changes and is not expected to be in place until March 2010. However, a lower level Resolution from the Spanish General Tax Directorate will be issued instead.

VAT Package implementing legislation

According to the Spanish Tax Authorities, the VAT package will not be implemented in Spanish VAT law in January. However, a lower level Resolution from the Spanish General Tax Directorate, will be issued instead. This brings about uncertainty in respect of certain provisions of the Spanish VAT rules, such as the reverse charge rule, use and enjoyment, etc. However, it should be possible to rely on the Principal VAT Directive, which under EU law is directly effective.



SPAIN

Update on VAT Package implementation (cont.)

Removal of the 'force of attraction' rule from Spanish VAT legislation

Effective 1 January 2010, the 'force of attraction' rule will be removed from Spanish VAT legislation. For the purpose of determining the person liable for VAT, foreign companies (even though having a PE in Spain) will be regarded as non-established in respect of those transactions carried out without the direct intervention of the local establishment; thus, they will not be entitled to charge Spanish VAT to their customer and the reverse charge mechanism will be fully applicable.

B2B services within the Spanish VAT territory between non established operators

Up to now, services in the Spanish VAT territory between non established operators were not subject to the reverse charge rule except in particular cases (intermediary services, Intra-EU transport services - including intermediary and ancillary services, and work on movable property) - provided the recipient provided the supplier with a Spanish VAT ID number. Under the VAT package implementation in Spain, such services shall be subject to the reverse charge mechanism.

New compliance obligations: modification of EC Sales and Acquisitions Listings (Spanish form 349)

A new regulation concerning EC Sales and Acquisitions Listings will mean both Intra-community supplies and acquisitions of goods and EU cross-border supplies of services shall be declared through this form.

The new EC Sales & Purchases Listings will be filed monthly if a EUR 100,000 threshold (for years 2010 and 2011) is exceeded during the previous year. Otherwise, the return will be filed quarterly. The threshold as from year 2012 shall be, in principle, EUR 50,000.

Non-established taxpayer VAT refund claims

The new procedure for claiming input VAT borne within the Spanish territory by non resident taxpayers, will consist in applying for the refund of VAT through the websites of the Member States where each claimant is established. The conditions for filing these refund applications shall be those established by the applicant's country of residence, regardless of whether the application is filed directly by the applicant or by a third party.

Once filed, the Tax Authorities of such EU countries will check that the refund claims have been correctly completed (according to the requirements of each EU Member State) and, if there are no irregularities, they will forward the relevant claims to the Spanish Tax Authorities, with further communications being directly between such authorities and the claimant.



EUROPEAN UNION

Commission calls on Hungary to change its VAT reimbursement rules

The European Commission has called on Hungary to modify the relevant provisions of its VAT legislation, which preclude Hungarian taxable persons from claiming reimbursement of input VAT where the underlying supply has not been financially settled by the taxable person.

The Hungarian VAT Act grants taxable persons the option to choose between carrying forward their excess VAT (which results from deductible VAT exceeding payable VAT in a tax period) to the next tax period or immediately claiming the refund of it. However, the reimbursement of excess VAT cannot be claimed in respect of input VAT charged on a purchase that has not yet been paid by the taxable person. As a result, taxable persons whose tax returns consistently show "excesses", are de facto obliged to carry forward the excess input VAT to the following tax period.

The Commission considers that this regime infringes Article 183 of Directive 2006/112/EC (VAT Directive), as interpreted by the European Court of Justice (ECJ).

Commission issues opinion to France in relation to building land

According to French VAT legislation, the supply of building land for consideration by a taxable person to a private individual who has the intention to build on it is exempted from VAT.

However, the Principal EU VAT Directive states that any supply of goods or services for consideration by any person should be subject to VAT. The Directive lists only a limited number of exempted transactions. In this regards, it has to be highlighted that supply of building land is excluded from this list.

Therefore, the Commission has asked France to change its legislation within the next two months.

Proposal for recast of implementing measures concerning EU VAT Directive

From 1st January 2010, the VAT Package on the new place of supply rules entered into force across the EU.

The European Commission on the 17th December 2009 published a proposal for a recast on implementing measures concerning the EU VAT Directive 2006/112, which includes a number of measures related to the VAT Package, in particular to prevent situations of double taxation that could arise as a result of diverging interpretations of the new rules. For example, there are guidelines for suppliers on establishing the location and tax status of the customer, as this will determine the rate of VAT that must be paid. Other guidelines focus on the provisions within the new VAT package which complement or provide exceptions to these general new rules.

However, the proposal does not only contain implementing measures for the VAT package, it also includes a codification of elements covered by Regulation 1777/2005/EC and new measures based on guidelines agreed by the VAT Committee since 2005 on different matters.

For further information follow this [link](#)

VAT Grouping - Infringement Proceedings

The European Commission has formally requested a number of EU Member States, including the UK, to amend their legislation with regard to the application of VAT grouping schemes. In the UK, this will have a major impact on most AIM-listed technology companies, where the holding company has been allowed to join a VAT group, and thereby became entitled to the recovery of input VAT according to the level of taxable activities of the group.

The EC has ruled that this practice infringes the VAT grouping rules, which means that any VAT incurred by the holding company will become a cost.

The European Commission has given the UK, among others, until 20 January 2010 to implement the ruling.

VAT Refund Directive – Additional codes for use in the transmission of information under Article 34(a)(2) of Regulation (EC) No 1798/2003

On 30 November 2009 the Commission published Regulation (EC) No 1798/2003 advising businesses wishing to reclaim VAT incurred on expenses in other EU Member States under the New Refund Directive (former EU Eighth VAT Directive) of the additional information that must be provided transmitting their reclaim application.

In short, each expense type must be coded in accordance with specific codes, which have been defined in this Regulation.

The information can be found using the following link:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0050:0059:EN:PDF>

If you wish to reclaim VAT on your foreign expenditure, please contact Meridian for assistance.

DEVELOPMENTS AT THE EUROPEAN COURT OF JUSTICE

Supply of a partially demolished building

The European Court of Justice (“ECJ”) gave its decision in case no. C-461/08, *Don Bosco Onroerend Goed BV v. Staatssecretaris van Financien*.

Background information

This is a question that relates to the concept of “building land” in accordance with Articles 12(1) and 135(1) of the EU Principal VAT Directive 2006/112/EC, particularly whether the fact that a building that was on the land in a partially demolished state meant that the sale of that land was the sale of a building, i.e. exempt from VAT, or that of building land, which is subject to VAT.

It is important to note that the seller of the land and building also provided the demolition services.

The Ruling

The ECJ ruled on the facts of the objective of the transaction from the point of view of the purchaser. His objective was to purchase building land, as he had commissioned the seller to demolish the building so that they could then build on the land.

Therefore, the transaction would be outside the scope of Art. 135(1)(j), as the supply was not that of a building or of land on which a building stands.

The ECJ left it to the Dutch courts to determine if the supply of the land falls within the exemption of Art. 135(1)(k) and therefore constitutes “building land” within the definition of Art. 12(1)(b). The Judge did however opine that an Art. 135(1)(k) exemption can only apply in cases where the land has not been built upon and is not intended to support a building.

For the full text of the ruling, please follow this [link](#).

Decision for refund applications - Claim signatures – *Yaesu Europe BV*

Judgement from 3 December 2009 in case no. C-433/08 (*Yaesu Europe BV v Bundeszentralamt für Steuern*) - arrangements for the refund of VAT to taxable persons not established in the territory of the country – meaning of “signature” of that application.

The Issue

Whether the German claim form for a VAT refund under the 8th Directive has to be signed by the taxable person in person, or whether the signature of an agent is sufficient. In the above case, the non-established company asked their German agent to sign the claim form on their behalf and with due authorization. However, the application was rejected on the grounds that the claim form must be signed in person by the applicant, and not his representative

The Judgement

The ECJ ruled that a refund application need not necessarily be signed by the taxpayer in person, and that the signature of an agent may be sufficient for those purposes.

The reason given was that the term “signature” as provided in the specimen form set out in Annex A of the Eighth Directive is a Community law notion, which must be interpreted uniformly. The Eighth Directive neither contains any definition of “signature”, nor makes any reference to the law of the Member States to determine the meaning and scope of the term.

The wording of Annex A to the Eighth Directive simply indicates that a “signature” is required on the claim form, and in no way specifies that the signature must be of a particular kind, such as the signature of the taxpayer in person. Furthermore, it is the aim of the Eighth Directive to harmonise the arrangements for the refund of VAT paid in a Member State by taxable persons established in another Member State by eliminating the discrepancies between the various Member States. This aim can only be achieved if the

Decision for refund applications - Claim signatures – *Yaesu Europe BV* (cont.)

terms provided in a specimen form for VAT refund applications in Annex A of the Eighth Directive are attributed the same meaning and scope in all the Member States, in a way that does not go beyond the requirements specifically provided for in the model. Germany has been particularly challenging in this respect, as it also accepted personal signatures of Directors, etc., of a company, which resulted in significant discrepancies to the practice in most other Member States.

Moreover, even though the Eighth Directive does not expressly provide for the possibility of appointing an agent, the Eighth Directive none the less does not exclude that possibility, which means that an application for VAT refund modelled on the specimen set out in Annex A can be signed by an agent.

Consequences of the ruling

We understand that the German overseas repayment unit is currently examining this ruling, as many other claimants have rested appeals against signature related rejections on this claim. We expect further instructions and guidance in this respect shortly, and will keep our readers updated.

This ruling is good news for businesses who have previously found it difficult and challenging to obtain the required signatures on the German reclaim application forms.

ECJ Referral

Services received from 'tax havens' – VAT deduction

Oasis East sp. z o.o. (C-395/09) – Standstill provisions – input tax blocked – validity under EU VAT law.

The issue

Whether VAT can be deducted on services received from suppliers based in countries that under VAT legislation are treated as 'tax havens'.

Questions referred

Poland has referred a question to the ECJ concerning the validity of a 'standstill' provision, which prevents the deduction of VAT incurred on services received from suppliers based in countries, which Polish VAT legislation treats as 'tax havens'.

ECJ Referral

Pre-registration input tax – treated as input tax?

Nidera Handelscompagnie B.V. (C-385/09) – Pre-registration input tax – deductibility

The issue

Whether input VAT incurred on goods used before VAT registration to make supplies that will be liable to VAT after registration be deductible.

Questions referred

The questions Lithuania has referred are:

- Can VAT only be recovered by taxable person registered for VAT?
- If yes, then, has a VAT payer the right to deduct input and/or import VAT in respect of goods and/or services acquired before the date of his registration as a VAT payer only if those goods will be used for an activity of that VAT payer that is subject to VAT, that is to say, input and/or import VAT in respect of goods and services acquired before the date of his registration as a VAT payer may not be deducted if those goods have already been used for that activity?"

Both referrals are available on the Europa website via this [LINK](#).

VAT Package

Meridian delivers advanced webinars on practical issues in respect of the VAT Package rules.

The Institute of Chartered Accountants England and Wales (ICAEW) and Meridian present a webcast on February 25th 2010.

The New EU VAT Legislation - Theory and Business Reality - A practical perspective on the new European VAT Rules addressing complex implementation issues.

[Register](#)

Please see below links to recordings of webinars that have already taken place

Meridian Webinar on The Refund Directive. What is changing and how it will work - a practical insight.

Delivered in: June 2009

[Recording link English](#)

[Recording link French](#)

[Recording link German](#)

Advanced webinar on 2010 "Place of Supply" - addressing complex implementation issues.

Delivered in: November 2009

[Recording link English](#)

[Recording link French](#)

[Recording link German](#)



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