



meridian

VAT trends

September / October 2009





CZECH REPUBLIC

VAT increase from 01.01.2010

With effect from 1.1.2010, VAT rates in the Czech Republic will increase by 1%. The reduced VAT rate will be increased from current 9% to 10% and the standard VAT rate will increase from the current 19% to 20%.

The approved VAT increase should help to fight the enormous budget deficit, which is faced by the Czech government due to the financial crisis.

If you require assistance in implementing these changes into your business, please contact your usual Meridian contact for advice.



DENMARK

Update re deadlines for payment of the Danish VAT due in 2009

In our July/August 2009 issue of VAT Trends we reviewed the Danish law proposal extending the deferral of VAT payments.

As a consequence of the adoption of the proposal, businesses that pay VAT on a monthly or quarterly basis are allowed to defer their VAT payment for periods from August 2009 to December 2009.

The new deadlines for payment of the Danish VAT due in 2009 and submission of VAT returns are as follows:

<u>VAT Return period</u>	<u>Standard deadline</u>	<u>Extended deadline</u>
September 2009	26 th October 2009	9 th November 2009
October 2009	25 th November 2009	1 st December 2009
November 2009	28 th December 2009	28 th December 2009
Quarter 3 2009	10 th November 2009	1 st December 2009

Meridian will keep you informed of any further updates in this regard.



FINLAND

Reduction of the reduced VAT rate

With effect from 1 October 2009, the reduced VAT rate of 17% in Finland decreased to 12%. The reduction in the VAT rate will apply to food products sold in shops. The decrease is only a temporary measure. From July 2010 the rate of 12% VAT is due to be increased to 13%.

VAT on food sold in restaurants will continue to be subject to the standard rate of 22% and is due to be decreased to 13% in July 2010.

Meridian will keep you informed of any changes in VAT rates in Finland.



FRANCE

New VAT return filing dates for non-established businesses introduced from 1 January 2010

A decree has modified the dates on which French VAT returns are due from companies not established in France, but who have a French VAT registration, and file their returns with the DRESG based in Noisy Le Grand.

From 01 January 2010, the due dates for submitting the VAT returns will be as follows:

- Monthly returns: 19th of each month.
- Quarterly returns: 19 January, 19 April, 19 July, 19 October.
- Annual returns: 4 May 2010.



FRANCE

Intrastat filing: Mandatory electronic submission for large businesses

Currently, businesses may submit their French intrastat declarations (Déclarations d'Echanges de Biens) electronically or in paper format.

In order to cut costs and improve the validity of the data provided, the French administration has put measures in place to ensure that large businesses submit their intrastat declarations electronically with effect from 1 July 2010.

The details are as follows. Taxable persons, who:

1. During the preceding calendar year had EC arrivals or dispatches at a net value of more than EUR 2,300,000 or,
2. Breach this threshold during the current calendar year.

Companies that will be affected by this change will receive an official communication in the first quarter of 2010, and will be offered technical assistance. Companies should note that non-compliance with the new rules can result in penalties.

If you require further assistance in relation to your compliance matters in France, please contact your Meridian Client Services Manager.



GREECE

Option to pay VAT liabilities in instalments

The Greek authorities issued a new piece of legislation allowing businesses to pay the VAT due in their periodic VAT returns in three instalments. The first payment must represent at least of 30% of the total, and is to be made at the time of filing the return. The next payments are to be made monthly.

This system gives some flexibility to businesses for which cash flows can be a major issue, but is also complemented by significant penalties if the payments are made late, or if the sums paid do not match the VAT return.

If you wish to find out more about this subject, please contact your Meridian Client Services Manager.



ITALY

Increase of the distance selling and intra-Community acquisitions thresholds

The distance selling and intra-Community acquisitions of goods thresholds have been increased as follows:

- Distance selling from Italy to another Member State: from €79,534 to €100,000;
- Distance selling from another Member State to Italy, from EUR 27,889 to 35,000;
- In respect of intra-Community acquisitions effected by non-registered taxable persons and non-taxable legal persons, from EUR 8,26 to 10,000.



PAKISTAN

Proposal for the introduction of VAT

The Pakistani government wants to implement a Value Added Tax (VAT) system in Pakistan in order to increase the country's local tax revenues. Introduction is expected from the beginning of 2010.



PORTUGAL

Portuguese Authority set to implement a new VAT reimbursement process

The Portuguese Tax Administration recently issued "Ordinance 23/2009", which provides guidelines on the



PORTUGAL

Portuguese Authority set to implement a new VAT reimbursement process (cont.)

new VAT reimbursement process, which came into effect in June 2009.

The new process aims to reduce the guarantee costs connected with some VAT refund claims, and improve control of VAT refunds requested by taxpayers.

Currently, the tax authorities require a bank guarantee for the first VAT refund and also when the taxable person ceases activity and files a final VAT refund claim. In order to reduce the guarantee cost, the Ordinance states that for taxpayers who cease activities or file the first VAT refund claim, it is no longer necessary to provide the tax authority with a bank guarantee or an equivalent type of collateral for the total amount of the refund.

Conversely, if the taxpayer who ceases activity or files the first VAT refund claim, chooses to proceed with a bank guarantee, the reimbursement timeframe is decreased to 30 days instead of 90 days.

With regard to improving the control of taxpayers, all VAT taxpayers requesting a VAT refund should fill in a VAT return claiming the reimbursement, within the legal period, along with a list of the following:

1. Suppliers from whom acquisitions were made, including amount and the VAT related.
2. Clients to whom the supply of goods of services were made.

If the total amount of transactions below EUR5,000 is lower than 5% of all transactions stated on the form, then the supplier or client can summarize all transactions below EU 5,000 in one single line.

In addition, the request for a refund requires various requirements to be completed:

- Taxpayer must not be in a Portuguese tax default situation.
- A bank account in the name of the company requesting the refund must be held.
- The refund claimed must be correctly filed.

If your business requires assistance with the new reimbursement process, or any other queries in relation to the practical issues arising from this new process, please contact your Meridian Client Services Manager or usual contact.



SLOVAKIA

Deductibility of VAT on passenger cars

On 2 October 2009 a proposal relating to the deductibility of VAT on passenger cars was delivered to the Slovak Parliament. According to this proposal, restrictions preventing deduction of input VAT on passenger cars and accessories (air conditioning, alarms, airbags) should be abolished as of 1 January 2010. If the proposal is approved, businesses will be entitled to recover input VAT incurred on purchases of all types of cars and related accessories.

In addition to the simplification of rules for VAT deduction, this proposal also aims to improve the business environment and increase car sales in Slovakia.

This proposal is subject to the normal approval process of the Slovak Parliament. Meridian will keep its readers informed of further developments in this area.



SPAIN

Spain set to increase its VAT rates from July 2010

The Cabinet of Ministers has recently passed Spain's 2010 Budget Proposal. It approved the increase of the country's standard rate of VAT from currently 16% to 18%. The higher reduced rate of currently 7% will rise to 8%.



SPAIN

Spain set to increase its VAT rates from July 2010 (cont.)

Both rate changes will come into effect on 1 July 2010.

Spain operates a system of three VAT rates:

- The standard rate of currently 16% is applicable to any taxable transactions that are not within the scope of the reduced rates or other exemptions.
- The reduced rate of currently 7% applies to hotel accommodation, restaurant services or admission to cultural events.
- The reduced rate of 4% is due on so-called "basic necessities" such as bread, fruit and vegetables. This rate is not set to change.

If your business requires assistance with the change in the rate of Spanish VAT, e.g. in understanding how supplies covering the period before and after the rate change should be treated for VAT purposes, or any other queries in relation to the practical issues arising from a rate change both for the sale and the purchase of goods or services, please contact your Meridian Client Services Manager or usual contact.



SWITZERLAND

Increase of VAT rates approved

In a people's referendum on 27 September 2009, an increase of the VAT rates was approved by a majority of 54.5% of the Swiss people.

The increase in the VAT rate will apply from 1 January 2011 until 31 December 2017, and will be as follows:

- Standard VAT rate to increase from 7.6% to 8%;
- Reduced VAT rate to increase from 2.4% to 2.5%; and
- Special reduced VAT rate to increase from 3.6% to 3.8%.

If you require any assistance in the practical implementation of these changes, please contact your usual Meridian contact.

New VAT return form and annual VAT return from 1 January 2010

With effect from 1 January 2010, any business submitting VAT returns into Switzerland should have implemented the new Swiss VAT return formats in order to be compliant with the new Swiss VAT law (nMWSTG).

Currently, all VAT return turnover figures are reported on part 1 of the Swiss VAT return form, part 2 contains the calculation of the VAT due.

Additional details required on the VAT return form

In line with the new regulations, taxpayers now have to report in more detail the following information by disclosing the relevant turnovers as a separate line item:

- Income generated from supplies of goods or services to recipients established outside of Switzerland where no Swiss VAT was charged (e.g. management services, consulting services, export of goods)
- Income generated from the transfer of business assets
- Correction of input VAT deducted where the supply became a self-supply
- Reductions due to subsidies must be declared in a separate input box
- Any other revenue, such as compensation payments, receipt of dividends or donations must also be separately reported

New Annual VAT return

Swiss taxpayers are currently only required to submit quarterly VAT returns. With effect from 1 January 2010, Switzerland requires the submission of an annual return (fifth return), based on the calendar- or financial year of the company. Similar to the German annual VAT return, this return is a summary return, used to declare any corrections required to the input or output VAT figures.



SWITZERLAND

New VAT return form and annual VAT return from 1 January 2010 (cont.)

Adjustment of accounting systems

VAT codes in your Swiss ERP systems will need to be aligned to reflect both the new place of supply rules for services, as well as aligning the turnover figures to the correct box on the new VAT return form.

If you require assistance with the above, please do not hesitate to contact us via your usual channels.



UNITED KINGDOM

Changes to Intrastat thresholds from 1 January 2010

HMRC have confirmed that from 1 January 2010 the exemption thresholds for Intrastat declarations will be as follows:

- Intrastat arrivals has been increased from £270,000 to £600,000; and
- Intrastat dispatched has been reduced from £270,000 to £250,000.

The revised thresholds will be implemented by a Statutory Instrument, which will be laid before Parliament in the coming weeks. The new thresholds will be effective from 1 January 2010, provided that Parliament does not have any objections to the changes.

Compound interest claims on overpaid VAT

The Upper Tribunal (Tax and Chancery Chamber) has decided in the case of the Compound Interest Project ("CIP") that claims for compound interest should be made by way of a claim in restitution in the High Court.

The CIP litigation involved five unconnected appellants that carry on business as motor dealers. VAT was overpaid on bonus payments made to them by car manufacturers and further output tax was overpaid on the sale of demonstrator cars which were used for the purpose of their businesses. Simple interest was paid out to the appellants, however the appellants argued that section 78 of the VAT Act 1994 (provision relating to the payment of interest in respect of output tax claims) should provide for compound interest.

The Upper Tribunal held that whilst they accepted that compound interest is required under Community Law, the "natural construction" of section 78 only provides for simple interest. It was also held that the Tribunal is under no obligation to give effect to Community law as English Law already allows for a claim in restitution to be made in the High Court.

For taxpayers that are awaiting a conclusion on a Conde Nast/Fleming claim, consideration should be taken as to whether it would be worthwhile submitting an appeal to the Tribunal for compound interest, within 30 days of receiving notification that simple interest will be paid. Where claims have already been paid out, taxpayers should evaluate whether a claim ought to be made to the High Court (subject to a cost-benefit analysis).

For more information, or if you have any questions concerning such claims, please contact your Meridian Client Service Manager or your local Meridian office, for a list of offices worldwide, please go to www.meridianglobalservices.com.

Online VAT returns mandatory from 1 April 2010

Filing VAT returns online will become compulsory from 1 April 2010. The new rules will apply to existing businesses with an annual turnover of £100,000 or more, and to all newly registered businesses (regardless of their turnover). Any VAT due must also be paid electronically if returns are submitted electronically.



UNITED KINGDOM

Tax concession for charities

HM Revenue and Customs (HMRC) announced in Revenue & Customs Brief 39/09, issued on 1 July 2009, that the “charitable building” concession will be withdrawn on 1 July 2010.

At present, charities pay no VAT on the acquisition or construction of a new building if at least 90% of the building is used for charitable purposes. To determine the use, one of four different methods could be used.

HMRC will now accept that the conditions for “solely” are met if the relevant use of the building is 95% or more. Any method, provided that it is “fair and reasonable”, can be used to calculate the qualifying use.

There is a transitional period of 12 months from 1 July 2009, in which charities have a choice of using either the old extra-statutory concession, or the new 95% limit.

Tour Operator’s Margin Scheme

As we have advised previously, the implementation of the changes to TOMS, originally due to be introduced from 1 April 2009, has been delayed. The changes will now take effect from 1 January 2010.

The changes affect the market valuation of in-house supplies (following the case of MyTravel C-291/03 the use of market valuation will become compulsory), supplies to business customers for own consumption (the “opt out” provision will no longer apply) and supplies to business customers for resale (the “opt in” provision will no longer apply).

VAT rate freeze for retailers and phone companies

HMRC have announced that they will grant an extension to pubs, clubs, restaurant, hotels and mobile phone operators to charge VAT at 15% until 6am on New Year’s Day.

The 15% rate will be granted for all takings received up to the earlier of:

- the end of trading on 31 December; or
- 6am on the morning of 1 January 2010.

The extension will only be available to businesses that are open at midnight on 31 December 2009, which account of VAT at the point of sale. It will not apply to mail order or on-line retailers.



EUROPEAN UNION

Carousel fraud: Measures proposed by the Commission of the European Communities

In order to fight against tax fraud, specifically against Carrousel fraud, the Commission of the European Communities has proposed an optional and temporary application of the reverse charge mechanism to specific goods and services. This disposition will amend Directive 2006/112/EC by inserting Article 199 a.¹

In addition to this article, Annex VI A will list the goods and services referred to in Article 199a. This list has been set up based on fraud sensitive goods and services, which were subject to recent carousel fraud cases reported by the Member States. The list includes items such as mobile phones, integrated circuit devices, perfume, precious metals and allowances to emit greenhouse gases.

It has to be highlighted that this change does not alter the principle of the VAT system, the items possibly subject to the reverse charge remains limited in scope. Member States can only adopt this measure for three of the categories listed in the Annex VI A. Furthermore, the duration to allow this mechanism is limited to 31 December 2014. If a Member State decides to introduce this measure, VAT due on those goods and services will be payable by the person (business clients only) to whom they are supplied.

Official position of the EU Commission on VAT groups published

VAT grouping is provided for in Article 11 of Directive 2006/112/EC.

In a 12-page document, the Commission clarifies that VAT group schemes were initially created as a simplification measure for businesses.

However, the disparity in the rules implemented by the various Member States represent a real risk of tax evasion and legal uncertainty for businesses operating in more than one Member State.

The Commission is therefore reiterating the basic principles for VAT grouping, and provides a very interesting insight into some of the concepts on which those rules are based, such as the necessary financial and organisational links between group members.

It is also clear from this communication that the Commission expects Member States to adopt a stricter approach to ensure that the rules governing the creation of VAT groups and the right of deduction are implemented correctly, but also to use anti-avoidance measures to combat abusive practices.

This communication is available on the Europa website and could potentially be a useful tool for any company that is considering entering into a VAT group as it explains the boundaries in which such provisions should be used and gives an overview of the directions that will be taken on a European level in the future regarding VAT grouping schemes. The official document name is IP/09/1078, and you can also find this in Communication COM/2009/325, or follow this [link](#).

¹ Proposal for a Council Directive amending Directive 2006/112/EC

DEVELOPMENTS AT THE EUROPEAN COURT OF JUSTICE

ECJ Referral

Failure to maintain proper VAT Records – Input VAT restriction

Referral in Case C-188/09 (Dyrektor Izby Skarbowej w Białymstoku v 'Profaktor' Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku) – VAT Records – 30% Input VAT restriction for failure to maintain – Input VAT.

The Issue

Whether compliance measures adopted by Poland to restrict input tax recovery for failure to maintain adequate VAT records is compatible with EC law.

Questions referred

A Polish Court has referred questions to the ECJ concerning VAT compliance measures and whether it would be incompatible with EC law to introduce a temporary forfeiture of the right to reduce the amount of tax due by an amount equivalent to 30% of the input tax who fail to fulfill the obligation to keep records of turnover and amounts of tax due by using cash registers.

ECJ Referral

Dispatch of ex-warehouse goods – Place of supply and scope of exemption

The Issue

In a chain of supplies, which supply is an “intra-Community transport of goods” that qualifies for VAT exemption.

Questions referred

The case concerns goods sold on an ex-warehouse basis, with the buyer re-selling to a final purchaser prior to dispatch.

The Tax Authorities was of the view that exemption would only apply between the sale between the buyers and the final purchaser and not between the originating seller and the buyer.

The seller has appealed the decision, with the Dutch Supreme Court referring to the ECJ on which supply the intra-Community transport exemption should be allocated to.

ECJ Referral

Supply of contractual rights in the context of time share points – Liability of supply

Referral in Case C-270/09 (Macdonald Resorts Limited v The commissioners for Her Majesty's Revenue & Customs) – Time share points scheme – Characteristics of supplies of contractual rights – Liability of supply.

The Issue

Whether a timeshare points scheme is a VAT-exempt supply of immovable property or a taxable service.

Questions referred

The Scottish Court of Session's main question is whether the characteristics of supplies of contractual rights ('Points Rights') are that of leasing or letting of immovable property, a membership of a club or another supply for VAT purposes. Following on from this, the ECJ has also been asked what factors affect the characterization of the supply.

ECJ Referral

Cross border leasing of motor cars – Abusive VAT practices

Referral in Case C-227/09 (The commissioners for Her Majesty's Revenue & Customs v RBS Deutschland Holdings GmbH) – Cross-border leasing of goods – Whether arrangement can be viewed as abusive practice to obtain a tax advantage – Recovery of input tax.

ECJ Referral

Cross border leasing of motor cars – Abusive VAT practices (cont.)

The Issue

Whether a cross-border car leasing arrangement that allows the recovery of input tax without the payment of output tax under national laws constitutes an abusive practice.

Questions referred

Based on a specific set of facts that involve a UK bank and its German subsidiary purchasing and leasing cars cross-border, the Scottish Court of Session referred questions as to whether such an arrangement constitutes an abusive practice. The arrangements allowed the taxpayer, in accordance with national law, to recover input tax on the purchase of cars without having to charge output tax.

ECJ Referral

Payment processing services – Scope of exemption

Referral in Case C-27/09 (T-Mobile (UK) Ltd v The commissioners for Her Majesty's Revenue & Customs) – Transferring funds through payment processing services – Liability of supply.

The Issue

Whether the transfer of funds entailing a change in the legal and financial situation is an exempt supply.

Questions referred

The UK High Court has questioned the characteristics of an exempt services that has 'the effect of transferring funds and entails changes in the legal and financial situation', in particular debit / credit adjustments that are carried out.

ECJ Referral

Criminal proceedings

Referral in Case C-285/09 (R) – Refusal to allow VAT exemption – VAT evasion.

The Issue

This relates to criminal proceedings aimed at refusal for VAT exemption.

Questions referred

Whether VAT exemption under Article 28cA(a) of the Sixth Council Directive (exemption for intra-Community supply of goods) can be refused on the objective factors that the supplier:

- a) knew that, by his supply, he was participating in a transaction aimed at evading VAT, or
- b) took actions aimed at concealing the true identity of the person to whom the goods were supplied in order to enable the latter person or a third person to evade VAT?

ECJ Case Law Update

Selling reinsurance for consideration – Place of supply and scope of exemption

Judgment in Case C-242/08 (*Swiss Re Germany Holding GmbH v Finanzamt München für Körperschaften*) – Insurance and reinsurance transactions – Transfer of a portfolio of life reinsurance contracts for consideration to a person established outside the EU – Place of supply

The Issue

Whether a transfer of a portfolio of reinsurance contracts from a reinsurer established in Germany to its associated company in Switzerland is subject to VAT.

The Judgment

The ECJ ruled that the transfer constitutes a supply of services, which cannot be treated as a VAT exempt

ECJ Case Law Update

Selling reinsurance for consideration – Place of supply and scope of exemption (cont.)

supply of an “insurance or reinsurance transaction” or a “financial transaction”. The transfer is therefore a supply of services taxable where the supplier is established (German VAT at 19% was therefore applicable).

The reasoning given was that there was no contractual relationship between the German reinsurer and its associated company for the contract of reinsurance and the transfer was a single service from an economic viewpoint, which cannot be artificially split into a financial dealing and a transaction concerning debts to be a “financial transaction”.

Based on the ruling in this judgement it is not only important for any insurer/ reinsurer involved in such transactions to ensure that they structure their contracts effectively but to also consider the impact that the VAT Package would have, i.e. from 1 January 2010 the customer in Switzerland would self-assess the VAT due at 7.6% as opposed to incurring irrecoverable German VAT at 19%!

ECJ Case Law Update

Selling a subsidiary – VAT may be recoverable

Judgment in case C-29/08 (Skatteverket v AB SKF) – VAT incurred in the TOGC of a subsidiary may be recoverable – businesses should consider reclaim opportunities.

The Issue

Whether input tax is recoverable on the sale of shares in a subsidiary company.

The Judgment

This is the first time that the ECJ has made a judgement specifically on the VAT treatment of the sale of shares (Kretztechnik C-465/03 concerned the

VAT treatment of the issue of shares in order to raise capital and BLP C-4/94 did not specifically address the VAT treatment of the sale of shares (although it did state that any associated input tax is irrecoverable).

The ECJ ruled that a sale of shares can either be a VAT exempt sale of shares or a TOGC (provided the TOGC criteria is fulfilled, namely that the company selling the shares must be providing active management services to the subsidiary in which it is selling).

If the sale of the shares can be treated as a TOGC, any related input tax is recoverable according to the seller’s overall activities, i.e. if it is a fully taxable business, all related input tax would be deductible.

Where the sale of the shares constitutes an exempt supply, it is up to the national court to decide whether the associated input tax has a direct and immediate link to the exempt supply. If it does, the input tax is irrecoverable.

Businesses involved in such transactions that have incurred related input VAT should consider if they have an opportunity to recover some of these costs. If you would like to discuss this issue further, please contact through your normal channels.

VAT Package

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

Please see below links to our recordings

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

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