Tackling intra community VAT fraud

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The VAT system and the right to deduct

VAT legislation interpretation tools

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The VAT system and the right to deduct

Basic VAT features

1. Imposed on sale of goods and provision of services – general tax on consumption
2. Proportional to the retail pieces of goods and services
3. Imposed on every stage of the production process, but finally borne by the consumer
4. Right to deduct input VAT is an essential feature of the VAT system

C-426/07 Krawczynski para.21
The VAT system and the right to deduct

The right to deduct input VAT (Art. 168 of the VAT Directive)

**Output VAT**  
*(VAT charged to the customer)*

**Input VAT**  
*(VAT charged by the supplier)*

**VAT payable**  
*(VAT remitted to the tax authorities)*
The VAT system and the right to deduct

The right to deduct input VAT

Factory → Retail store → Final Consumer

100 + 24 VAT (24%) = 124

300 + 72 VAT (24%) = 372

VAT remittable to the tax authority

VAT received: 72

Input VAT deduction: 24

VAT payable to the tax authority: 48
“The right to deduct input VAT is a fundamental principle of the common system of VAT, which in principle may not be limited and is exercisable immediately in respect of all the taxes charged on the taxable person’s input transactions”

— CJEU in a number of cases
The VAT system and the right to deduct

The right to deduct input VAT

- A right of deduction shall arise at the time the deductible tax becomes chargeable (Art. 167 of the VAT Directive)
- The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied (Art. 63 of the VAT Directive)
The VAT system and the right to deduct

The right to deduct input VAT - conditions

- The person concerned must be a **taxable person** and the goods or services must
  (a) be used by the taxable person for the purpose of his **own taxed output transactions**
  and
  (b) be **supplied by another taxable person** as inputs

- The exercise of the right to deduct input VAT is subject to holding an **invoice** drawn up in accordance with the provisions of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
The VAT system and the right to deduct

The classification of the activities on the basis of the right to deduct input VAT

- Exempt from VAT without the right to deduct input VAT
- Zero-rated activity (exempt from VAT, but with the right to deduct input VAT) e.g. intra-Community sales or exports
- Subject to VAT with the right to deduct input VAT
The principle that calls for non-tolerance of abusive practices is not a rule included in the Directive, but is based on CJEU jurisprudence:
The VAT system and the right to deduct

Tax avoidance & the right to deduct – the Kittel test

Do I commit fraud;

No

Is my supplier committing fraud;

Yes

Right to deduct is forfeited

No

Do I know about it or do I have reasonable grounds to suspect;

Yes

Right to deduct is forfeited

No

Right to deduct is retained
The VAT gap
The VAT gap

The problem

"Today’s figures show that efforts to shut down opportunities for VAT fraud and evasion have been making gradual progress – but also that much more work is needed. The coronavirus pandemic has drastically altered the EU’s economic outlook and is set to deal a serious blow to VAT revenues too. At this time more than ever, EU countries simply cannot afford such losses. That’s why we need to do more to step up the fight against VAT fraud with renewed determination, while also simplifying procedures and improving cross-border cooperation.”

Paolo Gentiloni, Commissioner for Economy
The VAT gap

The definition

expected VAT revenues - VAT actually collected = VAT gap

WHAT CAUSES THE VAT GAP?

- Fraud and tax evasion
- Corporate insolvency
- Corporate bankruptcy
- Maladministration
- Legal tax optimisation

Estimate of revenue loss due to tax fraud, tax evasion and tax avoidance, but also due to bankruptcies, financial insolvencies or miscalculations
The VAT gap

The numbers

2018: €140 bn.

2020 estimate: €164 bn.

due to the effects of the coronavirus pandemic on the economy
As in 2017, Romania recorded the highest national VAT Gap with 33.8% of VAT revenues going missing in 2018, followed by Greece (30.1%) and Lithuania (25.9%). The smallest gaps were in Sweden (0.7%), Croatia (3.5%), and Finland (3.6%). In absolute terms, the highest VAT Gaps were recorded in Italy (€35.4 billion), the United Kingdom (€23.5 billion) and Germany (€22 billion).

Individual performances by Member States still vary significantly. Overall, in 2018 half of EU-28 Member States recorded a gap above the median of 9.2%, though 21 countries did see decreases compared to 2017, most significantly in Hungary (-5.1%), Latvia (-4.4%), and Poland (-4.3%). The biggest increase was seen in Luxembourg (+2.5%), followed by marginal increases in Lithuania (+0.8%), and Austria (+0.5%).
The VAT fraud typology
The VAT fraud typology

The basic types of fraud

1. Carousel Fraud (Missing Trader)
2. Non-compliance
3. Fictitious I/C sales
4. Fictitious transactions
5. Fictitious taxpayers
The VAT fraud typology

The Carousel fraud (Missing Trader Intra-Community fraud)

- **Taxpayer I** (Greece)
  - Sales: 120,000
  - VAT charged @24% = 28,800
  - VAT payable: 28,800

- **Missing Trader**

- **Taxpayer II** (Greece)
  - Sales: 130,000
  - VAT charged and collected @24% = 31,200
  - VAT deducted: 28,800
  - VAT remitted: 2,400

- **Taxpayer III** (Greece)
  - Sales: 140,000
  - VAT 0% (I/C supply)
  - VAT refund: 31,200

- **Taxpayer (EU)**
  - Sales: 100,000
  - VAT 0% (I/C supply)

Tax authorities collect 2,400 and must refund 31,200! Loss: 28,800
The VAT fraud typology

The Carousel fraud (Missing Trader Intra-Community fraud)

- Mobile phones
- Printer inks
- Other computer components
- Audio and video goods
- Valuable metals
- Parts or vehicles
The VAT fraud typology

**Failure to comply**

- The use of goods and services for private purposes despite the fact that input VAT has been deducted
- Supplies of goods or services without VAT invoices and consequently without the payment of VAT
- Non or underreporting of VAT debts
- Inflated VAT refund claims
The VAT fraud typology

Fictitious i/c sales (domestic sales disguised as i/c supplies)

Factory

Wholesaler

Wholesaler

100 + 24 VAT (24%) = 124

100 + 0 VAT

Fictitious i/c supply
zero rated (0%) VAT with the right to deduct input VAT

VAT refund

VAT remittance

100 + 24 VAT (24%) = 124

Fictitious i/c supply
zero rated (0%) VAT with the right to deduct input VAT
The VAT fraud typology

**Fictitious transactions**

- **Existing taxpayers** issue proper invoices to other existing taxpayers, but for transactions that never took place.
- The VAT to be remitted to the tax authorities is decreased.

**Fictitious taxpayers**

- **Non-existing (for VAT purposes) taxpayers** issue invoices. Received by other taxpayers, which exercise their right to deduct input VAT.
- In case of good-faith (Kittel test), the taxpayer should not be deprived of the right to deduct input VAT.
- The case is different if fake tax records are issued; in this case of fraudulent activity the right to deduct is forfeited.
The VAT fraud typology

Fraud distinguished from other avoidance practices

- Full compliance (existing business purpose)
- VAT Abuse (tax purpose in place)
- Fraud = illegal activity
The VAT fraud typology

Fraud distinguished from other avoidance practices

- **Aggressive tax planning**
  - Serves business objectives

- **Tax Avoidance**
  - The main benefit is tax related

- **Abuse**
  - Artificial arrangement to obtain a tax advantage

- **Tax evasion**
  - Intention to obtain a tax advantage

- **Fraud**
  - Illegal activity
  - Intention to act in a fraudulent way
The VAT fraud typology

Fraud vs. abuse

• “Article 27(1) of the Sixth Directive permits the adoption of a measure derogating from the rule set out in Article 11.A.1(a), concerning the taxable base for VAT purposes, even where the taxable person carries on business of a kind capable of leading to a reduction of that base, not with any intention of obtaining a tax advantage but for commercial reasons. Such conduct comes within the concept of avoidance which, unlike that of evasion which involves an element of intent, represents a purely objective phenomenon. The adoption of a derogating measure which applies only to certain taxable persons amongst those whose sales methods lead to the avoidance of tax is permissible on condition that the resultant difference in treatment is justified by objective circumstances. “

138 and 139/86 Direct Cosmetics Limited and Laughtons Photographs Limited
The VAT fraud typology

Fraud vs. abuse

- A finding that there is an abuse presupposes an intention on the part of the Community exporter to benefit from an advantage as a result of the application of the Community rules by artificially creating the conditions for obtaining it.
- Evidence of this must be placed before the national court in accordance with the rules of national law, for instance by establishing that there was collusion between that exporter and the importer of the goods into the non-member country.

C-110/99 Emsland-Stärke
The VAT fraud typology

Fraud vs. abuse

- The Sixth Directive must be interpreted as **precluding** any right of a taxable person to deduct input VAT where the transactions from which that right derives constitute an **abusive practice**.

- For it to be found that an abusive practice exists, it is necessary, first, that the transactions concerned, **notwithstanding formal application of the conditions** laid down by the relevant provisions of the Sixth Directive and of national legislation transposing it, result in the **accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions**. Second, it must also be apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain a tax advantage.

- Where an abusive practice has been found to exist, the transactions involved must be redefined so as to re-establish the situation that would have prevailed in the absence of the transactions constituting that abusive practice

C-255/02 Halifax
The VAT fraud typology

VAT Directive legislative provisions

“In the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof, Member States may consider that no supply of goods has taken place and that the person to whom the goods are transferred is to be treated as the successor to the transferor.

Member States may, in cases where the recipient is not wholly liable to tax, take the measures necessary to prevent distortion of competition. They may also adopt any measures needed to prevent tax evasion or avoidance through the use of this Article.”

“In order to prevent tax evasion or avoidance, Member States may in any of the following cases take measures to ensure that, in respect of the supply of goods or services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the taxable amount is to be the open market value…”

“Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.”

“The Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.”
The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.”
Conclusion

“Member States are obliged to adopt all legislative and administrative measures able to safeguard the collection of the total VAT amount due and to combat tax avoidance and tax evasion.”
Conclusion

CJEU uses both terms “fraud” and “abusive practice”

VAT Directive allows the adoption of measures to tackle tax avoidance and tax evasion
Tackling the VAT fraud
Tackling the VAT fraud

VAT reform

- VIES
- OLAF / EPPO
- Joint audits
- tax authorities anti-VAT fraud cooperation
- EU Four Quick Fixes VAT reforms
- EU VAT rate setting freedoms
- EU definitive VAT system
- VAT registration thresholds equivalence for foreign businesses

2018
- Simplifications of e-services EU VAT compliance
- Harmonised e-publications VAT rates
- EU Generalised Reverse Charge VAT Mechanism
- One-Stop-Shop (OSS) single EU VAT return
- EU Four Quick Fixes VAT reforms

Eurofisc
- Regulation 904/2010
- Eurojust
- Fiscalis
- Payment providers VAT reporting obligations

2025
Tackling the VAT fraud

Traditional and contemporary methods to combat VAT fraud

Administrative penalties, surcharges and interest

Cooperation between tax administrations and the use of advanced digital technology is the latest trend, since VAT fraud is a phenomenon with cross-border elements

Criminal sanctions
Tackling the VAT fraud

Measures aiming at limiting VAT fraud

- Reverse charge
- Joint liability
- Split payment mechanism

Legal nature

- Electronic invoicing
- Digital data bases
- Accredited taxpayer

Legal & Technical nature

Measures aiming at limiting VAT fraud
Conventional approach

VAT Information Exchange System

- It is an electronic mean of validating VAT-identification numbers of economic operators registered in the European Union for cross border transactions on goods or services.
- A computerised VAT Information Exchange System to allow for the flow of the data held across the internal frontiers which:
  - enables companies to obtain rapidly confirmation of the VAT numbers of their trading partners
  - Enables VAT administrations to monitor and control the flow of intra-Community trade to detect all kinds of irregularities
Conventional approach

- EUROFISC is a mechanism provided for Member States to enhance their administrative cooperation in combating organised VAT fraud and especially carousel fraud. EUROFISC allows for quick and targeted sharing of information between all Member States on fraudulent activities.

- The EUROFISC network was established by a Regulation on administrative cooperation and combating VAT fraud (Council Regulation 904/2010) and officially launched on 10 November 2010.

- A very close co-operation between national tax administration and a more common risk analysis is, in the view of the Commission, an essential to limit VAT fraud effectively and, notably, to detect carrousel fraud before major tax losses occur.
Tackling the VAT fraud

Conventional approach

- Eurojust works with national authorities to combat a wide range of serious and complex cross-border crimes involving two or more countries. The Agency leads the judicial response to growing threats in Europe, enabling the Member States to keep one step ahead of criminals, mainly focusing on organised crime groups.

- The cases brought before Eurojust either involve two or more EU Member States or a Member State and a non-EU State. Sometimes cases involve crimes committed in a single Member State that have repercussions beyond its borders. Eurojust offers Member States its vast experience and expertise in judicial cooperation, including a range of tools to handle problems such as conflicts of jurisdiction, extradition, admissibility of evidence, and the freezing and recovery of assets. As Eurojust accommodates authorities from all Member States and various third States, it can respond to requests rapidly, sometimes helping to resolve a case within hours.

- A special team in Eurojust is dedicated to tax fraud: the illegal evasion of taxes by individuals or entities, ranging from knowingly underreporting taxable income or overestimating business deductions to sophisticated international VAT carousel frauds.
Tackling the VAT fraud

Conventional approach

EUROPEAN ANTI-FRAUD OFFICE

• OLAF investigates fraud against the EU budget, corruption and serious misconduct within the European institutions, and develops anti-fraud policy for the European Commission.

• In addition to its independent investigative work, OLAF also plays an active role in the development of EU anti-fraud policies as a European Commission service. The Office is regularly at the forefront of drafting and negotiating legislation concerning the protection of the EU’s financial interests against fraud and corruption.

• Between 2010-2019, OLAF:
  • Concluded over 2000 investigations
  • Recommended the recovery of over €7.3 billion to the EU budget
  • Issued over 2700 recommendations for judicial, financial, disciplinary and administrative action to be taken by the competent authorities of the Member States and the EU.
Tackling the VAT fraud

Conventional approach

European Public Prosecutor's Office

• The EPPO is the independent public prosecution office of the European Union, responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU.

• These include several types of fraud, VAT fraud with damages above 10 million euro, money laundering, corruption, etc.

• The EPPO undertakes investigations, carries out acts of prosecution and exercises the functions of prosecutor in the competent courts of the participating Member States, until the case has been finally disposed of. Up until now, only national authorities could investigate and prosecute these crimes, but their powers stopped at the borders of their country. Organisations like Eurojust, OLAF and Europol do not have the necessary powers to carry out such criminal investigations and prosecutions.
Tackling the VAT fraud

Conventional approach

- Fiscalis 2020 is an EU cooperation programme. It enables national tax administrations to create and exchange information and expertise.
- It allows developing and operating major trans-European IT systems together, as well as establishing networks by bringing together national officials from across Europe.
- Objectives of the programme
  - To improve the proper functioning of the taxation systems in the internal market by enhancing cooperation between participating countries, their tax authorities and their officials.
  - To support the fight against tax fraud, tax evasion and aggressive tax planning and the implementation of Union law in the field of taxation by
    - ensuring exchange of information
    - supporting administrative cooperation and, where necessary and appropriate
    - enhancing the administrative capacity of participating countries with a view to assisting in reducing the administrative burden on tax authorities and the compliance costs for taxpayers.
Regulation No 904/2010 on administrative cooperation and combating fraud in the field of value added tax must be interpreted as meaning that the tax authorities of a Member State which are examining whether value added tax is chargeable in respect of supplies of services that have already been subject to that tax in other Member States are required to send a request for information to the tax authorities of those other Member States when such a request is useful, or even essential, for determining that value added tax is chargeable in the first Member State.
Tackling the VAT fraud

The VAT administrative cooperation framework (Regulation 904/2010)

- EU countries each designate a central liaison office as a contact point for the other EU countries and the European Commission. The office must keep a list of designated officials and liaison departments that can share information with their counterparts in other EU countries.

- It sets out procedures allowing EU countries’ authorities to work together and share information on value added tax (VAT) and to combat VAT fraud. It thus ensures that:
  - VAT is assessed and applied correctly;
  - VAT fraud is detected and prevented;
  - VAT revenue is protected.

- Certain information is shared automatically when:
  - information from the EU country of origin is essential for the control system of the EU country of destination where taxation will take place;
  - there is reason to believe that there has been or will be a breach of VAT legislation in the EU country of destination;
  - there is a risk of tax loss in the EU country of destination.

- EU countries may also share information spontaneously and may request feedback from the countries with which it is shared.

- It sets out procedures allowing EU countries’ authorities to work together and share information on value added tax (VAT) and to combat VAT fraud. It thus ensures that:
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Tackling the VAT fraud

The VAT administrative cooperation framework – The 2018 amendments

Regulation 2018/1541

Until 2018, the tax audits were not targeted and were carried out by the national tax authorities.

General rule - art. 28 (2) & (2a)

Special rule - art. 7 (4a)

The audits are targeted; the Regulation sets out the rules for the applicable law.
Tackling the VAT fraud

The VAT administrative cooperation framework – The 2018 amendments

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authorities may, with a view to collecting and exchanging the information referred to in Article 1, take part in the administrative enquiries carried out in the territory of the requested Member State.

Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities and shall be conducted under the direction and according to the legislation of the requested Member State. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons.

Where it is permitted under the legislation of the requested Member State the officials of the requesting Member States shall exercise the same inspection powers as those conferred on officials of the requested Member State.

The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the requested authority, the participating authorities may draft a common enquiry report.
Tackling the VAT fraud

The VAT administrative cooperation framework – The 2018 amendments

Article 7 (4a)

Where the competent authorities of at least two Member States consider that an administrative enquiry into the amounts referred to in the second subparagraph of paragraph 4 of this Article is required and submit a common reasoned request containing indications or evidence of risks of VAT evasion or fraud, the requested authority shall not refuse to undertake that enquiry ... Where the requested Member State already possesses the information requested, it shall provide this information to the requesting Member States. Where the requesting Member States are not satisfied with the information received, they shall inform the requested Member State to proceed further with the administrative enquiry.

If the requested Member State so requires, officials authorised by the requesting authorities shall take part in the administrative enquiry. Such administrative enquiry shall be carried out jointly and shall be conducted under the direction and according to the legislation of the requested Member State. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested Member State for its officials, be able to interview taxable persons. The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.
Where the requested Member State has not required officials from the requesting Member States, the officials from any of the requesting Member States shall be able to be present during the administrative enquiry exercising the powers provided for in Article 28(2), in so far as conditions under the national law of the requested Member State are met. In any case, the officials from those requesting Member States shall be able to be present for consultation.

Where officials from the requesting Member States have to participate or have to be present, the administrative enquiry shall be carried out only when such participation or presence for the purposes of the administrative enquiry is ensured.
Tackling the VAT fraud

The VAT administrative cooperation framework – CJEU jurisprudence

Exchange of information is possible even without prior application

VAT is imposed on the State of Destination, but the effectiveness of the audit controls depends mostly on information required to be retrieved by the State of Origin.

There is a clear risk of loss of revenue.

A Member State believes that there is a possibility for VAT law violation in the other Member State.
Tackling the VAT fraud

Regulation 904/2010 on administrative cooperation on VAT matters – key questions

- Does the Regulation award rights to taxpayers?
- Can taxpayers ask for the cooperation between tax authorities?
- Can taxpayers object in the administrative cooperation?
- Are taxpayers informed for the administrative cooperation?
- Can taxpayers be informed on the way information was exchanged?
- Can taxpayers object to the use of certain information?
Tackling the VAT fraud

Contemporary approaches

- The introduction of a split payment mechanism could help to combat non-compliance, with the ultimate aim of improving VAT collection.
- On a practical level, a split payment mechanism would change the regular VAT collection regime by introducing on payments for taxable supplies a split between the VAT amount and the taxable base (e.g. by two separate payments for every taxable transaction).
- The split payment model is a model in which the purchaser pays the VAT to a blocked VAT bank account which can only be used by the supplier for paying VAT to his suppliers’ blocked VAT bank account. Thus in an early stage of the VAT collection process, the VAT collected is physically transferred to a blocked VAT bank account with the tax authorities’ bank. This model allows the tax authorities to monitor and block funds on the VAT bank accounts and prevent taxable persons from disappearing with VAT funds paid to them.
Tackling the VAT fraud

Contemporary approaches

- This model can only work if e-invoicing is made obligatory for B2B transactions and if the data contained in e-invoices is actively collected by the tax authorities. The main cost component of this model is the investment by taxable persons to change from paper invoicing to e-invoicing. Additional operational costs will include the cost of the data transfers to the central VAT monitoring database and the cost of maintaining and mining large volumes of data by the tax authorities.
In this model, the VAT-liable business' accounting system generates a standard audit file for tax and the data in that file needs to be stored in a data warehouse that can be accessed by the tax authority. This model has already (partially) been implemented in some Member States. The use, format and data elements have been defined in OECD Guidance. Experience in these Member States shows that the investment is limited, as most suppliers of accounting software adapt their applications to comply with the requirement of generating a standard audit file for tax purposes. Implementing data warehouses by each taxable person would, however, require a large-scale investment.
Tackling the VAT fraud

Contemporary approaches

• Under this model, the taxable person needs to comply with the requirements for certification and set up an internal control system. The model requires limited investment for taxable persons whose VAT accounting systems have been approved and authorised by the tax authorities and/or that already comply with other legislation that poses similar requirements, such as Sarbanes-Oxley.

• The benefit of the model is additional assurance that taxable persons use compliant systems and that the risk level diminishes. This could offer opportunities to target audit efforts on segments of taxable persons that pose a higher risk. The benefit in terms of reduction of the VAT Gap is lower than in the other models.
Tackling the VAT fraud

Joint liability for the payment of taxes

Joint and several liability

Factory

100 + 24 VAT (24%) = 124

Wholesaler

Seller and purchaser may be held liable jointly for the remittance of VAT to the Tax Authority
Joint liability for the payment of taxes

• Member States are permitted to enact measures under which a person is to be jointly and severally liable to pay a sum in respect of VAT payable by another person.
• Member States must respect the general principles legal certainty and proportionality.
• Whilst it is legitimate for the measures adopted by the Member States to seek to preserve the rights of the public exchequer as effectively as possible, such measures must not go further than is necessary for that purpose.

• C-384/04 Federation of Technological Industries
• C-499/10 Vlaamse Oliemaatschappij
Latest VAT developments
Tackling the VAT fraud

What’s coming next?

**EU Generalised Reverse Charge VAT Mechanism**

- To help combat the stubborn challenge of ‘missing trader’ or carousel fraud, the EU provided member states with the option to introduce a generalised reverse-charge mechanism (GRCM) on a temporary basis under strict rules. It is part of the EU Action Plan for VAT and other reforms.
- The GRCM measure eliminates the cash payment of VAT on all domestic B2B transactions above €17,500, and thus removes the opportunity for non-payment of the due VAT to the authorities. It follows the same treatment and reporting as the existing domestic reverse charge mechanism member states may apply, with EU Commission approval, on a defined range of fraud-sensitive sectors (Article 199a of Directive 2006/112/EC).
What’s coming next?

Harmonised e-publications VAT rates
• The EU Council agreed to allow member states to apply reduced or zero VAT rates to electronic publication income.
• Previously, member states had to levy their standard, VAT rates on e-books and online news journals.
Simplifications of e-services EU VAT compliance

- Part of the EU c-commerce VAT reform package agreed in 2017 are simplifications for small businesses selling electronic, telecoms and broadcast services (‘e-services’) to consumers in other EU states.
  - €10,000 per annum threshold below which an EU established supplier of e-services may charge and report VAT on sales to EU consumers under the rules of the supplier’s state.
  - single piece of consumer residence evidence threshold requirement for suppliers of pan-EU e-services below €100,000 sales per annum.
Tackling the VAT fraud

What’s coming next?

2020 tax authorities anti-VAT fraud cooperation

- EU member states agreed in 2018 to strengthen administrative cooperation to help tackle VAT fraud. Most of the provisions came into place on 1 January 2020.
- Of particular focus is ‘missing trader’ and ‘carousel fraud’ where cross-border sales are purchased and resold, mis-stating them as zero-rated for VAT whilst the tax is actually collected and illegally withheld;
- The key measures agreed by the member states are the following:
  - Exchanging information between tax authorities without prior request;
  - Joint VAT audits by member states;
  - Procedures to refund VAT to taxable persons not established in the Member State of refund;
  - Strengthening Eurofisc – a network of national tax officials – with a joint risk analysis capacity and the possibility to coordinate enquiries and cooperate with OLAF (European Anti-Fraud Office) and Europol in the disclosure of serious VAT fraud cases, and with the EPPO (the European Public Prosecutor’s Office);
  - Tackling fraud involving the dual VAT regime applicable to cars by improving access to vehicle registration data; and
  - Access for customs authorities to information in the registry of VAT identification numbers and the recapitulative statements (to avoid diversion of goods into the black market).
Tackling the VAT fraud

What’s coming next?

EU VAT four quick fixes

Call-off stock
Harmonising and reducing the obligation to VAT register on stock holdings held with a customer in another EU member state.

Chain transactions
Clarifying the pan-EU VAT rules on supply chain transactions and VAT zero-rating to provide businesses with certainty on their obligations.

Valid Customer VAT number
Obliging suppliers to obtain a customers’ VAT number, and list it on the sales invoices, as a new substantive condition for zero-rated intra-community supplies.

Proof of cross-border transportation
Harmonising the proof of transport document rules for zero-rating intra-community supplies.
Marketplace deemed supplier EU VAT reforms

• From 1 July 2021, online marketplaces which ‘facilitate’ the cross-border sales of third-party sellers will become the ‘deemed supplier’ on certain imports and cross-border sales to consumers. This will oblige the marketplace to first purchase the goods from the seller, typically on a zero-rated cross border basis, and then make the sale to the consumer. This second step will oblige the marketplace to charge and report VAT under its own name – it will become the deemed supplier for VAT purposes.

• The marketplace deemed supplier changes will reduce some of the opportunities for fraudulent non-EU and EU sellers to avoid declaring VAT on their sales. The aim is to reduce VAT fraud on cross-border e-commerce transactions which the EU Commission estimate cost member states over €5 billion in 2019, rising to €7 billion by 2021.

• The liability of the marketplaces to any underdeclared or missing VAT has still to be clarified. If the seller provides inaccurate information to the marketplace then the marketplace cannot be held liable. However, if it can be shown that the marketplace did or could have reasonably known that the data was incorrect, then they may be held responsible for any excess undeclared VAT.

• This potentially deploys the ‘Kittel principle’
Ending €22 import VAT exemption; new IOSS return

• From 1 July 2021, EU states will withdraw the low-value consignment stock relief. This provides an import VAT exemption for goods at or below €22 originating from outside the EU being sold to EU consumers. This generally exemption typically applies to online purchases by EU shoppers buying goods from the US, China or elsewhere outside of the EU. The threshold is being withdrawn to provide a level playing field for EU online and traditional retailers who must charge VAT on all their sales to consumers.

• For sales at, or below €150, sellers will have to declare the VAT charged on imported packages in a new VAT declaration, the Import One-Stop-Shop (IOSS). Imported goods with a value above this will have to be reported through a regular VAT return if the seller wishes to declare and recover the import VAT which will be collected at customs as is the current process.
One-Stop-Shop (OSS) single EU VAT return

- From 1 July 2021, the EU member states have agreed to extend the existing Mini One-Stop-Shop (‘MOSS’) single EU VAT return for pan-EU B2C sales of e-services to online sales of all goods and services to consumers. The reform will hugely simplify the VAT compliance burden for hundreds of thousands of online sellers, building on the success of the MOSS reforms of 2015.

- The amendment will mean e-commerce merchants of goods, selling on a distance selling basis, will no longer have to VAT register in all the states of their consumers. Instead, they may opt to complete a single One-Stop-Shop (OSS) return, declaring all sales to consumers in other member states. This is filed with their domestic VAT office, with the VAT charged on each transaction calculated at the rate of the customers’ country of residence. OSS returns will be filed on a quarterly basis.
What’s coming next?

**VAT rate setting freedoms**

- EU member states have provisionally agreed to free-up the rules on setting reduced EU VAT rates on goods and services – currently, they are tightly controlled by the EU VAT Directive. It remains unclear if the planned 2022 implementation date will now go ahead since the measure is linked to the contentious introduction of the Definitive VAT System.

- In January 2018, the EU Commission proposed that states would take full control over their VAT rate setting:
  - Right to set reduced rates at any level for most goods and services;
  - A proviso that their weighted rate for all taxable supplies remained at or above 12%; and
  - A ‘negative list’ would restrict reduced rates on certain, sensitive goods, such as firearms and alcohol.

- Member states have agreed that the rate-setting reforms should be introduced alongside the proposed Definitive VAT System in 2022. However, since this complex overhaul of the EU VAT regime is now likely to be postponed further, member states have indicated that they may prioritise the rates reform, and untie it from the switch to the destination-based VAT system.
Key take-outs
Key take-outs

MEASURES TO COMBAT VAT FRAUD
Variety around the world – the ones focusing on VAT compliance are the preferred options

THE NEXT DAY OF VAT
Radical changes are coming in the near future

TECHNOLOGY
Digitalization of taxes is expected to mitigate VAT fraud

EXCHANGE OF INFORMATION
Focus on tax-payer rights

THE NEXT DAY OF VAT
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