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***VAT trends***

*July/August 2009*

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## BELGIUM

### Special rules for event, trade show and merchandising<sup>1</sup>

New rules have been implemented by decision n° E.T. 116547. They foresee a derogation to the rules laid down in circular AFER n° 4/2003, point 85.

The revised rules apply to the following taxable persons:

- Organisers, of events, trade shows and exhibitions, where these are not established in Belgium
- Participants, at events, trade shows and exhibitions, where these are not established in Belgium
- Intermediaries, specialised in merchandising and that participate in events, and who are not established in Belgium

Under the old rules<sup>2</sup>, the above taxable persons were exempted from VAT the obligation to register for VAT in Belgium where they only occasionally carried out taxable supplies in relation to events in Belgium. Point 85, b) of circular AFER n°4/2003 has been now changed.

Therefore, taxable person carrying taxable transactions in Belgium will have to register for VAT, even where there are only occasional event-type services. Businesses must inform the Belgian Authorities (Bureau Central de TVA) of the commencement of their activities, and regular VAT registration must be sought, subject to the domestic rules.

However, taxable businesses falling within the above specifications will not be required<sup>3</sup> to file monthly or quarterly VAT returns. Instead, they will be asked to submit a "specific VAT return for events,

<sup>1</sup> Decision E.T 116547

<sup>2</sup> Point 85, b), circular AFER n°4/2003

<sup>3</sup> As laid down by article 53§1,2° of the VAT code

trade shows and merchandising". This is a special form, which cannot be submitted electronically.

The VAT return must be filed annually, when the annual net turnover is less than EUR100,000, and not later than 31 January of the following year. The return must be filed bi-annually where the turnover is above this threshold.

Please note that this rule came into force with effect from 1 July 2009, and that taxable businesses who obtained a specific authorisation not to VAT register under the old rules, but that have events that will be held after 01 July, will be contacted by the Belgian Authorities in order to comply with the new rules and will be asked to seek a VAT registration in Belgium.



## BURUNDI

### Introduction of VAT

With effect from 1 July 2009 VAT has been introduced in Burundi. The new VAT system replaces the previous GST system, which operated a sales tax rate of 17%. The new standard rate of VAT is 18%.

The main features of this new VAT system are as follows:

- Taxable transaction: Any delivery of goods or services for consideration by taxable persons
- Taxable person: Any person (private individual or company) who is carrying out taxable transactions, and whose turnover reaches a threshold set by the Ministry of Finance
- Rates: the main rate is 18%
- Exports: Subject 0%
- Exemptions: there is a list of exempted goods and activities that is similar to the list provided by The EU Principal VAT Directive 2006/112/EC (Articles 131 and 135)
- Deductions: the deduction is operated via an offset mechanism
- VAT refunds are possible for tax credits



## BURUNDI

### Introduction of VAT (cont.)

Any taxable person who is not established in Burundi needs to have a fiscal representative in order to be able to carry out taxable transactions in Burundi and charge VAT.

Please contact your local Meridian sales representative if you wish to have more information on this new VAT system.



## CROATIA

### Standard VAT increase

With effective from 1 August 2009, Croatia increased the standard VAT rate by 1%, bringing the new rate from 22% to 23%. This measure has been taken in order to boost revenues and help the economy.

Furthermore, a reduced rate of 6% applies to mobile phone revenues.

### Measures for registrations of non-established traders

Croatia will introduce the possibility for non-established traders to register for VAT purposes in Croatia.

Meridian will keep you updated in relation to the details. If you require assistance with this, or wish to register in Croatia, please contact us via the usual channels.



## CZECH REPUBLIC

### Monthly and electronic submission of EC sales list

With effect from 1 January 2010, as a general rule EC Sales lists have to be submitted in electronic form on a monthly basis. This rule applies to both goods and services lists.

These changes are part of the implementation of the 2010 VAT Package. Quarterly taxpayers will also be obliged to submit the EC Sales lists on a monthly basis.

However, taxpayers that provide only services for which the new EC sales lists for services have to be submitted, the period remains unchanged, and will depend on their VAT return period (monthly/quarterly). EC sales lists for services have to be filed where a business provides services across borders to other EU taxable persons for which the recipient is liable to account for VAT under the reverse charge rules.

The EC sales lists will have to be submitted in electronic format, and must be signed with an advanced electronic signature based on a qualified certificate.



## DENMARK

### Amendments to the VAT act

The Danish Parliament has recently accepted a legislative proposal, which will significantly change the VAT treatment of supplies exempt from VAT.

Under the current VAT rules, services consisting of the management of immovable property, the supply of new buildings (a building is regarded as new until five years after completion), and building land are exempt from VAT.

With effect from 1 January 2011, the VAT exemption will be abolished, and the supply of the above items will be subject to VAT at the standard rate of 25%.

Moreover, from 1 January 2011 services of travel agents, which are currently exempt from VAT without credit, will become taxable under the tour operators margin scheme.

If your business may be affected by the above, please do not hesitate to contact Meridian if you require assistance with the new rules.



## DENMARK

### Deferral of VAT payments extended to December 2009

Due to the continuing financial crisis, the Danish government has recently passed a proposal extending the deferral of VAT payments.

The new deferral rule applies to both the due date of the payment and the filing date of the VAT returns for periods from August 2009 to December 2009.

As a consequence, businesses paying VAT on a monthly or quarterly basis are allowed to defer their VAT payment by 30 days (e.g. companies paying VAT monthly for August 2009, which is due by 25 September, are allowed to postpone payment to 13 October 2009).

For small businesses paying VAT every half-year, the payment for the second half of 2009 are deferred by six months.



## ESTONIA

### Increase in standard VAT rate

The standard VAT rate in Estonia has changed from 18% to 20% with effect from 1 July 2009.

The new VAT rate must be used for taxable events dated on or after 1 July 2009. If payment has been made for goods and services on or after 1 July, or goods or services are supplied on or after 1 July 2009, the new VAT rate applies.

Deposit invoices that are issued before 1 July 2009, but the actual payments are received on or after 1 July, will also be subject to the new VAT rate.

The reduced VAT rate of 9% applicable to books, medical products, hotel accommodation and periodic publications remains unchanged.

### Submission of VAT returns in electronic format

Prior to 1 January 2009 it was up to taxable persons to decide if they want to submit their Estonian VAT return form (KMD) in paper form or electronically.

Following a regulation of the Estonian Ministry of Finance of 9 December 2008, which amends the instructions for completion of VAT returns, the KMD must be submitted in electronic format if a person has been liable for VAT for at least 12 months.

This applies only to the KMD forms filed on or after 1 January 2009.

This means that from 2009 the form KMD may be submitted in paper format only if a person has been liable for VAT for a shorter period than 12 months. After 12 months the form KMD must be submitted in electronic format.



## FRANCE

### Implementation of the reduced rate for restaurant and catering services

The reduced rate of 5,5% for restaurant and catering services applies since 01 July 2009. On 30 June 2009, the French Administration published a six page instruction (Bulletin des Impôts N° 65, 3 C-4-09) that comments on and gives the guidelines for the implementation of the reduced rate, which does not apply to alcoholic beverages. These remain taxed at the standard rate of 19,6%.

The general directorate for competition policy, consumer affairs and fraud control (DGCCRF) has made an assessment and observations that three weeks after the implementation of the reduced rate, only half of the restaurants have decreased their prices. The management of the implementation of the VAT savings to consumers will be further controlled and verified, even though there cannot be any sanctions from the government against service providers who decide not to decrease their prices.



## FRANCE

### **Implementation of the reduced rate for restaurant and catering services (cont.)**

However, it is expected that consumers will act as arbitrators by choosing to consume in the premises of service providers that have kept their promises of decreasing their prices.

### **Reverse charge of VAT: Penalty of 5% of deductible VAT for omission of declaration of reverse charge on local returns.**

If a taxpayer has omitted to declare an amount of VAT for which he had to apply the reverse charge on his local French VAT return, the administration cannot impose additional tax assessments if all the conditions to deduct the VAT are met. However, it can apply a penalty of 5% of the amount of the deductible VAT, which was omitted as per article 1788 A 4 of the French Tax Code.

The French Authorities want to achieve a measured application of the Law and therefore they will not apply this penalty to taxpayers who voluntarily lodge an amended VAT return previous to the Administration taking any action (for example a VAT audit).

*Rescrit* N° 2009/9 (RC) dated 17 February 2009, which has been further updated in June 2009, details the conditions under which a tax payer can avoid the application of the penalty by voluntarily lodging an amended VAT return.

All French taxpayers and non-established businesses registered for VAT purposes should therefore ensure that the receipt of reverse charged supplies of goods and services is correctly accounted for in their VAT returns.

### **Specific regime for travel agents, position of tour operators, licences and agreements of travel agents**

The French Administration was asked whether for VAT purposes the specific regime for travel agencies is solely applicable to travel agents who own a license or a specific agreement.

The French administration held that per section E of article 266 of the French Tax Code, companies that act in their own name towards a client, and use services rendered by third parties in order to provide the travel services do fall under the regime of travel agents. The nature and the conditions of the realisation of the operation apply, regardless of owning a specific administrative authorisation, such as a license or an agreement.

Therefore, any business engaged in the provision of travel services, may be required to apply the tour operators margin scheme.

This decision by the French Authorities follows the principles applied by the ECJ in case of *Madgett & Baldwin* (C 308/96 and C 94/97 dated 28 October 1998).



## GERMANY

### **Status of declarant for import purposes**

This information is relevant to non-EU businesses importing goods into Germany as both the importer of record and as the declaring party.

In accordance with an internal regulation introduced by the German customs authorities, the declarant of goods entering into free circulation into Germany and originating from outside the territory of the Community has to be a company established in Germany, or in another EU Member State. This regulation takes immediate effect.

In order to successfully clear goods through German customs, it is no longer possible for the importer of records (if it is a non EU company) to also be the declaring party.

These changes have no impact on the importer of records, who is the only party involved and has the right to recover the import VAT incurred (subject to normal rules).



## GERMANY

### Status of declarant for import purposes (cont.)

If your company is a non-EU based company importing goods into Germany and until now was also the declaring party, please contact your Client service manager for more details regarding how to proceed in the import procedure in the future.

### Monthly submission of EC sales list

The German VAT Act will be subject to several amendments, which will be valid with effect from 1 January 2010. One of the most important changes will be that European Sales lists will have to be submitted on a monthly basis.

The new requirement will apply, however, only for businesses making supplies that exceed € 50,000 per quarter.

It remains unclear at this point, what will be the date when the monthly submission will have to be submitted.



## HUNGARY

### Hotel and holiday accommodation subject to the reduced rate of 18%

With effect from 8 July 2009, hotel and holiday accommodation are both liable to the reduced rate of 18% Hungarian VAT.

Before the amendments to the Hungarian VAT law, hotel and holiday accommodation were subject to the standard VAT rate.



## LITHUANIA

### New VAT rate in Lithuania

With effect from 1 September 2009 the standard VAT in Lithuania increased from 19% to 21%.

The higher rate does not apply to cigarettes and manufactured tobacco, provided that these products are marked with excise duty stickers, which were ordered until 1 September 2009. If this condition is not met, tobacco products should be subject to the new 21% VAT rate.

Additionally, according to the latest changes in the Lithuanian VAT Law, the reduced VAT rate of 9% will apply to the supply of heat and hot water. The application of the reduced VAT rate is a temporary measure and will be in force from 1 September 2009 to 31 August 2010. It remains to be seen what will happen to this rate after this expiry date.



## SLOVAKIA

### Increase of VAT registration threshold

With effect from 1 July 2009, the turnover threshold from which a Slovak established business must register for VAT was increased from EUR 35,000 to EUR 49,790.

Slovak taxable persons, who exceeded threshold of EUR 35,000 by 30 June 2009, but did not exceed EUR 49,790, are not obliged to file an application for VAT registration. However, they are still allowed to apply for a voluntary registration.

### Proof of export – Electronic single administrative document

As of 1 July 2009, the Slovak customs authorities introduced an electronic system for customs procedures in relation to the exportation of goods. Since this date, the single administrative document (SAD) for the export of goods is issued in electronic format only.

For VAT purposes, in order to avail of the exemption from VAT in relation to the export of goods to third countries, a valid SAD has to be retained by the exporter. The SAD provides evidence from Slovak Customs that the goods left the territory of the European Union. The Slovak Tax Directorate informed that SADs in electronic format stored on data carrier must be accepted as proof of export.



## SWITZERLAND

### Potential increase of VAT rates

The Swiss Federal Council is seeking opportunities to improve the financial situation of the Swiss social security system. One of the options is to temporarily increase the VAT rates. However, an obligatory referendum is required, which will be held in September 2009 in order to approve the increase of the VAT rates.

If the VAT increase passes through the referendum, all three VAT rates will change with effect from 01.01.2010 and will be valid for seven years until 31.12.2016. The VAT rates are to be increased 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%.

Unfortunately, there will be a very short time frame to implement the amended VAT rates into the companies IT systems, invoicing templates, contracts etc.

Meridian is ready to support you in the implementation process and therefore please contact your client service manager or your contact at Meridian should you need any assistance in this matter.

### New VAT law applies from 1 January 2010

The Swiss Tax Authority, "the ESTV", published guidelines to all Swiss taxpayers in relation to the new Swiss VAT Law ("nMWSTG"). The law is dated 12 June 2009. The new legislation replaces the old MWST dated 2 September 2009, and comes into effect from 1 January 2010.

The main aim of the revised legislation was to simplify the VAT system and to make it more business friendly in order to decrease the administrative costs for businesses.

The following is a summary of the most important changes, which may have an impact on taxpayer's VAT compliance obligations, and may require changes to the accounting systems and the way VAT is applied.

#### 1. VAT Registration Threshold (Art. 10,11 and 12 nMWSTG)

The old VAT registration thresholds of CHF75,000 and CHF250,000 have been replaced by a single turnover threshold of CHF 100,000. Any business that has not achieved this limit is exempt from VAT. The threshold of CHF 150,000 continues to apply to sport clubs and non-for-profit organisations.

Every taxable person has the right to register for VAT purposes voluntarily, even where no sales have yet been made.

Businesses can inform the ESTV in writing by 31 January 2010 if they wish to deregister from Swiss VAT in case their turnover in 2009 is below the CHF 100,000 threshold.

#### 2. Deduction of VAT (Art. 28 nMWSTG)

The new legislation follows the principle that any VAT incurred in the course and furtherance of taxable activities should be deductible. **Therefore, a deduction of 50% of the VAT incurred on subsistence (meals, drinks) is no longer required. 100% can be claimed from 1 January 2010.**

#### 3. Self supplies

Self supplies will be accounted for by adjusting the VAT reclaimed on the purchase of such goods or services. Therefore, there is no output VAT to be declared going forward.

#### 4. Changed rules in relation to the place of supply of services to align these with EC Law

Swiss VAT legislation will align the rules in relation to the Business-to-Business supplies of services with the new Place of Supply rules for services in the EU, which means that the basic place of supply rule will be the place where the customer has established his business.

Should you require further assistance with the new legislation, please contact Meridian.



## SWITZERLAND

### **New status of bonded warehouses**

With the introduction of the new customs law and the changed VAT law on 1 May 2007 the status of bonded warehouses changed as of 1 May 2009 after the expiration of the transitional period.

This means that bonded warehouses are now considered as Swiss territory from a VAT point of view. Bonded warehouses thus have the same status as open customs warehouses. The changes resulting from this are as follows:

- Services provided in a bonded warehouse are now considered as services provided in Switzerland and may cause a registration liability, even if these services are VAT exempt
- The simplified import procedure no longer applies when the goods are transferred into free circulation in Switzerland.
- Services, which are not ancillary to transport services and are considered as provided in the bonded warehouse, have to be taxed at the standard rate.

All other regulations regarded bonded warehouses remain unchanged.



## THE NETHERLANDS

### **Exempt services - Fund management/ administration services**

According to a recent decision in the Netherlands, the following services should be exempt from VAT:

- Management of immovable property
- Management of liquid assets
- Administrative services provided to investment funds

If your business is engaged in the provision of fund and other management services to which an exemption without the right to deduct the VAT may apply, it is important that

professional guidance is sought to ensure that the correct VAT treatment applies.

### **Reclaim opportunity for tours operators/ travel agencies**

A recent judgement of the Dutch Supreme Court now allows VAT refunds to Tour Operators/Travel Agencies.

Tour operators only have to pay VAT on their margin, and in the Netherlands this was never implemented into local legislation.

Instead, this ruling was covered by a formal decree under the Dutch 'tour operator scheme' and the decision from the Dutch Supreme Court held this an inappropriate way of implementing the EU VAT Directive.

Therefore, tour operators not established in the Netherlands can now choose to ignore this Dutch 'tour operator scheme', effectively enabling the regular rules from the Dutch VAT Act to be applied.

Tour operators not established in the Netherlands will now be entitled to deduct all Dutch input VAT incurred in the furtherance of their business. This would include items such as transport or hotel costs. VAT on food and drinks cannot be deducted.



## TURKEY

### **Increase in VAT rate on certain restaurant services**

With effect from 15 July 2009, 18% of Turkish VAT is applicable to the restaurant services provided by first-class restaurants, restaurants in hotels, as well as holiday villages with three or more stars.

Previously, such services were liable to the lower rate of 8% Turkish VAT.

If you wish to learn more about VAT recovery in Turkey, please contact Meridian.



## UNITED KINGDOM

### **New data field for exports**

A new regulation is due to come into force on 1 January 2010, which requires Member States to report the currency of a commercial invoice for trade with non-EU countries.

For UK exporters, this means that the data element of box 22 on the SAD will become mandatory. However, to reduce the burden on such businesses, this change will only be required above a statistical threshold (likely to be set at £100,000) and there will be no requirement for the actual invoice value or to change the currency that the statistical value is declared (box 46). The Tariff will be amended with the full completion rules in due course.

### **New guidelines for temporary imports**

HMRC have made a number of updates to Notices 306 and 308 relating to temporary importations.

For further information regarding this, please follow this link: [Revised public Notice 306 and 308 - Temporary admission](#)

### **The VAT Package – Guidelines on EC sales List and information on accounting for the receipt of reverse charged services**

The UK VAT authorities (“HMRC”) have issued further guidance in respect of the time of supply rules for reverse charge services and filing information for EC Sales lists. These rules will apply from 1 January 2010.

#### *Receipt of reverse charged supplies – time of supply rules*

The time of supply for reverse charge services will be when a service is performed. For continuous supplies, the tax point will be the end of each periodic billing or payment period. If a payment is made before the end of the period to which it relates, or before the end of the billing period, then that the payment date, rather than the end of the period, will be treated as the tax point.

#### *EC sales lists for services*

The new reduced time limits for submitting EC Sales lists are 14 days from the end of the reporting period for paper forms, and 21 days for electronic submissions.

It is important to note that EC Sales lists for goods will be required on a monthly basis, if the value of intra-EC goods exceeds £70,000 in the current quarter, or any of the previous four quarters. The threshold will change to £35,000 from 1 January 2012.

Where a business supplies services to another EU business, and the recipient is liable to account for the VAT under the reverse charge rules, the transaction is to be reported in a new EC sales list for services.

EC Sales lists for services will be required on a strict calendar quarter basis, however, businesses can opt to submit them monthly. Businesses submitting VAT returns on a quarterly basis other than calendar quarter should note that the use of non-standard accounting periods will be withdrawn.

If your business is required to revise its VAT compliance regime to implement the new rules, please contact Meridian for further assistance in relation to the *The VAT Package*.

### **UK publishes guidelines on change to the standard rate of VAT to 17.5%**

All businesses should be aware that on 1 January 2010 the standard rate of VAT will revert back to 17.5% and will no longer be charged at 15%. In order to assist businesses in managing this change, HMRC have issued guidance for businesses. The guidance has a particular focus on the time of supply rules, as well as the special rules for supplies that span the change of rate.

By way of example, where goods or services are supplied before 1 January 2010, but the tax point occurs after 1 January 2010 (i.e. an invoice is raised within 14 days following the basic time of supply), businesses can choose to apply the 15% rate as opposed to 17.5%.



## UNITED KINGDOM

### **UK publishes guidelines on change to the standard rate of VAT to 17.5% (cont.)**

This would be of particular benefit to customers that are unable to recover their input tax in full.

Alternatively, where the goods or services are supplied after 1 January 2010, but payment has been made, or an invoice has been issued before that date, businesses can choose to charge 17.5% as opposed to 15%. This would be of particular benefit to businesses that are able to recover their input tax in full.

There are also certain apportionment rules that can be applied to continuous supplies of services that span the change in rate.

In light of this change, businesses will need to consider amending their current invoicing and accounting systems to take into account the increase in VAT rate.

If your business requires assistance in relation to this, please contact your usual Meridian advisor.

### **Zero rating of carbon credits to prevent fraud**

New legislation to zero-rate the supply of emission allowances and transferable units within the UK was introduced with effect from 31 July 2009.

The purpose of the new measures is to tackle Missing Trader Intra-community VAT fraud, which arises where standard-rated goods or services can be zero-rated when supplied between EU Member States. Fraudsters would sell carbon credits within the UK and charge the UK VAT. They would then disappear without passing the VAT to HMRC.

The tax point for this kind of supply will be the earliest of either the transfer of title or payment. Any amount purporting to be VAT on tax invoices dated from 31 July 2009 will not be recoverable as input tax.

As the legislation was updated at short notice, HMRC will bear this in mind when considering what action to take in any case where the VAT has been charged and it should not have been.

However, to prevent fraud, businesses are advised to stop paying VAT from the date the new legislation came into effect.



## EUROPEAN UNION

### Goods imported for onward IC-supplies – Relief from Import VAT

On 25 June 2009, the EU Council published a new Directive modifying the rules applied to goods imported in the EU and immediately transferred to another EU member state. The new rules amend articles 22, 140 and 143 of Directive 2006/112/EC.

In order to exempt goods that are imported and immediately transported or dispatched to another Member State from import VAT, the importer will have to meet the following conditions and provide to the relevant customs authorities:

- a) His VAT identification number in the Member State of importation, or the VAT identification number of his tax representative in this same Member State.
- b) The VAT identification number of the customer to whom the goods are subsequently supplied in accordance with the article 138(1), issued in another Member State, or his own VAT identification number issued in the Member State where the transport of the goods ends.
- c) Proof that the goods imported are intended to be despatched outside of the Member State of importation to another member state

Even if the Council left some freedom to the Member State in relation to the application of the last condition (point c) these new rules should lead to a reinforcement of the conditions for the application of the exemption when the goods imported are directly moved to another Member State.

### Council Directive 2009/47/EC - Reduced VAT rates

Council Directive 2009/47/EC of 5 May 2009 amending the EU Principal VAT Directive 2006/112/EC concerning reduced rates of VAT was published in the Official Journal on 9 May 2009. The Directive came into force on 1 June 2009.

Under Article 106, all Members States were allowed to apply until 31 December 2010 the reduced rates to labour-intensive services listed in Annex IV of the Directive, which are the following:

- Minor repairing of: bicycles, shoes and leather goods, clothing and household linen.
- Renovation and repairing of private dwellings, excluding materials, which account for a significant part of the value of the service supplied.
- Window cleaning and cleaning in private households.
- Domestic care services such as home help and care of the young, elderly, sick or disabled.
- Hairdressing.

The Council of the European Union has decided to make these provisions permanent by transferring them into Annex III of the VAT Directive. Therefore, the reduced rates may still be applied going forward.

Furthermore, the Directive has included two additional supplies to Annex III, to which the Member State may apply the reduced rates:

1. Supply, including on loan by libraries, of books and other publications on all physical means of support such as books on electronic support.
2. Restaurant and catering services, it being necessary to exclude the supply of (alcoholic and/or non-alcoholic) beverages.

Lastly, the Directive also authorises the following individual Member States to apply the following reduced rates and exemptions:

- Cyprus may continue to apply the reduced rate to the supply of liquid petroleum gas in cylinders.
- Portugal may continue to apply the reduced rate to the toll on bridges in the Lisbon area.
- Portugal may continue to apply rates lower than those applying on the mainland of Azores and Madeira.
- Malta may apply an exemption with respect to the supply of foodstuffs for human consumption and pharmaceuticals.



## IRELAND

### ECJ Ruling - Treatment of public bodies

Commission v Ireland: C-554/07

The ECJ has ruled in against Ireland in a case concerning the VAT treatment of public bodies. The judges ruled on the Irish application of Articles 2, 9 and 13 of Directive 2006/112/EC.

The case, which has been broadened from the initial question, related to non-taxation of off-street car parking supplied by local government bodies. The ECJ was asked to investigate a possible distortion of competition, given the absence within Irish national legislation for provisions taxing all activities of such local bodies to avoid distortion of competition.

The judgement found that Ireland has failed to correctly apply the Directive, given Ireland has merely treated such activities as taxable provided it has made specific provision within national legislation.

Click [link](#) to read full text of the judgment on the Europa website.



## ITALY

### Deductibility of VAT for non-resident companies that have a fixed establishment in Italy – Ruling in ECJ case no. C-244/08

#### Summary

The ECJ ruled that Italy has failed to properly implement the Eighth or Thirteenth Directives, as well as the EU Principal VAT Directive, in regards to non-resident companies that have a fixed establishment in Italy. Input VAT should be deductible for non resident businesses, which are VAT registered and have a fixed establishment in Italy, even when the purchase of goods or services were made directly for the purpose of the business of the main establishment abroad.

#### The case

The European commission, on reviewing art 38-ter of the Italian VAT Act (DPR 633/72) regarding the refund of VAT to non-residents entities, held that the article was not compatible with the principles of the EU VAT legislation.

Consequently, infringement proceedings were taken against Italy for obliging non-resident companies to recover input tax incurred through the Eighth and Thirteenth Directive procedures, even when those companies had a VAT registration in Italy in respect of other unrelated supplies for which periodical VAT returns were submitted.

The Italian authorities justified their position by stating that the purchase was made directly from the business establishment abroad and not from the Italian fixed establishment. However, the ECJ found this interpretation to be incorrect. In accordance with Art. 17 of the Sixth Directive, a fixed establishment must be taken into account when determining how the refund of VAT should be made. The Court stated that the purchases made from the main business establishment and the purchases made from the fixed establishment in Italy are for the purpose of the same legal entity as they relate to the same taxable person; the two entities have the same Italian business number. For this reason, a non-resident taxable person that has a fixed establishment in an EU country, must be considered as established in that country and he can therefore deduct input VAT through the local VAT return of that country, even when the goods or services are purchased not through the fixed establishment in Italy, but directly from the place in which that entity has its principal establishment.

#### Conclusion

Any business with a fixed establishment in Italy will be affected by this ruling. No retrospective action will be required. However, going forward, Italian VAT incurred by the foreign headquarter should be reclaimed through the fixed establishment's domestic VAT return. This may require internal processes to be changed in order to ensure that cash-flow is increased through the recovery of input VAT through the domestic VAT



## ITALY

### Deductibility of VAT for non-resident companies that have a fixed establishment in Italy – Ruling in ECJ case no. C-244/08 (cont.)

returns. This is especially important to those headquarters established outside of the EU where reciprocity restrictions apply in Italy.

If your business requires assistance with Italian VAT compliance, please contact Meridian, where your team of designated Italian VAT specialists can assist you.

### EGN BV – Filiale Italiana - ECJ Case no. C-377/08: Deductibility and refunds of input VAT for “out of country” telecommunication supplies

#### Summary

The European Court of Justice (“ECJ”) has declared that Art. 17(3)(a) of Directive 77/388/CEE has to be interpreted in a way that the supplier of telecommunication services established in Italy, as the one described in the case C-377/08, has the right to deduct or reclaim input VAT in Italy for telecommunication services supplied to a taxable person established in another EU Member State, if the supplier would have the right to deduct VAT on such supplies had these been made in Italy under domestic VAT legislation.

#### The case

The Italian Supreme Court (Corte Suprema di Cassazione) asked for a preliminary ruling on the question how to interpret Art. 9(2)(e) of Directive 77/388/EC in relation to the deduction of VAT incurred in relation to such supplies, where the place of supply is effectively outside of Italy.

The opinion of the EU judges is that the right to deduct VAT must be granted for both the activities “materially carry out” outside Italy, and also for the ones that, based on the place of supply rule criteria, are “considered to be carried out” outside of Italy.

In case no C-377/08, an Italian subsidiary of a Dutch company supplied telecommunications services to another Irish partner.

The services were originally bought from Italian suppliers, and for that reason the Italian affiliated company paid input VAT on these services.

Because the services were rendered to an Irish entity, these services were considered to be “outside of the scope of Italian VAT” for the lack of the territoriality element (in accordance with art 7, paragraph 4, letter (e) of the Italian VAT Act (DPR 633/72).

The Italian entity was therefore in a constant VAT repayment position and applied for refund of this VAT, which was rejected based on the position that there were not the legal grounds that would allow the taxpayer to execute his right to deduct the VAT.

However the local Tribunal Court (Commissione Tributaria Provinciale) agreed with the claimant on the grounds of article 19, paragraph 3, letter b, of the DPR633/72, which grants the refund of VAT for these activities carried out in another country, which would be eligible for refund of VAT if they had arisen in Italy.

The Italian appeals court subsequently overturned this ruling, stating that the expression “*activities carried out in another country*” refers only to the activity “materially carry out abroad” and not to the ones that are **only extraterritorial for conventional reasons, or for a choice of the legislator.**

On grounds of interpretation issues, the Higher Court of Appeal referred to the case to the ECJ.

#### The ruling

The ECJ ruled that the claimant has the right to deduct this VAT in relation to telecommunication services provided to an undertaking that has its principal place of establishment in another Member State as the right to deduct would have arisen had the place of supply been in Italy.



## POLAND

### **Poland referred to ECJ for incorrect application of VAT rules on certain international passenger transport services**

The Commission has recently referred Poland to the European Court of Justice for the misapplication of the VAT rules regarding international passenger transport services.

In June 2008 the Commission issued to the Polish government a reasoned opinion concerning this matter. Due to the fact that Poland has not addressed this issue and has not amended its national legislation, the Commission has decided to refer the case to ECJ.

Pursuant to Council Directive 2006/112/EC, the place of supply of transport services (other than intra-Community transport of goods) shall be the place where the transport takes place, proportionately to the distances covered. In principle, the VAT due in terms of the distance covered in each Member State should be declared in the relevant Member State's local VAT return.

Poland has implemented into its national VAT legislation, without prior consultations with the EU Commission, special provisions regarding levying VAT on the cross-border passenger transport services occasionally rendered by operators of coaches registered abroad. These are as follows:

- VAT due is collected at the Polish border;
- 7% of VAT is levied from the tax base equal to PLN 285 per each passenger;
- the transport company has no right to recover any Polish input VAT incurred.

Meridian will inform its readers on any progress made in the above ECJ case.



## SPAIN

### **Ruling V2404-08 from Spanish VAT authority regarding gift cards**

In this judgment, the Spanish Authority has ruled concerning the treatment of Gift Cards sold by the supplier and which can be used to buy a range of products in different supplier's shops.

The Spanish Authority has deemed that consideration for gift cards are in actuality pre-payments of a lump sum for items that, in so far as they are not clearly identified, and which could be bought in different supplier's shops, are not subject to VAT. This is because at the time of sale of the gift card, there is no direct link to a supply.

However, when the customer uses the gift card to buy any goods at the supplier's shop, then the VAT becomes chargeable and it would be due over the total cost of the goods, although the means of payment are both cash and Gift card.

Therefore the Spanish Authority have applied the same approach as that of the EC Court in the case of BUPA Hospitals Ltd concerning the prepayments of lump sums for supplies not yet identified at the time of the payment.



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