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## **BUSINESSEUROPE CALLS FOR ACTION TO CHANGE THE TAXABLE EVENT FOR CROSS-BORDER B2B SERVICES**

### **Introduction**

On 1 January, the VAT package 2010 entered into force. From this date the new rules for cross-border B2B services have to be applied. The advantage of the new rules for cross-border B2B services is that a supplier has to charge VAT to foreign business customers less often. This implies also that a business receives fewer invoices with foreign VAT. However, the new listing requirement increases the administrative burden and the new rules regarding the taxable event for these services imply huge compliance issues. BUSINESSEUROPE fears that in certain Member States businesses will face more audits, assessments and (interest) penalties even where no tax is at risk.

### **The taxable event from 2010 onwards**

Under the new legislation the taxable event (i.e. the moment that the supply of the service needs to be reported for VAT, article 63 of the Directive 2006/112) for cross-border B2B services occurs at the moment when the service is supplied. This implies that if, say, an entrepreneur established in the Netherlands supplies a service in January to a business customer in Greece, the Dutch entrepreneur as well as the Greek business customer have to report this transaction in their VAT returns for the month of January. The purpose of the change of the taxable event is to facilitate cross-checks on intra-Community supplies of services. The idea is thus that sellers and buyers should report the sales and acquisitions in the same period. However, in practice this will be almost impossible to comply with.

The root cause of this issue is that the issuance of the VAT invoice by the supplier as well as the handling of the VAT invoice by the business customer takes time. A supplier normally issues an invoice if it is commercially wise to do so. Issues like acceptance by the customer, whether it is worthwhile to invoice (the amount maybe too small and, in a later month more work is expected) may delay the invoicing. Furthermore, sometimes it is impossible to determine the invoice amount for the transaction to the exact amount due to the fact that an invoice amount will in the end include several different cost components from third parties for which the seller needs to await incoming invoices. Furthermore BUSINESSEUROPE wants to stress that the performance of a service for VAT purposes is not information that is found in existing accounting systems (ERP).



The VAT reporting is based on VAT codes that will be used for a transaction at the moment of invoicing. This implies that the VAT invoice for the service supplied in the last week of January is probably invoiced somewhere in the first two weeks of the following month February and will be booked by the supplier in the February VAT period, so already one month late. In order for businesses to comply with article 63 of the Directive, a separate manual reporting system must be created besides an existing accounting system. This will, of course, imply incalculable costs for businesses.

If it will be hard for a supplier to report the supply of the service it will be impossible for the business customer of the service to know the exact date and for what amount a service is acquired. A business customer of a service will be expected to utilise information that is not available to him until the receipt of an invoice. At the moment when the business customer receives the invoice, the division of responsibilities means that several departments will have to handle the invoice before it is finally accepted and booked. Firstly there will be a check as to whether the agreed service has been delivered against the agreed price, and then other departments are required to handle the payment and booking. It may be that the invoice in the above-mentioned example is handled/booked by the business customer in the last week of February. However, at that moment, in the majority of the Member States of the EU, the VAT return for January has already been filed. From a practical operational compliance perspective, it is impossible to book these kinds of invoices in the correct VAT period. Again the performance of a service for VAT purposes is not information that is found in existing accounting systems (ERP), manual adjustments are necessary to book this invoice in the January VAT period.

Officially the supplier and customer need to correct their VAT return or file a second VAT return for the same month of January. In practice, in most Member States supplier and customers will report the invoice in the month they receive the invoice, but from a strict legal point of view this is too late.

Besides that, the term “supplied” used to describe the taxable event is rather vague in the context of services. If “supplied” refers to the completion of the service, an in-depth-analysis of the 28 civil laws applicable in the EU will have to be done to come up with an autonomous European term for “completion” of a service. The usual civil law concept for completion of a service seems to be the mutual acceptance of supplier and receiver of a service on the fulfilment of the supplier’s obligation. Unless expressly agreed otherwise, acceptance of the invoice by the customer will be deemed to constitute completion of the service. Taking that into account, the invoice seems – also from a civil law perspective – the most feasible link to the tax point of a service supply.

The example of the cross-border supply of a service shows that the new rules regarding the taxable event are almost impossible to comply with. For suppliers as well as customers it will be almost impossible to report all supplies and acquisitions in the same period. So the purpose of the reporting will not be met.



BUSINESSEUROPE fears that business will be confronted with lots of compliance issues that result in an increase of administrative burden and that business will face all kind of VAT assessments and (interest) penalties because of formalities, the late booking of invoices. These issues can be minimised if the invoice date is used, as is often the case until now.

### **System until end 2009**

Until the end of 2009, the taxable event for cross-border services with reverse charge in Member States like the Netherlands, Germany, Italy and France, was primarily the invoice date unless there have not been an invoice raised in the month following the completion of the service. In some other countries the taxable event for cross-border services with reverse charge already occurred at the moment of the supply. However some of these countries recognise that such a rule is very difficult to comply with. In practice these member States accepted that the invoice was reported in a later VAT return. In e.g., the Czech Republic a ruling was issued that taxable persons were allowed to book the reverse charge in a later month.

### **Compliance issues now widely recognised**

With the implementation of the VAT package, other Member States have also recognised the compliance issue related to the taxable event. In the UK HMRC issued a guidance paper regarding the VAT package which mentions that:

“as a general principle we will accept reliance on an invoice date or any other reasonable methodology provided it does not produce a manifestly inaccurate over result. Ultimately it is up to the individual businesses to identify the most appropriate methodology for their particular circumstances”.

In Sweden, the Committee to the Chamber of the Parliament has stated the following:

“Regarding the comments to the accounting rule that have been put forward during the preparation, the view of the Committee is that the new rules should not have to cause significant practical problems in cases where billing is done in close connection with the supply of the service. However, it is not possible that, contrary to the directive's rules impose legal rules as exclusively linking accounts for the period when the invoice is issued or payment is received. The Committee understands and assumes that the practical problems will be handled in the interaction between Tax administration and businesses. With the new procedures should the invoicing be the basis of accounting (tax and reporting point) when it is in close connection with the supply. The committee assumes that the government follow the question on experience of application in both the EU and national levels, and if necessary raise the issue of a revision of the VAT Directive in this part.”



The reaction in the UK and Sweden shows there is a real compliance issue under the VAT package.

The effect of article 63 to the administrative burden seems not to be covered by a relevant impact assessment. A VAT reporting according to article 63 is, in our view, not possible to apply either for businesses or tax administrations. The reporting must follow the invoices. The current proposal on the taxable event for cross border supplies of goods within the EU should be adjusted accordingly. Therefore BUSINESSEUROPE calls for action at Member-State and Commission level.

**BUSINESSEUROPE call for action:**

**Member States should accept businesses using the invoice date to report mark the taxable event rather than the moment of the actual supply. Member States should therefore not raise any VAT assessments and (interest) penalties because of the late booking of invoices.**

**The Commission should play an active role in persuading all Member States to deploy the soft touch approach, with no VAT assessments raised and no (interest) penalties charged because of the late booking of invoices.**

**The Commission should publish as soon as possible a proposal to adjust the VAT directive in such a way that the invoice date may be used as the trigger for the VAT reporting of cross-border supplies of B2B services. The current proposal on the taxable event for cross-border supplies of goods within the EU should be adjusted accordingly. The VAT invoice is a prime business document and normally used to evidence VAT accounting in country so it is logical to use that rather than the moment of supply, on which suppliers and customers may not agree.**