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## **BUSINESSEUROPE'S SURVEY ON THE IMPLEMENTATION OF THE 2010 VAT PACKAGE**

On January 1, 2010 the VAT package came into force, changing the rules for taxation of the cross border supply of services and the refund of foreign VAT.

BUSINESSEUROPE has carried out a survey on the implementation of the VAT package. The purpose of the survey is to verify whether the fundamentals of a well functioning VAT system within the internal market -i.e. uniform implementation, legal certainty, neutrality and proportionality-, had materialized. The results from the survey can be found in Annex 1.

The key findings are derived from the responses from 15 Member States. The survey shows that, further to the introduction of the 2010 VAT Package, substantial differences in implementation remains between Member States, and obstacles to a well functioning market may even have increased in some situations compared to the previous legislation.

Furthermore, it is impossible for companies to comply with certain elements of the Directive - for instance, with the moment when the tax has to be reported (the taxable event), which in the new provisions is linked to the moment of supply and not the date of invoice.

BUSINESSEUROPE therefore urges Member States and the European Commission to take immediate steps to revise the Directive in some respects.

### Taxable event for cross border services

During the implementation of the VAT Package, 27% of the 15 Member States have recognized that using the moment of supply as the taxable event (the moment when tax has to be reported), instead of using the invoice date, does not work from a practical and reporting perspective. These Member States accept that the supplies are reported at the time of the invoice date.

At the same time, in other Member States businesses are concerned about the threat of assessments and penalties for late reporting of VAT invoices if they use the date of invoice as the taxable event.

This situation is not acceptable for European businesses, given that rules are impossible to comply with. The directive therefore needs to be changed in this respective, recognizing the date of the invoice as the tax point in time.

### Adoption and implementation of the Directive into national law

The survey showed that 10 out of the 15 Member States adopted and implemented the Directive during the last two months of 2009, only two months before the VAT legislation entered into force.

### Adoption and implementation of secondary law

Almost 50% of the 15 Member States adopted and implemented secondary law after January 1, 2010.

### Information about new forms, returns

Approximately 85% of the 15 Member States informed the business community about new forms and returns only 4 months prior to the new rules entering into force.

### Explanation and implementation of the current rules

Practice has shown that there are no clear rules regarding the “intervening fixed establishment”. Furthermore, warehousing services are interpreted in different ways in different Member States - with some considering the service of warehousing as a service related to immovable property, whilst others consider that the main rule is applicable.

Also, the VAT treatment of bundled supplies is not clear. For instance, the repair of goods (e.g. trucks and cars) in combination with the supply of parts is handled in different ways in different MS. In some Member States, the repair in combination with the supply of parts is considered as a service transaction (resulting in cross border service without VAT) whilst in others the transaction is considered as a local supply of goods, with the result that companies incur foreign VAT.

### Refund of foreign VAT

The survey was conducted during the first months of 2010. However, recent information indicates that there are still significant issues with the VAT refund portals and the bilateral communication between these portals. The country by country set up - each country having a different portal and the communication between them takes place on a bilateral basis and not through a centralized mechanism-, has resulted in a non-harmonized and, until now, non-functioning system where claims of foreign VAT are lost and postponed. Some of the issues that have been reported can be found in Annex II.

### **Conclusions and next steps**

The late and non-harmonized implementation of the VAT Package means that businesses face significant difficulties when it comes to compliance and legal uncertainties. The fact that the VAT Committee is unable to come to an agreement regarding a Regulation, shows the inability of Member States to solve their differences.

Businesses have had very little time – and in some cases no time- to adjust their IT systems, which results in further legal uncertainty. This must be duly considered for future work.

The different treatment of warehousing services and bundled supplies across the European Union has a negative impact on neutrality and the functioning of the internal market. Businesses face a non-harmonized European Union in the VAT area.

The taxable event for cross border services, being the moment of the supply and not the date of invoice, also creates legal uncertainty for businesses because it is a concept that does not fit into business practice. Businesses cannot comply with legislation and thus fear assessments and penalties. The fact that the Council has recently adopted the invoicing directive, in which the taxable event for the cross border supply of goods is linked to the invoice date, shows that all Member States recognize that the taxable event for cross border services also needs to be changed.

The underlying idea that the VAT package would result in reduced administrative burden will not be met, due to the fact that too many supplies involve foreign VAT.

The refund of this foreign VAT has to be routed via the portals that are highly unstable and not working well, and therefore businesses face legal uncertainty. Furthermore, as summer holiday is approaching, deadlines are getting close and cash flow issues become bigger.

BUSINESSEUROPE is very concerned, and suggests the following actions:

#### Short term actions

- Immediate introduction of the (old) paper system for the refund of foreign VAT.
- Change in the Directive as soon as possible, and modification of the taxable event for services before the end of 2010. Similar as for the supply of goods, the invoice date should be the taxable event for the supply of services.
- The Commission should start as soon as possible with Fiscalis seminars on the invoicing directive, in order to avoid similar future problems as with the VAT Package during the implementation of the invoicing directive.
- For as long as businesses have to deal with a non-harmonized implementation, and/or a taxable event that is linked to the supply of the service and not the invoice date, Member States should apply a light-touch approach on penalties.

#### Longer term actions

- In the future, directives should have an “introduction date” (the date that the directive must be translated into national legislation) and an “implementation date” (the date that the directive is implemented and enters into force).

- The Commission must have a much more active and leadership role with the implementation of legislation and IT systems at Member State level.

Yours sincerely,



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## ANNEX 1. SUMMARY OF SURVEY ON IMPLEMENTATION OF 2010 VAT PACKAGE

### 1. Transposition of the EU Law into national Law - Timing

*Q: When was the EU Law transposed into the national law, date of adoption and publication of the national law?*

- Before November 2009: DE, GR, PT, UK
- In November / December 2009: BE, CZ, FI, FR, HU, NL, PL, ES, SE
- After January 2010: IT

*Q: Has any secondary legislation on the application of the new national law been produced? If yes, when was it published?*

- Before January 1, 2010: NL, PL, PT, SE, UK
- After January 1, 2010: BE, DK, FI, DE, GR, HU, IT, ES

### 2. VAT technical aspects - Change of Place of Supply Rules (B2B)

**Art. 43 / Art. 44: Definition - service recipient as taxable person / General rule B2B**

*Q: How should the supplier determine whether the supply should be treated as B2B or B2C? Does the existence of a VAT ID- number imply that the transaction has to be treated as B2B?*

- BE: On the basis of available financial and commercial information, VAT number, and other “normal” business controls, the supplier should determine whether the supply should be treated as B2B or B2C.
- CZ: On the basis of the VAT ID number.
- DK: B2B when a sale to a taxable person. When not having VAT-number the seller must have some documentation that proves that's a sale to a business.
- FI: On the basis of the VAT ID number
- FR: B2B VAT rules apply to purchases of services for business purposes. B2C VAT rules apply to purchases of services made by a private customer.
- DE: if the customer is a VAT person and uses the service provided for purposes of his business.
- GR: As provided in art.44,45 of 2008/8 / Yes
- HU: General rules: Art 37. 1) RC is applied in case of sale to a taxable person.
- IT: when the service is rendered to a taxable person established in the Italian territory. Companies are always deemed to purchase the service in the course of their business activity.
- NL: On the basis of the VAT ID number.

- PL: customer is Business if it performs an entrepreneurial activities, even if not registered for VAT purposes; in practice VAT ID no.
- PT: On the basis of the VAT ID number.
- ES: On the basis of the VAT ID number.
- SE: On the basis of the VAT ID number, supply is also treated as B2B when a sale to a taxable person i.e. NOT requiring VAT-number.
- UK: Supplier must obtain commercial evidence that customer belongs outside UK and does not receive supplies for wholly private purpose. VAT ID no. best evidence, but if not available alternative evidence such as certificates from fiscal authorities, business letterheads or other commercial documents indicating the nature of the customer's activities.

*Q: How far does the responsibility of the supplier and the customer go to ensure that the supply should be treated as B2B or B2C? What evidence do they need to keep?*

- BE: In case of doubt, the supplier should contact the customer. VAT ID-check and all other 'normal' business controls, a "good faith" principle applies.
- CZ: If absent other evidence might be used, such as certificate of incorporation or confirmation of competent tax authority.
- DK: "good faith" term, i.e. VAT ID-check or has to obtain other reasonable assurance.
- FI: As regards non-EU customers other measures (such as trade register extracts) are used.
- FR: In order to prove the *bona fide* of the company, it is highly recommended to have a copy of the VIES data-base justifying the validity of the customer VAT id. number, plus any other legal documents proving the real existence of the customer.
- DE: VAT ID-check. Confirmation of qualified VAT-ID check from German Federal Tax Authority (BZAST) in paper to be kept.
- GR: Verifiable registration / VATid.nr., in VIES.
- HU: VAT ID check.
- NL: VAT ID-check.
- PL: In case of doubts taxpayer's status may be verified using VIES or other official documents can be requested.
- PT: VAT ID check.
- SE: When not having VAT-number the seller must have some documentation that proves that's a sale to a business.
- UK: Evidence should be kept as part of records.

### 3. VAT technical aspects - Change of Place of Supply Rules (B2C)

#### **Art. 45: General Rule B2C**

*Q: Supply to a non-taxable person – What, if at all, does a supplier need to do to make sure / find out that he supplies to a non-taxable person? If the customer has no VAT ID-No, does that imply that is not a taxable person? See above aspects to Art. 43 (supply to a taxable person).*

- BE: On the basis of the available commercial and financial information. In case of doubt the supplier should contact the customer. The absence of a (known) VAT number is not enough to apply the B2C rules.
- CZ: Other evidences in case of absent VAT ID-No. are required.
- DK: If supply does not qualify as B2B, then B2C. Problems regarding associations, organizations, public bodies (public bodies registered for other persons are deemed to be taxable persons).
- FI: If the customer has no VAT ID-No, he is regarded as non-taxable customer in practice. However, he might be liable to obtain a VAT ID-No.
- FR: Supplier will have to make sure that the customer is a private customer, or a non-VAT-liable nor VAT-registered company, or in case it is a VAT liable and VAT registered company, it has to prove that such purchases of services have been made for private or for staff purposes.
- DE: If the supplier cannot prove an Article 44 service supply, the service will be deemed to be an Article 45 service, as according to the transposition into national law in DE, Article 45 (Article 3a para 1 German VAT code) is seen as the basic rule.
- GR: If can't be established it is B2B, then VAT will be charged.
- HU: If can't be established it is B2B, then VAT will be charged.
- IT: Lack of the VAT-id should not imply that the customer is not a taxable person.
- NL: EU-customers: if a VAT-ID No. is lacking.
- PL: If it cannot be proven that the transaction is B2B then it is considered as B2C.
- PT: VAT ID is mandatory for both supplier and customer.
- ES: If no VAT No. then no taxable person.
- SE: When not having a VAT-number, the seller must have some documentation that proves that's a sale to a business.
- UK: If it cannot be proven that the transaction is B2B that it is considered as B2C.

*Q: When is a supply made from the fixed or permanent establishment (PE), and when from the head office? Is it the contractual arrangement that counts, or is it where the service is actually performed from?*

- BE: Not explicitly addressed. An interpretation could be that the supply is made from a PE, when the PE actually performs the supply.
- CZ: Not specified. Generally a supply comes from HQ. To be considered a supply of FE this should be based on factual situation.



- DK: No special provisions. According to the VAT-guidance, the Fixed establishment has to have a sufficient degree of permanence and structure in terms of technical and human resources.
- FI: No special provisions. Technical and human resources required.
- FR: Supplies can be rendered from a fixed establishment if they have the capability to provide services or to use services provided. Such a capability of the fixed establishment must be analyzed case by case.
- GR: According to the facts (where the service is performed from).
- HU: If the EU customer has a HU site and the service is provided directly for its benefit, this will be considered as a local transaction charging HU VAT.
- IT: Contractual agreement should be explicit in order to clarify which are the parts involved in the transactions; secondarily, however, attention should be drawn to the actual situation.
- NL: Not clearly addressed in legislation, but contract would prevail.
- PL: If services are actually performed from the fixed establishment different from the Headquarters then this place counts.
- PT: VAT code always make the mention to " head office" , " P.E", or residence from whom the services are rendered.
- ES: Contractual arrangement.
- SE: The evaluation shall be based on current business relations and documentation (such as contract, invoice and payment terms. This evaluation should also take into account the actual economic and business conditions.
- UK: If, as either the supplier or the recipient of services, you have establishments in more than one country, each establishment have to be looked at separately. For each supply of services, you are regarded as belonging in the country where the establishment most directly connected with that particular supply is located.

#### 4. VAT technical aspects - Change of Place of Supply Rules (B2B and B2C)

##### **Art. 59a: Exceptions - Use and enjoyment**

*Q: How have the "Use and enjoyment rules" been implemented into the new Law? Have the old rules been broadened?*

- BE: Not (yet) implemented.
- CZ: Applies to all Art. 44 B2B services when the recipient of the service is VAT registered in the Czech Rep. Further it applies to hiring of means of transport (B2B and B2C) and as required by Art. 59b to B2C tel.com. and broadcast services. The rule has been broadened in respect of its scope, i.e. now it covers all Art. 44 services.
- DK: The old rules have not been broadened. It is noted in the comments to the new legislation that there are no significant changes.
- FI: Only as regards short term hiring of means of transport. The old rules have not been broadened.



- FR: Same provisions as these coming from art. 59a of the EU VAT Directive dated 2008/8/EC.
- DE: No. However, according to a circular of the MoF, German tax authorities will not complain if certain services (e.g. transport of goods) which are physically rendered in non-EU-countries, are not subjected to German reverse charge.
- HU: Only as regards short term hiring of means of transport. The old rules have not been broadened.
- IT: The use & enjoyment rule has been adopted with reference to: i) Short term lease of means of transport; ii) Long term lease of means of transport rendered to non taxable persons; and, iii) Telecommunications services and radio and television broadcasting services, rendered to non taxable persons.
- NL: Implemented. No broadening of the existing rules.
- PL: Not implemented.
- PT: If the acquirer of the services is a tax payer or private customer outside EU, the services will be not taxed in Portugal.
- ES: Yes.
- SE: Before 2010 limited used now implemented. Remains to be seen how it is applied in practice.
- UK: Use and enjoyment only applies to letting on hire of goods or means of transport, telecoms, radio and television broadcasting services and B2B electronically supplied services. The old rules have not been broadened.

#### **Art. 192a: Force of attraction**

*Q: How has the "... not intervene in that supply..." concept been implemented?*

- BE: The PE is supposed not to intervene in the supply when the technical or human means of the Permanent Establishment (PE) have neither directly or indirectly been used in any way. The fact that a PE delivers purely administrative support (e.g. issuing of invoices if they don't mention name, address or VAT number of the PE) does not mean that it has intervened in the supply.
- CZ: It has simply been copied into the law.
- DK: No direct implementation. The commentary to the new legislation simply states, that implementation is left to "practice".
- FI: Permanent establishment is not considered to intervene in the supply if it only takes care of invoicing, bookkeeping, debt collection etc.
- FR: This concept supposes the permanent establishment or the headoffice are only able to use the services provided without being able to provide services themselves. When the means of the structure only allow to provide administrative tasks, it should not be qualified as being "attractive" and thus unable to intervene in the supply of services.
- DE: "...If the supply was not made by the permanent establishment" (Sec. 13b para. 4 German VAT Code).
- GR: A ministerial decision is expected to define the details.

- HU: If the EU customer (with a valid EU VAT reg. number) has a HU site and the service is provided directly for its benefit, this will be considered as a local transaction charging HU VAT.
- IT: There has not been a direct implementation; in practise the applicability of the reverse charge mechanism states that it does not apply to the transactions rendered from or to non resident persons when those transactions are rendered or received through PE in the Italian territory.
- NL: If the PE gives technical or personal assistance, then the PE intervenes in the supply. If the only task of the PE is to issue invoices, then there is no intervention.
- PL: PE is not considered as a taxpayer if it did not take part in transactions. There are no further details available.
- ES: No PE of the supplier intervenes in the supply of goods or services.
- SE: "Not intervene in the supply" means that the Swedish PE is not in any way, with their technical or human resources, participating in the performance of the supply made by foreign p/e. The extent of the use of its technical and/or human resources relating to that supply is irrelevant.
- UK: The UK position is that the establishment making the supply is the one most closely connected to it. Therefore, minimal involvement in making the supply will not be viewed as 'intervening'.

## 5. Transposition of the EU Law into national Law - VAT compliance

### **Art. 66 Tax point for cross-border services**

*Q: When is the tax point, when the service is performed or when the invoice is issued?*

- Service is completed: BE, FI, FR, NL, PT, ES, UK, CZ, DK, DE, GR, PL, SE.
- Invoice is issued: IT

*Q: Is it mandatory to report these cross border services at the moment the service is performed? If so, does this create reporting issues?*

- YES: BE, CZ, FI, HU, NL, PT, ES, FR, DE, GR, IT, PL
- NO: SE, UK, DK

*Q: Has your government introduced any kind of regulation that allows you (to a certain extent) to follow the invoice date of the invoice?*

- YES: SE, UK, DK
- NO: BE, FI, DE, NL, PT, Es, CZ, FR, GR, HU, IT, PL

*Q: Do you fear assessments and or penalties in case of wrong reporting?*

- YES: BE, CZ, FR, DE, GR, HU, IT, ES, UK

- NO: DK, FI, NL, PL, SE

## 6. Extension of Statistical Reporting Requirements (EC Sales and VAT Returns)

### **Art. 262: Filing of EC Sales Lists for certain type of services (Art. 44) EU B 2 EU B**

*Q: Quarterly or monthly? What is the filing deadline?*

- Monthly: BE, CZ, FI, FR, GR, IT, NL, PL, ES, SE
- Quarterly: DK, DE, UK
- PT depends

*Q: How is the reporting of exempt services handled? Based on the supplier's or customer's country rules?*

- BE: Supplier has to ask customer, who must notify if the supply is exempt. Based on customer's country rules.
- CZ: Exempt services not reported.
- DK: Based on customer's country rules.
- FI: Customer's country rules.
- FR: Exempt services not reported, based on customer's country rules.
- DE: Based on customer's country rules.
- GR: Reported on VAT return only, based on customer's country rules.
- IT: Customer's country rules.
- NL: Based on customer's country rules.
- PL: Exempt services not reported.
- PT: No reporting is needed.
- ES: Customer's country rules.
- SE: Only supplies taxable in the state of the customer should be reported.
- UK: Reporting of exempt services is based on customer's country rules.

### **Art. 264: Content of EC Sales Lists for services - EU B 2 EU B - changes on VAT return boxes**

*Q: When have the new EC Sales List forms and new VAT return forms been published?*

- Before January 2010: BE, CZ, DK, DE, GR, IT, NL, PL, PT
- After January 2010: FR, HU, ES

*Q: Are there any new boxes in the EC Sales Lists or the new VAT returns?*

- YES: BE, FI, FR, DE, GR, HU, NL, PL, PT, ES, SE
- NO: CZ, IT, UK

## 7. International VAT Refund Systems

### **Art. 7 - Art. 31 Procedure**

*Q: Art. 7: How is the new procedure working? Any experience, both outbound and inbound? How long did the process take?*

- BE: No info.
- CZ: Electronic procedure working OK, some potential problems but no experience yet.
- DK: Electronic procedure working OK.
- FI: Electronic procedure working OK.
- FR: No experience yet.
- DE: Electronic procedure working OK, but it is too detailed (3-4 minutes per invoice).
- GR: No experience yet.
- HU: Electronic procedure working OK, no experience yet.
- IT: No experience yet.
- NL: There are still problems.
- PL: No experience yet.
- PT: No experience yet.
- ES: No experience yet.
- SE: Portal working OK, but problems due to lack of “save” function
- UK: No experience yet.

*Q: Art: 10 What kind of documents have been electronically requested? Was an electronic submission possible?*

- BE: No info.
- CZ: No experience yet, kind of documents are those requested on the directive.
- DK: No request of documents.
- FI: Electronic submission only.
- FR: form + the sales invoices report + copies of purchases invoices with foreign VAT above a certain threshold.
- DE: Electronic copies of invoices must be provided for purchases with a taxable base above 1,000 € (250 € for fuel); so far no experience as regarding whether the electronic submission was possible.
- GR: Scanned copies / Yes
- HU: Electronic submission only.
- IT: Not yet published. Only the general information that the request should contain are currently available.
- NL: No request for documents.
- PL: Electronic application filled-in including invoices details. Invoices do not need to be attached. Attachment of invoices in respect to refunds are expected from some countries.
- PT: No request of documents.
- ES: Scanned invoices.

- SE: no information available at the moment.
- UK: No information available yet.

## 8. Transposition of the EU Law into national Law - VAT compliance

*Q: Are there any specific issues experienced in business practice which you would like to report for your country?*

- FR: Still a lot of questions:
  - mix of transaction (services and goods)
  - goods and services split into the systems
  - time of taxation: self assessment in case of partial recovery for non billed services: guidelines are required
  - capture prepayments/milestones billing
  - update the systems for tax codes needs and any additional fields
  - VAT number recognition such as Spanish ID numbers
  - long checks process with VIES
  - different qualification of services from one country to another
- DE: Transposition of Article 43/44 Directive 2006/112/EC into national law not fully in line with the wording of the directive.
- GR: EU listing for purchase of goods and services (monthly).
- IT: Provision of art. 194 of the Directive, relating to the possibility of a general application of the reverse charge mechanism. In the course of the adoption of the VAT pack rules, Italy has opted for the application of the generalised reverse charge; therefore, the mechanism will be applicable not only to B2B under the provisions of art. 196, but also to in the following cases:
  - supply of goods relevant in the Italian territory, made by a non resident taxable person to a taxable person established in Italy;
  - supply of services rendered from a non-resident taxable person to a taxable person established in Italy, that are relevant in the Italian territory in compliance with a place of supply rule other than the general one.
- SE: The implementation into national legislation was done too late, however, tax authorities worked well when issuing forms and a large number of guidelines. Practical problems regarding the refund portal.

## 9. Other Remarks

### **Country Specific**

- NORDIC COUNTRIES - When looking into the details of the local implementation in different Nordic countries, many differences have emerged. Basically, no general Nordic answers could be given. A message to the European legislator could be that for future legislation they should limit the possibilities for countries to make their own choices when implementing new rules. Ideally, all new rules should be implemented in the same manner in all countries.

- Italy - local legislation was late and Clarifications from tax authorities are expected regarding: 1) the identification of taxable person; 2) definition and correct treatment of continuous supplies of services; 3) which document/declaration on VAT treatment (exempt or not) has to be required to EU customer in order to evaluate whether to include or not the service in Intrastat.
- Spain - The legislation has not been approved yet, and therefore, the current treatment is uncertain. Especially the changes related to the permanent establishment are not clear.
- Greece - The legislation has not been implemented yet, and therefore, the current treatment is uncertain. Companies are afraid to stop charging local Greek VAT even though the directive should have direct effect.

### **General**

- Unclear how storage/warehousing services should be treated – i.e., whether it falls under the exception for immovable property or not.
- Unclear how invoices on which delivery of services and delivery of products should be treated. For instance, if transport costs are charged together with a domestic purchase of a product, should the transport service have the same VAT treatment as the delivery of the product (so charge local VAT), or should no VAT be charged on the service if the supplier is established in another country?
- Doubts remain regarding the Reverse charge mechanism of services in countries that implemented rules on use and enjoyment (like Romania and Czech Republic). Does the reverse charge mechanism apply if the supplier is VAT-registered (not established) in the member state where the service is considered to be enjoyed? Does it matter if the recipient of the service is only VAT-registered in that country (and not established)?
- For most of the countries there is a considerable administrative burden due to the obligation to report invoices based on service delivery date.
- The new VAT Package rules are experienced as complicated by local employees. Therefore resources are needed to educate employees in The new rules.
- Lack of consistency e.g tax points, use and enjoyment rules, between country implementations make it difficult to implement across one common ERP (SAP) system.

## ANNEX II – ISSUES WITH THE REFUND PORTALS

### Different treatment of VAT groups

- In some Member States, all claims must be submitted under the “representative” company of the VAT group. In other Member States, claims must be submitted at legal entity level.

### Agents

- In certain Member States (Austria, Bulgaria, Czech Republic, Hungary, Italy, Sweden, Romania and Spain) the local Tax Authorities are stipulating that companies must have a registered address in the country in order to receive their Activation code to use the portal, therefore obliging companies who do not have a registered address to use a local agent.
- In some Member States it is not possible to register as a foreign agent because the law does not allow that (yet).

### Claiming Prior years

- In The Netherlands, it has always been possible to submit claims for 5 years prior to the claiming period. With the new portal system, non Dutch portals do not allow that claims prior to 2009 can be entered. Therefore, this imposes a limitation on the possibility to claim Dutch VAT.
- In Belgium, until 2010 it was possible to submit claims for 3 years prior to the claiming period. However, as the claims for 2007 and 2008 cannot be entered, the Belgian Tax Authorities have communicated that they will accept paper claims for these years.

### No Save Function

- In Ireland, Belgium and France (might be more Member States) there is no saving function on the portal. As a result, if there is a claim with for instance, 1000 lines (i.e., 1000 invoices), the claim must be completed in one go, or otherwise the data will be lost.

### Limitation of lines per claim

- In Austria the portal only accepts 40 lines per claim, therefore limiting each claim to 40 invoices.
- In France the limit is 100 lines per claim (however as of the 1<sup>st</sup> of July this will be amended).
- This limit on the number of invoices that can be claimed imposes an unfair limit on the refund of foreign VAT.

### Compatibility

- At the moment there is no standardization between the portals. Some Member States allow uploading information in either JPEG, PDF, XML or other similar file type formats. However, unless the Member State of refund accepts the corresponding file type, it is uncertain whether the claim will be rejected or not, if the file types are not compatible.



### Scans – thresholds

- Some Member States are requesting scanned invoices in for claims in which the taxable base is above €1000. However, in some other Member States, this €1000 threshold refers to the amount of VAT and not the taxable base, and in some other Member States, no scanned invoices are requested at all. So different Member States use different thresholds.
- Besides, the file size of the scanned invoice is limited to a maximum of 5Mb. As a result, sometimes not all invoices can be filed and claimed.
- Not clear whether WinZip files are accepted.

### Portals

- Some portals undergo maintenance very often make, some sites are unavailable for longer periods of time.
- Very few portals allow for automatic uploading of data.
- Few portals have an auto fill-in function of data on certain fields, so this implies that the same data has to be re-entered one time after the other for every invoice.
- Many requests for a refund are still “pending” between the Member State of establishment and the Member State of refund. The tax administrations will most probably reprocess these requests, i.e. will send the requests to the Member State of refund again. The risk is that the Member State of refund is going to receive the same request twice. There is an example that the French Tax Authority asked a client to re-introduce a claim but Belgian Tax Authorities imposed a fine because of “double claiming”

### Notifications statements

- The system of notifications that the application has been received by the Member State of establishment and Member State refund, does not work properly. Furthermore, for business it is not clear what the status of the claim is if notifications are not received, which creates legal uncertainty.

### Information

- Information on EC website is not sufficient. Sub codes can be found on the website but still no summary about rules for deductions and if invoices must be attached, etc.
- It is not clear to the claimant whether its application has been received, or what is the status of the claim when no notification is issued by the Member State of refund

### Language

- Many countries require that applications must be completed in local language.
- Portals are in local language
- The use of the local language in the refund portals does not facilitate the refund procedures

### Country specifics

- A client in Sweden has received a request from the Italian Tax Authorities to send all documentation in Italian, by paper (not electronically), and within one month.
- Monaco - Clients from Monaco are not considered as French on the French portal, but they are considered as French in the Member State of refund.

- Sweden - The e-certificate which an applicant must have in order to use the electronic portal is linked today to the personal e-identification of a specific private person. This causes problems both for the Swedish users when employees do not want to use their private e-identity, and furthermore, impedes foreign agents from using it. An alternative solution is being developed and was scheduled for completion on 22 June. The solution involves an e-certificate on a company level to be used for foreign agents but not for Swedish companies.
- Sweden - Only one code per invoice can be selected in the Swedish portal. An invoice may contain different types of costs. In the Swedish portal the largest amount of VAT will determine which code to use. A solution with multiple codes on a single invoice is being developed. The use of sub codes is applied differently across Member States. It is the responsibility of the applicant to find out if a Member State of refund requires sub codes or not. The portal itself does not control this.
- Sweden – When comparing the number of applications for 2009 with the number of applications over previous years, it can be seen that the Swedish Tax authorities have only received 60 to 70% less applications for 2009. This shows that it is a hurdle to claim foreign VAT through the portals.