



FSI tax alert Belgium

Guidance on Skandia judgment: tax authorities impose VAT on head office – branch supplies as of 1 July 2015

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On 9 April 2015, the Belgian VAT authorities released their guidance on how the outcome of the Skandia judgment of last year (Skandia America Corp. (USA), C-7/13) will affect the Belgian VAT rules (Decision ET. 127.577 dated 3 April 2015). In the court case, the Court of Justice of the European Union ("CJEU") ruled that supplies of services from an overseas head office to a branch, which is part of a VAT group in a Member State, should be subject to VAT. Going forward, the Belgian VAT authorities will thus require the application of VAT on such transactions. This requirement must be implemented by 1 July 2015 at the latest.

Analysis of the Skandia judgment by the Tax Authorities

Based on the former 'FCE Bank'-case of the CJEU, transactions between the head office and an establishment of the same company fall outside the scope of VAT. However, in the Skandia case, the CJEU ruled that this principle does not apply if the establishment is part of a VAT group with other legal entities established in an EU Member State. Any supplies of services made by the overseas head office to this branch are considered to be made to the VAT group as a whole and are hence subject to VAT. As a result, the VAT group is required to account for VAT on these supplies under the reverse charge rule.

The Belgian VAT authorities have now aligned their position with these principles. Cross border transactions for consideration between establishments of the same legal entity will be subject to VAT if one or both establishments are, in their country of residence, part of a VAT group including other legal entities. The VAT authorities expect businesses to apply these rules by 1 July 2015 at the latest.

The current provision in the Belgian VAT Code taxing services rendered from a foreign establishment to a Belgian establishment that is part of a VAT group is no longer relevant and will be abolished. Until now, this provision had only been applied in cases of abusive 'channelling' of

services. Further changes to the VAT legislation do not seem to be planned. No changes are required to the VAT treatment of cross border transfers of goods within one legal entity, as these are already assimilated to taxable supplies in all cases.

Belgium is one of the first countries to issue formal guidance on the consequences of the Skandia judgment. The UK has also already published advice regarding the application of this case law in the national VAT legislation. The position taken in this advice differs from that of Belgium and allows branches that are part of UK VAT groups to receive services from their overseas head office without VAT. This difference is primarily due to the varying definitions of “VAT groups” across the EU countries as a result of the minimal regulation of EU VAT legislation in this respect.

In order to achieve a common approach and interpretation among Member States, the topic has been placed on the agenda of the VAT Committee. The early publication by the Belgian VAT authorities of their extensive interpretation of the case, without awaiting further consultation between the Member States, is regrettable.

Practical consequences for businesses having multiple establishments

Businesses established in Belgium with establishments abroad and having implemented VAT grouping arrangements will have to carefully review all service flows within their legal entity, both from an inbound and an outbound perspective.

For example, if a Belgian establishment, member of a Belgian VAT group, receives services from an overseas establishment (EU or non-EU), these services are subject to VAT payable by the VAT group through the reverse charge rule. The Belgian VAT authorities specify that this applies even if the services are not recharged to other members of the VAT group.

The taxpayer will need to determine whether these services are taxed or exempt as well as define the taxable basis. Moreover, an invoice will have to be issued or drafted internally and all the transactions will have to be reported in the VAT return of the VAT group. The same obligations apply if the foreign establishment rendering the services is part of a VAT group in another Member State, even if no Belgian VAT group has been set up.

Where a Belgian establishment, part of a Belgian VAT group, is itself rendering services to an establishment abroad, the Belgian VAT authorities also consider that this is a taxable service which, under the general B2B rule, should be taxed in the country of the receiving establishment. Also here, the Belgian establishment may be obliged to issue an invoice mentioning ‘reverse charge’ and report the transaction in its VAT return and European Sales Listing, even if the receiving country may not (yet) consider this as a taxable transaction.

The taxable nature of transactions within one legal entity means that these transactions also influence the VAT deductibility (prorata calculation) for mixed taxpayers. In this respect, the VAT authorities already highlight that, given the separation between the establishments in view of the VAT group, VAT related to costs made by a head office for the benefit of establishments abroad will be non-deductible unless these costs are recharged to those establishments.

With these guidelines, the Belgian VAT authorities have adopted a position which will have a significant impact on the administrative burden of companies operating through a branch structure (e.g. VAT reporting obligations, adapting invoice references, etc.). In addition, the VAT charged to a VAT group by a foreign establishment will be a cost in so far as the VAT group does not have the (full) right to deduct this VAT. This additional VAT cost will be especially relevant for the financial sector.

Given the deadline of 1 July 2015, institutions working through branches will have to urgently assess the financial and organisational impact of these rules within their business. As the settlement of transactions within a single legal entity is often effected at year end closing, the financial impact may cover transactions during the full year, unless action is taken in this respect. The VAT burden that arises as a consequence of this may lead to companies having to review the efficiency of their structure.

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