



VAT alert Belgium

Belgian VAT Code adapted to reflect Skandia ruling

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In light of the [2014 Skandia case in the Court of Justice of the European Union \(CJEU\)](#), the Belgian government introduced a [draft law](#) in Parliament to adapt the Belgian VAT Code. In the Skandia case, the 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. In the past, such supplies remained untaxed as the head office and branch are part of the same legal person. The government now abolishes a specific anti-abuse rule that aimed to tax recharges from a foreign establishment into a Belgian VAT group. This legislative change confirms that the taxation of such internal recharges has become the general rule.

Principles developed by the Skandia ruling

Transactions between the head office and an establishment of the same company in principle fall outside the scope of VAT.

Last year, the CJEU ruled that this principle does not apply if the branch office is part of a VAT group with other legal entities established in an EU Member State. The CJEU considered that the VAT group's membership means that the branch is part of a person separate from the head office. Consequently, 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, acting as a separate person, 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 (see the [VAT Alert of 18 September 2014](#)).

Specific anti abuse rule abolished

The Belgian VAT authorities already aligned their position with these principles through a decision published earlier this year (see the [VAT Alert of 10 April 2015](#)). Cross border transactions between establishments of the same legal entity will be subject to VAT, if one or both establishments are part of a VAT group including other legal entities. The VAT authorities expected businesses to apply these rules by 1 July 2015 at the latest.

The Belgian VAT Code currently contains a provision that considers services from a foreign establishment to a Belgian member of a VAT group as subject to VAT. This specific anti abuse rule aimed to counter the fact that in some instances, services from abroad were 'channeled' via the Belgian establishment to the other members of a VAT group, entirely 'VAT-free'. The service fees charged from the foreign establishment to the Belgian branch would not be subject to VAT because it is a charge between two establishments of the same person. The subsequent recharge by the Belgian branch to the other VAT group members would also not be subject to VAT due to the VAT group regulation's impact.

As the taxation of transactions between establishments of the same legal entity is considered by the CJEU as a general principle, in case a VAT group is involved, the specific anti abuse rule is obsolete and will hence be abolished.

In the comments accompanying the draft bill, it is clarified that the new rule applies to both inbound and outbound transactions. Furthermore, the change does not take into account conflicting positions taken by other Member States, potentially giving rise to 'mismatches' with other countries' reporting systems.

This confirms the Belgian government's willingness to apply the Skandia principles as promoted by the European Commission, well ahead of most other Member States and before a final consensus is reached at EU level.

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