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VAT alert
Belgium

Fighting VAT fraud: Commission proposal on generalised domestic reverse charge mechanism

On 21 December 2016, the European Commission proposed a temporary and optional generalised domestic reverse charge mechanism. The proposal is part of the Commission's fight against VAT fraud, for which it set out measures in its VAT action plan of 7 April 2016. Pending the definitive VAT regime's implementation, this amendment to the VAT directive would allow Member States particularly affected by VAT fraud to take temporary measures whereby VAT on domestic B2B supplies of goods and/or services would be due by the recipient instead of the supplier.

Currently applicable VAT regime for supplies of goods and services

VAT law foresees that the supplier of goods or services supplied domestically is liable for VAT payment. In other words, when the supplier makes the supply, he must apply VAT to the supply, then charge it to and collect it from the customer. The supplier will include the VAT payable to him in his VAT return, leading to the balance of output VAT minus input VAT being paid to the State.

This general principle that the supplier is liable to VAT payment on domestic supplies of goods or services is subject to some exceptions, most notably, where these supplies are made by a non-established supplier. This option is foreseen in

article 194 of the VAT directive (and in article 51, § 2, 5° of the Belgian VAT code).

VAT gap caused by carousel fraud

Ill-intended traders could collect VAT from their customers and not pay it to the State. In carrousel fraud, traders make use of the fact that their intra-community purchase is not subject to VAT (exempt as an intra-community supply) to on-sell the same goods domestically with VAT.

Optional and temporary generalised reverse charge mechanism

The EU Commission proposal to amend the VAT directive allows Member States to temporarily (until 30 June 2022) apply a generalised reverse charge mechanism (a 'GRCM') on domestic supplies of goods and services. It constitutes an urgent and specific measure as well as a fundamental exception to the currently applicable system, where a supply in each stage of the supply chain is in principle taxed, and the payment of VAT to the State is thus fractioned.

A generalised reverse charge mechanism removes the VAT payment liability from the supplier and shifts it to the customer. Since the customer is liable to VAT payment, he does not need to pay it to the supplier. Consequently, the supplier cannot collect the VAT and disappear without complying with VAT obligations.

However, the Member State needs to meet certain conditions if it wishes to introduce the GRCM. The territory concerned namely needs to be confronted with a strong increase of VAT fraud or the absence of an administrative capacity to tackle this fraud.

This is measured by the size of the VAT gap within the Member State, a gap expressed as a percentage of the VAT Total Tax Liability, which should be at least 5 percentage points above the Community median VAT gap. According to the most recent numbers from 2014, the Community median VAT gap is 10.40%.

As such, Member States with a VAT gap exceeding 15.40% would qualify for the GRCM. According to these same figures, 11 Member States would qualify: Bulgaria, the Czech Republic, Greece, Italy, Latvia, Lithuania, Hungary, Malta, Poland, Romania and Slovakia.

Within its total VAT gap, the Member State also needs to have a carousel fraud level of more than 25%. Furthermore, it needs to establish that other control measures are not sufficient to combat carousel fraud on its territory.

The GRCM applies to all supply of goods and services above a threshold of EUR 10,000 per invoice. Specific electronic reporting obligations are then introduced together with the GRCM.

Neighbouring Member States could also apply the GRCM since they are exposed to fraud from adjacent territories.

The GRCM's application would be subject to authorisation by the European Commission. The European Commission will decide on the authorisation maximum within three months after receiving all information. The Commission can also repeal that authorisation.

Even though this amendment has not been adopted yet, once it receives unanimous approval from the Council, it will enter into force without delay. It will be interesting to see which Member States will be first to adopt the rule and which will follow.

For businesses, this will entail additional specific reporting in Member States having adopted the GRCM and local adaptations of systems to comply with the GRCM. Since the precise scope and functioning of the GRCM will be defined at national level, this temporary regime may trigger significant costs in monitoring and implementing changes for businesses active in multiple Member States.

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