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VAT alert
Belgium

New tax point rules as of 2016: invoice restored as tax point

On 1 January 2013, a major change was brought to the tax point rules under Belgian VAT, as the issuance of an (advance) invoice was no longer considered as a tax point. It caused many practical concerns for businesses and hence a transitional regime was put in place, allowing businesses to postpone changes to their invoicing systems until the legal framework would be modified. This change has now been approved by the Belgian government.

In essence, the invoice is fully restored as a tax point, regardless of whether the invoice is issued before or even after the taxable supply. At the same time, a cash based regime will be introduced for supplies to public bodies (B2G-supplies). The new rules will enter into force on 1 January 2016. What follows is a brief outline of the key changes submitted to Parliament.

Transitional regimes and 'final' guidance on tax point rules

The tax point rules for local transactions were fundamentally changed in 2013. An advance invoice (i.e. an invoice issued before a supply or payment) was no longer considered to be a tax point. Moreover, the VAT authorities initially did not allow an invoice to be issued to claim an advance payment.

Due to the extensive impact of this new regulation on the processes of businesses, transitional regimes applied for 2013 and 2014. Discussions between the tax authorities and the business community led to a 'final' guidance containing detailed practical rules implementing the tax point legislation, which were due to enter into force on 1 January 2015, but later postponed to 1 July 2015.

Invoice as tax point for local supplies

The new Belgian government announced that the tax point rules would be evaluated, as the regulation seemed to entail practical difficulties for businesses since the payment of an advance could not be requested on the basis of an invoice. In order to remedy this and to reduce the burden for businesses, the government has decided to readjust the provisions of the VAT Code and essentially fully restore the invoice, being a crucial commercial document, as a tax point.

The new rules will apply as of 1 January 2016, and will include the following:

- The prime tax point occurs and the VAT becomes due the moment of the supply or completion of the service (currently the case);
- However, by derogation, the VAT will become due at the moment the invoice is issued, regardless of whether the invoice is issued *before* or *after* the moment of supply;
- The VAT will in any case become due on the 15th of the month following the month of the supply if no invoice is issued on that date.
- The VAT will also become due when a payment is received before the supply.

The fact that an invoice can also serve as a tax point when issued after the supply is a new concept and confirms the quintessential role of the invoice in the new tax point rules. With this legislative proposal, the government makes extensive use of the optional tax point provisions in the European VAT Directive, which are designed to facilitate the collection of VAT by businesses.

There are no modifications for intracommunity supplies and services. Likewise, the cash based regime for most supplies to private persons, which was broadened in 2013, remains unchanged.

B2G

The new regulation will also provide a specific tax point for transactions towards public bodies. The tax point will be deemed to be the moment when payment is received from the public body. This rule will apply even if the public body is registered as a VAT taxable person. This new rule goes beyond the existing (administrative) regime allowing the VAT to become due when an invoice is approved by the public body. The new rule will however neither apply to cases where a reverse charge applies (since in that case the public body has to account for the VAT due), nor for supplies of immovable goods towards public bodies.

Contacts

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