



VAT alert Belgium

Online sales of goods – impact on distance sales regime

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Following discussions by the VAT committee, the Belgian VAT administration recently adopted a wider interpretation of the notion that transport is performed by the supplier when distance sales are concerned (Decision n° E.T.128.714 of 9 February 2016). It has done so to tackle schemes to apply lower VAT rates on online

sales of goods or avoid multiple VAT registration. The decision impacts a significant number of foreign and Belgian sellers.

Applicable VAT regime for supplies of goods

VAT law foresees that when goods are sent from one Member State to another, the supply is generally localised in the Member State of shipment and VAT is due in this State. This supply can then possibly be exempt, when it concerns an intra-community supply for example.

An exception to this rule can, in general, apply when goods are dispatched or transported by or on behalf of the supplier from another Member State to Belgium and the buyer is a private person or a member of the 'group of four' (a non taxable legal person or an exempt tax payer among others).

If the supplier opted to apply Belgian VAT or has exceeded the Belgian distance sales threshold set at EUR 35,000 annually, the supply is then located in Belgium. It is generally up to the foreign supplier to charge Belgian VAT and register for VAT purposes in Belgium.

However, if the buyer personally picks up the goods or arranges transport, then the supplier is seen as performing a domestic sale. In other words, VAT is due in the Member State where the goods are made available to the buyer.

If a Belgian private person orders electronic products online and has them sent by his/her supplier to his/her address in Belgium from France, Belgian 21% VAT will apply if the supplier exceeds the threshold. If on the other hand, the Belgian private person picks up the goods with the French seller, French 20% VAT will apply.

Classic interpretation of transport by supplier

The Belgian VAT administration considered that, even if the supplier intervenes indirectly, transport is arranged on the supplier's behalf. A mail order company offering goods while also offering services of a third party transportation company, with whom a client can enter directly into an agreement, falls within the scope of this provision. The delivery terms determine the applicable regime and need to be analysed based on available commercial documents and factual circumstances.

Broader interpretation of transport by supplier

Recently however, in its decision no. E.T.128.714 of 9 February 2016, the Belgian VAT administration adopted an even broader position, endorsing the guidelines of the VAT committee adopted during a meeting on 4 and 5 June 2015 (taxud.c.1(2015)4820441 – 876).

Since some of the guidelines were already adopted unanimously, the Belgian VAT administration already endorsed them; the decision officially indicates its adoption of all principles reflected in the document.

The administration considers that a supplier has indirectly arranged the goods' transport when:

- The supplier requested a third party transport company to deliver the goods to the buyer
- A third party transport company delivers the goods but the supplier carries the responsibility for the goods' delivery, partly or wholly
- The supplier invoices the shipment costs to the buyer and receives payment of these costs to subsequently transfer the money to a third party responsible for the goods' delivery
- The supplier actively promotes the transport services of a third party, connects the buyer with such third party, to whom the necessary information for the goods' delivery is communicated

In all of the above cases, provided the supplier has exceeded the threshold of distance sales to Belgium, Belgian VAT is due.

The above list is supposed to tackle certain structures set up by e-tailers in order to be able to charge VAT applicable in the Member State of shipment.

Broader context

The Belgian VAT administration has increased its attention to online sales, as demonstrated by recent articles in the press. Deloitte is currently working on a study for the European Commission to measure the extent to which the distance sales regime is correctly applied and does not cause any distortion of competition and revenue losses for Member States. The European Commission is expected to propose amendments to the VAT directive by the end of this year.

Impact

This decision has a significant impact on foreign online sellers of goods which offer their goods on the Belgian market as well as Belgian sellers which offer their goods to customers in other Member States. Businesses will need to reconsider their structures and analyse their invoicing and relationships with third party transport companies.

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