

Input VAT newsletter

VAT changes as of 1 January 2017: increase of penalties and joint liability of persons in charge of management

3 January 2017

The tax reform¹ introduces substantial increases of penalties applicable in case of infringement of the VAT law. It also introduces a joint liability of the persons in charge of management. These changes are applicable as of 1 January 2017. These new measures highlight the reinforcement of the action of the authorities to ensure a proper functioning of the VAT system. This action has been illustrated in the last years by the increased number of VAT audits, and reinforced more recently by the number of electronic audit files (so-called "FAIA") to be completed by taxpayers at the request of the VAT authorities (see "Requirements for a Standard Audit File for Tax (FAIA) for Luxembourg VAT purposes"² and "FAIA Test: Is your company in the scope of this FAIA requirement?"³). Thus, now more than ever, taxpayers should carefully consider their VAT position, implement efficient processes, and properly monitor their VAT obligations to ensure perfect compliance with the VAT law.

¹ Law voted by the Parliament on 14 December 2016.

² <https://www2.deloitte.com/lu/en/pages/tax/articles/faia.htm>

³ <https://www2.deloitte.com/lu/en/pages/tax/articles/faia-test-company-scope.html>

Increase of penalties

The first change concerns the amount of the penalties that might be applied by VAT authorities in case of infringement of the VAT law or non-communication of documents or information. Penalties applicable to infringement of the VAT law, such as late filing of VAT returns, filing of uncomplete VAT returns or issuance of non-compliant invoices, are increased to €250 to €10,000 per infraction instead of €50 to €5,000. In case of non-communication of information or documents, the penalties are increased to a maximum of €25,000 per day instead of €50 to €1,000.

When infringements of the VAT law are made **with the result or the intention** to elude the payment of VAT or to irregularly obtain a reimbursement of VAT, a penalty of 10 to 50 percent of the eluded or reimbursed VAT is applicable.

These infringements are punished as “aggravated tax fraud” (*fraude fiscale aggravée*) when some thresholds are exceeded per tax period:

- a) one fourth of the VAT due or reimbursed **without being lower than €10,000 or**
- b) b) €200,000 of the VAT due or reimbursed.

In these cases, the penalties applicable are fines from €25,000 to six times the eluded or irregularly reimbursed tax and an imprisonment of one month to three years.

It is worth emphasizing that these harsh sanctions are applicable even if the infringement is committed without the intention to elude the payment of the tax or irregularly obtain a reimbursement of VAT. A good-faith taxpayer might thus be subject to these sanctions because these thresholds are exceeded.

Joint liability of persons in charge of management

The tax reform introduces a joint responsibility of persons in charge of the daily management of a taxpayer entity (managers, directors, etc., including “de facto” managers) when these persons commit a fault in the execution of their tasks.

These persons are jointly liable of the payment of the VAT due by the taxpayer entity. In addition, VAT authorities may also ask for a guarantee (*appel en garantie*) from these persons.

If you have any questions regarding the above, please do not hesitate to contact us.

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