



### LATEST NEWS

The so-called VAT Package, effective from January 1<sup>st</sup>, 2010, constitutes a new set of rules for EU countries: new place of supply of services, new procedure of VAT refund and improvement of the cooperation between Member states in order to fight against EU VAT fraud and evasion. Today, all 27 countries in the EU have implemented, with more or less difficulties, the VAT Package in their domestic legislation.

Whereas the new rules of place of supply of services are applied somehow (issues of interpretation at stake), the second part of the VAT Package concerning the new procedure of VAT refund is trickier to apply. Indeed, at this moment, 96% of the EU countries have an electronic portal (26/27), 75% of them are officially running, nevertheless less than 50% of them are fully operational (*read more page 2*).

### CONTENTS

Latest News	1
Main article	2
Country News	3
Customs	3
VAT Chart & contacts	4



### Harmonization and discrepancies

One of the primary purposes of the new rules on the place of supply of services is to reduce double or non-taxation between the EU Member States. Nearly three months after the implementation of the VAT Package, has this been achieved?

Most of the 27 EU Member States have implemented the Council Directive 2008/8/EC practically word for word (with official translations) into their National Law, so in principle this should have eliminated the discrepancies we have found in the past regarding the VAT treatments by the Member States. However, on closer inspection, are we exposed to a greater risk of uncertainty around the correct tax treatment than before?

We have identified a number of issues regarding the interpretation for the place of supply of services, for example with warranties, and whether these discrepancies could lead to a mix of supplies of goods and services for the one supply. Moreover, as there still seems no agreement on the definition of "rights to admission", should we expect a further discrepancy as from January 1<sup>st</sup>, 2011?

## HARMONIZATION AND DISCREPANCIES

*(Continuation of page 1)*

If we take the example of warranties, the individual area where businesses often incur the most foreign VAT, prior to January 1st 2010, this would have been taxed in the country where the warranty work took place, regardless of whether it consisted of labour (e.g. repairs) or goods (e.g. parts). One of the main changes to the new place of supply of services rules, for B2B, was the place of supply of work on goods being the country where the recipient belongs, regardless of where the actual work takes place. Therefore, from the effectiveness of the VAT Package, labour costs should be charged without VAT when invoiced to a VAT registered recipient in another EU Member State, or a non-EU entrepreneur.

So, in the example of a warranty, when the charge between businesses is made up by a mix of labour and parts under one single warranty obligation agreement, should the supply be classified as a service, or as goods, or two separate supplies with individual VAT treatments? If you speak to the UK tax administration, their viewpoint is that you need to see whether the supply itself satisfies the rules of a single or multiple supply, and only after that has been determined can you decide on the correct VAT treatment. In countries like Germany or Belgium, however, the authorities take a pragmatic view of a 50/50 rule – if 50% or more of the overall cost is for labour, the whole supply is services, if 50% or more of the overall cost is for goods, the whole supply should be treated as goods. Other countries have specific guidance for warranty work, like the Czech Republic, whose tax administration maintains that warranty work is always deemed to be a service, regardless of whether the supply includes goods, even if the goods account for the majority of the value of the supply.

As businesses registered for VAT in the EU, we are charged not only with the responsibility of collecting VAT on behalf of the respective governments, but also of ensuring that VAT is paid and reclaimed in accordance with the law. When the rules that businesses need to follow are not harmonised across the EU Member States, then an extraordinary burden is placed on the business, since not only do we expect business to understand their own local legislation, but that of every other Member State, to ensure that if and when the reverse-charge should apply, this can be done correctly.

Unfortunately, warranties is just one discrepancy. Clinical research is a second. When these services often have various definitions, injections and visit to patients, storage of solutions, laboratory analysis, compilation of data, this is clearly another area of concern. Whether the place of supply of the service falls where the recipient belongs (consultancy) or where the service takes place (scientific services) depends on the interpretation of each Member State.

In the absence of harmonization from the legislations, we have submitted rulings to the French tax administration and SOLVIT to try to establish some clarity on these services so we can determine where the VAT liability should lie.

**Harmonization of rules is a long way**



**Recharge of VAT must be carefully analysed**

## VAT PACKAGE

*(Continuation of page 1)*

In fact, many taxpayers encounter problems of connexion or are confronted with the complexity of the procedure for having codes and passwords. Moreover, at least 56% of businesses outsource the function of managing foreign VAT claims yet, only few electronic portals are operational for foreign tax agents. For instance, Greece, Sweden and Finland are unable to support foreign tax agents in their respective electronic portals.

There are so many procedures of connexion for local taxpayers and tax agents as EU countries. We are still far from a complete harmonization of the procedure of VAT refund.

**COUNTRY NEWS****POLAND**

Inter-Mark Group – Case 530/09 - Preliminary ruling

Is the temporary provision of fair stands to clients presenting their goods and services at exhibitions

**Provision of fair stands – Entertainment or advertising?**

- A service ancillary to fair services (i.e. similar to entertainment activities taxed where physically carried out until December 31, 2010) OR

- An advertising service taxed at the place where the customer is established?

Such services may include presentation of goods and services, drawing up of a design and visualization of the stand, transportation of parts of the stand and its assembly. The exhibitor pays to the organizer fees for the possibility of participating in the fair which cover utility, fair infrastructure and media service costs etc., while visitors pay fees for entrance to the fair which accrue to the organizer only.

**COUNTRY NEWS****ITALY**

New official forms and instructions relating to Intrastat and EC listings have been published by the Italian authorities on February 22th, 2010: electronic submission by February 25th 2010 of the month following that in which the transactions take place.

**Intrastat/EC Lists – Electronic submission**

The January 2010 declaration was consequently due by February 25th, 2010 using the new forms. However, be aware that due to the delay in providing these new rules, no penalties should be imposed for any incorrect declarations, provided that your company made any necessary amendments before July 20th, 2010.

**OECD News****REPORT**

05/02/2010 – Focus on VAT for foreign businesses, which highlights the difficulties faced when they try to recover VAT incurred abroad

**Business and difficulties with foreign VAT**

The report is based on a survey of about 300 businesses. 72% of businesses considered refund procedures difficult and nearly 21% of the respondents are unable to recover any of their foreign VAT. 1/3 said that these difficulties influence decisions on investment.

Businesses would like to see improved communication with tax administrations and greater harmonization and standardization of the procedures to improve the repayment systems. This is echoed by the fact that many businesses outsource the function of managing foreign VAT claims, citing local language as well as cost efficiency as the main factors for doing so. <http://www.oecd.org/dataoecd/18/52/44560750.pdf>**EU News****PROPOSAL**The European Commission presented in September 17<sup>th</sup>, 2009 a proposal of reform of the regulation CE/1777/2005 representing the measures of execution of the 6<sup>th</sup> directive which aims at harmonizing the rules of VAT in the Member states of the EU. This consolidation of the regulation will be the occasion to update the different measures and orientations given on this matter and explain useful notions for the determination of the place of supply of services (For instance, permanent establishment, supply of transport, supply of restaurant and catering services).**Europe pursues its efforts of harmonization****CUSTOMS****REPORT**

The list of goods excluded from the Intrastat declaration has been amended in order to align EU statistics (Eurostat) on statistics held by the United Nations.

**Intrastat declarations : when Emergency meets statistical formalities**

Besides the obligation to declare sales new vehicles to individuals, the Commission considered, quite surprisingly, that there was no objective reason to exclude from the Intrastat movements relating to emergency aid for disaster areas.

We have asked more details to the French customs administration. We have been confirmed that all types of aid or assistance enter in the scope of the declaration: food, emergency shelters as tents, clothes, medicine, etc.

Nevertheless, the delivery of materials used to implement the aid, but which are not supposed to remain within the disaster areas, shall not be declared so long all conditions are met, as they are regarded as temporary movement of goods.

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## CUSTOMS

**"MADE IN" : meeting customs origin criteria is not sufficient**

Last January, the French Government gave its point of view following the question of a deputy on commercial benefits drawn from the use of the "Made In" mention on manufactured goods, and more specifically on clothes.

The Ministry of Trade and Economy considered that a manufactured good has two origins that shall be distinguished: a customs origin, which is systematically and inevitably assigned, and origin defined in order to protect consumers. Despite professionals are free to mention it or not, "Made in" origin marking shall not be likely to deceive consumers, or to delude them. In this respect, the "French" customs origin remains a necessary condition but not sufficient for the marking to be admitted. It would imply that the product utterly originates from the said region or country, whereas it is not the truth.

## CUSTOMS

**First sale Mechanism : towards an abandon a profitable measure?**

The European Commission proposal to abandon the first sale valuation method for customs duty purposes was to be debated at the last EU Valuation Committee on 8 March 2010.

The first sale rule is a method of determining the transaction value of imported goods which can be used as a basis for calculating customs duties, and other fees upon entry into the EU, when the good has been subjected to series of sales during the importation process. In this case, the importer is entitled to calculate the customs value on the basis of the price paid in the first sale or in the sale prior to the introduction of the good into the EU territory.

As this measure would highly affect businesses that managed to use this valuation method, many of them will undoubtedly express their displeasure in order to preserve the current position.

## VAT CHART (March 2010)

