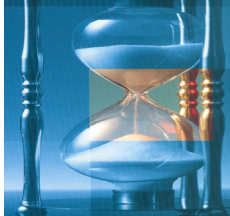


April 2006

Say "Reverse Charge" – en Français!

The French Finance Act for 2006 has raised an arresting and topical issue on TVA (VAT): the application of "autoliquidations" or "reverse charge". The Act provides that the pool of reverse-charged supplies in France be expanded as from 1st September 2006. This will



reduce the instances where foreign suppliers to French VAT-registered customers are required to register for VAT in France. Any French VAT due on such supplies will be assessed to the French customer rather than the foreign supplier, unless the supply is made from a permanent establishment in France. Foreign businesses involved in the French market are celebrating, somewhat.

It would be difficult to think of a more important concept in cross-border trade within the EU VAT regime than the reverse charge. Apart from forming the basis for the zero-rating of supplies of several goods and services to VAT registered customers in other EU Member States, the reverse charge mechanism underpins a number of VAT "Simplified Procedures" of the Single Market. It is also the cornerstone of legitimate VAT planning for intellectual property transactions, advertising services, data processing services, certain digitised services, intermediary services, the services of consultants, engineers, lawyers, accountants and the like.

But reverse charge itself is not a complicated accounting procedure of Community VAT. Normally, the supplier of a service is the person who must account, to the tax authorities, for any VAT due on the supply. However, in reverse charge situations, it is the customer who must account for any VAT due. He must act as if he is both the supplier and the recipient of the supply.

Currently, the situations in which VAT registered customers in France must self-assess on supplies received from foreign businesses are limited to certain intangible services, intra-EU transport and triangular transactions within the EU. In most other cases, foreign suppliers making taxable supplies in France (but without an establishment there) must register for VAT in France, file VAT returns and pay the VAT collected to the French authorities. This often leads to extra VAT registrations for foreign

suppliers. The extension of the situations in which reverse charge will apply under the new rules will therefore reduce the tax compliance burden of foreign suppliers, many of whom may no longer have a liability to be registered for VAT in France at all.

So, an outbreak of generosity in France towards foreign non-established businesses and France-based consumers of foreign goods and services?

Not exactly. First, foreign suppliers of goods to unregistered customers in France may still be caught by the "distance selling" rules. Second, where the foreign, non-established businesses suffer French VAT on the costs of the supplies made in France, they will have to use the rules and procedures provided for in the 8th and 13th EC VAT Directives to claim a refund. And third, the tax obligations of the french taxpayer in respect of goods and services received from foreign suppliers will actually increase with reverse charge.

In effect, both french taxpayers and foreign companies supplying to the french market will have to adopt new ways. They will need to review their accounting and invoicing systems, as well as their VAT payment procedures, to ensure that they are in compliance with the new requirements. This could be a steep learning curve for some.

The ECJ Rules on Gillan Beach Case

Gillan Beach Limited, a UK VAT-registered company with no business establishment in France, organised two boat shows in Nice. It supplied exhibitors with inclusive services comprising setting up stands and means of communication, providing staff to welcome visitors and renting and arranging surveillance of mooring areas for the boats on show. Assuming that such exhibition services were subject to reverse charge treatment, Gillan Beach Ltd applied, under the 8th EC VAT Directive, for a refund of French TVA on the price of the goods and services it had purchased in France in order to organise the boat shows. The French authorities rejected that application on the ground that the organisation of the shows, since it is physically carried out in France, is a service deemed to be provided in France in accordance with Community VAT law.

The ECJ agreed. Services that are subject to reverse charge treatment must be distinguished from those, such as exhibitions, whose place of taxation is where the service is physically performed.

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