

*AS PricewaterhouseCoopers in Estonia helps clients in finding tax efficient business solutions and managing tax risks.*

We work together with our colleagues in other PricewaterhouseCoopers' offices world-wide and use our access to international know-how and long-term experience to quickly and efficiently solve tax issues that arise both locally and in foreign jurisdictions. For more information, please see our contact details below.

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# Tax alert

Estonia, Issue 18, June 2016



## *Legal acts*

### *European commission withdrew key proposals*

On 30 April 2016 the Official Journal of the European Union published the following notices regarding decisions made by the European Commission. Namely the Commission has decided to withdraw several proposals which would have had an effect on VAT calculation and rules regarding VAT exemptions. The 2013 proposal for amending the VAT directive and implementing a standard VAT return across the EU has also been withdrawn. The initial proposal suggested changing the lines of the VAT return form and the manner and frequency of submitting the return. The aim of the proposal was to reduce the administrative burden for businesses who operate in a cross border environment and have registered for VAT in a number of Member States. According to the Estonian Ministry of Finance, accepting this proposal would not have affected the obligation and principles of submitting additional information along with the VAT return (KMD INF).

Furthermore, the 2007 proposal for Council Directive amending the VAT directive regarding the treatment of insurance and financial services and the proposal for a regulation laying down implementing measures for the directive with the aim of aligning the principles of interpreting the application of exemptions in the financial and insurance sector.

### *The European Commission intends to significantly*

### *reform the value added tax system*

On April 7 2016 the European Commission adopted the „Action Plan on VAT – towards a single EU VAT area“<sup>1</sup> for the future of the VAT system containing possibilities for renewing the current EU VAT system in order to simplify it, combat fraud and keep pace with the challenges of today’s global, digital and mobile economy.

In the Commission’s opinion, the current VAT rules must be brought to date urgently and VAT fraud that causes significant revenue loss known as the “VAT gap” should be combatted decisively. The “VAT gap” between expected revenue and revenue actually collected is estimated at EUR 170 billion, while cross-border fraud alone accounts for EUR 50 billion of revenue loss each year.

The Commission is to submit clear proposals for amendments in 2016 and 2017. Prior to that, the European Parliament and Council supported by the European Economic and Social Committee are to provide clear political guidance on the options put forward in this Action Plan and confirm their support for the planned reforms.

The Action Plan sets out a pathway to modernise the current EU VAT rules, including:

- key principles for a future single European VAT system;
- short term measures to tackle VAT fraud;

<sup>1</sup> [http://ec.europa.eu/taxation\\_customs/taxation/vat/action\\_plan/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm)

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- update the framework for VAT rates and set out options to grant Member States greater flexibility in setting them;
- plans to simplify VAT rules for e-commerce in the context of the Digital Single Market (DSM) Strategy and for a comprehensive VAT package to make life easier for SMEs.

One of the crucial points of the action plan pertains to intra community sale of goods to limit the possibilities of fraud. The current VAT system for cross-border trade which came into force in 1993 was intended to be a transitional system and leaves the door open to fraud. The Commission therefore intends to come forward in 2017 with a proposal to put in place definitive rules for a single European VAT area.

Under the new rules, cross-border transactions would continue to be taxed at the rates of the Member State of destination ('destination principle') as today, but the way taxes are collected would be gradually changed towards a more fraud-proof system. Therefore the current system where the key elements are a non taxable (zero-rated) intra-Community supply for the supplier and a taxable intra-Community acquisition for the buyer are going to change – charging VAT on cross-border transactions will become similar to domestic transactions where the VAT is collected by the seller. At the same time, an EU-wide web portal would be implemented to ensure a simple VAT collection system for businesses and a more robust system for Member States to gather revenue.

## *Would the formal shortcomings of an invoice disallow VAT deduction?*

The improper formatting of an invoice may lead to a situation where the immediate deduction of input VAT by the recipient of the invoice proves to be impossible, but it is vital to distinguish formal requirements from material requirements. The Supreme Court recently rendered decisions in two important cases (no 3-3-1-59-15 and 3-3-1-51-15) regarding invoices and their formal defects.

Even an invoice with formal deficiencies can be used as basis for deduction of VAT. For example, failing to note the issuer's address and VAT number is an immaterial formal error according to the Supreme Court, because the company's name and commercial code allow for adequately identifying the seller's person and establishing whether it is a VAT registered person.

During an inspection, the Tax and Custom's Board (TCB) took a very stringent position that since at the time of submitting the VAT return the invoice was inadequate (and also at the time of submitting it for review to the TCB) then there was no right of immediate deduction of input VAT. The Supreme Court interpreted the provisions of the VAT Act in accordance with the VAT Directive and judgements of the European Court of Justice and did not support their understanding. The Supreme Court explained additionally that information about the "identity of the seller and the goods or services" must be regarded as important and their absence

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results in disallowing the deduction of input VAT under such inadequate invoice (please see case no 3-3-1-51-15, point 11).

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