



NEWS FLASH

Luxembourg VAT: Introduction from 1 July 2010 of a reverse charge rule for domestic “climate rights” transactions

Like some other Member States, Luxembourg has introduced a reverse charge system for domestic transactions in “climate rights”, in order to eliminate suspected VAT fraud in this sector.

In principle, suppliers or service providers must charge their clients VAT and must pay the VAT they charge to the VAT authorities. Clients may deduct the VAT they pay in their VAT returns and receive a refund from the authorities. Some fraudulent traders have used this system to reclaim VAT which they have not been charged and which the supplier has not paid to the authorities. In the past the goods sector has been more exposed to such frauds: thus major frauds of this type have involved transactions on cars, chips, mobile phones, etc. Until recently the service sector has been more or less protected from fraud of this kind. However, lately some frauds have been organised in the sector of “climate rights”, usually referred as Kyoto rights. Fraud of this type has come to light in Belgium, France, the Netherlands and the UK.¹

Consequently, Luxembourg has now modified the rules applicable to such transactions.² In domestic transactions, VAT will be due from purchasers and no longer from suppliers. Thus purchaser will declare the VAT due on the transaction in their VAT returns and deduct that VAT in the same return. Cash payments are thus eliminated, and purchasers will no longer be able to claim refunds of VAT they have not paid. This system is the same reverse charge system (also known as “*auto-liquidation*”) as that applicable on goods and services which those registered for VAT purchase from foreign suppliers and providers. The new rule will apply to all transfers of quotas and rights provided by article 3, a), m) and n) of Directive 2003/87 of 13 October 2003, or instruments which are mutually recognised pursuant to article 25 of that Directive.

¹ More information may be found in “VAT fraud on Carbon Allowances” by Charlène-Adline Herbain, Loyens & Loeff, Luxembourg, Tax Planning International: Indirect Taxes, BNA, September 2009.

² *Loi du 2 juillet 2010 modifiant la loi modifiée du 12 février 1979 concernant la taxe sur la valeur ajoutée*, Mémorial A – n° 102 du 6 juillet 2010, p. 1829.

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Surprisingly, the law does not require clients to qualify as vatable, or as not vatable but registered for VAT, although only such professional individuals or entities are VAT-registered and hence able to declare the VAT in their VAT returns. Thus strictly speaking, the new rule applies to anyone, including private individuals. Of course, it would be really surprising for a private individual to purchase climate rights!

The Luxembourg government introduced the bill proposing the new legislation on 5 March 2010, intending that it should enter into force from 1 April 2010.³ However, the parliamentary procedure took longer than expected, and the new rule only came into force on 1 July 2010. It is interesting to note that Austria also introduced reverse charging for such transactions⁴ from the same date.

This is the first time, Luxembourg has introduced the reverse charge system for domestic supply. As it represents a major divergence from one of the fundamental principles of the VAT system, it is unlikely that Luxembourg will introduce further cases of reverse charging. The introduction of this rule for “climate rights” transactions should be considered as an *ad hoc* measure to fight against fraud in a sensitive sector.

³ See Michel Lambion, Anny Tai and Charlène-Adline Herbain in « TVA – Un nouveau paysage administratif: plus d'automatisation? Plus de célérité ». ACE, n°4, April 2010, p. 15 and 16.

⁴ This measure is also introduced for transactions on heat and cooling energy.

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