

## VAT NEWS

# THE DECREASED LUXEMBOURG VAT RATES IN PRACTICE

## I. Introduction

The package of measures adopted recently by the Luxembourg government to tackle inflation foresees a temporary decrease of the Luxembourg VAT rates for the period from **1<sup>st</sup> January 2023 to 31<sup>st</sup> December 2023**.

In particular, to the exception of the super-reduced rate (3%), the current Luxembourg VAT rates shall be decreased by 1%. Therefore, the standard rate will become 16%, while the intermediary rate will become 13% and the reduced rate 7% (see also our Indirect Tax Newsletter dated 6 October 2022).

Although this measure seems simple in essence, its practical implementation triggers questions and challenges for businesses, given that the latter shall take into consideration the Luxembourg VAT rules related to the chargeable event and the chargeability of VAT (which vary depending on the nature of the supplies) before they amend accordingly their accounting systems.

We have set out below an overview of the key points for the concepts of the chargeable event/chargeability of VAT as well as practical examples for different type of transactions illustrating when the decreased VAT rates should apply.

## II. Why is the chargeable event & the chargeability of VAT rules important ?

The chargeable event determines the moment at which the VAT becomes due in a material sense. In fact, such event occurs when the supply has been completed (de facto or by legal fiction). For instance, for the supply of an advice, the chargeable event occurs when the advice is provided to the client.

The chargeability of VAT means that the VAT becomes “formally” due and the VAT authorities are entitled to claim the VAT from the person who is liable to remit and pay the VAT, even though the time of payment may be deferred.

As a general rule, the chargeability of VAT arises at the same moment the chargeable event occurs. By way of derogation, in case a VAT invoice is required to be issued, the chargeability of VAT arises at the moment at which such invoice is issued or should have been issued. Furthermore, derogatory rules may apply in cases of advance payments or for cross-border supplies.

From the above, it results that in case of change in the VAT rates and the moment of the chargeable event is different from the moment of the chargeability of VAT, the decision on whether the decreased VAT rates are applicable or not should be based on the latter element (i.e. chargeability). Such element is also important for VAT deduction purposes (i.e. the input VAT deduction right arises at the time the deductible tax becomes chargeable).

## VAT NEWS

# THE DECREASED LUXEMBOURG VAT RATES IN PRACTICE

### III. When are the decreased VAT rates applicable ?

As different rules in relation to the chargeable event and the chargeability of VAT apply to each type of taxable transaction, a case-by-case assessment is required. We have set out below some indicative examples:

#### ► Local BtoC transactions

##### 1) Supplies of services/goods to a private individual

In this case, there is no obligation to issue an invoice.

The chargeable event and the chargeability of VAT occur when the supplies of services/goods take place.

Example 1: A Luxembourg bicycle store repairs the bicycle of a private individual on 15 December 2022. Thus, the VAT rate in force at the time of the supply shall apply, i.e. 8%.

Example 2: A Luxembourg supermarket sells a bottle of alcohol to a private individual on 5 January 2023. Thus, the VAT rate in force at the time of the supply shall apply, i.e. 16%.

For the sake of completeness, the above would also apply in case the Luxembourg supplier decides at its discretion to issue an invoice as well as in cases where it issues a simplified invoice or a ticket. As in these cases there is no obligation to issue an invoice, the chargeability of VAT would still occur when the supplies take place.

##### 2) Supplies of services/goods to a private individual giving rise to successive statements of account /successive payments

In this case, there is no obligation to issue an invoice.

The chargeable event and the chargeability of VAT occur on the expiry of the periods to which such statements of account/payments relate.

Example 1: A Luxembourg bank provides wealth management services to a private client for a 2 years period. The remuneration agreed shall be paid at regular intervals, i.e. every 3 months, on the 3rd of the month following. The first period starts on 1 October 22 and expires on 31 December 2022 and the payment is made on 3 January 2023. Thus, the VAT rate in force on the expiry of that period shall apply, i.e. 17%.

Example 2: A Luxembourg electricity supplier provides electricity to a private individual for a 3 years period. The customer shall pay the bill at regular intervals, i.e. every 2 months, on the 15th of the month following. The first period starts on 1 December 2022 and expires on 31 January 2023 and the payment is made on 15 February 2023. Thus, the VAT rate in force on the expiry of that period shall apply, i.e. 7%.

## VAT NEWS

# THE DECREASED LUXEMBOURG VAT RATES IN PRACTICE

### 3) Supplies of services/goods to a private individual with payments on account/advance payments

In this scenario, VAT becomes in principle chargeable on receipt of the advance payment. However, in this case there is also an obligation to issue an invoice. Thus, the chargeability of VAT arises when such invoice is issued or on the expiry of the deadline at which such invoice should have been issued. Based on the Luxembourg VAT rules, an invoice shall be issued no later than the 15th day of the month following the month in which the supply of goods/services to which the invoice relates is made.

**Example 1:** A Luxembourg furniture store sells a dining table to a private individual and requires an advance payment of EUR 2.000 on 29 November 2022. It issues the invoice for the advance payment on 10 December 2022. Thus, the VAT rate in force at the time of the issue of the invoice shall apply, i.e. 17%.

**Example 2:** A Luxembourg automotive company sells a car to a private individual for the total amount of EUR 30.000 and requires an advance payment of EUR 5.000 on 30 November 2022. It issues the invoice for the advance payment on 6 December 2022. Thus, the VAT rate in force at the time of the issue of the invoice shall apply, i.e. 17% X EUR 5.000.

The supplier receives the remaining sales amount on 6 January 2023 and issues the final invoice on 10 February 2023. Thus, the VAT rate in force at the time of the issue of the final invoice shall in principle apply to the difference between the total sales amount and the advance payment (i.e. 16% X EUR 25.000 (EUR 30.000 - EUR 5.000)). Nevertheless, please note that in such cases the Luxembourg VAT legislation provides for a potential derogation by virtue of a Grand-Ducal Regulation that may be issued (according to which the VAT rate in force at the time of the supply would apply, i.e. 17%).

#### ► **Local BtoB transactions**

In these cases, there is an obligation to issue an invoice. Thus, the chargeability of VAT arises when such invoice is issued or on the expiry of the deadline at which such invoice should have been issued.

**Example 1:** A Luxembourg bank provides services in relation to management and safekeeping of securities to a wealth management company on 15 December 2022.

If the Luxembourg bank issues its invoice on 23 December 2022, then the VAT rate in force at the time of the issue of the invoice shall apply, i.e. 14%.

However, if the Luxembourg bank issues its invoice on 10 January 2023 (i.e. before the expiration of the invoicing legal deadline), then the decreased VAT rate, i.e. 13% shall apply.

**Example 2:** A Luxembourg store sells laptops to a law firm on 17 November 2022. It issues its invoice on 2 January 2023. As the deadline for the issue of the invoice expired on 15 December 2022, the 17% VAT rate shall apply.

Same approach will also apply to BtoB supplies made to taxable persons that give rise to successive statements of account /successive payments as well as to BtoB supplies with payments on account/advance payments.



## VAT NEWS

# THE DECREASED LUXEMBOURG VAT RATES IN PRACTICE

### ► Cross-border transactions

#### 1) Supplies of services from foreign suppliers to Luxembourg taxable persons (BtoB)

In these cases, the Luxembourg taxable persons will have to self-assess Luxembourg VAT in their Luxembourg VAT returns.

In principle, the chargeable event and the chargeability of VAT occur when the supplies of these services take place. In practice, these supplies are declared in the Luxembourg VAT returns based on the date of issue of the invoices. A case-by-case assessment might be needed for these transactions.

Example: A law firm established in Belgium supplies legal services to a Luxembourg holding company that is VAT registered in Luxembourg on 20 November 2022. It issues its invoice on 6 January 2023.

In principle, the chargeability of VAT would occur on 20 November 2022. However, as at that moment the invoice has not been issued, the Luxembourg holding company cannot declare this supply in its 2022 November Luxembourg VAT return. In practice, it will declare this supply in its January 2023 VAT return and therefore it will self-assess 16% Luxembourg VAT.

As the Belgian supplier might declare this supply in its Belgian European Sales Listings (ESLs) at a different moment and thus discrepancies with the Luxembourg VAT reporting might occur, a careful assessment is recommendable.

#### 2) Intra-Community acquisitions of goods

In this case, the chargeability of VAT arises when the invoice is issued or on the expiry of the deadline at which such invoice should have been issued.

#### 3) Importation of goods

The chargeable event and the chargeability of VAT occur when the goods imported into Luxembourg. However, if the goods are immediately placed under a customs arrangements/situations, the chargeable event and the chargeability are postponed and arise when the goods cease to be covered by such arrangements/situations.

Example 1: A Luxembourg manufacturer purchases a machine from a supplier established in the US. The good is dispatched from the US to Luxembourg and the Luxembourg company carries out an importation in Luxembourg on 16 December 2022. The VAT rate in force at the date of importation shall apply, i.e. 17%.

Example 2: A Luxembourg manufacturer purchases a machine from a supplier established in the US. The good is dispatched from the US to Luxembourg and the Luxembourg company carries out an importation in Luxembourg on 16 December 2022. However, the good is placed immediately under a customs warehousing arrangement. The Luxembourg company removes the good from such arrangement and releases it for free circulation on February 2023. The VAT rate in force at the time when the good ceased to be covered by the warehousing arrangement shall apply, i.e. 16%.

## VAT NEWS

# THE DECREASED LUXEMBOURG VAT RATES IN PRACTICE

### ► Credit note issues

As there is no specific rule in the Luxembourg VAT legislation for such scenario, the general rules should apply.

Therefore, any credit note, which contains a VAT adjustment and is issued on or after the date of the entry into force of the decreased VAT rates, should show VAT at the rate in force at the time the original invoice was issued.

Example 1: A Luxembourg audit company supplies consulting services to a telecommunication company (BtoB) on 20 November 2022. A credit note is issued on 20 January 2023. Such credit note shall show the 17% VAT rate.

Example 2: A law firm supplies legal services to a management company (BtoB) on 20 November 2022. It issues its invoice for EUR 3.000 on 5 December 2022. However, it decides to make a discount and issues a credit note for EUR 1.000 on 20 January 2023. Such credit note shall show the 17% VAT rate.

### IV. Conclusion

The above shows that the practical implementation of the Luxembourg VAT rates is rather complex and a case-by-case assessment of the different transactions is necessary. Furthermore, as the chargeability of the VAT is inherently linked to the input VAT deduction right, it appears that a mindful application of these rules could have a positive cash flow impact for companies with no or limited input VAT deduction right.

### V. How could BDO help you ?

Should you have any questions on the application of the decreased VAT rates, or need assistance with the identification of the potential VAT implications, or with the training of your team, please feel free to contact our VAT experts.

## VAT NEWS

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