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International Tax

World Tax Advisor

20 May 2011

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VAT implications of organizing an event in the EU

Many organizations and companies arrange training, seminars, conferences or similar events (collectively, events and conferences) on a regular basis. These events generally require significant effort and resources to be a success, but what organizers may overlook is the fact that, when held abroad, there may be a significant value added tax (VAT) exposure attached to the organization of these events. This article highlights and discusses some of the VAT issues that organizations and companies should be aware of when arranging events in the EU. The VAT rules applicable to the supply of services in relation to events changed as from 1 January 2011 and a new Implementing Regulation (282/2011) that, inter alia, clarifies certain aspects of the rules will come into effect on 1 July 2011.

Introduction

In most cases, the costs of organizing an event will be covered (at least in part) by charging a fee to the attendees. In the case of concerts, this fee may simply grant access to a certain seat in the venue. For conferences, the fee may entitle the payee to participate in the conference sessions, enjoy snacks and/or meals, join a guided tour and may even include overnight hotel accommodations for multiple day events. The first question that arises is whether this participation or admission fee is subject to VAT. As demonstrated below, the answer differs depending on the specific nature of the event, on what the fee covers and on where the event takes place. All amounts charged in consideration for participation in or attendance at an event should be considered from a VAT perspective, irrespective of how the payment is characterized.

EU rules

According to old article 53 of the EU VAT Directive (2006/112/EC), the place of supply of services and ancillary services relating to cultural, artistic, sporting, scientific, educational, entertainment and similar activities, such as fairs and exhibitions (including the supply of services of the organizers of such activities), was the place where the activities were physically carried out. This place of supply rule determines where an activity is deemed to take place for purposes of assessing VAT liability.

The VAT Package (Council Directive 2008/8/EC), which contains rules that will be implemented in 2013 and 2015, introduced a number of changes to the EU place of supply of services rules with the result that admission to such events

and any relevant ancillary services, if supplied to a taxable person (i.e. business to business or B2B) are taxable where the events actually take place. All other event-related services supplied to a taxable person (B2B) follow the main place of supply rule for services, which, provides that services are subject to VAT at the place where the recipient is located (article 44 of 2006/112/EC, applicable as of 1 January 2010).

For the supply of event-related services to a non-taxable person (business to consumer or B2C), the rules generally remain unchanged, i.e. old article 53 was replaced by article 54 with effect from 1 January 2011, but the text stayed the same except for the phrase "are physically carried out," which was replaced by "actually take place."

With the introduction of the VAT Package and the new main rule for the place of supply of B2B services, services are subject to VAT in the jurisdiction in which the recipient is established. However, the EU Council wanted to make an exception with respect to the admission to events to avoid practical problems that would arise where an event organizer sold tickets to a mixed group of persons. It would be impractical if the event organizer had to charge VAT to private individuals but not charge VAT to business customers. This policy corresponds to the principle of taxation at the place of consumption.

Admission to an event – The European Commission and the EU VAT Committee initially took the view that the advance payment of a registration fee for attending a conference or seminar should not be considered as consideration for admission to an event. Instead, it should be seen as being made for "participation" in the event because the admission (i.e. gaining entry to the event) is not an aim in itself. The view was taken that the only situation in which attending events, in particular conferences or seminars, would constitute "admission to an event" is where they were open to some or all participants without pre-registration.

This position was subsequently abandoned, however, and it was proposed that the right of entry to educational or scientific events, such as conferences and seminars, should be considered as "admission to an event" and, therefore, subject to VAT where the event actually takes place.

This line of thought ultimately was included in the new Implementing Regulation that comes into effect on 1 July 2011. Because the Implementing Regulation is binding and directly applicable in all Member States, the VAT position for organizations and companies arranging an event in the EU for which a participation or admission fee is charged should be crystal clear going forward: the fee will be subject to local VAT in the Member State where the event actually takes place. However, whether VAT effectively becomes due and who is eventually liable to account for the VAT depends on the type of event, and specific rules may vary by Member State.

Exemptions – In some Member States, educational events and vocational training are exempt from VAT. These exemptions generally have to be interpreted strictly and are subject to conditions set out in the local country's VAT legislation. Some Member States (e.g. Belgium and the U.K.) exempt educational events if they are organized by recognized educational bodies. Other Member States apply the exemptions more broadly (e.g. Ireland and Lithuania generally exempt vocational training regardless of the status of the service provider).

Liability to account for VAT – In most Member States, the event organizer is responsible for accounting for any VAT on the fees (i.e. it must charge VAT on its invoice, collect VAT from the participant and pay the VAT over to the local VAT authorities).

In some Member States (e.g. Belgium, France and Spain), a foreign organizer of a local event does not have to charge VAT on the fees collected from local business participants. In these cases, the participant must self-account for the VAT on the fees under the reverse charge mechanism. In Austria, for instance, if an event is organized by a foreign company or organization, the liability to account for VAT on the admission fee is shifted to the business participant, regardless of whether it is VAT-registered in Austria.

VAT registration – If the event organizer has to account for VAT in the Member State where the event takes place, it likely will have to register for VAT purposes. However, some Member States (such as the U.K.) have a high VAT registration threshold. Consequently, if the value of the taxable activities remains below the specified threshold (currently GBP 73,000 per year in the U.K.), no VAT has to be charged and no VAT registration is required.

Taking the above into account, although one could argue that it makes sense to tax admission fees for events and registration fees for participation in seminars and conferences in the Member State where the event actually takes place,

ultimately the event organizer ends up with a significant VAT compliance burden. It often has to manage multiple VAT registrations (particularly if it does not regularly use the same Member State for its event), file periodic VAT returns in various countries and ensure that its invoices comply with the local requirements.

Although some Member States disregard one-off events from being subject to VAT and others minimize the compliance burden, it is arguable that such VAT compliance obligations are disproportionally burdensome compared to the effective net VAT revenue obtained by the local VAT authorities on these transactions.

Admission fee charges – Having discussed the concept of "admission to an event" from an EU VAT perspective, it is important to note that Member States may have different views on which costs may be included in the admission fee charges.

Example – An international conference organizer is charging a single flat registration fee for admission to a conference. The fee includes hotel accommodation for two nights at the conference hotel, participation in the conference plenary and breakout sessions, participation in the conference gala dinner, meals for the three days of the conference, a guided tour of the city where the conference takes place and transport from and to the airport and to and from the social events.

The question is whether the organizer can consider its services to be a single composite supply following the VAT treatment of admission to the conference or whether it will have to consider each individual service separately and apply the VAT treatment (of each individual service) accordingly. This is particularly relevant if some elements would be subject to different VAT treatment. Since the European Court of Justice decision in *Card Protection Plan*, it has been widely accepted that a supply must be regarded as ancillary to a principal supply (e.g. admission) if it does not constitute for customers an aim in itself, but a means of better enjoying the principal supply.

Applying this principle to our example, it could be argued that all elements provided are for the enjoyment of the conference and consequently are ancillary to the admission. This becomes much harder to argue, however, if attendees could register separately for certain parts of the conference and if the registration fee would change accordingly (e.g. the attendee pays a lower fee if he/she opts out of the conference dinner).

Another important factor is that some Member States may consider certain services subject to the tour operators margin scheme (TOMS), which may eventually lead to double taxation. The U.K. VAT authorities, for instance, take the position that, among others, hotel accommodation and transport services, if purchased by an EU established conference organizer, should be charged separately and follow the VAT treatment that applies to TOMS. Consequently, these services are subject to VAT in the Member State where the conference organizer is established, with VAT calculated only on the profit margin of these services. The disadvantage is that the conference organizer cannot recover any VAT incurred on the purchase of the services and, since other services are still subject to VAT in the Member State where the conference takes place, VAT compliance carries a heavy burden. Taking this into account, it may be easier for the organizer to have the participants pick up the accommodation cost with the hotel and pay for their own transport directly.

It will be interesting to see whether all Member States will bring their legislation in line with the Implementing Regulation by 1 July 2011. The Netherlands, for instance, followed the initial position of the EU Commission and EU VAT Committee when it implemented the new rules as of 1 January 2011 and, consequently, it currently does not consider "pre-registration" as admission to an event from a VAT perspective.

Other fees

Advertising and sponsorship – In most cases, when organizing conferences and major events, admission fees are not the only element that requires attention from a VAT perspective. These types of events are sometimes excellent occasions for attracting attention to a brand or product. As a result, many event organizers provide opportunities for sponsors, partners or participants to advertise during the event. In most Member States, these services generally follow the main place of supply rule for services, which renders them taxable where the advertiser or sponsor is established. However, some Member States (e.g. Spain) apply "use and enjoyment" provisions to these services, which may attract VAT in the Member State where the event takes place.

Provision of exhibition space – If exhibition space is provided at an event, the VAT treatment may be different depending on the Member State. Some Member States consider exhibition space an advertising service (see above), while others treat

it as a land-related supply that is subject to VAT in the place the immovable property is located. In the latter case, it also must be confirmed whether VAT effectively has to be charged (e.g. Ireland generally treats land-related supplies as exempt, but Spain tends to tax).

Gala dinner – If a gala dinner is not considered ancillary to the conference (e.g. when it is open to non-conference participants or is optional to conference participants and charged for separately), it generally will be treated as a restaurant and catering service, which is subject to VAT where the dinner is physically carried out.

The above examples demonstrate that there are many elements to be considered from a VAT perspective when organizations or companies organize an event in the EU.

VAT incurred on costs

While VAT is the main risk factor from a VAT perspective, most organizations and companies also are interested in whether the VAT that they incur on costs associated with the event is recoverable, which will determine the actual cost of the event and inform the setting of the admission price.

In general, VAT incurred on business expenses is recoverable in the EU, particularly if the expenses are incurred in direct relation to outgoing taxable activities, such as the organization of events or conferences for which admission fees are charged to participants. It is critical, however, that appropriate documentation be maintained to benefit from the right to recover VAT. In practice, this generally means that valid invoices meeting local requirements need to be kept. Experience shows that invoices do not always mention the proper VAT number or exact name of the customer (i.e. the organization or company that is organizing the event), which may jeopardize VAT recovery upon audit.

As discussed above, in most cases, event organizers have a liability to account for VAT when they charge admission fees for events that take place in the EU. In general, this VAT liability triggers a VAT registration and an obligation to file periodic VAT returns. The VAT incurred on expenses in relation to the organization of the event would then be recoverable by reporting it on the event organizer's local VAT return.

In rare cases where event organizers would not be required to register for VAT or file a local VAT return, the input VAT may be recovered through one of two EU VAT refund mechanisms for foreign businesses (new Directive 2008/9/EC for EU businesses (introducing various changes to the 8th Directive) and the 13th Directive (86/560/EEC) for non-EU businesses). However, in principle these VAT refund claims will not be accepted from organizations and companies that had a liability to be registered because of the organization of an event.

Additionally, some Member States (e.g. the Netherlands) apply refund restrictions for VAT incurred on costs for food and drinks, even if these costs are eventually recharged to the participants. Other Member States (e.g. Belgium) generally allow recovery only if these costs are recharged and itemized on the invoices provided to the participants. This requirement is often difficult for event organizers to meet (e.g. because they do not want to disclose the value of the food and drinks in the overall price for attending the event). Other Member States disallow the recovery of VAT on specific entertainment costs or car rental costs. And, as mentioned above, the U.K. disallows VAT recovery of cost components of services that fall within TOMS.

In any case, it is important for event organizers to have robust processes in place to optimize VAT recovery, among others, by making sure that purchase invoices comply with local requirements. Event organizers are often subject to VAT audits by the local VAT authorities because they generally end up in a VAT refund position. They have to pay the VAT collected on the admission fees at the latest on the VAT return for the period in which the event is completed, whereas they can only recover the VAT incurred in the VAT return for the period in which the final invoices (e.g. from the hotel where the event takes place) are received, which may take a couple of months. Experience shows that sufficient forward planning may reduce the audit risk.

Conclusion

Organizations and companies setting up training, seminars, conferences or similar events in the EU should consider the VAT consequences, in particular to determine whether they have to account for local VAT and have an obligation to register and file VAT returns in the Member State where the event actually takes place. The new Implementing Regulation that will

become effective as of 1 July 2011 and that lays down the implementing measures for the new rules relating to events (which came into effect on 1 January 2011) clarifies certain aspects, but it does not resolve all VAT issues related to the organization of events in the EU. Additionally, it is crucial to have the right documentation in place to allow maximum recovery of VAT incurred on costs. Not being prepared can lead to an assessment of underpaid VAT, penalties and late payment interest and cause reputational damage to the business. It is always better to be safe than sorry.

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Germany:
Court confirms validity of Swiss notarial recordings on transfer of shares

A German GmbH was incorporated in January 2010 with its seat in Germany. In March, the founding shareholder, pursuant to a notarial deed recorded in Basel by a Swiss notary, transferred his shares in the GmbH to a Swiss citizen. The Swiss notary also revised the list of shareholders showing the new shareholder, which he filed electronically with the commercial register in Germany via a German notary who acted on the notary's behalf. In August, the German notary, again acting as a messenger for the Swiss notary, submitted a revised list of shareholders in the GmbH showing a German citizen domiciled in Basel as the shareholder.

The commercial register refused to accept the revised list of shareholders on the grounds that the transfer of shares was invalid because following the introduction of the Act on the Modernization of the Law Governing Limited Liability Companies and to Combat Abuses (MoMiG), the German Law on Limited Liability Companies (GmbHG) required the recording to be made by a German notary. The GmbH and the new shareholder appealed the commercial register's rejection of the revised shareholder list.

The Higher Regional Court (OLG) of Düsseldorf accepted the appeal and suspended the refusal by the commercial register to accept the revised list of shareholders. In its decision, the court confirmed the validity of a deed on the transfer of shares in a German GmbH recorded before a Swiss notary in Basel. The OLG's decision contradicts a 7 October 2009 decision of the regional court of Frankfurt and reinstates previous jurisprudence of the Federal High Court (BGH) that applied before the MoMiG was introduced.

Although the decision of the OLG Düsseldorf has been welcomed by the professional community, legal certainty on the issue will be established only by a decision of the BGH that concerns a time period after the introduction of the MoMiG.

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Netherlands:
Relief granted for delayed foreign VAT refunds

The Netherlands Ministry of Finance (MOF) recently decided to provide relief to businesses encountering problems as a result of the delayed repayment of foreign VAT under the new electronic refund procedure in the EU. The relief is granted in the form of a deferral of any Dutch taxes due.

The VAT Package that became effective in the EU as from 1 January 2010 changed the procedure to obtain a reimbursement of VAT incurred by EU businesses in EU Member States in which they are not established from a paper-based procedure to a fully electronic procedure, with a view to expediting refunds. An EU taxable person now can submit a VAT refund request to the tax authorities of the Member State in which it has its registered office. The tax authorities will forward the request to the tax authorities of the Member State in which the VAT was incurred, and those authorities are

required to process the refund request within four months. Because some Member States have experienced systems implementation issues, the refund procedure has not been operating entirely as intended, resulting in delays and potential cash flow issues.

To benefit from the deferral provided by the Dutch MOF, the following requirements must be met:

- The entrepreneur must have submitted an electronic application to the Dutch tax authorities requesting a refund of VAT paid in another Member State, as well as a written statement that the Dutch VAT due will be paid once the foreign VAT has been refunded or the refund request rejected;
- The entrepreneur must have experienced cash flow problems as a result of delay in the refund procedure;
- If the amount of unpaid domestic taxes exceeds the amount for which the entrepreneur requested a refund, the entrepreneur still must pay the difference between the two amounts; and
- The entrepreneur must provide a (bank) guarantee (if so requested).

The MOF also announced that the Dutch tax authorities will pay interest on the amount of VAT refunded to Dutch businesses where the transmission of the application for a VAT refund to the other Member State has been delayed.

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Thailand: Foreign company without operations required to obtain foreign business license

The Thai Ministry of Commerce recently determined that a foreign company that seconded a technician to Thailand is required to obtain a foreign business license to operate its business in Thailand.

The case involved a Thai company that entered into a joint venture agreement with a foreign company for the manufacture of vehicle equipment. As a condition of the agreement, the foreign company was required to dispatch a technician to work in Thailand, although the company did not operate any other business in the country. The agreement further required that the Thai company pay for the technician's services in the form of a royalty to the foreign company.

The Ministry of Commerce concluded that, because the foreign company earned income from the secondment of the technician to work in Thailand, it is operating a service business under Thai law. As a result, the foreign company must obtain a foreign business license to operate the business in Thailand.

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In brief

United Kingdom – The tax authorities have announced that Extra Statutory Concession 3.2.2, which limits the impact of an anti-avoidance provision introduced in 1997 to counter the practice of routing certain purchases via offshore members of VAT groups, is to be given statutory effect. The concession reduces the reverse charge VAT that has to be accounted for when intra-VAT group charges include exported services routed via an offshore member to an amount equivalent to the tax that could have been avoided, but for the anti-avoidance measure. The tax authorities have requested views on the approach to be taken and have published a technical note as background for an informal consultation over how it should legislate this concession. Comments are invited by 3 August 2011.

United Kingdom – All company tax returns for accounting periods ending after 31 March 2010 must be filed online, using a specified data format known as Inline XBRL or iXBRL. XBRL has released a 43-page document "XBRL UK Detailed Tagging Information," which supplements the guide published on 31 March 2011 and, while it does not necessarily represent the U.K. tax authorities' formal view, it is likely to be the closest to authoritative guidance issued. The document is aimed at: those involved in manually tagging financial statements using the U.K. accounts taxonomies; those providing training or other forms of guidance for taggers of accounts; developers of software that create accounts in XBRL; and consumers of XBRL data and those who create software for analyzing XBRL data.

United States – The U.S. Treasury Department released final regulations on 17 May 2011 to prevent taxpayers from utilizing certain cross-border triangular reorganizations involving property used to acquire parent stock or securities with the effect of repatriating cash while avoiding U.S. tax ("Killer B" transactions). With some modifications, the regulations finalize 2008 temporary and proposed rules that treat the payment received by the parent company for its stock as a constructive dividend separate from the acquisition of the parent stock.

United States – The U.S. Treasury Department has reissued (but not changed) the list of countries that require cooperation with or participation in an international boycott as a condition of doing business to include: Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen. Iraq remains under review. A U.S. taxpayer conducting operations in a listed country must submit a report to the Treasury; tax consequences of such operations include denial of a foreign tax credit for any tax paid to the listed country and income inclusion under subpart F for U.S. shareholders of controlled foreign corporations that conduct operations in listed countries.

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Malta
Guidance issued on hybrid loans
The Inland Revenue Department has issued additional guidance that confirms the treatment of income from hybrid loans as interest and not as income from share capital or from an equity holding. [Issued: 17 May 2011]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/c1910600d6dff210VgnVCM1000001a56f00aRCRD.htm?id=us_email_Tax_WTA_052011
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_Malta_170511.pdf?id=us_email_Tax_WTA_052011

United States
Potential U.S.-Poland treaty missing from Senate treaty hearing agenda
The Senate Committee on Foreign Relations has announced a June hearing on the proposed U.S.-Hungary treaty and proposed protocols with Luxembourg and Switzerland. Notably missing from the agenda are the pending treaty with Chile and the still-under-negotiation treaty with Poland. This may mean that the treaty with Chile or a new treaty signed with Poland (which currently does not have a modern limitation on benefits article) will not become effective by the end of 2011. [Issued: 19 May 2011]
URL: http://www.deloitte.com/view/en_GX/global/services/tax/international-tax/345c9bb001700310VgnVCM1000001a56f00aRCRD.htm?id=us_email_Tax_WTA_052011
URL: http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Alerts/dtt_tax_alert_unitedstates_051911.pdf?id=us_email_Tax_WTA_052011

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