



efc briefing

legal and fiscal

November 26th 2009 - Ref: befc0978 - Email: eu@efc.be

Member States have to exclude non-taxable persons from VAT grouping rules

Outline

According to the European Commission, non-taxable persons including tax exempt public benefit foundations are not allowed to form VAT groupings, a tax-structure which is currently allowed in several Member States to ease VAT application of connected organisations. Several Member States currently allow non-taxable persons to form such VAT groupings, which allows even tax exempt organizations to recover some of their irrevocable VAT costs. The European Commission has now formally requested the Netherlands, Ireland, Spain, Finland, United Kingdom, the Czech Republic and Denmark to amend their legislation with regard to the application of their VAT grouping schemes to non-taxable persons (e.g. certain tax exempt public benefit foundations).

If Member States amend their laws accordingly, this could result in tax exempt public benefit foundations that are currently in a VAT group to be removed from their VAT groups. As a result they could be hit with a higher irrevocable VAT cost. This will be a concern to organizations that are partly exempt from VAT/outside the scope of VAT and therefore not able to recover their VAT.

Article 11 of the VAT Directive gives Member States the option, to regard connected organizations as one single taxable person. The proper application of Article 11 of the VAT Directive only permits Member States to allow forming VAT groupings composed of taxable persons. Tax exempt public benefit foundations are therefore not allowed to benefit from the grouping structure.

Finland however currently allows the inclusion of non-taxable persons into a VAT group. The proceedings against Ireland (2008/2141), the Netherlands (2004/4719), Spain (2008/2142), United Kingdom (2008/2145), Denmark (2008/2147) and the Czech Republic (2008/2146) concern the same issue. All these Member States allow non-taxable persons to join a VAT group. The European Commission press-release (IP/09/1768), which includes information on additional formal requests regarding the application of the VAT grouping rules is available at:
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1768&format=HTML&aged=0&language=en&guiLanguage=en>

These requests are in the form of a reasoned opinion which is the second stage of the infringement proceedings provided for in Article 226 of the Treaty. If these Member States fail to comply with the reasoned opinion within two months, the Commission may refer the matter to the Court of Justice of the European Communities.

In July 2009 the Commission adopted a Communication on the VAT grouping option provided for in the VAT Directive. The Communication set out the Commission's view on how the provisions of Article 11 of the VAT Directive should be translated into practical arrangements whilst respecting the basic principles of the Community VAT system and ensuring that the effects of using the option scheme remain restricted to the Member State applying it.

For the latest information on infringement proceedings, go to:

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

Action Point

The EFC will continue to keep its members informed about future foundation law developments. For more information, please contact: eu@efc.be