

Chargeability of VAT: definitive rules (almost) applicable

The chargeability of VAT was a hot subject during recent years. It can be summarized as follows: issuing an invoice no longer leads to the chargeability of VAT. The moment of chargeability has shifted to the supply of goods, the completion of the service or the (partial) payment of the invoice.

The application date has been postponed several times, but is now set at 1 January 2015. However, the tax authorities will be flexible until 30 June 2015 for VAT payers which could not yet adapt their computer systems to the new rules.

Preliminary: what is the moment of chargeability

The moment of chargeability of VAT is the moment on which the right of the Treasury to claim payment of VAT occurs, even though the effective payment can be postponed.

Principle: chargeability at the time of supply, completion of services or (partial) payment

VAT is no longer chargeable when issuing an invoice.

These three chargeable events however make VAT chargeable:

- supply of goods;
- completion of services;
- payment of (a part of) the invoice.

Importance for the client

Also for the client (when it is a VAT payer) this moment is relevant. It determines as from when he can deduct the VAT paid.

Difficulty: what if an advance invoice is issued?

An advance invoice can be issued before the supply of goods or completion of the service. When issuing the invoice no payment has been made. In other words none of the three chargeable events occurred. The VAT is not yet chargeable. But, and that is the disadvantage, the customer cannot deduct the VAT yet.

In order to meet these difficulties, administrative tolerances were applicable until the end of 2014 as transitional arrangements. Also now the legal provisions have taken effect, some tolerances remain to exist.

Still a tolerance: advance invoice less or more than seven days before supply or service

Also the legal provision is in a way tolerant for the advances asked for after 1 January 2015.

- In case the service or supply occurs less than seven days after the invoice date, the invoice is considered as a definitive invoice and not as an advance invoice. In practice it will not (always) be possible to mention the correct date of the taxable event on the invoice. It is sufficient to mention the invoice date. The supplier should not issue a corrective document.
- In case the service or supply occurs more than seven days after the invoice date, the invoice is to be considered as an advance invoice. On this advance invoice the probable chargeability date should be mentioned. This probable chargeability date can be one of the following dates: (i) probable date of payment, (ii) the ultimate payment date or (iii) is it earlier the date of the supply of the goods or completion of the services. It only concerns a 'probable' date: the tax authorities will not cause problems if afterwards the date shows to be incorrect. If the probable chargeability date is not mentioned, the invoice is incomplete. This means that the supplier/service provider will have to issue a second document when VAT becomes chargeable (supply, completion of service or payment).

Watch out when issuing (advance) invoices. In order to be sure (and for your comfort) you can better always mention the probable chargeability date.

Also tolerance for the VAT return

The supplier/service provider should report the transaction in the VAT return relating to the period when the VAT becomes chargeable (= when the supply takes place, the service is completed or payment is received). As a tolerance he can do this even earlier, in the VAT return relating to the period in which the advance invoice was issued.

Also for the client a tolerance is introduced. He can deduct the VAT in the month in which the advance invoice was issued, and should not wait until VAT becomes chargeable. He should however prove that VAT became chargeable by the end of the third month after the month in which the advance invoice was issued.

Note: not for transactions with private individuals

These new rules only apply to transactions between VAT payers. So when the client is a VAT payer with right to deduct VAT. For transactions with private individuals nothing changes.