

EC 13th Directive infringement proceedings launched against UK

The European Commission has formally requested the United Kingdom to amend its legislation concerning the refund of VAT borne by taxable persons not established in the EU. It has also requested France to modify its legislation concerning the VAT rates applied to transactions performed by undertakers. The requests take the form of a reasoned opinion (second step of the infringement procedure provided for in Article 226 of the EC Treaty). If the relevant national legislations are not amended within two months in order to comply with the respective reasoned opinions, the Commission may decide to refer these matters to the European Court of Justice.

United Kingdom: recovery of VAT borne by taxable persons not established in the EU

In December 2004 the United Kingdom amended its domestic VAT legislation transposing the 13th VAT Directive. That Directive lays down the arrangements for the refund of VAT to taxable persons not established in the territory of the Community.

As a result of the amendment, a taxable person established outside the Community is denied the right to recover VAT paid or due in the UK on goods or services in so far as they are used for the purpose of insurance or financial transactions supplied to customers established outside the EU. By contrast, a taxable person established in the Community (in the UK or otherwise) is entitled, under UK domestic legislation, to recover VAT in such cases.

The Commission has taken the view that the 13th VAT Directive, interpreted in connection with the relevant Community legislation, must be understood as allowing taxable persons established outside the Community to recover VAT in the aforementioned cases.

Comment

Non discrimination is a basic EU principle. That is why, when the UK amended its 13th Directive rules in 2004, following the WHA case, it was always likely that it would only be a matter of time before the Commission challenged the basis of this amendment. This challenge has now been made. Effectively, banks and insurance companies established outside the EU are treated differently by the UK from those based in the UK/EU when it comes to being able to claim UK VAT incurred on making financial and insurance supplies to non EU customers. The non EU entities are blocked from claiming that VAT. The 13th Directive does allow certain types of expenditure to be blocked (Germany for instance blocks claims for VAT on fuel by non EU businesses) and it does allow for Member States to set conditions, but by blocking all input tax claims by a complete industry has the UK taken this 'discretion' a step too far, given that supplies of finance and insurance to non EU-customers are not exempt? Discretionary powers cannot contravene those basic principles. If the UK has to change the rules again to reinstate such claims, will they also have to accept that the normal, very strict time limits for these types of claims should be set aside, and will they have to pay interest on the claims because of 'official error'?