

PUBLISHER'S NOTE

Correction to “Gulagging in Vat Law” by Scott Crosby

The purpose of the “Gulagging” article was, on the one hand, to expose the tendency of tax authorities to seek recovery of unpaid VAT, not from those who have defaulted, but from others whose only connection with the defaulter is that they were part of the same supply chain. It was also to expose, on the other hand, a practice whereby exempt or zero-rated status was being denied to suppliers in intra-Community transactions, where their customers sell on, collect VAT, cease trading, pocket the VAT and disappear.

The effects of the former may be limited to the Member State in question. The effects of the latter affect intra-Community trade by definition. By making the supplier in Member State A responsible for the unforeseen future acts of his customer in Member State B, a massive disincentive to intra-Community trade is created. The VAT law of the EU does not allow Member States to act in this fashion. The EC Commission chooses, however, not to intervene.

In the article published in the last issue (Volume 7, Issue 2), it was explained that fraud following an intra-Community acquisition is possible for the sole reason that the acquirer is able to obtain the goods VAT free. However, the workings of the system were inaccurately described. It was stated that the acquisition of goods from another Member State attracted no VAT. This is incorrect. The correct position is that VAT is due upon an intra-Community acquisition of goods, but that it is not due up front. More precisely, on receipt of goods from another Member State the acquirer accounts for “acquisition VAT” on the VAT return for the period in which the tax point occurs, but may recover the amount as input tax on the same VAT return. Thus, if acquisition VAT were 100 and the acquirer collected VAT at 150 on selling the goods on, his debt to the state would be 50, and he would never be out of pocket. Intra-Community acquisitions are, therefore, not VAT free de jure but are (or may be) VAT free de facto.

The published article asserted that intra-Community acquisitions were VAT free de jure. The authors corrected the mistake prior to publication, but fate decreed that the uncorrected text be published.