

## NEWS

Sweden  
Spain  
Malta

## FEATURE

EU VAT Regulations

### SWEDEN

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## EU Regulations Concerning VAT Invoices

The invoicing regulations from many EU countries have been brought together by EC VAT Invoicing Directive (2001/115/EC) which should now have been implemented by member states as follows:

*Unit Price:* The 'unit price' must be shown on an invoice. This applies to countable goods or services. For services this could be, for example, an hourly rate or a price for standard services. If the supply of a particular service cannot readily be broken down into countable elements then the total tax-exclusive price for the specific service will be accepted as the unit price.

A professional firm that is supplying a service will not be required to specify a 'unit price' where the supply is for a specified unit of time, for example from 1 January to 31 March. An EU company issuing an invoice for a commission would show the description on the invoice as 'Commissions for the period from 1 January 2004 to 31 March 2004'. However, a consultant's invoice for work billed at an hourly rate must show that hourly rate.

*Numbering:* Invoices must be sequentially numbered "in one or more series which uniquely identifies the invoice". As most businesses already use this system it should not be difficult to comply. The invoicing records must show any numbers that were spoiled and have not been used.

*Advance Payments:* Where payment is received on account prior to the completion of the supply and issue of the invoice, the date payment was received must be shown. For example, a VAT registered agent receiving a €1,000 commission on 31 July 2004 and issuing the invoice on 15 August must show the date of payment as being 31 July in addition to the date the invoice was issued.

*Reverse Charge Supplies:* When a supply of services is made of a type listed in Article 9(2)(e) of the Sixth VAT Directive to a customer in another EU Member State, the VAT on this supply is to be accounted for by the customer and the invoice must show the customer's VAT number and indicate in words or legal references that the supply is a reverse charge supply. For example, if a Luxembourg registered company issues an invoice to a customer in Italy for licence fees for

the exploitation of a copyright, the invoice will not carry Luxembourg VAT but the customer is required to account for Italian VAT, under the reverse charge procedure (sometimes known as the 'tax shift mechanism'). The invoice must now not only show the customer's VAT number but also indicate that the reverse charge procedure applies.

*Margin Schemes:* For goods sold under the margin or auction schemes the invoice must indicate that the appropriate scheme applies. The EU-wide margin scheme and auction schemes apply to supplies of second hand goods including motor vehicles, horses and works of art. Second hand goods can be sold outside of these schemes but if a scheme applies, this must be indicated on the invoice.

*Discounts:* A supplier must state on the invoice if any discount or price reduction was given which was not included in the price. This Regulation applies if an invoiced amount exceeds the amount paid and was not reflected by a credit note issued for the reduction.

### Sweden – Capital Gains on Shareholdings

Capital gains relating to the disposal of shares held for business reasons by Swedish corporate entities are now tax exempt. This exemption also applies to foreign companies resident in the EEA area and conducting business from a permanent establishment (PE) in Sweden when the shares are allocated to the PE. Unquoted shares are always considered as held for business reasons. The new legislation seeks to make Sweden more attractive as a base for international holding companies.

### Spain - Tax Changes

*Property Investment Companies.* To encourage an increase in the availability of residential rental properties in Spain, new rules have been introduced to make renting out these properties more attractive to corporate landlords. The main advantage is a large Corporate Income tax exemption.

The option to apply the regime must be notified to the Tax Authorities and only applies to companies renting houses. Other premises

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Further details of all these items  
are available at  
[www.agn-europe.org](http://www.agn-europe.org)



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and parking lots can be included when the net value of these does not exceed 20% of the total.

To qualify there must be at least 10 houses (or apartments); the total book value of the houses purchased under construction should not be more than 20% and at least a third of the lessees must have the option to purchase their property. Additionally, the real estate should be purchased at market price and must have been constructed or completely renovated in the last three years. The total area of the houses should not exceed 110 sqm (up to 135 sqm in 20% of the houses). The rent must be linked to inflation for the first 5 years, and the right to purchase option must be exercisable in the 6 months prior to the end of the rental term. The landlord company must also have an employee and premises from which it conducts its business.

85% of the tax due on rental or transfer of the houses is exempt. For transfers, the house must have been rented for 5 years and there must be reinvestment in other rental properties.

There is an exemption from 97% of the tax when both the annual rent does not exceed certain limits and when the right to purchase applies for 6 months after the end of the rental period.

The company shareholder will be able to apply the internal double tax credit. Individuals will not be entitled to apply such double tax credits.

For VAT purposes the purchase of such houses will only qualify for the 4% rate when the conditions for the 97% exemption are met.

*Withholding Taxes.* From January 2005, Spanish resident individuals will be able to deduct in their personal tax calculations the Austrian, Belgian and Luxembourg withholdings on savings income.

*Thin Capitalisation.* The EU parent companies of Spanish subsidiaries which lend more than three times the net equity of the subsidiary will no longer have the interest corresponding to the excess treated as a distribution of dividends, disallowed for corporation tax and subject to withholding tax – unless the country is a tax haven.

*Controlled Foreign Companies.* The rules no longer apply for Spanish companies receiving income from an EU company.

*Royalties.* Amounts paid to a non-resident entity for the use or right to use industrial, scientific or commercial equipment will be considered as

royalties (as they are in the OECD Model Treaty) and the withholdings to be made to an EU country for royalties will not be more than 10% from 1 January 2005 (less if the Tax Treaty so provides).

*Capital Risk Funds:* Dividends and income obtained in the transfer or discount of securities for non-Spanish residents (except tax haven residents) without a permanent establishment in Spain will not be taken as obtained in Spain.

## Malta – International Holding Companies

The Maltese tax system does not have a specific 'international holding company' regime. However, shares in a non-Maltese company held by a Maltese holding company may qualify as a 'participating holding' if the parent holds at least 10% of the shares. If the shareholding percentage is less than 10%, the shareholding still qualifies as a participating holding if:

- the Maltese corporate shareholder is entitled at its option to purchase or has the right of refusal on a disposal of the balance of the equity shares of the overseas company;
- the Maltese corporate shareholder is entitled to be represented on the board of the overseas company;
- the shareholding value exceeds LM500,000 liri (or the equivalent sum in another currency, for example approximately €1,175,000);
- the shares are held in the overseas company for the furtherance of the business of the Maltese company.

Non-resident shareholders of a Maltese holding company which has a participating holding in a non-resident company qualify for a full refund of the Malta tax paid by the Maltese company on income arising from these foreign holdings. The refund is triggered on a dividend distribution of this income to the non-resident shareholders.

Dividends are declared in the financial statements of the international holding company which are submitted to the Inland Revenue Department together with the income tax return and tax settlement. The non-resident shareholder (or his representative in Malta) submits an application for the tax refund, which is normally repaid by the Inland Revenue Department 4 to 8 weeks after receiving a valid application.

# Think Globally Act Locally