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Tax & Legal

VAT disputes: why VAT, now more than ever, requires specialist expertise

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Organizations are increasingly finding themselves involved in tax disputes with tax authorities. This is happening in the Netherlands, but also elsewhere. As a result of increasing digitalization and a strong European dimension, the VAT practice is becoming more complex and the financial stakes are high

What does this require of organizations and how can they future-proof their VAT position?

As Werner Gelderblom, Senior Manager Indirect Tax at KPMG Meijburg & Co explains: “VAT is always made up of two layers. It starts with the EU VAT Directive, which is then implemented at the local level. The friction between these two layers not only results in debates about what Dutch law says, but also how it relates to the EU VAT Directive and to all principles applying throughout Europe.”

What happens in practice is decisive

This complexity is further magnified due to the fact that VAT is a transaction tax. As Gert-Jan van Norden, Partner Indirect Tax at Meijburg & Co, explains: “Unlike direct taxes, what matters for the VAT treatment is what type of business you are dealing with and exactly what sales and transactions take place.” The stakes are high – you’re often talking about tens of millions of euros, because VAT affects total turnover.

Werner Gelderblom uses an example to illustrate this: “A commercial laboratory was faced with the question: is it the lab technicians who are doing the work or is a robot analyzing everything? We took the Dutch tax authorities to the lab to show them see exactly how the test tube process works. This specific insight proved to be decisive: the Dutch tax authorities acknowledged that the services fall under medical care activities and that this did not only involve an IT service. The art lies in being able to apply the law to what someone is specifically doing.”

An end to uncertainty

This complexity requires thorough preparation, certainly with regard to audits by the Dutch tax authorities. Gert-Jan van Norden explains: “Audits are far more commonplace in VAT than in direct taxes.” To help clients who are being audited, requires a combination of knowledge of the client’s business and solid subject-matter and procedural expertise. A good relationship with the Dutch tax authorities and the relationship of mutual trust with the client also plays a role. After all, if you’re being audited by the tax authorities, you want to have a party that can help you at all levels.”

Audits are often a sword of Damocles for taxpayers. Many companies, above all, ultimately want there to be an end to the uncertainty. Gert-Jan van Norden: “You may of course want to get the most for yourself out of it, but you just have to resolve it. That’s probably the

most important factor in audits: what is the best and most acceptable way to get it over and done with.”

Sound strategy and strong relationship of mutual trust

An important factor in these types of processes is the dialog with the tax authorities. What strategy do you adopt? Who acts as dialog partner? When do those involved join the dialog? According to Werner Gelderblom, the dialog with the tax authorities involves two things. “The dialog process firstly involves spending time and effort preparing for it. That means going through different scenarios, knowing where you want to end up, what the parameters are, where there’s room to move, how that will affect other years. Such extensive preparations are sometimes forgotten, while that’s where you can make the first gains.”

The second point is the dialog itself. Werner Gelderblom: “That’s always where the human aspect comes in. Meijburg has always had a good reputation: the Dutch tax authorities are aware that we come to the table with an open mind rather than with the intention to fleece each other. At the same time, we do want to arrive at the best solution and we know the facts, which means we can have constructive discussions about the content and trust each other. If that trust isn’t there from the start, it’ll be far harder to bring such a dialog to a successful conclusion.”





Documenting for the future

Werner Gelderblom emphasizes that the cyclical nature of VAT controversies means that proper documentation is crucial. “You often see that a cheerful mood arises after a controversy situation: no supplementary VAT assessment is going to be imposed. Yet at that time it’s essential to ensure that all agreements are properly documented. You could find yourself in the same situation again 10 years down the road.”

Gert-Jan van Norden adds: “This also has to do with the fact that we, as organization, seek long-term and permanent relationships with our clients and that clients have a long-term relationship with the Dutch tax authorities. After all, the company and the tax authorities will have to deal with each other long into the future.” As organization you’re therefore constantly preparing and substantiating your position. Werner Gelderblom: “Ultimately that’s controversy.”

Proving your case

Sometimes you can’t mutually resolve matters, and you land up litigating. Gert-Jan van Norden: “In court proceedings it’s the facts that are the most important. That also means that your file has to be up to date in respect of the facts.

Also, you have to think carefully beforehand about which burden of proof each party has. Gert-Jan van Norden: “Who has to convincingly demonstrate a fact?

Is that the taxpayer or is it the Dutch tax authorities? If you’re not clear about that, it can create an unpleasant dynamic. VAT litigation is often about VAT recovery or application of the reduced VAT rates or exemptions. The burden of proof for this rests with the taxpayer. Assuming that this isn’t so, entails risks. In the litigation stage before the courts, it’s therefore really important to carefully think this through beforehand.”

VAT is moreover preeminently a European tax and that European context plays a crucial role in court cases. The Court of Justice of the European Union is, in fact, the highest court in VAT cases. Gert-Jan van Norden: “We recently litigated a pension fund case right up to the Court of Justice of the European Union.”

EU dimension

This European context is becoming more important now that tax authorities within the EU are working more closely together via multilateral audits. Gert-Jan van Norden uses an example to illustrate this: “Especially in e-commerce it’s very common to be active with the same product in a lot of countries. If the tax authorities see a VAT risk somewhere, then that often also applies to the other countries and the tax authorities in those countries can act together.” As a result of the digitalization of the economy such multilateral audits are becoming more common. Countries outside the EU often also have a VAT-type of system, so that the problem can be even bigger.

To be more specific, Werner Gelderblom has this to say: “As soon as you cross the border with your business and serve consumers in various countries, you will be faced with VAT in all those countries. If you are familiar with the EU directives and have a network that allows you to rely on local expertise throughout Europe and beyond, then you can really be of more help to a client. That’s because you don’t have to keep explaining in each country where the problem lies.” Gert-Jan van Norden: “Because of our expertise we are even asked to assist in disputes or to act as an expert in court proceedings in other countries within and outside the EU.”

Digital reality changes the rules

The VAT practice is facing major changes due to increasing European collaboration and information sharing. Werner Gelderblom explains: “As a result of e-invoicing and e-reporting, in future each invoice will have to be reported to the Dutch tax authorities almost immediately. This will give tax authorities throughout Europe a more precise picture of what you’re doing and how you treat each product for VAT purposes.” This requires organizations to change their thinking: from day one you have to know how to invoice and report things.

This development is part of a broader trend, where tax authorities will have an ever-increasing amount of data at their disposal. Gert-Jan van Norden: “This is a game changer for tax and the position of taxpayers.”

Moreover, increasing digitalization makes European legal principles even more important. As Werner Gelderblom explains: “These principles are about what we think the legal order should be like throughout Europe. Take, for example, the principle of the right to defense or the principle of proportionality, if all that available data is being used in a manner other than for which it was originally intended. In such cases, the European principles offer additional guidelines to protect the interests of our clients.”



Contact Meijburg

The Tax Controversy & Litigation practice of KPMG Meijburg & Co is made up of a specialist and international team of tax professionals and lawyers. Together, they combine their expertise to find the most appropriate approach for their clients.



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