

## ECBA AUTUMN 2013

### – VENICE

#### **VAT for lawyers in Belgium:** **Criminal defense 21% more expensive, a blessing or a curse?**

##### **1. Summary of the new legislation**

After the Directive of 28 November 2006 (2006/112/EG, the so-called “Sixth Directive”), VAT can be seen as a European issue. Nevertheless, Member States could organize exceptions to the general rules regarding the “value added tax”. Belgium used this possibility to exclude certain services from the VAT obligations.

Until now, legal independents (“advocaten”) in Belgium benefited from such an exception (art. 44 §1, 1° VAT Code) to escape the obligation to add VAT to each invoice for legal services rendered.

In 2013, Belgium put an end to this legislation and made the VAT regulations applicable to legal independents, which means legal practitioners will be obliged to add 21% VAT to each invoice. This new legislation will enter into force on 1 January 2014.

This minor change is a revolution in the Belgian legal system, causing law firms to adjust themselves to apply the new rules with a well-prepared administration, computer system etc.

The easiest conclusion from this change is: legal fees will increase with 21%. As a legal professional it is worth to take a closer look and ask yourself: do they really? The VAT that needs to be added can be seen from different perspectives to learn that the impact is very different, depending from who is analyzing the new system.

The overview hereafter does not aim to be an expert analysis of the VAT system, nor does it claim to be complete. It contains some easy conclusions with some (strictly) personal comments from the author, him being the only one to be blamed (if that would be required).

##### (a) The legal professional

Lawyers will raise their bills with 21%. Their legal fees will remain the same and in order to safeguard the same income, the total bill will be €121,00 where it used to be €100,00. The extra €21,00 will be transferred to the Belgian State, unless the lawyer is able to deduct VAT on business purchases.

E.g. a lawyer buys a desk (€50,00 + €10,50 VAT) and receives fees (€100,00 + €21,00). He will transfer €10,50 to the Belgian State and recover the VAT he paid for the desk (€10,50).

Up till now, he would have received €100 and would have paid the VAT for the desk without deduction.

##### (b) The client

Clients can be subdivided in two categories: business clients (companies etc.) and ‘private’ clients (physical persons). *Business clients* will benefit from the new regulations, since the VAT paid to a lawyer can be deducted from the VAT received from their clients.

*Private clients* will really feel that lawyer bills have raised, because they simply pay 21% extra without any form of recovery. It could be feared that clients will be tempted to ask lawyers to invoice “unofficially” to escape from the VAT phantom, of course a despicable practice.

(c) The authorities

It seems logical that the Belgian State would be the main beneficiary from the change, receiving loads of VAT from lawyers. It might be too easy to jump to this conclusion, since lawyers will have the possibility to deduct VAT for investments made up to five years prior to the introduction of the VAT. E.g. a lawyer renovated an office for €100.000,00 + €21.000,00 VAT in 2012. He can recover 13/15 of the VAT paid (i.e. €18.200,00) and might be able to avoid having to transfer any VAT received during the first couple months/years. Many lawyers might do a thorough search to recover VAT on cars, electronics,... purchased less than 5 years ago and constructions, real estate,... purchased less than 15 years ago. These investments should of course be related to the business of being a lawyer.

It is clear that the Belgian State will not receive major amounts of VAT during the first few months. However, Belgium will no longer have to pay 72 million euro (€72.000.000,00) to the European Commission in order to spare the lawyers from having to charge VAT. This counts for an immediate impact on the accounts, a classical problem in Belgium.

(d) Conclusion

Private clients will be the main victim, the Belgian State will receive some extra funds, business lawyers and business clients will feel no change, smaller law firms might see their income reduced or feel the pressure of clients to participate in an illegal circuit.

## 2. Impact on clients seeking legal representation in criminal cases

Lawyers becoming more expensive is not that big a shock, however a raise of 21% is enormous. Among the private clients, all suspects in criminal proceedings will feel the impact of the new legislation, even white collar crime suspects from multinationals or other companies.

Criminal law in Belgium is a matter of personal accountability, meaning that physical persons will personally be charged, even for activities in relation to a company. Those persons can be prosecuted together with the company.

A lawyer can be paid by third parties, but has certain obligations under the VAT code, such as detailed invoicing. Taking into account the accountability, invoices should be delivered to the physical person himself, with no possibility for the companies to recover the VAT paid to the lawyer.

It therefore is certain that all suspects facing criminal proceedings will receive bills for legal fees which will be 21% higher, starting from January 2014. Is it worth considering to investigate whether the new regulations violate the rights of defense...?

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It does not harm to ask whether it was necessary to impose VAT on lawyers starting from 2014. The decision can at least be doubted, given the impact for those in need of legal representation (21% more expensive) and moreover, one could ask himself the question whether a lawyer could charge VAT, since in many cases he brings no added value to the table...

Hans Van de Wal