

Third parties Due Diligence – what can be done to minimize risk in case of VAT Fraud

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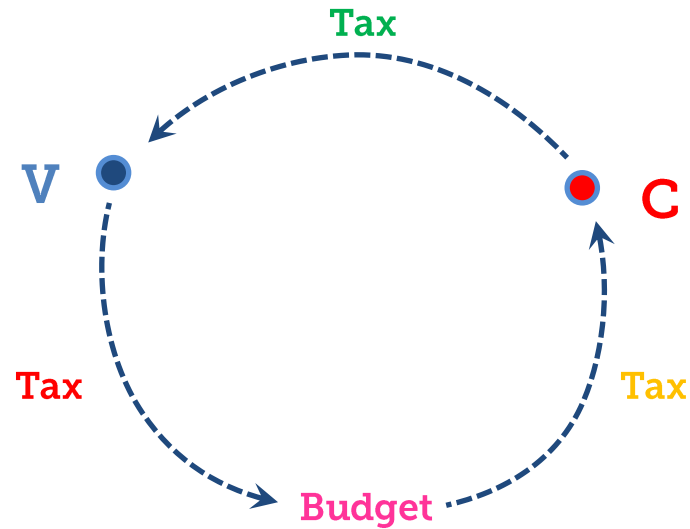
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VAT Fraud - Context

- Largely made possible by current transitional VAT system;
- Coexistence of reverse charge and fractional payments;
- Future VAT regime may introduce corrections.

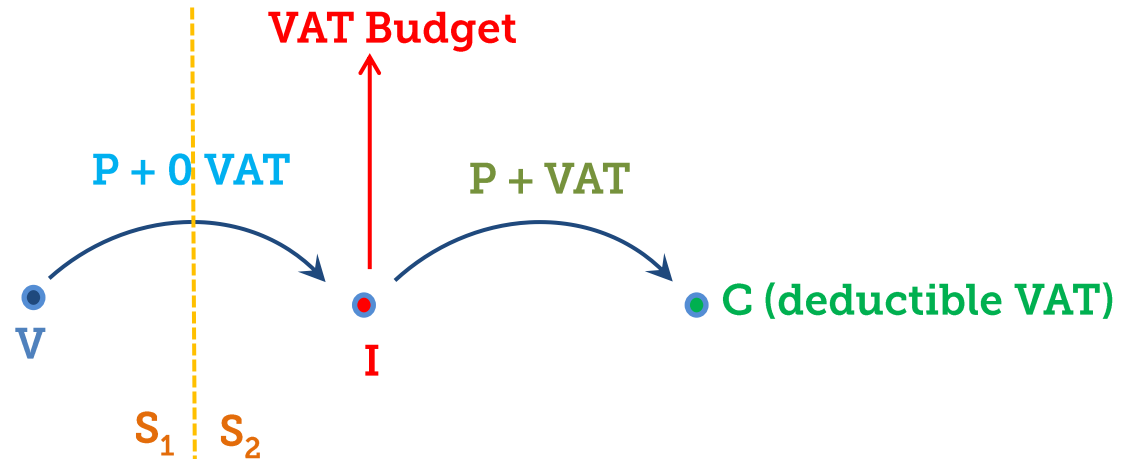
VAT Fraud – Context

VAT circuit in B2B



- The tax is “moved” between merchants and budget
- Risk of fraud

VAT Fraud – Context



I → Collects VAT from C for the entire value added chain

→ Does not pay VAT due to budget

Transitional VAT: Invitation to fraud!

Relevant decisions of ECJ

- C-354/03 (Optigen – UK), C-355/03 (Fulcrum Electronics Ltd – UK), C-448/03 (Bond House Systems – UK):

“The right to deduct input value added tax of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by value added tax fraud, without that taxable person knowing or having any means of knowing.”

Impact (2014 - 2016)

- ANAF issued a significant number of tax decisions imposing VAT to tax payers by refusing the right of deduction of VAT paid to suppliers which were allegedly involved in carousel fraud, based on the assessment that the taxpayer “knew, or should have known” about said fraud;
- Tax decisions were followed by penal complaints;
- 60% of all appeals submitted by tax payers with ANAF in 2015 were suspended as a result of penal complaints;
- Many are still pending...

Decisions of ECJ

➤ **Case C-277/14 (22.10.2015) – PPUH Stehcemp (Poland):**

"The provisions of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2002/38/EC of 7 May 2002, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, by which a taxable person is not allowed to deduct the value added tax due or paid in respect of goods that were delivered to him on the grounds that the invoice was issued by a trader which is to be regarded, in the light of the criteria provided by that legislation, as a non-existent trader, and that it is impossible to determine the identity of the actual supplier of the goods, except where it is established, on the basis of objective factors and without the taxable person being required to carry out checks which are not his responsibility, that the taxable person knew, or should have known, that that transaction was connected with value-added-tax fraud, this being a matter for the referring court to determine."

What can we do?

<https://www.youtube.com/watch?v=gsll67Al1Cg>

What can we do?

- Know your supplier!
- Old suppliers should be periodically screened for validity of the VAT code;
- New suppliers should be analyzed for background in trading;
- Lack of track record should be a warning!
- Look at the shareholders/managers to check if they have a history of fraud;
- The prices are lower than the market place, this could indicate that the profit is made from VAT fraud;
- Always keep in mind that *what seems too good to be true* is generally **NOT TRUE!**

Thank you!

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