

# Reverse charge VAT: services linked to metal product supplies (2/7/18)

With supplies of metal products and related services (such as cutting, bending, machining, welding, rolling, cleaning, surface treatment and other types of processing) attracting reverse-charge VAT from 1 January 2018, an interpretation recently handed down by the State Revenue Service (SRS) has thrown the metal trade into confusion: reverse-charge VAT applies to those services only if they accompany a supply of metal products. This means that the general VAT scheme applies when accounting for VAT on such services supplied separately. This article explores the issue in detail.

## Interpreting this clause

What drives the opinion that only a supplier of goods can provide the services specified in section 143.4 of the VAT Act? Are those services essentially connected with a supply of goods?

A grammatical interpretation of this clause implies that metal processing services attract reverse-charge VAT only if they are rendered in connection with a supply of metal products, not in transactions involving metal products listed in the Cabinet of Ministers' Regulation.

This understanding might be based on an assumption that reverse-charge VAT covered supplies of metal products and closely linked services known as "ancillary" services, and the Cabinet Regulation then specified what services are treated as closely linked to supplies of those goods. The principle that the same VAT scheme should cover ancillary services as well as the principal supply has been upheld by the case law of the Court of Justice of the European Union. According to this principle an ancillary service and the principal supply should be carried out by the same person, and the purpose of acquiring the ancillary service is not to receive it as such, but rather as a means of using and enjoying the items of the principal supply (i.e. metal products) in the best circumstances, and the ancillary service should be crucial to making the principal supply.

We have our doubts here as to whether those metal processing services are in substance closely linked to supplies of metal products and should be treated as ancillary services. Or should those services be still considered independent? Is the practice of restricting reverse-charge VAT to service providers who also supply metal products not contrary to the principle of fair trade, which prevents the application of different VAT schemes to identical transactions?

A systemic analysis of the provisions of law in question can lead to a finding that is contrary to the grammatical interpretation. Sections 141, 143 and 143.4 of the VAT Act dealing with timber, scrap metal, metal products and related services are identical:

- Section 141. A special VAT scheme for timber supplies and related services;
- Section 143. A special VAT scheme for scrap metal supplies and related services;
- Section 143.4. A special VAT scheme for metal product supplies and related services.

Are there any grounds for believing that services connected with timber or scrap metal also attract reverse-charge VAT only if they are rendered by a supplier of timber or scrap metal? It is clear that no such practice existed in the timber trade, as we can conclude from the publicly available case law. For instance,

Case No. A420658410 involved a dispute over input VAT exactly because the SRS auditors believed that the person who carried out felling preparation services (drawing up a technological map of the felling site, marking hazardous areas, setting up a loading area etc) but did not supply timber, was required to apply reverse-charge VAT to his services. Also, when we look at the list of services attracting reverse-charge VAT, we understand that it is difficult to imagine a timber supplier simultaneously providing market research (marketing) and brokerage services in connection with supplies of those goods. It follows that reverse-charge VAT on timber-related services does not require those services be rendered by a timber supplier, and those services are not closely connected with supplies of goods, but much rather with specific timber. Does the SRS's interpretation of VAT treatment of services linked to supplies of metal products mean that the SRS now believes that the section 141 services should also accompany timber supplies to qualify for reverse-charge VAT?

Annotation to proposed new legislation is a key source that helps understand its necessity, application and impact on various areas, but unfortunately the annotation to the piece we are analysing here is scarce and fails to explain whether reverse-charge VAT is restricted to services a supplier of metal products renders along with a supply of metal products. However, the target demographics that will or might be affected by the new legislation include registered taxable persons who are suppliers and recipients of metal products as well as providers and recipients of services linked to metal product supplies. This might imply that reverse-charge VAT also affects taxable persons who only provide such services, without supplying such goods.

In summary, we believe that the associations who proposed and encouraged the introduction of reverse-charge VAT to fight fraud in their industries have reasonable grounds for asking the lawmaker to fine-tune the reverse-charge treatment in order to clear up the confusion surrounding the application of the rules adopted earlier (timber and scrap metal) as well as the new rule (metal products).

We would be happy to help associations or individual taxpayers defend their interests. Until this issue is resolved we suggest abiding by the SRS's interpretation.