

## The Netherlands

October 2010

**The Dutch Supreme Court decides that it is not possible to deduct input VAT in a different period than the period in which the invoice is issued.**

### ***The court case***

In the first and second quarter of 2004 a Dutch VAT entrepreneur received several invoices which included Dutch VAT. This VAT was included in the VAT return of the fourth quarter of 2004. The Tax Authorities argued that the VAT was not reclaimed in the correct period and denied the refund. The Dutch Supreme Court decided that the Tax Inspector is correct to deny the refund. The tax payer should have filed additional VAT returns reclaiming the VAT in the correct period. Additional VAT returns can be filed up to five years after the calendar year has ended. As a result of this decision of the Supreme Court in the year 2010, the tax payer was not able to reclaim the input VAT of 2004 by filing an additional VAT return, as the filing period already ended in 2009.

### ***The consequences***

Until now, the Dutch Tax Authorities had a(n off the record) practical approach regarding including the input VAT of invoices of another period in a VAT return, as long as the invoices were from the same calendar year as the VAT return. Due to the decision of the Dutch Supreme Court it is now clear that this practical solution can no longer be applied. As a result, the tax payer should always reclaim the input VAT on invoices in a(n additional) VAT return of the period the invoice is dated.

Moreover, including the invoice in the incorrect period, can be regarded as deliberately filing an incorrect VAT return for which the tax payer/person who filed the VAT return can be prosecuted. Therefore, please make sure that all invoices are included in the correct VAT return.

### ***The solution***

Additional VAT returns can be filed for part of a year or a whole calendar year. In case an invoice has not been included in VAT return of the matching period, you should consider whether or not you want to file an additional VAT return for the corresponding period immediately, or want to wait and file one additional VAT return for the whole calendar year at the end of the year, including all “forgotten” invoices. The decision to include all invoices in one additional VAT return at the end of the year could be based on a cost-benefit analysis.

Should you have any questions or remarks on this, just give us a call.

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