

Issue 32



# TAX TRIBUNE

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Dear Readers,

It is my great pleasure to introduce the 32<sup>nd</sup> edition of Tax Tribune, the magazine of the Intra-European Organisation of Tax Administrations (IOTA). This edition marks a change of format for this IOTA publication as it is the first time that we publish the Tax Tribune in the format of an e-book. Our aim is to make the magazine and its articles easier to reach.

I am convinced that all five articles will present useful information and experience what kind of actions tax administrations can take in order to increase and/or maintain the confidence of citizens in tax administrations. The article of Lennart Wittberg and Anders Stridh describes how behavioural economics (people's actual behaviour based on empirical evidence) can contribute to the development of compliance strategies. The compliance strategy of the Swedish Tax Agency is aimed at increasing the willingness to comply by building trust and to make it easy to comply and difficult not to comply. Pia Mettala and Hannu Hautamäki demonstrate the efforts of the Finnish Tax Administration to maintain confidence in the overall tax system by presenting the example of the Real Time Audit (RTA) Project in Finland. The RTA kind of audit is one possibility to gather information of customer behaviour and encourage tax compliance. Simon Vincent and Steve Morgan explain how the UK's Tax Authority has applied the Court of Justice of the European Union (CJEU) judgment within the framework of a Multilateral Control (MLC) event. The rapid progress of this MLC has been achieved through positive engagement and extensive co-operation with other Member States' tax authorities. The outcome demonstrates that the UK is making use of all legal acts to disrupt fraudulent activities. Rivo Reitmann highlights the possible positive effects of the establishment of an integrated Employment Register in Estonia: increased tax revenue collection to the state budget is expected – estimated additional tax yield per year is about 10 million euro. The Estonian Tax and Customs Board started the project in common with other interested public agencies with the aim of reducing the administrative burden on employers since employment data is no longer duplicated to different public agencies as it is now converged and integrated into one system. Laurence Geyduschek presents the initiatives taken by Belgium in the promotion and facilitation of electronic invoices which it has greatly contributed to a shift of mind of enterprises who have now started to enhance their existing e-invoicing

procedures. Overall, more than 45% of the Belgian enterprises sent an e-invoice in 2014, and more than 40% received an e-invoice.

I am proud to be able to present you these valuable articles and I am convinced that you will find them both interesting and useful.

Miklós Kok

Executive Secretary

IOTA

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# COMPLIANCE STRATEGIES AND BEHAVIOURAL ECONOMICS

Behavioural economics refers to a research discipline that aims to describe how people actually behave based on empirical evidence from both experimental studies and real world data. This knowledge and the resulting insights can be used for adapting and improving compliance strategies. It has already influenced the thinking on compliance in the Swedish Tax Agency.

## Introduction

The compliance strategy of the Swedish Tax Agency is aimed at increasing the willingness to comply by building trust and to make it easy to comply and difficult not to comply. To increase the willingness to comply is a completely different path from just saying that compliance should increase. The Swedish strategy assumes that it is important why taxpayers comply, not just that they are compliant. People's motives are important and therefore it is important to understand behavior.

The underlying idea is that sustainable long-term compliance can only be achieved if taxpayers want to comply. Compliance based solely on deterrence, fear and punishment can work in the short-term but will be difficult to uphold because it turns taxpayers against the tax administration and will require increasingly harsher methods. Enforcement activities like audits and punishments are necessary but they should also be seen as, and used as, tools for increasing trust and the willingness to comply.

The traditional view on the role of a tax administration has been that it is an enforcer of the tax law. The research on tax compliance behavior more or less started with the classic economic model of tax evasion from the 1970s by Allingham and Sandmo<sup>27</sup>. This model assumes that people are behaving in an economical rational way. According to this view, compliant or non-compliant behaviour is the result of a cost - benefit calculation. People comply when the costs of evasion outweigh the benefits of evasion and choose not comply when evasion is more profitable.

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<sup>27</sup> Allingham, M., G., Sandmo, A. 1972, Income Tax Evasion: A Theoretical Analysis. University of Pennsylvania, Philadelphia, USA and The Norwegian School of Economics and Business Administration, Bergen, Norway.

Daniel Kahneman, a psychologist that received the Nobel Memorial Prize in Economic Sciences in 2002 for his work in behavioural economics, has shown that humans are not rational as the term is understood in the classical economic model. But humans are not completely irrational either. Kahneman argues that people are mostly reasonable rational but that we as humans tend to use heuristics, or rule of thumbs, and are susceptible to biases in our decisions which can lead to undesired or non-optimal behaviour. People sometimes need help to make more accurate judgements and better decisions.<sup>28</sup>

The economist Richard H. Thaler and the jurist Cass R. Sunstein coined the term "nudges" to refer to small efforts with the purpose of providing such help. The idea is to help people achieve particular outcomes but without removing any of the available choices. One example of a nudge involves changing the order in which cafeteria food is arranged so that the healthy food is placed before unhealthy snacks, which lead to customers making more healthy food choices. Another example shows how gradually reducing the distance between feedback stripes painted on the road before a dangerous curve prompt drivers to slow down by creating the illusion of increased speed.<sup>29</sup>

A better understanding of behavioural economics can therefore be helpful for designing compliance strategies. The purpose of this article is to point to the potential changes in perspective, mindset and strategic thinking. This in turn can have a big impact on what a tax administration chooses to do and how it does it. Changed strategies and changed mindsets will impact day-to-day operations once they have been established.

### **It's an environmental issue**

The OECD report "*Right from the Start: Influencing the Compliance environment for Small / Medium Enterprises*"<sup>30</sup> from 2012 says that a right from the start approach is about creating an environment which supports compliant behavior and that tax administrations have a role to play in creating such an environment.

The approach to focus on the taxpayers' environment is mainly based on two insights provided by research on behaviour. The first insight relates directly to

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<sup>28</sup> Daniel Kahneman (2011), *Thinking Fast and Slow*, Penguin Books Ltd.

<sup>29</sup> OECD FTA (2014): Tax Compliance by Design; Achieving Improved SME Compliance by Adopting a System Perspective, Forum on Tax Administration, OECD: Paris. <http://www.oecd.org/tax/administration/tax-compliance-by-design-9789264223219-en.htm>

<sup>30</sup> OECD FTA (2012): Right from the Start: Influencing the Compliance Environment for SMEs, Forum on Tax Administration, OECD: Paris. <http://www.oecd.org/site/ctpfta/49428016.pdf>

behavioural economics and the conclusion that even small changes in the taxpayer's environment can have a big impact on behaviour. The second insight is based on a behavioural feature called the fundamental attribution error that says that we as human beings tend to overestimate the importance of other people's character and underestimate the importance of external factors when we assess people's behaviour. Both of these insights points towards the importance of the environment.

The notion that small changes in the environment can have big impact on behaviour is a result of applying the knowledge from behavioural economics. Studies in the field of behavioural economics clearly show that humans do not behave as fully informed, economic rational and purely self-interested decision makers.

Daniel Kahneman has described many of these non-rational behaviours. One example is the anchoring effect. It is a name for a common human tendency to rely too heavily on the first piece of information offered (the "anchor") when making decisions or judgements, even when this information is totally irrelevant.

Kahneman and his colleague Amos Tversky conducted an experiment to show this effect. They asked two groups of students to write down a specific number that they were told had been chosen by random, 10 for the first group and 65 for the second. These are the anchors. The students then had to answer some questions including "What is your best guess of the percentage of African nations in the UN?" The average estimate was 25% from the first group and 45% from the second group. People's estimates are influenced by the information they currently have available even if it is not connected to the issue at hand. The anchoring effect can take many forms, for instance if a person considers how much to pay for a house, that person will be influenced by the asking price. The same house will appear more valuable if its listing price is high rather than low.<sup>31</sup>

The insight that we as human beings tend to overestimate the importance of personal character, the fundamental attribution error, originates from a classic experiment that Edward E. Jones and Victor Harris carried out in 1967. In the experiment subjects were asked to read essays that expressed opinions for or against Fidel Castro, and were asked to rate the pro-Castro attitudes of the writers. They rated writers who spoke in favour of Castro as having a more positive attitude towards Castro than those who spoke against him. This was the case even when the

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<sup>31</sup> Daniel Kahneman (2011), Thinking Fast and Slow, Penguin Books Ltd.

subjects were told that the writer's positions were determined by a coin toss. This showed that the subjects attributed the behaviour of the writers to their character even though they knew that it was external factors that had decided what they should write about Castro.<sup>32</sup>

Tax administrations are affected by this also. It is easy to assume that tax evaders evade because it is something wrong with them related to some features in their character. People are undeniably different and personal character matters but the point is that we tend to overestimate the importance of character and make assumptions on people's motives even when we do not really know why people behave the way they do.

The OECD report on the concept of right from the start draws the following conclusion from these insights:

*"When the significant impact of context and external factors is considered, it also becomes obvious that the design of compliance strategies cannot depart from a point where we simply distinguish between compliant taxpayers and non-compliant taxpayers. Compliant and non-compliant behaviours are a function of many factors and therefore the result rather than the starting point. So compliance behaviour can be influenced by influencing the external factors."*

This is an important conclusion that has real impact on the thinking around compliance strategies. It means that it is probably a bad idea to start with segmenting taxpayers into different groups based on their perceived attitudes or motives related to compliance and then applying different treatments for the different groups. Such a strategy assumes that taxpayers inherently are more or less "good" or "bad" and that by treating the different taxpayers differently we can influence their behaviour.

The right from the start approach based on insights on human behaviour suggests that we should see it from another perspective. Instead of using different segments based on character as a starting point we should see different behaviour as the result of how the environment looks like. Different taxpayers operate in different environments and behave differently; this can be observed and treated as a fact without having to make judgment on taxpayers' motives or character. The observed

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<sup>32</sup> OECD FTA (2010): Understanding and Influencing Taxpayer's Compliance Behaviour, Forum on Tax Administration, OECD: Paris. [www.oecd.org/dataoecd/58/38/46274793.pdf](http://www.oecd.org/dataoecd/58/38/46274793.pdf)

behaviour is, mostly, the result of the environment and if we want to influence the behaviour we should try to change the environment. The idea is to see the environment as the main driver or cause behind the behaviour and the observed behaviour as the result and thus an indicator on how well the compliance environment support compliant behaviour.

### **The strategic and practical implications**

The reasoning above represents good news because it is easier to change the environment than trying to change people's character. Regardless of how much we think that character matters it is still a good idea to work more with influencing the environment because it is more cost-effective.

Another important conclusion is that this means that we have to make a choice on how we perceive the taxpayers; as part of the problem or as part of the solution. If we assume that there is something wrong with the taxpayers then they are part of the problem. If we on the other hand assume that the problem lies with the environment and circumstances then it would be a natural thing to work together with taxpayers and their representatives in order to influence the environment through joint efforts. This is a matter of choosing a strategic perspective that can have great impact on how a tax administrations way of working.

Working more together with other parties is a direct and practical consequence of this changed strategy. The Swedish Tax Agency is today more than ever working together with industry organisations, tax intermediaries, software developers and other parties.

This is a positive view on humans and their character. Most people are probably willing to comply if they perceive it as easy, if they are treated fairly and with respect and if they perceive that other taxpayers pay their fair share too. These are factors that research on tax compliance shows has a strong correlation to compliance. It is more in line with how people actually behave than the traditional economic model assuming that people only are rational calculators.<sup>33</sup>

Employees in the Swedish Tax Agency are trying different things in order to support taxpayers better. One example is to use post-it notes on letters. A small handwritten message like "Please contact me if you have any questions" or other kind of

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<sup>33</sup> OECD FTA (2010): Understanding and Influencing Taxpayer's Compliance Behaviour, Forum on Tax Administration, OECD: Paris. [www.oecd.org/dataoecd/58/38/46274793.pdf](http://www.oecd.org/dataoecd/58/38/46274793.pdf)

greetings can have a great impact. The receiver of the message reacts in a positive way, he or she is happy to see the “personal touch” which indicates that the message comes from a real person with a real interest in the receiver’s issue. The effect is in most cases a smoother communication, better and faster reply and a better understanding on both sides. This is a good example of a small change that can have a great impact.

We know that other tax administrations are experimenting with changing the wordings in letters. Small changes of how a message is presented can potentially have a great impact on the behaviour.

OECD has recently published a report called “*Tax Compliance by Design; Achieving Improved SME Tax Compliance by Adopting a System Perspective*”.<sup>34</sup> It builds on the report from 2012 on the right from the start concept and presents way to “design in” compliance in business taxpayers normal processes and support systems. It is all about influencing the compliance environment together with taxpayers and other stakeholders.

More focus on changing the taxpayers’ environment and circumstances does not mean that enforcement activities like audits will be less important. Enforcement will still be a very important part of what a tax administration does. There is not a conflict between influencing the environment and working with enforcement. Changes in the environment can work better if they are supported by enforcement. Enforcement strategies and activities can therefore require some adjustments in order to maximize the combined effect. New legislation in Sweden on mandatory use of certified electronic cash registers are for instance supported by an increase in the number of unannounced inspections.

This leads to another important change or clarification in mindset. The traditional view of tax administrations have been that the work is about detecting and reducing errors or evasion. It is about preventing what can go wrong. The focus on environment instead suggests that it is about making things more right. This is foremost a matter of perspective, not necessarily what is done in practice. But it is important to emphasize that increasing compliance is not just about preventing non-compliance or finding errors or evasion; it is about finding opportunities for building on and supporting the willingness to comply.

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<sup>34</sup> OECD FTA (2014): Tax Compliance by Design; Achieving Improved SME Compliance by Adopting a System Perspective, Forum on Tax Administration, OECD: Paris. <http://www.oecd.org/tax/administration/tax-compliance-by-design-9789264223219-en.htm>

The practical consequences can be numerous and diverse. But ideas on what can be done in practice is best derived from a clear strategic direction and intent that in turn is built on the mindset and perspective on taxpayer and their behaviour as described above. The working pattern of the Swedish Tax Agency has to a great extent been to first collect and embrace knowledge. New and more knowledge can bring new insights. These insights can change mindset and perspective which will be the main drivers behind new working methods. These changes should therefore be seen as long term developments and where we will end up is difficult to envisage today.

### **Do no evil**

It becomes clear that knowledge from behavioural economics can be used in order to influence behaviour. This is not something new. Salespeople have for a long time used knowledge on human behaviour in order to encourage people to buy more. This can in some cases be called manipulation.

A tax administration can and should use knowledge on human behaviour but need to be careful about how to do it. Transparency, trust and respect are important factors for building a willingness to comply. Taxpayers who feel, or are, being manipulated will maybe in the future change their view on compliance and on the tax administration. Their willingness to comply in the long run can suffer.

A problem with experiments on behaviour is that they only measure the direct change in behaviour as a result of some changed circumstances. Behaviour can change in a desired way but that does not mean that the willingness to comply will increase. Nor does it mean that the change in behaviour will be sustainable.

The Swedish Tax Agency's view on this is that it is not enough that one particular measure has a desired impact on immediate behaviour. Equally or even more important is how the measure affects the willingness to comply in the long run. How measures are implemented is also important. Treating all taxpayers with respect and building trust is core parts of Swedish Tax Agency's compliance strategy. This has consequences on what can be done.

It can for instance be possible that sending threatening letters to taxpayers can improve compliance. Taxpayers will then be more compliant because they are afraid of being caught. But other effects will occur, like changed attitudes towards the tax administration and to compliance. It is in this case likely that the willingness to comply will suffer meaning that as soon as the threat is perceived to be reduced non-compliance will increase (to a higher level than before the letters were sent

out). It is important to take a long-term perspective and to focus on the willingness to comply and on building trust. This will make sure that only suitable and justifiable measures are implemented. The end does not justify the means. The means must be justifiable on their own merits.

All measures contemplated by a tax administration should therefore meet high ethical standards and the tax administration should be open and transparent about what it is doing and planning to do. Involvement of external stakeholders is often necessary. This means that not all options provided by insights from behavioural economics can be used but our view is that there are still plenty of options left that we can explore further in order to increase the willingness to comply in a cost-effective way for both taxpayers and the tax administration.





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**Hannu Hautamäki** has been working in Tax Administration since 1983, 28 years in Tax Auditing Unit and 3 years in Tax Office. He has worked for 16 years as a tax auditor, 10 years as head of office and 5 years as line director. Processes in which Hannu Hautamäki works at the moment are communication, development of skills and the prepayment. In addition, he is a member of the real-time tax audit project.



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**Pia Mettala** has been working in the Finnish Tax Administration and in the Tax Auditing Unit for 18 years. As audit line director in Uusimaa Tax Auditing Unit she is responsible for quality and coherence of audits, tax expert function and international matters e.g. TIEAs. In 2014 she was also a member in RTA pilot project. She has a master's degree in business from the Helsinki School of Economics and Business Administration (Aalto University).

# THE REAL TIME AUDIT PROJECT IN FINLAND

## Background

The primary goal for the Finnish Tax Administration – as in other countries - is to maintain confidence in the overall tax system and diminish the tax gap. We try to influence our customers in a way that they voluntarily give all the information needed in taxation correctly and fully and pay their taxes on time. At the same time we try to prevent the possibilities to act incorrectly by tax risk management, proactive guidance and different tax control methods.

The tax audit (field audit) in Finland in small and medium sized enterprises (SME's) is traditionally carried out at the same time in all tax categories (business income tax, VAT and payroll taxes) and covering 1-3 fiscal years. By examining the statistics from 2013 we can see that 44 percentage of the tax audit resources were used to audits with minor fiscal meaning, with direct outcome of the audit (tax payment) below 10 000 EUR. The errors found during these audits were also mostly unintentional. The average working days spent on one audit, from the audit preparation to the finished audit report, were 22. At the same time another study showed that 65-85 % of the errors in tax matters found in audits were frequent. From this point of view it is not always necessary to audit all tax categories and several fiscal years. The same results can be reached using less comprehensive auditing methods. With a better segmentation of the businesses based on their tax risk, more audit resources can be allocated to high-risk customers. The audit coverage in Finland in 2013 was below 1 percentage. In order to prevent deliberate tax evasion it is important that the possibility to end up as subject to a tax audit is reasonable.

## The real time audit (RTA) project

The real time audit (RTA) project in Finland began in January 2014 (one year project). The aims of the project were to find the most suitable audit methods to lower-risk customers, optimize the working days used for an audit, give guidance to make compliance easier, react quicker to possible errors in taxation and, primarily, to ensure that taxes are levied in the correct amount and at the right time in the future. A very important target was also to increase the amount of contacts with customers to make the tax administration more known.

In real time audit there are three main differences compared to traditional audits:

- the audit period is shorter (3-6 months or the last financial year as opposed to 1-3 years)
- the audit is focused on ongoing fiscal period instead of already reported fiscal years
- a possibility to self-correction.

The audit can also be targeted to a certain tax category, to a certain tax matter e.g. corporation arrangements, VAT refund or fringe benefits, or the auditors can check that the actions needed in bookkeeping due to new tax legislation have been understood and implemented.

### **Audit practice in RTA project**

The RTA audits were always carried out by two auditors. In the RTA project, the timetable for audits was 1-2 audits per pair of auditors per week.

To get background information for the audit the auditors visited the company's homepage in internet or social media and took the Tax Administration's data about the client in an "auditor's travel-packet" to their computer. All the information the client has submitted to the tax administration is in this packet. It contains also a lot of data from other authorities. Then the auditors contacted the company and asked the journal and general ledger in electronic format. Sometimes, already at this point, the auditors were given an access to company's e-files in the cloud.

The taxpayers were informed about the audit in advance, normally from 3 days up to 3 weeks before the visit. The actual audit was carried out in the customer's or in accounting company's premises. In this project the visit took 1-2 days. The visit was conversational and contained a lot of guidance in person. At the closing meeting the client, auditors and also the accountant if possible were present (the information is usually useful for other clients too). In this meeting auditors summed up their remarks, stated the possible mistakes and encouraged the customer to correct errors by himself on the ongoing accounting period (notable amounts) or in the future (smaller amounts).

The auditors made afterwards sure that the customer complied with the given instructions. It could be done by asking for the corrected documents or making sure that the corrected periodic tax returns and income tax returns had been given. In a couple of audits a re-audit was needed.

In this project the auditors had a model tax audit report template available. Compared to the normal audit report it was quicker to complete. It was shorter, including only the most important information: short description of the business activity, audited material, audited period and the most important remarks. There was also a request to make corrections (self-correction). All the guidance was in a compact form and there were links to the internet pages of the tax administration when possible.

## **Conclusions**

The project was carried out at the same time in every Tax Auditing Unit in Finland. Sixty of all the auditors (450 active) were allocated to this project. Most of the auditors were working fulltime in this project, a part of them carried out RTAs side by side with the traditional audits. The experiences were promising. The auditors felt that the audits were meaningful and the customers were pleased to have personal guidance in their tax matters, even if it meant more taxes to pay.

By the end of September 2014, 1096 audits were finished, in comparison to 1985 traditional audits finished by the same time. The average working days spent in RTA were 4.3. Some kind of action was taken in 37 % of the cases. There was need for control procedures afterwards in less than half of the audits. In couple of audits major tax problems were found and the audit had to be extended.

It is good to remember that the voluntary compliance rate in Finland is very high. According to a 2014 customer survey 96 % of Finns think that paying taxes is important in order to maintain the welfare society. Some 74 % of Finns pay their taxes willingly. Because of complicated tax laws they still need some help sometimes. The RTA kind of audit is one possibility to gather information of customer behaviour and encourage tax compliance. This kind of audit is however not suitable for the non-compliant customers or grey economy. In these cases it could even lead to less compliance. It is very important to improve the risk analysis system further. It is also important to remember that in spite of the risk evaluation made beforehand the auditor in every audit considers carefully the tax risk and has an opportunity to extend the audit if needed.



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**Simon Vincent** has been an officer of HM Revenue & Customs for 25 years and has a wide experience of investigating VAT fraud. He is currently a member of a team that is located within Criminal Investigation, a part of HM Revenue & Customs, which is responsible for looking at Organised Crime and MTIC Fraud.



**Steve Morgan**  
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**Steve Morgan** is part of a policy team within HM Revenue & Customs that looks at ways of tackling VAT fraud through the use of civil rather than criminal interventions. He has been responsible for helping to create the UK's response to MTIC fraud using Kittel. He has also been responsible for providing advice and assistance in many of the UK's most important cases involving the use of Kittel.

## **MECSEK-GABONA KFT C-273/11 AND ITS USE IN A UK MULTILATERAL CONTROL (MLC) EVENT**

The aim of this article is to highlight how the UK's tax authority, Her Majesty's Revenue and Customs (HMRC), has applied the Court of Justice of the European Union (CJEU) judgment in the case of Mecsek-Gabona Kft ('Mecsek') within the framework of a Multilateral Control event.

The Mecsek judgment allows a tax authority in a European Union (EU) Member State to deny a taxable person their right to exempt an intra-Community supply in certain circumstances. Those circumstances are discussed in greater detail within this article. Like other judgments before it, most notably Axel Kittel and others (C-439/04 and C-440/04), the CJEU reiterates the point that the prevention of tax evasion, avoidance and abuse is an objective recognised and encouraged under the Principal VAT Directive. Thus Mecsek is seen as, and should be used as, a tool to combat fraud where the conditions are met.

### **Mecsek-Gabona Kft (Case C-273/11)**

#### **Background**

Mecsek-Gabona Kft was a Hungarian company engaged in the wholesale supply of cereals, tobacco, seeds and fodder. It entered into a contract with Agro-Trade srl ('Agro-Trade'), an Italian company, for the sale of rapeseed. Agro-Trade undertook to arrange the means of transportation and to transport the goods to Italy. Prior to transportation, Agro-Trade provided the registration numbers of the vehicles which would pick up the goods. After the vehicles had been weighed, the quantities of the goods purchased were entered on the CMRs, and the transport documents were presented by the carriers. The first copies of the completed CMRs were photocopied by Mecsek, while the originals remained with the carriers. The serial numbers of the 40 CMRs, which were consecutive, were returned to Mecsek by post from Agro-Trade's address in Italy. Shortly after issuing sales invoices Mecsek checked Agro-Trade's VAT number and found it to be valid.

In the course of checking Mecsek's tax return, the Hungarian tax authority submitted a request for information to the Italian tax authority. According to the information returned, Agro-Trade could not be found. No company of that name had ever been registered at the purported business address (a residential property)

and Agro-Trade had never paid VAT. Agro-Trade's Italian VAT registration number was removed from the register with retroactive effect from 17 April 2009.

The Hungarian tax authority took the view that Mecsek had not succeeded in proving that the transaction in issue was a zero rated intra-Community supply of goods and assessed for the output tax. Mecsek appealed and the Hungarian court made a reference to the CJEU.

### **The judgment**

At paragraphs 53 and 54 of its judgment, the CJEU stated:

*... it should be borne in mind that, in proceedings brought under Article 267 TFEU, the Court has no jurisdiction to check or to assess the factual circumstances of the case before the referring court. It is therefore for the national court to carry out an overall assessment of all the facts and circumstances of the case in order to establish whether Mecsek-Gabona had acted in good faith and taken every step which could reasonably be asked of it to satisfy itself that the transaction which it had carried out had not resulted in its participation in tax fraud.*

*If the referring court were to reach the conclusion that the taxable person concerned knew or should have known that the transaction which it had carried out was part of a tax fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be asked of it to prevent that fraud from being committed, there would be no entitlement to exemption from VAT.*

It concluded:

*Article 138(1) of the Directive 2006/112/EC ... is to be interpreted as not precluding, in circumstances such as those of the case before the referring court, refusal to grant a vendor the right to the VAT exemption for an intra-Community supply, provided that it has been established, on the basis of objective evidence, that the vendor has failed to fulfil its obligations as regards evidence, or that it knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser, and that that it had not taken every reasonable step within its power to prevent its own participation in that fraud.*

Therefore exemption can be denied for an intra-Community supply where:

- the taxable person has failed to fulfill his obligations as regards evidence, or
- the taxable person knew or should have known that his transaction was part of a tax fraud committed by the customer, and that he had not taken every reasonable step within his power to prevent his own participation in that fraud.

The second bullet point is called 'the Mecsek principle' in the UK.

### **Application of the 'Mecsek principle' in the UK**

The UK breaks down the 'Mecsek principle' into three limbs, all of which must be met if the taxable person is going to be denied their right to exempt an intra-Community supply:

1. Has there been a tax fraud committed by the customer?
2. Has the taxable person taken every reasonable step to prevent himself from being involved in that tax fraud?
3. Did the taxable person know, or should he have known, that the transaction was part of the tax fraud?

### **How the UK evidences the three limbs**

#### **Limb (1) - 'Has there been a tax fraud committed by the customer?'**

To begin with, although the CJEU used the term 'tax fraud' for the purposes of implementing Mecsek, HMRC would seek to establish whether there was a VAT fraud. However, this does not mean that other forms of tax fraud, such as Corporation Tax, would be ignored.

In order to evidence that the customer has committed a tax fraud, HMRC would need evidence from the customer's tax authority that directly deals with this point. Within the EU this is obtained by making a SCAC (Standing Committee on Administrative Co-operation) request.

What HMRC would need from the relevant tax authority is a clear statement that the taxable person's customer was involved in tax fraud. It is therefore important that the SCAC response is based on objective evidence and not just opinion and provides as much evidence as possible. What type of evidence is provided is down to the tax authority and will depend on what documents are held.

**Limbs (2) & (3) - 'Has the taxable person taken every reasonable step to prevent it from being involved in that tax fraud?' and 'Did the taxable person know, or should he have known, that the transaction was part of the tax fraud?'**

Although the literal wording of the Mecsek judgment indicates that these are separate conditions, for practical purposes the same evidence may go towards proving both propositions and therefore they should be considered in conjunction with each other. For example, it is virtually impossible to envisage a situation in which there is firm evidence that a taxable person knew or should have known that its transaction was part of a tax fraud and yet they nevertheless could be said to have taken every reasonable step to prevent their involvement in such fraud. It is almost inevitable that any precautions or checks undertaken in these circumstances would be mere 'window dressing', i.e. undertaken by the taxable person solely to give the impression that they took all reasonable steps. Therefore HMRC focuses on the question of whether the taxable person knew or should have known that its transaction was connected with fraud.

### **The use of Mecsek in a Multilateral Control event**

#### **Background**

The European Commission has stated within its Multilateral Control Management Guide that "*in their audit programmes, tax administrations need to take into account the risks posed by the increase of intra-community trade. In addition they take account of the fact that companies are often operating in different Member States through branches and subsidiaries, whereby it is difficult for one tax administration to obtain a global picture of a company's activities. The Multilateral Control (MLC) tool allows dealing with these particular challenges when carrying out audits*".

The guide continues that an MLC is a coordinated control of the tax liability of one or more related taxable persons organised by two or more participating countries which includes at least one Member State and which have common or complementary interests.

The legal base for carrying out multilateral controls is the relevant legislation on the exchange of information, mutual assistance and simultaneous controls:

- for VAT: Council Regulation 1798/2003
- for direct taxes: Directive 77/799/EEC, modified lately by Council Directive 2004/56/EC
- for excise duties: Council Directive 2073/2004.

Other legal instruments concerned are bilateral agreements based on Article 26 of the Organisation for Economic Co-operation and Development (OECD) model convention and the OECD Treaty on mutual administrative cooperation of 25/1/1988.

The main objectives of multilateral controls are:

- to ensure that tax is payable in accordance with EU and National legislation,
- to encourage tax officials to consider multilateral controls as part of normal audit activity,
- to share knowledge on audit practices with other Participating Countries,
- to test the existing multilateral control procedures and improve those procedures where necessary.

### **A UK Multilateral Control (MLC) event**

The UK is currently leading in an MLC event under Council Regulation 904/10. Other participating countries are:

- Hungary
- Cyprus
- Germany
- Poland
- Czech Republic
- Netherlands

Council Regulation 904/10 states that *“for the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed. They must therefore not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State”*.

The objectives of the MLC are:

To support the fight against tax fraud and tax evasion, principally through the application of:

- Kittel, Mecsek and Facet CJEU judgments.
- To clarify the onward supply and total volume of tax losses in other EU Member States
- To collect sufficient information to prove fraudulent intent to test the application of the Mecsek judgment to UK businesses and other Member States to apply the Kittel judgment to their businesses.
- To obtain company formation documents from other Member States for other businesses involved to establish who the UK nationals are behind them. The purpose of this is to establish bank account/asset details in order to facilitate post-action asset recovery.

### **The United Kingdom Company**

- The principal case first registered for Value Added Tax (VAT) in 2009
- Upon gaining a VAT registration it began wholesaling mobile telephones
- Turnover has gradually increased from £252,000 in its first VAT quarter to £40 million at its highest
- It is now acting as a conduit, in that it is part of a transaction chain that is connected with fraudulent evasion of VAT in other Member States
- The company is making full use of the cross border opportunities to participate in tax fraud in the UK and other Member States

### **How is the fraud being perpetrated?**

- The UK Company had been selling mobile telephone handsets into Germany in 2011 until Germany introduced a reverse charge derogation in July 2011
- In 2012 the UK Company established a ‘Polish Route’ with supplies being made directly to Polish missing traders
- During 2012 turnover continued to increase, reaching over £30 million in the final VAT quarter of that year
- Sales are made to a range of customers in other Member States (Denmark, Hungary, Cyprus, Czech Republic) but goods are rarely despatched to the invoiced customer’s premises.

In order to tackle this fraud the UK applied to place the principal case within a MLC project which is funded by the EU Commission. The Commission agreed the

application and the first MLC meeting took place in London on the 21-22 November 2013. The MLC focuses on three VAT quarters for the selected company where the turnover was approximately £100 million.

### **Results and Impact**

The MLC has enabled the UK to very quickly identify fraudulent defaults within complex supply chains in Poland. The identification of defaults is vital evidence to support the application of the 'Mecsek principle'.

The rapid progress of this MLC has been achieved through positive engagement and extensive co-operation with other Member States' tax authorities. The foundations laid by the MLC of the principle case have enabled other Member States to have a clear understanding of the UK's evidential requirements in order to apply the Mecsek principle.

If the evidential requirements are met and the Mecsek principle applied successfully it would result in an assessed sum of approximately £20 million. A positive decision will also send out a clear message to fraudulent businesses, not only within the UK but also across the EU.

The MLC has also supported the Polish Finance Ministry in understanding the extent of MTIC fraud using mobile telephones. The Polish Finance Ministry has subsequently presented an amendment to the law on VAT that widens the list of goods subject to the reverse-charge to include mobile telephones.

### **What does the UK hope the MLC will achieve?**

Although the MLC is about a specific 'cell' of traders, the pattern of trade they are exhibiting is common to a number of cells operating within the UK and, potentially, throughout the EU.

The outcome of this MLC is therefore to send a clear message to these traders that the UK is making use of all legal tools (such as Mecsek-Gabona and Kittel) to disrupt their fraudulent activities and either prevent recovery of related input tax or denial of exemption for intra-Community supplies.

The UK is looking to share best practice and the experience of tax authorities in other Member States to maximise the likelihood of a successful outcome.

## Useful links

**Judgement of the Court (Second Chamber) of 6 September 2012 (Case C-273/11)**

<http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130de8c7d95a018344061b03cac25b1c5fa5c.e34KaxiLc3eQc40LaxqMbN4Ob3qKe0?text=&docid=129011&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=208376>

**Judgment of the Court (Third Chamber) of 6 July 2006.**

**Axel Kittel v Belgian State (C-439/04) and Belgian State v Recolta Recycling SPRL (C-440/04).** <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62004CJ0439&from=EN>

**European Commission Multilateral Control Management Guide:**

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/tax\\_cooperation/fiscalis\\_programme/participating/guide\\_mlc\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_cooperation/fiscalis_programme/participating/guide_mlc_en.pdf)

**Council Regulation 1798/2003:** <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003R1798&from=en>

**Council Directive 77/799/EEC:** <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31977L0799&from=EN>

**Council Directive 2004/56/EC:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0056:en:HTML>

**Council Directive 2073/2004:** <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0106&from=EN>

**Council Regulation 904/10:** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:268:0001:0018:EN:PDF>





**Rivo Reitmann**  
Head of Service Department,  
Estonian Tax and Customs Board

**Rivo Reitmann** has been working in the Estonian Tax and Customs Board for 14 years. Since 2011 he has led the Service Department and has been successful in working out a new competence centre based structure of the Service Department as well as the service strategy for the period of 2013-2016. Throughout his career Rivo has been involved in service development.

# INTRODUCTION OF EMPLOYMENT REGISTER IN ESTONIA

1 July 2014 the amendment of the Taxation Act of the Republic of Estonia, with which the employment register was established, entered into force.

## 1. Why?

In 2013 about 11% of the employees in Estonia received wages on which the prescribed taxes were either fully or partially not paid. Due to this the revenue from taxation not collected to the state budget amounted over 154 million euro, which makes 28% of the outstanding revenue in 2013.

Besides the outstanding revenue from taxation this situation caused many problems also to the employees. Persons who are working unofficially have no social guarantees – no sickness benefits, redundancy payments or unemployment insurance premiums can be paid to such employees on the salaries that the employer has not declared. Likewise the pension payments to such persons after their retirement will be less than should actually be.

A number of institutions in Estonia are processing and using employment related information – the Estonian Health Insurance Fund, the Estonian Unemployment Insurance Fund, Labour Inspectorate under the Ministry of Social Affairs, Estonian National Social Insurance Fund, the Police and Border Guard Board and the Estonian Tax and Customs Board (ETCB). Until now each agency had their own methods for information collection and their own information systems, many employment related documents were submitted and collected on paper. Information processing was time-consuming and the data quality in different agencies was differing and inconsistent.

On top of that the employers' administrative burden was too high because the employment data had to be submitted in parallel to different public agencies.

## 2. How?

In order to solve this problem Estonian Tax and Customs Board in common with other interested public agencies started up the project at the completion of which the employment related information would be converged in the integrated electronic environment.

As a result of the implementation of this new system the data entered in the employment register would become the basis for determining the employment related social guarantees (health insurance, pension, and unemployment insurance premiums) and for supervision over the fulfilment of the employment related obligations. The register data would be available for all the public bodies requiring employment related information.

The objective of the implementation of this system was to avoid multiple submissions, collection and processing of the data and to reduce the administrative burden of the employers as well as of the public agencies.

### **3. What?**

1 July 2014 the employment register entered into force.

The biggest change is that if before establishment of the employment register the employers had to register their employees with the Health Insurance Fund, then since 1 July 2014 the persons employed in Estonia are registered in the employment register managed by the Estonian Tax and Customs Board. This means that the employers are not required to file the data on employment with the Health Insurance Fund any more.

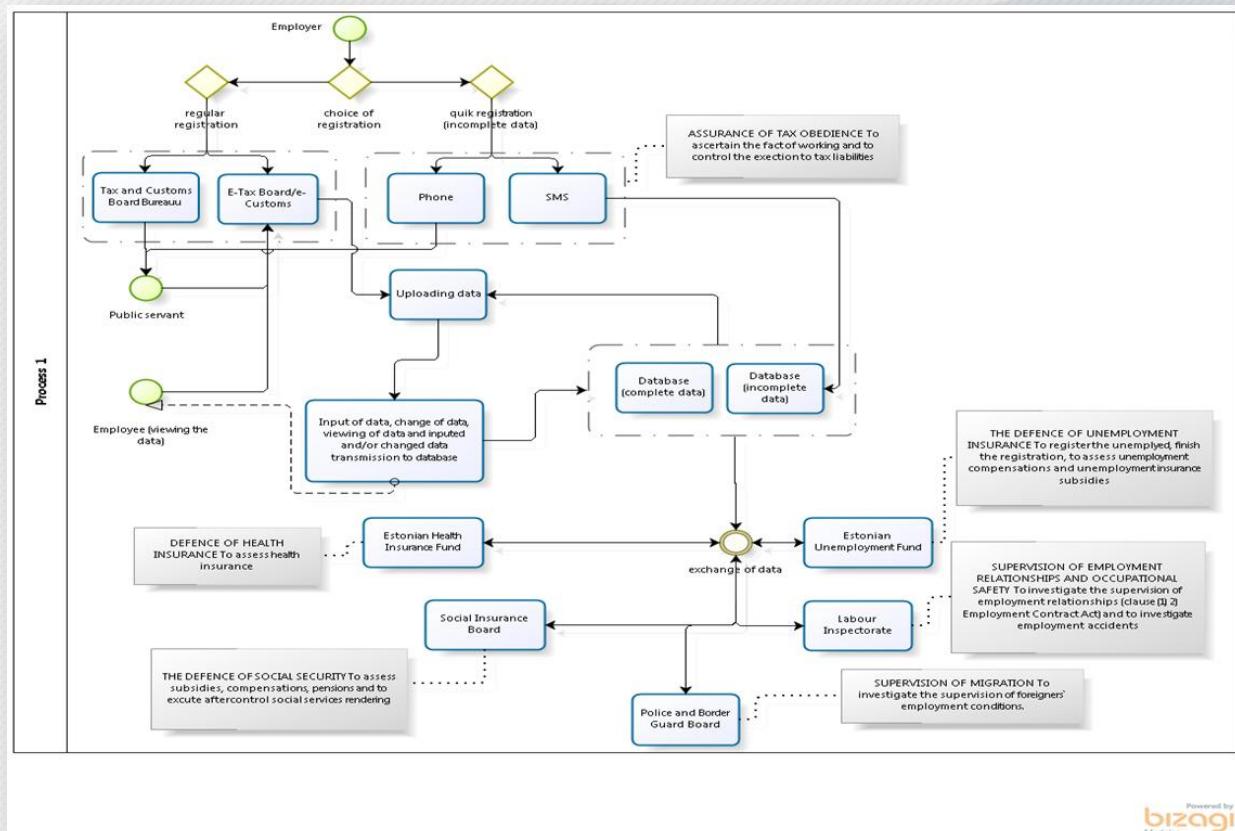
The term of registration was also changed. According to the former Taxation Act the employers were required to register their newly recruited employees within seven days since the commencement of work, but now the recruits must be entered in the employment register **before they actually start working**.

The new system is similar to the system that was formerly used for filing the health insurance data with the Health Insurance Fund, which makes it easier to the employers to get accustomed with the new system. Most of the Estonian employers are already familiar with the procedure.

The employment register is accessible in the electronic service environment of the Estonian Tax and Customs Board e-Tax Board/e-Customs, and the employment data recorded in the register of the Health Insurance Fund before 1 July 2014 were automatically transferred into the employment register.

For registration of their employees the employers can choose the method that suits them best. Employment data can be recorded in e-Tax Board/e-Customs environment either by entering the data manually or by uploading the relevant file; it is also possible to file the employment data via X-Road by sending the data of the personnel

management programmes to the employment register through machine-to-machine interface. It is also possible to use the simplified procedure for employment registration, by doing it either by phone or by sending an SMS message. If the simplified procedure is used, then within seven days the initial data must later be supplemented in e-Tax Board/e-Customs environment. Employment registration is also possible at the regional service bureaus of the Estonian Tax and Customs Board.



**Figure 1** Operating principle of the employment register and the institutions involved

## 4. Results

### 4.1 Impact of the introduction of employment register

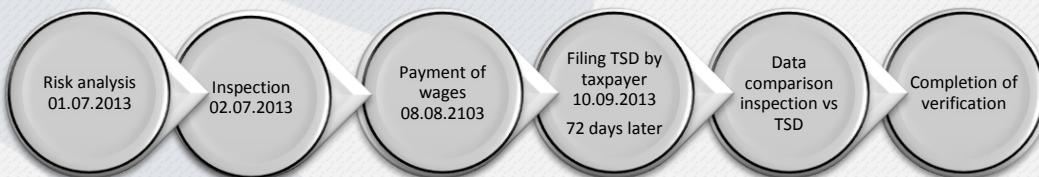
- More honest competitive environment is created for economic operators because payment of concealed salaries is not so easy any more. During the four months (July – October 2014) following the implementation of the employment register the percentage of employees receiving official wages has increased by 1.8%, or by 9000 persons.
- Unofficial use of labour force has decreased and employees' assurance has improved.

- Increased tax revenue collection to the state budget – estimated additional tax yield per year is about 10 million euro. Assessed impact of the employment register on the tax revenue yield within the seven months following the introduction of the register was 9 million euro.
- Administrative burden of the employers was reduced; single user friendly electronic environment, less documents on paper carrier, reduced number of offices to whom the data must be filed. State authorities are getting the necessary information from a single register. The state must, through its authorities ensure that the data would reach the institutions concerned in time.
- Relieved administrative burden and increased operational efficiency of the institutions involved in the project – the data are available electronically, therefore the information exchange is improved and the time spent on tax proceedings is reduced, etc.
- Employees have the possibility to check the lawfulness of their employment starting from the first day since the commencement of work; they can view if their employment was registered, whether the payments made have been declared, and whether the taxes have been paid and the social guarantees are available.

## 4.2 Tax supervision view

The operating principle of the employment register in the tax supervision view is that the person providing the work (employer) files the respective data with the employment register before **the person performing the work will actually commence working**.

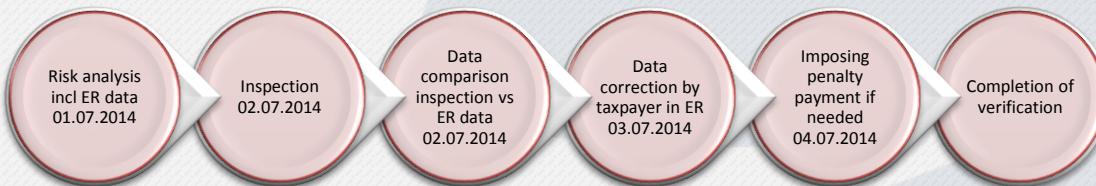
### Verification of declaration of labour taxes before 01.07.2014



**Figure 2:** Before establishment of the employment register the verification process starting from the inspection conducted at the person subject to control until the person filed the workforce declaration could take 72 days. Verification of declaration

of labour taxes could proceed only after the submission of the declaration. In Estonia such controls often took practically about 190 days. In the course of such a long time many changes might have taken place for instance at a construction site, which aggravated or even made impossible the collection of necessary evidence. Because of that this kind of verification process was considered as inefficient.

### Verification of declaration of labour taxes after 01.07.2014

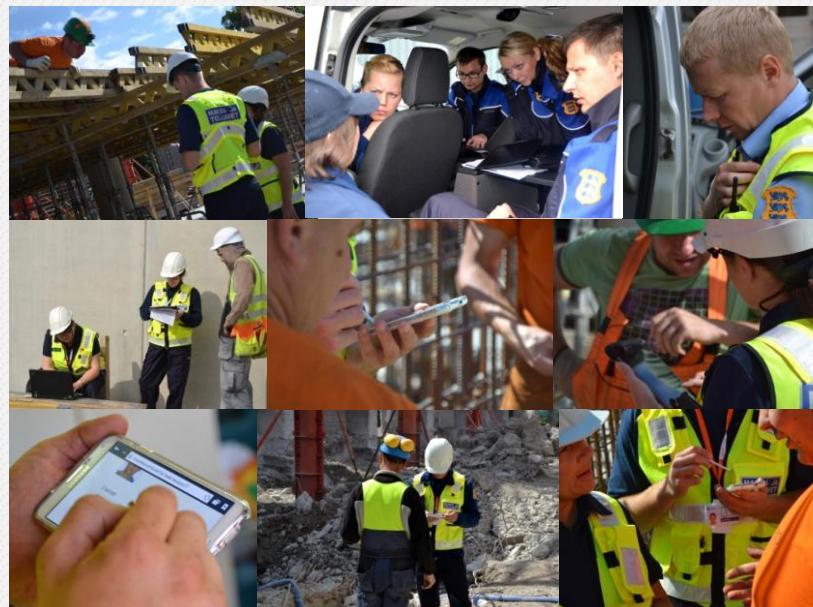


**Figure 3:** After the establishment of the employment register the Estonian Tax and Customs Board has no need to wait until a person subject to controls declares labour taxes, because the employment as such is ascertained by comparison of the data obtained in the course of inspection and the data entered in the employment register. As a result of the amendment made in the Taxation Act the tax authority was also authorised to impose a penalty payment obliging the employers to immediately enter their unrecorded employees in the employment register. Penalty payment may be imposed twice in the course of a tax proceeding in the total amount up to 3300 euro (for comparison – the minimum wages in Estonia is 390 euro).

### 4.3 New IT solutions

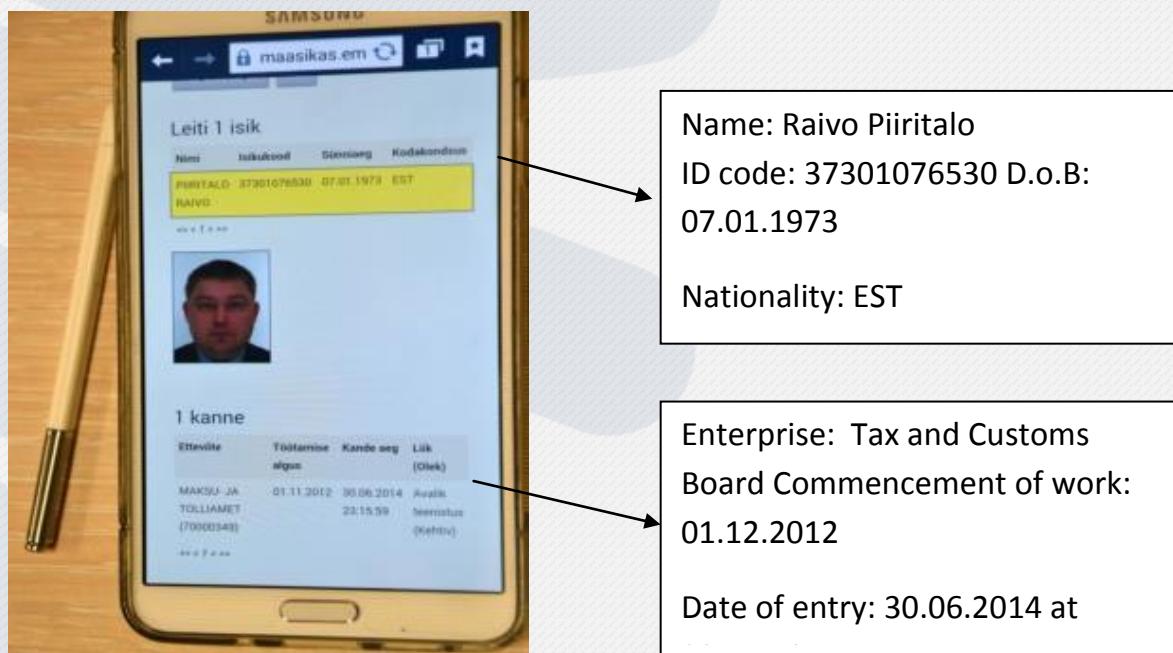
At the introduction of the employment register also the new IT solutions were applied enabling to conduct *online*-inspections at the taxpayers' premises and facilities in order to support the application of the amended legislation and the changed work processes.

**A smart phone application** has been developed for checking the data entered in the employment register. A tax auditor can send an *online*-inquiry to the employment register using a smart phone and the quick feedback is received from the register on the register entries concerning the registered employments. If the employment data of a person have been entered in the register it will take less than a minute after a tax auditor gets assurance of it.



**Photograph 1** Checks of the employment registration at the construction sites

In addition the so-called **mobile workplaces** have been created for tax auditors in order to speed up and simplify the conduct of inspections. This means that a tax auditor has the access to all the databases of the Estonian Tax and Customs Board while working in a specially equipped bus meant for conducting control operations and he or she can draw up all the inspection reports and misdemeanour reports on the spot in the course of inspection.



**Photograph 2** Employment register inquiry view in a smart phone about the person subject to control



**Photograph 3** Mobile work place constructed in a bus

## 4.4 Automated processes

### 4.4.1 Notifications sent to employers

An employer is expected to pay wages to the employee for the period of working if he or she has entered the data of the employee in the employment register. In Estonia the wages are declared in the individually registered income and social tax returns submitted on monthly basis. For example, if an employee has a valid employment contract in January and the wages are paid at the end of the month then the employer must declare the payment of wages in the income and social tax return submitted for January. The objective of ETCB is that the wages paid to the employees who are recorded in the employment register would also be declared and the taxes on the wages would be calculated and paid. To ensure the achievement of this objective the automated process has been developed for comparing on monthly basis the entries made in the employment register with the entries in the tax returns submitted by employers and for notifying the employers of the discrepancies detected between these entries.

- By now such notifications have been delivered to the employers for four months and during that period e-mail messages have been sent to more than 10 000 employers informing them of the 16 000 occasions, where the employment registration entries were different from the data declared in the tax returns.

- Automated process is used also for impact assessment of the notifications on making entries in the employment register and on making corrections in the tax returns as compared with the data entries for the periods following the notification. About 61% of the employers have eliminated these discrepancies in data after receiving the notification. It is estimated that the impact of notifications equals to 3.1 million euro as the additional tax revenue.

#### **4.4.2 Monitoring the inspection results**

Inspections conducted by the tax auditors at the places of business of the employers for checking the employment registrations can be logged. In the automated system it is possible to monitor on daily basis if the unregistered employees identified in the course of inspection are entered in the employment register or not. All the tax auditors can view the results of the inspections they have carried out and take further decisions in the verification process depending on the conduct of the employers. All the employees of ETCB can observe the control statistics from the web based statistical reports.

- During the seven first months since the introduction of the employment register the inquiries at the inspections have been made about 14 600 employees (2.6% of the registered persons), of which 10% were not registered, but were working mostly in the construction, catering and retail sale enterprises.
- 95% of unregistered employees identified in the course of inspection have been entered in the employment register after the inspection was carried out.

#### **5. Summary**

Today 70 000 employers have entered more than 570 000 employees in the employment register; most of whom are employed in educational institutions, retail sale and construction areas of activity. Financial impact from the seven operational months of the employment register is the estimated additional revenue yield in the amount of 9 million euro, including social tax, income tax withheld and unemployment insurance premiums.





**Laurence Geyduschek**

Policy Adviser

Agency for Administrative Simplification

Belgium

**Laurence Geyduschek** is a civil servant since 1996, she has been working for the Agency for Administrative Simplification (ASA) since 2010. The goal of the Agency is to reduce the administrative burdens for companies, associations and citizens, its projects always involve one or several Federal Administrations – the Tax Administration being one of them. Amongst other projects: promotion of e-invoicing in Belgium, various (often fiscally-related) simplified procedures for the cultural and non-profit sectors.

# “PROMOTION AND FACILITATION OF ELECTRONIC VAT INVOICES BY TAX ADMINISTRATIONS”

## THE BELGIAN INITIATIVES

### Basic rules of e-invoicing in Belgium

e-Invoicing is accepted since 1993, under certain (technical and procedural) conditions. The e-invoicing possibilities were extended in 2004, and again in 2013.

Since the 1<sup>st</sup> of January 2013, e-invoices are considered being equal to paper invoices in Belgium, according to the law<sup>35</sup> published in December 2012. No more agreement beforehand from the Tax Administration is needed. All technical restrictions of the earlier years have been abolished. Every invoice sent and received electronically is considered as being an e-invoice.

The Tax Administration was closely involved in the whole process of preparation of the new regulatory framework and therefore 2012 was a very busy year for a lot of civil servants.

### Free Instruction Manuals available

Amongst other things, a general explanatory note<sup>36</sup> (called Circular) was rapidly published (January 2013) on the website of the Tax Administration. This useful tool, available for everyone, is used as an instructions manual by several enterprises and tax professionals. A more detailed Circular concerning e-Invoicing was published in April 2014, giving some practical examples of the application of 2 different systems of e-invoicing, each based on the proper business controls creating a reliable audit trail<sup>37</sup>. These 2 explanatory documents or Circulars are widely used and answer to many pragmatic questions. Unfortunately, (small) entrepreneurs are not always aware of their existence.

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<sup>35</sup> Law of 17 December 2012 modifying the Value Added Tax Code (published in Moniteur Belge of 21.12.2012) ; Royal Decree of 19 December 2012 modifying the Royal Decree Nr. 1 of 29 December 1992 concerning the payment of the Value Added Tax (published in Moniteur Belge on 31.12.2012)

<sup>36</sup> Circular AFZ/AAF number 2/2013, of January, 23th, 2013

<sup>37</sup> Circular AAFisc./AGFisc., number 14/2014, of April, 4<sup>th</sup>, 2014

## **Road Shows with civil servants of the Tax Administrations**

As mentioned before, static documents are not sufficient to reach the targeted public. This is why several other efforts have been made by the Tax Administration to address accountancy professionals as well as entrepreneurs. “Road shows” were organised in partnership with professional federations: the members of the federations were invited to an event in their usual meeting places. Experts from the Tax Administration gave presentations and answered the public’s various questions. Nothing beats these direct contacts with the public in order to build confidence.

These events were successful, as they attracted more than a thousand participants in a dozen cities. Quite surprisingly, the biggest crowd was not met in the capital: targeting other cities like Hasselt, Kortrijk or Antwerp reached a public which does not move easily to Brussels to obtain information.

The road shows were preceded of followed by the publication of relevant articles in the professional magazines of the organising federations: another way to address, at their office, those who are not searching in an active way for the information. In many ways, the Tax Administration went very far to meet the professionals in their daily environment.

## **Active presence during professional fairs**

The Tax Administration took and still takes part in several professional fairs in Belgium, which focus on one or on several sectors such as the construction sector, the hotels and restaurants, self-entrepreneurs, ... Whenever relevant, the Agency for Administrative Simplification (ASA), the Federal Administration in charge with the coordination of the promotion of e-invoicing, is involved, and active promotion of e-invoicing is made during the fair. It also offers the opportunity to discuss about the developments with Tax Controllers and to observe that the control of e-invoices slowly becomes the new standard for the Tax Controllers as well.

## **Website [www.efacture.belgium.be](http://www.efacture.belgium.be)**

A special website was also created by the Federal Authorities, which went live in December 2012. Coordinated by the Agency for Administrative Simplification (ASA), it involved many stakeholders – experts from Professional, Patronal, Accountancy and Fiscal Federations, Service Providers, and of course the Tax Administration.

A list of the Belgian legal resources (laws, decrees and circulars) can be found on a dedicated page, containing links to the documents (mainly situated on the website of the Tax Administration).

Lots of efforts were devoted to the FAQ section of the website. You can find there nearly a hundred questions as pragmatic as “What happens in case of fiscal control?”, “Is a PDF legally considered as e-invoicing?” or “Must the Tax Administration give me approval before I can start e-invoicing?” and all the answers have been written with the help of and have been approved by the Tax Administration.

The public can also send additional questions via email. The ASA received hundreds of emails, often containing the same questions. As some answers to these questions were not yet to be found on the website, the Tax Administration answered these new, additional questions, which afterwards are meant to feed and enrich the existing FAQ section of the website.

### **A statement: e-Invoicing is easier than you believe**

Even though (some kind of) e-invoicing was legally valid in Belgium since 1993, the expansion of e-invoices only took off quite recently. The legal framework applicable as from January, 1<sup>st</sup>, 2013, has contributed in this take-off which appears to get stronger every year. What was unusual becomes the norm.

The involvement of the Tax Administration is crucial. It depends upon the adoption – or non-adoption – of e-invoicing by many enterprises. All the discussions with the public, by writing or by speech, show that the public still needs to be informed about the simplicity of what is really required by the Tax Administration.

A common misunderstanding is that only certain formats of e-invoices are accepted, and/or that the invoice needs an advanced electronic signature in order to be valid.

Some people believe that the old legal framework, which was far more restrictive, is still today the only valid one. Wrongfully believing that you know enough is much more dangerous than knowing that you are ignorant. The “wrongfully believers” do not seek information at all, they base their decisions on the wrong premises, taking unnecessary risks, and they can miss a lot of opportunities.

The same can be said about international companies who started e-invoicing abroad, often facing more legal restrictions, and who want to implement the same system in their Belgian branch. When contacting us (when they boldly do it), they

are positively surprised to learn that the Belgian legal framework is much simpler than they assumed it was. As for the Belgian companies, if they are advised properly and on time, it can prevent them from investing in an oversized (IT) solution.

Many people fear the costs of what seems to be a huge investment in IT solutions. Any change means a potential risk for the enterprise, and the Tax Administration is often not the first actor with whom to discuss. As for the choice of any potentially risky tool, many commercial advisers emphasise on the “safest solution”, whilst the Tax Administration only demands a solution which is “safe enough”. Not selling any IT solution, the Tax Administration is thus a crucial actor, because she gives an objective advice and can help many entrepreneurs to cut their planned costs according to their real needs.

### **A result: a shift of mind**

Globally, after a period of reaction, with enquiries from enterprises who received e-invoices (must we accept e-invoices? Is it legal for our supplier to charge us x euros for each paper invoice if we want to keep receiving paper invoices? What in case of tax control?), we entered now a phase of action with more and more questions from enterprises who want to start sending e-invoices, or to enhance their existing e-invoicing procedures.

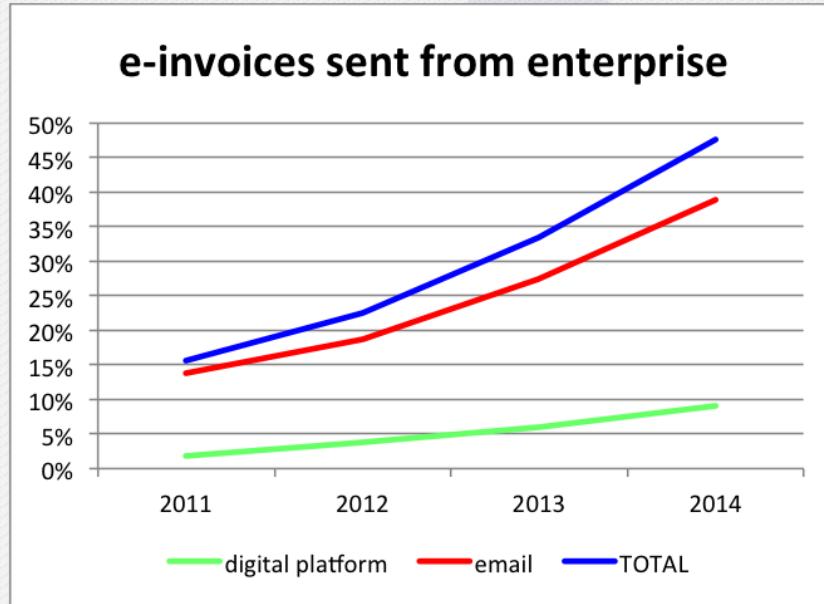
This reflects in the last yearly survey of enterprises<sup>38</sup>. As shown in the following graphs (1 and 2), the growth of “fully digital e-invoicing” (through a digital platform) remains constant as the growth of emailed e-invoices increases a bit each year. Most e-invoices in Belgium are “basic e-invoices”, sent via email. It is often the simple and cheap way to start e-invoicing for an enterprise, especially for a small or very small enterprise (the vast majority of enterprises in Belgium).

Overall, more than 45% of the Belgian enterprises sent an e-invoice in 2014, and more than 40% received an e-invoice.

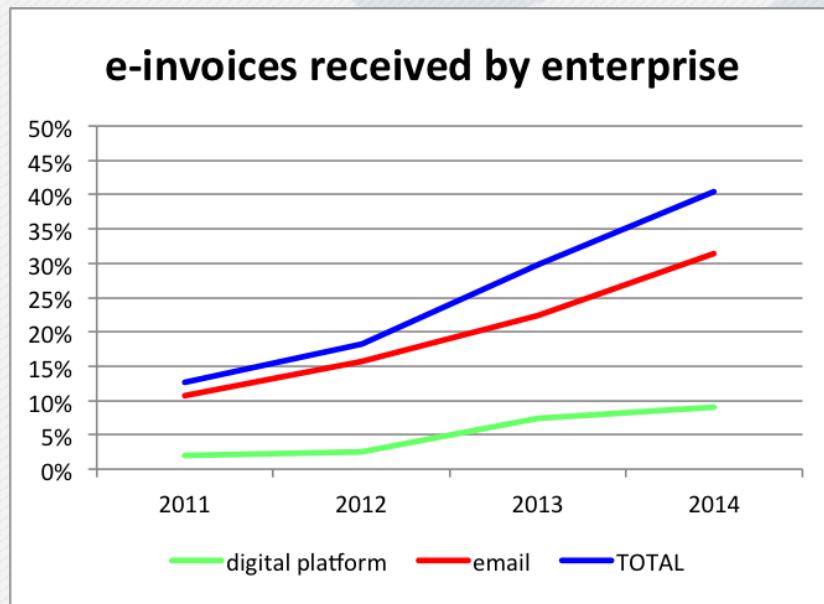
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<sup>38</sup> ASA, e-Invoicing Report on the administrative cost-savings achieved through the use of electronic invoicing in 2014, to be found on [http://www.efactuur.belgium.be/sites/5039.fedimbo.belgium.be/files/explorer/rapport\\_facturation\\_Elektronique\\_FR\\_2014.pdf](http://www.efactuur.belgium.be/sites/5039.fedimbo.belgium.be/files/explorer/rapport_facturation_Elektronique_FR_2014.pdf)

Graph 1

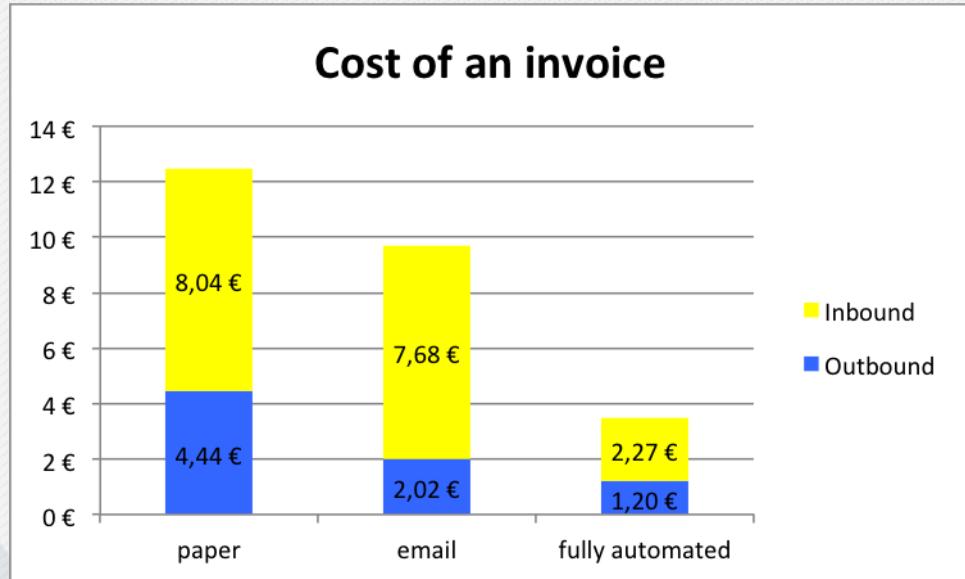


Graph 2

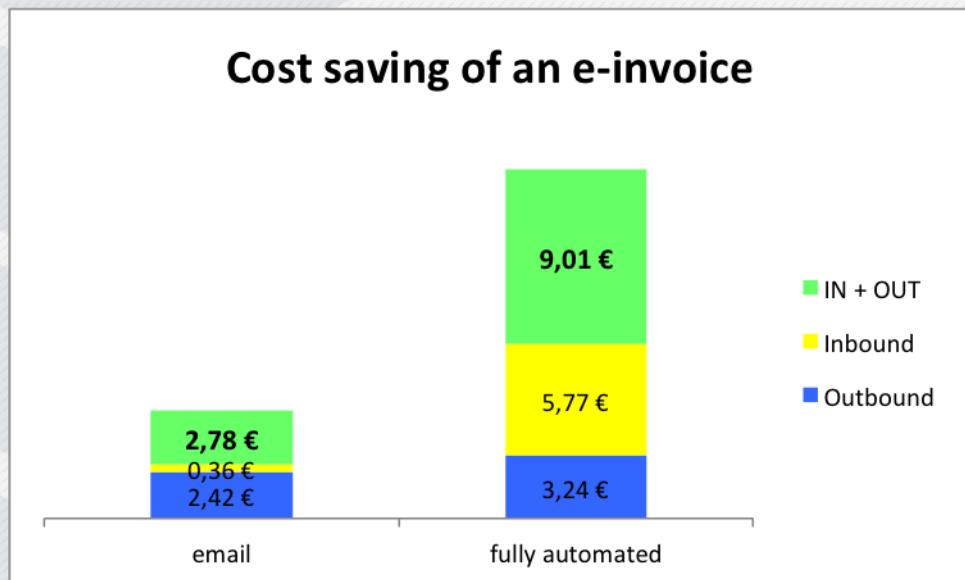


This step (vast majority of e-invoices are not fully automatized, but annexed to emails) is estimated to be temporary. As shown in the graph 3, the cost savings are more important on the incoming (receiver) than on the outgoing (sender) side : the most value is saved when the e-invoice is automatically received, matched and processed for payment.

Graph 3



Graph 4



**Next step: be more confident ourselves and continue to increase the confidence**

As mentioned above, the shift of mind does not happen only for entrepreneurs, but also for Tax Controllers.

Every technical change (electronic versus paper) implies a change of minds and methods. We do not write using a computer keyboard in the same way as we do using a pen. Some things get easier to do (therefore many oversized books), some become more difficult (the most difficult part, surprisingly, often being to print the

whole damn document once written). In the same order, one does not control an electronic file in the same manner as the way one controls a filing cabinet.

Hence, more and more Tax Controllers are beginning to consider the control of e-invoices as more practical, physically easier and allowing a more efficient control. An e-invoicing system gives them more time (or to be more accurate, it reduces the lack of time) to focus on more value-added tasks. And the more integrated it is in the process flow of the enterprise, the more potential it offers for an efficient control by the Tax Authorities.

e-Invoicing implies a different way of controlling, which, though perceived as unbalancing at the first times, is very fast manageable by the average controller and offers possibilities to control faster and in a more substantial way.

The best communication remains a face-to-face one, which of course takes time. One year ago, the ASA survey indicated that 68% of the 517 surveyed accountants considered the attitude of the tax controllers the attitude of tax controllers towards e-invoicing as being “not clear yet”; only 7% did not agree with this statement. These figures must evolve, and every Tax Controller will actively take part in the evolution. Internal training is a must. Time, with its new reality, will do the rest.



## Resources

[www.efacture.belgium.be](http://www.efacture.belgium.be)

Legal framework (in French and Dutch) available on  
<http://www.efacture.belgium.be/legislation>

Report of the last survey available on  
[http://www.efactuur.belgium.be/sites/5039.fedimbo.belgium.be/files/explorer/rapport\\_facturation\\_Elektronique\\_FR\\_2014.pdf](http://www.efactuur.belgium.be/sites/5039.fedimbo.belgium.be/files/explorer/rapport_facturation_Elektronique_FR_2014.pdf)



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