

Guidelines for the application of Section 108C VAT Consolidation Act 2010 – “Joint-and-Several Liability for Tax”

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1. Introduction

Finance Act 2014 inserted a new section, 108C, in the VAT Consolidation Act (VATCA) 2010. Section 108C VATCA 2010 provides that where VAT has been fraudulently evaded, an accountable person who knowingly or recklessly participated in transactions connected to that fraudulent evasion of VAT is jointly and severally liable for the VAT that has not been remitted, and Revenue may notify him or her accordingly.

An accountable person does not have to be directly involved in the evasion of VAT in order to be jointly and severally liable.

VAT which has been fraudulently evaded will have been evaded by the person primarily liable for payment of that VAT ("first accountable person" in the legislation). However, the person to whom section 108C applies is the other person who is jointly and severally liable for that unpaid VAT, due to their participation in transactions involving the same good(s) or service(s) ("second accountable person" in the legislation).

Where particular goods or services pass through a chain of transactions involving a number of persons, any or all of those persons who knew or were reckless as to whether or not there was fraudulent evasion of VAT in relation to the supply of those goods and/or services, may be notified that they are jointly and severally liable for the unpaid VAT.

A simple example of a scenario involving an intra-Community acquisition of goods from another Member State, where joint and several liability may apply, is illustrated in the diagram below:

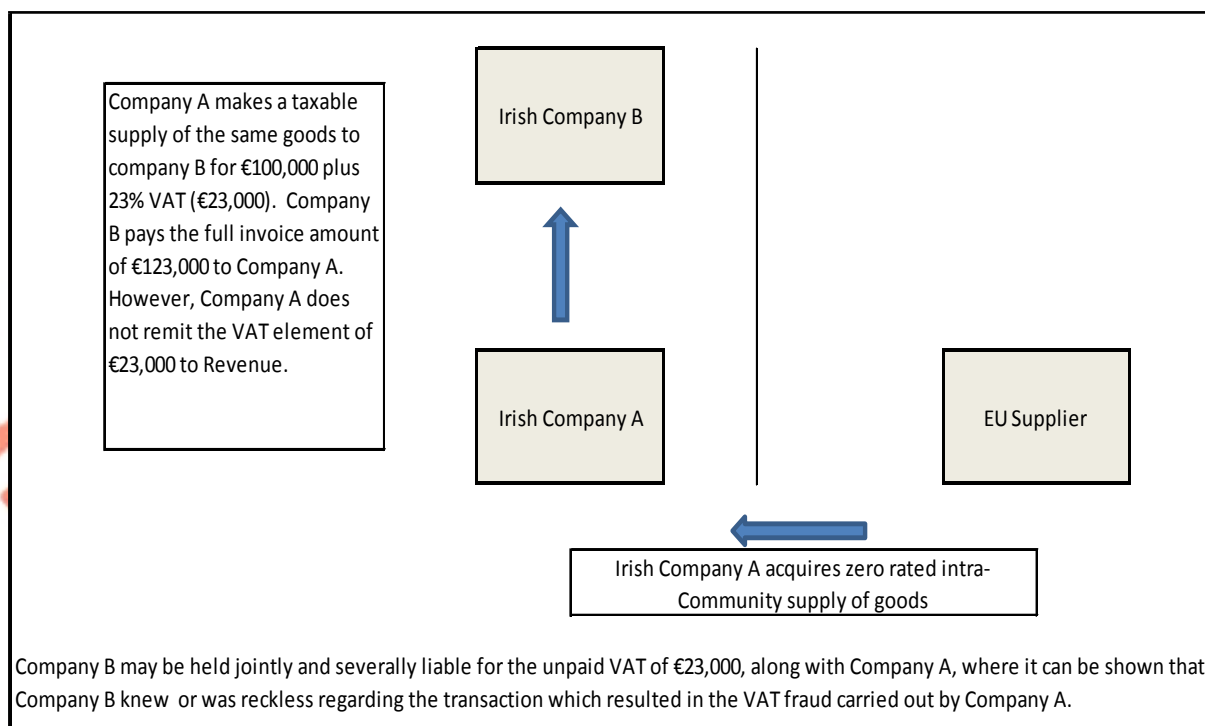


Figure 1: Scenario where Joint and Several liability may apply

2. Purpose of the legislation

The purpose of this legislation is to encourage compliance and discourage the participation in, and the facilitation of, VAT fraud. It will assist businesses which operate legitimately, and which may face unfair competition from businesses which participate in transactions resulting in the evasion of VAT.

The power to notify a person that he or she is jointly and severally liable for unpaid VAT will be particularly effective in dealing with 'missing trader fraud'. The power enables the Revenue Commissioners to recover the unpaid VAT from persons who are involved in transactions with fraudulent traders and who may be held to be jointly and severally liable for the unremitted VAT in these transactions.

3. Circumstances for use of the legislation

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.[...]

3.2 Persons subject to the legislation

The legislation applies to accountable persons. It may be applied where the Revenue Commissioners believe that VAT is due to them from an accountable person who is jointly and severally liable for that unpaid VAT, where at the time of a transaction (or series of transactions) that accountable person knew or was reckless, as to whether

or not the transaction(s) in which s/he participated was connected to the fraudulent evasion of VAT.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

5. How to Operate the Provision

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5.3 Amount of tax for which a person is liable

A person who is jointly and severally liable for unpaid VAT is liable for the net amount of unpaid VAT. The formula for calculating the net amount of unpaid VAT for which the second accountable person is held liable is calculated as follows:

$A - B$

Where:

A = the tax payable by the first accountable person on that taxable supply of goods or services, or intra-Community acquisition under section 3(a),(c),(d) or (e)

B = the amount of tax, if any, which may be deductible in accordance with section 59(2) by the first accountable person, provided that the aforementioned deductible tax is directly attributable to the acquisition of those goods and/or services which give rise to the charge to tax payable by the first accountable person

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5.4 Interest and penalties

Persons who are held to be jointly and severally liable for unpaid VAT will also be liable to pay the interest due on the net amount of VAT, which is calculated with effect from the date on which the amount was payable by the person originally liable for the VAT (first accountable person). Penalties will not apply to VAT due and payable solely because of joint-and-several liability provisions.

The normal penalty provisions will apply to the trader (first accountable person) who incurred the unpaid VAT liability in the first instance.

5.5 Appeals

A person who is jointly and severally liable under section 108C VATCA 2010 and who is served a notice under this section and a notice of assessment to tax under section 111 VATCA 2010 may, in accordance with the appeal provisions of that section, appeal the assessment.

Conclusion

Section 108C provides that where an accountable person knowingly or recklessly participates in transactions connected to the fraudulent evasion of VAT, then they are jointly and severally liable for the unpaid net VAT amount and Revenue may notify them to this effect. The purpose of this power is to encourage compliance and to provide Revenue with a power which, if used appropriately, will assist in tackling VAT evasion.

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[...]

Appendix A

The Legislation

The legislation is contained in Section 108C of VAT Consolidation Act 2010.

Subsection (1) provides for definitions.

Subsection (2) provides that where at the time a supply or acquisition is made, a person knows or is reckless as to whether or not that supply or acquisition is connected with the fraudulent evasion of VAT which has not been paid to the Revenue Commissioners by the person who was originally liable, those persons are jointly and severally liable for that VAT.

Subsection (3) provides the formula for calculating the amount of VAT due.

Subsection (4) provides for the notification of the person that he or she is jointly and severally liable for unpaid VAT, the amount for which he or she is liable and details of the person(s) with whom he or she is jointly and severally liable.