

VAT changes on the horizon



This month's edition of VAT News highlights the Court of Justice of the European Union (CJEU) judgment regarding the VAT treatment for fraudulent payment of goods, announcements from various jurisdictions of VAT changes in 2014, and an announcement that tax incentives will be offered in Malaysia to assist with the implementation of GST.

European Union

Court of Justice of the European Union (CJEU)

CJEU rules on VAT and fraudulent use of credit cards

The CJEU held in *Dixons Retail plc.* (C-494/12) that a credit or debit card payment for goods is considered taxable, irrespective of whether the card usage is later determined to be fraudulent.

The amount paid to a business by the credit card company should be treated as consideration for the goods supplied. Dixon's, a retail group selling electrical goods, accepts card payments for transactions carried out in person and over the Internet. Dixon's has a contract with American Express Europe Limited (AmEx), in which the taxpayer accepts

cards issued by AmEx, agrees to comply with AmEx's card authorization procedures, and is paid by AmEx. AmEx pays Dixon's for the amount of completed transactions net a service charge.

Dixon's initially paid and declared VAT relating to fraudulent transactions carried out between November 13, 2005 and November 30, 2008. In 2009, Dixon's took the position that these are not taxable sales for VAT purposes since the purchases were made through fraudulent means. Dixon's also argued that the consideration received from AmEx did not constitute consideration in return for goods. Dixon's submitted a claim of £2 million to the UK Tax Authority, Her Majesty's Revenue & Customs (HMRC), for output VAT overpaid on these fraudulent transactions.

HMRC refused the taxpayer's claim on the basis that the fraudulent intent of the customer did not mean that: 1) there was no supply of goods, and 2) the payment by the third party bank is not consideration in return for a supply of goods. The taxpayer appealed HMRC's decision to the UK First Tier Tax Tribunal (FTT). The FTT referred the following questions to the CJEU:

- When a purchaser knowingly pays for goods with an unauthorized card, is there a supply of goods for VAT purposes in accordance with the relevant provisions of the EU VAT directive?
- When payment is made by a credit card company for a transaction that is carried out fraudulently, does such a payment constitute consideration obtained by the supplier in return for the supply in accordance with the relevant provisions of the EU VAT directive?

The CJEU found that 'supply of goods' includes any transfer of tangible property by one party which empowered the other party to dispose of the goods as if the party were the owner. The CJEU held that the supply of goods has to be viewed objectively and without regard to the purpose or results of the transaction (provided VAT fraud was not a concern). The CJEU also found that the fraudulent use of the card did not alter the fact that a supply of goods had taken place.

The CJEU held that the physical transfer of goods to a purchaser using a fraudulent bank card constitutes a supply of goods for VAT purposes. In the context of such a transfer, payment made by the third party (e.g., Amex) under agreement with the supplier constitutes consideration in return for that supply where the third party pays the supplier for the goods sold to the fraudulent purchaser.

The case will return to the FTT to consider the judgment issued by the CJEU. Businesses who enter into similar arrangements with credit card companies should consider the outcome of this case.

European Union

Belgium

Intra-Community supplies: required proof for VAT exemption

The VAT exemption for intra-Community supplies requires, among other items, the supplier to provide the customer's VAT identification number. Following a CJEU decision, however, the Belgian Tax Authority recently issued guidance stating the VAT exemption cannot be refused on the sole ground that the customer's VAT identification number has not been provided when the following conditions are simultaneously met:

- The supplier acts in good faith, meaning, among other requirements, that all measures have been taken that can be reasonably required to obtain the customer's VAT identification number.
- The supplier can provide other information that sufficiently demonstrates the person acquiring the goods is a 'taxable person', acting as such with respect to the transaction at issue.

Despite this welcome guidance, businesses should be reminded that obtaining the customer's VAT identification number is generally preferable and likely required in other EU Member States.

Denmark

Hotel VAT refunds up from 50% to 75% January 1, 2014

In Denmark, businesses are currently permitted to deduct 50% of input VAT incurred on hotel accommodation relating to business travel. Beginning January 1, 2014, 75% of the input VAT incurred may be deducted. It is estimated that this 25% increase will save business travellers who file VAT refunds an additional 5% on hotel costs.

Businesses who incur hotel expenses relating to hotel travel in Denmark should ensure that this additional input VAT is claimed beginning January 1, 2014.

Germany

Personal signature required for VAT refund applications submitted by non-EU entities

The German Supreme Tax Court ruled that the only person authorized to sign a VAT refund application under the 13th Directive procedure is (with few exceptions) the 'statutory agent' of the non-EU claimant. A statutory agent means a board of directors or managing director. To prevent the possible rejection of a refund claim, businesses seeking a refund of VAT incurred in Germany, via the 13th directive mechanism, should ensure refund claims are signed by a statutory agent.

Hungary

2014 VAT Act changes

Various VAT act changes will take place in Hungary in 2014. Changes include the following:

- amended tax point rules for transactions with periodic settlements
- a reduction of the tax base for refund coupons
- an extended deadline for evidencing exports
- an extension of input VAT adjustments to intangible property rights
- simplified invoicing for certain 'receipts'
- reverse charge VAT for the real estate sector and the introduction of a 5% VAT rate for certain supplies in the agricultural sector.

Businesses operating in Hungary should be aware of these impending changes.

Italy

Filing deadline for 'e-money' declaration postponed to January 31, 2014

The Italian tax authorities announced the postponement to January 31, 2014 of the deadline by which financial institutions are required to report purchases equal to or greater than 3,600 EUR made by private customers and paid via 'e-money' (debit card, credit card, etc.), for the period from July 6, 2011 to December 31, 2011.

The original filing deadline for the Spesometro Pos report was November 12, 2013, and October 31, 2013 for the Angarafe dei rapporti. As a result of this postponement, taxpayers may submit reports, or replace reports already submitted, by January 31, 2014, without the imposition of penalties. The Spesometro Pos should be submitted via Entratel and the Angarafe dei rapporti should be submitted via SID (i.e., data interchange system).

Ireland

Retention of 9% reduced VAT rate

The Irish Finance Bill (No 2) 2013 contains draft legislation that addresses various tax measures, including indirect tax measures dealing with the retention of the 9% reduced VAT rate, an increase in the cash receipts threshold from 1.25 million EUR to 2 million EUR and the withdrawal of VAT credit for bills not paid within six months.

The 9% reduced VAT rate in Ireland applies to supplies within the tourism and hospitality sector (i.e., holiday accommodation, catering, etc.). However, the rate also applies to a number of other supplies such as hairdressing, admissions to the movies/museums, certain printed matter, and certain sporting facilities. As such, businesses will likely welcome the continuation of the reduced rate.

Another key change to note provides the withdrawal of VAT credit for bills not paid within six months. The draft legislation states that when a purchaser does not submit payments for the purchase of goods or services within six months from the VAT period in which the VAT was deducted (i.e., the initial period) the purchaser must adjust its input VAT credit accordingly. This measure becomes effective for initial periods beginning on or after January 1, 2014. For example, VAT deducted on invoices received in January or February 2014 that remain unpaid in September 2014 should be adjusted in the July/August 2014 VAT return (due to be filed in September).

If payment is subsequently made, in full or in part, an input VAT credit can be sought. Note that on or before the due date for the return, if the Revenue Commissioners are satisfied that there are reasonable grounds for not having paid the full amount, the VAT adjustment will not be required. Businesses operating in Ireland should be aware of the impending changes to ensure the necessary steps for compliance.

Portugal

Clarification of tax amnesty rules

As reported in the [November VAT News](#), Portugal announced an exceptional and temporary regime to settle tax and social security debts, allowing for the waiver of interest and a reduction in penalties with respect to debt settlements. Additionally, the Portuguese Tax and Customs Authority (PTCA) recently issued guidance to clarify when the tax amnesty rules should apply.

In particular, the amnesty should cover the following debts:

- debts identified by the PTCA (based on a return submitted by the taxpayer or following a tax inspection) when the legal deadline for payment was prior to August 31, 2013
- debts not identified by the PTCA, when the voluntary deadline for payment was prior to August 31, 2013, if the taxpayer had complied with its legal obligations in due time.

Social Security debts still under a forced collection process, debts regarding custom duties, or other charges collected by the PTCA that are not deemed as taxes, are not covered by this regime (e.g., toll debts, tuition fees, etc.).

The following amnesty conditions apply:

- Debts that fall under a collection process or a voluntary process for payment after notification must be paid before December 20, 2013.
- For debts that depend on a previous assessment by the PCTA (e.g., Personal Income Tax (PIT) or Real Estate Municipal Tax (REMT)), the taxpayer must submit the respective declarations (e.g., PIT tax return – Form “Mod.3” or Form 1 – REMT) by November 15, 2013 and pay the tax before December 20, 2013.

Debts paid before the amnesty was effective may also benefit from: 1) the reduction of penalties (10% of the penalty applied) with a minimum of 10 EUR, and 2) the waiver of collection fees and other procedural costs. To take advantage of the penalty reduction, the penalty must be paid before December 20, 2013.

Acceptable payment methods include:

- full voluntary payment
- payments on account
- payment by installments
- voluntary payments by third parties
- compensation of credits.

VAT registered businesses in Portugal should consider the applicability of this clarifying guidance.

Slovak Republic

New invoice reporting requirement for 2014

Effective January 1, 2014, businesses are required to file a new VAT report known as the 'Local Listing' (Kontrolný výkaz). The Local Listing details certain taxable transactions not reported in other VAT reports (e.g., EC Sales Lists and Intrastate reports). The Local Listing will include distance sales (i.e., sale of goods to private customers in other EU Member States) since the Slovak Republic legally requires businesses to issue invoices for such transactions.

The Local Listing must be filed by the 25th day of the month following the respective VAT period (calendar month) that corresponds with the deadline for filing VAT returns. If a business files its VAT return before this deadline, the Local Listing should also be filed earlier (i.e., together with the VAT return). The first VAT period to be reported is January 2014 (or Q1 2014) with a filing deadline of February 25, 2014 (April 25, 2014 for quarterly VAT payers). In some exceptional cases a Local Listing does not have to be filed (e.g., when there is no transaction subject to the Local Listing carried out during the month).

The Local Listing must be filed electronically using an .xml format published by the Slovak Financial Directorate. Please note that persistent non-filing of the Local Listing may result in VAT de-registration. The Tax Office may impose a penalty of up to 10,000 EUR for non-filing and late filing, or the incomplete or incorrect filing of the Local Listing. Affected businesses should be aware of the new requirement to submit a Local Listing and should ensure the required systems and procedures are in place to ensure compliance.

Europe

Serbia

Reduced VAT rate to increase from 8% to 10% effective January 1, 2014

A proposal to increase the reduced VAT rate from 8% to 10%, effective January 1, 2014, has been adopted by the Serbian Government. The reduced VAT rate typically applies to basic food items, drinking water (excluding bottled), natural gas, and tickets for cultural and entertainment venues.

Ukraine

Simplified VAT registration from January 1, 2014

Effective January 1, 2014, simplified VAT registration procedures will be in place in the Ukraine. Under the new simplified rules, a taxpayer may voluntarily register for VAT even though no taxable operations are performed at the time of VAT registration.

Furthermore, the new simplified rules allow a VAT registration application to be submitted at the same time as the business entity's state registration application. This simplification will also apply for unified tax registration. Businesses required to register for VAT in the Ukraine should welcome this as an efficient, business friendly measure.

Asia-Pacific

Malaysia

Tax Incentive Package for GST Implementation

As reported in the [November VAT News](#), Malaysia will implement a GST system on April 1, 2015. To support the smooth implementation of GST, certain proposed incentives will be offered to taxpayers, including the following:

- reduction of income tax rates
- accelerated capital allowances to be granted for expenditure on Information and Communication Technology (ICT) equipment and software
- training grant of RM100 million for providing GST training to employees
- financial assistance of RM150 million for the purchase of accounting software by Small & Medium Enterprises (SMEs).

We will share any further developments and announcements with you regarding the implementation of GST, or any related incentives, in Malaysia.



Tom Boniface
US VAT Leader

+1 (646) 471-4579
thomas.a.boniface@us.pwc.com

300 Madison Avenue
New York, NY, 10017

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Tom Boniface, *New York*
+1 (646) 471-4579
thomas.boniface@us.pwc.com

Evelyn Lam, *New York*
+1 (646) 931-7364
evelyn.g.lam@us.pwc.com

Nathan Trautwein, *San Francisco*
+1 (415) 498-6342
nathan.a.trautwein@us.pwc.com

Raymond van Sligter, *San Jose*
+1 (408) 808-2951
raymond.v.sligter@us.pwc.com

Reena Reynolds, *Chicago*
+1 (312) 298-2171
reena.k.reynolds@us.pwc.com

Irina Sabau, *New York*
+1 (646) 471- 5757
irina.sabau@us.pwc.com

Sinead Hughes, *Chicago*
+1 (312) 298-2219
sinead.hughes@us.pwc.com

Our global indirect tax network

PwC has a global network of 1,900 indirect tax professionals in 130 countries worldwide, including a dedicated VAT team located in the U.S. who is available to provide real-time VAT advice. This News Alert does not provide a comprehensive or complete statement of the taxation law of the countries concerned. It is intended only to highlight general issues, which may be of interest to our clients. For issues relating to this VAT News, please contact your local Indirect Tax Practice advisor or the specialists listed above.

Global VAT Online

Many of the developments above are described in more detail on *Global VAT Online* (GVO), PwC's online subscription service which provides up-to-date business critical information on VAT/GST rates, rules, and requirements around the world. This information will help you maintain control, mitigate risk, and improve the overall effectiveness of your VAT/GST function. GVO's news service provides timely updates on worldwide VAT/GST developments, along with a facility to deliver news to your desktop via RSS feeds, newsflashes and a weekly newsletter. It also includes commentaries on new legislative proposals, decisions on recently concluded cases, hyperlinks to related subjects, and case law and official documentation.

For further information, please speak to your usual PwC advisor or the US VAT team above. Visit the [GVO Website](#).

© 2013 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

SOLICITATION

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.