

VAT rate changes abound



This edition of VAT News highlights the Court of Justice of the European Union (CJEU) judgment concerning the permissibility of time restrictions placed on the removal of goods from the European Union (EU), announcements from various jurisdictions of VAT rate increases, an announcement that Egypt is considering the implementation of VAT and recent updates on the China B2V Pilot Programme.

Court of Justice of the European Union (CJEU)

CJEU rules 90 day export time limit unacceptable

The CJEU held in the matter of *BDV Hungary Trading Kft, in liquidation* (C-563/12) that European Union (EU) law precludes national provisions. This case deals with Hungarian VAT legislation that states there is an absolute loss of the right to zero rate exports if the goods concerned are not removed within 90 days of being supplied.

The taxpayer, BDV Hungary Trading Kft ('BDV'), sold goods on an 'ex-works' basis to customers established outside the EU. Following an inspection, the Hungarian Tax Authority found that the taxpayer had

classified certain transactions as export sales, despite the goods in question leaving the EU after expiration of the 90 day time limit imposed under Hungarian law. The Hungarian Tax Authority issued an assessment for the tax deemed to be due on the transactions that were exported after 90 days, together with a fine and a late payment penalty.

BDV appealed the assessment on the basis that (i) the Hungarian rules in question were contrary to EU law, (ii) all of the supplies involved were in fact dispatched outside the EU and (iii) given the 'ex-works' nature of the supplies, BDV had demonstrated the required level of due diligence by regularly reminding purchasers of the need to transport the goods outside the EU within the applicable time limit.

BDV's appeal was successful before the Regional Court in Budapest. The Hungarian Tax Authority sought to appeal to the Hungarian Supreme Court. The Supreme Court referred the following questions to the CJEU for preliminary ruling:

1. Do the relevant provisions of the EU VAT Directive mean that the transport of goods, intended for export, must take place within a defined period in order to qualify as an exempt supply of goods for export?
2. Do the conditions of supply (i.e., whether the vendor, the purchaser or the supplier acted in good or bad faith, with due care or negligently; the period for declaration; or the fact that the goods are actually exported after the time-limit but within the limitation period for charging the tax) have any effect on the answer to question one above?
3. Do the principles of tax neutrality, legal certainty and proportionality allow the rules of a Member State to provide for additional conditions to the provisions of the Directives and to make qualification as an exempt supply for export subject to a combination of several objective conditions that do not appear in the Directives?
4. Do the relevant provisions of the Directive mean that to prevent tax evasion, abuse and avoidance and to correctly charge and collect tax, the Member State may also attach conditions?
5. Do the fundamental principles of EU law and the provisions of Directive 2006/112, allow the tax authority to alter the classification of an exempt export and order the taxpayer to pay tax when conditions which do not appear in the Directive are not met? If so, in what circumstances is this possible?

The CJEU noted that it was not disputed that the supplies in question had actually taken place or that the goods had physically left the territory of the EU. The CJEU held that although Member States are entitled to take measures to protect tax revenues, including fixing a reasonable time-limit for exports, such measures must not go further than necessary for that purpose.

The CJEU held that since the Hungarian national provisions taxed the goods (even if they actually left the EU after expiration of the 90 day time-limit), these provisions were not necessary to prevent tax evasion and avoidance.

Therefore, the CJEU held that the Directive provisions preclude national legislation in which exported supplies from the European Union must be exported within a fixed period of three months or 90 days following the supply date, when merely exceeding that time limit results in the loss of exemption for that supply. This case will return to the Hungarian Supreme Court to consider the judgment issued by the CJEU. Businesses should welcome this as a logical and perhaps unsurprising judgment in their favor from the CJEU.

European Union

Austria

Expansion of domestic reverse charge effective January 1, 2014

The domestic VAT reverse charge provisions in Austria have been expanded effective January 1, 2014 to include (i) the supply of game consoles, (ii) tablet PCs and laptops when the invoiced amount exceeds 5,000 euros, (iii) the supply of gas and electricity to taxable dealers, (iv) the supply of gas and electricity certificates, and (v) the supply of raw and semi-finished metals according to chapter 71 and XV of the combined nomenclature and the taxable supply of investment gold. Businesses supplying or acquiring any of the above items in Austria should be aware of these new rules.

Bulgaria

New cash accounting regime effective January 1, 2014

Effective January 1, 2014, a new VAT cash accounting regime allows businesses with a taxable turnover below 500,000 euros to remit VAT when payments are received from customers and to deduct input VAT when payments are made to suppliers.

The regime is available, upon authorization, for a period of 12 months and applies mainly to transactions with a place of supply in Bulgaria (one notable exception relates to contracts between related parties). Businesses that do not exceed this threshold should be aware of this new cash accounting regime.

Revised 2014 Intrastat thresholds

The Intrastat arrivals threshold for 2014 has been increased from BGN 240,000 (approximately 123,000 euros) to BGN 360,000 (approximately 184,000 euros). The Intrastat dispatches threshold has been reduced from BGN 240,000 to BGN 210,000 (approximately 107,000 euros). Businesses operating in Bulgaria should be aware of these new thresholds.

Denmark

Extended VAT reporting periods for small businesses effective January 1, 2014

Effective January 1, 2014, VAT reporting and payment periods for small businesses have been extended. Under the new rules, the VAT reporting period for businesses with an annual turnover between DKK 1 million (135,000 euros) and DKK 5 million (670,000 euros) is six months (January – June and July - December). Prior to January 1, 2014, such businesses had to file VAT reports on a quarterly basis. The deadline for remittance of VAT has also been extended from 40 days to 60 days from the end of the VAT period.

The VAT reporting period for businesses with an annual turnover between DKK 5 million (670,000 euros) and DKK 50 million (6,700,000 euros) has been changed to calendar quarters (prior to January 1, monthly reporting applied for businesses with an annual turnover of more than DKK 15 million). The deadline for remittance of VAT for these businesses has also been extended to 60 days from the end of the VAT period.

Large businesses with an annual turnover of more than DKK 50 million have no changes in VAT reporting periods or remittance deadlines. However, businesses may opt for a more advantageous, shorter reporting period. Businesses registered for VAT in Denmark should be aware of these new VAT compliance deadlines.

France

VAT rate increase effective January 1, 2014

Businesses are reminded that effective January 1, 2014, the standard rate of VAT in France increased from 19.6% to 20%, the reduced rate of 7% increased to 10% and the specific rate of 8%, applicable within Corsica, increased to 10%. Businesses registered for French VAT should make the necessary amendments to their ERP systems to take account of these new VAT rate changes.

Italy

New 'web tax' in 2014

The Italian Government recently approved new 'web tax' legislation which will require Italian companies to purchase internet advertising from locally VAT registered suppliers. The effective date of this new tax was originally January 1, 2014. However, the VAT element of this tax has been postponed to July 1, 2014.

The new 'web tax' legislation would require the following:

- Taxable persons purchasing online advertising services or sponsored links online, even if via media centers or third party operators, must purchase such services from businesses registered for VAT in Italy.
- Online advertising and sponsored links that are displayed on the web pages of online search engines, and that can be displayed in Italy when a certain website is visited or during the usage of on-line services through a fixed line or mobile network or device, should be purchased solely from entities (editors, advertising agencies, search engines or other advertising operators) registered for VAT in Italy. This applies even when the purchase is made via a media center, third party operator, or advertiser.

It is still unclear how the new law will work in practice, for example whether a non-resident business providing the above services will have to issue an invoice via its Italian VAT registration number or whether the reverse charge procedures should apply.

It should be noted that this is a highly controversial measure and has been heavily criticized on the basis of alleged non-compliance with EU law and principles. The delayed implementation is in part due to the controversy. We will keep you apprised of any developments pertaining to this 'web tax' legislation.

Portugal

Azores VAT rate increase effective January 1, 2014

Effective January 1, 2014, the standard VAT rate applicable in the Azores increased from 16% to 18%. The intermediate rate also increased from 9% to 10% and the reduced rate increased from 4% to 5%.

United Kingdom

Intrastat arrivals threshold increased to £1.2M for 2014

The threshold above which businesses must submit an Intrastat supplementary declaration of goods purchased from other EU Member States ('Intrastat arrivals return') has been increased from £600,000 to £1,200,000, effective January 1, 2014. The threshold for Intrastat dispatches returns remains unchanged at £250,000. The 'delivery terms' threshold for both arrivals and dispatches, above which additional data must be declared, has been increased from £16,000,000 to £24,000,000. Businesses should be aware of the increased Intrastat thresholds in the UK.

Europe

Ukraine

VAT rate change postponed to 2015

The VAT rate decrease to 17%, originally effective January 1, 2014, has been postponed until 2015. As a result, the standard VAT rate in Ukraine will remain at 20%.

Africa

Egypt

Egypt seeking to introduce VAT

The Egyptian Government recently announced that it will move forward a bill to introduce VAT at a rate of 10 – 12% to replace sales tax in Egypt. As the bill is yet to be finalized, little is known about the precise details at this stage. As such, we will keep you apprised of further details once they are made available.

South Africa

Taxation of digital imports postponed to April 1, 2014

The Taxation Laws Amendment Act, 2013, signed by the President on December 12, 2013, confirms the delay in the implementation of the VAT levy (at the standard rate) on electronic services provided by non-residents to residents of South Africa, or paid from a bank in South Africa, from January 1, 2014 to April 1, 2014. We will keep you apprised of any further developments and announcements regarding this important change in South Africa.

Asia-Pacific

China

Welcome changes in B2V Pilot Programme effective January 1, 2014

Following the State Council's announcement of adding postal services and railway transportation to the Business Tax (BT) to Value Added Tax (VAT) transformation pilot programme (B2V Pilot Programme), the Ministry of Finance and State Administration of Taxation have jointly issued a new circular Caishui [2013] No. 106 (Circular 106) to officially include postal services and railway transportation into the B2V Pilot Programme. Circular 106 replaces the current circular Caishui [2013] No.37 (Circular 37) as the backbone of the B2V rules. The new Circular, effective January 1, 2014, provides welcome clarification of policy for certain industries. Companies doing business in China should consider whether the provisions contained in Circular 106 have any impact on their business.

Indonesia

New e-invoicing rules effective January 1, 2014

The Indonesian Ministry of Finance (MoF) recently introduced new VAT e-invoicing rules which affect invoice preparation, amendment or replacement. Under the new rules, e-invoicing will be mandatory for certain types of businesses.

It should be noted that for businesses with mandatory e-invoices usage, non-compliance with e-invoicing may be subject to a penalty equal to 2% of the VAT base. A paper-based invoice is still applicable for certain businesses and in respect of export-oriented transactions (i.e. export of tangible/ intangible goods subject to VAT and export of services subject to VAT).



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

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