

VAT updates



This month's edition of VAT News highlights the CJEU judgment concerning the movement of 'own goods' within the EU, an announcement that the European Parliament supports the introduction of a standard VAT return in the EU, and an announcement from the South African Revenue Agency that the digital imports regime will most likely be postponed until later this year.

Court of Justice of the European Union (CJEU)

Deemed intra-Community supply of 'own goods' unless returned to Member State of origin

The CJEU held, in the matter of *DresserRand SA*: (C-606/12, C-607/12), that an intra-Community movement of goods without a change of ownership is considered a deemed supply for VAT purposes unless the goods are subsequently returned to the Member State of origin.

The taxpayer in this case (Dresser-Rand France) moved certain components from France to Italy for incorporation into an industrial compressor, which was shipped to a customer in Spain when completed. As part of

the contract to build the compressor, further goods and services were supplied by a local Italian supplier (FB ITMI). Dresser-Rand Italy, acting as tax representative of Dresser-Rand France, assumed that based on its classification as an 'exporter making frequent shipments', it could acquire the goods and services from the local supplier without having to pay VAT. Italian VAT law provides that 'frequent exporters' may purchase, import and acquire goods and services without payment of VAT. The term 'exports' includes exports of goods and services and intra-Community supplies.

The tax authority disagreed that no VAT was due, on the basis that Dresser-Rand Italy's classification as an 'exporter making frequent shipments' was dependent on the transfer of the components from France to Italy being

treated as a deemed supply for VAT purposes (i.e., when the movement of a company's own goods from one EU Member State to another is treated as a deemed supply for VAT purposes). The tax authority held that the movement of the goods fell under a simplification rule that removed from the deemed supply provisions goods returned to the originating Member State after having been processed (i.e., 'work on the goods').

This simplification rule holds that a deemed supply of goods does not exist when goods are dispatched to another EU Member State, for the purposes of further processing on those goods, if the goods are subsequently sent back to the originating EU Member State of dispatch. Dresser-Rand France disagreed with the tax authority, stating that for the simplification to apply, the relevant provisions of the EU VAT Directive require that the goods must be returned to the originating EU Member State after processing. Since the goods originated in France but were shipped from Italy to Spain, Dresser-Rand France stated that the transaction fell outside the scope of this simplification. In addition, Dresser-Rand France argued that the Italian contractor supplied goods, as opposed to performing a service, which activity is not provided for in the simplification.

During subsequent litigation, the Commissione tributaria provinciale di Genova (Provincial Tax Court, Genoa, Italy) decided to stay proceedings and refer the following questions to the CJEU for a preliminary ruling:

1. Does the transfer of goods to Italy from another Member State for the purpose of verifying whether those goods may be adapted to other goods acquired within Italy, without anything being done to the goods brought into Italy, come within the definition of 'work on the goods' referred to in the above named simplification provided for in the EU VAT Directive?
2. Does the simplification provided for in the EU VAT Directive preclude Member States from providing in their legislation or practice that the dispatch or transport of goods is not to be treated as a transfer to another Member State except on condition that the goods are returned to the Member State from which they were initially dispatched or transported?

The CJEU started by looking at the second question and had little difficulty in finding that the relevant provision of the VAT Directive must be interpreted to mean that, in order for the dispatch or transport of goods not to be classified as a taxable transfer to another Member State, those goods, after the work on them has been carried out in the Member State in which dispatch or transport of the goods ends, must be returned to the taxable person in the Member State from which they were initially dispatched or transported.

The CJEU then declined to answer the first question on whether there had been 'work on the goods' since it was obvious from the orders for reference that the goods in question had not subsequently been returned to the Member State of origin (France).

The CJEU gave its judgment without the benefit of an Advocate-General's opinion, suggesting that it found the point at issue relatively straightforward. Those who were looking to the case to provide some insight into what might constitute 'work on goods' for the purposes of deciding whether an intra-Community movement of goods without change of ownership can be disregarded for VAT purposes (i.e., the simplification mentioned above), or whether there is a deemed supply giving rise to local VAT accounting obligations, may be disappointed in the straightforward decision. The case also highlights that companies engaging in the movement of their own goods cross border within the EU may have certain VAT registration obligations to the extent the goods are not returned to the EU Member State from which they are originally dispatched.

European Union

European Parliament support for a standard VAT return

EU Commissioner for Taxation Algirdas Šemeta has welcomed the European Parliament's support for the standard VAT return. The Commission considers that a standard VAT return will improve compliance and save businesses money.

As previously announced in November 2013, the European Commission adopted a proposal for a uniform EU VAT return. The purpose of this proposal is to introduce a harmonized VAT return and a common approach to the submission and correction of VAT returns in all EU Member States. This proposal includes:

- replacement of all national VAT returns by a standard VAT return, containing 26 boxes of information to be completed by businesses (Member States may choose to exempt business from having to complete all but five of these boxes)
- provision for additional boxes for special VAT schemes that will also be standardized
- the standard tax period should be monthly, however SMEs (i.e., those with annual turnover of less than two million euros) will only be required to file quarterly, unless they opt to file monthly and Member States may allow for longer VAT return periods up to one year
- Member States will be able to impose monthly filing of VAT returns to prevent tax evasion or fraud in specific cases
- Member States will no longer be allowed to require an annual summary VAT return
- businesses will have the right to sign and file their VAT returns electronically.

Subject to the approval of the Member States, legislation to enact the uniform VAT declaration is expected to be effective December 31, 2016. The introduction of a standardized VAT return in the EU will likely require systems and process changes for businesses that are registered for VAT in the EU. We will keep you updated on developments in this area.

Denmark

Domestic reverse charge on consumer electronics beginning July 1, 2014

Effective July 1, 2014, Denmark will introduce reverse charge VAT accounting for domestic supplies of mobile phones, gaming consoles, tablet PC's, laptops, and integrated circuit devices. The new legislation will result in a number of challenges for Danish businesses. The change in the legislation extends the VAT reverse charge rules to include domestic supplies of the aforementioned items. Effective July 1, 2014, the customer will be liable for calculating and reporting the VAT due when purchasing any of these goods locally. These new rules do not apply if the supplier mainly or exclusively sells these goods to private consumers. The phrase 'mainly or exclusively' means more than 50% of total sales, in which VAT would have to be imposed under the current rules (i.e. invoiced and reported by the supplier). This applies, for example, to sales by retailers.

The change in legislation will undoubtedly result in a number of challenges for affected businesses. Businesses that purchase these goods locally are required to know if the seller has incorrectly accounted for VAT on such supplies since purchasers cannot deduct VAT incorrectly charged. In addition, sellers will need to consider whether their products are covered by the new rules, since there is no complete list of the products covered and new products may be introduced to the market, making it difficult to decide if the new rules should apply or not. Businesses purchasing or selling these types of goods in Denmark should consider the impact of these new changes on their VAT compliance obligations.

Europe

Turkey

Extension of e-invoicing transitional period to April 1, 2014

In December 2013, the Turkish Revenue Administration (TRA) officially published Tax Procedural Law Communiqué No.433, stating that all companies need to be registered for e-invoicing by December 31, 2013. However, this deadline has been extended to April 1, 2014 for companies issuing e-invoices to other e-invoicing registered entities. Until April 1, 2014, taxpayers have discretion as to whether they issue paper or electronic invoices to other registered users.

In addition, in accordance with Tax Procedural Law General Communiqué No.421, taxpayers that must apply e-invoicing procedures also must keep their books electronically. Under this Communiqué, affected taxpayers are expected to switch to e-bookkeeping within calendar year 2014. Companies that intend to develop their own software to use the e-bookkeeping application should obtain approval from the Turkish tax authority by completing the necessary test requirements by September 1, 2014. Businesses that are registered for VAT in Turkey should be aware of these electronic invoicing/bookkeeping requirements.

Africa

South Africa

Digital imports regime likely to be postponed

As mentioned in the [February VAT News](#), the South African Government has published draft regulations regarding the taxation of digital imports effective April 1, 2014. Based on the latest discussions with the tax authorities, it appears likely that the taxation of digital imports will be postponed from April 1, 2014 until possibly May 1, or even June 1, 2014. Some significant changes to the scope of the new rules have been made and some categories have been excluded. The most significant changes from the original regulation appear to be:

- The paragraphs on information system services and maintenance services have been deleted, as has the section dealing with software. The effect of this is that these types of services are no longer in scope.
- Possible changes have been made to the treatment of subscription services although no further details are available at present.

An updated regulation is being finalized and is expected to be published shortly. We will keep you informed of any developments in this area.

Asia-Pacific

New Zealand

New non-resident GST registration rules beginning April 1, 2014

Currently, only non-residents who make taxable supplies in New Zealand are able to register for GST and claim GST on their costs. In a welcome development, beginning April 1, 2014, non-residents who do not make taxable supplies in New Zealand will be able to register for GST under a special regime that will allow non-residents to register even if they don't conduct a taxable activity.

In order to register under the new regime, the non-resident must:

- not be carrying on or intending to carry on a taxable activity in New Zealand and not become or intend to become a member of a group of companies carrying on a taxable activity in New Zealand
- be registered for consumption tax in the country they are resident, or if there is no applicable consumption tax, have a level of taxable activity (NZ \$60,000 per

annum) that would require registration if they were carrying out that activity in New Zealand

- be likely to incur at least NZ \$500 of input tax for the first taxable period after registration
- not perform services that will likely be received by a person in New Zealand who is not GST registered.

The non-resident will need to complete a special GST registration application form (IR 564) and special GST return. Additional documentation will need to be provided to support the GST registration application (e.g., copies of passports of directors, executive office holders etc.) and to substantiate the GST recovery of costs included in the GST return (e.g., copies of tax invoices/receipts). The Inland Revenue must refund the GST within 90 working days of the return being filed. If the non-resident subsequently begins making taxable supplies in New Zealand, they will be considered as registered under the existing general GST registration rules. No established entities regularly incurring GST on expenses in New Zealand should consider registering for the special GST, effective April 1, 2014, to recover this GST.

Singapore

Guidance notes issued on GST advance ruling system

The Singapore tax authority issued guidance notes on March 21, 2014 regarding the application of the GST advance ruling system. A GST taxpayer who wishes to submit an advance ruling request must do so no later than 1 month before the GST return filing deadline. Express advance rulings may be submitted no later than 10 business days before the GST return filing deadline. To the extent a taxpayer wishes to receive a ruling in advance of the transaction date, the advance ruling/express advance ruling request should be submitted at least 1 month/10 days before the date the transaction is entered into. Rulings should be issued to the Comptroller of GST (CGST) in Singapore. Once issued, the advance ruling is final and is binding on the taxpayer and the CGST. In this regard, GST taxpayers should carefully consider the implications of requesting an advance ruling.



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](#).

© 2014 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.