VAT updates

This edition of VAT News highlights the CJEU's judgment concerning the VAT treatment for a lump sum payment by healthcare insurers, an update on the B2C 2015 VAT changes and proposed changes to the Japanese Consumption Tax system.

Court of Justice of the European Union(CJEU)

Lump sum payments constitute VAT exempt consideration not outside the scope of VAT

The CJEU held, in the matter of *Le Rayon d'Or SARL* (C-151/13), that a lump sum paid by healthcare insurers to residential care providers should be considered linked to the price of the healthcare and within the scope of VAT and VAT-exempt income for partial exemption purposes.

The taxpayer is a residential care home provider for the elderly. French law establishes the tariff according to whether the care providers have signed long-term care agreements with the state authorities to be reimbursed. The law provides that expenses relating to medical care provided to persons with insurance and recipients of social assistance in the care homes must be covered by national sickness insurance funds or covered by the social assistance, using lump sum formulas when appropriate.

The taxpayer argued that the lump sums received from national sickness insurance funds should not be regarded as consideration for its VAT exempt supplies of health care, but should be treated as being outside the scope of VAT. Therefore, the lump sums would have no impact on the taxpayer's VAT recovery entitlement. The taxpayer further argued that the national legislation exempting the lump sums from VAT was invalid because the lump sums were outside the scope of VAT, and were not a subsidy linked to the price of the healthcare supplied to residents.

The tax authority disagreed, determining the healthcare lump sum was not a subsidy, but a pricing mechanism. The tax authority held that the pricing was established on the basis of healthcare needs and did not prevent the services from being effected for a consideration. There was a direct and immediate link between the disbursement of the healthcare lump sum and the healthcare services provided to residents. The service did not necessarily have to be personalized, and the price did not have to be paid by the recipients of the healthcare or commensurate with the value of the services to constitute consideration.

The French court referred the following question to the CJEU: do 'healthcare lump sum' payments disbursed by sickness insurance funds to residential care homes for the elderly represent a subsidy that is directly linked to the price of healthcare services provided to residents and, therefore, fall within the scope of VAT?

The CJEU restated the principle that a supply of services 'for consideration' occurs if there is a legal relationship between the provider of the service and the recipient pursuant to a reciprocal performance, and the payment received by the supplier constitutes the value actually given in return for the service supplied to the recipient (*Tolsma*-case).

The CJEU determined the healthcare lump sum, paid by the national sickness insurance fund, was received by the taxpayer as consideration for the care provided in different forms to residents. The taxpayer was legally obligated to provide the services to residents in return for payment of the lump sum. The fact that the direct beneficiary of the services in question was not the national sickness insurance fund that paid the lump sum, but the insured person, did not break the direct link between the supply of services and the consideration

Finally, the CJEU determined the taxpayer's supply of healthcare services was permanently available at the appropriate time as required by the residents. A direct link between the service and consideration was not required to establish that a payment for healthcare at a specific time at the request of a particular resident took place. Accordingly, the CJEU ruled that the 'healthcare lump sum' constitutes consideration for the healthcare services provided by a residential care home for the elderly to its residents and falls within the scope of value added tax.

OECD Global Forum on VAT, Tokyo, April 2014

Governments endorse new OECD guidelines on applying VAT across borders

On April 17-18, 2014, 250 high-level representatives from about 100 countries, jurisdictions and international organizations attended the OECD Global Forum on VAT meeting in Tokyo. The representatives endorsed a new set of OECD guidelines for the application of VAT or GST (goods and services tax) to international trade. The governments of 86 countries endorsed the first internationally agreed framework for applying national VAT rules to cross-border transactions. They seek to set standards aimed at ensuring neutrality in cross-border trade and a more coherent taxation of business-to-business (B2B) trade in services.

As a major revenue source for governments, VAT can be difficult to apply to international trade, particularly for services, since different tax jurisdictions often use different rules to determine the right to tax a transaction. This situation creates the risk of double taxation or not applying the correct tax, which can negatively impact trade or reduce available revenue for governments.

The guidelines set standards in two key areas: ensuring VAT neutrality, and making taxes on B2B trade in services destination-based. According to the guidelines, VAT targets private consumption and not businesses, thus creating a neutral effect on production and leveling the playing field for domestic and foreign businesses in cross-border trade. The second focus allows tax on B2B trade in services only in the country of the recipient of the service.

The forum also discussed the equity impact of VAT. Countries often implement reduced rates to alleviate the burden on poorer households. Forum discussions confirmed that this practice is a very expensive way of providing support to the poor, particularly when compared to the use of targeted cash transfers. The OECD is working with all the Global Forum participants to extend its guidelines for cross-border sales of services to private consumers (B2C), an area that is growing strongly with the rise of online shopping.

European Union

2015 B2C VAT changes: European Commission publishes explanatory notes

On April 4, 2014, the European Commission published explanatory notes regarding the amended place of supply rules for B2C telecommunications, broadcasting and electronic services, effective January 1, 2015. These explanatory notes provide further guidance on the new place of supply rules along with a guide to the VAT One Stop Shop published last year by the Commission. Businesses impacted by the new B2C 2015 VAT rules should take note of these explanatory notes.

Italy

New e-archiving rules effective April 11, 2014

New technical rules on e-archiving took effect on April 11, 2014 under a new Government Decree. There is a three year transitional period within which existing e-archiving systems should comply with these new rules. The Decree provides for the following changes:

- The e-archiving system should be capable of generating packages of information in accordance with predefined formats.
- The person responsible for e-archiving must keep an e-archiving manual that contains information related to the process including detailed technical documentation regarding the procedures and software used, security measures adopted, and the entities involved and their roles in the e-archiving process.

Businesses which currently engage in e-archiving in Italy should evaluate the potential impact of these new rules on their current e-archiving processes.

Europe

Ukraine

Crimean taxation guidelines issued

The Crimean State Council has issued a Decree addressing taxation, under which taxpayers will be required to follow the Russian Tax Code beginning January 1, 2015. Until this date, the Ukrainian Tax Code will continue to apply subject to the following conditions and adjustments:

- Russian VAT rates (18% regular rate and 10% rate for groceries, goods for children, periodicals, medical goods, etc.) are imposed as of May 1, 2014.
- Ukrainian input VAT incurred on purchases after March 1 2014 is not recoverable, but can be deducted for CPT purposes (2/1.5 multiplying coefficient will apply).
- Supplies to Ukraine are subject to 0% VAT. Imports of goods to Crimea, including supplies from Ukraine, are subject to 18%/10% VAT as of March 26, 2014.
- Refund of VAT receivables accumulated before March 2014 will not be available. Input VAT incurred in February 2014 can be offset against future VAT liabilities.

Africa

South Africa

Digital imports regime deferred to June 1, 2014

As mentioned in Issue 15, the South African Government has published draft regulations regarding the taxation of digital imports effective April 1, 2014.

National Treasury officially announced that the implementation of the new legislation relating to electronic services supplied by a business outside South Africa to a recipient in South Africa has been deferred to June 1, 2014. This new law requires the foreign supplier of such services to register for VAT in South Africa. This postponement allows businesses more time to get their systems ready to comply with the new law.

Asia-Pacific

Thailand

Implementation date deferred for VAT additional information requirements

As previously announced in Issue 11, additional information will be required on tax invoices, debit notes, credit notes and VAT reports. These requirements are to include the tax identification number of the customer and a note indicating whether both the seller and the customer are using a head office or a branch for the transaction. The implementation effective date has been deferred from January 1, 2014 to January 1, 2015. Businesses registered for VAT in Thailand should consider the impact of these changes on current invoicing and reporting systems.

Indonesia

Increase in registration threshold for small entrepreneurs

The registration threshold for small entrepreneurs, for VAT purposes, has been increased from IDR 600m to IDR 4.8 bn (approximately US$400,000). The increase is effective January 1, 2014. To the extent this threshold is exceeded, small entrepreneurs should register and collect VAT on the supply of taxable goods and services. Small entrepreneurs doing business in Indonesia should be aware of the increase in the VAT registration threshold.

Malaysia

Changes to Goods and Services Tax Bill 2014

The Goods and Services Tax Bill 2014 (the 2014 Bill) was considered in Parliament on March 31, 2014. The 2014 Bill contemplates certain changes to the Goods and Services Tax (GST) Bill 2009 (the 2009 Bill). Malaysia is due to implement a GST system on April 1, 2015.

The main changes to the Bill include, but are not limited to:

- requirement for taxable persons to quote GST-inclusive prices in all price displays
- requirement to charge GST on the value of imported leased goods and not on the lease payments
- change in penalty regime for late payment of tax due to late registration
- requirement to issue a tax invoice within 21 days from the basic tax point deleted
- criteria for self-billing arrangements legislated
- removal of late payment penalty of 25% on tax outstanding
- power granted to Minister of Finance to determine the fixed rate of recovery for input tax claims

- non-residents making taxable supplies exceeding the registration threshold required to appoint an agent to account for GST
- Free Commercial Zones recognized as places outside Malaysia
- introduction of rules for the taxation of gaming supplies.

Businesses performing activities in Malaysia should consider the impact of the new GST rules on current transaction flows and system capabilities.

Japan

Japanese tax reform approved

On April 1, 2014, the Japanese Consumption Tax (JCT) rate was increased from 5% to 8% and will be further increased to 10% on October 1, 2015. Additional proposals for 2014 Japanese tax reform were approved in March 2014. Among other amendments to the current JCT system, the tax reform provides a decreased rate of deemed input JCT credit under the Simplified Taxation System and an exemption for consumables purchased by foreign tourists.

Change of business classification under Simplified Taxation System

Under the old law, business enterprises with taxable sales during the 'base period' (i.e., generally the year beginning two years before the tax year concerned) of 50 million yen or less can elect to take a deemed input JCT credit (depending on business classification) on taxable sales, instead of a credit based on the actual input JCT and taxable sales ratio. Once an election to implement the Simplified Taxation System is made, it cannot be changed for two years.

Under the 2014 tax reform, for tax years beginning on or after April 1, 2015, the rates of deemed input JCT credit for certain categories have decreased. For example, the financial and insurance business rate has decreased from 60% to 50% and the real estate business rate has decreased from 50% to 40%.

JCT exemption on consumables for foreign tourists

Non-residents of Japan that buy certain goods (excluding consumables) at a designated shop in Japan may apply the JCT exemption if the goods are purchased for the private use of the buyer (i.e., not for business use) and the total cost exceeds 10,000 yen per shop on the same day.

Under the 2014 tax reform, foreign tourists can utilize a JCT exemption on purchases of consumables such as food, drinks, tobacco, medicine and cosmetics. Certain conditions apply to qualify for exemption (e.g., up to 500,000 yen purchased in Japan per shop on the same day). The exemption applies to purchases for export out of Japan made on or after October 1, 2014. Businesses registered for JCT in Japan should consider the impact of these recent and upcoming changes on current business transactions.

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Let's talk

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