

Significant VAT developments for electronic service providers



This edition of VAT News highlights recently released OECD draft guidelines on B2C digital supplies, the European Court of Justice's decision regarding the right to deduct input VAT in connection with intra-EU acquisitions when substantive requirements are fulfilled, implementation of import VAT deferment simplification in a number of EU countries, changes to VAT rates applicable to books and e-books in certain EU countries, and new VAT obligations in connection with electronic services in South Korea and Argentina.

OECD

Additional draft guidelines on B2C supplies of services and intangibles

The OECD recently published a number of Discussion Drafts as part of the Base Erosion and Profit Shifting (BEPS) Action Plan, including proposed additions to the draft International VAT/GST Guidelines on supplies of services and intangibles to consumers. The OECD is inviting written responses to each of

the Discussion Drafts and businesses should take time to consider how the various proposals and options could impact them. Responses to the VAT/GST proposals are requested by February 20, 2015 with a public consultation meeting scheduled for February 25.

The draft guidelines discuss the place of taxation for cross border business-to-consumer ('B2C') supplies of services and intangibles, to include:

- *General Rule* – The OECD is proposing that the destination principle (i.e., where the consumer is usually resident) should be used as the best means to identify the place of consumption in the context of B2C supplies of services.
- *‘On the spot’ services* – When services are physically performed at a readily identifiable location, are generally consumed at the same time and at the same place where they are performed, and the physical presence of both the supplier and the consumer is generally required at the same time and place of performance of the supply, the place of consumption should generally be where the services are physically performed.
- *Specific rules* – Notwithstanding the above mentioned rules, the OECD recognizes that taxation may not always take place in the country of consumption for certain services such as passenger transport, for example. In this regard, the OECD provides guidelines to determine whether specific rules are required to determine the place of consumption. Such specific rules may also apply for supplies of other services and intangibles in the event the general rule, as mentioned above, does not lead to an appropriate result. The OECD does point out that the use of such a specific rule will only be justified when the analysis suggests that it would lead to a significantly better result than the use of the general rule.
- *Services connected with immovable and moveable property* – Internationally traded supplies of services and intangibles directly connected with immovable property (i.e., real estate) are typically taxed in the country in which the immovable property is located. The OECD further suggests in the guidelines that specific place of supply rules may also be required in relation to the provision of services connected with moveable property (e.g., vehicle repair, etc.) to ensure taxation and consumption take place in the same jurisdiction.
- *Simplified registration and compliance* – Finally, the OECD proposes that governments adopt a ‘Simplified Registration and Compliance Regime for non-Resident Suppliers’ - similar to the EU’s ‘Mini One-Stop Shop’ (MOSS) system, which took effect on January 1, 2015. Non-resident suppliers would collect the tax in each country where customers are located, but would remit the tax via a simplified compliance system.

European Union

European Court of Justice

ECJ confirms taxpayer cannot be denied right to deduct input VAT when substantive conditions met (Idexx Laboratoires Italia srl: C-590/13)

An Italian taxpayer purchased goods from French and Dutch suppliers, but failed to carry out the record keeping formalities required by national law for such transactions. On appeal, the tax authority assessed the taxpayer for VAT due on the acquisition of the goods, along with a penalty equivalent to 100% of the tax for failure to comply with the provisions of national law.

On further appeal, before the Corte di Cassazione, the taxpayer argued that the intra-community acquisitions in question had no substantive effects, creating neither tax debts nor tax credits. Rather, the taxpayer argued the acquisitions created solely ‘notional’ debts and credits, along with formal obligations to enter a suspense account in both VAT registers, without implications as to the substance. Consequently, the taxpayer contended that non-compliance with such obligations did not allow the tax authority to reassess the purchaser’s VAT return and to claim tax payment that was merely theoretical, by ignoring the taxpayer's right to deduct.

The Corte di Cassazione referred questions to the ECJ concerning the right of the taxpayer to deduct the reverse charged VAT when the taxable person has failed to comply with the formal requirements as contained in the national legislation implementing the relevant provisions of the EU VAT Directive, and more generally the requirements which govern the right to deduct reverse charged VAT.

The ECJ confirmed that, in the context of the reverse charge procedure, the fundamental principle of fiscal neutrality requires the allowance of input tax deduction if substantive requirements are satisfied, even when the taxable person has failed to comply with certain formal requirements. Companies involved in intra-EU trade should be aware of this decision, which confirms the right to deduct when substantive requirements are fulfilled.

Czech Republic

Extension of local reverse charge effective April 1, 2015

Effective April 1, 2015, the local reverse charge mechanism will be extended to include, among other items, mobile phones, integrated circuits (e.g., microprocessors and central processing units), portable automatic data processing devices (e.g., laptops, tablets, etc.), and video game consoles in which the tax base of the taxable supply exceeds CZK 100,000 (approximately \$4,200). The list of particular items subject to the reverse charge mechanism is specified by the respective governmental decree.

New 10% VAT rate effective January 1, 2015

An additional reduced VAT rate has been implemented, effective January 1, 2015. Supplies subject to the new 10% rate include: printed books; children's picture books; and vaccines, drugs and chemical contraceptives intended for medical and veterinary services, prevention of diseases, and for human and veterinary treatment purposes. Taxpayers with operations in the Czech Republic should take note of the proposed VAT amendments.

Italy

Extension of reverse charge mechanism, potential increase of VAT rate to 25% by 2017, and 4% VAT rate on e-books

On December 29, 2014, the 'Disegno di Legge di Stabilità', the Stability Law 2015 (Law December 23, 2014, no. 190), was published in the Italian Official Gazette. The new Law includes the following:

- The reverse charge mechanism is extended in Italy to transactions falling within the scope of the construction and energy sectors (e.g., greenhouse gas emission allowances, supplies of gas and electricity to taxable dealers established in the territory of the State, and supplies of goods to hypermarkets, supermarkets and discount food stores – subject to authorization by the European Union).
- A possible increase in the standard rate of VAT, from 22% to 24%, beginning January 1, 2016, a further 1% increase beginning January 1, 2017, and an additional .5% beginning January 1, 2018. These measures may be replaced in whole or in part by other provisions to ensure the same positive effect on the budget balances.

A series of other proposed VAT changes include:

- New filing rules applicable starting with the annual VAT returns for 2015 (that have to be submitted in 2016) have been introduced. Thus, the obligation to file a unified annual return (i.e., a single return for both corporate tax and VAT that had to be submitted under certain circumstances by Italian taxpayers) has been removed. The deadline for the submission of the annual VAT return is the end of February (instead of the end of September). The requirement to file an annual VAT communication has been revoked.
- A 4% VAT rate for e-books has been introduced. To apply the 4% VAT rate, 'books' are considered to be "all publications identified by ISBN code and conveyed through any physical support or by electronic communications media."

Businesses are advised to consider the impact of the new provisions on their operations and VAT compliance systems.

France, Spain and Sweden

Implementation of import VAT deferment simplification in additional EU countries

France

New rules allowing import VAT to be accounted for through the VAT return under certain conditions were implemented in France, effective January 1, 2015. Any taxable person established in the EU subject to VAT at importation into France can, by option, apply the reverse charge system and indicate the amount of VAT due directly on their VAT returns (CA3 for example), provided that the importer holds an authorization for centralized customs clearance.

Taxable persons established outside of the EU may also exercise the option to apply the reverse charge system, provided that the customs representative acting on the importer's behalf has obtained the authorization to use the Single Authorization for Centralized Clearance. The option to apply the reverse charge lasts for three years and is automatically extended by three year periods unless revoked with two months' notice.

Spain

Following publication in the Official State Gazette, a number of previously reported amendments to the VAT Act should become effective in 2015. The VAT amendment bill includes, among other provisions, the possibility for businesses that file monthly VAT returns to defer import VAT until filing the VAT return. Such measures would result in a cash flow advantage for taxpayers who could defer the payment of import VAT to their VAT return and take an immediate credit within the same return (i.e., no cash payment of import VAT due when the taxpayer has full VAT recovery entitlement).

These new provisions are effective January 1, 2015. To apply this simplification, a company should submit a registration return (Form 036) during the month of November, before the calendar year in which the regime should be applicable. The registration return for 2015, however, can be filed through January 30, 2015 and the simplification will be applicable February 1, 2015.

Sweden

Effective January 1, 2015, VAT on imports into Sweden must be reported to the Tax Agency, instead of Swedish Customs. Since the import VAT will be paid through the VAT return, instead of when customs authorities release the goods into free circulation, the accounting for import VAT will be postponed (i.e., import VAT will be declared and recovered in the same VAT return assuming the taxpayer is entitled to full VAT recovery). Businesses with operations in France, Spain, and Sweden should consider the new simplifications available and the impact on their VAT reporting obligations.

Germany

Books on 'all physical means of support' subject to 7% VAT effective January 1, 2015

The Ministry of Finance has announced that, effective January 1, 2015, the supply of audio books on physical carrier media is subject to the reduced VAT rate of 7%. Audio plays, however, are not covered by the reduced rate. In general, the electronic supply of an audio book (e.g., via download) is treated as a supply of an electronic service subject to the standard VAT rate.

When the supply of a printed book (reduced VAT rate applicable) and the electronic supply of an audio book is carried out for a single consideration, the supplier must split the remuneration between the applicable VAT rates. The Ministry of Finance will not, however, object if supplies of e-books made before January 1, 2016 are treated as ancillary services and share the VAT treatment of the main supply (i.e., the supply of a printed version of the book subject to 7% VAT). Publishers and other taxpayers

involved in such transactions should consider the impact of the new rules on their business activities and financial systems.

Malta

Among other measures announced in the 2015 budget, the VAT rate on audio books and books published on CDs, DVDs, SD-Cards and USB drives and similar media, has been reduced from 18% to 5%, effective January 1, 2015. This measure seeks to align the VAT treatment of digital books with that currently applicable to printed matter/books. Publishers and other taxpayers involved in such activities should consider the impact of the new rules on their business activities and financial systems.

Finland

Supreme Court rules books on CD, CD-ROM, or memory stick subject to 24% VAT

Following the ECJ's judgment in the K Oy case (C-219/13), the Supreme Administrative Court (SAC) ruled on December 31, 2014 (KHO:2014:199) concerning the VAT treatment of audio or e-books on physical means of support such as a CD, CD-ROM or memory stick. The SAC held that such audio or e-books are not similar to printed books, do not satisfy the same needs of the average consumer, and are not, therefore, subject to the reduced VAT rate of 10%. According to the SAC, books on such physical means of support more closely resemble e-books downloadable from the internet, to which reduced VAT rates cannot be applied based on the EU legislation.

The SAC stated that although printed books are subject to the reduced VAT rate, while books on other physical means of support are subject to the standard VAT rate, this does not offend the principle of fiscal neutrality.

Luxembourg

New VAT measures for 2015

On December 19, 2014, the Luxembourg Parliament enacted the Budget Law (Bill n° 6720), introducing new VAT measures effective January 1, 2015. As announced in the Draft Budget Law, the reduced, intermediary, and standard VAT rates were each increased by 2 %, to 8%, 14%, and 17%, respectively, effective January 1, 2015. The super-reduced 3% rate has not increased; rather, its application has been revised.

A new procedure to claim periodical VAT refunds has been introduced, effective January 1, 2015, for VAT registered businesses. The VAT authorities will be bound by deadlines within which VAT refund claims should be considered or, when necessary, additional information should be requested from the taxpayer. Failure to observe these deadlines will trigger a right to default interest payments in favor of taxpayers. In the event claims are refused, a taxpayer can initiate administrative and judicial appeal proceedings. Businesses are advised to consider the impact of the new provisions on their operations and financial systems.

United Kingdom

Intrastat arrivals threshold increased to £1.5m effective January 1, 2015

Effective January 1, 2015, the annual threshold for intrastat arrivals returns has increased from £1.2m to £1.5m. When taxpayers do not meet the revised threshold, they are exempt from filing 'Intrastat' declarations of goods received from other EU Member States. The Intrastat threshold applies separately for goods dispatched and goods received. The annual dispatches threshold remains at £250,000.

Iceland

VAT rate decrease to 24% effective January 1, 2015

The Icelandic Parliament has passed a law amending the VAT Act. Effective January 1, 2015, the standard VAT rate is reduced from 25.5% to 24% and the lower VAT rate increases from 7% to 11%. Businesses are advised to align their systems and VAT compliance processes to the newly enacted changes.

Middle East

Israel

Zero VAT rating for clinical trial services

Section 30(19) of the Israeli VAT Law was amended in December 2014 stating that supervision, coordination, and control services in Israel in connection with carrying out medical experiments on humans to foreign residents will be subject to zero VAT.

The amendment was enacted to highlight the importance of clinical research carried out in Israel by multinational companies, the contribution of the clinical research to the health of the citizens of Israel, and the competition with other countries that already exempt such clinical research from VAT.

Historically, VAT authorities in Israel have determined that clinical trial services are not subject to zero VAT since they fall within the scope of the exception stipulated under the VAT law. The exception states that a service is not subject to the zero VAT rate if it is actually rendered not only to the foreign resident, but also to an Israeli resident in Israel (i.e., the Israeli hospitals in which the services are provided and the Israeli patients taking part in the trials).

The new rules are expected to have a beneficial impact on companies undertaking clinical trials in Israel.

Asia Pacific

Korea

Zero VAT rating for clinical trial services

When a domestic hospital or medical institution supplies clinical trial services to a foreign pharmaceutical company outside Korea and receives consideration for the supply of services in a foreign currency, VAT at the zero rate will apply to the supply of these services. This rule will be immediately effective after the amended rule is enforced (likely February 2015). The new rules are expected to have a beneficial impact on companies provisioning Korean clinical trial services.

VAT on sales of digital services through offshore open markets

The VAT law has been amended to apply VAT to the supply of electronically supplied services (e.g., applications, MP3, music, films) to Korean recipients through offshore open markets app stores. Effective July 1, 2015, suppliers of such services that are not resident or not established in South Korea must apply for a simplified VAT registration and levy VAT on such supplies. The proposed Enforcement Decree of the amended VAT legislation provides:

- The affected digital services include streaming services, program updates, remote service provision (news, traffic information, etc.), software, electronic documents, etc.
- Online registration required information will likely include the name of the company and its representative, contact information, the jurisdiction in which the marketer's business is registered, service type, and the launch date of the service to Korean customers.
- VAT payments should be made through a foreign exchange bank account either in a foreign currency or Korean Won.

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- Service providers will be exempt from the requirement to issue VAT invoices to Korean customers.

This change will apply to the supply of relevant electronic services on or after July 1, 2015. Electronic service providers should consider the impact of the new rules on their activities in Korea and prepare for compliance purposes. Please note that, unlike similar rules in other countries including the EU, the amended law will apply to both business-to-business and business-to-customer transactions.

Japan

As part of its 2015 Tax Reform, plans were recently confirmed to subject electronic supplies by offshore suppliers to Japanese Consumption Tax effective October 1, 2015. The measure is expected to pass through the Diet towards the end of March 2015.

Companies making digital supplies to customers in Japan should consider the details of the proposed measure (which was publicly announced on December 30, 2014 as part of the Ruling Party's 2015 Tax Reform Outline).

Thailand

Royal Decree extends the 7% VAT rate to September 30, 2015

Although the statutory VAT rate is 10%, a series of Royal Decrees have reduced the VAT rate since 1992 to 7%. A new Royal Decree further extended the 7% rate through September 30, 2015.

Americas

Mexico

Publication of e-filing rules for temporary imports

Effective January 1, 2015, companies that have obtained VAT and excise tax certification, or that will guarantee the fiscal interest, will be required to electronically transmit monthly discharge reports relating to temporary import declarations on withdrawals from bonded warehouses, returns, regime changes, and virtual transactions (among others).

Additional benefits granted to certified IMMEX companies

Under the Fourth Resolution of the Mexican Foreign Trade Rule published on December 12, 2014, additional benefits have been granted to IMMEX companies that obtain VAT and excise tax certification. General benefits include:

- Certified entities are permitted to file a statement with the authorities describing possible irregularities detected in their foreign trade operations. Those entities can make post customs clearance payments of omitted duties and taxes, prior to a review by the authorities. The authorities may grant a term of 60 days to correct the omission detected by certified entities without imposing any penalties.
- When temporarily imported goods are transferred to other IMMEX entities, OEMs, or vehicle parts manufacturers, such transfers can be performed by making a one-step declaration that corrects and supports the virtual operations performed. The Ministry of Finance will create rules of operation. This simplified self-correction benefit for certified entities will become effective six months after its publication in the Official Gazette.
- Certified entities will not be required to present a Customs Value Declaration or a Customs Value Worksheet for the determination of the import customs value on temporary imports under its IMMEX Program.

Specific benefits apply to companies under the 'AA' and 'AAA' modality. Companies who operate under the IMMEX program should take note of these developments.

Argentina

Turnover Tax regime applicable to amounts paid for digital supplies in Buenos Aires

The Tax Authority of Buenos Aires (AGIP) established a new turnover tax (i.e., provincial sales tax) withholding system to effectively tax digital services provided by foreign residents to final consumers (B2C supplies). Such services include online services to access movies, TV, and other audiovisual entertainment transmitted over the Internet to televisions, computers, and other devices connected to the Internet. Services also include the subscription to buy or rent digital content related to music, games, movies, or similar contents, except for software.

With effect from February 1, 2015, Argentine credit card entities, which collect payments for such services, are required to withhold turnover tax at the rate of 3% on the net price of the transaction made by final consumers to the non-resident service providers. As these foreign service providers are not registered taxpayers in Argentina, the credit card companies should be reporting the amounts withheld with reference to the service provider's country of establishment Tax ID number.

This resolution has given rise to public debate and challenge as it is the first specific initiative of a Tax Authority in Argentina aimed at collecting Argentine taxes on digital supplies made by foreign suppliers. It remains to be seen whether this tax will continue to be challenged in the future, and whether Tax Authorities in other provincial jurisdictions in Argentina will follow suit and impose such a system in the future.



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Let's talk

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Global VAT Online

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