Uniform EU VAT declaration

This edition of VAT News highlights a CJEU judgment concerning VAT treatment when a contract does not address VAT, an EU announcement implementing a uniform VAT return, and an announcement that GST will be implemented in Malaysia.

European Union

Court of Justice of the European Union (CJEU)

CJEU rules on VAT treatment of silent contracts

The CJEU held in the joined cases of *Tulică and Plavoşin* (C-249/12 and C-250/12) that when a contract does not address VAT, the amount paid is deemed to be inclusive of any VAT due, unless there is a legal entitlement in domestic law for the supplier to recover the additional amount from the customer.

The taxpayers entered into numerous contracts for land purchases and property transactions. The taxpayers did not consider themselves taxable persons for VAT purposes. Additionally, the contracts for the land transactions did not make any reference to VAT.

The Romanian tax authority considered the taxpayers taxable persons (i.e., making supplies subject to VAT) and considered the land transactions subject to VAT. The tax authority assessed the taxpayers for VAT that should have been charged on the amounts payable under the terms of the contracts.

The taxpayers considered the VAT a component of the price, rather than an addition, according to the legal principle of contractual freedom (the taxpayers argued the tax authority infringed this principle). The taxpayers further argued that no assumption could be made that the purchasers would have agreed to buy the properties if the contract terms had provided for the addition of VAT.

The tax authority held that the tax base should be the price agreed by the contracting parties to correctly determine the amount of VAT due. If the contract provided for VAT to be added or made no provision for VAT, VAT should be added to the agreed price (consideration). The Romanian court considering this matter sought clarification from the Principal VAT directive.

The Romanian Court referred to the CJEU the question of whether the EU Principal VAT directive must be interpreted to mean that the taxable amount is: (a) the consideration for the supply of the property determined by the parties, less the rate of VAT, or (b) the consideration for the supply of the property as agreed by the parties, when a vendor has been reclassified as a taxable person and the contract is silent on the VAT treatment.

The CJEU held that a contract with no provision for VAT added and no national law provision for the supplier to secure an additional sum equivalent to the VAT from the purchaser requires the supplier to bear the VAT burden (rather than the end user) since the agreed price is treated as the taxable amount. Otherwise, the tax authority would breach the principle that tax must not be levied on more than the supplier has received.

The CJEU further held that the national court should determine whether the taxpayers, under national law, could charge and recover from purchasers an amount equivalent to the VAT. Otherwise, the Romanian domestic legislation that enabled the tax authority to assess the additional VAT amount would be incompatible with the Principal VAT Directive, and thus incompatible with EU law.

Therefore, the CJEU held (referring the matter back to the Romanian Court) that the Principal VAT Directive must be interpreted to mean that when the price of a good established by parties does not reference VAT, and the supplier owes VAT on the transaction (and cannot recover VAT from the purchaser), the agreed price must be regarded to already include VAT.

This case highlights the necessity to include appropriately worded clauses regarding VAT in contracts. The absence of VAT clauses can lead to assessments, complications recovering VAT, and registration or other reporting obligations. Therefore, businesses should seek advice for the inclusion of appropriately worded VAT clauses in any contracts.

European Commission proposes standard VAT declaration for EU businesses

The European Commission adopted a proposal for a uniform EU VAT return. 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 uniform VAT return should lead to a more unified approach regarding the submission and correction of VAT returns across the EU. Among the proposed changes, a uniform EU VAT return would replace national VAT returns and the appropriate tax period would become monthly for all businesses. Micro enterprises (i.e., enterprises with annual turnover of less than 2 million euro) would comprise one exception to the tax period rule since such enterprises may submit quarterly VAT returns (unless opting to file monthly returns). In certain circumstances, Member States can also impose the filing of monthly VAT returns to prevent tax evasion or fraud. Finally, Member States would no longer be allowed to require an annual summary VAT return.

Businesses should welcome these changes since the EU VAT return process may become less burdensome. The Commission anticipates the introduction of a standard VAT return may result in administrative cost savings for businesses of around 15 billion euros per year.

We will continue to keep you updated on further developments in this area.

European Commission publishes guide to 2015 Mini One Stop Shop

Legislation was published last year regarding VAT registration and reporting rules for businesses making business-to-customer (B2C) supplies of telecommunications, broadcasting, and electronic services within the EU (i.e., the Mini One Stop Shop, 'MOSS'). The European Commission recently published a guide aimed at providing a better understanding of the legislation, along with functional and technical specifications for the MOSS scheme. When the new place of supply rules take effect January 1, 2015, the MOSS scheme provides an alternative to multiple EU VAT registrations for B2C suppliers of telecommunications, broadcasting, and electronic services within the EU.

Under the rules, a taxable person registered for the scheme in a Member State (the Member State of identification) will electronically submit any VAT due, along with quarterly MOSS returns detailing supplies of telecommunications, broadcasting, and electronically supplied services made to non-taxable persons in other Member States (the Member States of consumption). These quarterly returns, along with VAT due, are then transmitted by the Member State of identification to the corresponding Member States of consumption via a secure communications network.

The guide covers four areas:

- VAT registration process (including de-registration)
- VAT return process
- VAT payment process (including reimbursements)
- miscellaneous items (e.g., record keeping).

Please note that the guide is not legally binding and has been issued by the Commission only as practical and informative guidance. The Commission plans to issue further guidelines in the future regarding the audit of the Mini One Stop Shop and explanatory notes on the place of supply rules for telecommunications, broadcasting, and electronically supplied services. We will provide you with further details once these additional guidelines become available.

Belgium

Transitional tax point regime extended by one year

In Belgium, effective January 1, 2013, the issuance of an invoice prior to a taxable event is no longer considered a tax point for VAT purposes. Therefore, a recipient cannot deduct input VAT upon receipt of an advance invoice. Input VAT deduction only applies when a taxable event takes place (i.e., when the transfer actually occurs or upon payment prior to transfer of the goods/services). A one-year transitional regime was implemented in 2013, during which time both suppliers and customers may still use the existing rules (i.e., pre- January 1, 2013). The Belgian Tax Authority announced that due to continuing administrative difficulties, taxpayers can continue using the pre- January 1, 2013 rules in the 2014 calendar year.

Germany

Restriction on wholesale goods simplification on supplies to Germany

Typically, supplies of goods to business customers in other Member states are treated as zero-rated, intra-EU supplies of goods from Germany by the supplier and intra-EU acquisitions of goods in the Member State of arrival by the customer. In such cases, the supplier is required to check the validity of the VAT number of all EU customers. Customers are required to account for local acquisition VAT and satisfy various compliance obligations related to the arrival of the goods into the EU country of destination. These requirements often create additional administrative effort for both suppliers and customers, particularly when sales are made to many small scale customers.

A previous simplification rule in Germany allowed wholesalers from other Member States to treat supplies of goods to customers in Germany as intra-EU supplies with subsequent domestic supplies of goods to the customers. The tax authorities in both the supplier country and Germany had to agree to apply this simplification rule.

This simplification rule allowed the supplier to register for VAT in Germany and to account for local VAT on sales to German business customers. The supplier benefitted with no requirement to obtain and validate each customer's German VAT number. The customer benefitted by receiving invoices with local German VAT and not having to comply with the more onerous compliance obligations associated with intra-EU acquisitions from other EU Member States.

Effective October 1, 2013, Germany has restricted the application of the simplification rule by stating that it will now only apply in cases where the goods arriving into Germany are transported by the supplier in its own vehicles (not via a freight forwarder or other means). Unless businesses satisfy these new requirements the simplification rule will no longer apply, and the general VAT rules for intra-EU transactions must be applied for supplies into Germany.

Businesses currently using the simplification rule should consider the impact of the new rules and take appropriate steps to ensure compliance, which may include altering transport arrangements or de-registration from German VAT (thus requiring businesses to gather and validate customer VAT numbers).

Finance Ministry Circular on requirements under Invoicing Directive

As a result of the recent transposition of the EU Invoicing Directive into German law, the Federal Ministry of Finance has issued a Circular including a table with the new invoicing requirements in other languages. The Circular highlights, for example, the fact that 'Gutschrift' on a credit note may not trigger a VAT liability since the term may refer to a self-billing invoice, or a credit note for the purpose of invoice cancellation, price reduction, etc.

The Circular provides that any corresponding foreign language wording in accordance with the EU VAT Directive may be used instead. This also applies for wording associated with the reverse charge, Tour Operator Margin Scheme (TOMS), and special arrangements applicable to second-hand goods, works of art, collectors' items and antiques. Businesses required to issue invoices in Germany should be aware of the new wording requirements and consult the Circular guidance accordingly.

Italy

Commission infringement proceedings on VAT refunds

Under the Italian VAT refund procedure, a non-established taxpayer requesting a VAT refund via an Italian VAT return is required to submit a bank or insurance guarantee covering the full amount of the VAT refund requested. The guarantee must be submitted for each VAT refund request and must be maintained for a period of three years after the VAT refund is made. Nonetheless, businesses established in Italy that meet certain criteria may be exempt from the guarantee requirement.

The European Commission has launched infringement proceedings against Italy on grounds that the requirement to submit a financial guarantee as a condition for receiving a refund is a breach of the European law's principles of neutrality and proportionality. The European Commission considers these principles breached for the following reasons:

- an excessive delay in making refunds, even when the refunds are determined due and indisputable
- stringent conditions imposed on taxpayers seeking relief from the guarantee requirement
- taxpayer financial risk exposure due to the excessively long time period necessary to obtain the annual VAT refund.

Businesses seeking VAT refunds in Italy should take note of the Commission's position. We will report on the outcome of the Commission's infringement proceedings once available.

Completion instructions and relevant software for 'Spesometro' VAT declaration and extension of 'Spesometro' filing deadline to January 31, 2014

The Italian Tax Authority has published its final version of the declaration and instructions for completion of the 'Spesometro' VAT declaration that requires businesses to report all business-to-business (B2B) transactions (regardless of the amount) and business-to-customer (B2C) transactions equal to or exceeding 3,600 euro. The Tax Authority has also provided guidance on the software specification.

The official deadline for filing 'Spesometro' declarations for transactions carried out in 2012 is November 12, 2013 (for monthly VAT settlements) and November 21, 2013 (for quarterly VAT settlements). However, an extension has been granted through January 31, 2014 for businesses to make declarations without penalty.

Netherlands

VAT reporting changes from January 1, 2014

The Dutch Tax Authority has announced that effective January 1, 2014, businesses currently filing VAT returns and EU listings via the 'BAPI – channel' are required to file via the Software Business Reporting Programme (SBR). Impacted businesses should start planning since the transition to SBR can take more than a month to complete.

Additionally, businesses should note that there are transitional rules for returns covering 2013 periods required to be filed after January 1, 2014. Under the new system, businesses can also choose to use an intermediary to take care of these reporting obligations, thereby avoiding the need to transition to SBR.

Portugal

Tax amnesty effective November 1, 2013

Portugal has announced an exceptional, temporary waiver of interest and reduction in penalties for tax and social security debt settlements. The amnesty provides for the waiver of late payment interest, late assessment interest and administrative costs, and a significant reduction in penalties. Please note that the partial payment of principal allows a proportional waiver of interest and administrative costs, but not penalties. The amnesty became effective November 1, 2013 and applies to debt settlements that occur before December 20, 2013, and applies to debts due on or before August 31, 2013.

United Kingdom

Reminder to businesses on cross border VAT rulings trial

Updated guidance from Her Majesty's Revenue and Customs (HRMC) on obtaining VAT rulings reminds businesses that 13 Member States (the UK, Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal, and Slovenia) have agreed to conduct a trial of cross-border VAT rulings between June 1, 2013 and December 31, 2013. Taxpayers will be able to request rulings on cross-border transactions and will be able to send feedback regarding the trial to the EU. The guidance now includes information on the trial and a link to a Commission document describing how to take advantage of this opportunity.

Businesses should be aware that the trial ends on December 31, 2013. Therefore, any business that may benefit from the trial should consider requesting a ruling as soon as possible.

Africa

South Africa

New electronic record keeping requirements

The Tax Administration Act in South Africa now requires specific tax authority permission to maintain electronic records outside South Africa. Any electronic records maintained or stored physically outside the borders of South Africa require specific permission by written application to the South Africa Revenue Service (SARS). Only a senior SARS official may authorize a taxpayer to keep electronic records outside of South Africa.

Businesses should not underestimate the need to seek permission from SARS. For example, a South African subsidiary of a multinational corporation that enters financial information on a computer terminal located on premises in South Africa would need to request permission if the data leaves South Africa and is stored on a server located out of the country. Another example includes internet based transactions when the South African business makes use of e-Commerce software if both the software and related transactions data are stored on a web server located outside of South Africa. In both instances, the South African taxpayer would need to approach SARS for permission to store data abroad.

A successful application to SARS requires that the vendor allow access to this information regardless of where the information is physically stored. Please note that failure to comply with this provision of the Tax Administration Act is an offence. Therefore, businesses should ensure that when data is stored outside of South Africa, the necessary permission is obtained to comply with these South African provisions.

Asia-Pacific

India

Guidance on excess input tax credits and penalty provisions in Delhi

Businesses should be reminded that in Delhi, effective September 12, 2013, excess input tax credits or inadvertent excess payments of tax cannot be carried forward to the subsequent financial year. Businesses should also note that new penalty provisions are in force and that they have generally increased.

Penalty provision	Old Penalty	New Penalty in Force
Failure to apply for amendment in registration	INR 100 per day restricted to a maximum of INR 5,000	INR 500 per day restricted to a maximum of INR 10,000
Failure to apply for cancellation/surrender of registration	INR 100 per day restricted to a maximum of INR 5,000	INR 1,000 per day restricted to a maximum of INR 25,000
Failure to file return or supporting annexure(s)	INR 100 per day restricted to a maximum of INR 10,000	INR 500 per day restricted to a maximum of INR 50,000
Residual penalty	None	INR 10,000

Penalty provision **Old Penalty** **New Penalty in Force**

Malaysia

GST to be introduced from April 1, 2015

The Prime Minister of Malaysia recently announced that a Goods and Services Tax (GST) will be implemented on April, 1 2015. The GST rate will be 6% and the anticipated threshold for mandatory GST registration will be 500,000 Malaysian Ringgit (approximately US $156,000). Although the GST bill and regulations have not been released, the Malaysian Government issued a comprehensive list of supplies that are deemed to be zero-rated or exempt supplies.

Zero-rated supplies include, but are not limited to, food items, goods supplied to Labuan, Langkawi, and Tioman, goods supplied in connection with international shipping and air services, services and spare parts related to shipping and aircraft (excluding private use), international transportation of passenger and goods, leasing of goods outside of Malaysia, and telecommunication services provided to persons outside Malaysia. Exempt supplies include, but are not limited to, land and building used for residential, agricultural, burial and religious purposes and services such as education, childcare and healthcare services.

Businesses trading in Malaysia should be aware of the upcoming implementation of GST and as such should commence planning for the additional compliance cost and reporting obligations that may arise once GST has been implemented. Businesses should, in particular, ensure that they have adequate systems, controls and processes in place to deal with the implementation of GST in Malaysia. We will keep you apprised of further developments and announcements regarding the implementation of GST in Malaysia.

Philippines

New VAT exemption for passenger transport by international carrier

Under recently implemented legislation, the transport of passengers by international carriers is now exempt from the 12% VAT and 3% common carriers tax. Related businesses should be aware of this change to ensure the appropriate exemptions are applied.

Thailand

Additional information required on tax invoices, debit notes, credit notes, output and input VAT reports

The Thai Tax Authority issued regulations requiring additional information on full format tax invoices, debit notes, credit notes, and other various VAT reports. Businesses are now required to include, among other items, the tax ID number of the customer and a notation indicating whether both the seller and customer are transacting via a head office or a branch. The new regulations will apply to tax invoices issued beginning January, 1 2014. Debit and credit notes, and the related output and input VAT reports will be required to include the new information when referring to tax invoices issued from that date.

Businesses operating in Thailand should be aware of these changes and should implement the necessary systems changes to ensure compliance with these regulations.

Americas

Mexico

Indirect tax changes on the horizon for 2014

As reported in our September edition of VAT news, the Mexican Government issued a proposal for various reforms to Mexican VAT legislation. The Mexican Congress approved the reforms to Mexican VAT legislation that will be effective January 1, 2014.

The 11% VAT rate applicable to transactions performed in the Border Region will be revoked on the effective date and the standard 16% VAT rate will apply. Additionally, certain supplies that were previously exempt for 'Maquiladora' entities (entities benefiting from the IMMEX Program that allows a free trade zone for manufacturing) will be subject to VAT. For example, temporary importations made by IMMEX entities, bonded warehouses for the automotive industry, and strategic bonded warehouses will be subject to VAT. Sales from a foreign resident to IMMEX entities and sales of goods subject to the strategic bonded warehouse regime will be subject to VAT. Additionally, IMMEX entities are no longer required to withhold VAT from suppliers of goods.

In the case of temporary importations, a new immediate credit mechanism of 100% of the VAT to be paid on the temporary imports will be implemented. The new credit mechanism may provide a cash flow benefit to relevant companies. The credit applies to companies that obtain a 'certification' under the rules to be published by the Mexican Tax authority. Taxpayers that do not wish to apply for certification will also have an option to obtain a bail in guarantee for the payment of the corresponding import VAT. The obligation to pay import VAT on temporary importations will become effective one year after the certification process rules are issued by the Mexican Tax authority. Businesses operating in Mexico should be aware of the VAT changes effective January 1, 2014 and should take the necessary steps to prepare for these changes.

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 these issues might affect your business, please contact:

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

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

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

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

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

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

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

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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.