Value-added Tax News Alert

A Washington National Tax Services (WNTS) Publication

April 2012

The following is a summary of some key indirect tax developments across the globe that are particularly relevant for U.S. multinational companies.

Global Indirect Taxes

EUROPEAN UNION

European Court of Justice

Import VAT recovery is not conditional on payment: In the case of Société Veleclair (C-414/10), the ECJ has held that the taxpayer had the right to deduct VAT due on its imports, regardless of whether it had paid the import VAT due to the tax authority.

In this case, the taxpayer imported bicycles in the period from 1992 until 1995, declaring that the goods came from Vietnam. The French tax authorities later established that the bicycles were actually imported from was China and, as a result, the taxpayer was subject to customs duties and anti-dumping duties and a tax assessment was issued for import VAT due on that sum. The taxpayer subsequently went into compulsory administration and did not pay the import VAT due. However, an application for the refund of the deductible import VAT was submitted on its behalf. The French tax authorities rejected the claim on the basis that deduction of the VAT on imports is conditional upon its actual prior payment.

In reaching its judgment, the ECJ considered that the taxpayer was entitled to deduct the import VAT 'due or paid' within the territory of his country, and this right is independent of payment of the consideration for imported goods. The ECJ considered that the common system of VAT needs to comply with the principle of fiscal neutrality and, if the deduction of import VAT were conditional upon payment of the VAT to the tax authority, the taxpayer would be subject to an economic burden that he should not bear.

Italy

New invoicing rules for intra-Community supplies of services: Article 8, paragraph 2, Law no. 217/2011 ('Community Law') made some important changes regarding the invoicing requirements for services provided by EU taxable persons, falling under the general place of supply rules.

In accordance with Community Law, the requirement of 'integration of the invoice issued by the supplier' has been introduced in Italy (instead of the so-called 'self-invoicing' provisions which had existed previously) for "basic rule Article 44 services provided by suppliers established in other EU Member States, in order for the Italian taxpayer to account for VAT under the reverse charge mechanism. This obligation is already in place for intra-EU acquisitions of goods.

In the case of generic Article 44 services provided by non-EU suppliers, the issue of 'self-invoices' by taxpayers established in Italy is still valid in order to account for VAT under the reverse charge mechanism.

Clarity provided in relation to the storage of invoices: Circular Letter no 5/2012, issued by the Italian Tax Authorities has provided clarification on the place of storage of invoices and other documents relevant for tax purposes for Italian businesses.

Specifically, the tax authorities have stated that the e-archiving of tax and accounting documents outside Italy is allowed only (subject to limited exceptions) in respect of:

- Electronic invoices issued in accordance with the client's agreement
- Electronic invoices issued without the client's agreement and sent by paper, which are then e-archived

E-archiving abroad is not permitted for other tax documentation (e.g. scanned purchase invoices, delivery notes, accounting documents etc.), which have to be stored (including via server or optical supports) in Italy.

The restrictions do not apply to EU taxable persons who are VAT registered in Italy via direct VAT identification, who will continue to be allowed to keep VAT documentation outside Italy.

Germany

New draft guidelines issued on the evidence requirement for intra-community sales: After previous drafts met the criticism of concerned business circles, the German Federal Ministry of Finance (FMoF) has recently issued a new draft of the guidelines for evidence requirements associated with the zero-rating of intra-Community supplies of goods.

As with previous drafts, the FMoF adheres to the Intra Community Entry Certificate (ICEC) as being the main evidence for intra-Community supplies of goods. However, under the latest draft, the FMoF now allows for simplifications for suppliers in cases where goods are physically received into the destination country by a party other than the supplier's customer (e.g. chain supplies). In such cases, the FMoF allows for a document dated and signed by the actual recipient of the goods, provided that all other prescribed content of the ICEC is shown. The draft also eases the conditions surrounding electronic submission of ICECs and expressly provides for the possibility of customers issuing accumulative ICEC for all supplies carried out within one month periods (or for other periods not exceeding a quarter).

The current guidelines remain in draft and it is not yet clear when the final version of the guidelines will be available. Nevertheless, the recent draft suggests that a return to the former evidence provisions may be unlikely. Therefore, businesses should assess their position as a matter of urgency.

United Kingdom

Update on legal challenge to the removal of low value consignment relief: As previously reported in the December 2011 VAT News Alert, the Channel Island states of Jersey and Guernsey had planned to take legal action against the UK in response to its decision to remove low value consignment relief for goods sent from the Channel Islands to the UK, effective April 1, 2012.

The States of Jersey and Guernsey were granted leave to appeal the High Court's judgment on the matter. However the governments of both islands have decided that, as it would require a referral to the European Court of Justice, they will not pursue the matter any further.

Netherlands

New energy anti-avoidance rules: Effective from April 1, 2012, businesses that engage in the domestic supply of gas and electricity services in the Netherlands will have the option to zero-rate their supplies under a 'fictitious' VAT warehouse arrangement. This new option was introduced as a measure to combat the increasing levels of VAT fraud related to the provision of these services.

To qualify for zero-rating, businesses must apply for a license to run a 'fictitious' VAT warehouse and comply with additional invoicing and regulatory requirements. Due to the increased administrative burden, there is no legal requirement for businesses to adopt the zero rated treatment, however the associated cash flow advantages and reduced risk of VAT fraud may make the option attractive to certain taxpayers.

Spain

VAT permanent establishment guidance published: During late 2011 and early 2012, the Spanish VAT authorities have issued four new consultations concerning the interpretation of "establishment" for VAT purposes. The interpretation of an establishment for Spanish VAT purposes has changed significantly in recent years, particularly in relation to supplies of goods from Spanish based warehouses.

According to the recent consultations, the rental of a warehouse in Spain creates a permanent establishment for VAT purposes in Spain and all supplies of goods in Spain should be automatically attributed to such establishment. As a result, the local reverse charge cannot be applied to the sale of goods from a Spanish VAT warehouse by a non-resident business and instead, the supplier of goods would be required to register for VAT in Spain and charge VAT directly.

This represents a complete change in position by the Spanish tax authorities and brings the position back in line with the pre-2010 interpretation. Non-resident businesses making supplies of goods in Spain should evaluate their position immediately.

Austria

Restrictions on the option to tax leases of immovable property postponed: As previously reported in the March 2012 VAT News Alert, the VAT treatment of immovable property leases was restricted, to be originally effective April 1, 2012. However, the Austrian Parliament has since postponed the effective date of the new regulation until September 1, 2012.

The new regulation will apply to rental agreements commencing after August 31, 2012, provided building construction through the landlord has not commenced before September 1, 2012. In cases where a condominium is rented VAT exempt, the new regulation will be applicable if the rental agreement commences after August 31, 2012.

The previously reported extension of the VAT adjustment period in connection with immovable property, from 10 to 20 years, became effective on April 1, 2012, as planned.

Finland

VAT rate to increase in 2013: As part of the budget framework for 2013 through 2016, the Finnish government announced that effective from January 2013, the standard VAT rate will increase from 23% to 24%.

EUROPE

Serbia

VAT invoicing changes: The Minister of Finance recently issued amendments to the Rulebook on VAT invoicing. The amendments include:

- Requirements for specific mandatory elements of the document (i.e. credit/ debit note) to be issued when the taxable base is changed.
- If the payment and subsequent supply of goods/services is made in the same tax period, there is no obligation to issue an advance payment invoice; and
- For continual service contracts with periodic invoicing, taxpayers should indicate on the invoice the period in which the services were rendered.

Businesses operating in Serbia should review their invoicing processes to ensure ongoing compliance with the new amendments.

ASIA/PACIFIC

China

Rules provided for exported pilot services: As previously reported in the January 2012 VAT News Alert, certain exported pilot services provided under the Shanghai VAT reform are eligible to be zero-rated or exempt from VAT. On April 5, 2012, the State Administration of Taxation released detailed implementation rules for the VAT treatment of zero-rated exported Pilot services in Public Notice [2012] No. 13 ("Circular 13"), effective retroactively from January 1, 2012. Circular 13 provides the following guidance:

- Clarification on the scope of eligible services and the meaning of R&D and design services;
- Explanation of the calculation method, documentation requirements and timelines for applying the ECR (Exempt, Credit and Refund) method. The ECR method outlines the amount of any VAT refund and credit that businesses are entitled to receive in respect of purchases relating to exported services;
- Information related to penalties for export VAT refund fraud.

AMERICAS

Canada

New HST for Prince Edward Island: On April 18, 2012, Prince Edward Island Finance Minister announced that the province plans to introduce a harmonized sales tax (HST) on April 1, 2013. The HST rate will be 14% and will replace the combined provincial sales tax (PST)/GST rate of 15.5%.

The tax base will be the same as for GST, with a few exceptions (including exemptions for home heating oil, children's clothing and children's footwear).

AFRICA

Angola

Consumption tax expansion: Effective from January 1, 2012, the consumption tax base has been significantly broadened to include multiple services that were not previously covered.

Services such as telecommunications, water/energy consumption, tax, legal, accounting, and engineering services are subject to consumption tax in Angola under the new rules.

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 News Alert, please contact your local Indirect Tax Practice advisor or the specialists listed at the end of this article.

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Global VAT Online Service

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