

Value-added Tax News Alert

A Washington National Tax Services (WNTS)
Publication

August 2012

The following is a summary of some key indirect tax developments across the globe that are particularly relevant for US multinational companies. E-invoicing and VAT rate and base adjustments continue to make global headlines.

Global Indirect Taxes

EUROPEAN UNION

European Court of Justice

No VAT exemption for discretionary portfolio management: In *Deutsche Bank (C-44/11)* (7/19/12), the ECJ held that discretionary portfolio management services (i.e., the analysis and monitoring of client's securities and the combined service of actually purchasing and selling those securities) must be considered to be a single economic supply which is subject to VAT.

In this case, Deutsche Bank had been given authorization from their client to buy/sell securities without any required pre-approval (within specifically agreed

parameters). Deutsche Bank had contended that their services were exempt from German VAT on the basis that they consisted of the buying and selling of shares (a VAT exempt activity in Germany). This position was challenged by the German tax authorities who argued that the key element of the services was that of investment management (i.e., the investment decisions of Deutsche Bank) and therefore that the services did not fall within the meaning of the share trading exemption in this case.

In reaching their decision, the ECJ recognized that Deutsche Bank was providing services that consisted of



multiple individual elements. However, in the ECJ's view, the services provided in this case were so closely linked that that they should be viewed as a single supply for VAT purposes. Following this conclusion, the ECJ stated that, since no one element of the service could be considered to be dominant, VAT exemption could not be considered to apply to the entire supply irrespective of the fact that single components of the services might qualify for VAT exemption under art 135(1)(f) Principal VAT Directive 2006/112/EC.

Businesses providing discretionary portfolio management services within the EU should review their position in light of this judgement. Businesses receiving such services should be aware that suppliers may now be obliged to charge VAT with immediate effect.

France

VAT Répondant procedure cancelled from October 1, 2012: As reported in the [December 2011 VAT Tax News Alert](#), the French VAT Répondant procedure (the procedure under which non-established businesses are able to voluntarily register for VAT through the appointment of a local tax agent in certain cases) was held contrary to EU VAT principles by the ECJ. On June 7, 2012, The French Tax Administration issued a tax notice which officially cancels the VAT Répondant procedure, effective October 1, 2012.

Removal of the Répondant procedure should force non-established businesses to consider their registration position and determine whether registration will be permitted under the new rules. In the event that VAT registration cancellation is required, US businesses should only be entitled to French VAT recovery via an overseas VAT reclaim procedure (e.g., the 13th Directive refund procedure) which is

likely to create significant cash flow issues due to the delay in receiving VAT refunds.

VAT rate increased cancelled: Contrary to previous reports, the French parliament has now confirmed that the increase in the standard VAT rate from 19.6% to 21.2% which was due to take effect from October 1, 2012, has been cancelled. Future changes to this position cannot be ruled out.

Germany

E-invoicing simplification: On July 2, 2012, the Federal Ministry of Finance (FMOF) published a Circular Letter to revise the guidelines regarding e-invoicing. The Circular Letter clarifies that paper and electronic invoices must be treated in the same manner for VAT purposes.

Under German VAT law, it is required that the authenticity of the invoice's origin, the integrity of its content and its legibility are ensured. The FMOF clarified that this can be achieved if a reliable audit trail is created between the invoice and the supply standing behind it by means of an internal control procedure. However, the FMOF pointed out that the purpose of such an internal control procedure is neither to ensure satisfaction of the requirements for input VAT deduction nor to ensure the correctness of the purchase invoices, which should be assessed separately.

Hungary

Additional VAT declaration required from January 1, 2013: On June 4, 2012, bill no. T/7028 was passed by the Hungarian parliament, requiring taxpayers to submit a domestic recapitulative statement along with VAT returns in respect of transactions (purchases and sales) in which the VAT amount is greater than or equal to HUF 2,000,000 (currently approximately

US\$9k), effective January 1, 2013. The purpose of the new bill is to detect tax fraud and curb fraud by means of fictitious invoices.

The data requirements for the recapitulative statements include:

- invoice numbers
- buyer/Seller's VAT number
- VAT base and VAT amount

The bill also states that invoices containing an output VAT liability greater than or equal to HUF 2,000,000 must include the buyer's VAT/tax number, provided that the supplier of the goods or services is established in Hungary for business purposes.

Spain

Additional guidance on VAT rate increase: As previously reported in the [July VAT Tax News Alert](#), Spain's standard VAT rate and reduced rate are increasing to 21% and 10%, respectively, effective September 1, 2012.

In addition to the rate increases, there will be changes in the scope of the reduced rate. Consequently, the standard rate will be applied to additional goods/services, including certain sports services, cinema, theatres, hairdressers, funeral services, digital broadcasting and TV services.

Further, VAT rates applicable to surcharges within the special scheme for retailers have also been modified.

United Kingdom

Changes to HM Revenue & Customs (HMRC) policy on land related services: HMRC has issued Revenue & Customs Brief (RCB) 22/12 which provides a policy statement on the place of supply of services connected to land. In RCB 22/12, HMRC states that the changes to the place of supply rules

from January 1, 2010/2011 highlighted differences in the treatment of certain supplies in various member states and consequently, HMRC has been working with the European Commission and other EU member states to try and agree on a uniform application.

The key changes to HMRC policy include:

- Stand space at exhibitions and conferences supplied with accompanying services (e.g., design and set up, telecoms, machinery hire) as a package will no longer be seen as a supply of land.
- Storage of goods where the supplier does not grant a right to a specific area for the exclusive use of the customer, this will not be seen as a land related supply.
- Access to airport lounges will be considered as a land related service.

Under UK law, land related services are typically subject to UK VAT in cases where the land to which the services relate is located in the UK. In contrast, non-land related services are generally only subject to UK VAT where the business customer is located in the UK. US businesses should be aware of which services they acquire are considered to be land-related for this purpose and therefore subject to UK VAT.

Where businesses have been treating services in accordance with HMRC's earlier policy, they may continue to apply that treatment for a transitional period of up to three months from the date of the RCB (August 2, 2012) in order to make adjustments to their systems and processes. However, businesses that wish to adopt the new treatment may do so immediately.

EUROPE

Andorra

VAT system announced: Andorra has announced the introduction of a VAT system, effective January 1, 2013. It is expected that the VAT system will be similar in style to that of the EU and the likely standard VAT rate will be 4.5%. There are expected to be no exemptions available, however, some supplies will be 0% rated (exempt with credit).

In general, local taxpayers will be required to account for VAT due on supplies made by non-resident suppliers via the reverse charge procedure, although non-residents should have the option to register for VAT voluntarily. There is also expected to be a non-resident VAT refund procedure available based on reciprocity.

Russia

Expansion of financial services VAT exemption: The Russian Duma (state assembly) recently adopted changes to the VAT Tax Code, expanding the scope of the VAT exemption applicable to financial services. Although the amendments have to be adopted by the Federal Council and officially published, they are expected to take effect January 1, 2013.

Currently, the VAT exemption is available for the purchase and sale of securities, and core banking and insurance services. However, under the new rules exemption will be available for:

- services provided by dealers and brokers
- services of registrars and depositories
- fund management services
- clearing and trade organization services.

Services qualifying for exemption are limited to activities covered by the respective license. In addition, services 'directly related' to the above services are also eligible for exemption. It is expected that the government will issue a list of directly related services in due course.

Further e-invoicing guidance: As reported in the [May VAT Tax News Alert](#), Russia authorized the use of e-invoicing from the end of May 2012. Among other items, it has been confirmed that the rules for e-invoicing include the following:

- E-invoices require a strictly regulated format and content;
- Authenticity and legal validity of the invoice must be confirmed by digital signature.
- Mutual agreement between counterparties is required to use e-invoicing;
- E-invoices must be archived electronically;

ASIA/PACIFIC

Japan

JCT rate increase and JCT holiday limitation: On August 10, 2012, the House of Councillors passed a bill that increases the Japanese Consumption Tax (JCT) rate from 5% to 8% on April 1, 2014 and to 10% on October 1, 2015.

In addition to the rate increases, the new bill disallows the one year JCT holiday for companies established on or after January 1, 2014, in which more than 50% of its shares are either directly or indirectly owned by a 'large enterprise' whose taxable sales exceed ¥500 million; or owned by a 'person,' including an individual, a Japanese company and a foreign company whose 'special affiliate's' (e.g., entities owned by the person and/or their immediate relatives) taxable sales exceed ¥500

million. The sales thresholds in this case are determined based on the sales in the period two years prior to the current tax period of the NewCo.

This revision is expected to be relevant for many new entities formed in Japan (including the conversion of a Japanese branch of a foreign company into a formal entity) and will remove the previously available JCT holiday in various instances. In assessing the impact, businesses should be aware that a 'large enterprise' would include a foreign company whose Japanese branch's taxable sales exceed ¥500 million.

AMERICAS

Canada

Tax facts and figures: A publication issued by the Canadian government provides an overview of upcoming Canadian indirect tax changes.

- In British Columbia, the 12% harmonized sales tax (HST) rate will be replaced with a sales tax regime similar to the pre-July 1, 2010 rate (i.e., 7% provincial sales tax and 5% Federal Goods and Services Tax) on April 1, 2013.
- Nova Scotia will reduce its HST rate from 15% to 14% on July 1, 2014, and to 13% on July 1, 2015.
- Prince Edward Island will replace the combined provincial sales tax combined rate of 15.5% with a 14% HST on April 1, 2013. Transitional rules will apply to facilitate the change.
- Quebec's sales tax (QST) will be harmonized with the goods and sales tax on January 1, 2013, with an effective rate of 14.975%.

Mexico

Revised VAT valuation of vouchers: In July 2012, the Mexican tax administration released new internal criteria and amendments regarding the taxable base for voucher issuance services.

Under the VAT law, the taxable amount is generally considered to include the total value of the agreed consideration, plus any amounts charged or collected to or from the person receiving the services (e.g., other taxes, travel expenses, sundry expenses etc).

However, in the case of vouchers, it has been confirmed that the issuer should only take into account the total value of the agreed consideration for the voucher issuance services (i.e., the commission obtained from the underlying merchant) when calculating the tax base of their services, and should not include the amount or face value of the vouchers, despite the fact that this amount is collected from the person receiving the services (i.e., the customer).

PwC has a global network of 1,900 indirect tax professionals in 130 countries worldwide, including a dedicated VAT team located in the US 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.

For more information, please do not hesitate to contact your U.S. VAT Team:

<i>Tom Boniface</i>	<i>(646) 471-4579</i>	<i>thomas.boniface@us.pwc.com</i>
<i>Reena Reynolds</i>	<i>(312) 298-2171</i>	<i>reena.k.reynolds@us.pwc.com</i>
<i>Irina Sabau</i>	<i>(646) 47105757</i>	<i>irina.sabau@us.pwc.com</i>
<i>Nathan Trautwein</i>	<i>(415) 498-6342</i>	<i>nathan.a.trautwein@us.pwc.com</i>
<i>Evelyn Lam</i>	<i>(646) 471-5697</i>	<i>evelyn.g.lam@us.pwc.com</i>

Global VAT Online Service

Many of the developments above are described in more detail on Global VAT Online (referred by many as 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. For further information, please speak to your usual PwC advisor or a member of the US VAT Team above. [GVO Website](#)

This document is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

SOLICITATION

© 2012 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers LLP, a Delaware limited liability partnership, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.