Value-added Tax News Alert

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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

Agent potentially liable for import VAT and duties in the case of principal fraud: The case in question, Jestel v. Hauptzollamt Achen: C-454/10, deals with the importation of goods into the European Union by a Chinese supplier. The supplier sold its goods via ebay and the taxpayer (Jestel) acted as an intermediary in the conclusion of contracts for the sale of those goods.

The Chinese supplier arranged for the importation of the goods via postal service to private individuals in Germany and made incorrect declarations as to the values and description of the goods being imported such that the de minimis thresholds for collecting import duties and VAT were not exceeded. The German Customs Authority assessed the Taxpayer (the intermediary) for the underpayment of import duties and VAT. The taxpayer alleged that it could not be a debtor liable for the underpayment because it did not participate in the actual introduction of the goods into Germany.

The ECJ held that a person who participated in the introduction of goods into the customs territory of the European Union by acting as an intermediary in the conclusion of the contracts relating to such goods should become liable for the customs duties and VAT liability arising from the unlawful introduction if that person was aware, or should have reasonably been aware, that the goods were being unlawfully introduced.

Italy referred to the ECJ for non-compliance with VAT exemption for commercial vessels: On November 24, 2011, the European Commission referred Italy to the ECJ for failing to comply with the EU VAT Directive in respect of the exemption applicable to the supply of ships (*Commission v Italy* 2008/4219).

The VAT Directive grants VAT exemption, under certain conditions, for the fuelling and provisioning supplies of vessels used on the high seas and the supply, modification, repair, maintenance, chartering and hiring of such vessels. However, under current Italian law, the VAT exemption extends to commercial vessels which are not sailing on the high seas and also vessels intended for public bodies. Additionally, Italy restricts the scope of the exemption in some instances which are not consistent with that of the EU Directive (e.g., the loading and unloading of vessels sailing on the high seas). In light of the current disparities, a letter of formal notice was sent by the EU Commission to Italy in May 2009 and a reasoned opinion followed in May 2011. On the basis that Italy has failed to amend its national law, the matter is now being referred to the ECJ.

VAT répondant procedure in France ruled contrary to EU VAT principles: The ECJ ruled on December 16, 2011 that the French VAT répondant mechanism is contrary to EU VAT principles.

Under the default VAT rules in France, a business that is not established in France and is selling to a locally VAT registered business should not charge French VAT. Instead, the buyer should account for any VAT due on the sales under the reverse charge mechanism. This absence of output tax accounting by the supplier can often lead to significant VAT cash flow costs associated with the recovery of input VAT (i.e. the supplier has no output VAT against which to offset input VAT incurred on purchases in, or imports into, France). With the répondant mechanism, a non-established business could mitigate the cash flow disadvantage by opting to appoint a fiscal representative that is responsible for collecting and remitting output VAT on its behalf.

The ECJ's ruling has the effect of removing the répondant system and, thus, removing this option for non-established business trading in France.

Finland

VAT rate increase on publications: On November 22, 2011, Parliament voted to increase the VAT rate on newspapers and magazines sold by subscription from the current 0% rate to a 9% rate.

Lithuania

Import VAT payment relief: On October 19, 2011, the Government issued Order No. 1205, which effective March 1, 2013, will allow taxpayers to account for import VAT via their periodic VAT returns, thus removing the need to make any actual payment to the tax authority in cases where the taxpayer is entitled to wholly deduct the import VAT incurred. Taxpayers will not be required to provide deposits nor warranties in order to use the new system.

Currently, only import VAT incurred on oil, nuclear fuel, thin or natural gas and goods imported as long term assets can be offset via the VAT return. All other imports currently require the formal payment of import VAT directly to the tax authorities.

Tax loss transfers not subject to VAT: The Tax Authorities issued Letter No. (18.2-31-2)-R-1007 on October 27, 2011 to explain that the transfer of tax loss, for or without remuneration, between affiliates is not subject to VAT.

According to the Republic of Lithuania CIT Law, the transfer is for corporate income tax purposes and therefore no services are rendered for VAT purposes.

Malta

VAT amnesty: On November 14, 2011, the Minister of Finance announced a VAT amnesty as part of the 2012 budget. The amnesty provides an incentive for businesses to regularize their VAT position by allowing for the settlement of VAT dues and also the payment of reduced penalties and interest. To participate, taxpayers must submit VAT returns (due on or after November 15, 2011), and associated payments, on time. A Legal Notice will be forthcoming to provide additional details.

Ireland

Standard VAT rate increased: Effective from January 1, 2012, the standard VAT rate will increase from 21% to 23%. The measure was included in the 2012 Budget and has been ratified by the Irish Parliament.

Italy

Proposed increase in VAT rate in 2012: On December 4, 2011, the Italian Council of Ministers approved a new anti-crisis measure under which the standard VAT rate would increase from 21% to 23% and the reduced rate would increase from 10% to 12%. The increased VAT rates would be effective from September 1, 2012, with an additional 0.5% increase in the VAT rate effective from 2014. The measure has not yet been approved and could be subject to further amendments.

Carry forward of VAT credits on registration of new branch clarified: On November 24, 2011, the Italian tax authorities issued Ruling No. 108/E to clarify the treatment of VAT credits in instances where a non-established company (VAT registered in Italy) sets up a new branch and closes its previous VAT registration. In particular, the ruling explains that foreign companies that were VAT registered in Italy and which have VAT credits under a prior VAT registration will be able to attribute the VAT credits to the VAT registration of the newly established branch. This clarification is expected to speed up the VAT credit recovery process in cases where a new branch is set up.

Luxembourg

The Luxembourg VAT Authorities have issued a Circular (756 of 12 December 2011) stating that no distinction should be made between books on physical and electronic means of support, meaning that the super-reduced 3% rate already applicable to books should also apply to e-books.

The Luxembourg Authorities have based their decision on the 'White Paper' Communication from the EU Commission (COM(2011) 851 final) stating in paragraph 5.2.2 (as one of the guiding principles for a review of the current VAT rate structure) that "similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed".

United Kingdom

Nil registration thresholds for non-UK established businesses: Effective December 1, 2012, the currently applicable VAT registration threshold for non-established businesses will be removed.

Non- UK established business with minor trade in the UK may currently avoid registration by trading beneath the registration threshold (currently 73,000 GBP), however, as of December

1, 2012, registration is likely to be mandatory for such businesses.

Legal Challenge to the removal of Low Value Consignment Relief: It has been announced that the States of Jersey and Guernsey are to take legal action against the UK in response to its decision to remove Low Value Consignment Relief on goods sent from the Channel Islands to the UK with effect from 1 April 2012.

In a statement, Jersey's Minister for Economic Development announced that legal proceedings would commence through the English courts "to seek to clarify EU VAT Law" in relation to the UK's move, which forms part of the draft UK Finance Bill 2012.

Czech Republic

On November 22, 2011, the President of the Czech Republic signed the amendment to the VAT Act which will increase the reduced VAT rate from 10% to 14% effective January 1, 2012.

The amendment further expects the unification of the standard and reduced VAT rates at 17.5% from January 1, 2013.

ASIA/PACIFIC

New Zealand

Proposed changes to GST Act: A lapsed bill which, amongst other items, confirms the application of GST to late payment fees is expected to be reintroduced by the next Government. If enacted, the Bill will apply retroactively from April 1, 2003, and will widen the scope of GST to include late payment fees (which have never previously been subject to GST on the basis that they are not part of the price of the underlying goods and services).

Businesses which do not charge GST on late payment fees would have until April 1, 2012 to implement t changes in their ERP systems. The Bill also confirms that penalty and default interest payments will continue to be exempt from GST.

The Bill also proposes the following changes, among others:

1. It would preclude liquidators, receivers and administrators from changing their GST accounting basis from payments to invoice basis to claim GST deductions;
2. Confirmation that assignments of commercial leases can be zero-rated under the compulsory zero-rating (CZR) regime; and
3. Remedial changes to the reverse charge rules.

Singapore

Additional GST compliance funds to be available: Due to its popularity, the Inland Revenue Authority of Singapore (IRAS) is extending its GST compliance initiative (ACAP) under which they offer to co-fund 50 percent (capped at $50,000) of a company's costs of engaging a qualified adviser or CPA firm to assist the company in its ACAP review, plus a one-time waiver of penalties for non-fraud errors that arise from, and are voluntarily disclosed in, the ACAP report.

The initial funds provided by IRAS for the scheme had already been exhausted, therefore, beginning April 1, 2012, an additional $5 million will be made available to eligible applicants and will be phased in over a four year period. IRAS will issue further updates on its website when available funding for the various phases reaches certain limits and also when the funds for each phase are exhausted.

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

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 U.S. VAT Team above. GVO Website

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