

Value-added Tax News Alert

A Washington National Tax Services (WNTS)
Publication

January 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

Suppliers can recover VAT repayable to customers for tax authority errors: The ECJ held that a supplier who correctly charged VAT in accordance with tax authority policy should not bear the economic burden of refunding VAT to customers when the tax authority made a policy error (*Banca Antoniana Popolare Veneta SpA: C-427/10*).

In this case, the taxpayer supplied services and charged VAT in accordance with tax authority policy. Subsequently, the Italian tax authority amended its policy interpretation, stating that the supplies in question were exempt rather than taxable. Through civil proceedings, the Italian

courts ordered the supplier to reimburse its customers with the VAT charged. The Taxpayer then sought to recover that VAT from the tax authority as it had been obliged to reimburse a whole 10 years worth of 'VAT' to its customers; meanwhile, the tax authority sought the protection of a two year time limitation to resist the taxpayer's claim.

Following various appeals before the Italian Courts, the Italian Supreme Court referred questions to the ECJ. The ECJ ruled, in effect, that where a customer has a claim against his supplier for VAT charged in error and paid to the tax authority, the principle of effectiveness requires that the supplier has the ability to recover that VAT from the tax authority. This is a



development of major significance in all cases where a Member State has made an error, whether of policy or of law

United Kingdom

Mandatory e-filing for VAT registered businesses: As of April 1, 2012, virtually all VAT registered businesses will be required file their VAT returns and Intrastat declarations electronically.

In order to file electronically, VAT registered businesses must sign up for VAT online services with HM Revenue & Customs (HMRC).

HMRC offers guidance on nil registration thresholds for non-UK established businesses effective December 1, 2012: HM Revenue & Customs (HMRC) released draft legislation providing that:

- Any level of taxable supplies requires a non-established taxable person to register;
- Registration is required for a non-UK established business, even if the business is not required to register under another schedule (e.g., distance selling);
- For entirely zero-rated supplies, a non-established taxable person can request exemption with notification to HMRC;

The draft legislation may impact a wide range of non-established businesses that make occasional sales in the UK as they will no longer be able to benefit from the UK VAT registration threshold (currently £73,000) and will become immediately obliged to register if they make taxable supplies in the UK.

Luxembourg

VAT no longer applicable to expired telecommunication credits: On December 14, 2011, Luxembourg issued Circular (736 bis) that revises the VAT

treatment of unused telecommunication credits (i.e., via prepaid cards).

Since July 1, 2008, the initial sale of telecommunications credits via prepaid cards had generally been considered outside the scope of VAT on the basis that the supply of services only takes place at a later date (i.e., the time when the purchaser redeems those credits). However, remaining and expired credits that are not used by end-consumers by the date of expiration were considered a taxable remuneration for the access to a telecommunication network, subject to the 15% VAT rate.

Effective January 1, 2012, the sale of expired telecommunication credits will no longer be subject to VAT.

Hungary

VAT changes announced for installment contracts, vehicle leases and intermediaries in a chain transaction: In December, Hungary implemented a bill which among other things, includes the following VAT provisions:

- The bill confirms which factors are relevant in determining the VAT rate applicable to certain transactions subject to periodic settlement, for which payments and/or the supplies span the recent VAT rate increase from 25% to 27% (effective January 1, 2012).
- The bill allows for the deduction of VAT incurred on the lease of vehicles used for taxable business activities. The rule removes a prior ban on such deductions, and will apply to input VAT incurred on rental/lease fees for settlement (contract) periods starting on or after January 1, 2012.
- The bill also restores the pre-2008 position in respect of the treatment

of the intermediary in a chain transaction. The bill provides that the legal assumption that the intermediary acts as buyer in the chain transaction will now only be refutable by the intermediary. Accordingly, from 2012 the tax authority will not be able to reclassify the role of the intermediary, which might be contrary to parties' intentions, or to modify the tax treatment of the transaction in question.

Slovak Republic

New Tax Procedure Act: Effective January 1, 2012, a new Tax Procedure Act (TPA) introduced a number of VAT related changes. The provisions include, among others:

1. Mandatory e-filing of documents for VAT payers, advisors and attorneys. However, due to anticipated problems with implementing the new electronic system, this has been postponed until April 1, 2012.
2. The obligation to file a supplementary tax return was expanded to include situations in which the VAT obligation is not amended, but where the input tax and the output tax is adjusted by the same amount (this relates primarily to taxpayers purchasing services from abroad, who receive late invoices).
3. Clarification that tax authorities have the right to seek out non-registered taxpayers to review completeness of evidence when investigating VAT taxpayers.
4. A potential obligation for the tax authorities to inform taxpayers during an audit of any findings they may have in advance so taxpayers can prepare to defend their position.

Latvia

Reverse-charge VAT on construction services: The Latvian VAT Act was amended such that VAT due in respect of construction services must now be calculated by the customer, rather than the supplier, via the reverse-charge mechanism.

The reverse-charge will apply to many construction services, including, among others, the preparation of construction sites, the construction of supporting and non-supporting elements or structures for a building; and the installation/assembly of equipment that forms an integral part of a building.

The new provisions will apply to construction contracts that are signed after December 31, 2011. Contracts signed on or before this date will only become subject to the reverse-charge provisions from January 1, 2013.

Portugal

Madeira VAT rates increase: From April 2012, the standard VAT rate in the Island of Madeira will increase from 16% to 22%, and the reduced rates of 4% and 9% will increase to 5% and 12%, respectively.

France

VAT rate increase on hardcopy books postponed: The VAT rate increase from 5.5% to 7% on hardcopy books has been postponed until April 1, 2012. However, the new VAT rate of 7% remains applicable to the sale of e-books from January 1, 2012.

Standard VAT rate increase: The French President has announced an increase in the standard VAT rate from 19.6% to 21.2 %, effective October 1, 2012. The increase has not been adopted by the French Parliament, but is expected to be adopted in February 2012. The delayed effective date will allow companies time to update their

commercial/invoicing/tax return processes and related ERP systems.

Sweden

Quarterly EC Sales Lists: Effective January 1, 2012, the threshold below which business have the option of filing quarterly EC Sales Lists for intra-community supplies of goods was reduced from SEK 1,000,000 to SEK 500,000. Businesses operating in excess of the new threshold are required to file on a monthly basis.

Germany

New intra-Community Entry Certificate: The new intra-Community Entry Certificate (ICEC) requirement that was originally expected to take effect from January 1, 2012 has been postponed until April 1, 2012. The postponement follows objections raised by, among others, the transportation and forwarding industry, who are supposed to contribute to the new documentation process.

The ICEC, in addition to the duplicate invoice, will be the only document to serve as proof that an intra-Community supply of goods has taken place from Germany. The introduction of the ICEC (which must be completed by the customer following receipt of the goods in their own country) marks a significant tightening of the current rules and an additional compliance obligation for taxpayers.

The German Ministry of Finance has published a first draft of guidelines and has invited taxpayers and other stakeholders to comment before the guidelines are officially published. A final version of the guidelines and the Certificate of Entry is expected by the end of January 2012.

EUROPE

Norway

Intermediate VAT rate increased: From January 1, 2012, the intermediate

VAT rate in Norway applicable to nutrients/foodstuffs was increased from 14% to 15%. As of the same date, the VAT exemption on warranty repairs supplied to foreign entrepreneurs was also reintroduced.

Electronic filing of VAT returns mandatory in 2012: From January 1, 2012 the Norwegian tax authorities will no longer issue paper based VAT returns and electronic filing for all returns issued after this date will become mandatory.

Paper based returns may continue to be received following the submission of a successful application by the taxpayer and agreement with the tax authorities (circumstances such as age, illness or lack of internet will generally be considered).

ASIA/PACIFIC

China

Guidance offered on zero rated and exempt pilot services and Shanghai VAT reform: On December 31, 2011, China released Circular 131 and Circular 133 to clarify the scope of VAT zero rated and exempted pilot services in relation to the Shanghai VAT reform.

Circular 131 includes a detailed list of specific activities that qualify as the 'export of services' and clarifies that international transportation services and the export of research, development and design services to foreign entities would be eligible for VAT zero rating. Certain other services that are exported may also be eligible for VAT exemption.

Circular 133 provides further implementation guidance on various items, including:

- The sale of used fixed assets;
- Applicable VAT rates (withholding) for foreign service providers;

- The filing status (general payer vs small-scale) for Pilot Enterprises engaging in various VAT-able activities applying different rates; and
- Transitional treatments for certain services provided during 2011 and 2012;

Japan

JCT rate increase announced: On December 29, 2011, the ruling Democratic Party of Japan announced a plan to increase Japanese Consumption Tax (JCT) from 5% to 8%, effective April 1, 2014, and to 10%, effective October 1, 2015.

An invoice system and multiple JCT rates are not expected to be adopted (currently, the book-keeping method is applied) and, therefore the burden of JCT compliance for small and medium sized businesses should not be increased. In addition, flexible terms aimed to mitigate the risk of any potential JCT hike will also be stipulated in the draft.

The current reform plans are likely to be subject to further debate before approval.

AFRICA

Uganda

Proposed amendments to VAT Act:

Uganda's 2012 budget review proposes several amendments to the VAT Act and regulations, including:

- Providing clarity on VAT treatment of imported services;
- The application of VAT on imported services to taxable persons;
- Exemption from VAT for the supply of solar energy; and
- Repeal of the investment trader facility.

AMERICAS

Canada

PST transition dates, rates and rules announced: The British Columbia (BC) Ministry of Finance has announced a Provincial Sales Tax (PST) target implementation date of April 1, 2013, with the government developing an action plan and transitional rules to guide the process.

It has been stated by the Province that the PST will be levied at the previous rate of 7% (the same rate incurred for the current Harmonized Sales Tax which is being replaced), with all permanent PST exemptions and some administrative improvements to streamline the tax.

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.

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

Tom Boniface (646) 471-4579 thomas.boniface@us.pwc.com

Reena Reynolds (312) 298-2171 reena.k.reynolds@us.pwc.com

Nathan Trautwein (415) 498-6342 nathan.a.trautwein@us.pwc.com

Evelyn G. Lam (646) 471-5697 evelyn.g.lam@us.pwc.com

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](#)

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.