

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

VAT relief for aircraft through the chain of supply: The ECJ has given judgment in A Oy (C-33/11) concerning the interpretation of "airline operating for reward chiefly on international routes" for the purposes of the zero-rating of aircraft. Although the European Commission had suggested that VAT relief should be restricted to direct supplies of aircraft to the operating airlines, and not available earlier in a chain of transactions, *e.g.* from a manufacturer to a business which will lease the aircraft to the international operator, the ECJ agreed with the Advocate General that the relief should be available through the chain of supply.

In reaching its decision, the ECJ pointed out that all language versions of the VAT Directive (except Finnish) referred to the supply of an aircraft "used by" such an airline, not "to" such an airline. The ECJ also noted that the licensing and registration formalities for such aircraft meant that it would not be difficult for the manufacturer to determine the type of use to which the aircraft would be put by the airline.

Furthermore, the ECJ agreed with the Advocate General that, the addition of VAT to aircraft supplies throughout the supply chain may cause a funding issue for the parties involved and hence an indirect additional burden on the airline (by way of an increased purchase/lease price).



Intermediary services on sale of shares exempt from VAT: The European Court of Justice (ECJ), in *DTZ Zadelhoff (C-259/11)*, held that intermediary services relating to the sale of shares giving a right to own or possess real property are exempt from VAT, unless the Member State has implemented provisions in national law to treat the sale of shares as a supply of goods.

The taxpayer is a commercial property broker and provides management and advisory services regarding real estate. The taxpayer provided advice, acted as negotiator in various sales of real property through the sale of shares of the company owning the property, and treated these services as VAT exempt services relating to 'negotiation...in shares' pursuant to the VAT Directive.

The Dutch tax authorities challenged the exempt treatment and argued the taxpayer was providing services connected with real property (finding an appropriate buyer, and/or managing the sale of property), which was Dutch subject to VAT where the property was located in the Netherlands.

In appellate proceedings, the Dutch court held the services were considered the taxable sale of real property, even though the sales were accomplished indirectly through the sale of shares. The taxpayer appealed the decision to the Supreme Court, which referred the matter to the ECJ, which sided with the taxpayer.

ECJ rules VAT deduction deniable only in cases of fraud: The European Court of Justice (ECJ) ruled in *Péter Dávid (C-142/11)* that a tax authority cannot deny the right to deduct input VAT on the grounds of improper action without objective evidence that the deduction was connected with fraud committed by the invoice issuer or by another trader earlier in the supply chain.

In this case, the Taxpayer undertook a building contract for which it subcontracted the work to a third party. The work was carried out and invoices were issued to the taxpayer by the subcontractor. Upon audit, the tax authority discovered that the subcontractor had no employees and had itself subcontracted the work to another contractor; this secondary subcontractor's records showed that he had no employees and that he had not submitted any VAT return for the period in question.

The tax authority assessed the Taxpayer for the input VAT claimed against the first subcontractor's invoices. Although it was not disputed that the works had taken place, and it was clear who the workers were, the tax authority considered that there was no evidence of the first subcontractor making any supply to the Taxpayer, and that the Taxpayer had failed to exercise due diligence by checking that the subcontractor had the resources to perform the works.

In the present case, there was no suggestion that the Taxpayer was involved in any fraud or abuse; he had clearly used the subcontracted works for the taxable purposes of his own business and the invoices against which he claimed the input VAT bore all the information required by law. The ECJ ruled that National law was incompatible with EU law if it precluded deduction without the tax authority demonstrating that the taxpayer knew, or should have known, that he was participating in a chain of supply connected with fraud.

In addition, the ECJ ruled in *Mahagében Kft (C-80/11)* that while Member States could impose additional due diligence conditions on taxpayers seeking VAT deductions, Member States cannot impose general

conditions on recovery, such as verifying that the supplier (or others in the supply chain) was a taxable person, had the resources to make the supply, or had complied with their VAT obligations. The ECJ considered that those were functions which the tax authority should perform as necessary, and not transfer to the taxpayer.

The taxpayer in this case purchased acacia logs from a supplier with proper invoices and deducted the input VAT. The Hungarian tax authority later denied the supplier's input VAT deduction, alleging that the supplies could never have taken place, based on the records of purchases and deliveries held by the supplier. However, the ECJ ruled the taxpayer has fulfilled the normal criteria for deduction, and input VAT deduction should be permitted.

Germany

New intra-community entry certificate rules expected to take effect on January 1, 2013: The new intra-community entry certificate rules that were introduced as of January 1, 2012, are now expected to take effect on January 1, 2013. As previously reported in our [June 2012 VAT News Alert](#), the new intra-community entry certificate required to claim the zero rate in an intra-community supply had been postponed until further notice. The current evidence to claim the zero rate still remains acceptable documentation.

ebay traders treated as taxable persons: Germany's Federal Tax Court ruled that an ebay trader who sold hundreds of goods should be treated as a taxable person for VAT purposes (BFH VR211 20120426). The Court made its decision based on whether the trader's efforts were comparable to that of a commercial trader. The Court noted that providing a large number of different types of goods that require a description and picture, and delivering

the goods is comparable to commercial trading. Additionally, the Court held that it is irrelevant whether the goods have been purchased in order to resell them.

Italy

VAT rate increase postponed: The increase in the standard and reduced rates (from 21% to 23% and from 10% to 12%) has been postponed from the original effective date of October 1, 2012 to July 1, 2013. However, effective January 1, 2014, the standard VAT rate will be reduced to 22% and the reduced rate will be lowered to 11%.

The Italian Council of Ministers noted that if certain tax law provisions effective before June 30, 2013 have a positive effect on Italy's net debt, the increases scheduled to take effect on July 1, 2013 will not apply.

Spain

VAT rate increase: On July 11, 2012, the president of the Spanish Government announced in Parliament an upcoming increase in the standard and reduced VAT rates. The overall rate will be increased from 18% to 21% and the reduced rate will be increased from 8% to 10%. The new rates become effective September 1, 2012.

United Kingdom

Supplier liable for liquidated customer's "self-billed" VAT: In *Gemini Riteway Scaffolding Ltd* [2012] UKFTT 369 (TC), The First Tier Tribunal (FTT) held that a scaffolding subcontractor was liable for output VAT due on supplies made to a "self-billing" main contractor. Under a self-billing arrangement, the recipient of the supply, rather than the supplier, is responsible for issuing the VAT invoice.

In this case, the main contractor had wrongly treated the scaffolding supplies as zero-rated and paid the net amount due to the subcontractor, then had gone into liquidation. HMRC assessed the

subcontractor for the VAT due, even though the main contractor would have recovered any VAT charged in full.

The subcontractor appealed the assessment, stating it should only be required to remit VAT that had been received. HMRC upheld the assessment. The FTT agreed with HMRC that self-billing did not remove the subcontractor's obligation to account for the output VAT due. Only the need to issue a VAT invoice was removed. Therefore, the FTT held the subcontractor was liable for the standard rated VAT due.

FTT rules wealth management services VAT exempt: In *Bloomsbury Wealth Management LLP* [2012] UKFTT 379 (TC), the First Tier Tribunal (FTT) held that wealth management services are exempt financial intermediary services. The taxpayer, an independent financial adviser, provides financial investment services for high net worth individuals that include advice on asset choice, asset allocation and choice of investment manager. The services also include arrangement for fund unit purchases, quarterly portfolio reviews and possible further purchases.

HMRC ruled that the taxpayer's services were outside of the scope of the financial intermediary exemption and the taxpayer appealed. The FTT disagreed with HMRC, noting that the taxpayer introduced clients to fund managers for the purpose of acquiring and maintaining a portfolio of investments. The FTT considered the taxpayer's initial advice an ancillary element of a supply of intermediary financial services. Therefore, the taxpayer's services qualified for the exemption.

ASIA/PACIFIC

China

Further expansion of VAT pilot program: On July 25, the Chinese State

Council announced that the VAT Pilot Program would be implemented in another 10 Chinese provinces and cities (namely Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hubei, Guangdong, Xiamen and Shenzhen) over the period from August 1 through the end of 2012.

The announcement also mentioned that the Pilot Program will continue to expand next year, with selected industries to be tested on a nationwide basis.

Special VAT rate announced for international transportation, animation, and leasing industries: On July 17, 2012, China's Ministry of Finance and State Administration of Taxation released Caishui [2012] 53 that supplements the VAT pilot program by introducing a 3% VAT rate for the international transportation, animation, and leasing industries.

The new rate applies to certain supplies made by suppliers operating within the industries and becomes retrospectively effective from January 1, 2012 (for the transport and animation industries) and July 1, 2012 for the leasing industry.

Vietnam

VAT payment deferral guidance: On May 23, 2012, the Ministry of Finance issued Circular 83/2012/TT-BTC ("Circular 83") that provides detailed guidelines for qualifying businesses eligible for deferrals of VAT payments.

In general, the payment of import VAT cannot be deferred. However, import VAT relating to imported machinery and equipment which are fixed assets and cannot be domestically produced continues to be eligible for deferral for 60 days, provided certain conditions are met. For businesses with eligible and non-eligible activities, the VAT amount which can be deferred is

calculated based on the revenue ratio. Qualifying businesses must declare their VAT liabilities for which payment can be deferred in an appendix (which is attached with Circular 83) and submit it together with the monthly VAT return.

AMERICAS

Jamaica

GCT changes announced: Jamaica's 2012-13 Budget newsletter announced a reduction in the standard General Consumption Tax (GCT) rate from 17.5% to 16.5%. In addition, the newsletter announced the following changes:

- Removal of certain GCT exemptions;
- Increase in the GCT rate on electricity supplies to residential, industrial and commercial customers from 10% to 16.5%; and
- Overhaul of the GCT Regime for tourism effective September 1, 2012. This includes an

introduction of a specific GCT rate and withdrawal of Overseas Commission and Transfers deductions.

Mexico

New invoicing rule for goods imported through pipes or cables: On June 7, 2012, the Tax Administration Service of the Mexican Ministry of Finance published the second amendment to the Miscellaneous Tax Regulations for 2012 that provides a new rule addressing the import of goods through pipes or cables.

In general, the Mexican Federal Tax code establishes that in the case of first hand sales of imported goods within Mexico, taxpayers must include the import declaration number and the date and customs facility by which the goods were imported on invoices issued. Effective June 8, 2012, taxpayers importing goods through pipes or cables are relieved of the obligation to declare the import declaration number and date on which the goods were imported.

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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SOLICITATION

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