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 corporations.

Global Indirect Taxes

EUROPEAN UNION

European Commission

VAT Grouping: The European Commission (EC) has referred the Czech Republic to the European Court of Justice ("ECJ") for allowing non-taxable persons (e.g. passive holding companies) to join a VAT group. This is the latest in a series of actions against Member States, including the United Kingdom and Republic of Ireland, concerning the same issue (Commission v Czech Republic: C-109/11).

If the ECJ rules in the EC's favor, many countries would have to alter their local law to disallow the inclusion of non-taxable persons in VAT groups. The impact of this on input VAT recovery would need to be considered by affected businesses.

Upcoming ECJ issues: On May 19, 2011, the EC formally asked Italy to adjust the scope of its local exemption for goods and services supplied in relation to certain ships and vessels. Currently, the scope of the exemption in Italy does not correspond with the scope laid down in the EU VAT Directive and if Italy fails to adjust its legislation within two months, the matter could be referred to the ECJ.

Travel Agents: The EC referred the Netherlands to the ECJ over its application of VAT rules for travel agents. The EC argued that the Netherlands has failed to properly implement the so called 'special margin scheme' for travel agents, by artificially widening its application to include B2B supplies.

The EU VAT Directive only permits the use of the margin scheme for B2C supplies and the EC is contending that application in the Netherlands is creating a distortion of competition by placing a heavier tax burden on some travel agencies rather than others. The Netherlands had previously informed the EC that it would bring its legislation into line by 1 April 2011, but it has yet to do so.

VAT Refunds

The deadline for non EU established businesses to claim VAT refunds in the EU has been changed in certain countries. Examples of upcoming deadlines include:

- June 30, 2011, for claims in Germany and the Netherlands;
- September 30, 2011, for claims in Italy and Greece; and
- December 31, 2011, for claims in Cyprus and the United Kingdom.

Businesses with outstanding EU VAT claims should ensure that their claims are submitted prior to the relevant deadlines to ensure repayment.

Germany

In judgement V R 38/09, issued on January 1, 2011, the German Supreme Tax Court ruled that a sale of less than 100% of the shares of a subsidiary could not be considered the transfer of a business for VAT purposes and therefore, any input VAT incurred in relation to the exempt share sale is not deductible. In light of this (and other previous judgements in this area), businesses should continue to consider the effect that exempt share sales may have on their input VAT recovery position.

Cell phones - integrated circuits/chips: The German tax authorities issued regulations providing details about a mandatory VAT reverse-charge that applies to certain sales of cell phones and integrated circuits/chips. The new regulations require the VAT-registered customer in Germany to account for German VAT instead of the supplier, for affected sales on or after July 1, 2011. The new provisions are similar to those currently applied in the UK, but in Germany a broader range of products is affected.

In summary, the reverse charge should apply to sales with all of the following characteristics:

- Shipments made after June 30, 2011 of cell phones or of any integrated circuit (electronic circuits with wiring) placed on a unique chip (semiconductor substrate). The broad description of integrated circuits means that microprocessors and CPUs (Central Processing Unit) are within the scope of this mechanism. Unlike the similar provision in the UK, the German regulation does not indicate a precise customs tariff code to identify the affected goods;
- Sales to businesses registered for German VAT and for which German VAT is normally accounted for by the supplier; and
- Sales under a single contract or overall sales agreement for more than € 5,000. If a sale includes several shipments, the mechanism applies if the aggregate value of all shipments exceeds € 5,000.

The invoice for an affected sale should indicate the amount payable net of VAT and a sentence indicating that the reverse charge is applicable. However, exact requirements are not yet clear.

Netherlands

On March 25, 2011, the Dutch Supreme Court ("DSC") gave its final ruling in the case of Euro Tyre Holdings BV (C-430/09), a case involving the 'back to back' sale of goods from the Netherlands to purchasers in Belgium.

The case involved a tax authority challenge of the zero rating applied by Euro Tyre to its supplies of goods which were destined for Belgium. The challenge was based on the fact that the goods were being onwardly sold by Euro Tyre's customer to another third party before the goods had left the Euro Tyre's warehouse in the Netherlands.

The DSC held that Euro Tyre was entitled to zero rate its supplies on the basis that the ultimate intra-Community transportation of the goods (which it attributed to both sales) ended in a Member State other than the Netherlands, the Belgian buyers identified themselves with their Belgian VAT IDs and, also, did not inform EuroTyre of the onward sale prior to transportation out of the Netherlands

Netherlands VAT Rates: The State Secretary of Finance has published tax plans in the Fiscal Agenda, with the subtitle 'Towards a more simple, more solid and fraud-proof tax system'. One of the essential features of the Fiscal Agenda is the shift from direct to indirect taxes, which includes, in the short term, a possible rise in the reduced VAT rate from 6% to 8%.

In the long term, the government considers implementing a system under which VAT is levied at a single rate, which will be set at the current normal rate of 19%, with a possible exception for the supply of food and foodstuffs, which would still be subject to a reduced rate.

Cyprus

The Cypriot VAT authorities have issued revised guidance (Circular 151) in relation to the VAT treatment of apportionment/charges of salary costs between companies and the provision of director services. In particular, they have dealt with the VAT treatment of transactions in the following areas:

- Definition of the services constituting “supplies of staff” and their VAT treatment;
- Value of services for VAT purposes;
- VAT treatment of apportionment of salary costs;
- Cashier services between related persons;
- Appointment of directors and other company officers; and
- VAT implications of services provided by directors.

The circular intends to notify businesses of the position that will be taken in future tax audits. This is due to recognition of the fact that, prior to the issuance of the circular, situations existed where the authorities have taken a more lenient position. Businesses engaged in these transactions may potentially face significant VAT exposures relating to any transactions which are not in line with the circular's requirements.

Hungary

The ECs Advocate General has, in the case *Commission v. Hungary*, suggested that Hungary has failed its obligation under Council Directive 2006/112/EC by requiring taxable persons to indefinitely carry forward an excess input VAT credit to the following tax year in cases where the taxable person has not paid the supplier the full amount for the purchase in question.

The Commission argued that the principle of neutrality precludes the Member States from imposing requirements on the refund of excess VAT where such conditions may entail a burden on the taxable person and affect that person's financial position, liquidity or commercial decisions.

Czech Republic

The Parliament of the Czech Republic has approved a VAT law amendment that would increase the reduced VAT rate, applicable to certain supplies including pharmaceuticals, housing and books, from 10% to 14% in 2012. The amendment is currently awaiting approval of the Senate and the President.

Notwithstanding the amendment, the intention remains to introduce a uniform VAT rate of 17.5% as of 2013.

EUROPE

Ukraine

Effective June 1, 2011, the VAT exemption for the supply of consulting, engineering, legal, audit, IT and similar services was repealed.

This means that:

- Local supply of such services will be subject to a 20% VAT;
- Supply of such services by non-residents will be subject to a 20% VAT through the reverse-charge mechanism;
- Supply of services to non-residents will not be subject to VAT (but input VAT must be pro-rated).

ASIA/PACIFIC

Indonesia

Update on VAT on Export of Services: The MoF has released PMK-30 as an amendment to the law regarding the treatment of exported services Effective February 28, 2011, PMK-30 specifically amends the provisions regarding reporting in the VAT return of exported manufactured goods resulting from the export of toll manufacturing services.

It is now regulated that the export of manufactured goods resulting from the export of toll manufacturing services should be reported by the exporter of the services as an export of taxable goods in its VAT return. Previous law had stated otherwise.

Furthermore, PMK-30 also confirms that the associated input VAT relating to the manufacturing can be credited by the exporter of the toll manufacturing services.

Update of VAT on banking services: The Director General of Tax (DGT) issued a rectification to Attachment II of Circular Letter No. SE-121/PJ/2010, related to the VAT treatment of certain banking services.

Prior to the rectification, all income received by banks from routinely activities such as bank drafts, traveler checks, payment orders, telex, swift or National Clearing System (SKN) was subject to VAT at a rate of 10%. However, the rectification has now made it clear that income received through the performance of the activities described above is only subject to VAT at 10% when it is received from non-customers of the bank.

Vietnam

On February 28, 2011, the Ministry of Finance issued Circular 28/2011/TT-BTC providing guidance on tax Administration and containing numerous VAT related changes, concerning the treatment and filing obligations of branches and head offices located in Vietnam.

In particular, the Circular confirms the VAT filings responsibilities of branches and head offices located across different provinces of Vietnam and also provides clarification of the circumstances in which deemed VAT charges may arise for production/ manufacturing branches.

Australia

GST reform measures deferred: The Government announced that the following measures that were to commence on July 1, 2011 will now take effect from the first quarterly tax period after Royal Assent (or later, where appropriate):

- Adoption of the income tax self assessment regime for indirect taxes and refreshing the period of review;
- Reform of the change of use adjustments;
- Allowing adjustments for pre-registration acquisitions;
- Simplifying GST group membership rules, such as grandfathering current membership rules and allowing grouping of non-operating holding companies and trusts;
- Amending the indirect tax sharing agreement provisions; and
- Introducing reverse charge for supplies of going concerns and farmland.

The Government also announced that it will not advance at this time with the introduction of an option for businesses to treat certain B2B supplies as taxable. This measure was planned to take effect on July 1, 2010 and has been deferred while the government gives more extensive consideration to the possibility of a wider use of reverse charging and GST-free B2B transactions.

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*
Coralie Owen	*(408) 817-8174*	*coralie.owen@us.pwc.com*
Camilo Martinez	*(617) 530-5483*	*camilo.r.martinez@us.pwc.com*
Nathan Trautwein	*(415) 498-6342*	*nathan.a.trautwein@us.pwc.com*

Global VAT Online Service

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