

# 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

The European Court of Justice, (ECJ), in *Elsacom NV (C-294/11)*, held that the prescribed time limits for claiming 8th Directive VAT refunds are mandatory, i.e. taxpayers must submit their claims on or before the deadline to avoid forfeiture of their right to a refund.

The case concerns a refund claim for VAT incurred during 1999. The claim was submitted to the Italian tax authorities (ITA) on July 27, 2000. The ITA rejected the 8th Directive claim on the basis that it was filed after the June 30 deadline. On appeal, the lower Italian courts reversed ITA's decision and upheld the taxpayer's claim, stating that the deadline was more indicative in

nature than mandatory. The ITA sought an appeal before the Supreme Court of Cassation, which referred the matter to the ECJ. The ECJ acknowledged that although some language may have been ambiguous, 8th Directive claims must be submitted on or before the deadline -- at that time six months after the end of the year -- to avoid forfeiture of the right to a refund.

Taxpayers must therefore ensure that they submit all 8th Directive claims within the prescribed time limit, which is now nine months from year end.

#### Czech Republic

*VAT exemption on medical services now limited:* Effective April 1, 2012, an amendment of Article 58 of the VAT Act provides that a VAT exemption no



longer applies to patient requested medical services if the purpose of the service is other than increasing or preserving the patient's health. Previously, the exemption limitation did not apply. Services that do not fulfil the health conditions will now be subject to VAT. However, related input VAT has become creditable.

#### France

On June 21, 2012, the European Commission issued [Press Release IP/12/673](#) announcing that it has asked France to amend its reduced VAT rate rules concerning certain "personal services".

European Union legislation allows Member States to apply a reduced VAT rate to domestic care services such as home help and care of the young, elderly, sick or disabled. France applies a reduced VAT rate to a much broader category of "personal services" covering, for instance, gardening, home lessons (different from school support), computer and internet assistance at home, maintenance services, and maintenance and temporary guarding of main and secondary residences. The European Commission considers that applying a reduced VAT rate to these services is not compatible with EU law.

If France does not act upon the request within two months, the European Commission may refer the matter to the ECJ.

#### Germany

*Further postponement of new Intra-Community Entry Certificate:* As previously reported in the [March 2012 VAT Alert](#), the new Intra-Community Entry Certificate requirement, which was originally approved to take effect from January 1, 2012, had previously been postponed until July 1, 2012. The German Ministry of Finance has again postponed the implementation. The current evidence to zero-rate intra-community supplies of goods remains acceptable in the meantime.

#### Greece

##### *Delay of new VAT refunds system:*

The introduction of a new system for VAT refunds that was announced in *Decision POL 1090/2012* has been deferred until a new Ministerial Decision is released. A recent Minister of Finance Decision explained the need for further action by the General Secretariat of Information Systems before the new system can be implemented.

#### Italy

##### *Intra-EU reporting penalties effective August 1, 2012:*

On April 27, 2012, the Italian tax authorities issued Ministry Resolution no. 42 to explain the penalties applicable to intra-EU supplies if the Italian customer's VAT registration number is not included in the 'VIES' system (VAT Information Exchange System). Valid Intra-EU supplies or acquisitions require both the customer's and the supplier's VAT registration numbers to be included in the VIES system. The consequences of not verifying an Italian taxable person's VAT registration number in the VIES system include:

- the transactions are considered outside the scope of Italian VAT;
- the place of supply is the country of the supplier;
- if the Italian taxable person accounts for VAT under the reverse charge mechanism, input VAT is not deductible;
- a penalty equal to 100% of the input VAT wrongly deducted will apply for any intra-EU purchases made on or after August 1, 2012.

*VAT joint liability for supplies on procurement contracts:* According to art. 2(5-bis) of Law Decree n. 16 of March 2, 2012, with effect from April

29, 2012, if the final recipient is a taxable person, the recipient is jointly responsible with any contractor or subcontractor for the payment of VAT on supplies linked to procurement contracts (usually in the building sector). The final recipient's joint liability applies throughout the agreement term and up to the second year following the termination of the agreement. However, joint liability does not apply if the final recipient proves that it has carried out all necessary actions to avoid missing payments.

It is still unclear what types of documentary evidence will be required to prove that VAT has been correctly accounted for by the contractor or subcontractor.

#### Latvia

*VAT rate cut confirmed:* As previously reported as a proposal in the [May VAT Alert](#), Latvia has now confirmed the standard VAT rate will be reduced from the current 22% to 21% effective July 1, 2012. The current reduced rate of 12% will remain the same.

*VAT incentives offered through In-depth Co-operation Programme:* The Latvian Parliament recently passed amendments to the Taxes and Duties Act, introducing the so-called In-depth Co-operation Programme (ICP) effective July 1, 2012. The initiative seeks to encourage cooperation between taxpayers and the State Revenue Service (SRS). Potential membership benefits include:

- accelerated VAT refunds;
- simplified customs procedures;
- a personal SRS consultant, including early warnings of any tax avoidance risks detected by the SRS, and early written replies from the SRS (within two weeks); and

- the ability to obtain advance tax rulings within 30 days.

#### United Kingdom

*FTT suspends penalties for input VAT pro rata errors:* The First Tier Tribunal (FTT) has ordered Her Majesty's Revenue & Customs (HMRC) to again suspend penalties imposed on a taxpayer for incorrectly calculated input VAT for partial exemption (pro rata) purposes. HMRC argued that, because previous penalties for similar errors already had been suspended and the taxpayer had still not corrected the issue, penalties should apply.

The taxpayer in the case was a partly exempt business that operates residential caravan parks (exempt) and a mixture of commercial (taxable) and residential properties (exempt). In 2009 and 2010, the taxpayer had incorrectly calculated its pro rata ratio. At that time, HMRC imposed penalties, but subsequently suspended the penalties, conditional on the appellant rectifying the errors.

In 2011, HMRC discovered similar errors in two additional 2010 periods, imposed penalties, and did not suspend the penalties. The appellant appealed, arguing that HMRC should have suspended the penalties because:

1. the errors were not due to a lack of reasonable care; and
2. the special reduction powers should have been used due to the inherent subjectivity of the partial exemption.

The FTT held that:

- The appellant had failed to take reasonable care since it had chosen not to take professional advice to calculate the pro rata;
- The special reduction request was rejected, because all partly

exempt businesses are obliged to calculate the partial exemption; but

- Since the errors were not deliberate, HMRC acted unreasonably in not suspending the penalties, despite the repetition of previous errors.

As a result, the FTT ordered HMRC to suspend the penalties.

*Revised guidance on Senior Accounting Officer (SAO) penalties:* HMRC has revised its 2009 legislation regarding SAO penalties. An SAO of a company is the director or officer who has overall responsibility for the company's financial accounting arrangements. Companies are required to report the name of their SAO to HMRC, and special penalties can be imposed on SAOs and/or the company if they fail to comply with the duties associated with this role.

The new guidance highlights, among other things, the following:

- HMRC will routinely consider SAO compliance where an inaccuracy has been identified in the company's tax returns, whether disclosed voluntarily or through HMRC compliance activities;
- HMRC Customer Relationship Managers (CRMs) must obtain internal sign off before suggesting SAO failure, and penalties must be approved by senior HMRC officers;
- To encourage voluntary tax compliance, the SAO may be subject to a personal GBP 5,000 failure penalty;
- HMRC's resources will be applied to the highest risk cases

only. Therefore, being viewed as voluntarily compliant by HMRC is beneficial;

- The new policy is expected to increase the number of penalties imposed;
- A GBP10,000 error in year one may give rise to a penalty in year two if the SAO has not taken reasonable steps to correct it;
- The SAO certificate will be a major feature of the annual Business Risk Review undertaken by HMRC. If the company is seen as 'low risk' by HMRC, an SAO failure would very likely change this to a 'non-low risk' rating with the result that returns and operations will undergo increased scrutiny; and
- If the company is seen as 'non-low risk', commissioning an SAO review and report, as well as implementing any recommendations will move the company towards the 'low risk' rating.

## ASIA/PACIFIC

### Australia

*GST administration reforms:* On April 15, 2012, the Indirect Tax Laws Amendment (Assessment) Act 2012 was enacted. The Act provides for the following:

- The goods and services tax (GST) self-assessment system is harmonized with the income tax self-assessment system;
- Taxpayers are only obligated to pay or entitled to receive benefits under the indirect tax

- law that is stated on their assessment;
- Filing a return will result in a deemed assessment;
- Assessments have a four year statute of limitations, with a four year renewal for any amended assessments;
- Minor errors in relation to importation of goods can be reported in the current period; and
- For importation purposes, the definition of single 'net amount' under GST law includes any luxury car tax or wine equalization tax.
- Provisions to restore the policy intent that non-commercial activities of Government related entities are not subject to GST. This is done by amending the definition of 'consideration' for VAT purposes to exclude appropriations.

### China

*New biomedicine VAT treatment:* On May 31, 2012, China's State Administration of Taxation issued Bulletin [2012] 20 (Bulletin 20, dated May 28). Bulletin 20 allows enterprises engaged in the wholesale or retail sale of biomedical products to elect a simple approach to compute VAT effective July 1, 2012. Under the new simple approach, the VAT liability is computed by multiplying gross income (excluding the VAT itself) from the sale of biomedical products by a three percent VAT collection rate. Under the normal approach, the calculation is multiplied by a 17 percent or 13 percent output VAT from the sale of tangible, movable property, minus creditable input VAT from the purchase of taxable items.

To qualify for this approach, the enterprises must receive a license for medicine business operations from the competent government agency in charge of food and medicines. The bulletin also provides that enterprises cannot return to the normal approach of computing VAT within 36 months after making the election.

### Taiwan

*Clarification of VAT treatment of goods sold into bonded areas:*

According to the Value-added and Non-value-added Business Tax Act (BTA) enforcement rules, zero percent VAT applies to sales of goods within bonded areas, if the goods are (i) used for exportation purposes or (ii) are used in business operations within the bonded areas.

In addition, the Tax and Superannuation Laws Amendment (2012 Measures No 1) Bill 2012 was introduced into Parliament on March 1, 2012. Although not yet enacted, the bill proposes the following GST amendments:

- The Commissioner would have the ability to delay refunds pending verification of the integrity of claims according to *Commissioner of Taxation v Multiflex Pty Ltd* [2011] FCAFC 142;
- GST-free supplies of health related goods or services to an individual in settling insurance claims under both private health insurance policies and taxable insurance policies would be considered a GST-free supply, provided the underlying supply to the insured individual is also GST-free. However, the parties can agree to treat these supplies as taxable; and

"Goods used for exportation purposes" means goods sold from a business entity located in a taxable area to a business entity located in a bonded area. Zero percent VAT applies if the goods are directly exported in the name of the entity located in the bonded area, rather than merely delivered into the bonded area.

"Goods used in the business operation within the bonded areas" means goods sold to business entities located within bonded areas that are used to manufacture "bonded products".

The zero percent VAT rate also extends to non-bonded materials/components purchased by business entities located within bonded areas, if they are used to manufacture bonded finished goods (i.e. goods that are booked in a separate set of accounts supervised by the Customs Authority). However, finished goods that are not manufactured using bonded materials/components are not Customs supervised bonded goods, and therefore subject to the five percent VAT rate.

## AMERICAS

### Canada

*Valuation audits to focus on footwear and apparel as priority items:* The Canada Border Service Agency (CBSA) has added footwear and apparel products to its list of priorities for 'value for duty' (VFD) audits. If the VFD declared by the importer is found to be incorrect, the CBSA can re-assess duties and taxes (including GST/HST) for up to four years. Even if the goods

are duty-free, the CBSA will require that the original customs entries be corrected. Financial penalties can be imposed if the CBSA has reason to believe the original declared value was incorrect, whether or not the error resulted in a loss of revenue. Penalties can be avoided if the importer submits a voluntary disclosure before the commencement of any enforcement activity, such as an audit. In addition, if the error is discovered as a result of an internal review or a review by an external party, the importer may not be required to correct the error on past entries, even when additional duty may be owed.

The audit will focus on the following key points:

- whether the buyer whose price is used as the basis of the VFD qualifies as a purchaser in Canada;
- whether the sale to that person is a sale for export to Canada;
- if the buyer and seller are related, whether that relationship influenced the price;
- whether the buyer furnished, directly or indirectly, any 'assists' (e.g. materials, designs) that were used in the production of the goods; and
- whether the buyer paid any royalties, commissions or payments of any kind that should be included in the VFD.

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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