

Value-added Tax News Alert

A Washington National Tax Services (WNTS)
Publication

March 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

ECJ rules pre-registration input VAT is recoverable: Following a referral from the Polish Courts, the European Court of Justice (ECJ) has ruled that VAT incurred on partners' investment costs incurred prior to the formal creation and VAT registration of the partnership can be recovered in certain cases.

The case at hand deals with the recovery of input VAT incurred on investment expenses incurred by individuals in relation to a property partnership. The supplies on which VAT was incurred were provided prior to the formal creation of the partnership and were invoiced to the individuals directly. The Polish tax authorities challenged the recovery of

the input VAT by the partnership on the basis that the supplies had been made to the individuals directly and/or that the supplies had been incurred prior to the partnership's creation.

The ECJ concluded that under the principle of neutrality, the VAT cost of a first investment must be regarded as a cost of the economic activity to which that investment ultimately relates. Furthermore, the ECJ held that even if the invoice provided does not meet some of the formal requirements (i.e., is not made out to the partnership directly), deduction of the input VAT should be allowed, provided that, the substantive requirements are satisfied and that, viewed objectively, the costs were incurred with the intention that they would be used by the partnership in making taxable supplies.



IMPACT - Pre-VAT registration input VAT incurred before the incorporation of the business may be recoverable, even where the tax invoice does not meet all the formal requirements, provided it can be objectively demonstrated that the purchases would be used by the business in making taxable supplies.

Luxembourg

New place of taxation rules for transportation of goods and related services outside of the EU: Recently enacted legislation (introduced as Proposal No. 6355) published February 23, 2012, introduced "use and enjoyment" provisions in relation to the place of taxation of freight transport and related services performed outside of the European Union (EU). The legislation has been introduced to apply retroactively with effect from January 1, 2012.

Since the implementation of the VAT Package in 2010, the transport of goods between taxable persons had been subject to the general EU rule regarding the place of taxation and therefore subject to VAT in the customer's location. In other words, transport services provided to Luxembourg business customers would be subject to VAT in Luxembourg regardless of the supplier's location or the location in which the transport takes place.

Freight transport services provided outside the EU can often, under local rules, be subject to indirect tax in the country where the transport takes place. Therefore, in order to minimize the occurrence of double taxation, the newly enacted legislation provides that the place of taxation of the transportation of goods between taxable persons shall be the place of its effective 'use or enjoyment' (i.e., the country where the transport takes

place), where such a place is outside the EU.

Italy

Tax Authorities clarify rules on transfer of 'usual exporter' credits: The Italian tax authorities recently clarified in Resolution No. 124/E that in the context of a business restructuring, it is possible to transfer part of the 'plafond' (i.e., the financial limit up to which certain businesses may purchase goods or services in Italy without payment of VAT) accrued by the transferor.

To improve cash flow, the 'plafond' provisions allow for businesses engaging primarily in the exempt export/removal of goods from Italy ("usual exporter") to benefit from VAT "exemption" on certain purchases in Italy up to an accrued financial limit.

Where a business operating under the plafond provisions is transferred, the Italian tax authorities have confirmed that the transferee should be eligible to become the "usual exporter" and receive the accrued plafond held by the transferor, subject to satisfaction of the following conditions:

1. The transferee carries on the transferred business activity in the same manner as was carried out by the transferor.
2. The transferee assumes the necessary passive and active legal relationships related to the transferred business unit to enable the transferee to continue the business enterprise.

Special consideration may be granted in circumstances where only a portion of the business is transferred (e.g., division of accrued plafond).

VAT refunds available for leasing companies adopting international

accounting principles: The Tax Authorities clarified in Resolution No. 122/E that leasing companies adopting international accounting principles (IAS 17) may claim a VAT refund on the purchase of depreciable assets leased to their own clients. The refund is available, even though the leasing companies classify leased assets on the balance sheet as receivables and do not depreciate the leased assets.

Simplification of the 'high value transactions' report: In 2010, Italy introduced special reporting rules whereby businesses are obliged to report all supplies of goods and services where the net value of the supply equals or exceeds €3,000 for transactions subject to invoicing obligations (typically EU sales) or €3,600 for transactions not subject to invoicing obligations (typically non-EU sales). From January 1, 2012, the €3,000 threshold will no longer apply and taxpayers will only be obliged to report the aggregate value of supplies per customer/supplier as opposed to reporting each individual transaction.

New time of supply rule for international transactions: Effective March 17, 2012, the time of supply (i.e. the time when a transaction should be reported) for international services has changed from the time payment is made to the time the services are completed or, for periodic or continuous services, when payment is due. However, where payment in whole or in part is received prior to these events, the time of supply is the earlier date of payment, limited to the extent of that payment.

Reduction in threshold for offsetting VAT credits with other taxes: Effective April 1, 2012, the threshold for offsetting VAT input tax credits against other taxes has been reduced from €10,000 to €5,000.

Clarification on the place of storage of invoices: Circular Letter no 5/2012, issued by the Italian Tax Authorities on February 29, 2012 has clarified that Italian business persons are only allowed to maintain e-archives for electronic invoices outside Italy, but e-archiving abroad is not allowed for certain tax documentation, such as scanned purchase invoices, delivery notes, and accounting documents, unless the business is an EU taxable person who is VAT registered in Italy via a direct VAT identification.

United Kingdom

Input VAT recovery possible even though goods were not delivered: The First Tier Tribunal (FTT) ruled that a taxpayer was entitled to recover input VAT on goods, even though the goods were not ultimately received.

In this case, the taxpayer entered into contracts for the purchase of plant and machinery from its supplier. Valid VAT invoices were issued by the supplier and payment was made by the taxpayer in advance of the goods' delivery. The supplier liquidated the business and it later transpired that the items in question had been sold to more than one customer prior to liquidation. The UK tax authorities disallowed the recovery of input VAT by the taxpayer on the basis that the goods were never received, so legal title in the goods had not passed to the taxpayer. The taxpayer appealed.

The FTT considered that an unconditional contract for the sale had been created and a supply had been made for VAT purposes. In so ruling, the FTT considered that the taxpayer had paid for identifiable goods (listed by serial number) under an agreement, had received valid VAT invoices and had made payment pursuant to that agreement. The fact that delivery was postponed did not in any way affect the validity of the contract and it should be concluded that the taxpayer had a right

to those goods even though they were still in the physical presence of the seller. The case could be distinguished from the other cases where there was no invoice to support recovery or where the goods did not exist. The taxpayer's appeal was therefore allowed.

It was noted by the FFT that there was no evidence to show that the supplier had not been entitled to supply the goods in question or that any other party had acquired legal title to the goods before the taxpayer.

Mandatory electronic filing of Intrastat declarations: Effective April 1, 2012, Intrastat declarations (reporting of intra-Community movement of goods) must be filed electronically. In addition, the filing deadline is now 21 days from month end.

Germany

Further postponement of new Intra-Community Entry Certificate: As previously reported, the new Intra-Community Entry Certificate (ICEC) requirement that was originally approved to take effect from January 1, 2012 was postponed until April 1, 2012. On February 27, 2012, the implementation was further delayed, to take effect July 1, 2012. 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.

It has also been reported that the Federal Ministry of Finance (FMOF) is reconsidering its plans to go ahead with the new measure, although there are no further details available at this stage.

IMPACT - Without a properly executed ICEC, German VAT registered persons engaging in intra-EU sales of goods may not be able to zero-rate their

transactions, and could be liable for German VAT on their sales.

Austria

Austrian Amendments Decree published: The Austrian Ministry of Finance addressed multiple VAT matters in the recently published Amendments Decree 2011 to the Administrative VAT Guidelines, including:

- Extension of the domestic reverse charge from January 1, 2012 to include supplies of mobile devices and integrated circuits where the invoice amount exceeds €5,000,
- Electronic declaration proof of export (whether held electronically or as a hard copy form) is required to claim zero-rating of export supplies,
- Additional shareholding and control conditions implemented for the formation VAT groups,
- Clarification that the sale of customer base and goodwill is considered as a supply of goods (contrary to EU case law),
- Payment processing fees related to certain service types should generally be considered as ancillary to the principal service and not treated as a separate exempt financial service.

Restrictions on the option to tax leases of immovable property: Effective April 1, 2012, the option to tax immovable property will not apply if the lessee uses the property almost exclusively for exempt supplies. In addition, the adjustment period (i.e. the period over which input tax credits can be claimed) for immovable property is extended from nine to nineteen years.

Poland

Reduced VAT rate for medical devices applicable to a composite supply of goods and software: In a decision by the Provincial Administrative Court (No. I SA/Bd 340/11) it was held that a distributor of medical devices (such as respirators, incubators, and medical monitors) and specialized medical software, should apply VAT at the reduced rate of 7% (currently 8%) to all the components of the supply. The ancillary items (e.g. gas cylinders, computers, servers and computer accessories) did not constitute accessories of medical devices, but were necessary for their proper functioning.

The Court, therefore, found that the supply of the product set composed of medical device and ancillary equipment and should therefore be subject to the reduced rate.

Czech Republic

New domestic reverse charge for construction services: As of January 1, 2012 the Czech Republic has implemented a domestic reverse charge for construction work, whereby the buyer of the services is required to account for the VAT due.

EUROPE

Croatia

VAT rate increased: Effective March 1, 2012, the standard VAT rate increased from 23% to 25%. In addition, food products such as edible oils and fat, baby food, sugar and water, other than bottled water, became subject to the reduced VAT rate of 10%. Some additional changes are expected to be effective January 1, 2013, including:

- Food served at restaurants to become subject to a reduced VAT rate of 10%;
- VAT registration threshold to be significantly increased from

HRK 85,000 to HRK 230,000; and

- Quarterly VAT reporting threshold to be significantly increased from HRK 300,000 to HRK 800,000.

Also effective March 1, 2012, VAT incurred on entertainment expenses and the purchase of boats and aircraft became non-deductible.

ASIA/PACIFIC

Australia

Qantas case - Commissioner granted leave to appeal in case of GST treatment of forfeited airfares: On February 10, 2012, the Commissioner was granted special leave to appeal against the decision of the Full Federal Court in favor of Qantas regarding GST on forfeited airfares. The case concerns fundamental questions as to what constitutes a 'supply' for GST/VAT purposes and what constitutes the requisite nexus between a payment and a supply in order to give rise to a 'taxable supply'.

Vietnam

VAT treatment of non-bank lending: The Prime Minister's office issued Official Letter 608 (Letter) opining that interest income generated by businesses other than banks is subject to VAT.

For background, credit activities are generally exempt from VAT in Vietnam. However, in principle, only credit institutions can engage in such activities and benefit from VAT exemption. Therefore, in the PM Office's opinion, interest generated by non-bank lending should be subject to VAT.

At this stage, the Letter is only an opinion and it is unclear if or how its content would be implemented. If the PM Office's opinion is implemented, it

would have a significant impact on the Vietnamese tax system. In particular:

1. Interest charged on intra-group loans made by onshore non-banks would be subject to VAT.
2. Interest on loans from overseas non-banks, such as shareholder loans granted by foreign investors, would be subject to VAT withholding. This would be in addition to the current 10% corporate withholding tax.

New requirements for exported services to be zero-rated: From March 1, 2012, Vietnamese businesses have to obtain written confirmation from their foreign customers that they do not have a PE and are not VAT payers in Vietnam in order for exported services to be zero rated.

AMERICAS

Canada

Proposed transitional rules in BC for the transition from HST to PST and GST: On February 17, 2012, Canada's Department of Finance proposed transitional rules relating to the elimination of the Harmonized Sales Tax (HST) in BC. The transitional rules are based on when the tax is or becomes payable. Generally:

- 12% HST applies if the tax is payable or paid before 1 April 2013;
- 5% of GST applies if the tax is paid or payable after 31 March 2013.

Mexico

New invoicing requirements for non-residents: Effective January 1, 2012, amendments to the Miscellaneous Tax Regulations for 2012 modifies the current invoicing rules and increases the requirements for non-resident entities.

Under the new provisions, Mexican taxpayers who wish to claim a deduction or credit for tax purposes (i.e., income tax, VAT deduction, flat tax, or cash deposits tax) in respect of supplies provided by foreign residents must obtain valid invoices which contain, at a minimum, the following information: the name, address and Tax ID of the foreign supplier; the place and date of issuance; the Tax ID ("RFC") of the Mexican acquirer; the details of the supply as set out in Art. 29 section V of the Federal Tax Code (i.e., quantity, unit, type of goods or description of services and other requirements in the case of specific transactions); the unit value and total amount; for lease, the property tax account number or identification data of the immovable property participation certificate; and if applicable, the details referred to in Art 29-A section VII of the Federal Tax Code (i.e., whether the invoice is paid in full or in installments, amount of taxes charged per applicable rate, amount of withheld taxes and payment method).

The criteria are specific and failure to obtain appropriate invoices may result in non-deductible taxes and irrecoverable VAT.

For sales of goods or leasing, the new requirements will only apply when the activities are performed within the Mexican territory.

IMPACT - Mexican resident business should ensure immediately that foreign suppliers adhere to the new invoicing requirements.

AFRICA

Democratic Republic of Congo (DRC)

New VAT regime introduced: A national VAT came into force on January 1, 2012, per VAT Ordinance Law No. 01-001 of August 2010.

VAT is levied on supplies of goods and services of an industrial or commercial nature carried out within the DRC (unless specifically exempted). The standard VAT rate is 16%, and exports and similar transactions will be eligible for zero-rating. Supplies such as banking and financial services, education, medical services, charitable and social activities will be VAT exempt.

Non-residents engaging in business in DRC must appoint a local VAT representative who will be responsible for paying and collecting VAT on behalf of the non-resident.

IMPACT - Businesses engaging in any business in DRC should assess their position immediately. The introduction of VAT can significantly impact both business processes and financial models.

South Africa

Various VAT amendments proposed in 2012 budget: On February 22, 2012, the Minister of Finance, Mr. Pravin Gordhan, delivered the 2012 Budget, which proposes the following VAT measures:

- Elimination of zero-rating for interest earned on loans to non-residents, to equalize the VAT treatment with that of loans to South African residents.
- A review of the policy and legislation related to cross border transactions will be reviewed. Specifically, the VAT treatment of indirect exports of goods by road will be reviewed to ensure exporters are not disadvantaged.
- An amendment of the provisions requiring foreign companies to register and

charge VAT in respect of sales into South Africa that are 'continuous or regular'. The current provisions can lead to duplication of VAT charges in cases where the customer is also liable for the import VAT due.

- Elimination of the double VAT charge imposed on goods that are temporarily removed from a customs controlled area and not returned within 30 days.
- Clarification of the current rules regarding the date on which a person must register for, and charge, VAT.

Swaziland

VAT introduced from April 1, 2012:

Effective April 1, 2012, the current sales tax regime will be abolished and a national VAT regime will be introduced. The introduction of VAT in Swaziland comes at a time when the government is attempting to simplify and modernize the Kingdom's taxation system, as well as strengthen the country's domestic sources of revenue.

The standard VAT rate is likely to be 14%, with specific zero-rating for exports, international transportation of goods and passengers, and other specified foodstuffs. Supplies of financial services, education, medical, dental, social welfare, in-country passenger transport and water, amongst others, will be VAT exempt without the right to recover input VAT.

IMPACT - Businesses engaging in any business in Swaziland should assess their position immediately. The introduction of VAT can significantly impact both business processes and financial models.

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:

<i>Tom Boniface</i>	<i>(646) 471-4579</i>	<i>thomas.boniface@us.pwc.com</i>
<i>Reena Reynolds</i>	<i>(312) 298-2171</i>	<i>reena.k.reynolds@us.pwc.com</i>
<i>Nathan Trautwein</i>	<i>(415) 498-6342</i>	<i>nathan.a.trautwein@us.pwc.com</i>
<i>Evelyn Lam</i>	<i>(646) 471-5697</i>	<i>evelyn.g.lam@us.pwc.com</i>

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.