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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

ECJ rules that phone cards for resale are a single supply of telecom services: In the case of *Lebara Ltd. v. HMRC (C-520/10),* the European Court of Justice (ECJ) ruled that a taxpayer selling phone cards to resellers/distributors has only made a single supply of telecommunication services to the reseller/distributors and should not be considered to make a further supply when the cards were purchased and used by the final customer.

In this case, the taxpayer (a UK company) did not account for UK VAT on the sale of phone cards to distributors in other Member States on the basis that the transaction was a supply of telecoms services to the distributor for which the distributor was required to account for VAT under the reverse charge mechanism in their Member State. The UK tax authorities considered that the taxpayer was liable to pay VAT in the UK, on the basis that it supplied two services; the first at the point of sale of the card to the distributor, and the second on redemption by the end user (the latter being subject to UK VAT chargeable by the taxpayer).

In reaching its decision, the ECJ considered that a telecommunications services operator selling phone cards to a distributor which display all the information necessary for making telephone calls by means of the infrastructure provided by that operator and which are resold by the distributor, in its name and on its own behalf, carries out a supply of telecommunications services for consideration to the distributor. The ECJ further considered that the operator does not carry out a second supply of services for consideration to the end user, where that user, having purchased the phone card, exercises the right to make telephone calls using the information on the card.

United Kingdom

Changes in VAT treatment of vouchers: Following on from the Lebara decision and effective May 10, 2012, Her Majesty Revenue & Customs (HMRC) announced an amendment to the current UK VAT law such that single purpose face value vouchers (SPVs) are to be taxed at the time of issuance and not on redemption. HMRC defines SPVs as vouchers that carry the right to receive only one type of goods or services which are all subject to a single VAT rate.

This amendment represents a significant change for the UK treatment of vouchers and removes the special rules that were previously applicable to face value vouchers. Transitional provisions are in place for SPVs that were issued prior to May 10, 2012, but that are redeemed on or after May 10.

European Commission

Draft Directive issued on the treatment of vouchers: The European Commission issued a draft Directive on the VAT treatment of vouchers on May 10, 2012.

The Directive introduces the concept of single-purpose vouchers (SPVs), which can be identified as vouchers where the underlying supply of goods or services along with the Member State of taxation can be identified at the time of issuance. The Directive also introduces the concept of multi-purpose vouchers (MPVs), which can be identified as vouchers for which the underlying supply or Member State of taxation cannot be accurately determined at the time of issuance.

The Directive seeks to clarify and harmonize the treatment of vouchers across the EU by providing that SPVs will be taxed on issuance and MPVs will be taxed on redemption.

Although the proposed implementation date for the new Directive is January 1, 2015 and the proposal still requires approval from all 27 Member States, it is likely that most Member States will already be familiar with the proposal and that few, if any, changes can be expected before the Directive is formally adopted.

To access the draft Directive, click here.

Czech Republic

Temporary VAT rate increases to lower the budget deficit: The Czech Government has approved increases in the standard VAT rate from 20% to 21%, and in the reduced rate from 10% to 15%. However, these increases are only intended to be temporary, and are expected to apply for the years 2013 - 2015.

Italy

VAT rate not now expected to increase: On May 3, 2012, the Italian government stated that the VAT rate will not increase from 21% to 23% as had been indicated in prior announcements. The government indicated that it will aim to reduce spending in lieu of any VAT rate increases.

"E-money" declaration filing deadline extended: The deadline by which financial institutions in Italy must report purchases made by private customers which are of an amount equal to or greater than Euro 3,600 and have been paid via e-money (e.g., via debit card, credit card or pre-paid

card), has been postponed from 30 April 2012 to 15 October 2012.

VAT grouping procedure proposed: Under a new draft Decree, which has yet to be approved; the Italian Government is expected to prepare a package of tax reforms. Potential VAT measures include implementation of the VAT grouping procedure as described in the EU VAT Directive.

Currently, under the 'Italian VAT grouping' procedure, the VAT settlement of group companies can be combined, but the companies maintain their full independence as taxable person and inter-company transactions follow the ordinary VAT rules.

If the procedures are amended to be in line with the VAT Directive, grouped companies would be regarded as a single taxable person for VAT purposes. This would have a relevant impact especially for those companies with limited input VAT deductibility - such as financial entities.

Finland

Potential increase in VAT rate to 24% from January 1, 2013: The Finnish government has made a spending limits decision to increase all VAT rates by 1 percentage point effective January 1, 2013. Although there is not yet a bill before Parliament, a proposal to this effect is expected this autumn.

France

Anti-fraud reverse-charge rules introduced for telecom services: Effective April 1, 2012, a domestic reverse charge applies to the business to business (B2B) supply of any electronic communication services that do not fall within the scope of the 0.9% Telecoms tax. This new measure was introduced in the amended Finance Act for 2012.

The reverse charge mechanism is not applicable in cases where the services in question fall within the scope of Telecoms tax but due to other factors (e.g., the application of de minimis rules or the availability exemptions) no telecoms tax is actually paid.

Services falling within the scope of the domestic reverse charge mechanism may include:

1. Wholesale supplies of fixed services (telephone or internet);
2. Wholesale supplies of mobile services, including prepaid cards;
3. Wholesale supplies of network capacity and bandwidth; and
4. Access to telecommunication networks, and interconnection services.

Germany

Managing director held liable for unpaid reverse charge VAT: In the recent case BFH 20111206 XIS911, the managing director of a GmbH was held liable for unpaid VAT due by the GmbH on construction services received.

Although the Supreme Tax Court was unsure whether there was any damage for which liability could be assumed in the case, as the supplier had a right to input tax recovery, the case serves as a reminder of the extent of a director's liabilities when it comes to VAT.

Latvia

Proposed VAT rate decrease from 22% to 21% effective July 1, 2012: A proposal to decrease the standard VAT rate from 22% to 21% has been put forward as a means to put Latvia's standard VAT rate in line with its neighboring Baltic countries. The standard VAT rate in Estonia is currently 20%, and Lithuania's standard VAT rate is currently 21%.

Netherlands

VAT rate increase: The Dutch Parliament recently agreed to increase the standard VAT rate from 19% to 21%, effective October 1, 2012. It is expected that transitional measures, similar to those seen under previous rate changes, will be introduced.

Optional reverse charge for mobile phones and computer parts effective from June 1, 2012: As of June 1, 2012, an optional reverse charge will apply in the Netherlands to supplies of mobile phones and computer parts valued at EUR 10,000 or more. This measure has been implemented as a means to prevent VAT fraud. However, the definitions of "mobile phones" and "computer parts", as well as the application of the EUR 10,000 threshold, are still being worked through.

The new reverse charge system is, at this stage, optional because the Netherlands has to obtain approval from the European commission before it can introduce a mandatory reverse charge in its national legislation.

EUROPE

Russia

E-invoicing goes live: The Ministry of Justice of Russia has registered the Order of the FTS No. MMB-7-6/138 on March 5, 2012, approving the electronic format of VAT invoices, including details of the procedures for issuing and receiving of VAT invoices. The Order ensures that e-invoicing systems are workable in practice and provides the following:

- The use of e-invoicing is voluntary;
- VAT invoices may be issued in electronic format based on the mutual consent of the transacting parties and if the parties have compatible technical means;
- The VAT invoice in electronic format must be signed with an electronic digital signature and transferred via an appropriate operator (currently, operators are in the process of receiving required licenses and permits); and
- E-invoices may be submitted for requests from tax authorities to provide documents.

Supreme Court rules on VAT treatment of supplier bonuses: In Resolution 11637/11, the Presidium of the Supreme Court Arbitrazh Court of Russia (Russian SAC) ruled that certain "bonuses", specifically in the retail network, provided by suppliers to their customers in return for fulfilling certain criteria, should not be considered payment for services, but should be treated as trade discounts.

In the case at hand, the taxpayer had received bonus payments from its suppliers for having achieved certain sales volume targets as well as for the placement of their goods in retail stores. The taxpayer did not charge VAT on amounts received from the supplier and the Russian tax authorities challenged the treatment, alleging that the bonuses represented consideration for services supplied by the taxpayer.

The Russian SAC determined that since no additional action was required from the taxpayer in return for the bonus payments, the bonuses did not constitute payment for services and therefore the taxpayer did not have an obligation to charge VAT on the amounts received.

According to the Russian SAC, bonuses of this nature are considered to directly relate to the supply of goods and therefore represent a form of trade/volume discount. Thus, upon providing bonuses, suppliers should have the right to adjust the output VAT previously charged on their supplies and customers should reverse its input VAT accordingly.

ASIA/PACIFIC

South Korea

Scope of zero-rating for export services restricted: Effective July 1, 2012, exported services subject to the VAT zero rate will be limited to professional, scientific, and technical business services, collectively known as professional business services. The amendment to the VAT law has effectively narrowed the scope of the zero rate for exported services.

Companies that may currently be eligible to apply the zero rate to their services (including inter-company charges) may be required to apply VAT to their charges under the new rules. Businesses engaging in the export of services (or foreign businesses engaging in the purchase of services) from South Korea should assess their position immediately.

New Zealand

GST expansion to include late fees may be postponed: A Taxation bill that would impose GST on fees for late payments with effect from April 1, 2012 may now be deferred. The Revenue Minister has asked the Finance and Expenditure Committee (FEC) to consider deferring the application date to January 1, 2013.

Under the proposed amendment, the GST base would be broadened to include fees for late payments. Such fees had not previously been included in the tax base for GST on the basis that they do not form part of the price for the underlying goods and services.

Vietnam

Penalties and input VAT credit for invoices issued in foreign currency: On April 3, 2012, the General Department of Taxation issued Official Letter No. 4355/BTC-TCT, stating that a seller of goods or services may be penalized under foreign exchange regulations if the seller is not allowed to receive payments in foreign currency, but nevertheless issues a VAT invoice which shows the payment value in a foreign currency and provides an exchange rate into a VND equivalent.

For any such invoices issued before April 3, 2012, the buyer can claim an input VAT credit for the invoice, provided the seller has declared and paid the corresponding output VAT, and that all other conditions required for VAT creditability are met.

AMERICAS

Canada

Four provinces will be modifying their sales tax regimes or rates in the coming years: The concerned provinces are British Columbia (BC), Nova Scotia (NS), Quebec, and Prince Edward Island (PEI).

1. On April 1, 2013, BC will replace its harmonized sales tax (HST) with a provincial sales tax (PST) regime similar to the one that applied before July 1, 2010.
2. NS will reduce its HST rate from the current 15% to 14% by July 1, 2014, and to 13% by July 1, 2015.
3. Quebec will further harmonize the Quebec sales tax (QST) with GST by January 1, 2013 by increasing the QST rate to 9.975% but applying it to the sales amount prior to GST, and generally exempt financial services. Financial services are currently zero-rated in Quebec.
4. PEI will replace its PST/HST with a 14% HST by April 1, 2013.

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:

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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