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 treatment of SWIFT services: In case C-350/10 *(Nordea Pankki Suommi Oyj)*, the ECJ ruled that the VAT exemption applicable to certain financial transactions cannot be applied to SWIFT, a Belgian company whose international financial messaging system is used in the course of "settlement" transactions between banks.

In so ruling, the ECJ pointed out that SWIFT was only responsible for the secure transmission of messages and did not have access to the information contained within. Furthermore, the transactions could only be effected by the financial institutions themselves, and it was ruled that the exemption need not extend to each individual process necessary for the activity itself to take place, even if the services were essential to the overall exempt activity. Therefore, on the basis that the SWIFT services did not effect changes in the legal and financial position of the parties to a transaction, it was held that they did not fall within the scope of the exemption.

In light of this ruling, EU Member States which have treated SWIFT services as exempt in their national legislation are expected to introduce amendments where necessary. EU companies outside Belgium buying in SWIFT services should ensure that reverse charge VAT is accounted for in light of this decision.

Hungarian excess input VAT treatment in violation of EU law: The ECJ ruled in Case 274/10 (*EC v Hungary*) that the Hungarian law disallowing refunds of excess input VAT in cases where the associated invoices, including VAT, had not been paid in full by the taxpayer was in violation of EU law.

In light of this ruling, the Hungarian tax authority amended its VAT Act and allowed a limited window which ended on October 20, 2011 for taxpayers to file extraordinary refund requests for refunds which had previously been blocked under the offending provisions. After this date, taxpayers with excess input VAT may seek a refund or deduct it from total tax payable in tax returns filed after 20 October in accordance with the new rules.

Place of residence irrelevant for determining taxable person's business establishment: In Case C-421/10 (*Markus Stoppelkamp*), the ECJ determined that the place of a taxable person's personal residence should not normally be taken into account when determining where a taxable person is established for VAT purposes.

Germany's Deggendorf Tax Office had previously issued an assessment notice for undercharged VAT, claiming that the taxpayer was liable to charge VAT on his services provided to German customers on the basis that he maintained his personal residence in Germany. The ECJ stated that for the taxpayer "to be considered a 'taxable person who is not established within the territory of the country', it is sufficient that the taxable person should have established the seat of his economic activity outside that country." The existence of a personal residence in Germany did not prevent the taxpayer from being considered to be established outside the country for the VAT purposes.

Upcoming questions for the ECJ: In Case C-388/11 (*le Credit Lyonnais*) the ECJ has been asked to clarify the impact of overseas branch income, and particularly that of non-EU branches, in determining the VAT recovery position of a business with its headquarters in the EU. The outcome of this case will be particularly relevant for partially exempt financial services businesses with branch networks across the globe.

European Commission

Council Directive 2010/45/EU Invoicing Guidance: The European Commission published a set of explanatory notes for the EU invoicing changes effective January 1, 2013.

The changes aim to promote and further simplify the current invoicing rules by removing existing burdens and barriers. The changes establish an equal treatment between paper and electronic invoices without increasing the administrative burden on paper invoices. The changes aim to promote the uptake of e-invoicing by allowing freedom of choice regarding the invoicing method.

The explanatory notes cover the requirements for paper and electronic invoices, the issuing of invoices, the content of invoices, and the storage of invoices. The explanatory notes are not legally binding, but are intended to be an evolving work in progress offering practical and informal guidance aimed at helping Member States implement the new Invoicing Directive in a more uniform way and to provide business with the necessary information to adapt to the new rules in time.

Denmark

New Fat Tax: Effective from October 1, 2011, Denmark introduced a tax on raw food products such as meat and cooking oil which contain more than 2.3% of saturated fat (the "fat tax"). The fat tax rate is DKK16 per kg of saturated fat (EUR 2.15) and, depending upon the type of food, businesses may use the content declaration or a technical analysis of the food to determine the tax due. Special rules apply to raw meat and composite food products.

Businesses producing or importing food subject to the fat tax in Denmark must obtain a "saturated fat registration" from October 1, 2011. This registration requirement also applies to non-Danish entities selling products in Denmark if their taxable sales into Denmark exceed DKK 280,000 (EUR 37,634). A tax refund may be available for products affected by the tax which are exported from Denmark.

Since the fat tax is part of the taxable base for calculating the amount of VAT due, the sales price should generally be inclusive of the tax. However, taxpayers may choose to separately show the fat tax on an invoice.

Germany

E-invoicing rules amended: The Bundesrat (upper house of parliament) approved the German Tax Simplification Act on September 23, 2011. Under the new Act, Germany will treat electronic invoices and paper invoices equally, and electronic invoicing is no longer limited to the use of the Electronic Data Interchange (EDI) procedure or a qualified electronic signature (i.e., any electronic format including e-mail, web downloads and PDF files can now be used). Taxpayers must substantiate input VAT deduction by authenticating the origin of each invoice and the integrity and clarity of its content. The Ministry of Finance has released a question and answer booklet to provide clarification on the details.

Limitations of intra-community exemptions in cases of fraud: Following recent ECJ and German Federal Fiscal Court case law, the Federal Ministry of Finance has issued a Decree to the effect that the VAT exemption for intra-Community supplies does not apply in cases where the supplier breaches the documentation and recording obligations in an attempt to conceal the identity of the true purchaser to facilitate VAT fraud. In such cases, it will no longer be open to the supplier to demonstrate actual intra-community delivery by other means (e.g. hailers invoices or airway bills), and the German tax office will be entitled to asses VAT as though the sale was made directly to private individuals.

Netherlands

2012 Dutch Tax Package on VAT: The Dutch Government recently published the 2012 Tax Package on VAT which includes measures to combat VAT fraud, new rules to adjust VAT returns and new ways to tax private use of company cars. The measures include:

1. *Simplified triangulation rules:* Effective from January 1, 2012, the Dutch rules for triangulation sales will be simplified such that the Dutch intermediate seller will no longer be deemed to make an intra-Community acquisition in the Netherlands in cases where it provides its Dutch VAT registration number to the overseas supplier. Such a simplification would remove the need for the Dutch intermediate seller to account for acquisition VAT in the Netherlands. The Dutch intermediate seller would still be required to include the subsequent supply to the final party in its EU Sales Listing.

2. *Private use of company cars:* A new system for taxing the private use of company cars by employees came into effect from July 1, 2011. Based on this new system, VAT is due on the contribution paid to the company by the employee for the private use of the car. Where no contribution is made or the contribution is below market value, VAT should generally be calculated at 2.7% of the listed price of the car.

3. *Adjustments to VAT returns:* Effective from January 1, 2012, taxpayers who become aware of inaccuracies or errors in filed VAT returns must immediately notify the tax authorities. Failure to notify the tax authorities is considered an offense subject to penalties of up to 100% of the under-reported VAT.

The measures are still subject to approval by the Houses of Parliament in the Netherlands and may be subject to change, but businesses should begin to assess the impact in readiness for when they take effect.

France

VAT exemption for supplies of ships: The EC has launched infraction proceedings against France for failure to properly implement EU law with regards to the VAT exemption of supplies related to ships (e.g. supplies of goods used for fueling and provisioning ships, as well as on the supply, modification, repair, maintenance, chartering and hiring of such ships). Historically, France has allowed exemption to apply to supplies related to ships used for the transport of passengers for reward or used for other commercial purposes, without imposing the condition laid down in the EC Directive that the ship must be used on the high seas. If France is forced to amend its law, the scope of the current VAT exemption may be reduced.

Reduced rate for e-books: The French Tax Code has been amended such that, with effect from January 1, 2012, the reduced rate of 5.5% will apply to all books, including e-books, despite the EU Directive stating that the reduced rate does not apply to services provided by electronic means. The French Government is in discussions with the EU Commission and other EU Member States to persuade them that the provisions do not contravene EU law, but in the meantime the reduced rate applies to e-books in France from January 1, 2012.

Czech Republic

Indirect bonuses guidance: The General Directorate of Finance has stated that manufacturers issuing indirect bonuses must reduce their output VAT accordingly. An example of an indirect bonus would be a bonus issued directly to retailers by manufacturers as a reward for the volume of products that the retailer had purchased from distributors/ wholesalers (i.e. in the case of an indirect bonus, there is no direct supplier-buyer relationship). According to the new guidance, the issue of an indirect bonus constitutes a reduction in the value of the original supply so the manufacturer must reduce its output VAT accordingly. In such a case, the recipient of the bonus must reduce, by the same amount, the input VAT deduction originally claimed when buying goods from the distributor/wholesaler.

AFRICA

Namibia

Proposal to scrap voluntary VAT registration: The Ministry of Finance recently announced a plan to abolish voluntary VAT registration in Namibia. VAT registration is currently required when a person's taxable turnover exceeds N$200,000, however, the current proposal will only allow VAT registration when a person's taxable turnover exceeds N$500,000 in any 12-month period. A six-month transitional period will be granted to persons who are voluntarily registered for VAT to allow for deregistration and to settle any outstanding VAT, penalties, and interest. This proposal will be of particular relevance to exploration companies who will no longer be allowed to voluntarily register for VAT, and therefore may lose the ability to recover input VAT in Namibia.

ASIA/PACIFIC

Australia

GST financial supply guidance: The Assistant Treasurer released exposure draft legislation regarding three of the seven proposed changes to the GST financial supply provisions announced in the federal budget. The draft legislation sets out the following:

1. The financial acquisitions threshold used to determine whether input tax credits must be blocked in relation to financial supplies will be increased from $50,000 to $150,000, effective July 1, 2012.

2. Acquisitions made under hire purchase agreements entered into on or after July 1, 2012 would allow cash accounting basis taxpayers to claim the full amount of any available input tax credits at the time the first payment is invoiced or paid (rather than requiring progressive claims for each payment made).

3. Effective July 1, 2012, the "borrowing concession" (a concession used to remove input tax restrictions in cases where funds are borrowed to fund taxable activities) will exclude borrowings acquired through a bank deposit account which the taxpayer makes available.

China

Trading commodities VAT exemption: Preferential tax, customs, finance and land policies have been granted by the State Council to Hengqin Island within the Zhuhai Special Economic Zone in South-east China. As part of the measures, the trading of commodities among enterprises in Hengqin Island will be exempt from VAT and Consumption Tax.

In addition, provisions related to VAT and customs duty have been implemented to make Hengqin Island a favorable location for certain activities involving trade with mainland China. These include:

1. Production-related commodities sold and transported from Mainland China to Hengqin Island shall be treated as exports and eligible for export tax refund.

2. Production-related commodities shipped from overseas to Hengqin Island shall be kept under bonded status until they are moved to other areas of the Mainland China.

Indonesia

New Bonded Zone Implementation Regulation: The Tax Authorities issued a new Bonded Zone Implementation Regulation No, 147/PMK.04/2011, which changes a number of rules with respect to bonded zones is effective from January 1, 2012. Some of the most significant changes include:

1. The bonded zone concession will be extended to include goods originating from outside the bonded zone, such as import from other bonded zones or from within the Indonesian Customs area in cases where the goods are to be combined with goods produced in the bonded zone.

2. Bonded zones will be generally limited to industrial areas, and the bonded zone license will remain valid throughout the duration of the company's business license. In certain conditions, a bonded zone may be set up outside an industrial area, but the license will only be valid for three years.

3. Permitted domestic sales from the bonded zone will be capped

at 25% of the prior year's exports value.

4. A new formula for calculating import duties and taxes on goods supplied in the domestic market will be introduced.

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