

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

Italy

VAT rate increase: On September 15, 2011, the President of the Republic of Italy signed into law an increase in the standard VAT rate from 20% to 21%. The increase rate was introduced via an amendment to law decree no. 138/2011 and became effective from September 17, 2011. Note that the reduced VAT rates (currently 4% and 10%) will not increase.

Grace period for VAT rate increase: The Italian Ministry of Finance has announced a 'period of grace' until September 30, 2011, in cases where business accounting systems are unable to cope with the increased VAT rate. Under the transitional measures announced, businesses will be allowed to invoice the 1% difference separately,

without penalty, provided the difference is paid within the deadline provided for by the law based on the original time of supply.

United Kingdom

Hotel 'bed bank' VAT case: The taxpayer in this case is part of a group of travel-related businesses that operates a website through which it markets hotel and other accommodations. *Secret Hotels2 Ltd (formerly Med Hotels Ltd)* [2011] UKUT 308 (TCC). Approximately 94% of the supplies of hotel accommodations were arranged through travel agents; the remaining 6% were arranged directly on the taxpayer's website.

HM Revenue & Customs (HMRC) assessed the taxpayer for under



declared output VAT on the basis that the taxpayer acted as principal in supplying hotel accommodation (rather than agent), the supplies fell within the UK VAT tour operators margin scheme (TOMS), and the place of supply was the UK. The First Tier Tribunal (FTT) had previously upheld the HMRC decision, however, the Upper Tribunal has now reversed this decision, stating that the taxpayer was acting as an agent.

In reaching their decision, the Upper Tribunal commented that the FTT had allowed itself to be influenced by the behavior of the parties and that the clear written agreements in place should have been used to determine the intention of the parties involved. Only in certain restricted circumstances (e.g. where the agreements are 'a sham') would examination of the conduct of the parties be permissible in reaching a decision on whether the taxpayer is acting as an agent or principal.

France

New hotel tax: On September 7, 2011, the French Parliament adopted the imposition of a 2% hotel tax. This new tax is non-deductible and is applicable to accommodation charges equal to or more than 200 Euros (before VAT at 5.5%). The tax is effective November 1, 2011.

Greece

Reminder of September 1 VAT rate increase on restaurant food: The VAT rate on 'prepared food for immediate consumption' in restaurants and canteens among other places, increased from 13% to 23% on September 1, 2011. The new rate also applies to fruit juice, non-alcoholic beverages, carbonated and sweetened water.

The reduced rate of 13% continues to apply to prepared food for immediate

consumption from canteens within schools and other educational institutions, hospitals or other welfare institutions.

Romania

Amended VAT exemption for international organizations and NATO: An Order has been published that amends the rules for applying the VAT exemption provided by the Fiscal Code for supplies made to European institutions, international organizations, NATO forces, and for diplomatic purposes. The Order aligns the conditions for applying the VAT exemptions with those provided in the Fiscal Code and also updates the template of the VAT exemption certificate, as provided by EU Regulation no. 282/2011.

The main change introduced by the Order is that a direct VAT exemption may be applied for supplies of goods and services in the Romanian territory for the benefit of NATO forces.

Hungary

Due to the current budgetary constraints, the Government's tax package includes a proposed increase of the standard VAT rate from 25% to 27%.

Luxembourg

The law implementing VAT suspension regimes was officially published on 12 September and will enter into force on 1 October 2011. The new law is aimed at enhancing the development of Luxembourg as a logistics centre for the trading of certain high value goods.

The VAT suspension regime is aimed at creating a zone or warehouse similar to those already applicable under the customs and excise warehouse regimes.

The idea is to suspend all VAT payments while goods are under the

regime, and all operations undertaken will, in principle, be VAT exempt until the goods exit the regime.

European Court of Justice

Upcoming questions for the ECJ: The ECJ has been asked whether a supply of services and an associated property lease constitute a single supply of property services or separate supplies (Field Fisher Waterhouse Plc [2011] UKFTT 524 (TC)).

The questions referred to the ECJ are aimed at obtaining additional guidance on the long standing issue of differentiating between single and multiple supplies for VAT purposes.

EUROPE

Serbia

The Serbian Government adopted VAT amendments in the Autonomous Province of Kosovo and Metohija (APKM). The amendments are effective from September 16th, 2011 and deal with supplies of oil and oil derivatives, telecommunication services and motor vehicles between Serbia and APKM. The changes may lead to increased VAT exposure in some cases. For example, under the new rules the place of supply of telecommunication services provided between Serbia and APKM will be the fixed place of business of the service provider and, therefore, Serbian VAT may now be charged on supplies of telecommunication services to customers in APKN.

ASIA/PACIFIC

Indonesia

Guidance on invoicing rules and zero rating of export services: The Director General of Taxes issued Circular Letter No.SE-50/PJ/2011 (SE-50) to address

the point at which a VAT invoice must be issued. The Circular lays down specific examples for each type of taxable good and service and also addresses the timeframe in which a combined VAT invoice must be issued in relation to deliveries made to the same recipient during a single calendar month.

Circular Letter No.SE-49/PJ/2011 (SE-49) provides guidance on the implementation of Minister of Finance (MoF) regulations regarding VAT on exports of services. The Circular confirms that the zero-rate of VAT is only applicable to three types of services:

- toll manufacturing services;
- repair and maintenance services attached to services or movable goods utilized outside the Customs Area;
- and construction services attached to services or immovable goods located outside the Customs Area.

Vietnam

Proposed changes to international services and VAT exemptions: The Government has released draft Decrees to amend and supplement certain articles of the existing VAT and tax legislation. The draft regulations have been released for comment and are expected to be effective from January 1, 2012. Proposed VAT changes include, but are not limited to expansion of the definition of a VAT exempt supply, changes to the range of services not subject to output VAT, alterations to VAT declaration under the 'direct method' and permission for input VAT recovery in respect of damaged goods.

Australia

GST not due for unused air flights: In *Qantas Airways Limited v Commissioner of Taxation* [2011] FCAFC 113, the Full Federal Court unanimously held that goods and services tax (GST) was not due when domestic air travel was reserved and paid for, but subsequently cancelled, or forfeited, and the customer did not receive a refund.

The Administrative Appeals Tribunal (AAT) previously held there was a taxable supply when the passenger made a reservation and paid the fare. The Full Court disagreed, however, finding that the customer pays for 'carriage by air', described as 'the essence, and sole purpose of the transaction'. Therefore, the booking was not considered a taxable supply for GST purposes.

This decision will be significant for many taxpayers, who should now review the GST treatment of all payments received by them for an intended purpose which does not take place or which fails.

Given the difficulty in obtaining GST refunds on amounts overpaid, businesses will need to determine not only any retrospective impact of this decision, but also the approach to be adopted on relevant payments received going forward.

Loyalty programs: The ATO has released a draft GST ruling concerning the implications of certain loyalty programs. The draft ruling considers a range of issues including the treatment of points allocation and redemption, and arrangements between loyalty program operators and third parties. Comments on the draft ruling are due by October 7, 2011.

New Zealand

The New Zealand Government is proposing to introduce an enhanced GST registration option for non-resident businesses to broaden the circumstances in which they can claim input tax deductions and to promote GST neutrality between resident and non-resident businesses. The Government is also considering alternative proposals, such as:

- extending the current zero-rating rules to certain supplies; and
- introducing a direct refund scheme, similar to the EU, which allows non-residents to claim refunds for input tax deductions without the need to register for GST.

AFRICA

Namibia

Non-resident VAT refunds. Namibia's Ministry of Finance issued a press release on August 17, 2011 relating to proposed amendments to tax laws which amended a prior press release.

The Ministry confirmed that refunds of VAT will continue to be issued to non-resident persons for VAT paid on the acquisition of Namibian goods exported to other countries. Under the previous press release, non-residents would not have been able to claim refunds on exports of raw materials, unprocessed fish, livestock, game, crude oil and gas.

SOUTH AMERICA

Brazil

VAT rate increase for cars: On September 15, 2011, the Brazilian government issued an Executive-branch decree to raise the IPI (federal - level VAT) rate on imported cars by up

to 30%, effective immediately until December 31, 2012.

The IPI rate will vary by engine size and small, fuel-efficient imported cars with engines up to 1l. (one liter) in size will now be taxed at 37%, up from 7%.

The Brazilian government further clarified that cars manufactured in other Mercosul (the South America regional free-trade agreement) countries (specifically Argentina and Uruguay) will not be subject to the higher IPI.

Mexico

The Mexican Executive Branch has presented an initiative to Congress which would allow Mexican States to impose local consumption taxes.

In general terms, according to the proposal, local consumption taxes should have the following characteristics:

- Be levied on the supply of goods or services.

- Maximum 5% rate.
- Cash-flow basis
- Place of supply of goods should be where the goods are delivered or ordered. Place of supply of services should be where the services are performed.
- Certain supplies (including public services, telecommunication services) should be exempt

The proposal will be subject to Federal Congress approval and will probably be subject to changes prior to final approval. If passed, the proposal would become effective for 2012.

However, even if passed, the decision to actually implement local consumption taxes would remain with the State Congresses.

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](#)

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SOLICITATION

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