Keeping up to date with VAT…

April 2015

- Selected Local developments

**Broadcasting, Telecommunications and Electronically supplied services**

As detailed in previous newsletters, as from 1 January 2015, broadcasting, telecommunications and electronically supplied services (as defined) will, in all circumstances, be subject to the VAT rules applicable in the place where the end customer is established, has a permanent address or usually resides.

Where VAT is due to be paid in an EU Member State other than Malta, this can be done through the Mini One Stop Shop system, which has been operative through the VAT Department’s web site for the last few months. The VAT Department has also issued guidelines setting out the services that qualify as “electronically supplied services”.

**Recovery of input VAT**

Article 22(4) of the Value Added Tax Act has been amended to extend the possibility of claiming a deduction or credit for input tax. In terms of this amendment, it is now possible to also recover input tax which is incurred in connection with supplies which are subject to VAT outside Malta but which would have been treated as being exempt without credit supplies had they been provided in Malta.

This amendment could be of particular relevance to iGaming operators in the light of their new obligations to account for and charge VAT in other EU States on transactions which, up until 31 December 2014, were considered as being provided in Malta and qualifying as exempt without credit supplies. The new possibility to recover input tax must of course be considered in the light of the increased compliance and other obligations that such input VAT recovery may involve.

**Registration threshold**

Taxable persons established in Malta providing taxable or exempt with credit supplies of goods or services who, are not VAT registered in view of having a turnover of less than €7,000 per annum, are now required to be VAT registered. Such registration (or reactivation of a previous VAT registration) must be undertaken by the 30 June 2015 and can be made under either article 10 or article 11 of the Value Added Tax Act.

**Bad Debt Relief Claims**

The VAT Department has issued guidelines for bad debt relief VAT claims, setting out the conditions to be satisfied for a valid bad debt relief claim. In brief, the claim must follow a final court judgment that the debt is unrecoverable and must reach the Commissioner not later than 12 months from the date of such judgment.

Furthermore, all VAT returns and payments due as at the date of the claim (including the VAT in connection with the bad debt) must have been submitted by that date. The guidance note also outlines the procedure to claim the relief, and includes details as to what records should be kept and how the claim is calculated. The claimant may deduct the tax relative to the bad debt relief claim in Box 41 of the VAT return for the tax period following that in which the Commissioner has authorised the relief.
Reduced Rate
The 5% reduced VAT rate applicable to certain printed matter has now been extended to cover audio books, books and similar printed matter supplied on all physical means of support which include CD, DVD, SD-card and USB. The reduced rate, however does not cover supplies that qualify as electronically supplied services.

Exemption from issuing fiscal receipts
Persons supplying broadcasting, telecommunications and electronically supplied services in Malta that are reported under the Mini One Stop Shop regime, are not required to issue fiscal receipts in terms of the Thirteenth Schedule to the VAT Act for such services.

Remission of interest now extended to administrative penalties
Apart from any interest incurred under the provisions of article 21(4) of the VAT Act, the Commissioner for Revenue may, at his discretion, now also remit wholly or in part any administrative penalty incurred under any of the provisions of the Act.
However, the Commissioner may only remit such interest or administrative penalty if he is satisfied that the tax due was not paid within the prescribed period due to a reasonable excuse. For this purpose, reliance placed on any other person to perform any task does not constitute a reasonable excuse.

- Selected recent rulings of the Court of Justice of the European Union (CJEU)

CJEU rules on reduced rates on e-books
Commission v France (C-479/13) and Commission v Grand Duchy of Luxembourg C 502/13
Background
On 5 March 2015 the CJEU gave judgement in the infringement cases taken by the European Commission against France and Luxembourg for applying a reduced rate of VAT on the supply of electronic books.

CJEU Ruling
The Commission observed that, under the first subparagraph of Article 98(2) of the VAT Directive, the reduced rates of VAT may apply only to supplies of goods and services referred to in Annex III to that Directive. The supply of electronic books does not fall within the scope of that annex and a reduced VAT rate could not therefore apply to it since the Directive specifically excludes the application of a reduced rate of VAT to electronically supplied services.
On those grounds, the Court (Fourth Chamber) declared that, by applying a rate of value added tax of 3% to the supply of digital or electronic books, the Grand Duchy of Luxembourg had failed to fulfil its obligations under VAT Directive.

CJEU confirms right to deduct
Idexx Laboratoires Italia srl: C-590/13
Background
In a case dating back to 1998, the Italian taxpayer purchased goods from French and Dutch suppliers but failed to carry out the record keeping formalities required by national law in respect of such transactions.
Following a protracted appeals procedure, the tax authority assessed the taxpayer for VAT due on the acquisition of the goods, along with a penalty equivalent to 100% of the tax for failure to comply with the provisions of national law.
In a further appeal before the Corte di Cassazione, the taxpayer submitted that the intra-Community acquisitions in question had no substantive effects, creating neither tax debts nor tax credits, but solely 'notional' debts and credits, along with formal obligations to enter a suspense account in both VAT registers, without implications as to the substance. Accordingly, non-compliance with such obligations did not allow the tax authority to reassess the purchaser’s VAT return and to claim from it payment of tax which was merely theoretical by ignoring the taxpayer’s right to deduct.

CJEU Ruling
Citing earlier judgements, the CJEU had little difficulty in confirming that in the context of the reverse charge procedure, the fundamental principle of fiscal neutrality requires deduction of input tax to be allowed if the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements.
The CJEU consequently ruled that although the VAT Directive sets out a number of formal requirements relating to the right to deduct input VAT, failure to comply with such requirements, in circumstances such as those at issue in the main proceedings, cannot result in the loss of that right.

**How can PwC help?**

For additional information or if you wish to discuss any other VAT related matter, please feel free to reach out to our VAT team on the email address provided below or contact David Ferry, Anna Herrera or Mirko Gulic.

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