
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

Alternate evidence for output VAT adjustment allowed: In *Kraft Foods Polska S.A.: C-588/10*, the ECJ ruled that the principle of effectiveness allows a taxpayer to provide alternative evidence for an output VAT adjustment if a credit note receipt confirmation cannot be obtained, despite the taxpayer's best efforts.

Polish law requires taxpayers to obtain a credit note receipt confirmation from its customer in order to adjust output VAT after a supply takes place. The taxpayer argued for the right to adjust output VAT when the customer receives the credit note, regardless of whether receipt confirmation has been provided by the customer.

Upon inquiry of the Minister of Finance, the tax authority upheld the receipt confirmation requirement and stated that it was irrelevant that obtaining such confirmation was difficult in practice. The taxpayer appealed to the Regional Administrative Court, which ruled in favor of the taxpayer. The Polish government then appealed to the Supreme Administrative Court, which referred the question to the ECJ.

The ECJ ruled that, although the credit note confirmation condition could be imposed, the principle of effectiveness required that the law should not make it impossible or excessively difficult for the taxpayer to obtain relief. Therefore, if the taxpayer could prove a credit note was issued and follow-up action such as



a reminder was given, the national court should accept that the taxpayer had made sufficient effort and grant the relief.

Supply of staff includes self-employed persons: The ECJ has determined that the phrase "supply of staff" includes services performed by self-employed persons. The place of supply was therefore the service recipient's location, the same as if the taxpayer were supplying employees (*ADV Allround: C-218/10*).

A German taxpayer arranged for self-employed drivers to work for haulage contractors in Germany and Italy. Based on the supply of staff rules, up until 2006 the taxpayer considered the place of supply for the Italian contractors to be the recipient location, Italy. In 2006, the taxpayer started charging German VAT, following a ruling by the German tax authorities that German VAT must be invoiced to the Italian contractors since the supply of staff only encompassed a business' own employees and, therefore, the supply location was where the supplier was established (i.e. Germany).

The Italian recipient sought to make 8th Directive refund claims for the German VAT incurred, but the claims were rejected by the German tax office on the basis that the place of supply was Italy and German VAT should never have been charged. On appeal, the German court referred the matter to the ECJ. The ECJ interpreted "supply of staff" as including supplies of self-employed persons, and noted the additional benefit that recipients are no longer required to question the driver's employment status to determine whether reverse charge applies.

Cyprus

Standard VAT rate increase: The standard VAT rate will increase from 15% to 17% effective March 1, 2012. The

reduced rates of 8% and 5% remain unchanged.

Italy

Financial institutions required to report certain e-money purchases: On December 29, 2011, the Italian Tax Authorities enacted Act no. 2011/185905. The Act requires Italian financial institutions to report any VATable purchases equal to or greater than EUR 3,600 made by private customers (non-taxable persons), provided the purchases are paid via e-money (e.g., debit cards, credit cards, etc.) issued by the financial institution. Purchases made during the time period from July 6, 2011 to December 31, 2011 must be reported by April 30, 2012. The report should include general purchaser data, the date and total amount (including VAT) of the purchase, supplier details, and point of sale (POS) information (such as the identification code of the POS system).

New option to remit VAT payments on a quarterly basis: Under new rules effective January 1, 2012, VAT may be paid on a quarterly, instead of a monthly, basis if annual revenue does not exceed EUR 700,000 (for supplies of goods) or EUR 400,000 (for supplies of services). The new rules under Law no. 183 of November 12, 2011, now bases the timing of payments on a taxpayer's annual revenue, rather than the turnover from supplies of goods and services. However, as under the previous rules, 1% interest remains due on any payments not made on a monthly basis.

Denmark

Proposed amendments for the financial sector, transportation and periodicals: The Danish Ministry of Taxation has submitted to Parliament proposed amendments to the Danish VAT Act, to take effect April 1, 2012. The amendments propose the following:

- The financial sector would no longer be eligible for an input VAT refund for financial services related to goods exported outside the EU and supply costs of financial services performed outside the EU. Instead, the 'normal' VAT deduction rules would be available.
- Passenger transport businesses would have their VAT refund rules replaced with the 'normal' rules for input VAT deductions.
- Baggage fees for transportation to countries outside of Denmark would be VAT exempt, with any VAT incurred refundable under a special scheme.
- Import VAT would be charged on all magazines, periodicals and similar publications sent to private customers in Denmark from countries outside the EU. A private subscriber would have to pay import VAT as well as a customs clearance fee (DKK 160) for each magazine sent to the subscriber from a non-EU country.

Guidance on subsidiary sale transactions: The Danish tax authorities have published guidance regarding the application of the ECJ case *AB SKF*. The case determined VAT deductibility in connection with parent companies selling shares in subsidiaries. In general, the tax authorities do not consider a business' transfer of shares in subsidiaries comparable with a transfer of a business, but will assess transactions on a case by case basis.

However, Danish law has been amended for a transfer of assets of a fully VAT liable business that includes a

block of shares. In such transactions, VAT costs in connection with the share transfers are now deductible.

The tax authorities also made a distinction between expenses that were included in the price of the sold shares (not deductible), and expenses that are part of the cost elements in the remaining activities of the taxable person (deductible). The tax authorities considers that if the purpose of the expense is to influence the price of the shares in a positive direction, including promoting demand for the shares, the expense will be considered as included in the sold shares price and therefore not VAT deductible.

Hungary

Extended VAT refund deadlines: On December 23, 2011, the Hungarian Parliament enacted Act CXCVIII of 2011, which amends certain provisions regarding the timing for the issuance of VAT refunds. As such, effective February 1, 2012, VAT refunds generally will be remitted within 75 days of the due date regardless of the amount of the refund. Prior to the amendment, the law provided a 30-day deadline for issuing refunds of less than HUF 500,000, and a 45-day deadline for issuing refunds in excess of that amount.

Nevertheless, for taxpayers who pay in full the balance due for all transactions to which VAT applies upon the filing of the returns, the refund must be issued within 30 days for amounts of HUF 1M or less, and 45 days for amounts over HUF 1M. It must be noted that this exception applies only if all the invoices to which the refund requests relate to are paid by the date the VAT returns are filed.

Portugal

Monthly due date for Intrastat returns changed: In 2012, Intrastat returns will be due by the 15th of the month following the date on which the transaction occurred. Prior to 2012, Intrastat returns were due by the 10th day of the following month. The Intrastat reporting thresholds remains the same.

New certified invoicing program rules to prevent fraud: On January 24, 2012, Decree order no. 22-A/2012 was issued to introduce new compulsory certified invoicing programs to prevent fraud and tax evasion. Effective April 1, 2012, the compulsory use of certified invoicing programs is extended to entities that do not issue invoices to individuals and the threshold amount at which the obligation to use these programs applies is reduced to EUR 125,000. A further reduction to EUR 100,000 is effective January 1, 2013. The Decree order also regulates the issue of documents by non-certified equipment or programs, including cash registers and pre-printed invoices by authorized print companies.

EUROPE

Russia

VAT invoice format and procedures amended: On January 16, 2012, Decision No. 1137 was published which amends the standard format for VAT invoices, the methodology of performing amendments to VAT invoices, as well the format of corrective invoices. The Decision is effective from January 24, 2012. However, the Ministry of Finance issued a communication on January 31, 2012, stating that the old VAT invoice format can be used until April 1, 2012.

ASIA/PACIFIC

China

Asset restructuring transactions: The State Administration of Taxation (SAT) has issued Notices No. 13 and 51 to collectively clarify that the following asset restructuring transactions involving the transfer of all or part of certain qualified assets together with their associated creditors' rights, liabilities, and labor force are not subject to VAT or Business Tax (BT):

- mergers,
- spin-offs, and
- sales or swaps of assets.

Notice No. 13, relating to the VAT treatment of asset restructuring, took effect on March 1, 2011. Notice No. 51, regarding the BT treatment of asset restructuring, took effect on October 1, 2011.

Vietnam

VAT exempt supplies definition expanded and output VAT guidance offered: Decree 121/2011/ND-CP was issued on December 27, 2011, to expand the definition of VAT exempt supplies. Effective March 1, 2012, VAT exempt supplies now includes a number of financial services transactions including foreign exchange trading, the management of securities investment companies, and debt factoring (including the sale of debts). The decree also states that the following supplies are not subject to output VAT:

- goods and services provided outside Vietnam (even between two Vietnamese taxpayers),
- compensation, bonuses, subsidies and income from transfer of certified emission reductions (CERs) and other financial income, and

- assets sold by organizations or individuals that are not engaged in business and do not pay VAT.

Pilot project allowing for VAT refunds on goods purchased by foreign residents: Government Decision No. 05/2012/QĐ-TTg has been issued to provide VAT refunds on goods purchased by foreign residents departing Vietnam from Noi Bai (Hanoi) and Tan Son Nhat (Ho Chi Minh City) international airports, effective from July 1, 2012 until June 30, 2014. The pilot project requires the following conditions be met to qualify for a VAT refund:

- the unused goods must have been subject to VAT, and must be allowed as either carry-on or checked baggage,
- the goods must not be on the export prohibition or restriction list,
- invoices must have been issued within 30 days prior to departure, and
- the total goods value purchased at one store in one day is at least two million Vietnamese Dollars.

Taxpayers claiming VAT refunds will be charged a processing fee not exceeding 15% of the refunded amount.

Australia

GST reform update: On January 13, 2012, Exposure Draft Regulations were released that included the following proposed amendments to the GST Regulations, to take effect July 1, 2012:

- limit the use of reduced input tax credits (RITCs) for bundled trustee and responsible entity services,

- treat all components of hire purchase transactions as taxable supplies,
- expand the availability of RITCs for life insurance, lenders mortgage reinsurance, and transactions fraud monitoring services, and
- clarify the language used in relation to guarantees and indemnities.

In addition, Treasury has released Exposure Draft legislation that includes GST amendments, effective July 1, 2012, proposing that:

- certain supplies made to insurers in settling insurance claims are not subject to GST if the underlying supply to the insurance policy holder or third party is not subject to GST, and
- non-commercial activities of Government related entities would not be subject to GST (following the Full Federal Court decision in *TT-Line Co Pty Ltd v FCT* [2009] FCAFC 178).

Proposed amendments to financial supplies and new residential premises rules: On November 23, 2011, Tax Laws Amendment (2011 Measures No 9) Bill 2011 was introduced to the House of Representatives. The bill proposes the following amendments to the GST Act, effective July 1, 2012:

- increasing the first tier of the financial acquisitions threshold from \$50,000 to \$150,000,
- excluding certain financial supplies (loans made through an Australian authorized deposit-taking institution) from the borrowings concession, and

- allowing cash basis taxpayers to claim input tax credits for acquisitions made under hire purchase agreements.

Additional amendments would treat sales or long-term leases of new residential premises by a registered

entity as taxable supplies and would treat sales or long-term leases of other residential premises as input taxed supplies. The majority of the residential premises amendments will apply retroactively from January 27, 2011.

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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