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

Germany

Exclusion of input VAT deduction for supplies performed abroad: In judgement 20110210 6K156208, the Rheinland-Pfalz Tax Court denied an input VAT deduction for an entrepreneur that built holiday homes in Spain and sold the homes, subject to VAT, to private customers. The Court referred to the German VAT Act that excludes an input VAT deduction for supplies of goods and services performed abroad, if the supplies performed abroad would have been tax exempt if carried out within Germany. The Court noted the fiscal neutrality principle of the decision and declared the German VAT Act is in accordance with EU VAT law.

Czech Republic

Services for Establishments and Braches: The Czech Republic has implemented the rules contained in EU VAT Regulation No. 282/2011, effective July 1, 2011, with respect to the provision and receipt of services by/from fixed establishments. A fixed establishment (i.e., a branch) is considered any establishment that (i) has a sufficient level of permanency and (ii) a sufficient structure in terms of human and technical resources to enable it to receive and use the services supplied to it (or provides the services which it supplies as the case may be). It is not decisive whether the establishment engages in economic activity.

Accordingly, if the provider of a service is considered to be a fixed establishment in the Czech Republic, it may be required to register and account for Czech VAT on its supplies. Where the fixed establishment receives services from a provider located outside the Czech Republic, it may be required to register and account for local VAT on a reverse charge. Non-registered fixed establishments (i.e., branches) and companies that provide services to fixed establishments in the Czech Republic should be aware of this new rule to ensure that the correct VAT treatment is applied.

Other EU Member States should have implemented similar provisions from July 1, 2011 as the Regulation is binding.

United Kingdom

Multi-tax Compliance Process Trials: Revenue and Customs announced the trial of a new approach to compliance checking, which will involve single inspections covering VAT, income tax, corporation tax and PAYE. The trial will commence on June 1, 2011, and will last six months, through December 31, 2011 in different locations across the UK.

HMRC hopes to improve customers' experience and reduce costs by simplifying and standardizing the compliance checks process. The new process will be rolled out nationally in January 2012, subject to the results of the trials.

HMRC consultation on cost sharing VAT exemption: HMRC has launched a consultation document, "VAT: cost sharing exemption" seeking the views of UK organizations on the introduction of exemption from VAT for shared costs, bringing the UK into line with EU VAT law.

Art 132(1)(f) Principal VAT Directive 2006/112/EC permits EU Member States (MS) to exempt from VAT the supply of services by independent groups of persons:

- who are carrying on an activity, which is exempt from VAT or in relation to which they are not taxable persons;
- for the purpose of rendering to their members the services directly necessary for the exercise of their activity;
- when these groups merely reclaim from their members exact reimbursement of their share of joint expenses; and
- such exemption is not likely to cause distortion of competition.

The exemption has been implemented in a number of EU Member States, but not the UK to date. The Government has recognized that efficiencies could be achieved by organizations in the VAT exempt sectors sharing services, and has already held discussions with charities and affected sectors to consider options for implementing the EU cost sharing exemption. "VAT: cost sharing exemption", available on the HMRC website, offers an opportunity to seek to influence the exemption by responding formally to the consultation. Responses to the consultation are required by September 30, 2011.

EUROPE

Norway

B2C E-services Rules Guidance: The Norwegian Tax Administration provided guidance regarding the new imported B2C e-services rules, which took effect from July 1, 2011. From July 1 ,2011, the supply of electronically supplied services from abroad to private individuals resident in Norway are subject to VAT at the standard rate of 25%. Such foreign service providers, supplying electronically deliverable services to private individuals resident in Norway, are required to register for VAT in Norway. The guidance details the new system that includes on-line registration and a simplified VAT reporting procedure exclusive to non-established vendors of e-services.

Ukraine

Update: In the June 2011 VAT News Alert, it was reported that the VAT exemption for the supply of consulting, engineering, legal, audit, IT and similar services was repealed, effective June 1, 2011. However, due to a delay in the President's signature and publication, the repeal took effect from July 1, 2011.

AMERICAS

Mexico

IMMEX Program: On June 30, 2011, a modification to the Miscellaneous Foreign Trade Rules was published in Mexico's Official Gazette, which establishes the VAT treatment of sales to Mexican entities by foreign principals of goods manufactured by other Mexican entities under an IMMEX Program (including Maquilas).

Currently, Mexican entities acting under the IMMEX program (including Maquilas) and duly registered as a "Certified Entity," are allowed to transfer temporary imported goods (owned by a foreign resident) to other Mexican resident entities for their definitive importation. This transfer must be supported by virtual export/import declarations. Under the modified rules, the supply by a foreign resident to a Mexican company of goods being delivered within Mexico by a Certified IMMEX entity would be deemed to take place within Mexico. Accordingly, the Mexican resident acquiring the goods must now withhold and remit VAT in accordance with Mexican VAT Law. Companies (i.e. Mexican resident companies acquiring the goods) operating under this structure should implement VAT withholding, and note the applicable VAT rate, documentation requirements, and other tax implications.

ASIA/PACIFIC

Japan

Consumption Tax reform passed the Diet: On June 22 2011, Consumption Tax reform was included in a tax bill that passed the Diet with the following changes:

Two Year Consumption Tax Holiday is reduced by half for businesses, whose taxable supplies during the "base period" (defined as the period two years prior to the current year) are JPY 10 million or less and whose taxable sales and salary expenses exceed 10 million yen during the first six months of the current fiscal year (excluding the current fiscal year of seven months or less). Such a business would automatically become a taxable enterprise for Japanese Consumption Tax (JCT) purposes for the next fiscal year (beginning on or after January 1, 2013).

The bill also introduced amendments to the rules regarding input tax credits. Where more than 5% of total sales consist of exempt (without credit) supplies, the input JCT is allocated to such supplies and a credit cannot be claimed against output JCT. When a taxable enterprise has taxable supplies during the "base period" exceeding JPY 500 million, input JCT allocated to exempt without credit supplies cannot be credited against output JCT from the tax year beginning on or after April 1, 2012 (*i.e.,* from 2013 if the fiscal year-end is December 31st).

New Zealand

New zero-rating for supplies involving land: In December 2010, new legislation was enacted, effective from April 1, 2011, providing that compulsory "zero-rating" (i.e., GST at 0%) applies to any supply involving land between two GST-registered parties if:

- The purchaser acquires the land with the intention of using it to make taxable supplies, and
- The land is not intended to be used as a principle place of residence for either the purchaser or an associate.

The legislation also replaces the current "principle purpose" test for input tax deductions with a "use" test. The new test will require taxpayers, at the time of acquisition, to estimate the proportion of goods or services they acquire that will be used for a taxable purpose and to deduct GST based on that proportion. If the actual use of the goods or services differs from that estimated on acquisition, taxpayers will need to make regular adjustments. Additionally, effective April 1, 2011, the GST definition of "dwelling" (GST-exempt) has been narrowed, and the GST definition of "commercial dwelling" (subject to GST) has been broadened.

Australia

Consultation papers released on GST reform measures: The Treasury has released consultation papers on three GST measures announced in the 2011-12 federal budget, including:

- GST treatment of property in possession of a mortgage;
- GST and certain supplies to health insurers;
- Allowing small businesses in a net refund position to access the GST installment system.

Mergers and acquisitions: In June 2011, the Australian Taxation Office issued guidance on whether to claim input tax credits on acquisitions made in connection with merger and acquisition (M&A) activity. The guidance clarifies the application of input tax credits when assets of an enterprise are used to make supplies that are taxable or GST-free, and when the transaction involves the purchase of shares of domestic targets. The Australian Taxation Office also provides guidance on:

- Determining whether acquisitions related to M&A activity are for a creditable purpose or whether a "safe harbor" approach applies to deny all input tax credits until after the M&A activity is complete;
- Apportioning input tax credits where the deal structure is unknown;
- Apportioning the success fee over the M&A activity's life cycle (for assets versus shares outcomes) to determine the appropriate input tax credits;
- Integration costs (e.g. HR consultancy, or marketing for new branding) are not related to M&A activity and can generally result in full input tax credits.

Taiwan

Financial institutions: The business tax on service fees is reduced from 5 percent to 3 percent for Taiwanese financial institutions, including banking, insurance, investment trust, securities, futures, and commercial paper enterprises, that purchase services exclusively for their authorized businesses from a foreign financial institution with no fixed place of business in Taiwan.

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

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