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

ECJ rules on defaulted debt purchases: The ECJ has held that, in contrast to a factoring arrangement whereby the factor guarantees its client payment in return for a fee, there was no supply of services for consideration by a purchaser of distressed debt if the purchaser assumed, on its own account, the risk that the debtors would default. (*GFKL Financial Services AG*: C-93/10).

In this case, the taxpayer purchased delinquent loan agreements from a bank, assuming all risks for their recovery. Due to anticipated problems in securing recovery of the loan amounts, the taxpayer purchased the agreements at significantly less than face value. The taxpayer and the bank considered that the taxpayer was not making a supply of services to the bank for recovery of the debt amounts.

The German Ministry of Finance disagreed with taxpayer's analysis and contested that the taxpayer was making a taxable supply of debt recovery services to the bank, which was excluded from the exemption for financial services according to the ECJ's judgment in *MKG-Kraftfahrzeuge-Factoring* (C-305/01).

Upon initial appeal, the German Tax Court upheld the taxpayer's appeal on the grounds that, unlike true debt factoring arrangements, the transfer of the delinquent receivables did not give rise to a taxable supply of services by the purchaser to the vendor. The tax authority appealed the judgment and the Federal Court referred the matter to the ECJ for a preliminary ruling.

The ECJ stated that, in contrast to, *MKG*, there was no commission paid to the taxpayer for guaranteeing payment of the debt and therefore, there was no consideration received by the taxpayer for any supply to the vendor. In and of itself, the difference between the face value of the debt and the lesser amount paid by the purchaser was not consideration for any supply by the purchaser to the vendor and, instead, it merely reflected the fact that the debts were doubtful

ECJ rules on customer reimbursement rights: In *Danfoss and Sauer Danfoss*: C-94/10, the taxpayers purchased lubricant oils from various companies in Denmark and incorrectly paid excise duty (in breach of EU law) on those purchases. The taxpayers sought to recover that duty, on which the suppliers had not claimed any reimbursement, from the authorities. The claims were rejected on the basis that the right under EU law to recovery of sums unduly paid only accrues to the person who is directly taxable and not to subsequent links in the supply chain. The taxpayers appealed and the Danish Court referred the issue to the ECJ.

The ECJ held that a Member State may oppose the reimbursement claim if the purchaser is able to bring a civil action against the taxable person for recovery where reimbursement by the taxable person is not virtually impossible or excessively difficult. The ECJ also held that a Member State may reject a claim for damages if there is no direct causal link between the duty levied and the damage suffered, provided that the purchaser is able to bring a claim against the taxable person for the damage suffered.

European Parliament

Parliamentary report on the future of VAT: The European Parliament recently issued a report on the future of VAT, commenting on the European Commission's Green Paper. The report agrees that the future VAT system should reduce operational costs for users and administrative charges for authorities while at the same time combat fraud. The report considers that creating a fraud-proof VAT system is a key priority and addresses several areas, including (1) VAT design, exemptions and reduced rates; (2) reduction of the red tape (e.g., bureaucracy, and excessive regulation); (3) efficiency of VAT collections; and (4) increase of legal certainty of EU VAT. To access the complete report, please click here.

Portugal

2012 State Budget proposals: The Government of Portugal has issued certain indirect tax measures in its 2012 State Budget proposals. Although the proposals do not indicate when the changes will take effect, the main measures include:

1. Changes to the application of the reduced VAT rate: Certain supplies including bottled water, milk-based desserts and beverages, soft drinks, juices and concentrates, prepared potatoes, and artistic and sporting events are to be excluded from the reduced rate list;

2. Changes to the application of the intermediate VAT rate: Certain supplies including restaurant services, takeaway/ready meals and renewable energy equipment will be excluded from the intermediate rate list;

3. The introduction of anti-avoidance provisions related to the manipulation of taxable amounts for supplies between related parties with limited input VAT deduction.

Hungary

Changes to indirect tax system in 2012: The Hungarian Government has proposed various changes to its current tax system for 2012, including:

1. Standard VAT rate increase to 27%;
2. VAT payable on the lease of vehicles for taxable activities will be deductible;
3. Changes to the VAT treatment of certain transactions during the VAT warehousing procedures ; and
4. The market price applicable between related parties has to be taken into account in apportionment calculations.

The items are still in the proposal stage and may be subject to change.

United Kingdom

Changes to Low Value Consignment Relief: Effective November 1, 2011, the Low Value Consignment Relief (LVCR) threshold, below which goods are imported into the UK free of VAT, was reduced from £18 to £15. As a result, goods imported into the UK from outside the EU will now be subject to import VAT where their value exceeds £15.

In addition, effective April 1, 2012, the LVCR will no longer be applicable to goods that are shipped from the Channel Islands into the UK. Historically, many companies have set up operations in the Channel Islands in order to sell low value goods to UK customers VAT-free. The removal of the LVCR for the Channel Island will result in all imports from these locations becoming subject to UK VAT at import. Legislation to enact the change will be published in draft on December 6, 2011, for inclusion in Finance Bill 2012.

Bulgaria

European Commission requests Bulgaria to amend its VAT law: The European Commission has officially requested Bulgaria to amend its VAT legislation related to the provision of refunds to taxable persons that are subject to tax audit. The amendment has been requested on the basis that current Bulgarian law discriminates against persons involved in intra-Community transactions.

Under the current law, taxpayers subject to tax audit will generally receive a refund of VAT at the end of the audit. However, refunds of VAT can be received prior to the completion of tax audit in cases where the taxpayer provides a bank guarantee to the tax authorities for the refund amount.

Bulgarian legislation lays down specific time periods for audits of taxable persons involved in intra-Community transactions. These time limits are twice as long as those applicable to traders only involved in domestic transactions and, therefore, taxable persons carrying out intra-Community transactions who wish to obtain refunds before the end of a tax audit must lodge a security or a bank guarantee for twice as long a period.

The Commission has formally requested Bulgaria, through a Reasoned Opinion, to amend its VAT law within a two-month period to remove the discriminatory elements. If Bulgaria does not comply as requested, the Commission may refer the issue to the ECJ.

EUROPE

Iceland

New VAT requirements for Non-resident ESS suppliers: Effective November 1, 2011, non-resident businesses must register and account for VAT in Iceland in respect of electronically supplied services (ESS) provided to non VAT registered businesses with a fixed establishment in Iceland and private individuals domiciled in Iceland. A fiscal representative must be appointed to register and account for VAT if the threshold of ISK 1,000,000 (approx. US $8,700) has been met over a 12 month period.

Previously, non-resident ESS suppliers were not required to register and account for VAT and, instead, the buyers of ESS were responsible for remitting the VAT to the tax authorities. This treatment applied to both VAT registered and non VAT-registered buyers, however, under the new rules, this treatment will only remain in effect for supplies made to customers that are VAT registered in Iceland.

ASIA/PACIFIC

Vietnam

Simplified VAT reporting: The Ministry of Finance issued Official Letter 13715/BTC-TCT allowing banks to only declare the total value of services rendered on a daily basis.

Current VAT regulations require companies to declare every VAT invoice issued/received during the month. However, due to the specific nature of the banking industry, which has large volumes of small transactions, the new rules will allow banks to declare the total value of services rendered on a daily basis rather than on a transaction by transaction basis.

Banks must continue to maintain proper invoices and supporting documents for each transaction and present them to the tax authority on request.

China

Update on a BT/VAT Pilot Program of the indirect tax reform: On October 26, 2011, the Chinese Prime Minister announced the introduction of a Pilot Program in Shanghai. The program will seek to assess the impact of expanding the application of VAT to include services which are currently subject to business tax (BT). To access PwC's VAT Flash on the Pilot Program, click here.

At the time the Flash was issued, the Chinese Government had indicated that the transportation industry and "certain modern service industries" would fall under the scope of the BT/VAT Pilot Program, without defining "certain modern service industries". In order to address this open question, on November 16, 2011, the Chinese tax authorities published, in Circular Cai Shui No. 111 of 2011, a detailed list of the services that will be covered under the BT/VAT Pilot Program in Shanghai. These services are grouped by sectors and are discussed below with some examples:

1. Transportation services including road, water and air transportation for passengers and goods, and pipeline transportation; however, railway transportation should not be included in the scope.

2. Research, development and technical services, such as R&D and technical consulting services;

3. Information technology services such as software services, circuit design and testing services, database management, and IT network configuration services;

4. "Culture creative services", such as design services, trademarks, goodwill, services related to intellectual property, advertising and exhibition services ;

5. Logistics auxiliary services such as ground and general aviation services, port services, freight forwarding services, customs declaration, warehousing, loading and unloading services;

6. Leasing of tangible personal property, including operating and capital leases;

7. "Certification and consulting services" such as legal services, accounting services, taxation services, investigation, appraisal and certification services.

AMERICAS

Mexico

VAT export/import rules changed: On October 10, 2011, modifications to the Miscellaneous Foreign Trade Rules were published and included a change in VAT treatment for maquila structures.

Under current rules, semi-finished or finished goods produced by a maquiladora (a manufacturer of goods for export) must be exported from Mexico. Therefore, in order to sell goods to Mexican clients (and comply with this rule), many businesses physically exported and re-imported the goods into Mexico. To remove this logistical burden, Mexico previously introduced virtual exportation and re-importation which created the effect of export and re-import without the goods ever leaving Mexico.

As part of virtual export/import the goods must be transferred to an authorized Mexican resident and such a transfer was consider exempt from VAT.

However, effective December 1, 2011, the sale of "virtually exported" goods to a Mexican resident will now be considered an internal sale subject to VAT withholding, to be remitted by the resident purchaser of the goods. This represents a significant change and ends the VAT benefit of virtual exportation by subjecting the transaction to the standard VAT rate.

The change yields numerous administrative changes and taxpayers should ensure they have the necessary planning and controls in place to comply with the new rules.

Canada

QST rate increase: On January 1, 2012, the Quebec Sales Tax (QST) rate will increase from 8.5% to 9.5%. For moveable property or services (including leases or licenses of immovable property), a taxable supply will be subject to the 9.5% rate on any portion of the consideration that becomes due after December 31, 2011, and is not paid before January 1, 2012.

For a sale of immovable property, the 9.5% rate applies to sales that are made pursuant to a written agreement concluded after December 31, 2011, if both possession and ownership are transferred after December 31, 2011.

The construction, renovation, alteration or repair of immovable property will also be subject to the 9.5% rate, if made pursuant to a written agreement concluded after December 31, 2011.

Special transitional rules apply to the certain supplies, including work on existing construction contracts, continuous supplies, exchanges of movable property, road vehicles, and bringing movable property into Quebec.

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