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FRANCE

VAT RECOVERY RIGHT OF A BRANCH RENDERING INTERNAL SUPPLIES – APPLICATION OF THE ESET CASE IN FRANCE

The French administrative Supreme Court (*Conseil d'Etat*) has made an important decision on the recognition of a VAT recovery right for a French branch rendering internal supplies of services to its foreign parent company.

In the case at hand, Morgan Stanley makes supplies of services to French clients and also makes internal supplies of services to its UK parent. The services to its French clients are subject to French VAT as a result of its previous election for VAT payments. The French tax authorities have challenged Morgan Stanley's right to VAT recovery on expenses incurred on the internal supplies on the theory that such supplies are not within the scope of VAT according the EU case FCE Bank (case C-210/04, 23 March 2006).

In this respect, the French *Conseil d'Etat*, quoting the recent ruling of the Court of Justice of the European Union (CJEU) in ESET (case C-393/15, 21 June 2016) and Articles 168 and 169 of the VAT Directive, admitted that a branch could benefit from a VAT recovery right as regards the expenses incurred for the purposes of the internal supplies, provided the parent company allocates such supplies to taxable transactions.

However, the French *Conseil d'Etat* has delayed its decision by referring the matter to the CJEU for a ruling on the calculation of the VAT recovery ratio in such a situation.

From a practical standpoint, the admission of a VAT recovery right for a French branch rendering internal supplies, whether that supply was exclusive or not, will have a huge cash impact for the concerned companies. Indeed, in situations where the parent company's activities are fully taxable, the branch would be in a position to recover all the input VAT incurred. Depending on the CJEU's decision in this case, companies like banks, whose activities are only partially taxable, might be in position to recover a part of the input VAT incurred by the branch.

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EDITOR'S LETTER

Dear Readers,

Welcome to the summer edition of BDO Indirect Tax News.

While there haven't been many material developments on the indirect taxes front over recent months, the lead in to the Brexit negotiations in late June has attracted lots of speculation regarding how the remaining 27 European Union Member States will conduct business with the UK once the final details have been negotiated. Both VAT and Customs Duty are no doubt high on the list of issues for consideration.

As it is likely that the UK will leave the Customs Union, issues of concern range from 'additional bureaucracy likely to add to both costs and delays in delivery times for goods' to 'additional customs duty costs and VAT cash flow considerations'. As you would expect, these could prove to be particularly challenging when goods are sourced from, or supplies are routed through, the UK, or where 'end customers' are based in the UK.

As it's been a year since the Brexit vote was passed, the owners of quite a number of Irish and indeed European businesses whose supply chains are likely to be directly affected have been conducting 'impact studies' with a view to identifying ways for them to de-risk their businesses from any potential negative implications. As stability is key in any business, their aim has been to avoid finding themselves under pressure to change their business model in a tight timeframe at the end of the Brexit negotiations when the fine details of the negotiations become apparent.

BDO Member Firms have been proactively engaging with clients to assist with 'Brexit Impact studies'. Our colleagues in the United Arab Emirates, Kuwait, Bahrain, Oman, Qatar, and Saudi Arabia have also been working closely with clients with activities in the Gulf Region to help them assess the impact the introduction of VAT in the region in 2018 will have on their operations.

If you have any concerns regarding the impact these or any other developments may have on your business, please reach out to your local BDO Partner who will be delighted to provide the necessary support you may require.

In the meantime, I hope you find the various indirect tax updates included in this publication of interest.

Kind regards from sunny Dublin!

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CHINA

THE PROGRESS OF VAT REFORM AND THE UPDATED VAT ENFORCEMENT REGULATIONS

On 1 January 2012 China launched a pilot program transitioning from Business Tax (BT) to Value Added Tax (VAT) for certain businesses in various regions in China. From 1 May 2016 all industries including construction, real estate, finance, and living services have been transitioned to a VAT system. As a result, the BT no longer applies in China.

After the comprehensive VAT implementation, the government released a series of detailed regulations and implementation rules. The newly released VAT regulations clarify some issues regarding operational procedures including the following: the 13% VAT rate is cancelled beginning 1 July 2017; the input VAT verification period will be extended from the previous 180 days to 360 days, and so on. The newly released regulations reduce the tax burden and have other positive influences on industries.

As well, there are significant changes to the tax administration with the 2016 nation-wide rollout of the Third Phase of the Golden Tax Project (Golden Tax III). Updates to the Golden Tax III rollout have continued into 2017. The updated system will not only transform the tax authority's operating system, it will also require changes to taxpayers' tax compliance procedures.

Observations and comments

With the development of information technology and the improvement of information transparency, the Chinese tax authority is applying information technology in daily tax administration including the Golden Tax III. However, due to the lack of detailed implementation rules, a relatively immature tax system, and the fact that there is not a uniform set of operating rules related to the Golden Tax III, there are many uncertainties related to practical operations and increased tax disputes in practice.

Here is a brief description of some tax issues and challenges our clients have encountered in practice:

- Tax returns cannot be filed online because tax person registration, general taxpayer registration, and so on, with local tax authorities often cannot be completed in advance. When that's the case, a delay in filing a tax return or in making a payment can lead to imposition of late payment interest and potential penalties.
- During the VAT declaration procedure, the input VAT, which is irrelevant to a taxpayer's main business under the Golden Tax III, may trigger a tax audit by local tax authorities.
- When payments are made for cross-border charges, the system may automatically detect whether the contract has been filed/reported to the local tax authority. If not, the system may generate notices to levy interest and possible penalties.
- Export tax refunds may not be approved because of issues related to the receipt of foreign exchange on exports. Generally, this happens as a result of the information sharing system in place among various local authorities.

The tax authority's improved ability to collect and analyse data through the updated system helps the tax authorities tighten their administration of taxpayers. Tax risks that were ignored before can now automatically be detected by the tax authority, resulting in penalties and impacting taxpayers' credits on tax collection. And, practically speaking, local tax authorities have the discretion to determine the ultimate tax treatment on a case-by-case basis.

To be well prepared for the upcoming new challenges brought by the VAT reform, we recommend that taxpayers start by sorting out weaknesses in their internal control systems, improving invoice administration, and enhancing tax compliance. While taxpayers can deal with tax issues raised by tax authorities by themselves, we have found that proactive communications with tax authorities by a professional who can explain your tax position can reduce the potential tax risks. Indeed, skilful negotiation with tax authorities is essential for resolving disputes. BDO China's International Tax Service team is experienced in this regard. We will provide further news about VAT Reform in China and keep you updated. For further information in relation to any of the above topics, please do not hesitate to contact us.

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GEORGIA

VAT TREATMENT OF ADVANCES

In January 2017 Georgia amended its VAT law with respect to advance payments. Now, when an amount is paid upfront, the transaction is subject to VAT if all the following conditions are met:

- The transaction involves defined deliverable goods/services;
- The quantity/volume of deliverable goods/services is specified;
- The cost of deliverable goods/services is specified;
- The deliverable goods/services are subject to VAT.

The new provision does not apply to permanently and regularly supplied services or utilities (for example, electricity or gas). In these cases, the previous treatment applies, which means the transaction is taxed no later than the last day of the reporting period.

A supplier in a transaction involving an advance can consider receiving the advance as a VAT taxable event and proceed with the charge even if one or more of the above four conditions is not met. In such a case, the supplier must get the buyer's consent to do so and the supplier must issue a VAT invoice on the advance.

The new rule also applies to transactions subject to reverse charged VAT. Specifically, if all of the above conditions are met, upfront payments to non-residents for the services rendered are subject to VAT upon payment, though the rest of the fee is taxed on completion of service.

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GERMANY

INVOICE THRESHOLD FOR 'LESS DETAILED INVOICES' INCREASED TO EUR 250

Within the German legislative package for the relief of administrative burdens (*Bürokratieentlastungsgesetz II*) the invoice threshold applicable to so-called 'less detailed invoices' was increased from EUR 150 to EUR 250. This change applies retroactively to 1 January 2017.

On invoices for supplies worth EUR 250 or less (inclusive of VAT) the following information is required:

- The full name and address of the taxable person;
- The date of issue of the invoice;
- A description identifying the quantity and nature of the goods, or the extent and the nature of the services rendered;
- The sum of the consideration and the amount of VAT due for the supply of goods or services; and
- The VAT-rate applicable, or if it is a VAT exempt supply, a note referring to that fact.

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THE GULF COOPERATION COUNCIL STATES

DRAFT SAUDI VAT LAW RELEASED

The Member States of the Gulf Cooperation Council (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE), plan to introduce VAT in 2018.

Though it is expected that most countries will implement VAT effective from 1 January 2018, with less than six months until that time, there is still very little concrete information available on the law and administrative arrangements.

This article concentrates on what is happening in Saudi Arabia and the UAE. Neither of these countries has published full details on how VAT will be implemented, but both have released some useful information through various channels.

Background to the law

The GCC Unified Agreement on VAT has been published; it sets out the framework for the tax. However, the document sets out the rules applicable to the Member States, rather than rules for individual taxpayers to follow. Member States will have to enact federal laws to implement VAT in their territory and it is these laws that will provide the all-important detail.

Saudi Arabia

So far, only the Kingdom of Saudi Arabia has released a draft law. The draft was published on 29 May 2017 as part of a consultation exercise. Unfortunately, the draft law published only provides part of the picture as it simply sets out the general structure for VAT in the Kingdom. It will be supplemented by regulations that will provide the specific details, such as which goods and services will be zero-rated and exempt. The regulations have not been published and therefore a number of questions about the VAT system remain unanswered.

Though the law is short on details and we do not yet have the supporting regulations, the draft provides insight in a number of areas:

- VAT groupings – VAT groupings will be permitted. Supplies between VAT group members will not be subject to VAT. VAT group members will be jointly and severally liable.
- Anti-avoidance – the General Authority of Zakat & Tax (GAZT) will have powers to disregard or re-characterise transactions where avoidance is perceived.
- Appeals – an appeals process will be put in place to deal with VAT disputes. This will include a first instance committee and a mediation process.

Penalties – the following penalties will apply:

- Late registration penalty – SAR 10,000;
- Errors in VAT returns – up to 50% of the error;
- Failure to pay tax to the GZAT on time – SAR 1,000 plus 5%, 10%, 20%, or 25% of the tax due, depending on how late the payment is;
- Incorrect issue of invoices – the greater of SAR 1,000 or double the tax;
- Failure to comply with various regulations – SAR 1,000 or 2% of monthly taxable supplies, up to a maximum of SAR 20,000;
- Making false statements – double the tax involved;
- Tax Avoidance – double the tax plus a penalty levied by the Administrative Court;
- Penalty for Tax Officials committing breaches of confidentiality – up to SAR 1,000,000 plus up to 2 years imprisonment.

United Arab Emirates

The UAE has not yet published its law but it has held a series of workshops to provide an outline of how the law will be administered. It has also released a number of updates on-line. Based on these sources we expect the following:

- Registration threshold – taxpayers who provide taxable supplies of at least AED 375,000 will have to register;
- Voluntary registration will be optional for taxpayers whose taxable supplies range from AED 187,500 to AED 374,999;
- Registration will open in the third quarter of 2017;
- VAT returns – VAT returns will be due every three months. Returns must be filed and the VAT paid within 28 days of the end of the VAT period. Some reporting will be on an Emirate level.

VAT exemptions

The following transactions are expected to be exempt:

- Financial services – comparable Islamic and non-Islamic financial arrangements will receive equal VAT treatment. Financial services with explicit fees will be subject to the standard rate.
- Real Estate – residential leases and sales (after the first supply of the property), as well as the supplies of bare land, will qualify for exemption. Note, however, that sale and lease of commercial property (offices, factories, warehouses, and so on) will be subject to the standard rate.
- Local transport.

Zero-rating

The following transactions are expected to be zero-rated for VAT:

- Exports of goods to outside the GCC;
- Some international services;
- Education services;
- Medical services;
- Medicines and medical equipment;
- International and intra-GCC transport of goods and passengers, as well as related transport services;
- Real Estate – the first supply of new or converted residential and charity buildings;
- Investment in gold, silver, and platinum;
- Vehicles, vessels, and aircraft used for commercial transportation.

Note that food will not be zero-rated. Supplies to government bodies will also be subject to the normal VAT rules.

Exports from the GCC are expected to be zero-rated. Goods must be exported within three months, however, and the exporter must have commercial evidence of export.

Intra-GCC sales – no VAT will be charged on business-to-business sales. Reverse charge rules are expected to apply to purchasers. For business-to-customer sales, UAE VAT will be charged, unless the seller breaches the registration threshold in another GCC state. If the supplier does, it must register for VAT in that state.

Cross border supplies of services – generally no VAT is charged on services supplied to buyers in other countries. But, there are exceptions and special rules will apply to the following: some cross-border business-to-consumer sales; the installation of goods; taxable supplies provided by restaurants, hotels and catering; real estate; telecoms; and sporting, artistic and cultural services.

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INDIA

NEW GOODS AND SERVICES REGIME

On 1 July 2017 India joined the ranks of countries that have a Goods and Services Tax (GST). The Indian dual-GST is administered jointly by India's Central and State governments.

The Indian GST differs from GST implemented by other countries because India has multiple tax rates and compliance requirements for different classes of goods and services.

India's previous indirect tax regime was particularly complex and lacked uniform structure and processes. As a result, taxpayers faced a cascade of taxes and a cumbersome compliance mechanism. Frequently changing laws that were often quite ambiguous led to disputes and litigation.

The simplified GST regime will significantly boost the Indian economy and make it easier to do business across the nation. With the GST, for the first time, Indian businesses can claim credits on all goods and services. This will result in a significant reduction in prices.

While the GST regime substantially simplifies India's indirect tax system and promotes transparency in recording transactions, businesses will face added costs as they put in place technology they need to implement the GST. Additionally, the reporting of voluminous data continues to be a concern across industries.

We have also observed some restrictions on tax credits along with several inconsistencies in the law.

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ITALY

NEW VAT COMPLIANCE

Italy's VAT law has been amended to provide new requirements related to:

- The quarterly VAT settlement communication; and
- The communication of all the data for the issued and received invoices.

The new requirements are applicable starting with the 2017 calendar year.

Quarterly VAT settlement communication

Until 31 December 2016, Italian VAT taxpayers had to determine their monthly or quarterly VAT credit or debit payments and simply pay the amount due within the month following the reporting period. They had to keep this data as part of their VAT bookkeeping but they did not have to provide settlement details to the Tax Authorities. Under the new rules, all companies, entrepreneurs, and professionals must submit to the tax administration all the data related to VAT settlements quarterly.

The information that must now be provided includes:

- Total sales amount, net of VAT;
- Total purchase amount, net of VAT;
- Output VAT;
- Input VAT;
- VAT debit/VAT credit at the end of the month;
- VAT credit of previous month; and
- VAT credit of previous year.

If the taxpayer fails to provide the required information, or if it is incorrect, or late, a flat penalty of EUR 500 to EUR 2,000 is due.

The submission deadline is the end of the second month after the quarter end.

Communication of all the data regarding issued and received invoices

Starting from 2017, VAT taxpayers must provide a so-called 'sale and purchase invoice communication' (in Italian *spesometro*) on a quarterly basis (previously it was annual).

As a result, all VAT taxpayers must communicate to the tax authorities for each invoice (sale/purchase/customs bills/credit note/debit note) the following information:

- Identification data of the seller;
- Identification data of the purchaser;
- Date and invoice number;
- VAT tax basis;
- VAT rate and VAT applied;
- Type of transaction.

If the taxpayer fails to provide the required information, or if it is incorrect, a flat penalty is due equal to EUR 2 for each invoice (the maximum amount for each communication is EUR 1,000, regardless the number of invoices).

The submission deadline is the end of the second month after the quarter end. As a transitional provision, for fiscal year 2017 only, the *spesometro* will be filed on a six-month basis (rather than quarterly).

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JAPAN

REVISION OF CONSUMPTION TAX SCHEME FOR SERVICES RELATED TO ENTERTAINMENT AND SPORTS PROVIDED BY FOREIGN BUSINESSES

In Japan, the Consumption Tax (CT) is the equivalent of VAT. The CT taxation method for provision of services related to entertainment and sports by a foreign business to Japanese businesses has been amended for taxable transactions carried out since 1 April 2016.

Introduction of a reverse charge mechanism

For purposes of CT, when a foreign business provides personal services that are conducted by film or theatre actors/actresses, musicians, or any other entertainers, or professional athletes, for Japanese businesses, such services are considered the 'provision of specific services'.

When the 'provision of specific services' are conducted by a foreign business for a Japanese business in Japan, the transaction is treated as a taxable transaction from a CT perspective but the foreign business is not required to collect the CT from the Japanese businesses. Instead, the Japanese business receiving the service must file and pay CT on the specific taxable purchases via a reverse charge mechanism.

As a transitional measure, the reverse charge mechanism applies for Japanese businesses that only file a consumption tax return through a general taxation system with a taxable sales ratio of less than 95%.

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THE NETHERLANDS

THE IMPACT IN THE NETHERLANDS OF THE OXYCURE BELGIUM CASE

On 9 March 2017 the Court of Justice of the European Union (CJEU) handed down its decision in the Oxycure Belgium case. According to the CJEU, the reduced VAT rate cannot be applied on the supply or hire of oxygen concentrators.

Case

Oxycure is a Belgian company whose main business is the supply and hire of oxygen concentrators. Oxygen concentrators are used in home-based oxygen therapy by patients suffering from a respiratory insufficiency or other serious impairment requiring oxygen treatment.

In Belgium the supply and hire of oxygen concentrators is taxed at the standard VAT rate of 21%. Oxygen concentrators are one of three sources of oxygen available on the market, along with medical oxygen cylinders and medical liquid oxygen tanks. These oxygen sources are all interchangeable and/or complementary. Thanks to a Belgian decree, oxygen tanks are taxed at the reduced VAT rate of 6%. Therefore, the question before the CJEU was whether the principle of neutrality precludes a national provision that prescribes a reduced VAT rate on oxygen treatment that involves use of oxygen cylinders while oxygen treatment using an oxygen concentrator is subject to the standard VAT rate.

The CJEU pointed out that Member States may choose to apply a reduced VAT rate to specific pharmaceutical products or medical devices, among those mentioned in point 3 and 4 of Annex III to the EU VAT Directive. As the Court has repeatedly made clear, the principle of fiscal neutrality cannot extend the scope of a reduced rate in the absence of clear wording to that effect. In the present case, the parties agreed that oxygen concentrators do not fall within point 3 of Annex III, which covers certain pharmaceutical products. Furthermore, the CJEU concluded that oxygen concentrators are also outside the scope of point 4 of Annex II, since the oxygen concentrators are not for the exclusive personal use of the disabled. In those circumstances, according to the Court, the principle of fiscal neutrality cannot require a Member State to extend the reduced rate to oxygen concentrators, even if the concentrators are perceived by the consumer as being similar to products that the reduced rate does apply to.

The Netherlands

Dutch VAT law explicitly prescribes that the reduced VAT rate of 6% is applicable on the supply and hire of oxygen concentrators. According to the ruling of the CJEU, the reduced rate for oxygen concentrators is probably not in accordance with the EU VAT Directive. However, as long as the Netherlands' VAT rules remain as they are, it is still possible to apply the reduced VAT rate in the Netherlands on the supply and hire of oxygen concentrators.

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POLAND

POLAND STIFFENS PUNISHMENT FOR VAT FRAUD AND ERRORS

Poland has instituted new regulations that introduce imprisonment for large-scale VAT fraud and restoration of sanctions for errors in accounting. Unfortunately, the regulations apply not just to tax fraudsters; they also apply to taxpayers who simply make mistakes in their billings or who use too low a VAT rate.

Long years of imprisonment for false invoices

Under the new regulations, the potential penalty for falsifying VAT invoices is 25 years imprisonment. A penalty may be imposed if the value of invoices exceeds PLN 10 million. If the value of invoices is PLN 5 million, imprisonment of from 3 to 15 years may be imposed. These penalties are imposed as a result of amendments to the Criminal Code to introduce new types of crimes: issuing false VAT invoices and counterfeiting invoices and processing them as authentic. At the same time, the new provisions also provide for an extraordinary mitigation of penalties for those who cooperate with law enforcement authorities on fraud investigations.

Penalties apply on underpaid tax

The VAT Act was amended so that from 1 January 2017 penalties apply on:

- Unjustified tax settlements;
- Deductions of input tax with respect to blank invoices that do not relate to actual activities; and
- Invoices originating from non-existent entities.

Sanctions of 30% are imposed for:

- Underestimating the VAT due;
- Overestimating the amount of tax to be transferred or returned;
- Failing to file a tax return;
- Unpaid tax; and
- Mistakenly applying a rate lower than the VAT rate that is required.

In addition to paying the correct tax amount, the taxpayer must also pay 30% of what should have been paid to the tax authorities. This penalty may be imposed on taxpayers who make a mistake in their tax return if the mistake was disclosed after the audit was initiated.

Penalty reduced on a guilty plea

The penalty can be reduced from 30% to 20% if the taxpayer complies with the inspection instructions and corrects their tax return. In such a case, the taxpayer must pay the tax resulting from the correction along with interest on the late payment. Additionally, the taxpayer must submit the original tax return and pay the tax resulting from this tax return together with default interest. The sanction will not apply if the taxpayer identifies the error before the inspection is initiated and corrects it. If the tax inspection has been initiated, the sanction will not apply only if the error was due to an obvious error or accounting error.

Double tax applies for incorrect invoices

The sanction may be 100%, which means doubling the tax paid, in the following situations:

- If VAT is deducted from invoices issued by non-existent entities;
- When the invoice relates to activities that have not actually been completed (this also includes blank invoices, in other words, those issued when no goods or services were sold);
- If the invoice contains incorrect amounts; and
- Invoices relating to activities that may not be the subject of a legally effective contract.

Taxpayers may be removed from the VAT register as a penalty

Taxpayers that issue blank invoices or who participate in transactions knowing or having reasonable grounds to believe they are involved in VAT fraud may be removed from the VAT register. Moreover, officials may remove a company from the VAT register when:

- The government determines the company does not exist;
- The company cannot be contacted;
- The information given in the application is untrue;
- The taxpayer does not appear before the tax authorities despite being summoned;
- The taxpayer does not submit a tax return, or submits a so-called 'zero' tax return for six months;
- The taxpayer does not submit a recapitulative statement for three months; or
- When the taxpayer has suspended its business for at least six months.

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ROMANIA

VAT DEDUCTION WHEN A TAXABLE PERSON IS DECLARED INACTIVE

Under Romanian legislation, taxpayers can be declared inactive in any of the following situations:

- If they do not fulfil any of the statutory reporting obligations for six consecutive months;
- If they evade tax supervision by declaring a registered office identification that does not allow the tax authorities to identify them; or
- If the tax authorities have determined the taxpayer does not carry out activities at their registered office or at their declared tax domicile.

When a taxable person is declared inactive, its VAT registration is cancelled.

If an entity performs economic activities during a period when its VAT registration is cancelled as a result of being declared inactive, the entity is obliged to collect VAT for its supplies. However, it is not entitled to deduct VAT related to acquisitions. Moreover, entities that acquire supplies from taxpayers whose VAT registration has been cancelled are not entitled to deduct the input VAT.

Recent amendments related to re-registered entities

In January 2017 the Fiscal Code was amended so that once an entity is re-registered for VAT purposes, both the company and its clients can deduct the VAT related to supplies acquired during the period when its VAT registration was cancelled.

This change to the Fiscal Code comes at the time that a case (Case C-101/16 – Paper Consult vs Fiscal Administration) is pending at the Court of Justice of the European Union (CJEU). The case was referred in the context of proceedings between Paper Consult and the Romanian tax authorities who refused to allow Paper Consult to deduct the VAT related to acquisition of services from Rom Packaging on the ground that the latter company had been declared an inactive taxpayer and its VAT registration had been cancelled.

On 31 May 2017, the Advocate General issued an opinion in this case. The decision concluded that the VAT Directive precludes a national rule that disallows a VAT deduction simply because the supplier has been declared inactive but there is no evidence of tax evasion or loss of revenue. In the case at hand, the VAT was paid and the taxpayer that was declared inactive was publicly and easily accessible to any taxable person in the Member State.

Assuming this opinion is upheld in the CJEU's final judgment on the case later this year, we expect the Romanian legislation will be further amended to make it clear that the deduction of VAT on acquisitions of supplies from operators that have been declared inactive is not restricted unless there is also evidence of tax evasion or a loss of revenue.

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SERBIA

NEW VAT RULEBOOKS ADOPTED BY THE SERBIAN MINISTRY OF FINANCE

The Serbian Ministry of Finance has issued three new Rulebooks detailing the place of supply rules for VAT purposes. The Serbian VAT Law was amended earlier to include new rules for determination of the place of supply of services. The amendments brought Serbia's rules in line with the rules applicable in EU countries.

Rulebook for services connected to immovable property

This Rulebook sets out details about a number of services considered connected to immovable property and therefore considered to have a place of supply in the country where the property is located. These rules are in line with the principles envisaged by the rules in many EU countries.

Rulebook for supply of food and drinks for immediate consumption

This Rulebook sets out the criteria for defining what is considered to be the service of selling food and drink for immediate consumption for VAT purposes as opposed to the sale of food and drink that is considered a supply of goods.

Rulebook for vehicles and other goods used for transport

This Rulebook sets out details about the place of supply rules applicable to vehicles (with or without engines) and other goods that are rented out and are used for the transportation of persons or goods.

NEWLY INTRODUCED OBLIGATION TO APPOINT VAT REPRESENTATIVE IN SERBIA

The latest amendments to the Law on Tax Procedure and Tax Administration (which came into force on 1 January 2017) introduced fines for non-resident entities that make taxable supplies of goods and services in the territory of Serbia without appointing a VAT representative. Fines are prescribed in the following amounts:

- From RSD 100,000 to RSD 2,000,000 for non-resident legal entities; and
- From RSD 50,000 for non-resident individuals.

According to Article 10a of the Serbian VAT Law, non-resident entities (legal entities or individuals) that make taxable supplies of goods and services (where the place of supply of goods and services is determined according to Articles 11 and 12 of the VAT Law) to persons that are not VAT payers (either individuals or legal entities that are not registered for VAT), are obliged to appoint a VAT representative for Serbian VAT purposes. The non-resident's turnover on sales of goods and services in Serbia is not relevant when determining the obligation to appoint a VAT representative (in other words, the RSD 8,000,000 threshold applicable to resident entities does not apply to non-residents).

There are some exceptions to the requirement that a non-resident appoint a VAT representative, such as:

- When the supply of goods and services is made only to a registered VAT payer in Serbia or to entities listed in Article 9 paragraph 1 of the Serbian VAT Law (including the Republic of Serbia, its bodies, autonomous provinces and local municipalities, as well as legal entities founded by these entities);
- When the taxable supplies are related only to the transport of passengers by bus.

If your company is required to appoint a VAT representative in Serbia, or if you, your parent company, or another entity in your group provide goods or services in the territory of Serbia to persons that are not registered VAT payers (or entities listed in Article 9 paragraph 1 of the Serbian VAT Law), we would be happy to help you. Our services include:

- Obtaining non-resident tax ID numbers and registration in the VAT system in Serbia;
- Registration of a VAT representative;
- Issuance of invoices to customers in Serbia, preparation of records, and submission of returns;
- Providing other activities in support of a VAT representative in accordance with Serbian VAT Law.

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SINGAPORE

CUSTOMER ACCOUNTING ON PRESCRIBED GOODS

Following the investigation by the Inland Revenue Authority of Singapore (IRAS) of 43 traders for suspected involvement in GST carousel fraud, the GST Act will be amended to extend customer accounting to prescribed goods commonly used in fraud schemes.

Generally, in a carousel fraud (also known in its simplest form as the missing trader fraud), the same goods are traded around contrived supply chains within – and sometimes beyond – the country. This allows the fraudsters (that is, missing traders) to charge GST on the sale of goods and abscond with the GST without paying it to the IRAS. The goods are further sold to bogus businesses in the supply chains and recycled through GST-registered companies and finally exported by companies seeking a refund of the GST that the IRAS never received. This scheme can be repeated many times, with the goods, in effect, going around in a carousel.

With effect from 1 January 2018, GST 'customer accounting' will be implemented for transactions involving prescribed goods commonly used in fraud schemes, such as mobile phones, memory cards, and off-the-shelf software ('prescribed goods'). This shift of GST accounting responsibility from GST-registered suppliers to the GST-registered customer will allow the IRAS to alleviate non-compliance in transactions involving prescribed goods.

How GST customer accounting on prescribed goods works

Under customer accounting, GST-registered suppliers will not charge GST on the sale of prescribed goods to GST-registered customers. Instead, the GST-registered customers will be required to account to the Comptroller of GST for the GST chargeable. This deters fraud schemes where the supplier absconds with the GST collected and businesses further along the supply chain continue to claim input tax.

Customer accounting is not new. EU jurisdictions such as Austria, Denmark, Germany, Italy, The Netherlands, and United Kingdom have implemented customer accounting in response to similar fraud schemes.

Seeking feedback from GST-registered businesses dealing in prescribed goods, the IRAS has recently introduced a draft e-Tax Guide 'GST: Customer Accounting for Prescribed Goods'. Because the GST customer accounting on prescribed goods will take effect from 1 January 2018, affected businesses should start preparing for changing their systems to take into account the new reporting requirements.

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SPAIN

IMMEDIATE SUPPLY OF INFORMATION ON VAT (SII)

The project known as 'Immediate delivery of information' (*Suministro inmediato de información*, or 'SII'), which will come into force on 1 July 2017, requires taxpayers to electronically provide to the Spanish Tax Administration the necessary information contained in invoices in order to prepare and keep the VAT ledgers.

This system is mandatory for all taxpayers that submit returns on a monthly basis. Therefore, large companies (companies that have an annual VAT turnover in Spain that exceeds EUR 6 million), VAT groups, and taxpayers enrolled under the monthly VAT refund scheme (REDEME) fall under this regime. More information on SII and its implications for business can be found in Indirect Tax News Issue 1 from April 2017.

Order HFP/417/2017 of 12 May has set out the regulatory and technical specifications for developing the management of the Value Added Tax Record Books through the E-Office of the Tax Agency. The following regulatory changes were introduced:

- The registration fields to be filled in on the VAT Books have been set out, including the way this data should be supplied via the Tax Agency E-Office.
- Specifically, the Ministerial Order establishes how to register different types of invoices and indicates which of the operations should be reported.
- The information to be submitted for the first half of 2017 is defined, along with how it should be sent to the Tax Agency.

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APPLICATION OF THE USE AND ENJOYMENT CLAUSE

On 22 November 2016, the Spanish Directorate General of Taxation (DGT) ruled on whether the use and enjoyment clause applies to market research and advertisement services rendered to a non-EU business customer engaged in running a website that allows users to browse for hotels and flights in Spain and in other countries.

According to several DGT rulings, based on the criterion set by the Court of Justice of the European Union , services initially located outside the European Union can be taxed for VAT purposes in one Member State when they are used by a recipient in performing transactions that are ultimately located in that Member State.

The DGT has also established that it is possible to apply the use and enjoyment clause when the recipient performs transactions that are located either inside or outside of Spain, as was the situation in the case at hand.

Consequently, the DGT concluded that the clause is applicable to the portion representing the ratio of the turnover generated in Spain over the total turnover of the transactions performed as a result of these services.

CALL-OFF STOCK SCHEME

A call-off stock scheme is a common structure usually applied to ensure a minimum volume of stock is available to a final customer. The stock within a storage facility is identified at the time it is dispatched as having been transferred for a specified customer, but it is only acquired by the final customer when the customer needs it.

Such a scheme is not regulated under the Spanish VAT Act, though the VAT treatment has been provided in several resolutions issued by the DGT, including as recently as a resolution of 28 November 2016.

Based on these resolutions, where goods from an EU country are transported and stored in a customer's premises in another EU country and the customer bears the risks from the moment the goods are received at the premises, even though legal ownership has not yet transferred, the transaction qualifies as an intra-community transaction.

As a result, fulfilment of the requirements set in the resolutions allows for the zero-rated treatment of such supplies and avoids the need for VAT registration in the EU country of destination.

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UNITED KINGDOM

VAT RECOVERY ON CORPORATE FINANCE DEAL COSTS

HMRC, the UK tax authority, has published updated guidance setting out its new policy on input VAT recovery by holding companies. While there has been some welcome relaxation to its former stance, businesses involved in merger and acquisition activity must still take positive steps to protect their VAT recovery on deal fees and other holding company costs.

Background

The recovery of VAT on deal fees in corporate finance transactions has long been the subject of challenge and ever changing guidance in the UK. HMRC has now issued an extensive update to its VAT Input Tax internal manual, which sets out its latest position. This is the culmination of a lengthy policy review, which involved a series of extensive meetings with leading advisers, including BDO, and takes account of recent case law – most notably the 2015 European Court judgment in *Larentia + Minerva*.

Outline of the UK's new approach

It is a condition of VAT recovery that the holding company must:

- Have contracted for the supply (whether directly or by novation);
- Have used and paid for the supply; and
- Hold an invoice in its name.

Although in all cases it is necessary for a holding company to be involved in an 'economic activity', the revised guidance provides some clarification over whether it is also necessary for a holding company to make management charges or interest bearing loans to support its entitlement to VAT recovery. HMRC seeks to distinguish between 'take-over' style acquisitions and investment acquisitions. Broadly speaking, HMRC says:

- If a shareholding is acquired as a 'direct, continuous and necessary extension' of a taxable activity of the holding company (for example, taking over a similar or complementary business or acquiring a company that owns an asset to be used in taxable trading) this would have a direct and immediate link to taxable supplies so VAT is recoverable without the need to make a management charge to the subsidiaries. Although not explicitly stated by HMRC, this would appear to refer only to holding companies that are VAT grouped with their subsidiaries. A separately VAT registered holding company would presumably still have to raise management charges to support its VAT recovery.
- If that test is not met, for example, because the target is acquired as an investment, the holding company must make (or intend to make) supplies of management services to its subsidiaries to which the relevant costs can be attributed. This is the case, even if the holding company is VAT grouped with its subsidiaries. A consideration must be paid for those services which is 'genuine and provided for a consideration which is more than nominal'. Management charges where payment is contingent, for example, on the future profitability of subsidiaries, will not entitle VAT recovery. If not all subsidiaries are charged, input VAT recovery must be apportioned.

HMRC has confirmed that certain on-going costs which may be invoiced to the holding company can be treated as a cost of a VAT group registration as a whole. The examples given include the general audit fees of the group, regulatory compliance, brand defence, bid defence and group legal costs. HMRC also confirms that VAT on vendor due diligence costs may be deductible provided it can be shown that the target is the recipient of the supplies in question and they were received for the purposes of the target's business.

Impact on business

The new guidance looks at the issue of VAT recovery at a high level and it does not answer all questions about entitlement to VAT recovery on deal fees and other holding company costs. However, HMRC has clearly moderated its previous position, which made VAT recovery all but impossible for many businesses involved in mergers and acquisitions and many historic disputes have already been resolved as a result of this policy review.

However, there are still hurdles to be jumped to secure VAT recovery, especially for investors, such as private equity houses. Key to this is ensuring that any bid vehicle – the future holding company – will be engaged in an economic activity and evidencing this at an early stage. Establishing a management services agreement between the holding company and subsidiaries is recommended, but care must be taken to ensure that the management charges are raised and paid on a regular basis or of otherwise evidencing there is a genuine intention to make taxable supplies.

If the uncertainty over VAT recovery has resulted in input VAT not being recovered over the last four years then now would be an ideal time to review whether there is an opportunity to recoup more of the VAT which was incurred. Those planning corporate finance transactions in the UK should take advice on their VAT position at an early stage.

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UNITED STATES OF AMERICA

REMOTE SELLER USE TAX NOTIFICATION LAWS

US states have historically struggled with the enforcement of use tax as applied to consumers, which states view as a significant source of revenue for budget purposes. As a result, remote seller use tax notification laws have become a trend in the United States. These laws typically require a vendor with no obligation to report and remit sales tax to a state to notify resident purchasers of their obligation to report and pay use tax, and submit a report to the state with such information as the identity of purchasers and the dollar amount of purchases made. Accordingly, the reports filed with the state can provide a road map to those consumers who have not reported and paid tax as required and, as a result, consumers named in these reports should expect to receive a tax due notice from the state.

No tax is due by remote vendors under these laws, but some states impose what may, at first glance, appear to be minor penalties for failure to comply with them. However, these penalties have the potential to be significant as the cumulative number of transactions and purchasers in the state increase. Further, while it may seem that the imposition of such a reporting responsibility would violate the physical presence nexus requirement found in the U.S. Supreme Court's decision in *Quill Corp*, the U.S. Supreme Court's denial of the taxpayers' petition for *writ of certiorari in Direct Marketing Association* in 2016 effectively disposed of any such notion.

States appear to be taking advantage of these laws and the decision in *Direct Marketing Association*. For example, in 2017 alone, eight states have introduced or enacted remote seller use tax reporting notification legislation.

Background

45 states and the District of Columbia impose a requirement on a vendor to collect, report and remit sales tax on taxable sales of tangible personal property and enumerated services made into the state. However, at least according to the U.S Supreme Court's decision in *Quill Corp*, a state may not impose such a requirement on a vendor that has no physical presence in the state (i.e. no property, employees or independent contractors acting on the vendor's behalf in the state). Where the state may not impose a sales tax compliance obligation on a vendor, or the consumer has not otherwise paid sales or use tax with respect to a particular purchase, the consumer is liable for reporting and remitting use tax for the use of the taxable tangible personal property or services in the state.

In 2010, Colorado enacted a remote seller use tax notification reporting law that requires a vendor that is not subject to the state's sales or use tax with USD 100,000 or more in Colorado sales (other than a vendor that makes sales in Colorado solely by means of download of digital goods or software) to:

- On each purchase, notify the consumer of its obligation to report and pay use tax, subject to a USD 5 penalty for each occurrence of noncompliance;
- By 31 January of each year, provide each consumer with information regarding their purchases for the preceding year and remind him or her of their obligation to report and pay use tax, subject to a USD 10 penalty for each occurrence of noncompliance; and
- File an annual statement with the Department of Revenue by 1 March of each year with information regarding each purchaser and their purchases for the preceding year, subject to a USD 10 penalty for each purchaser excluded from the report.
  See Colo. Rev. Stat. § 39-21-112(3.5) (2010).

Vendors took issue with Colorado's remote seller use tax notification law and challenged it as imposing a tax obligation on vendors with no physical presence and thus violating the holding in *Quill Corp*. The *Direct Marketing Association* matter followed and various federal and state injunctions were entered that stayed the enforcement of the law for nearly seven years. Any hope of further injunctions was removed when, in December 2016, the U.S. Supreme Court denied the taxpayers' writ of certiorari appealing an earlier U.S. Circuit Court of Appeal's decision. The U.S. Supreme Court's denial also served as a message to states that the Court agrees with the lower court that the enforcement of remote seller use tax notification laws does not require an in-state physical presence or, at a minimum, the Court prefers that federal and state legislators resolve the issue – an unlikely event. Pursuant to a settlement agreement entered into with the taxpayers in *Direct Marketing Association* in February 2017, Colorado, on its own accord, stayed enforcement of the law and the related penalty provisions until 1 July 2017.

Current state of affairs

During the pendency of the *Direct Marketing Association* matter, and continuing to date, several other states adopted remote seller use tax notification laws similar to Colorado's. The following is a brief summary of which states have enacted remote seller use tax notification laws. In addition to these, bills containing remote seller use tax notification laws are pending in the legislature or waiting final governor approval in Hawaii, Nebraska, Pennsylvania, and Wisconsin, and more are expected (see table page 17).

Conclusion

Now that states are effectively free from any jurisdictional restraints limiting the enforcement of remote seller use tax notification laws (i.e. at least for the time being), it is expected that more states will be enacting and enforcing them. This is evident from the recent legislative activity and the cry from many states regarding revenue concerns. The imposition of these laws will place additional burdens on remote vendors in terms of compliance – especially in those states that impose penalties for noncompliance – as they will be required to implement the necessary processes and procedures or risk potentially significant penalties.

International vendors making sales in the United States should be aware of these aggressive use tax notification reporting trends. It is recommended that a company periodically review its activity in the United States to confirm its use tax policy and procedures are consistent with current states laws, including those noted above.

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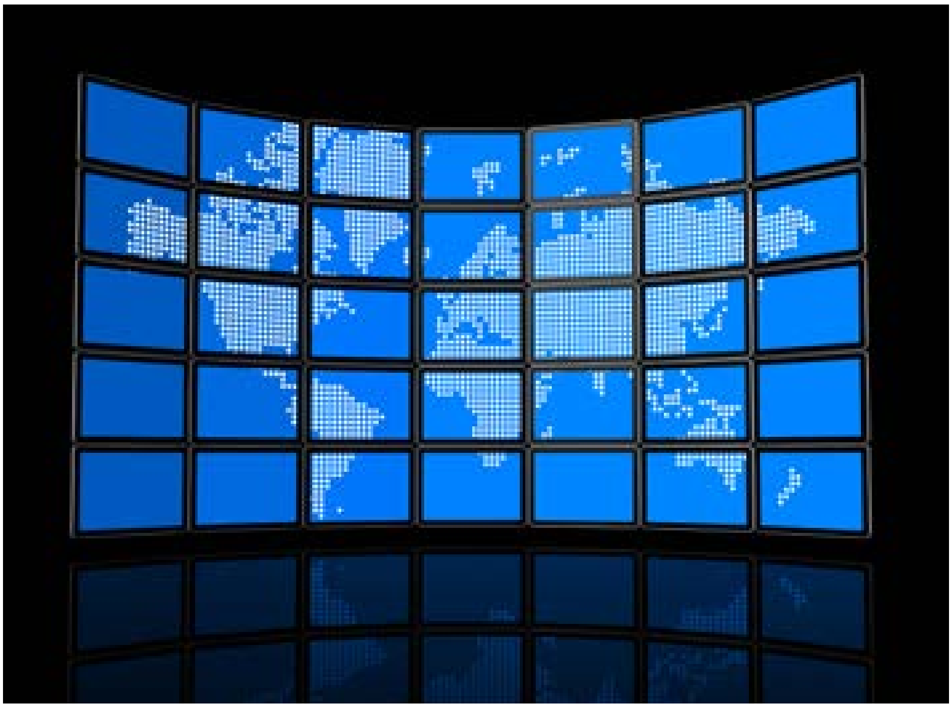
State	Effective Date	In-State Sales Reporting Threshold	Consumer Notification (Per Purchase)	Consumer Notification (Annual)	Annual State Filing Requirement	Penalties
Alabama[1]	1 July 2017	None	No	No	No	No
Colorado	1 July 2017	Exceed USD 100,000	Yes	Yes	Yes	Yes
Kentucky	1 July 2013	Exceed USD 100,000	Yes	No	No	No
Louisiana	1 July 2017	Exceed USD 50,000	Yes	Yes	Yes	No
Oklahoma	1 October 2010	Exceed USD 100,000	Yes	No	No	No
South Dakota	1 July 2011	Exceed USD 99,999	Yes	No	No	No
Vermont	1 July 2017	None	Yes	Yes	Yes	Yes

[1] The Alabama law merely authorises the state to require use tax notification and reporting and to impose penalties for noncompliance, but the state has not yet set the parameters of any such requirements or penalties.



CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 29 June 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.13582
Saudi Riyal (SAR)	0.23459	0.26648
UAE Dirham (AED)	0.23962	0.27219
Polish Zloty (PLN)	0.23598	0.26805
Serbian Dinar (RSD)	0.00824	0.00936
United States Dollar (USD)	0.88032	1.00000

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