APRIL 2017 ISSUE 1
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INDIRECT TAX NEWS

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AUSTRALIA

GST ON INTANGIBLES, SERVICES, AND LOW VALUE IMPORTED GOODS

Under Australia's current Goods and Services Tax (GST) legislation, GST is generally not imposed on cross border supplies of intangibles and services by offshore suppliers to Australian consumers. Similarly, GST is not imposed on supplies of low value imported goods (customs value of less than AUD 1,000) to Australian consumers.

New legislation has been introduced and further legislative changes are proposed to ensure that, from 1 July 2017, GST will be imposed on those supplies.

The changes

From 1 July 2017, GST will become applicable to supplies of intangibles, services, and low value imported goods by offshore suppliers to Australian consumers. These changes are primarily aimed at business-to-consumer (B2C) transactions, but have the potential to affect all transactions between offshore suppliers and Australian recipients.

Broadly, the new and proposed measures will operate as follows:

- Supplies of intangibles, services, and goods (with a GST-exclusive customs value of less than AUD 1,000) to Australian consumers may be subject to GST, regardless of whether the supply takes place inside or outside the Australian indirect tax zone. Exceptions will apply for supplies to Australian consumers who acquire such supplies outside of the Australian indirect tax zone.
- The GST liability of the offshore supplier can be shifted to another entity that assists Australian consumers acquire goods, services, or intangibles from outside the Australian indirect tax zone in certain circumstances, including situations where operators of 'electronic distribution services', such as online market places or businesses that provide redelivery or mail forwarder services, are in the supply chain.
- Affected offshore suppliers will need to determine if they have customers who meet the definition of an 'Australian consumer'. This will require offshore suppliers to take reasonable steps to identify, document, and support any position concerning the status of a customer for the purposes of the new rules.
- The new rules will not apply where offshore suppliers are engaged in business-to-business (B2B) transactions, rather than B2C transactions, because the supplies are not being made to an Australian consumer.
- A newly introduced and modified GST registration and remittance regime will be implemented for offshore suppliers to manage their Australian GST reporting and payment obligations.

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EDITOR'S LETTER

Dear Readers,

Many thanks for taking the time to read through this issue, our first edition of BDO Indirect Tax News for 2017.

As I write this, here in Ireland there is a lot of interest and indeed concern around the impending notification by the United Kingdom of its intention to leave the European Union. We expect British Prime Minister Theresa May to trigger the two year process for negotiations to agree on the formalities of the future relationship between the European Union and the United Kingdom very soon.

Ireland has much more potential exposure to the negative effects of Brexit than other countries, given that the United Kingdom is geographically situated between Ireland and mainland Europe and the fact that Northern Ireland is also part of the United Kingdom.

The election of President Trump and his stated policy of 'encouraging' American businesses to move significant elements of their operations back to the United States is also a threat to the Irish economy, give that over 1,000 American businesses have their EMEA HQs here.

Ironically, both the Brexit and Trump issues, though not overly positive in nature, have significant potential too. New VAT and customs duty implications for BDO Clients and contacts in Europe, the United States of America, and beyond may emerge. So, as the saying goes, 'it's an ill wind that blows no good'!

I hope you enjoy the articles in this issue and, as always, your feedback is welcome.

Kind regards from Dublin where we are starting to see a nice stretch in our springtime evenings!

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(continued from cover page)

The implications for offshore suppliers to Australia

The changes facing offshore suppliers in relation to Australian dealings are significant, and any such supplier should act now to consider the impact of these changes to their business.

Offshore suppliers should consider whether the new rules will require them to register for Australian GST purposes if they exceed, or will exceed, the registration threshold of AUD 75,000 annual sales to Australian recipients.

Offshore suppliers need to determine what additional, or new, information they will need to collect from their customers to assess whether those customers are Australian consumers.

The new rules may also result in a requirement for offshore suppliers to make changes to their accounting systems to account for Australian GST and to manage the new compliance and liability obligations being imposed by the Australian Taxation Office.

Offshore suppliers should consider the GST implications of the existing terms and conditions of legal agreements with customers, as the ability to impose or recover GST under the new rules may be limited where existing arrangements are in place or where standard documents do not take the new rules into account.

The Australian Taxation Office has released information and guidance materials in relation to the changes, which should be considered by an offshore supplier when determining the impact of the new rules.

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ARGENTINA

CREATION OF SUBSTITUTE TAXPAYERS WHEN FOREIGN SUBJECTS RENDER SERVICES IN ARGENTINA

Among the changes made by Law No. 27,346, published at the end of December 2016, were changes to Value Added Tax. These changes include creation of substitute taxpayers when foreign subjects render services in the country. This change addresses a long-standing legal vacuum that existed because the VAT law did not specify the treatment applicable to services rendered in Argentina by foreign subjects.

Under the changes, tenants, service recipients, representatives, and intermediaries of foreign subjects are now substitute taxpayers and therefore taxable subjects for VAT purposes when foreign subjects provide leases or services taxed in Argentina in their own name, regardless of the payment terms.

Under the provisions, substitute taxpayers include, among others, the National, Provincial and Municipal State, cooperatives, foundations, civil associations, mutual, sports associations, administrators and agents, and so on.

Substitute taxpayers will have to determine and pay the VAT corresponding to the supply, even when it is not possible for the substitute taxpayer to withhold from the foreign subject. The tax paid will be treated as a tax credit for purposes of computing VAT.

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BELGIUM

VAT EXEMPTION FOR 'COST SHARING ASSOCIATIONS' – NEW REGULATION

In December 2016 the new rules on the VAT exemption of article 44, §2bis of the Belgian VAT Code regarding services performed by 'Cost Sharing Associations' were published in a comprehensive Circular Letter (Circ. AAFisc nr. 31/2016 - E.T. 127.540 dd. 12.12.2016).

The Cost Sharing Association (CSA) 2.0

The 20-year old regulation regarding 'Cost Sharing Associations' (Circ. AAFisc. nr. 3/1996), urgently needed an update. The new article 44, §2bis of the Belgian VAT Code and the accompanying Circular Letter intend to meet the sharp European criticism:

- The association can now also carry out additional taxable transactions, both for members and non-members, as long as these transactions are not predominant;
- A larger group of natural and legal persons can join the association;
- The association can now also carry out taxable supplies of goods.

Purpose and legal status of the Cost Sharing Association

The association must have at least two members who wish to cooperate and pool costs in a sustainable way (that is, for at least two years, so no ad-hoc accessions or exits are allowed).

According to the new regulation, a Cost Sharing Association can be established with or without legal personality. In the second case, the cost sharing association should act in its own name as a separate association to its members and third parties. In addition, a cooperation agreement must be concluded, containing a detailed description of the activities, the personnel, the way of working of the association and an indication of the member responsible for the VAT obligations.

'Predominant' part of the activities of the group are exempt activities

The core business of the association remains the management and the rationalisation of shared costs. Only the services 'directly necessary' for the exempt/non-taxable activities of the members are eligible for the VAT exemption. The services provided by the Cost Sharing Association do not need to be the same for all members.

In case the services provided by the Cost Sharing Association are used for both the taxable and the exempt/non-taxable activities of the members, the remuneration must be split according to an appropriate pro rata. If not, VAT is due on the total remuneration.

Moreover, the VAT exemption is only applicable to the extent that the fee charged to each member represents the pure reimbursement of their share in the joint expenses. The Cost Sharing Association must therefore keep detailed records and issue an effective settlement to each member at least once a year (advanced payments are allowed).

Remarkably, the Cost Sharing Associations may also deliver goods under the new rules. The association may also provide services under the same conditions to non-members without jeopardising the application of the VAT exemption regarding services provided to members. All services and goods supplied to non-members are subject to VAT under the normal VAT rules.

It is, however, important that the proportion of exempt services (provided to members) represents more than 50% of the total amount of services provided by the Cost Sharing Association. Revenue from the supply of goods do not count for this calculation.

Who can be a member?

Any person (for example, private individual, legal person, public body) can be member of a Cost Sharing Association as long as the exempt/non-taxable transactions of each member represent more than 50% of their total annual turnover.

It is no longer required that the members perform the same kind of activity, either belonging to the same financial, economic or social group. Taxpayers with a full right to deduct VAT, however, are no longer allowed to be a member of a Cost Sharing Association.

The Circular Letter provides detailed calculation instructions and the necessary tolerances for both the turnover of the association as the turnover of the members.

No distortion of competition

An element of uncertainty is the concept of 'distortion of competition'. The Belgian VAT administration retains the right (in case of complaints) to investigate on a case-by-case basis whether there is not only factual distortion of competition but also a potential distortion of competition on a significant scale. In a worst case scenario, the VAT exemption may be revoked retrospectively. It is hoped that future European case law will bring clarity on this point.

Deduction and revision of VAT

As under the new regulation, the Cost Sharing Association may perform both exempt and taxable transactions, its right to deduct VAT will depend on the nature and quantity of the performed transactions. Unless the Cost Sharing Association has opted for the VAT regime for small enterprises, its right to deduct VAT as a mixed taxpayer shall be determined case-by-case (based on a general pro rata or the method of real usage).

The Circular Letter further illustrates, in detail, to what extent historical VAT on investment goods can be partially recovered.

Common personnel

If the association has legal personality, the staff should be directly hired by the association and stand on its payroll. To the extent the association has no legal personality or is prohibited by social law from recruiting its own personnel, the members can use their own employees as common personnel in the association. To the extent that staff are employed for the VAT exempt activities of the association, the VAT administration accepts (provided there is a clear indication of the deployed employees, their work schedule, tasks, and so on) that the provision of the personnel by a member to the association is not subject to VAT.

Notification requirement and ongoing case law

Each new Cost Sharing Association must notify the relevant VAT administration at the start of its activities and submit a member list and, if necessary, a copy of the cooperation agreement.

Existing Cost Sharing Associations must decide no later than 31 March 2017 whether they wish to continue with their activities, get in line with the new conditions (for example, concerning the pooling of staff, the preparation of a cooperation agreement) and provide an updated member list to the relevant VAT administration.

The Circular Letter provides clarity on the new, often more flexible but sometimes more severe, Belgian rules on Cost Sharing Associations. However, there are a number of interesting legal cases pending before the European Court of Justice whose outcome may possibly cause corrective actions on a Belgian level.

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COLOMBIA

RECENT CHANGES TO VAT

As a result of Colombia's recent Tax Reform (Law 1819 of 2016 and other regulations issued at the end of 2016) changes were made to the VAT law effective 1 January 2017. Here is a brief summary of the VAT changes impacting companies:

- The general VAT rate increased from 16% to 19%.
- The annual return of VAT was removed. Only the two and four month periods remain.
- Payments made to non-resident entities for intangibles related to industrial property are now subject to VAT.
- VAT withholding has been eliminated for suppliers that qualify for the simplified VAT regime.
- Subject to specific exclusions, services rendered and intangibles acquired or licensed from abroad are considered rendered, licensed, or acquired in the Colombian national territory and are subject to VAT if the direct user or recipient has a fiscal residence, domicile, permanent establishment, or headquarters in Colombia.

  The following services are specifically excluded from VAT:

  - Provision of web pages, servers (hosting), cloud computing, and remote maintenance of programs and equipment;
  - Acquisition of software licenses for the commercial development of digital content.

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FINLAND

CHANGES IN REPORTING AND ACCOUNTING FOR VAT

Rules regarding reporting and accounting for VAT and other self-assessed taxes (such as employer's contributions) were changed at the beginning of 2017 as a result of the coming into force of various amendments to the legislation. This article sets out the requirements that now apply.

Filing the VAT return

Tax returns for self-assessed taxes must be filed electronically. They can be filed via the Tax Administration's new e-service (MyTax) or via other networks. Paper tax returns are accepted only in special circumstances, for example, when electronic filing is not available. No preapproval for filing paper returns is required.

The due date for reporting VAT is the 12th day of the second month following the tax period. If a company's tax period is a calendar year, the tax returns must be filed by the end of February following the calendar year end. The due date is the same for both electronic and paper returns. The due date for accounting for the output VAT payable to the tax authorities is the same as for filing the return.

Correcting earlier VAT returns

Under the new rules, corrections to the earlier returns have to be made by filing a new return that replaces the previous return. When filing the new return, the taxable person must re-submit all the information related to the tax; they cannot simply correct the earlier incorrect information. Also, when filing a new tax return, the taxable person must provide a reason for the correction. There is a simplified procedure where the taxable person can correct a minor error (of EUR 500 or less) by reporting it on its next tax return.

Late filing penalties

If the tax return is filed late, a late filing penalty of EUR 3 per day is assessed for the first 45 days. If the tax return is filed beyond 45 days from the due date, an additional penalty of 2% for the late reported VAT (or other self-assessed tax) is assessed in addition to a late filing penalty of EUR 135 (EUR 3 x 45 days).

However, if the taxable person has filed a tax return by the due date and then makes a correction to it within 45 days after the due date, no late filing penalty is assessed. If the correction is made after 45 days from the due date, a 2% penalty fee for the late payment is assessed if the correction results in additional tax payable.

The maximum penalty charged on late reported VAT is EUR 15,000 per tax for a tax period.

Tax period

The standard tax period for reporting self-assessed taxes is a calendar month. However, if the taxable person's turnover in a calendar year is no more than EUR 100,000, they are entitled to report quarterly. If their turnover for a calendar year is no more than EUR 30,000, they can report annually. Taxable persons can apply to the Tax Authorities for a longer tax period. It should be noted that taxable persons can choose a different tax period for VAT and employer contributions.

Reporting and accounting VAT on a cash basis

Companies with a maximum turnover of EUR 500,000 during the fiscal year can opt to report the VAT on a cash basis for both supplies and purchases. This option was enacted to improve small businesses' liquidity. Accounting for VAT on a cash basis means they can report output VAT for supplies and input VAT for purchases for the month when it receives the payment for its supply and pays for purchases made. If a taxable person wants to report on a cash basis, they must do so for both supplies and purchases.

Cash basis reporting can only be applied to domestic Finnish sales and purchases. Thus, it cannot be used for reporting VAT on imports, exports, intra-Community acquisitions and supplies, or for the cross-border supplies of services where the reverse charge is applicable.

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GERMANY

CONSIGNMENT STOCK – POSSIBLE SIMPLIFICATION?

The VAT rules in Germany regarding so-called consignment stock/call-off stock have historically differed from some other European countries. Simplification measures implemented in other EU-Member States, like the Netherlands for example, were not introduced in the German VAT law or regulations.

However, a recent German court ruling with regard to consignment stock/call-off stock has set a new legal precedent in Germany. Under certain circumstances, if goods are sold under a call-off agreement, they are deemed to be a direct supply to the customer, thus potentially removing the need for the foreign supplier to be VAT registered in Germany.

Details of the case

A Spanish supplier sold goods that were produced in Spain to a German customer. Instead of shipping the goods directly to the German customer, the goods were stored in a German warehouse operated by the Spanish supplier before they were ultimately shipped to the customer in Germany (consignment stock/call-off stock).

'Delivery agreements' were in place that covered the prices, payment details, and delivery conditions. These delivery agreements were in existence before the goods were shipped. The customer was able to 'call-off' the goods and the parties entered into detailed 'call-off agreements' that set out the quantities to be delivered and delivery dates.

Therefore, from the legal agreements (which consisted of the delivery agreements together with the call-off agreements) it was evident that the goods were stored as consignment stock/call-off stock in the warehouse for a pre-determined German customer.

VAT treatment – historical

Shipment of goods from the Spanish supplier to a warehouse in Germany were treated as a deemed intra-Community supply of goods from Spain followed by a deemed intra-Community acquisition in Germany that have to be declared by the Spanish supplier in Germany.

For German VAT purposes, a taxable supply took place at the time the goods were removed from the warehouse and shipped to the German customer. As a result, due to the intra-Community acquisition in Germany as well as the local German supply, the Spanish supplier was required to be VAT registered in Germany.

VAT treatment – post the ruling

The German court ruled that if, before the goods are shipped, it is clear from the legally binding agreement(s) who the customer of the specific goods is, then the transaction is, in effect, a direct supply. As a consequence, the transaction is to be treated as an intra-Community supply of goods between the supplier and the customer. In effect, the fact that the goods are stored in a warehouse before being shipped to the customer is ignored for VAT purposes.

It is important to note that this conclusion is only applicable to consignment stock/call-off stock, as the goods must be destined for a single customer who has been identified in the contract. If several customers may receive the stock and it is not clear before the initial shipment who the customer is, then this new ruling will not apply.

It should also be noted that in this particular case, the legal agreement consisted of the 'delivery agreement' together with the 'call-off agreements' and the 'delivery agreement' specifically stated it was only legally binding in combination with the 'call-off agreements'. However, the ruling does not seem to hinge on this distinction; according to the court, the important factor was that an agreement existed for the stock between the supplier and customer and it was clear before delivery of the goods who the specific customer was.

VAT impact

The impact of this court decision is that foreign suppliers who supply goods on a call-off basis may not need to register for VAT in Germany, provided the above facts are met. This conclusion is based on the view of the German Federal Court of Finance that 'only' one type of transaction takes place, namely an intra-Community supply of goods for the supplier, followed by an intra-Community acquisition carried out by the customer.

We recommend that you assess such situations involving consignment stock/call off stock carefully because the customer might face a VAT risk if the proper VAT treatment is not identified. For example, if the supplier invoices a customer in Germany with German VAT when the transaction should have been treated as an intra-Community supply of goods, the customer faces a VAT risk. In such a case, invoiced German VAT would not be legally due and thus, the recipient would not be entitled to an input VAT deduction. And, even if the parties rectify the mistake and set-off the VAT positions, for example, during a VAT audit, the customer might face at least an interest payment.

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THE GULF COOPERATION COUNCIL STATES

VAT TO BE INTRODUCED IN 2018 – LAW STILL NOT AVAILABLE

The Member States of the Gulf Cooperation Council (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE), will introduce VAT in 2018 – with most states opting for 1 January as the implementation date. However, at this stage, neither the framework agreement, which will establish the common principles of the tax, nor the detailed national legislation has been released. This is causing some concerns with businesses in the region, which will have a limited time to prepare.

Some information on the contents of the framework is circulating and it appears it will borrow heavily from the European Directives, with principles and terminology that will be familiar to anyone knowledgeable of the EU system.

There will be a limited range of items eligible for exemption and indications are that member states will have discretion on how the exemptions are applied. It therefore seems likely there will be some significant variations across the region. Very broadly, we understand there will be an exemption for financial services and member states will be able to opt for either zero-rating or exemption for education, medical services, real estate, and local transport. Zero-rating will be possible for some medicines, food, international transport, and oil and gas.

One of the hot topics at the moment, especially in the UAE, is the treatment of free-zones. There are extensive free-zones in the UAE, particularly in Dubai, and under Emirates law businesses in some free-zones have been granted exemption from taxes for a period of 50 years. This does not sit easily with VAT and whilst it is easy to imagine goods in bonded free-zone areas will be relieved from VAT until they are removed from bond (in line with the treatment in many other jurisdictions) it is harder to see that a general relief for companies located in specific free-zone areas would be practical.

As previously reported, the rate of VAT will be 5%.

The framework agreement is likely to set a general registration threshold of approximately USD 100,000. However, some states have indicated that a phased approach will be applied in the initial stage. The UAE has previously advised that only businesses with a turnover in excess of AED 3.75 million (approximately USD 1 million) will be obliged to register in the first phase.

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INDONESIA

VAT AND/OR LUXURY TAX REIMBURSEMENTS TO CONTRACTORS IN UPSTREAM OIL AND GAS ACTIVITIES

The Minister of Finance has issued regulation no. PMK-158/2016 regarding the procedures for reimbursement of Value Added Tax (VAT) and/or Luxury Tax on Production Sharing Contracts (PSCs) signed between contractors and the government with respect to upstream oil and gas activities. The regulation, which has been in effect since 25 October 2016, provides more legal certainty regarding the limits of reimbursement of VAT and/or Luxury Tax.

The major changes

Under the previous regulations, the maximum reimbursement amount was the portion of the VAT and/or Luxury Tax that was paid with regard to the government share, which was excluded in the First Tranche Petroleum (FTP) amount. The FTP is a certain amount of one-year production of crude oil from certain areas.

Under the new regulation:

1. The maximum reimbursement amount is limited to the so-called 'government share' a contractor has paid to the state treasury, which consists of FTP and an equity portion.
2. Where a Production Sharing Contract excludes the FTP portion of the government share, the maximum reimbursement amount is limited to the equity portion.

The VAT and/or Luxury Tax that can be reimbursed is the amount paid, other than:

1. VAT that is exempt with regard to import and/or delivery of taxable goods and/or services;
2. VAT from operational costs of a Liquefied Natural Gas (LNG) plant for gas processing until sales;
3. VAT on expenses that are non-deductible under the VAT law.

Conclusion

The new regulation is more appropriate and gives legal certainty to the contractors involved in Production Sharing Contracts. Under the new regulation, contractors are entitled to more reimbursement because it is now clear that the FTP is part of the government share. The new regulation also provides the opportunity to claim VAT on LNG plant operations, which the previous regulations did not allow.

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ITALY

VAT GROUPS

The Budget Law 2017 (Law n. 232 of 11 December 2016, article 1, c. 24) has introduced VAT groups in Italy. Under the law, taxable persons established in Italy for VAT purposes can elect to be treated as a single taxable person that is identified with a single VAT number.

Requirements for creating a VAT group

The VAT group option can be exercised by taxable persons established in Italy for VAT purposes carrying out business or professional activities so long as they can demonstrate that they have certain financial, economic, and organisational links.

The following, however, cannot be included in a VAT group:

- Offices and permanent establishments located abroad; and
- Taxable persons subject to an insolvency procedure or in liquidation.

To apply to be a VAT group, the following requirements must be met:

1. **Financial** – a direct or indirect control relationship must exist between the entities. Alternatively, the entities must be controlled directly or indirectly by the same entity, provided that entity is resident in Italy or in a State having an actual exchange of information agreement with Italy as of 1 July;
2. **Economic** – the entities must all perform a business activity of the same nature or, alternatively, they must carry out a complementary activity or one that supports one or more of the entities in the group;
3. **Organisational** – there must be coordination, whether in accordance with Italian Civil Code or *de facto*, between the management bodies of the entities, even if the management is carried out by a third party.

All-in, all-out principle

The all-in, all-out principle applies to creation of a VAT group. In other words, all eligible entities must agree to the creation of the group. Once created, a group is bound together for a three-year period that is automatically renewed until the group revokes its option to be a group.

VAT group as a single entity

With an election to be a VAT group, entities that are part of the VAT group lose their independent recognition for VAT purposes. That means that transactions carried out between an entity of the VAT group and a third party are deemed to be carried out by the VAT group as a single entity. As a consequence, all VAT obligations (invoicing, bookkeeping, returns, payments) and rights (VAT deductibility, refunds) are vested in the VAT group.

Benefits and simplifications

As a consequence of electing to be a VAT group, the transactions carried out between the entities of the VAT group are not deemed to be the sale of goods or the supply of services for VAT purposes. This results in considerable benefits and simplifications, including:

a) Reduced costs associated with managing tax liabilities of the members of the VAT group because transactions between members will no longer be subject to formalities like invoicing, annotation in VAT registers, or the need for individual members to submit VAT return;

b) There is no influence on the deductibility of input VAT – intercompany transactions are VAT excluded so they will not be taken into account under a pro-rata deduction method.

The new regime is definitely applicable, and appealing, to banking and insurance groups that mainly perform exempt transactions, given that the provision of intercompany services would be excluded from VAT.

Effective date

The VAT group regime will come into force on 1 January 2019.

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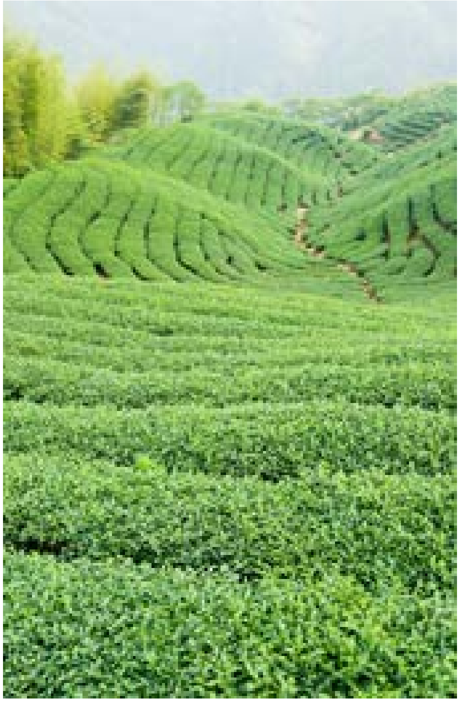
JAPAN

REVISION OF CONSUMPTION TAX RULES RELATED TO PROVISION OF CROSS-BORDER ELECTRONIC SERVICES

In Japan, the Consumption Tax (CT) is the equivalent of VAT. The CT rules for provision of certain electronic services by a foreign enterprise (a proprietor or a corporation) to Japanese customers have been amended for taxable transactions carried out since 1 October 2015.

Under the new CT rules, an 'electronic service' is defined as the provision of copyrighted articles (including licensing of copyrighted articles) and other services via telecommunication networks, for example, the internet. Distribution of online e-books, online games, music, and movies are examples of supplies that are subject to the new rules.

The amendments have significant impact on foreign providers of electronic services because of the compliance requirements and implications for their Japanese customers.



Key changes

The revision included four key changes:

a) The rules for determining whether the provision of an electronic service is considered a domestic or foreign transaction

The CT rules for determining whether a transaction related to the provision of electronic services is domestic or foreign have been revised. Previously the location of the office of the service provider associated with providing such services was determinative. Now the 'address of the service recipients' is key. This means that the provision of electronic services by a foreign enterprise to Japanese customers, which had been treated as an out-of-scope (or foreign) transaction and therefore not subject to CT under the old rules, is now treated as a domestic transaction and therefore taxable.

b) Introduction of a 'reverse charge mechanism'

The provision of electronic services by a foreign enterprise to Japanese customers is classified into the following two categories:

1. Provision of business-to-business (B2B) electronic services; or
2. Provision of business-to-consumer (B2C) electronic services.

Provision of services that normally are limited to a business enterprise, given the nature of the services or the terms and conditions relating to provision of the services, are classified as the 'provision of B2B electronic services' (for example, online advertisement services, providing a space in a cyber-shopping mall, certain online cloud services, and so on).

Any 'provision of electronic services' other than the 'provision of B2B electronic services' is classified as 'provision of B2C electronic services' (for example, online distribution of digital contents such as e-books, music, and videos).

A foreign service-provider is not required to collect the CT on 'B2B electronic services' from Japanese business enterprises. Instead, Japanese business customers are generally responsible for paying the CT through a 'reverse charge mechanism'.

In this regard, a foreign B2B electronic service provider is required to indicate on the invoice that the Japanese business service recipient is obliged to pay to a tax office in Japan the CT (output tax) on the 'B2B electronic services'.

For the 'provision of B2C electronic services', a foreign service provider is generally required to file a CT return and pay the CT on 'B2C electronic services'.

c) Eligibility for purchase tax credits associated with 'B2C electronic services' received from a foreign enterprise

A Japanese business enterprise that receives 'B2C electronic services' is not able to claim an input tax credit on the tax it pays on B2C electronic services if the foreign service provider is not a 'Registered foreign business' as described below.

d) Registration of a foreign service provider of 'B2C electronic services'

A foreign service provider may register as a 'Registered foreign business' with the Commissioner of National Tax Agency (NTA), if all the following conditions are met:

(i) They have an office or a tax agent (either a certified tax accountant or a lawyer) in Japan;

(ii) They are not delinquent with respect to any national taxes; and

(iii) If the NTA had previously revoked their registration, more than one year has passed since the revocation.

It should be noted that if a foreign service provider that would otherwise qualify as exempt from CT obligations because their taxable sales do not exceed JPY 10 million in the base period is registered as a foreign business for CT purposes, they are required to file a CT return and must pay the CT on 'B2C electronic services'.

If you would like clarification or details on any of the above, please contact me.

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LATVIA

CHANGES IN TAXATION PERIODS

To ensure additional control, starting from 2017 the Latvian tax administration has the right to request VAT returns for different taxation periods, but they cannot make more than one request per month.

Also, effective 1 January 2017, changes have been made to the taxation period for VAT returns. The six month taxation period has been changed to a quarterly taxation period (three months). For new VAT payers, for at least the first six months, their taxation period is one month, regardless of their turnover.

These amendments were made to limit the possibility of VAT fraud, especially for companies that used to incorporate for short terms and perform transactions with VAT before their first VAT return.

At the same time, to reduce the administrative burden for certain VAT payers, amendments have also been made regarding VAT returns for agricultural activities and for companies established in free ports and special economic zones.

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NORWAY

THE VAT REPRESENTATIVE SCHEME IS CHANGING

Norwegian-registered foreign enterprises (NUFs) are no longer required to have a local VAT representative in Norway if the enterprise (main office) is domiciled in a European Economic Area (EEA) member state that has an assistance agreement with Norway regarding VAT collection. This will enable enterprises from such countries to register directly with the Norwegian VAT Register.

This change is meant to improve the business opportunities in Norway for enterprises that do not have an establishment in Norway. The changes reduce the administrative costs for enterprises that choose to be directly registered.

The new rule is effective from 1 April 2017.

Enterprises domiciled in the following countries are affected by this change:

- Belgium
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Great Britain
- Iceland
- Italy
- Malta
- The Netherlands
- Poland
- Portugal
- Slovenia
- Spain
- Sweden

Enterprises domiciled in other countries must continue to have a local VAT representative that is jointly and severally liable for the payment of VAT.

Background

Since 1 May 1977, the Norwegian VAT Act has required foreign enterprises that do not have a place of business or residency in Norway but are conducting business there to register for VAT through a local representative (VAT Act Section 2-1 (6)). The representative is jointly and severally liable for the foreign business' reporting and payment of the correct amount of VAT.

In 2012, the ESA (the European Free Trade Association's surveillance body) initiated a case against Norway because it believed Norway's VAT representative scheme constituted a breach of the EEA Agreement's Article 11 (ban on quantitative import restrictions and measures with a corresponding effect) and Article 36 (ban on restrictions that hinder the free flow of services). As a result of that case, the joint and several liability for representatives of enterprises from countries that have an assistance agreement with Norway for the collection of VAT was abolished from 2013 for enterprises domiciled in countries listed above. However, until now, enterprises in these countries were still obliged to have a local VAT representative.

Conditions applicable to the changes

It should be noted that the EEA state where the enterprise is domiciled must be committed both to providing information and to assisting with the recovery of VAT claims. A tax treaty or other international agreement must also be effective for the period the VAT registration applies.

Also, under amended § 2-1 (8)[1], the Ministry of Finance may issue regulations related to conditions for an enterprise to be considered domiciled in an EEA state. The Ministry may also decide that non-effective assistance, related to information exchange and collection of VAT, may trigger the obligation for enterprises domiciled in the state concerned to be registered through a representative with joint and several liabilities. Further, the Ministry may require an enterprise wishing to directly register to provide financial security. These regulatory requirements will likely only be imposed by the Ministry if, based on actual experience, it deems such measures are necessary.

The practical consequences of the change

The requirement for a local representative is being abolished for enterprises affiliated with the countries listed above. NUFs with a main office in one of these countries may choose to report VAT themselves. From the Norwegian Tax Authorities' point of view, the conditions for determining residency in an EEA country will be fairly easy to meet[2].

If the enterprise chooses not to have a VAT representative and does not have a general manager or a board to manage the activity in Norway, the enterprise must appoint someone as contact person. The contact person submits VAT statements. It is important to point out that such enterprises may choose to continue to have a local representative and in such a case, the local person can be appointed as contact person.

[1] Prop. 113 L (2015–2016) kapittel 9, 'Til endringer i § 2-1 åttende ledd'

[2] Prop. 113 L (2015–2016) kapittel 9, 'Til endringer i § 2-1 sjette ledd'

Summary of the key changes

- NUFs of enterprises domiciled in an EEA member states with an assistance agreement with Norway for VAT collection are no longer required to have a VAT representative to submit VAT statements.
- The Central Norway Tax Region now handles all matters related to NUFs that no longer have to have a VAT representative.
- The tax office registers NUFs in the VAT Register and sends confirmation letters to the enterprise's foreign address. The registration process remains unchanged.
- Through the online portal (Altinn.no) the appointed contact person may apply for registration with the Norwegian VAT Register. VAT statements on behalf of the NUF must be submitted through the online portal.
- The Altinn form has been adapted to make it compatible with foreign account information. From 1 April 2017 (2. term), it is possible to register a foreign bank account number (with IBAN and BIC/SWIFT) on the VAT statement.
- Outgoing and incoming payments can be made to and from a foreign bank.
- Payment cards will not work abroad and will therefore not be produced and sent abroad.
- All relevant letters will be translated into English.

What should effected NUFs do?

- Effected NUFs must consider whether they wish to report VAT by themselves, or alternatively using a local contact person.
- NUFs must contact their current representative and decide how the reporting shall be handled from 1 April 2017.
- NUFS must determine whether the correct person is listed as the contact person.

What should their representatives do?

As the role of VAT representative is being abolished for NUFs registered with an enterprise domiciled in the above listed countries, representatives for such NUFs must contact the NUF.

Please note that a number of clarifications remain outstanding as regards how the transition from the role of representative to that of contact person should be handled. Once these details have been clarified, the Tax Authorities will issue updated information on the Tax Authorities' official website.

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SERBIA

ALIGNMENT OF SERBIAN VAT LEGISLATION WITH EU VAT RULES

As part of the process of aligning Serbian legislation with EU legislation, the Serbian parliament has adopted amendments to the Serbian VAT Law. The amendments relate to the rules for determining the place of supply of services. The new rules are in line with the principles set forth in the EU VAT directive. The changes relating to the place of supply rules come into effect on 1 April 2017.

Under the old rules, services were generally considered to be supplied in the country where the supplier was located (or where the supplier had a permanent establishment through which the service was provided). That rule applied unless the service fell under a special rule (there were special rules for services related to real estate properties, services of consultants, engineers, and so on).

The new rules distinguish between business-to-business (B2B) and business-to-consumer (B2C) transactions. In the case of B2B supplies, the general rule is that the service is considered to be supplied in the country where the customer is located. In case of B2C transactions, the place of supply is the country where the service supplier is located. The VAT law still includes a number of exceptions that are in line with the EU VAT rules.

In addition to the changes related to the rules for determining the place of supply of services, the amendments also contained changes, effective from 1 January 2017, related to the following:

- Clarification of when a foreign company must appoint a VAT representative in Serbia. Under the amendments, if a foreign company provides services considered supplied in Serbia to a Serbian company that is a VAT payer, the foreign company is not obliged to register for VAT purposes in Serbia. However, where a foreign company provides services that are considered to be supplied in Serbia to an entity (a company or an individual) not registered for VAT, the foreign company must appoint a tax representative for VAT purposes.
- The definition of a foreign company's permanent establishment in Serbia for VAT purposes.
- Amendments to the rules related to deduction of input VAT on construction services received.
- Introduction of new types of goods subject to the reduced 10% VAT rate.

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SINGAPORE

GST REGISTRATION LIABILITY

Determining when a liability for GST registration arises

Singapore businesses must register for GST in Singapore if their taxable turnover (total value of all taxable supplies made in Singapore excluding GST):

(a) Has exceeded SGD 1 million in the past four quarters (ending March, June, September, and December); or

(b) Is expected to exceed SGD 1 million in the next 12 months.

A business must inform the Comptroller of GST within 30 days of when its liability to register arises. To fulfil this obligation on a timely basis, therefore, a business needs to monitor, at the end of every quarter, whether its taxable turnover for the last four quarters exceeded SGD 1 million. It must also continuously monitor whether it expects its taxable turnover will exceed SGD 1 million at any time in the next 12 months. The registration threshold of SGD 1 million is not considered by reference to the sales, turnover, or income of a business as at the end of the financial year. A liability for GST registration may be triggered any time in the year and when established, the registration will be back-dated by the Singapore tax authority, possibly resulting in a penalty for late payment of taxes.

Businesses that are not required to register for GST may still do so voluntarily. However, businesses are advised to consider the voluntary registration option carefully, weighing the compliance costs against the benefits of recovering GST incurred on business expenses.

Exemption from GST registration

A business may apply for an exemption from GST registration if its taxable supplies are wholly zero-rated or substantially zero-rated. If the potential GST recovery is minimal, an application for exemption from registration may be a viable option.

Many businesses have the misconception that the SGD 1 million GST registration threshold does not include zero-rated/export sales. As a result, they fail to notify the Singapore tax authority of their interest in applying for an exemption from GST registration. A late notification of GST registration may attract a fine of up to SGD 10,000 and a penalty equal to 10% of the GST due.

Overseas businesses with no establishment in Singapore

An overseas business with no establishments in Singapore must also assess whether it has a lability to register for GST in Singapore if it contracts to sell goods to Singapore customers. Where title to the goods passes to customers when the goods are in Singapore, the place of supply is in Singapore. Accordingly, the liability to register for GST in Singapore is triggered where annual taxable turnover exceeds the SGD 1 million threshold.

In such cases, the overseas business must apply for GST registration and appoint a local agent to be responsible for all its GST matters, that is, to collect and account for GST on local taxable supplies made, file GST returns, and so on. Of course, if the overseas business meets the qualifying conditions and applies for an exemption from GST registration, then it need not appoint a local agent.

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SOUTH AFRICA

NON-EXECUTIVE DIRECTORS – EMPLOYEE, VAT VENDOR OR BOTH?

The South African Revenue Service (SARS) recently published two Binding General Rulings (BGRs) providing its views on the treatment of Non-Executive Director (NED) services and fees.

The rulings mainly deal with South African tax resident NEDs. However, it is arguable that certain NED's may still be subject to employee's tax (PAYE) and liable to register for VAT purposes. NED payments for services rendered are regarded as remuneration, regardless of whether a trade is carried on independently for income taxes if the payments are:

(i) Paid to, or on behalf of, a labour broker;

(ii) Paid to someone who is a labour broker; or

(iii) Paid to a non-resident.

For VAT purposes, NEDs receiving remuneration do not necessarily escape the VAT net merely because they receive remuneration. If a NED is an independent contractor in terms of BGR 41, a VAT liability may also arise since tests for independence vis-à-vis remuneration and enterprise should be considered independently. PAYE will then need to be withheld net of the VAT levied on these fees. Non-resident NEDs will have a VAT liability if their services are physically performed in South Africa on a continuous or regular basis. A non-resident NED providing services remotely for consumption in South Africa on a continuous basis could face a significant VAT liability.

NEDs should be familiar with SARS' interpretation of the law as it is the basis on which NEDs will likely be assessed going forward. The BGRs are effective from 1 June 2017. This means that NEDs who have a VAT liability will have to be registered as of 1 June 2017. In some instances, SARS may potentially apply the law retrospectively, imposing penalties and interest on the outstanding liability.

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SPAIN

PREPARING FOR ENTRY INTO FORCE OF THE IMMEDIATE SUPPLY OF INFORMATION (SII) SYSTEM

Further to previous articles, Spain's new system of keeping VAT register books through the Spanish Tax Authorities Electronic Office, known as the 'Immediate Supply of Information (SII)', will enter into force 1 July 2017.

This new system carries important changes to the current VAT management system and it means the supply of information to the Spanish Tax Authorities will have to be carried out almost simultaneously with billing registrations. The content of invoices will have to be sent within four working days (that is, excluding Saturdays, Sundays, and national holidays) of when the invoice is issued or from the date invoices received are entered into the accounting register. During a transition period – from 1 July 2017 to 1 January 2018 – taxpayers will have eight working days instead of four. Late submission of this information will trigger penalties of up to EUR 6,000 per quarter.

This system will be compulsory for all taxpayers submitting VAT returns on a monthly basis. Therefore, large companies (those with an annual VAT turnover exceeding EUR 6 million in Spain), VAT groups, and taxpayers enrolled under the monthly VAT refund scheme (REDEME) are subject to this regime.

It is also noteworthy that more information must be provided under the new system than is currently included in VAT register books. Under the new system certain tax-relevant information, for example, the applicability of Special Regimes, must also be included.

As well, it should be noted that the information provided may impact on other taxes or areas, for example, transfer pricing operations.

With 1 July approaching, it is crucial that effected companies ensure, before entry into force of the SII, that they have carried out the necessary changes and are ready for this new VAT management system – both from a technological and tax perspective.

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SPANISH VAT TREATMENT OF VOUCHERS

Spain has changed its interpretation of the VAT treatment of vouchers.

Under Binding Resolution V4588-16, issued by the Directorate General of Taxes (DGT), Spain adopts the criteria and definitions contained in Council Directive (EU) 2016/15065 dated 27 June 2016 on the treatment of vouchers, despite the fact that this Directive is not scheduled to come into force until 1 January 2019.

Currently there are no statutory regulations for vouchers under the Spanish VAT Act. So, their entire treatment thus far has been based on the DGT's interpretation.

The substantial change introduced in the resolution concerns the VAT treatment of intermediary services in the delivery of multi-purpose vouchers within the framework of a distribution chain.

Prior to the resolution, the DGT took the view that the sale of a multi-purpose voucher to distributors represented an intermediary action in the commercialisation of a payment method. As such, the delivery was zero rated.

The new DGT interpretation does not consider vouchers to be a payment method. Consequently, any provision of services related to multi-purpose vouchers, such as the provision of intermediary or promotional services, will be subject to VAT.

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SRI LANKA

RECENT VAT CHANGES

In this article we highlight changes in the Sri Lankan VAT Law as a result of October 2016 VAT Amendments.

VAT on wholesale trade and retail trade

Deemed VAT liability

Effective 1 January 2016, the rules related to the deemed VAT liability on all goods supplied by a person engaged in a local wholesale and retail trade business were removed.

Deemed Input VAT Credit

The concept of the deemed input tax credit has been introduced in Sri Lanka. Such credits are granted to any person engaged in a wholesale and retail trade business and who registered for VAT on or after 2 May 2016.

VAT on healthcare services

The exemption applicable to the supply of healthcare services (subject to exceptions) was removed. Such services have been brought under the VAT net.

Telecom industry

The exemption that applied to certain telecommunication services has also been removed. The following services are subject to VAT:

- The supply of telecommunication services;
- The import or supply of telecom equipment or machinery and high-tech equipment, including copper cables, for the telecom industry;
- The issue of licenses to local telecom operators by the Telecommunication Regulatory Commission.

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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 28 March 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.70215	0.76262
Euro (EUR)	1.00000	1.08603
UAE Dirham (AED)	0.25061	0.27220
United States Dollar (USD)	0.92067	1.00000
Japanese Yen (JPY)	0.00834	0.00906
Singapore Dollar (SGD)	0.66034	0.71724

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