DECEMBER 2017 ISSUE 4
WWW.BDO.GLOBAL

INDIRECT TAX NEWS

FINLAND
Changes in reporting and accounting of import VAT
READ MORE 8

ITALY
Timing of recovery of input VAT
READ MORE 10

ROMANIA
Update on the VAT split payment mechanism
READ MORE 14

UNITED KINGDOM

BREXIT – OFFICIAL POSITION PAPERS AND THEIR IMPACT ON VAT AND CUSTOMS DUTY

During 2017, the UK government has issued a number of position papers on the impact of Brexit on customs duty and VAT. Currently, these are no more than statements of intention and subject to negotiation between the UK and EU. However, cross-border businesses should take note of these proposals as they are the firmest indication so far of how their VAT and customs position might change after Brexit.

VAT

In March 2017, shortly after making its 'Article 50' notification of intention to leave the EU, the UK government issued a white paper announcing The European Union (Withdrawal) Bill. This will repeal the European Communities Act 1972 and convert EU legislation, as it stands on the last day of the UK's EU membership, into UK law.

The white paper also stated the government's intention to end the jurisdiction of the Court of Justice of the European Union (CJEU) when the UK leaves the EU, meaning UK courts will no longer be required to consider the CJEU's jurisprudence. However, the government plans to give historic CJEU case law equivalent precedent status to that of the UK Supreme Court so it can be used to interpret EU derived law as long as the latter remains on the UK statute book. The Supreme Court will also have the power to overturn the CJEU precedent, but this would be done on the same (exceptional) basis on which the Supreme Court may dissent from its own case law.

Broadly speaking, this would mean the EU law and case law that underpins the UK's VAT system will remain in force on the day that the UK leaves the EU, enabling the government to decide over time which it may wish to change.

Customs and cross-border trade

In August 2017, the government released 'Future customs arrangements: a future partnership paper' detailing its aspirations for the UK's future customs arrangements after its departure from the EU. This was followed up in October by another white paper setting out plans for a Customs bill containing legislation to implement a standalone customs regime for the UK.

Firstly, the government stated its intention to leave the EU customs union. However, it hopes to negotiate a transitional period under which the existing EU trade arrangements can be maintained while a new customs regime is developed. This, the government suggests, could be along the lines of one of the following models:

- **A streamlined customs arrangement** – To apply a customs border between the UK and EU, with negotiated trade facilitations to make trade with the EU and the rest of the world easier, for example, a waiver from the requirement to submit import and export entries for goods moving between the UK and the EU and allowing goods moving to and from the UK from non-EU countries to travel through the EU without paying EU duties.
- **A new customs partnership** – To operate a 'virtual EU' regime to goods that enter the UK for onward shipment and final consumption within the EU, under which the UK would apply the same tariffs and rules of origin as the EU. The government hopes this would allow those goods to continue moving freely between the UK and EU without the need for customs clearance at the border.

CONTENTS

EDITOR'S LETTER

Dear Reader,

As we wind down at the end of another busy year, it's great to see the BDO international network now extends to 162 countries and territories in which our global team of about 58,000 professionals are available to service the current and future needs of our growing numbers of domestic and international clients.

Despite a significant time lapse since the Brexit Vote, there's little clarity to report. We don't know whether there will be simplification arrangements made to reduce or eliminate the expected costly and bureaucratic indirect tax consequences and challenges that await European Union businesses that trade into the UK and vice versa. The article from BDO in the United Kingdom on the front page of this issue provides more detailed insight into the current position.

And, as a number of the 6 GCC Gulf States prepare for the introduction of VAT in January 2019, no doubt there'll be a lot for us to report from that part of the world too in 2018.

I thank you for your support of the BDO Network throughout 2017 and I wish you a peaceful and safe Christmas and New Year holiday season!

Kind Regards from a chilly Dublin!

IVOR FEERICK
Chair – BDO International VAT Centre of Excellence Committee
Ireland – Dublin
ifeerick@bdo.ie

The 'no deal' option

The October white paper added a contingency plan to set up a WTO compliant customs system for the UK in the event it was unable to agree either of the above models with the EU. Under this, trade with the EU will be subject to customs declarations and customs checks. The UK would apply the same customs duty rates to each country with which it did not have a trade deal (or preferential rates for developing countries), with precise duty rates to be set out in secondary legislation before the UK leaves the EU. UK businesses trading only with the EU will have to apply for an EORI number, currently required to trade goods with countries outside the EU, and quote it on customs declarations. The white paper also states that the customs bill will include provision to allow the government to implement measures to mitigate the impacts on traders, but does not comment on what these might be.

The government recognises that imports and exports of goods through 'roll on roll off' ports will be particularly affected by customs formalities at the border so proposes that consignments are pre-notified for customs and safety and security purposes, with an inland presentation scheme for exports. It also wants to avoid any return to a hard border between Ireland and Northern Ireland and says that the EU has made a clear commitment to work on a solution for this. However, neither customs paper sets out a specific plan to address that issue.

The proposed Customs Bill has just been presented to the UK Parliament for scrutiny. Meanwhile, the government has launched a public consultation on its customs proposals – asking in particular for details of individual businesses' EU trading activities, the time sensitivity of their supply chains and how long it would take to prepare for the changes.

Where does this leave businesses?

The proposed assimilation of EU law and case law suggests that the UK VAT system will continue unchanged immediately after Brexit. However, there are a number of important VAT considerations that the government has not yet addressed, such as:

- How it might mitigate the impact of import VAT on businesses' cash flow – in its recent Budget statement, the government has noted this as a point of concern but has yet to make any specific proposals to tackle this problem.
- The fate of VAT simplifications agreed between Member States for cross-border supplies of goods and services (for example, triangulation, reverse charge, distance selling, the Mini One Stop Shop, the Tour Operators Margin Scheme).

On the customs side, much remains to be done before a post Brexit regime is confirmed for trade in goods. Both suggestions offered by the UK would require a great deal of co-operation from the EU and received a cool response from EU officials when first published. At this stage, the contingency WTO plan, which would require customs declarations at import and export, looks like the most likely outcome.

With less than eighteen months until the UK is due to leave the EU, businesses still have very little concrete information about how it will affect them from a VAT and customs perspective, making it difficult to plan for the practical and systems changes Brexit may entail. However, it is perhaps worth noting that HMRC, the UK tax authority, has said it will need to recruit 5,000 new staff in the event of a 'no-deal' Brexit – which says a lot about the potential increase in administration it could cause.

How BDO can help

While negotiations continue, BDO UK has produced a **Brexit Planning Guide** and a **free Brexit planning tool** to help cross-border traders in the UK evaluate the most likely impacts on their business and focus on the practical steps that can be taken now. Another version of the Brexit Planning Guide, aimed at EU businesses, will follow in early 2018.

TOM KIVLEHAN
United Kingdom – London
tom.kivlehan@bdo.co.uk

ARGENTINA

STATUS OF WITHHOLDING TAX ON NON-RESIDENTS – PROVINCIAL SCOPE

A while back, we wrote about the Province of Buenos Aires implementing a withholding regime for non-residents of the Republic of Argentina who occasionally carry on activities within the provincial territory. At the end of 2015, the Province of Buenos Aires adopted the tax withholding treatment that went into effect in the Autonomous City of Buenos Aires at the end of 2014.

The withholding regime in effect in the Province of Buenos Aires provides that those who act as contractors, organizers, administrators, users, holders, or payers to non-resident suppliers, must pay the tax levied on those who render the services (including, for example, musicians, rock bands, theatre groups, those supervising engineering works, those implementing software).

In fact, under the withholding regime, the local person receiving the goods or services is deemed the substitute taxpayer and they must withhold the tax from the amount they are supposed to pay the non-resident.

The Province of Córdoba recently introduced a similar regime (published on 10 May). This regime makes it clear that the withholding is appropriate when the good or service is used and/or exploited in the Province.

It should be noted that when this regime comes into force in the Province of Córdoba, it will entail a cost for foreign persons and therefore it could affect current contracts. Nevertheless, given that this tax is applied on the gross invoice amount, foreign persons should analyse whether it can be used to offset any taxes in their home jurisdiction.

Interestingly, because of the constant controversy surrounding the withholding tax regime, the City of Buenos Aires has suspended the withholding tax regime.

GUILLERMO JAIME POCH
ALBERTO FABIÁN MASTANDREA
Argentina – Buenos Aires
gpoch@bdoargentina.com
amastandrea@bdoargentina.com

AUSTRIA

EUROPEAN COURT JUDGEMENT THREATENS INDEPENDENT GROUPS OF PERSONS (IGP) EXEMPTION FOR FINANCE AND INSURANCE COMPANIES

On 21 September 2017, the Court of Justice of the European Union (CJEU) released judgements in three cases related to the VAT exemption for independent groups of persons (IGP) within the meaning of Art. 132(1)(f) of the VAT Directive (Paragraph 6(1)(28) of the Austrian VAT Act). The three cases were: Rs C-605/15, Aviva, Rs C-326/15, DNB Banka, Rs 616/15, Commission against Germany.

This VAT exemption, sometimes known as the 'cost sharing exemption', allows businesses and organisations making VAT exempt and/or non-business supplies to save VAT by 'clubbing together' to form an IGP. The IGP can then provide services to its members and recover each member's share of the cost without charging VAT. This allows economies of scale to be achieved without incurring the VAT cost normally associated with outsourcing and puts small or fragmented organisations on a level playing field with larger entities who are able to undertake these services in-house.

Each of the CJEU cases involved a bank or insurance company that sought an IGP exemption. According to the CJEU, the IGP exemption generally does not apply to banks and insurance companies since the exemption provided in Article 132 relates only to IGPs whose members carry on an activity in the public interest. The services supplied by a group whose members carry on an economic activity in the area of financial and insurance services do not constitute an activity in the public interest and so they are not entitled to this exemption.

The CJEU also noted that the national authorities cannot reopen tax periods that have been definitively closed. As regards tax periods that have not yet been so closed, the CJEU made it clear that national authorities cannot rely on the judgements to refuse to exempt the supply of services of such IGPs from VAT.

Austria's IGP Exemption

Paragraph 6(1)(28) of the Austrian VAT Act provides the following three tax exemptions:

- Services performed by IGPs whose members perform mainly banking, insurance, or pension fund services to their members are tax exempt under certain conditions (invoicing at cost, direct use for tax exempt activities);
- Services provided by one taxpayer to another taxpayer are tax exempt under certain conditions, provided that both perform mainly banking, insurance, or pension fund services (for example, services provided by one bank to another). According to the Austrian tax authorities, this exemption is also applicable to services performed by one IGP to another (inter-IGP services);
- Provision of personnel from an IGP member to the IGP.

As these transactions usually do not 'serve the public interest', given the decision of the CJEU, it is expected that Paragraph 6(1)(28) in its current form can no longer continue to exist. For banks and insurance companies within existing IGPs this means that the cost allocation would no longer be VAT-exempt and the non-deductible VAT would remain a cost factor. In such cases, however, the VAT burden could be mitigated by forming a VAT group. Of course, to do so the integration conditions for a VAT group must be satisfied.

At this point, it remains to be seen how the judgements will be implemented by the Austrian legislature.

ANDREA HASLINGER
Austria – Vienna
andrea.haslinger@bdo.at

BELGIUM

VAT RECOVERY – NEW APPROACH TO CORRECTION OF VAT INVOICES

The Belgian VAT authorities have recently published a Circular Letter whereby they align their very strict position regarding the right to deduct VAT to recent decisions of the Court of Justice of the European Union (CJEU).

Current principles in Belgium

Until now, the Belgian VAT administration adopted a very formalistic approach and often denied the right to deduct Belgian input VAT if the corresponding invoice did not mention all mandatory invoice requirements.

During VAT audits, this frequently resulted in an obligation to reimburse input VAT (deducted based on an incomplete/incorrect invoice), increased by late payment interest and penalties. The taxpayer then had to obtain corrected/completed invoices to eventually secure VAT recovery in a later VAT return (provided no prescription had occurred in the meantime).

Influence of recent European case law

Following the European case law (principally the CJEU judgments in cases C-516/14 Barlis and C-518/14 Senatex), the Belgian VAT authorities felt obliged to soften their formalistic approach.

The new Circular Letter allows the taxable person to submit corrected invoices and/or additional supporting documents (for example, contracts, purchase orders, fee quotes, correspondence, and so on). Provided these documents can be supplied within a reasonable timeframe and ultimately before the VAT audit is closed, and it can be demonstrated that the material conditions are met, the taxable person will be able (in the absence of any fraudulent intent or abuse) to preserve their right to VAT deduction.

Consequences for the Belgian VAT practice

Although this 'substance over form' approach does not create any new rights for businesses, it will have a significant impact on the way VAT audits are conducted going forward.

The mere discovery of non-compliant invoices will no longer (automatically) trigger a regularisation of the input VAT at the taxpayer's expense. The latter will have the opportunity to obtain and deliver corrective documents or circumstantial evidence, to secure their VAT recovery.

PASCAL DAUW
TINE MERTENS
Belgium – Ghent/Brussels
pascal.dauw@bdo.be
tine.mertens@bdo.be

BRAZIL

FEDERAL GOVERNMENT'S TAX INSTALMENT PROGRAM

The highly anticipated Special Tax Regularization Program (*Programa Especial de Regularização Tributária* – PERT), which is basically a tax instalment program established by Provisional Executive Order No. 783/2017 (MP 783), has proven popular with Brazilians who are taking advantage of it to bring their tax filings up-to-date. In 2017, the objective was to collect approximately BRL 13 billion for the public treasury.

Initially the offered benefits of the instalment program were basically discounts on fines and interest, combined with the ability to make instalment payments to pay taxes owed. Taxpayers taking advantage of the instalment program also could use their income taxes and social security contribution tax losses to reduce their tax debt.

Because so few taxpayers participated in the program, the federal government issued new rules, extending the deadline for claiming the instalment and increasing the benefits offered.

Currently, PERT is regulated by Federal Law No. 13.496/2017 and it allows taxpayers to pay their tax debts in up to 175 instalments, with discounts of up to 90% on late payment interest and up to 70% on fines.

It is estimated that taxpayers participating in the amnesty program will inject about BRL 7 Billion into the public treasury. This instalment payment program should allow companies to catch their breath as they await recovery of the Brazilian economy.

BRUNO FANTI
QUELI MORAIS
Brazil – São Paulo
bruno.fanti@bdobrazil.com.br
queli.morais@bdobrazil.com.br

ECUADOR

SPECIAL CONSUMPTION TAX

Ecuador's Special Consumption Tax (*Impuesto a los Consumos Especiales* – ICE) taxes the transfer of goods and services that are considered luxuries or harmful to health, such as:

- Cigarettes and tobacco products;
- Beer;
- Soft drinks;
- Alcohol;
- Perfumes and eau de toilette;
- Video games;
- Firearms and munitions;
- Incandescent lamps;
- Vehicles;
- Airplanes, light aircraft, helicopters (except for such aircraft used for passenger transport);
- Yachts, jet skis, motorcycles, and boats;
- Pre-paid television services.

Natural and legal persons that manufacture or import such goods and services are subject to this tax.

The Special Consumption Tax is charged when Ecuadoran-made goods or services are transferred, regardless of whether the goods are paid for or are free. On imported goods, the tax is applied when the goods are customs cleared.

The tax rate of ICE ranges from 5% on vehicles costing under USD 20,000 to 300% on firearms and munitions.

Taxpayers who have charged ICE on their goods or services must submit to following to the tax administration:

- A monthly ICE statement form;
- A monthly ICE Annex;
- A list of prices of goods and services sold to the public (this information must be provided in the so-called PVP Annex).

If a taxpayer does not provide the required forms and information within the time required by law, the taxpayer will be subject to interest and fines.

Because this tax is transferred to the final consumers of the goods and services, it makes acquiring these products more expensive, helping to curb the sale of such goods.

VERÓNICA PEÑA
Ecuador – Quito
vpena@advice.com.ec

THE EUROPEAN UNION

INTRA-EU TRADE IN GOODS – EUROPEAN COMMISSION PROPOSES NEW VAT REGIME

The European Commission has released further details of its plans to replace the current system for accounting for VAT on Intra-EU business-to-business (B2B) supplies of goods with a new 'Single VAT Area'. The Commission plans that this new VAT system for Intra-EU B2B supplies of goods will come into force in 2022, with a transitional period scheduled to begin in 2019.

The 'Single VAT Area'

The Single VAT Area is one of five proposals that make up the EU's wider VAT Action Plan to reform VAT, which were first announced in 2016. As already outlined by the Commission, the Single VAT Area means that:

- VAT on Intra-EU B2B supplies of goods will be charged by the vendor in Country A (country of origin), but at the rate applicable in Country B (country of consumption/ destination).
- The VAT is declared and paid by the vendor in Country A via a web portal, through which the VAT will be paid over to the tax authorities in Country B.

The main aim of this change is to combat Intra-Community VAT fraud, which contributes heavily to the current 'VAT gap' of EUR 150 billion.

The latest documents not only announce the target implementation dates: they also provide more detail of the changes that will apply during the transitional period; for example, the new concept of 'Certified Taxable Person' (CTP), and interim simplifications intended to protect the Intra-EU VAT system before the new system comes fully into force in 2022.

Certified Taxable Person status

There will be a transitional period (currently planned to run from 1 January 2019 to 31 December 2021) under which Certified Taxable Persons ('trustworthy' purchasers certified by their national tax authority) can continue to use the current dispatch and acquisition system to account for VAT on goods they buy from other EU Member States. Those that do not qualify must use the new Single VAT Area regime from 1 January 2019.

VAT registered businesses with a place of business or fixed establishment in the EU can apply to their national tax authority for CTP status, provided they meet criteria related to:

- Good tax compliance;
- An auditable system demonstrating a high level of control of the business' operations and the flow of goods;
- Evidence of financial solvency.

Those already approved for Authorised Economic Operator (AEO) status will be deemed to have met the eligibility criteria.

Subject to conditions, CTPs will also be entitled to use other simplifications related to Intra-EU trade, including removal of the requirement of some Member States for the supplier to register for VAT in each EU country Member State where it stores call off stock for a predetermined customer, plus other easements related to chain transactions and evidence of dispatch of goods.

Next steps

The EU's plans are ambitious and the Single VAT Area proposal remains subject to approval by Member States, so the timescale for its implementation is not yet set in stone.

Assuming all Member States quickly agree to the proposals, this leaves only 14 months to set up a system for approving CTP status, which the majority of businesses buying and selling goods with other EU Member States will regard as essential.

The Commission says that more draft legislation will be published in spring 2018.

SARAH HALSTED
United Kingdom – London
sarah.halsted@bdo.co.uk

FINLAND

CHANGES IN REPORTING AND ACCOUNTING OF IMPORT VAT

VAT on imports into Finland is currently levied by the customs authorities. Beginning 1 January 2018, the Finnish tax authorities will take over responsibility for assessment of VAT on imports when the importer is registered for VAT purposes in Finland. However, the customs authorities will still take care of VAT on imports made by private persons and entities not registered for VAT in Finland. So, foreign companies that are not registered for VAT in Finland will still have to account to the customs authorities for VAT on imports.

Come 2018, entities registered for VAT in Finland will report the VAT on imports to the tax authorities on their own initiative in their tax return for self-assessed taxes, as a part of the normal VAT reporting. If the import is for their business activities subject to VAT, they can deduct the VAT on imports in their VAT return. Thus, a VAT registered importer has to pay VAT on imports only if it has no right to recover the VAT on the imports.

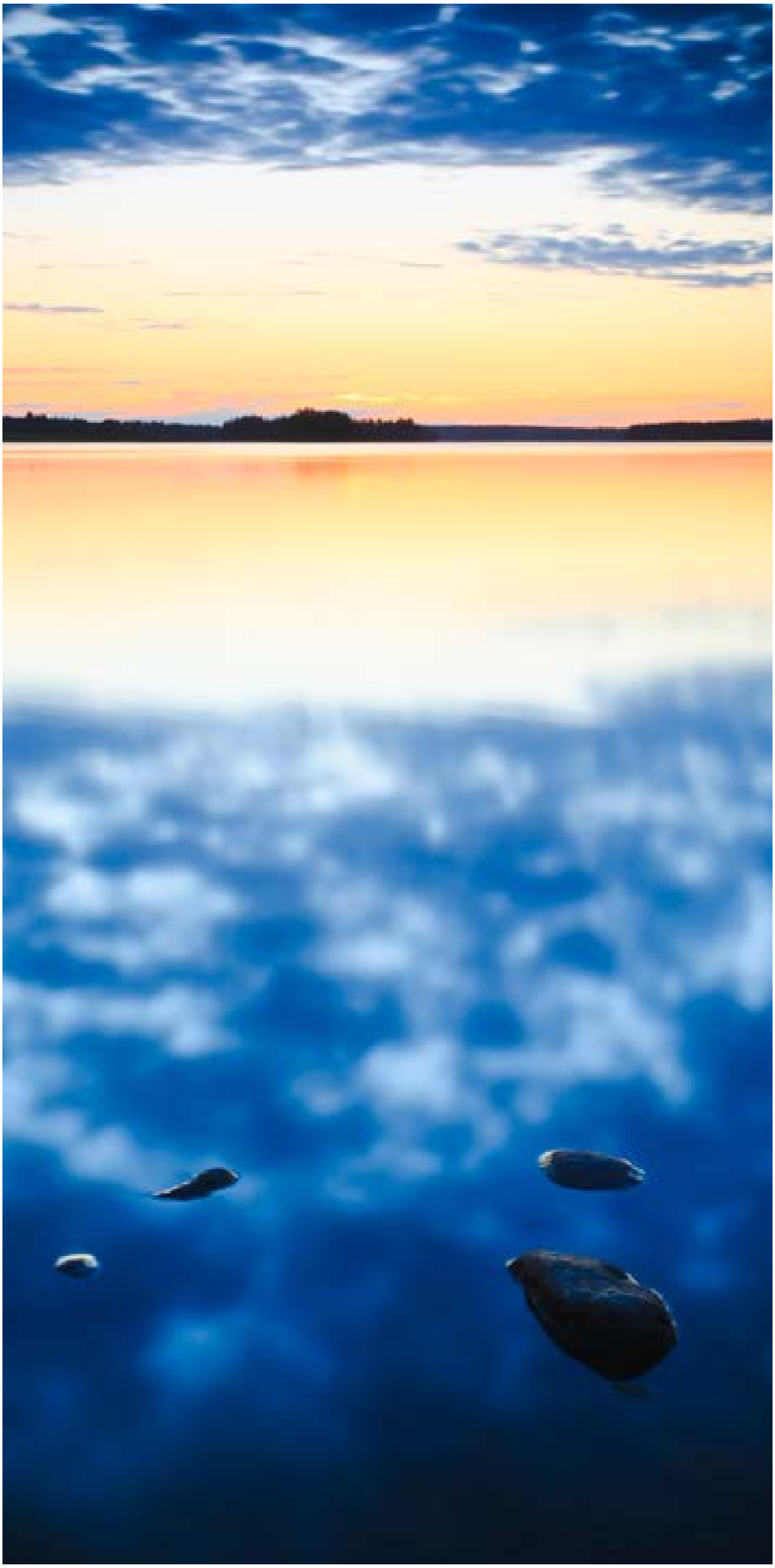
If a foreign entity has registered in Finland only for notification purposes, in other words, to report Intra-Community acquisitions, the foreign entity is not deemed a person liable for VAT. Therefore, it reports the VAT on imports as an output VAT payable in its tax return and accounts for the VAT to the tax authorities. If the foreign entity is entitled to recover the VAT on that import, it must apply separately for a VAT refund for foreign businesses.

The VAT on imports is reported in the month the import clears customs.

Under these new procedures, the importer is liable for calculating the amount of VAT on importation. So, to calculate the VAT on imports, importers must be aware of what amounts are included in the VAT tax base. The following are included in the tax base:

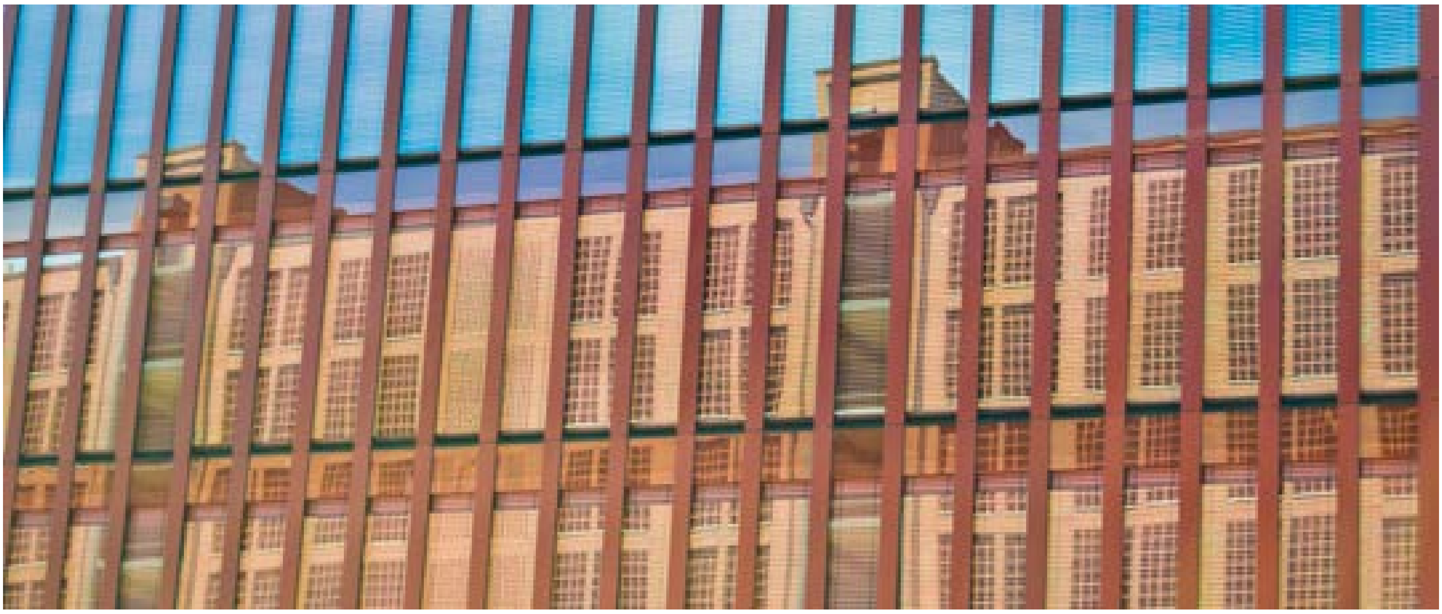
- The customs value of the imported goods;
- Other taxes (except for VAT), including customs duties and import fees levied by the Finnish State or by the EU;
- Other fees and taxes paid outside the EU as a result of the importation of the goods;
- Freight, loading, and unloading costs;
- Insurance premiums;
- Other costs related to importation to the first destination in Finland. If, at the time of importation, the importer knows that the goods will be transported to a second destination in Finland or in another EU Member State, the costs related to importation to the subsequent destination must also be included in the tax base.

MIIKA JOKINEN
Finland – Helsinki
miika.jokinen@bdo.fi



GERMANY

CONSIGNMENT STOCK IN GERMANY – IS VAT REGISTRATION REQUIRED OR NOT?



When it comes to goods distributed using consignment stock or warehouses, the delivery of the goods may be viewed by the tax authorities as two transactions, rather than one. Namely, one that involves goods being transported into the warehouse, which could be deemed an Intra-Community supply and acquisition, and a second one that involves the stock being supplied out of the warehouse, which could be a domestic supply. However, two recent decisions by Germany's Federal Finance Court had to do with the conditions under which a direct supply to the customer can be assumed, that is, one transaction occurs. In a circular dated 10 October 2017 the German tax authorities have adopted the court's reasoning in the German VAT application decree.

Predetermined final customer and brief storage period

The German tax authorities are generally sticking to the principle that a direct supply can only take place if there is a predetermined final customer.

With regard to deemed Intra-Community transactions, the German tax authorities indicate in the VAT application decree that where a predetermined final customer is known before the transportation of the goods begins in another EU Member State, a deemed Intra-Community transaction does not take place. Instead, it is a direct supply that has its tax point when the transportation begins.

A supply will be deemed to be a direct supply, for example, if the customer has made a binding order or has already paid for the goods in question. If one of these conditions is fulfilled, a direct supply will also take place in a 'shipment on hold' situation, as well as in the case of short-term storage (for some days or weeks) in a consignment stock situation.

But, where there is merely a potential customer, in other words, no one is obliged to accept the goods, this will not be sufficient to be considered a direct supply. In this situation the transportation of the goods into the warehouse will be regarded as a deemed Intra-Community transaction and the subsequent withdrawal of the goods will be a domestic supply and therefore generally subject to VAT.

Consequently, the tax authorities extended the criteria for a direct supply to exist where there is either a binding order or the payment for the goods has been made before the transportation starts.

Time of supply

In the case of supplies of goods with transportation, the tax point is the time the transportation begins. This tax treatment also applies where the goods are not being directly transported to the recipient but are being stored for an interim period in a warehouse. Thus, the tax point is not the time when the goods are being withdrawn from the stock (as is the case for most simplification measures for consignment stock in other EU Member States) but the time the transportation begins.

This tax treatment applies to all situations, even for local consignment stocks, so suppliers will be required to account for the supply in the reporting period when the transportation of the stock begins, not when the goods were withdrawn from the warehouse. Consequently, when it comes to claiming an input VAT deduction, it will be important for the recipient of the goods to determine whether the stated time of supply on the invoice is appropriate due to a possible timing difference.

Time-line

Though this tax treatment is applicable to all open cases, there is a transition period for transactions that take place before 1 January 2018.

Future EU developments related to consignment stock

Unfortunately, when it comes to consignment stock/warehouses each EU Member State can have its own regulations, particularly when it comes to consignment stock, as various countries provide simplification measures related to them.

In this regard, the EU Commission has published a proposal to amend the EU VAT Directive to introduce an EU wide simplification for consignment stock. Beginning 1 January 2019, when the necessary requirements are met (see proposed Art. 17a EU VAT Directive), supplies from consignment stock from one EU Member State into another will be treated as Intra-Community supplies.

ANNETTE POGODDA-GRÜNWALD
DANIEL AUER
Germany – Berlin
annette.pogodda-grunwald@bdo.de
daniel.auer@bdo.de

ITALY

TIMING OF RECOVERY OF INPUT VAT

A new provision included in Italy's VAT Law reduces the period in which input VAT can be recovered.

According to Law Decree n. 50/2017, which became Law n. 96/2017, beginning 1 January 2017, input VAT can be recovered only until the deadline for filing the annual VAT return for the year in which the VAT becomes payable. For fiscal year 2017, for example, the deadline for submission of the annual VAT return is 30 April 2018, which will be the last date taxpayers can recover input VAT related to fiscal year 2017. Therefore, under this provision, input VAT included in an invoice issued on 31 December 2017 can be recovered only until 30 April 2018.

Before application of this new provision, the latest input VAT could be recovered was in the VAT return relating to the second year after the year when the right of deduction arose.

This new provision creates many uncertainties with regard to the correct exercise of the right to deduct input VAT and many different interpretations or solutions are provided by authoritative doctrine. But, the Italian Tax Authorities have not yet provided any official clarification regarding the new provision.

Based on the provision, which hopefully will be amended by the Italian government, the last day to deduct input VAT will be:

- Input VAT related to fiscal year 2015: 30 April 2017;
- Input VAT related to fiscal year 2016: 30 April 2018;
- Input VAT related to fiscal year 2017: 30 April 2018;
- Input VAT related to fiscal year 2018: 30 April 2019.

We will keep you informed of any further developments with respect to this provision and, of course, we would be happy to respond to any questions.

LORENZA CASARI
Italy – Turin
lorenza.casari@bdo.it

LATVIA

REDUCED VAT RATE ON VEGETABLES, FRUITS, AND BERRIES

The VAT rate on typical Latvian vegetables, fruits, and berries is being reduced from 21% to 5% beginning 1 January 2018.

The new reduced VAT rate will apply to washed, peeled, shelled, cut, and packaged fresh fruit, berries, and vegetables. It will not apply to products that have been thermally or otherwise processed, such as frozen, salted, or dried products. To avoid any ambiguity, a new appendix to the VAT law has been prepared that lists the items the reduced VAT rate will apply to.

The VAT reduction, proposed by the Ministry of Agriculture and supported by the Cabinet of Ministers, is expected to contribute to the development of the horticulture and gardening industry. It is intended to help producers and buyers by lowering prices for these items.

The reduced VAT rate on Latvian vegetables, fruits, and berries is expected to apply from 1 January 2018 to 31 December 2020.

VALTS STŪRMANIS
JEĻENA BĀRTULE
Latvia – Riga
valts.sturmanis@bdo.lv
jelena.bartule@bdo.lv

MONTENEGRO

NEW VAT RATE AND OTHER VAT CHANGES

A number of changes to Montenegrin VAT have been made recently. In this article we review the most significant ones.

Increase in the general VAT rate

As of 1 January 2018 the general VAT rate is increasing from 19% to 21%.

Determination of the place of supply of services

To further reconcile Montenegrin VAT Law with the EU VAT regulations, the general rule of the place of supply of a service has been changed. The rule used to be that a service is considered to be supplied where the supplier is located. Beginning 8 August 2017, a service is considered supplied where the recipient of the service is located or has a permanent establishment (PE) (if the PE and parent company are located in different places and the supply is performed for the PE), or where the recipient has their place of permanent residence.

To apply the new general place of supply rule, the recipient of the service must be considered a taxpayer according to Article 17 of the VAT Law. Under Article 17, the following qualify as taxpayers:

- Persons carrying on business activities in Montenegro on a permanent basis;
- Legal entities, state bodies, bodies of the autonomous regions, and local municipalities and other public legal entities; and
- Foreign legal entities.

If the supply of services is performed for an entity that is not a taxpayer, the general place of supply of those services is considered to be the place where the service provider has its seat or PE (if the supply is performed from a PE that is not located at the seat of the supplier), or at the supplier's place of permanent residence. It should be noted that there are some exceptions to these general rules.

Procedure for appointment of a VAT representative

The Rulebook on the application of the VAT Law has been amended with respect to the rules for when someone can be appointed as a VAT representative of a foreign person. Starting 22 August 2017, a person is qualified to act as a VAT representative of a foreign person if:

- They have been registered for VAT at least 12 months before they submit an application to be appointed as a VAT representative;
- They have no unpaid tax liabilities as of the day they apply to be a VAT representative; and
- They have never been convicted of a criminal tax offence.

Requests for appointment as a tax representative must be submitted at least 15 days before the foreign entity starts carrying on activities in Montenegro.

ZDRAVKO GARDOVIĆ
BRANKA MARKOVIC
BOJAN CEPIC
Montenegro – Podgorica
Serbia – Belgrade
zdravko.gardovic@bdo.co.me
branka.markovic@bdo.co.rs
bojan.cepic@bdo.co.rs

THE NETHERLANDS

LEASE WITH A PURCHASE OPTION – SUPPLY OF GOODS OR SUPPLY OF SERVICES?

The Court of Justice of the European Union (CJEU) recently handed down its opinion in Mercedes-Benz Financial Services UK Ltd. (Case C-164/16, dated 4 October 2017), where the issue was how a lease agreement with a purchase option should be treated for VAT purposes.

Mercedes Benz Financial Services UK Ltd (MBFS) offered financial products related to the use and acquisition of vehicles. In respect of this case, MBFS offered three standard types of vehicle-use agreements: leasing, hire purchase, and a mixed agreement they called 'Agility'. The Agility agreement and its classification for VAT purposes was the subject in the main proceedings before the CJEU.

The Agility agreement was structured such that after the lease term expired, the lessee had a purchase option containing the payment of a final amount that corresponds to the mean anticipated value of the vehicle at the time of purchase (the final amount varied from 42% to 48% of the initial price). The sum of the instalments corresponded to the remaining part of the vehicle price (including financing costs). According to the findings of the court that referred the matter to the CJEU, approximately half of all Agility customers took advantage of the purchase option. At issue was whether the Agility agreement qualified as a supply of goods under Article 14(2)(b) of the VAT Directive or as a supply of services.

Preliminary questions were asked to establish whether, and to what extent, the words 'contract for hire which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment', used in Article 14(2)(b), must be interpreted as applying to a leasing contract with a purchase option, such as the Agility agreement.

The CJEU was of the opinion that these words must be interpreted as applying to a leasing contract with a purchase option if it can be concluded from the contract that exercising the option appears to be the lessee's only economically rational choice when the contract is performed for its full term. This question is something the national courts need to decide, according to the CJEU.

How it works in The Netherlands

According to Dutch VAT regulations, a leasing contract qualifies as a supply of goods for purposes of Article 14(2)(b) when five conditions are met. One of these conditions is that the lessee has the option to buy the asset for such a low price that it must be assumed the lessee will exercise this option. The Dutch Ministry of Finance is of the opinion that this condition is met when the amount of the purchase option is so low that, for economic reasons, it forces the lessee to choose the option. Under Dutch VAT Regulations, a purchase option is economically 'forced' when the price is 10% or less of the economic value of the asset at the end of the leasing agreement. The amount of the purchase option must be determined at the start of the lease. An unforeseen drop in the value of the car does not affect the initial qualification of the agreement as a financial lease, even if the drop causes the lessee to decide not to purchase the car. If the drop in value was foreseen, this could affect the VAT qualification of the leasing agreement.

In our opinion, the Dutch regulation is in line with the opinion of the CJEU, since it appears from this decision that exercising the purchase option appears to be the only rational choice for the lessee, which will be the case when the amount of the purchase option is set at a very low price. However, we are of the opinion that the 10% threshold can conflict with this judgement, since it is conceivable that in some cases a higher percentage can lead to the result that the purchase option is the only economically rational choice to be made by a lessee.

The judgement of the CJEU gives Dutch taxable persons more opportunities to argue that a particular lease agreement qualifies as a supply of goods than they might be able to argue under the decree of the Dutch State Secretary. (And of course, as long as the decree is not adjusted, taxable persons can still make use of the decree's 10% threshold.)

When dealing with situations where the place of supply is in the Netherlands, it is wise to discuss them with a Dutch VAT adviser.

MARCO BEERENS
The Netherlands – Breda
marco.beerens@bdo.nl

PANAMA

VAT WITHHOLDING AGENTS

VAT withholding agents are obliged to report and pay VAT amounts withheld and they must also issue VAT withholding certificates to the legal entities or individuals subject to VAT withholdings.

The following persons can be designated as VAT (*Impuesto sobre la Transferencias de Bienes Muebles y la Prestación de Servicios*) withholding agents:

(i) Government entities;

(ii) Panamanian-based clients of foreign individuals or companies not domiciled in Panama;

(iii) Entities that do not have legal personality;

(iv) Companies that have annual revenue in excess of USD 5 million and that are listed and designated by the Tax Authority (*Dirección General de Ingresos*); and

(v) Entities administering debit and credit card operations.

The VAT withholding agent's obligation to withhold arises when the withholding agent performs the first of the following events:

(i) When the agent pays the supplier for the goods or services;

(ii) When the agent makes the funds available to the supplier of the goods or services; and

(iii) When contractual deadlines for making the payment are met.

Reporting and payment procedures

The withholding agent must file a monthly tax form (Form 433) that shows:

- All transactions subject to VAT withholdings;
- The VAT withholding tax payable to the Tax Administration; and
- A description and information related to the legal entities and individuals bearing the tax withholdings.

Form 433 must be filed no later than the 15th day of the month following the month in which the withholdings were made. The payments are also due on the same date.

RAFAEL RIVERA CASTILLO
MALVIS A. MINA MUÑOZ
Panama – Panama City
rrivera@bdo.com.pa
mmina@bdo.com.pa

ROMANIA

UPDATE ON THE VAT SPLIT PAYMENT MECHANISM

As mentioned in our last article, the VAT split payment mechanism is expected to take effect in Romania starting 2018. This mechanism will require taxable persons and public institutions, regardless of whether they are registered for VAT purposes, to pay VAT related to the purchase of goods or services into a separate bank account the supplier opens specifically for collection of VAT. The Senate adopted the provisions related to the VAT split payment with amendments and it still must be reviewed and passed by the Deputies Chamber, the ultimate decision maker.

According to the proposed amendments, as of 1 January 2018 the VAT split payment mechanism will become mandatory for some and optional for others, as follows:

Mandatory application

The VAT split payment mechanism will be mandatory for taxable persons and public bodies registered for VAT purposes if one of the following criteria apply:

- On 31 December 2017 the taxpayer has overdue VAT liabilities of more than RON 1,500 for large taxpayers; more than RON 1,000 for medium taxpayers; more than RON 500 for small taxpayers; or more than RON 100 for natural persons.
- As of 1 January 2018 the taxpayer has VAT liabilities that are overdue more than 30 days and that equal more than RON 1,500 for large taxpayers; more than RON 1,000 for medium taxpayers; more than RON 500 for small taxpayers; and more than RON 100 for natural persons.
- The taxpayer falls within an insolvency/ insolvency prevention scheme.

Optional application

The VAT split payment mechanism will be optional for all other taxable persons and public bodies registered for VAT purposes. Taxpayers can exercise the option by submitting a notification that they will apply it.

Obligations of beneficiaries

Beneficiaries of suppliers/providers are required to transfer the VAT amount into the separate VAT bank account of suppliers/ providers that fall within the VAT split payment mechanism.

An exception

Natural persons and taxpayers that are non-established and non-registered for VAT purposes and that are not required to register for VAT purposes are not required to make split payments.

Conclusion

Though the version adopted by the Senate provides an option that was not in the original version, given the low thresholds with respect to overdue VAT liability and the obligations of beneficiaries acquiring goods/services from taxable persons falling within the mechanism, the new provisions really only offer a pseudo option.

DAN BĂRĂSCU
VLAD MĂDĂRAS
Romania – Bucharest
dan.barascu@bdo.ro
vlad.madaras@bdo.ro

SINGAPORE

CLARIFICATION ON 'DIRECTLY IN CONNECTION WITH' AND 'DIRECTLY BENEFIT' FOR GST PURPOSES

A supply of services is zero-rated if the services are 'international services' as defined under Section 21(3) of the GST Act. Among the 25 provisions (from (a) to (y)) that relate to international services, some do not require that the services supplied be 'directly in connection with' goods or land situated outside Singapore or that they 'directly benefit' an overseas person.

General circumstances where zero-rating relief may not apply

There are two categories of supplies of services for which zero-rating relief may not apply:

(a) Where there is a direct connection between the supply of services and goods or land situated in Singapore; and

(b) Where there are local persons who derive direct benefits from the services.

The Inland Revenue Authority of Singapore (IRAS) has recently published a revised edition of the e-tax guide "GST: Clarification on 'Directly in Connection with' and 'Directly Benefit'" (the e-tax guide) with examples and illustrations using common business scenarios. As the name implies, the updated e-tax guide seeks to provide further clarity on the application of the expressions 'directly in connection with' and 'directly benefit' as used in certain provisions related to zero-rating of services.

To assess if their supplies qualify for zero-rating, GST-registered companies providing services to customers should refer to the revised guidelines for the interpretation and application of the two expressions.

Methods of apportionment

Where services are supplied directly in connection with goods or land located in both Singapore and overseas, or to directly benefit both local and overseas persons, as an administrative concession, the Comptroller of GST (Comptroller) accepts reasonable proxies in apportioning the value of services supplied.

In the updated e-tax guide, IRAS has provided additional apportionment methods that do not require prior approval from the Comptroller (for example, apportionment based on the number of end-customers serviced). In recognition of the difficulties that businesses face in determining a reasonable proxy, IRAS also allows businesses to adopt a 'fixed' proxy for the supply of services. In adopting this apportionment method, a 'fixed' proxy has to be determined annually to apportion the supplies of services made during each prescribed accounting period and there is no year-end adjustment using actual figures. This method is allowed as long as there are no material changes to the business arrangement or agreement. The proxy for the subsequent year must be recomputed based on actual figures from the preceding year.

How BDO Singapore can help

Zero-rating is one of the common GST risk areas for businesses. There are many common misconceptions relating to zero-rating of services, for example, the erroneous belief that a supply of services to overseas persons is zero-rated.

BDO Singapore can help businesses review their business arrangements and the nature of their services to assess the GST treatment of transactions and to determine whether the services provided or received qualify for zero-rating.

CHIN SIEN EU
AMY SIM
Singapore
chinsien@bdo.com.sg
amysim@bdo.com.sg

SPAIN

MODIFICATION OF VAT BASE IN INSOLVENCY – SPANISH COURT RULES IN FAVOUR OF TAXPAYER

Pursuant to the Spanish VAT Act, if the recipient of a supply subject to VAT has been declared insolvent, the taxpayer (the supplier of goods or services) may recover the VAT and thereby reduce its VAT tax base provided that the following requirements are met:

- The recipient of the operations is declared insolvent;
- The VAT due on invoices issued by the supplier is unpaid;
- The insolvency declaration is issued subsequent to the time the VAT is considered to accrue.

For this purpose, the taxpayer must issue an amending invoice, in general terms, within three months from the day after the publication of the insolvency declaration in the Official State Bulletin.

The taxpayer must also notify the Spanish Tax Authorities of the modification of the VAT tax base within one month of the date the amending invoice is issued.

On 30 June 2017 the Spanish Supreme Court ruled in a case where the relevant authorities refused the modification of the VAT tax base of a company in an insolvency event. The company had issued an amending invoice two days after the legal deadline for issuing such invoices, but it met the deadline for communicating the modification to the Tax Authorities.

The Supreme Court concluded that so long as a taxpayer met the substantive requirements by issuing the amended invoice, the failure to meet a procedural requirement (the timeframe within which the amended invoice must be issued) cannot result in the denial of the modification of the VAT tax base.

The Court's arguments are consistent with the doctrine of the Court of Justice of the European Union that has stated that an unreasonable application of procedural obligations would be against the principle of tax neutrality.

ROSARIO ESTELLA
CARMEN GONZÁLEZ
Spain – Madrid
rosario.estella@bdo.es
carmen.gonzalez@bdo.es

VAT TREATMENT OF INTERMEDIARY SERVICES PROVIDED ELECTRONICALLY

On 17 April 2017, the Spanish Directorate General of Taxation (DGT) ruled on the VAT treatment applicable to commissions charged for the use of Internet platforms or portals by an intermediary engaged in housing rentals.

The case related to a company providing intermediary services to owners of immovable properties located in different countries who were interested in renting out these properties. The intermediary company used an Internet platform (IP) to reach a larger number of potential clients. In exchange for the service, the IP charged a fee or commission to the intermediary company.

The DGT first analysed whether the IP acted for the intermediary company as a principal or merely as an intermediary service provider. In the case at hand, the IP was not involved in contractual decisions of any kind. Consequently, the DGT determined that the commissions IP received were payment for an intermediary service, regardless of the fact that it was being supplied electronically.

After clarifying the nature of the service provided by the IP, the main issue to be settled was the place of supply of such a service; in other words, whether the service provided by the IP was a service related to an immovable property and therefore taxed in the country where the property is located based on the special rule, or whether it should be considered a business-to-business (B2B) service taxed in the country where the recipient is established.

On this issue the DGT applied Council Implementing Regulation (EU) No 1042/2013, which came into force on 1 January 2017, and referred to the explanatory notes from the European Commission concerning the rules to assess the place of supply of services connected with immovable property.

Based on this Council regulation, the DGT concluded that commissions charged by the IP to the intermediary company had a sufficiently direct connection to the property. The DGT also noted that the exclusion provided in the explanatory notes for intermediary services linked to the provision of accommodation in the hotel sector or to sectors having a similar function, was not met. As a result, since the IP did not provide intermediary services related to hotel accommodation, the DGT ruled that the IP's services should follow the special rule, that is, to situate the transaction in the country where the property is located.

DAVID SARDA
VERONICA TARGA
Spain – Barcelona
david.sarda@bdo.es
veronica.targa@bdo.es

UNITED KINGDOM

LITTLEWOODS LOSES COMPOUND INTEREST APPEAL

The UK Supreme Court, in a case referred to the Court of Justice of the European Union (CJEU), has ruled that compound interest is not payable on refunds of VAT found to have been overpaid due to an error by HMRC, the UK tax authority.

The Littlewoods case

In 2002, HMRC agreed that Littlewoods had overpaid VAT related to agent commissions and repaid it GBP 205 million of tax, along with simple interest of GBP 268 million. Littlewoods later applied to the UK High Court for restitution in the form of compound interest of GBP 1.2 billion.

The case was referred by the High Court to the CJEU to determine the type of interest which was due to be paid from HMRC to Littlewoods. In 2012, the CJEU ruled in principle that where a taxpayer has overpaid VAT collected by a Member State contrary to the requirements of EU VAT legislation it has a right to reimbursement of that VAT, plus interest. The Court added that the calculation of interest due should not deprive the taxpayer of an adequate indemnity for the loss it had suffered through undue payment of VAT. However, it also decided that it is for the national courts to determine whether simple interest, compound interest or another type of interest was appropriate to achieve this objective.

The Supreme Court decision

Following the decision of the CJEU, the UK High Court and Court of Appeal both found in favour of Littlewoods, deciding that simple interest was not an adequate remedy in Littlewoods' case.

However, the Supreme Court has now overturned that decision, finding that the payment of simple interest made to Littlewoods, which amounted to 123% of the tax it had overpaid, did not deprive it of adequate indemnity.

The Court noted that the award of simple interest is widespread practice among EU Member States and was of the view that, if the CJEU had been seeking to outlaw that approach, it would have stated this clearly in its 2012 judgment.

Compound interest claims in the UK

According to the Supreme Court's decision, some 5,000 UK claims were stood over behind the Littlewoods appeal, whose total value HMRC estimated to be GBP 17 billion.

The Supreme Court's decision brings this strand of litigation on compound interest to an end. Any taxpayers with compound interest claims in the UK will now need to review their position.

MARC WELBY
United Kingdom – London
marc.welby@bdo.co.uk

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 27 November 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Brazilian Real (BRL)	0.25897	0.30919
United States Dollar (USD)	0.83760	1.00000
Euro (EUR)	1.00000	1.19264
Romanian New Lei (RON)	0.21514	0.25685
British Pound (GBP)	1.11661	1.33276

CONTACT PERSONS

The BDO VAT Centre of Excellence consists of the following persons:

Ivor Feerick (Chair)	Ireland	Dublin	ifeerick@bdo.ie
Andrea Haslinger	Austria	Vienna	andrea.haslinger@bdo.at
Erwin Boumans	Belgium	Brussels	erwin.boumans@bdo.be
Annette Pogodda-Grünwald	Germany	Berlin	VAT@bdo.de
Deirdre Padian	Ireland	Dublin	dpadian@bdo.ie
Erwan Loquet	Luxembourg	Luxembourg	erwan.loquet@bdo.lu
Rob Geurtse	The Netherlands	Rotterdam	rob.geurtse@bdo.nl
Claudio Giger	Switzerland	Zurich	claudio.giger@bdo.ch
Sarah Halsted	United Kingdom	London	sarah.halsted@bdo.co.uk
Tom Kivlehan	United Kingdom	London	tom.kivlehan@bdo.co.uk
Steve Oldroyd	United States	San Francisco	soldroyd@bdo.com

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained herein without obtaining specific professional advice. Please contact the appropriate BDO Member Firm to discuss these matters in the context of your particular circumstances. Neither the BDO network, nor the BDO Member Firms or their partners, employees or agents accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

BDO is an international network of public accounting, tax and advisory firms, the BDO Member Firms, which perform professional services under the name of BDO. Each BDO Member Firm is a member of BDO International Limited, a UK company limited by guarantee that is the governing entity of the international BDO network. Service provision within the BDO network is coordinated by Brussels Worldwide Services BVBA, a limited liability company incorporated in Belgium with its statutory seat in Zaventem.

Each of BDO International Limited, Brussels Worldwide Services BVBA and the member firms of the BDO network is a separate legal entity and has no liability for another such entity's acts or omissions. Nothing in the arrangements or rules of the BDO network shall constitute or imply an agency relationship or a partnership between BDO International Limited, Brussels Worldwide Services BVBA and/or the member firms of the BDO network.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

© Brussels Worldwide Services BVBA, December 2017. 1711-03