

In this issue:

Country summaries

Americas

Asia Pacific

EMEA

Related links:

Global Indirect Tax

GITN archive

Contact us:

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Tax contacts

Global Indirect Tax News

Indirect tax updates from around the world

February 2013



Country summaries

OECD: The OECD has launched a consultation on its international consumption tax guidelines. [More](#)

Americas

Bahamas: The government has published a Tax Reform White Paper proposing the introduction of VAT. [More](#)

Turks & Caicos: It has been announced that the government will be allowed to decide whether to introduce a VAT regime from 1 April 2013. [More](#)

United States: California has adopted legislation expanding the authority to grant a sales and use tax exclusion in respect of “advanced manufacturing” projects. [More](#)

Uruguay: Certain personal care products are no longer subject to Specific Consumption Tax. [More](#)

Asia Pacific

India: The courts have ruled on stay applications and royalties. [More](#)

Malaysia: The general guidelines on taxable items for the Service Tax have been updated. [More](#)

EMEA

European Union: The European Commission has issued a report on the VAT treatment of public authorities and an updated list of EU VAT rates. The Court of Justice of the European Union (CJEU) ruled on the VAT treatment of the supply of goods not in free circulation. [More](#)

Albania: There is draft legislation on VAT exemption for certain types of supplies. [More](#)

Netherlands: The supply of phone cards and mobile subscriptions will be subject to VAT. The CJEU has ruled on the VAT treatment of the supply of “building land”. [More](#)

Poland: The CJEU has ruled on the VAT treatment of insurance provided with a supply of leased goods. Deloitte Poland has been successful in assisting clients in recovering from the Polish tax authorities interest for delays in refunding VAT claimed under the 8th and 13th EU Directives. [More](#)

Portugal: There is new jurisprudence on the pro rata calculation by entities that develop leasing activities, and there is some confusion about the implementation of the new invoicing rules. [More](#)

Romania: A VAT cash accounting system has been introduced, as well as an anti-fraud measure on the adjustment of the taxable base in related party transactions. [More](#)

United Kingdom: The tax authorities have issued guidance on the VAT treatment of supplies of rooms associated with catering. [More](#)

OECD

Consultation on international VAT/GST guidelines

The OECD has launched a **public consultation** on the international consumption tax (VAT/GST) guidelines that it has been developing. The consultation seeks input (by 3 May 2013) from the business community on four interim draft elements of the guidelines:

- The preface;
- The core features of VAT systems to which the Guidelines are intended to apply;
- The place of taxation for cross-border supplies of services and intangibles to businesses that have establishments in more than one jurisdiction; and
- Implementation of specific rules for determining the place of taxation for cross-border business-to-business supplies of services and intangibles.

Americas



Bahamas

Tax Reform White Paper published

The government of the Bahamas recently published a Tax Reform White Paper with three overarching objectives:

1. To secure an adequate revenue base in support of modern governance;
2. To establish a tax structure that promotes economic efficiency and stronger economic growth; and
3. To make the tax system more equitable.

As a means of achieving these objectives, it is proposed that a VAT be introduced as from 1 July 2014 as part of a fundamental reform of the tax system.

Mark Munnings, Partner, Deloitte Bahamas

Turks & Caicos

VAT announcement

It has been announced that the Turks and Caicos government will be allowed to decide whether to introduce a VAT regime as from 1 April 2013 after successful lobbying, although it was noted that the revised Fiscal and Strategic Policy Statement must be fully adjusted to reflect the decision not to introduce VAT and must show credible surpluses.

Mark Munnings, Partner, Deloitte Bahamas

United States

New California sales/use tax exclusion for “advanced manufacturing”

California recently adopted legislation expanding the authority of the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to grant a sales and use tax exclusion for the acquisition of machinery and equipment used in an “advanced manufacturing” project. The exclusion applies to tangible personal property placed in service in California and used in certain advanced manufacturing processes or systems. Qualification for the exclusion is discretionary and prospective and will be based on an application submitted to CAEATFA.

Importantly, the new law limits the total amount of sales tax exclusions that may be awarded in the aggregate for advanced manufacturing, advanced transportation and alternative source projects to USD 100 million per calendar year.

For further information, see: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Tax/us_tax_multistate_CA_Alert_1-30-2013.pdf.

Hal Kessler, Director, Deloitte United States

Uruguay

Treatment of personal care products under Specific Consumption Tax

Specific Consumption Tax (IMESI) is a Uruguayan excise tax levied at various rates on the import or first sale (in the case of local manufacturers) of a specific range of products.

IMESI is calculated, in general terms, by applying a specified rate to the tax base (which may be calculated differently depending on the type of product).

Cosmetics and other personal care products are subject to IMESI. However, the law recently has been amended, so that as from 1 January 2013, certain products are now excluded from the tax. According to a decree issued by the Executive Branch, the IMESI rate is set at 0% for certain personal care products, namely, hair conditioner, hair dye,

hair-gel and after-shave lotions. The direct consequence of the 0% rate is the inclusion of these personal care products on the “non-taxed items” list.

The decree also makes changes to the definitions of certain products to clarify the application of the IMESI.

Cecilia Valverde, Top Senior, Deloitte Uruguay
Javier Bugna, Senior Manager, Deloitte Uruguay

Asia Pacific



India

Recovery proceedings not to be initiated where a stay application is pending for reasons beyond the control of assessee

In a recent case before the Mumbai High Court, the petitioners challenged a circular issued by the Central Board of Excise & Customs (Circular No. 967/1/2013-CX dated 1 January 2013). The circular directed the field formations to initiate the recovery of outstanding demands even if an appeal had been filed with the Appellate authorities. The Mumbai High Court held that the circular cannot be applied to an assessee with a stay application that is pending for reasons beyond the assessee’s control, but the court clarified that recovery proceedings are valid where a stay application is pending because of the default or improper conduct of the assessee. The court also held that recovery cannot be commenced under an order before the time for challenging the decision before the appropriate Appellate Authority has expired.

Many other state high courts in India also have upheld the challenge to this circular.

VAT applies to royalties received for use of trademark and sharing business know-how

A recent case before the Kerala High Court concerned the receipt of royalties from franchisees for the use of a trademark and a share of business know-how on which service tax had been paid, under the category of franchise services. The tax authorities sought to levy VAT on the consideration received, treating the transaction as a transfer of the right to use goods (a deemed sale) under Kerala’s VAT law.

The single member bench of the Kerala High Court held that the trademark constituted “goods” and, based on the nature of the arrangement, the transaction represented a transfer of the right to use goods. The court distinguished the attributes set out by the Apex Court in another case (*BSNL*) involving the transfer of the right to use goods by observing that the case before the Apex Court did not involve the transfer of intellectual property, such as a trademark. The court also observed that the legality of levying service tax on the transaction was not an issue before the court, and it was up to the petitioner to challenge the same in appropriate proceedings.

Prashant Deshpande, Senior Director, Deloitte India

Malaysia

Second Schedule of Service Tax Regulations 1975 Guide updated

On 29 January 2013, the Malaysian Royal Customs Department (MRCD) published on its website the **updated general guidelines** to the list of taxable and non-taxable items under the Second Schedule to the Service Tax Regulations, 1975 (STR 1975). The guidelines incorporate the changes made on the basis of decisions and customs rulings issued by the MRCD since February 2011. The affected service groups are as follows:

- i. Hotels
- ii. Restaurants located in a hotel with 25 rooms or fewer
- iii. Restaurants located outside hotels
- iv. Night clubs, dance halls, cabarets, health centres, massage parlours, public houses and beer houses
- v. Private clubs
- vi. Golf courses and driving ranges other than those in hotels and private clubs
- vii. Private hospitals
- viii. Insurance
- ix. Telecommunications
- x. Forwarding agents
- xi. Parking lots for motor vehicles
- xii. Motor vehicle service or repair centres
- xiii. Employment agencies
- xiv. Accountancy
- xv. Law
- xvi. Professional engineers
- xvii. Architects
- xviii. Land survey, valuation and agency services
- xix. Consultancy
- xx. Management
- xxi. Hire-and-drive cars
- xxii. Advertising.

Fan Kah Seong, Executive Director, Deloitte Malaysia
Chin Choon Siong, Senior Manager, Deloitte Malaysia
Ha Kok Fei, Manager, Deloitte Malaysia
Ng Kel Vin, Assistant Manager, Deloitte Malaysia



European Union

VAT treatment of public bodies

The European Commission has published the report of a **study on the VAT treatment of public bodies**. The study builds on a report published in 2011 and analyses the issues arising from the current VAT treatment of public bodies and activities carried out in the public interest. It also identifies possible options for the future, and measures their impact. The report recommends a move towards “full taxation” of public body activities. The Commission’s VAT Expert Group is discussing the VAT treatment of public bodies, local authorities, etc.

Donna Huggard, Senior Manager, Deloitte United Kingdom

VAT rates throughout the EU

The European Commission has published an updated edition of its **list of VAT rates applied throughout the EU**. The list provides a snapshot of rates (including reduced, super-reduced and zero rates) in force in each member state at 14 January 2013, as well as details of the geographical rates (e.g. special VAT rates that Portugal applies in the Azores and Madeira) and the history of rates applied in each member state.

Donna Huggard, Senior Manager, Deloitte United Kingdom

Supply of goods not in free circulation

The CJEU ruled in November 2012 in the *Profitube* case that the supply of goods that are not in free circulation in the EU, but that are physically located in a member state and placed under a customs regulation, is subject to VAT, unless the relevant member state has implemented the option under the VAT Directive to exempt such supplies (or apply a zero rate).

As a result of this decision, the often-applied practice whereby businesses ignore all supplies of goods that are not in free circulation for EU VAT purposes can no longer be applied. Specifically, this practice can lead to VAT underpayment in countries where the exemption for the supply is not implemented or not implemented for the supply under the customs regulation applied. In other countries, there might be VAT reporting obligations that trigger a VAT registration obligation.

Having considered whether the exemption is implemented in the 27 EU member states and whether there are VAT reporting and registration obligations, it appears that in seven EU member states there is no full VAT exemption for these supplies of goods, and that in almost all EU jurisdictions these supplies trigger VAT registration and reporting obligations.

Businesses trading in customs goods may face an increase in VAT registrations and VAT reporting, along with a number of issues, such as changes to the way VAT is determined, VAT coding, the adjustment tax control framework, etc.

Rob Swenne, Director, Deloitte Netherlands

Albania

New VAT exemptions

Local supplies and import of iron and cement used as raw materials in the construction of hydropower stations

The import and local supply of iron and cement used as raw materials in the construction of hydropower stations are VAT exempt in Albania. A Draft Ordinance of the Council of Ministers describing the procedures, criteria and other specifications for the application of the exemption has been prepared and submitted for approval.

The VAT exemption will be granted on presentation of an Exemption Authorization to be issued by the General Customs Directorate (in the case of imports) and the General Tax Directorate (in the case of local supplies).

An Exemption Authorization must be issued by the relevant authorities within 30 days of submission of the required documentation.

The tax authorities can overturn exemption authorizations, if, during a tax audit, they discover that purchases made under the exemption regime have not been used for the purpose of hydropower construction and are not physically present at the construction site.

The exemption applies only to principals, not to subcontractors.

Machinery and equipment directly related to certain investment contracts

The import of machinery and equipment for the purpose of carrying out investment contracts valued up to ALL 50 million or investment contracts in small business enterprises, agro-business or active processing industries are VAT exempt in Albania. A Draft Ordinance of the Council of Ministers includes a list of the machinery and equipment directly related to investment contracts, and the procedures, criteria and other specifications for the application of the exemption.

The VAT exemption will be granted on presentation of an Exemption Authorization to be issued by the General Customs Directorate.

An Exemption Authorization must be issued by the relevant authorities within 15 days of submission of the required documentation.

Taxpayers importing machinery and equipment for resale purposes do not benefit from the VAT exemption.

Olindo Shehu, Director, Deloitte Albania

Netherlands

Policy change on sale and distribution of phone cards and subscriptions

The CJEU ruled on the VAT treatment of the sale and distribution of phone cards and subscriptions in 2012 (*Lebara*). Partly in response to this decision, the Dutch State Secretary of Finance issued a decree that will become effective on 1 July 2013. Under the decree, the sale and distribution of phone cards and mobile telephone subscriptions will be deemed to be VAT taxable operations.

The tax point can differ depending whether there is a single-purpose or multi-purpose card or subscription.

As a result of the amended rules for selling and distributing phone cards and mobile telephone subscriptions, the VAT on costs attributable to the sale and distribution of phone cards and mobile telephone subscriptions will become fully deductible.

CJEU decision in “VAT on building land” case

The CJEU has decided the Dutch case of *Woningstichting Maasdriel*, in which the taxpayer argued that land supplied to it was “building land”. Under Dutch law, the supply of building land is subject to VAT (deductible as input VAT where the taxpayer then makes a taxable supply of its own), but escapes transfer duty (which would not be deductible and, hence, would be a cost to the taxpayer).

The Dutch tax authorities took the position that at the point of supply, the land was not “building land” since under Dutch law and case law it is insufficient to simply demolish an existing construction on the land with a view to the intended new construction. According to the authorities, the transaction was subject to transfer duty rather than VAT. When this characterization was disputed, the case was referred to the CJEU.

The CJEU has held that the EU law exemption for supplies of building land did not apply if “... it is apparent from an overall assessment of the factual circumstances surrounding that transaction and prevailing at the time of supply, including the intention of the parties when it is supported by objective evidence, that, at that time, the land at issue was in fact intended to be built on ...”. As a result, the Dutch law on building land appears to be too restrictive.

Willem Kronjee, Senior Manager, Deloitte Netherlands

Poland

CJEU rules on VAT treatment of supply of insurance and leased goods

The CJEU has decided the Polish case of *BGŻ Leasing sp. z o.o.* involving the treatment of insurance provided with a supply of leased goods. BGŻ required the goods to be insured as a term of the lease and while the hirer could arrange the insurance separately, BGŻ also offered to arrange for the insurance and recharged the premium to the hirer.

The Polish tax authorities argued that in the latter case, there was either a single supply of the insured goods, or that the insurance was “ancillary” to the lease, and so VAT was

due on the total amount charged, not just on the rental of the goods (with the charge for insurance being exempt).

The CJEU left the final conclusion to be reached by the local court but suggested that the recharge of the exact cost of the insurance should be exempt from VAT and that, in principle, the supply of the goods on hire and insurance should "... be regarded as distinct and independent supplies" This raises the possibility of potentially claiming back overpaid VAT by the lease companies which, following the current practice of the Polish tax authorities, charged 23% VAT on insurance as well. On the other hand, there might be a potential risk for lessees deducting 23% VAT charged on insurance of leased goods.

Recovery of interest for delays in VAT refunds

Deloitte Poland has been successful in assisting clients in recovering from the Polish tax authorities interest for delays in refunding VAT claimed under the 8th and 13th EU Directives, and this approach has been confirmed by a number of Polish administrative court judgments.

This is an opportunity for any business that experienced a delay in obtaining a refund, because the interest can amount to about 50% of the VAT refund initially claimed in certain instances. Currently this applies to refunds received after 2007. However successful claims for interest from earlier periods may also be possible.

Affected taxpayers should act without delay, because, due to prescription periods, the opportunity may soon expire.

Michał Kłosiński, Partner, Deloitte Poland

Portugal

Pro rata calculation by entities that develop leasing activities

Recent jurisprudence has been published regarding the pro rata calculation by entities that develop leasing activities, indicating that the capital component of the rents charged to customers should be included in the numerator of the fraction (and not only the interest component, as the tax authorities have previously argued).

Appeals are likely to be filed by the tax authorities on the grounds that this conclusion distorts the principle of neutrality and that the effective remuneration is limited to the interest charged to the customer.

New invoicing rules

There remains some confusion between taxpayers and Portugal's tax authorities regarding certain aspects of the new invoicing rules, namely in relation to the simplified conditions to implement electronic invoicing. Taxpayers should have filed the new report obligations for invoices issued in January by 25 February.

Afonso Arnaldo, Partner, Deloitte Portugal

Romania

VAT cash accounting system introduced

A VAT cash accounting system, introduced on 1 January 2013, is mandatory for entrepreneurs with turnover below EUR 500,000, except for taxable persons registered directly/through a fiscal representative or that have a fixed establishment in Romania.

Taxpayers applying the system must collect and pay VAT related to their supplies of goods and services when they cash in their invoices, but no later than 90 days from the invoice date.

The right to a VAT deduction for such businesses, as well as for taxable persons acquiring goods/services from such businesses, is allowed only if there is proof that the invoice actually has been paid.

Adjustment of taxable amount at market price

Romania transposed the optional anti-fraud measures provided by article 80 of the EU VAT Directive into domestic law as from 1 February 2013. As a result, the tax authorities are entitled to adjust the taxable base for VAT purposes for transactions between related parties if at least one of the parties does not have the right to a full deduction of VAT.

Cristian Velcu, Manager, Deloitte Romania
Cristina Radulescu, Senior Consultant, Deloitte Romania

United Kingdom

VAT on rooms in hotels, etc., associated with catering

In October 2011, the tax authorities (HMRC) issued a new version of Notice 709/3, Hotels and Holiday Accommodation, which contains revised wording in the section dealing with the supply of rooms in hotels and similar establishments that were associated with supplies of catering. The new wording reflected a previously unpublicised change in HMRC's view, and confirmed that HMRC considered that all supplies of rooms associated with catering, whether or not provided by or on behalf of the hotel, etc., were subject to VAT.

HMRC has now confirmed that no action will be taken where businesses have continued to rely on the "old" policy of treating room hire as exempt, except where the hotel provided the catering or had opted to tax the property. Businesses are required to account for VAT according to the new policy with effect from the date of the **announcement**, 22 January 2013.

Donna Huggard, Senior Manager, Deloitte UK

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