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SWITZERLAND

CHANGES TO SWISS VAT LAW – 30,000 FOREIGN BUSINESSES WILL HAVE TO REGISTER FOR VAT IN SWITZERLAND

A revised Swiss VAT Law is expected to come into force on 1 January 2018. While the legislation covers a variety of topics, the most significant changes lead to an additional 30,000 foreign businesses having to register for VAT in Switzerland.

Under the current legislation, a company is liable to register in Switzerland only if it generates an annual turnover from taxable supplies of more than CHF 100,000 on Swiss territory, irrespective of the turnover abroad. However, the new law stipulates that not only the Swiss domestic but the worldwide turnover is relevant to determine whether a company exceeds the CHF 100,000 registration threshold. Consequently a foreign domiciled company must become VAT registered in Switzerland although its turnover within Switzerland from domestic supplies of goods and/or work on goods (e.g. installation-, maintenance-services) and/or from other specifically listed services (e.g. architectural-services, telecommunication- or electronic services to consumers) is minimal. The only exemption to register for VAT will apply to foreign suppliers which exclusively render services to Swiss-based consumers (B2C) or businesses (B2B) for which the reverse-charge provisions apply (e.g. management-, consulting-services). It is important to note that a supplier that is registered for VAT in Switzerland (for example due to work performed on goods) has to account for Swiss VAT on any service rendered to Swiss customers, even if the service would otherwise fall under the reverse charge provision.

Foreign domiciled companies must appoint a Swiss domiciled VAT representative to deal with its VAT obligations in Switzerland. BDO Switzerland is eligible to provide this service.

The second important change to the Swiss VAT law for foreign business concerns the Low Value Consignment Relief (LVCR). Upon importation of goods into Switzerland, VAT is currently only levied if the VAT amount exceeds CHF 5. Taking into account the low applicable VAT rates of 2.5% and 8%, goods up to a value of CHF 200 (taxable at 2.5%) and CHF 62 (taxable at 8%) do not trigger an import VAT charge. To close this loophole, the new rules foresee that the place of supply of goods falling under the LVCR will be shifted to Switzerland, if the (foreign domiciled) supplier generates taxable supplies in excess of CHF 100,000 p.a. from such LVCR sales, regardless of whether the goods are delivered to a tax liable person or not. Foreign businesses covered by this new rule (mainly distance sellers) will consequently conduct domestic sales in Switzerland and will have to register for VAT in Switzerland and to import the goods in their own name.

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EDITOR'S LETTER

Dear Readers,

Whereas one is generally discouraged from engaging in loose discussions about politics, I think 2016 can clearly be identified as a year during which politics and indirect tax became inextricably linked because of the now infamous "Brexit" vote in the UK a few months back.

Though it is likely to take quite a number of years to unravel all of the consequences that will arise from this decision, it is relatively clear at this stage that this vote is likely to result in significant additional considerations from both a VAT and a Customs Duty perspective. This is so, particularly for trading between the UK and the other 27 Members of the European Union, as soon as the UK formally exits from the "Union".

2016 was also the year during which details of the proposed implementation of VAT systems in the six GCC Gulf States of UAE, Kuwait, Oman, Qatar, Bahrain and Saudi Arabia started to emerge. India also announced details of a new Indirect Tax system to be rolled out.

Not to be outdone, a number of other countries also provided details of new indirect taxes to be introduced on certain digital services. So, as we head toward the year end, I and my indirect tax colleagues can relax in the knowledge that there will be plenty of opportunities to provide assistance to our clients in almost 150 countries worldwide as we continue to grow our international network.

Hopefully, the fact that we are available to assist and provide expert advice on indirect tax issues as they arise is also a source of comfort to our many clients.

Many thanks to all of our clients for their continued support and engagement with BDO International Offices during 2016.

Have a safe and peaceful Christmas/ New Year holiday break.

Kind regards from Chilly Dublin,

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(continued from cover page)

Selection of other important changes in brief:

- The reduced VAT rate of 2.5% will no longer only apply to printed issues of magazines, journals and books, but also to electronically provided issues
- The margin taxation instead of the notional input tax deduction will be re-introduced for collectibles such as art, antiques and similar items
- Tax liability of a foreign based company begins on commencement of its supplies of goods or services to Switzerland
- Pension schemes are not considered closely related persons. Accordingly, the consideration for supply of goods or services to or from a pension scheme need not be at arm's length for VAT purposes
- The supply of gas, electricity and long distance heating to consumers (B2C) is taxed where it is actually used
- Donations that do not entitle the donors to claim benefits from the charity do not trigger a reduction of the charity's input tax recovery, although the donors may receive benefits at the discretion of the charity
- The option for taxation of VAT-exempt supplies is no longer only valid if the VAT is displayed on the invoice but also if the tax is just declared in the VAT return
- Under the new law, (branches of) public authorities will remain exempt from tax liability unless their turnover to non-public authorities exceeds CHF 100,000. They are currently taxable if their turnover to non-public authorities has exceeded CHF 25,000 and their overall turnover (public and non-public authorities) has exceeded CHF 100,000. All branches of public authorities whose taxable supplies and services to private bodies do not exceed CHF 100,000 may apply for deregistration.

This revision of the Swiss VAT law will increase the number of primarily foreign, non-established companies doing business in Switzerland who must register for VAT. It is very important for these businesses to gain a comprehensive understanding of their compliance obligations under the new Swiss VAT law. Doing so sooner rather than later will ensure a sound management of potential risks and prevent fatal surprises.

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ARGENTINA

TAX AMNESTY AND VAT DEFERRALS

Argentina has established a tax disclosure program that includes a tax amnesty program that covers indirect taxes, as well as other taxes.

Thus, within the framework of the national tax amnesty regime, taxpayers can seek forgiveness for unpaid national taxes by providing the National Tax Authority with an exceptional statement of their assets – both those in Argentina and abroad.

The National Tax Authority invited the Provinces to follow in the name of "fiscal transparency". So far, more than half of the country, including the City and Province of Buenos Aires, Cordoba, Santa Fe, Misiones, among others, have already agreed to follow the tax amnesty regime, granting to those who declare their assets an exemption from turnover tax, as well as the erasing of fines and other penalties.

As a result, the Provinces will not investigate the origins of such assets (which could come from undeclared income). Some provinces will require payment of a "special tax" equivalent to 1% of the amount exempted or released, as turnover tax. Others, such as the Province and the City of Buenos Aires, do not require the payment of any special tax, making it even more attractive to taxpayers to participate in the amnesty program.

Deferral benefit for micro, small, and medium companies

On a different note, details about the application of the deferral benefit for VAT, commonly called "Quarterly VAT", under the Promotion Regime for micro, small, and medium companies was recently released. The deferral provides a financial benefit for small taxpayers within the Law of PyMES (small and mid-size companies).

This procedure enables the deferral of VAT payment in each of the monthly tax returns to the second month following the original maturity date.

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COLOMBIA

VAT AND SALES TAX REFORM 2017

The Colombian government has issued a new tax bill that is currently being discussed in Congress. If it is enacted, the provisions would be applicable starting in 2017. The bill is based on certain recommendations made by a Committee of Experts appointed by the tax authorities for this purpose, in accordance with Law 1739 of 2014 (see *Indirect Tax News April 2016 – ISSUE 1*).

The following are key indirect tax items in the bill:

VAT

- Increase in the VAT rate from 16% to 19%
- A special VAT rate of 5% applicable to newspapers and internet access for low income earning households
- VAT exemptions for laptop computers with a value of less than about USD 300 and mobile devices with a value of less than about USD 200
- VAT withholding (through a reverse charge mechanism) of 19% on payments abroad related to web pages services, hosting, cloud computing, software services, photos and videos storage online, and online services
- VAT can no longer be remitted annually; instead it will have to be remitted every two or four months, depending on income earned.

Sales tax

- Data and navigation services would be subject to sales tax at 8%;
- Restaurants under a franchise system would be subject to sales tax at 8%;
- Sugar-based soft drinks would be subject to sales tax of COP 300 per litre.

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DENMARK

MEMBER OF VAT GROUP REGIME AND USE OF VAT NUMBER

The Danish Ministry of Taxation has occasionally discussed tightening the practice relating to the use of VAT numbers for invoicing purposes as well as reporting purposes on EU sales lists for taxpayers that are a member of a VAT group in Denmark.

This relates to situations where companies that are a part of a VAT group do not always use the name, address, and VAT number of the main company when invoicing customers. The business community has pointed out that the current setup in the VIES database today leads to confusion, since the database contains information about all the companies that are part of a VAT group, not only information about the main company.

The Ministry of Taxation has announced that the proposed tightening of practice will only be implemented once the necessary changes in the VIES database have been completed so that only the information about the number of the main company will be available in the VIES database.

Until necessary changes are implemented in the VIES database, the Danish Tax Authorities accept that on their sales invoices companies only have to indicate their individual CVR/SE number associated with the EU trade, not the VAT number of the main company. The Danish Tax Authorities also accept that businesses either use their individual CVR/SE number when reporting their EU sales list or, instead, use the VAT number of the main company when reporting their EU sales list.

In terms of any purchases, the Danish Tax Authorities so far accept that companies only need to indicate their individual CVR/SE number instead of the VAT number of the main company.

The current accepted practice in Denmark could lead to reconciliation issues in terms of EU sales/EU purchase listings prepared by each contractual party.

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FRANCE

ELECTION FOR THE VAT REVERSE-CHARGE MECHANISM ON IMPORTATIONS OF GOODS

The reverse-charge mechanism for import VAT was introduced in France with effect from January 2015. When it was enacted, it was only available to single point of clearance holders ("*procédure de domiciliation unique*"). However, from 1 October 2016, French and EU companies are no longer required to hold a single point of clearance in order to apply the reverse-charge mechanism.

Indeed, now French and EU companies that import goods into France only need file an election in order to use the reverse-charge procedure for import VAT.

The election is subject to the following two conditions:

- The company must be established within the European Union
- The company must have a VAT registration number in France.

Regarding the last condition, it is still unclear whether an EU company can get a VAT registration number in France for the sole purposes of using the reverse-charge mechanism for importation of goods or if the EU company must be registered for VAT with respect to other activities it performs in France.

In terms of the formalities, the company should submit the election on the required form with the customs office where the goods will be imported in France. To date, this form only requires the identification and signature of the importer of record in France. If the conditions are fulfilled, the import VAT can be reverse-charged on the French VAT return.

The election for the reverse-charge mechanism will trigger a cash-flow opportunity for companies with a full right to recover VAT, since the company will be in a position to collect and deduct the corresponding VAT directly on its French VAT return.

For companies established outside of the EU, the single point of clearance regime remains necessary in order to elect to take advantage of the reverse-charge regime.

Finally, it should also be noted that the election will probably be subject to additional authorisation from the customs authorities, since further regulation on this matter will be implemented in the next few months.

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GERMANY

IS THE PLACE OF DESTINATION REQUIRED TO PROVE AN INTRA-COMMUNITY SUPPLY?

In a recent case, the German Federal Court of Finance (BFH) considered the issue of zero-rating an intra-Community supply of goods. Because the taxable person did not prove the conditions given by law for the zero-rating, the court denied the zero-rating.

The plaintiff supplied cars to "ghost" entrepreneurs in Spain and the Czech Republic. Those companies were founded by P, who also acted as intermediary with regard to the plaintiff's supplying of the cars. P's intention for setting up these companies was to not pay VAT on the supply of the cars in question. The cars were transported to their destinations as part of a consolidated shipment.

The plaintiff was in the possession of a confirmation (documentary evidence) from the purchasing companies that showed that the cars would be transported outside of Germany to Spain and the Czech Republic. However, the place of destination in Spain and the Czech Republic was not specified in the confirmation. The VAT-IDNs (VAT identification numbers) of the companies were recorded in the plaintiff's accounting books (record evidence).

Decision of the German Federal Court of Finance

The main issue before the German Federal Court of Finance was that the conditions for the zero-rating were not established, as the recipients were not taxable persons but "ghost" entrepreneurs. Hence, the criteria "for another taxable person … acting as such …" as required in Article 141 of the Council Directive was not met. Additionally, the BFH was of the opinion that the record evidence and the documentary evidence requirements were not fulfilled.

Different evidence could be required in Germany depending on who is responsible for the transportation (the supplier or the recipient) and on whether the supplier or purchaser transports the goods on their own (for example, using their own trucks) or if they order a carrier. However, in all situations, the place of destination of the goods after the dispatch or transport ends must be stated. Thus, since the place of destination was not specified, the supplier did not satisfy the documentary evidence requirements. In addition, the supplier must also satisfy the record evidence requirements related to the information the supplier must record in its accounting books. To prove that the purchaser is a taxable person and is acting as such, among the information that must be recorded by the supplier in its accounting books is the VAT-IDN of the purchaser. In this case, because the recorded VAT-IDN related to "ghost" entrepreneurs, the supplier did not meet the requirements with regard to the record evidence.

In the end, the BFH denied the zero-rating of the intra-Community supply of the cars.

Acting in good faith

If the conditions required for zero-rating are not satisfied because the purchaser provided wrong information, the goods could still be treated as being zero-rated if the supplier acted in good faith. In such a case, however, the formal requirements related to the documentary and the record evidence must be met. With respect to the record evidence, the BFH concluded that the conditions were met, even though the recorded VAT-IDN related to "ghost" entrepreneurs. However, the documentary evidence requirement was not satisfied, as only the countries of destination were mentioned, not the actual places where the transports ended.

Conclusion

This case represents another example of a situation where the BFH was called on to decide about whether the documentary and record evidence requirements were satisfied with respect to zero-rated intra-Community supplies of goods. Although the judgment referred to the older regulations under the German VAT Ordinance (UStDV), the BFH's conclusion that the place of destination in another EU-Member State must be specified is of importance today.

The main documentary evidence in Germany, the so-called "Entry Certificate", also requires that the "Member State and PLACE of entry" be stated. Therefore, for taxable persons performing zero-rated intra-Community supplies of goods it is important to be aware of the documentary evidence requirements.

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HUNGARY

NEW ELECTRONIC CASH REGISTER AND ELECTRONIC DATA SUPPLY OBLIGATIONS

The Hungarian government has decided to expand the mandatory use of electronic cash registers, which currently applies to the retail trade, to the services sector. The online cash register system was introduced in 2014 for the retail sector as part of measures aimed at improving tax collection and reducing the underground economy.

The electronic cash register system involves a direct connection between the National Tax and Customs Authority and the cash registers used in sales transactions.

The extension of the system to the services sector was scheduled to take place in two phases. However, for the time being, the government decided to suspend the two phase process and introduce the whole service starting from 1 January 2017 for the following service providers:

- Maintenance and repair of motor vehicles
- Sale, maintenance, and repair of motorcycles and related parts and accessories
- Auto mechanics
- Washing and dry cleaning of textile and fur products
- Plastic surgery clinics
- Amusement and recreation activities (for example, dance clubs)
- The offering of fitness facility services
- Taxi operators
- Currency exchange offices.

In addition to this change, additional obligations will come into effect later next year related to the VAT. Beginning 1 July 2017, taxpayers using invoicing software and issuing invoices to other Hungarian taxable persons that show VAT of HUF 100,000 or more will be obliged to supply invoice details electronically to the tax authority. This provision will allow the tax authority to monitor and perform direct data queries from the invoicing software. However, further details about what information and functionality the software programs will have to have is not yet available. The data to be provided and the way the electronic data supply must be configured will be set forth in a separate law.

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IRELAND

IRISH FINANCE BILL 2016

Finance Bill 2016 was published on 20 October 2016. From a VAT perspective, it contains a small number of changes. The most notable changes are described below.

Apportionment of deductibility of dual-use inputs

The turnover method is the primary method of apportionment. But, where this method does not reflect the taxable use of the dual-use inputs, the Finance Bill provides that an alternative method of apportionment should be used.

This change is being made to more closely align with the EU VAT Directive.

Flat rate farmer's addition

The Finance Bill increases the flat-rate farmer's addition from 5.2% to 5.4%.

A flat-rate farmer is a farmer who is not registered for VAT in respect of their farming activities. To compensate flat-rate farmers for the VAT paid on purchases, such farmers are entitled to a flat-rate addition (which is being increased to 5.4%) in addition to the prices received in respect of their sales to VAT registered-customers, such as marts, Co-ops, and so on.

The above changes come into effect from 1 January 2017.

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ITALY

THE UNCERTAINTY OF THE SUPREME COURT ON VAT REPRESENTATIVES

Decree n. 19482/2016 of the Civil Italian Supreme Court of Cassation has referred to the Joint Chambers of the Supreme Court of Cassation a question relating to the VAT treatment of an Italian VAT representative of a non-resident company. According to the Civil Italian Supreme Court decree, the VAT representative of a non-resident company has a "fully attractive power", which means that, once appointed, the Italian VAT representative should be used to manage all the sales and purchase transactions made in Italy, while the reverse charge is only applicable to transactions carried out in Italy by a non-resident company without a VAT representative or a VAT registration number.

The case that led to this decree arose in 2003, in other words, before Italian Law 18/2010, which implemented in Italy EU Directives 2008/8/CE, 2008/9/CE, and 2008/117/CE. Under the Civilian Italian Supreme Court of Cassation's interpretation, on sales in Italy by non-residents, VAT must be charged whether the non-resident company has a VAT representative in Italy. According to the judges of the Civilian Italian Supreme Court of Cassation, this interpretation even applies to transactions made starting from 2010.

The Civil Italian Supreme Court of Cassation's decree is clearly opposite to the European regulations related to VAT representatives and the EU VAT system.

If the Civil Italian Supreme Court of Cassation's interpretation is accepted by the Joint Chambers of the Supreme Court of Cassation, the effect would be that all Italian VAT representatives of non-residents and resident businesses have managed VAT incorrectly, since the VAT representatives have not issued invoices charging Italian VAT, in contrast to resident businesses, which have applied reverse charges on invoices.

We look forward to the Joint Chambers of the Supreme Court of Cassation's judgement, hoping that the mistaken interpretation of the judges of the Civilian Italian Supreme Court of Cassation will not affect these consolidated rules regarding Italian VAT representatives of non-resident companies.

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LATVIA

DOMESTIC REVERSE-CHARGE VAT MECHANISM FOR PRECIOUS METALS

The Latvian parliament is reviewing amendments to the VAT law related to implementation of a domestic reverse-charge VAT mechanism to local supplies for precious metals.

The aim of the amendments is to reduce the number of fraudulent transactions in precious metals, as the amount of input VAT paid out to companies operating in this particular area has notably increased over the last few years.

The amendments will apply only to transactions involving the sale/acquisition of precious metals:

- In the territory of the Republic of Latvia
- Between persons registered in the State Revenue Service's VAT payer register.

In the regulations applicable to the proposed provisions, precious metals are defined as:

- Unwrought precious metals and their semi-finished products
- Unwrought alloys of precious metals and semi-finished products
- Clad metals, which are unwrought, with precious metals
- Scraps of precious metals and debris or scraps of metals and debris that are clad with precious metals.

If the amendments are approved by the Parliament and announced by the president, the new regime will enter into force from 1 January 2017.

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MACEDONIA

MACEDONIA'S VALUE ADDED TAX

Within the last 10 years of economic reforms, Macedonia has created an attractive tax system for foreign investors. These reforms include introduction of a flat tax rate of 10% for corporate and personal income and low VAT, which simplify the tax system and stimulate successful companies to further improve operations and increase profitability.

Registration

Taxpayers whose annual turnover is MKD 1,000,000 or more must register for VAT. The tax registration period is until the 15th of the month following when the taxpayer's turnover exceeds this threshold. Newly established companies may voluntarily register for VAT, if in the previous calendar year they have turnover of less than MKD 1,000,000. The tax registration period is from 1 January-15 January, or within 15 days from when the company started performing their business activity.

Tax period

The period for which VAT is collected and paid (the "tax period") is monthly, unless the taxpayer's total turnover in the previous calendar year is less than MKD 25 million, in which case the tax period is quarterly.

VAT tax rates

Macedonia has a general and preferential VAT rate:

- The general rate is 18%
- The preferential rate is 5%.

Tax exemptions

In Macedonia there are VAT exemptions for specific taxpayers, such as non-residents, non-profit organisations, foreign diplomatic or consular missions and their members, and international organisations and their members.

Macedonia attracts foreign investors with a low rate of corporate income tax (only 10%), but also with tax exemption to investors in the Macedonian Technological-Industrial Development Zones (TIDZs). The exemption, valid for a period of 10 years, applies to corporate income tax, personal income tax, municipality taxes, VAT, and customs duties for purchased equipment, goods, machines, and raw materials. Users of the TIZD have VAT exemptions on sales of goods and services, other than on goods and services for final consumption. As well, goods imported into the TIDZ, other than goods intended for final consumption, are exempt from VAT.

VAT incentives

Quite apart from the VAT exemptions, there are also tax incentives related to VAT for donations supporting public activities.

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THE NETHERLANDS

A BUILDING PLAN FOR THE VAT QUALIFICATION OF CONSTRUCTION SITES

Whether or not a plot of land qualifies as a construction site for VAT purposes is debatable. There is a lot of European case law around this subject. The result of the varying cases is that the Dutch definition of a construction site for VAT purposes is not in line with the European definition. The Dutch legislature has announced that beginning 1 January 2017 the definition of a construction site for Dutch VAT will be widened and brought in line with the EU VAT Directive and EU Court of Justice (CJEU) case law. However, this change will have its consequences.

Definitions of a construction site for VAT purposes in the Netherlands

Until 1 January 2017 there are two definitions that lead to a construction site for VAT existing in the Netherlands: the Dutch definition and the definition developed under CJEU case law. According to the current Dutch VAT legislation, a construction site is an unbuilt plot of land:

a) Which is, or has been, processed;

b) To which provisions are, or have been, made exclusively subservient to the land;

c) To which provisions are, or have been, made in the surroundings; or

d) To which an environmental permit for construction activity is granted;

for the purpose of building on that plot of land.

Next to this definition, the CJEU decided in both the Don Bosco and the Maasdriel case that even when there are existing structures on a plot of land, this plot of land can still qualify as a construction site. In order for such a plot of land to qualify, the seller must have the intention of demolishing the existing structures and the purchaser must intend to build a new structure on the plot of land. According to the CJEU, under such conditions it is the intention of both parties to supply an unbuilt plot of land that qualifies as a construction site for VAT. With the new Dutch definition as of 1 January 2017, such scenarios will also be subject to VAT based on the updated Dutch VAT law. The definition of a construction site will then be:

- An unbuilt plot of land that is evidently destined to be built upon.

Cherry picking

As the CJEU's view of what constitutes a construction site is more comprehensive than the current definition under Dutch VAT law, taxpayers/tax-advisors can now "choose" (subject to conditions) which explanation/definition suits them best in a particular situation. As a result, taxpayers now have the choice of supplying a plot that is subject to VAT or exempt from VAT. The Dutch tax authorities, however, can only argue the limited definition as included in Dutch VAT law, since they cannot appeal CJEU case law (see, among other cases, the CJEU decision in Larentia & Minerva). With the announced change in the law, taxpayers/tax-advisors will no longer be able to cherry pick.

Real estate transfer tax exemption

The qualification as a construction site is important for VAT purposes and it has influence on real estate transfer tax as well. Only supplies of land that are by default subject to VAT are exempt from real estate transfer tax. For land that is only considered a construction site on the basis of CJEU case law, the real estate transfer tax exemption does not automatically apply.

Conclusion

For Dutch VAT purposes, this legislative change means less room for taxpayers to choose which explanation/definition applies for VAT and the real estate transfer tax exemption when purchasing/selling a plot of land. On the other hand, the expectation is that there will be less discussion with the Dutch tax authorities and more clarity around defining whether a plot of land is a construction site. The Dutch VAT and real estate transfer tax consequences should, therefore, be easier to determine.

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PHILIPPINES

ADHERENCE TO THE DESTINATION PRINCIPLE AND THE CROSS BORDER DOCTRINE

The VAT law of the Philippines adheres to the Destination Principle and the Cross Border Doctrine. Under the Destination Principle, goods and services are taxed only in the country where those goods and services are consumed. Conversely, the Cross Border Doctrine mandates that no VAT shall be included in the cost of goods or services destined for consumption outside the territorial border of the taxing authority. In effect, the export of goods and services from the Philippines to a foreign country is not subject to VAT, while goods and services used and consumed within the Philippines is subject to 12% VAT. For tax purposes, export processing zones are effectively considered foreign territories.

In the cases of CIR vs. Seagate and CIR vs. Toshiba, the Supreme Court held that if the export of goods and services from the Philippines to a foreign country is free of VAT, then the same rule holds for such exports from the national territory to a so-called ecozone or freeport zone, other than certain specifically declared areas.

In another case, the Supreme Court further held that given that it is the law that all goods entering a freeport or economic zone are duty-free or tax free, for as long as they remain there, are consumed there, are re-exported from there, or are destroyed while there, then they are not subject to duties and taxes under the laws of the Philippines.

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ROMANIA

FIXED ESTABLISHMENT FOR VAT PURPOSES

Let's assume Company A, incorporated in Italy, has a branch in Romania with employees. The Italian entity renders services to clients from other EU Member States, but no services are rendered to clients in Romania. In this case, the branch performs activities exclusively for the parent company, not for clients.

When determining whether Company A has a fixed establishment for VAT purposes in Romania, the judgements of the Court of Justice of the European Union must be considered. As decided in the Daimler AG (C-318/11) and Widex A/S (C-319/11) cases, a VAT taxable person established in one Member State that carries out only technical testing or research work, not including taxable transactions, in another Member State cannot be regarded as having a "fixed establishment from which business transactions are effected" in that other EU Member State. Also, as per the decision in the FCE-Bank C-210/2004 case, where a fixed establishment (that is not a legal entity distinct from the company) is established in another EU Member State, it should not be treated as a taxable person by reason of the costs imputed to it in respect of the activities performed on its benefit.

Considering the cases described above, the branch of company A is not considered to be making taxable supplies of services and would not be required to register for VAT purposes in Romania. Moreover, considering that the branch does not perform any taxable operations, this entity would not be considered a fixed establishment from a VAT point of view and VAT reimbursement through the electronic portal as per the EU VAT Refund Scheme would be possible.

Nevertheless, in cases where the branch makes intra-Community acquisitions of goods in Romania, the branch will be obliged to register for VAT purposes in Romania before performing such operations, even if the branch does not make taxable supplies of services. In this situation, the company will be able to deduct the VAT related to the acquisitions made in Romania through its VAT return. VAT related to acquisitions prior to VAT registration shall also be deductible.

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SINGAPORE

FOREIGN COMPANIES SUPPLYING GOODS IN SINGAPORE

Unfamiliarity with the Singapore Goods and Services Tax (GST) rules could result in foreign companies supplying goods in Singapore having a potential GST registration liability, not to mention that they could end up out-of-pocket. It is important, therefore, for foreign businesses to consider the GST implications before starting any business activities in Singapore so that they can mitigate their GST costs.

Determining the place of supply of goods

A supply of goods made in Singapore is subject to GST at the standard rate of 7% unless the supply qualifies for zero-rating (in which case the GST will be chargeable at 0%). Under the Singapore GST rules, the place of supply of goods is determined by reference to the location of goods at the time of supply. A supply of goods is treated as made in Singapore if the supply involves the removal of the goods from Singapore or the goods are in Singapore at the time of supply.

Where a foreign company makes taxable supplies of goods in Singapore and the value exceeds, or is expected to exceed, SGD 1 million in any 12-month period, the foreign company must register for GST. This is so, even if the goods are wholly or mainly exported from Singapore, in which case the supply would qualify for zero-rating. In such a case, an application for exemption from GST registration is necessary if the company does not want to be GST registered. An alternative is for the foreign company to appoint a GST agent (known as a "section 33(2) agent") who imports and supplies goods on the company's behalf. The import and subsequent supply (local or export) of the imported goods would then be declared via the GST returns of the GST agent, relieving the foreign company from registering for GST in its own name.

Potential costs

Foreign companies should be aware that not registering for GST or doing so late can lead to potential costs as follows:

- On the back-dating by the Inland Revenue Authority of Singapore (IRAS) of a late GST registration, additional GST will have to be accounted for and paid on the company's past sales from the date the company became liable to register. This is so even if the company did not collect GST from its customers (in other words, all past sales would be treated as inclusive of GST)
- Fines/penalties imposed by the IRAS due to non-compliance and late notification of GST registration liability
- Unrecoverable GST costs incurred and paid by the foreign company on the import of goods.

In view of the above, foreign companies that intend to supply goods in Singapore should consider the GST issues before concluding any business arrangement. Foreign companies currently making supplies of goods in Singapore should also revisit their business arrangements to ensure they are in compliance with the Singapore GST rules.

How BDO Singapore can help

BDO Singapore can help businesses:

- Review their business arrangements and provide advice to companies on options (for example, whether to apply for GST registration or to appoint a section 33(2) agent)
- Advise on options available to foreign companies on the import of goods into Singapore (for example, GST relief, special GST schemes, appointment of section 33(2) agents)
- Assess the GST registration liability and assist in submitting to the IRAS the requisite application for GST registration/exemption.

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SLOVAKIA

COMPENSATION FOR UNPAID INPUT VAT DEDUCTION DUE TO A VAT AUDIT

A recently approved amendment of the Slovak VAT Act will introduce a right to interest on input VAT deductions unpaid due to an open VAT audit. This amendment was made as a result of the judgement of the Court of Justice of the European Union in case C-107/10 Enel Marica Iztok 3 AD and an order from the ECJ in case C-120/15 Kovozber s.r.o.

Under the amendment, the right to interest on unpaid input VAT deductions will arise if the tax authority starts a VAT audit within the statutory deadline for such an audit and the audit takes more than six months.

The annual interest is 1.5% on the total amount of the VAT refund. It will be calculated per day starting after the sixth month until the VAT refund is paid to the VAT taxpayer.

This change is effective from 1 January 2017 and it will also apply to VAT audits started before that date that continue after 1 January 2017.

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SPAIN

THE SUBMISSION OF THE ANNUAL SUMMARY VAT RETURN DOES NOT RE-SET THE STATUTE OF LIMITATION

Last September a Resolution was published by the Economic Administrative Court declaring, as a matter of doctrine, that the submission of the annual summary VAT return (Form 390) does not re-start the statute of limitation that applies for the Tax Administration for determining the VAT tax liability.

The reasons given by the Spanish Tax Administration Court for its conclusion is that the submission of this form is just the fulfilling of an information obligation related to VAT management, it does not relate to the payment of the tax liability. On the contrary, the submission of periodic VAT returns is required to fulfil the taxpayer's material obligation related to its tax liability.

At first glance, it may seem that this Resolution is contrary to several past Supreme Court decisions that concluded that filing of such a summary return re-set the statute of limitation. However, the Economic Administrative Court was of the view that the decisions of the High Court related to situations when the summary return was jointly submitted with the periodic returns. Since it is no longer possible to submit the summary and periodic returns at the same time (now the periodic and summary returns must be independently submitted), the Economic Administrative Court was of the view that the Resolution is not contrary to the previous jurisprudential approach.

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UNITED KINGDOM

DISTANCE SELLING – ALTERNATE DELIVERY ARRANGEMENTS

The UK First-tier Tax Tribunal is set to consider whether the VAT distance selling rules, for online and mail order sales to consumers in other EU Member States, apply where a vendor has introduced or promoted a separate delivery service.

Distance selling rules apply to online and mail order sales to private customers in other EU Member States where the goods are "dispatched or transported by or on behalf of the supplier". Such businesses must register for VAT in any EU member state to which they deliver goods, where their turnover exceeds the distance selling threshold set by that country – normally EUR 35,000 or EUR 100,000. Sales below the threshold do not trigger a registration requirement and vendors should instead apply and account for VAT at the rate applicable in the member state of dispatch of the goods.

However, a number of vendors have adopted arrangements aimed at keeping them outside the distance selling rules, by removing the obligation for them to deliver, or to arrange the delivery, of their goods.

In a report published in 2015, the VAT Committee took the view that the term "by or on behalf of the supplier", in Article 33 of the Principal VAT Directive, should be interpreted not literally but broadly and by reference to "economic reality". In their view, it would apply to any kind of involvement by a supplier in the delivery arrangements, including promoting, recommending or even suggesting a transport company to the customer. This interpretation would have the effect of bringing many businesses using alternate delivery arrangements within the scope of the distance selling rules.

The VAT Committee's interpretation, although "almost unanimous" is not binding on member states and there have been no further comments at EU level since, although it is believed that tax authorities in some other member states are beginning to adopt the interpretation put forward by the VAT Committee.

In the UK, however, sportswear retailer Sports Direct has lodged an appeal against a ruling from HMRC, the UK tax authority, in which HMRC suggests the retailer should not be charging UK VAT on sales to consumers in other EU Member States. There has already been a preliminary hearing by the First-tier Tax Tribunal and a substantive hearing is expected early next year. The Tribunal may refer the case to the Court of Justice of the European Union for guidance on how Article 33 should be interpreted.

If the Tribunal in the UK agrees with the VAT Committee's interpretation, many online and mail order retailers in the UK may have an opportunity to seek recovery of the UK VAT they have previously paid in error to HMRC, but could also face a requirement to register for VAT in up to 27 other EU Member States in respect of distance sales. Aside from applying VAT at differing rates to the same goods and filing VAT returns in multiple jurisdictions, vendors may find some member states will seek to backdate their VAT registrations. If so, this may trigger penalties in addition to retrospective VAT liabilities.

The Sports Direct case has put distance selling arrangements firmly back on the VAT agenda in the UK, and has renewed concerns about the effectiveness of such arrangements. Businesses potentially affected by this issue should review their structures and delivery arrangements in light of the VAT Committee's views on "economic reality". In particular, they may wish to consider the feasibility of implementing alternative structures, or of using third party "arm's length" arrangements.

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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 30 November 2016.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Colombian Peso (COP)	0.00030	0.00031
Euro (EUR)	1.00000	1.06079
Hungarian Forint (HUF)	0.00321	0.00340
Macedonian Denar (MKD)	0.01615	0.01713
Singapore Dollar (SGD)	0.66088	0.70115
Swiss Franc (CHF)	0.92970	0.98628
US Dollar (USD)	0.94256	1.00000

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