APRIL 2016 ISSUE 1
WWW.BDOINTERNATIONAL.COM

INDIRECT TAX NEWS

CHINA
Customs implications for royalties
READ MORE 4

GERMANY
Latest court decisions on VAT groups
READ MORE 6

ISRAEL
Global companies with Israeli subsidiaries and global internet companies – be aware of Israeli VAT
READ MORE 8

UNITED ARAB EMIRATES

THE UAE TO IMPLEMENT VAT FROM 1 JANUARY 2018

It was recently announced that VAT is being implemented in the United Arab Emirates from 1 January 2018. The rate will be 5%. Healthcare, education and some basic food items will be exempt.

The VAT will be implemented across the Gulf Cooperation Council (GCC) countries (Saudi Arabia, Qatar, Kuwait, Oman, and Bahrain). Unlike the UAE, the other GCC countries have not yet announced whether they are going to implement VAT on 1 January 2018 or on 1 January 2019.

The exact details of the VAT regime will have to be set out in the common framework of VAT within the GCC and the national legislation is yet to be made available.

PRIYESH KAPADIA
United Arab Emirates – Dubai
priyesh.kapadia@bdo.ae

KUWAIT

POTENTIAL INTRODUCTION OF VAT IN KUWAIT

Last year, the Gulf Cooperation Council (GCC) states, which comprise Kuwait, Saudi Arabia, United Arab Emirates, Bahrain, Qatar, and Oman, agreed on a draft VAT framework agreement setting out the VAT principles that are to be adopted by each GCC state. The VAT framework agreement is expected to be issued by June 2016.

To protect the commercial competitiveness of all GCC countries, the GCC states have agreed to introduce VAT at the same time and at the same rate. In late February 2016 the Minister of State for Financial Affairs in the United Arab Emirates (UAE) confirmed that value added tax (VAT) at a rate of 5% will be implemented in UAE effective 1 January 2018.

CONTENTS

EDITOR'S LETTER

Dear Readers,

I've just arrived back from a 6-day trip to the US during which I had a series of meetings with, and presentations to, BDO colleagues in San Jose and Boston, as well as current clients of the firm in San Francisco, Sunnyvale, Seattle, and Boston.

When travelling back to Dublin over the weekend, two thoughts struck me:

1. The world is a very small place in which to do business as while I was away, apart from having contacts from my own firm in Ireland, I had calls with clients in Norway, Belgium, Canada, and Sydney who were all actively trading in Ireland.
2. Despite Irish cultural perception that "the hills are green far away", it was raining (and sometimes cold) in each of the US cities visited by me, whereas the weather in Dublin was pretty good during my absence.

Now that our spring has arrived, the increase in energy, and indeed business activity, levels in our workplace is truly palpable and based on my experiences over the past week, this phenomenon is not confined to Ireland.

You'll be pleased to hear that I and my BDO international colleagues are well placed to provide any advices that may be required as a result of this upturn and we look forward to supporting both our existing and new clients with any necessary assistance.

Finally, as this note is being penned in the run up to 17 March, I'd like to take the opportunity to thank all of our clients for their continued support of our network and to wish you all a very Happy Saint Patrick's Day 2016.

Kind regards from Dublin!

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

(continued from page 1)

Kuwait's Minister of Finance has confirmed that Kuwait is committed to the introduction of VAT. The Kuwait tax department is working on a VAT law and regulations but there is no clear timeframe for when these will be issued.

Potential VAT exemption

Though no formal VAT law or regulations have been issued in any of the GCC states, various finance ministers from GCC states have indicated that VAT will not apply on certain items, such as food, education, healthcare, and social services.

Way forward

The introduction of VAT in the GCC region with clear VAT regulations will be a hot topic for the next couple of years. Given the expected issuance of the VAT framework agreement in June 2016, businesses will have about 18 months to get ready for the implementation of VAT where their GCC country opts for a 1 January 2018 starting date. Businesses should be proactive and start planning to understand how VAT may impact their business.

QAIS M. AL NISF
RAMI ALHADHRAMI
Kuwait
qais.alnisf@bdo.com.kw
rami.alhadhrami@bdo.com.kw

ARGENTINA

TURNOVER TAX – THE SUPREME COURT OF JUSTICE OF THE NATION FAVORS THE DEVELOPMENT OF INDUSTRIAL ACTIVITY

Turnover Tax is a provincial tax levied on certain goods and services within a particular jurisdiction.

In general, the provinces levy higher turnover tax on goods that are manufactured outside their province than on goods that are manufactured and sold within the province. Taxpayers have long complained that such treatment is discriminatory.

In this context, the Supreme Court recently ruled that the decision of provinces to apply turnover tax to products manufactured outside their province at a rate that is higher than the rate applied to goods manufactured and sold in their province amounts to a restriction on the free movement of goods. According to the Court, such treatment creates, in effect, an internal customs mechanism that is prohibited by the National Constitution, infringing on the freedom of choice regarding the decision of where to establish one's business, and imposing an unequal public burden. As a result, the Court concluded that provinces should not treat goods manufactured and sold within their province differently than goods manufactured outside their province.

Given that local tax authorities have applied a similar discriminatory attitude toward other types of activities, the precedence set by this case may present a remedy for those taxpayers that are subject to such unequal tax burdens.

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

BELGIUM

VAT AND DISTANCE SALES

The Belgian VAT Authorities recently published a new Decision (Decision No. ET 128.714 of 9 February 2016) on the interpretation of the notion "transport by or on behalf of the supplier" regarding distance sales.

Distance sales

The EU's distance selling rules apply to businesses that sell and deliver goods to private customers in other Member States, e.g. through a website or mail order catalogue. According to regulation on distance sales, VAT is to be accounted for in the country of arrival of the goods, when:

- The goods are transported or dispatched to the buyer by or on behalf of the supplier, and
- The sales threshold, as prescribed by the relevant EU Member State, is exceeded by the supplier (the threshold in Belgium is currently EUR 35,000.00).

New means of transport, goods to be installed by or on behalf of the supplier and cases where the buyer should report an intra-Community acquisition of goods do not fall within the scope of this regulation.

If these conditions are met, the supplier will have to register for VAT in the country of arrival of the goods. The supplier may also opt to apply the distance sales scheme immediately, without exceeding the aforementioned threshold.

Guidelines of the EU VAT Committee

In the aforementioned VAT Decision, the Belgian VAT Authorities have clearly supported the guidelines of the EU VAT Committee on the meaning of the term "dispatched or transported by or on behalf of the supplier". In this respect, a merely indirect participation of the supplier in the transport already gives rise to the application of the distance sales regulation.

The supplier is deemed to organise the transport if he subcontracts a transport company, or if the transport is performed by a third party, but the responsibility to the buyer remains (entirely or partly) in the hands of the supplier or, when the supplier invoices the transport costs to the buyer.

A number of other actions, such as promoting a particular transport company, placing the buyer in contact with a transport company, providing the necessary information for the supply of the goods to the transport company, etc. are also included in the notion 'transport by or on behalf of the supplier'. This interpretation prevails nearly unanimously within the VAT Committee.

The regulation on distance sales is excluded only if the supplier is not in any way involved in providing or organising the transport, which implies that the supplier can charge VAT in the country where the transport begins.

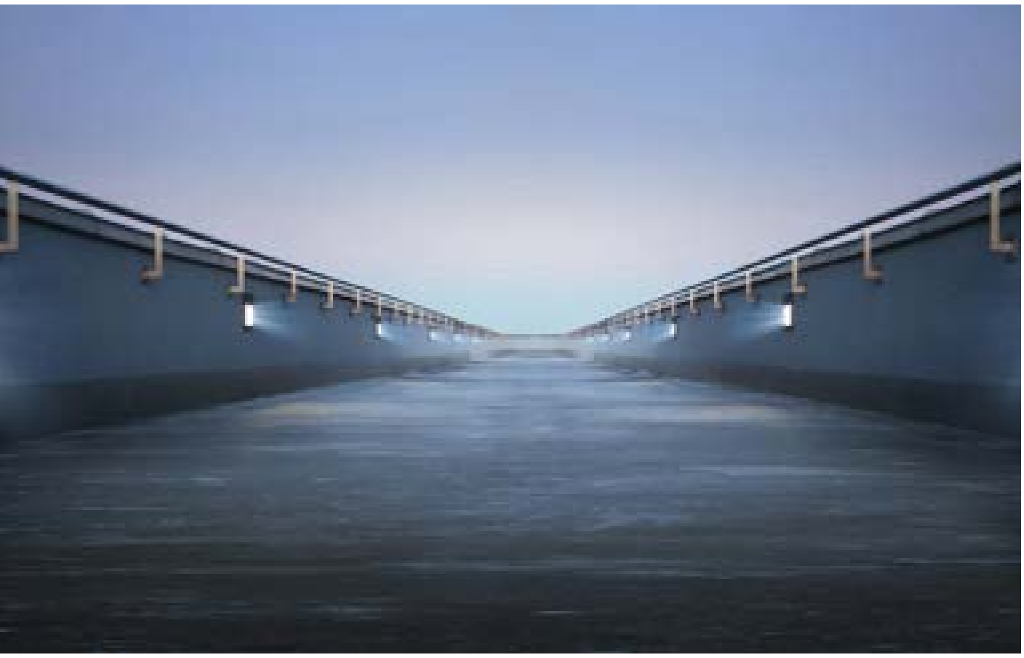
Check sales conditions recommended

Companies performing the activities described above are recommended to investigate their sales conditions in order to assure the correct application of the VAT legislation, as it is expected that similar guidelines will eventually be adopted across the entire EU.

BRIGITTE BRAECKMANS
Belgium – Brussels
brigitte.braeckmans@bdo.be

CHINA

CUSTOMS IMPLICATIONS FOR ROYALTIES



Royalty fees paid by taxpayers that are engaged in import-and-export businesses have become the target of investigation by Chinese customs authorities. Since royalty payments are subject to withholding tax as remittances under a non-trade category, many taxpayers do not understand why customs duty and import valued added tax (VAT) are imposed on royalty fees.

If the value of the royalty is included in the import price, the importer does not pay royalty fees separately. However, if the royalty is excluded from the import price of the goods, the import price is lower and so the customs duty and import VAT levied is less.

According to the World Trade Organization's (WTO's) Customs Valuation Agreement and the Regulations of the People's Republic of China on Import and Export Duties, Chinese customs authorities have the right to impute royalty fees in the final import price for customs duty and import VAT purpose. So, customs duty and import VAT is levied on the cost attributable to the royalty that is imputed. According to Decree No. 148 of the General Administration of Customs of the People's Republic of China, to determine whether royalty fees should be included in the import price, the following should be considered:

i. Whether the royalty fees are related to the imported goods – in other words, whether the royalties were paid in relation to something used in the production of goods before importation, in which case it should be included in the import price; and

ii. Whether the royalty fees are paid as a condition for the sale of the goods in the People's Republic of China, in which case such royalty fees should be included in the import price.

If the import price is challenged by the customs authorities, whether the royalty is excluded from the import price will become a key focus. Chinese customs officers are allowed to investigate import transactions of taxpayers after customs clearance. Therefore, in the event the Chinese customs authority challenges the taxpayer, we recommend importers prepare supporting documentation, such as a royalty agreement, sales contract, and records of overseas remittances. We also recommend that taxpayers consider the scope of the royalty. For example, technology used for domestic manufacturing of products is not considered related to the import materials, so royalties on such technology is not subject to customs duty and import VAT. Therefore, the royalty agreement should specify the nature of the technologies that are subject to the royalty.

GORDON GAO
JAY TANG
China – Shanghai
gordon.g@bdo.com.cn
jay.t@bdo.com.cn

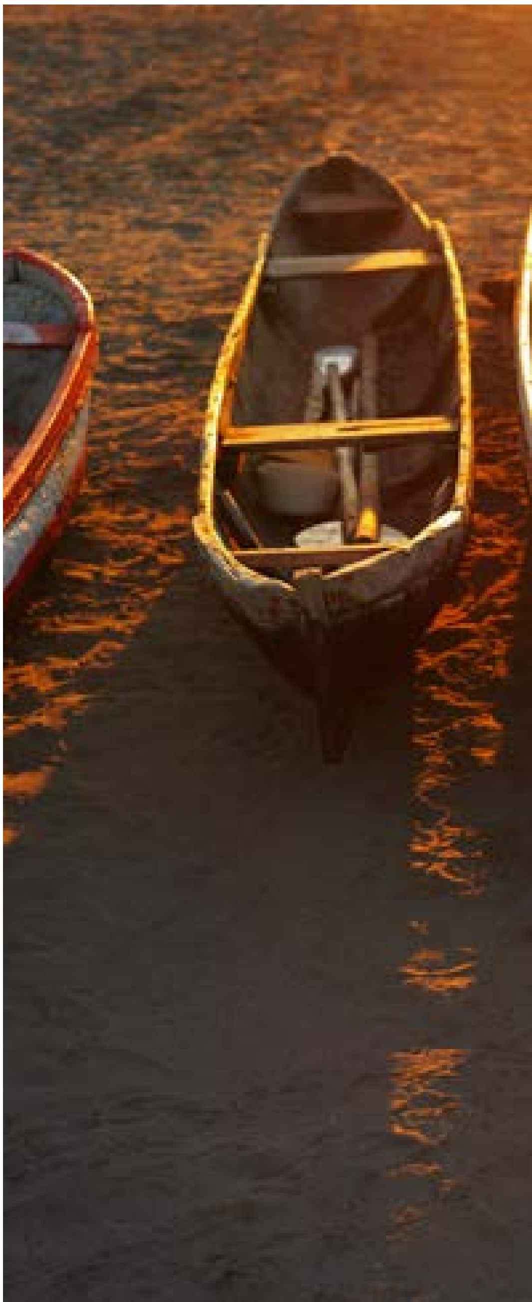
COLOMBIA

VAT REFORM 2016

On 25 February 2015 the National Government set up the Committee of Experts for Tax Equity and Competitiveness in accordance with Law 1739 of 2014 and Decree 327 of 2015. After 10 months of work, the Committee presented a report to the Ministry of Finance with recommendations for medium and long-term structural tax reform. A reform bill is expected to be submitted to Congress sometime in the second half of 2016.

The Committee made the following recommendations with respect to VAT:

- Transactions involving intangible property (in other words, transactions other than those involving tangible personal property and services) and commissions and expenses charged by the financial sector should be subject to VAT.

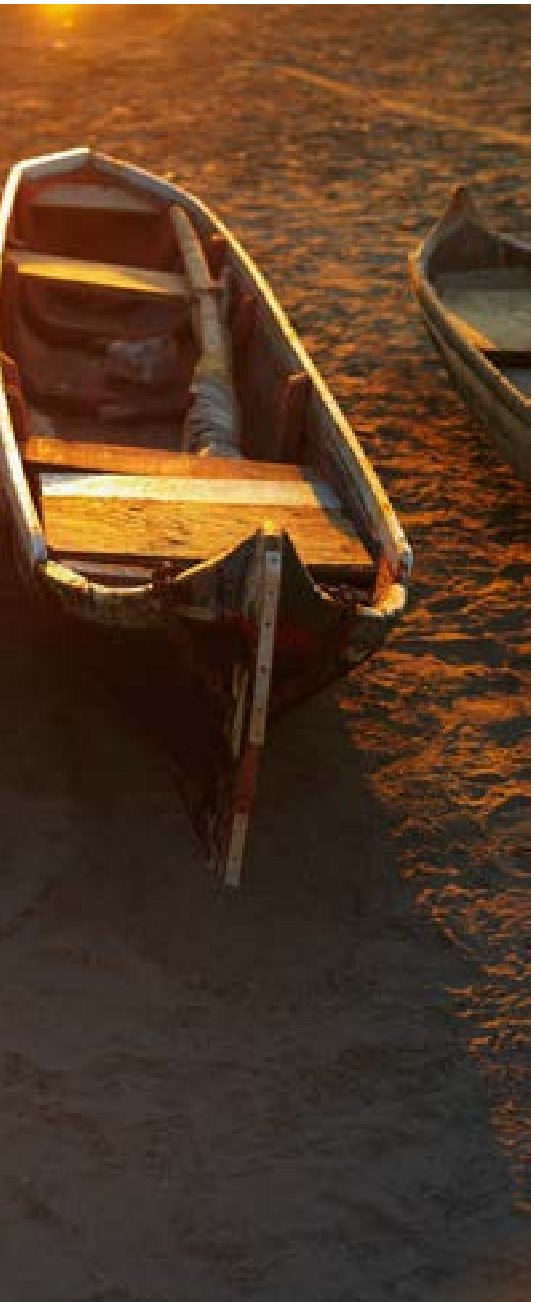


Columbia article continued

- Five VAT rate categories should be established: non-taxable (goods and services that are currently referred to as VAT exempt), zero rated, 5%, 10% and 19%.

The Committee recommended that the category of non-taxable services be confined to the following services: health, education, passenger public transport, and vital consumption of public utilities. The zero rate (which carries the right to obtain refunds for the VAT paid on inputs) would only apply to exports of property and services.

JUAN MANUEL IDROVO CUBIDES
EDWIN SAUL CASTAÑEDA SORIANO
Colombia – Bogota
jidrovo@bdo.com.co
ecastaneda@bdo.com.co



FINLAND

RULINGS REGARDING PARENT COMPANY'S RIGHT TO RECOVER INPUT VAT

On 22 December 2015, the Finnish Supreme Administrative Court (SAC) handed down two rulings regarding a parent company's right to recover input VAT.

In the first ruling (KHO:2015:183), Company A acted as a parent company of a group of companies. During the period at issue, Company A had several subsidiaries and associated companies and it provided administrative services subject to VAT to three of these companies. With respect to the other companies, Company A acted as a mere holding company and did not provide administrative services to them. Company A also had real estate leasing activities, some of which were subject to VAT and some of which were VAT exempt. The majority of Company A's income came from dividends it received from the subsidiaries and associated companies. On average, Company A had three employees on its payroll.

Company A had deducted input VAT on its overhead costs in full. As a result of a tax audit, the tax authorities took the view that Company A's recoverable input VAT on overhead costs should be calculated based on the proportion of Company A's income subject to VAT (administrative services and leasing that was subject to VAT) to its total revenue including, for example, dividends and interest income. Company A argued that its input VAT recovery should be calculated based on the proportion of its turnover subject to VAT to its VAT-exempt turnover, which should only include VAT-exempt leasing of real estate.

According to the SAC, Company A carried out some activities for which it was eligible for input VAT recovery and some for which it was not entitled to recover input VAT. The activities that were not eligible for input VAT recovery were the VAT exempt leasing activities and acting as a mere holding company of the subsidiaries that it did not provide any services to. The SAC was of the view that acting as a mere holding company was an activity outside the scope of VAT. Therefore, Company A would be obliged to divide the input VAT to recoverable and non-recoverable. However, neither the allocation method of VAT deductions on overhead costs presented by Company A nor that presented by the tax authorities were fully in compliance with the Finnish VAT Act, according to the SAC. On the other hand the SAC itself did not rule on exactly how the input VAT recovered should be allocated in this case.

In ruling (KHO:2015:184), Cooperative A had several subsidiaries. Some of the subsidiaries carried on activities that were subject to VAT and some subsidiaries carried on activities that were outside the scope of VAT. Cooperative A supplied administrative services subject to VAT only to subsidiaries that had activities outside the scope of VAT. Cooperative A was also a sole shareholder of a mutual real estate company and it carried out rental activity subject to VAT when leasing out premises in the mutual real estate company.

The SAC held that Cooperative A was entitled to recover the input VAT on the purchases related to its activities subject to VAT (that is, the supply of administrative services and rental activity) and on the overhead costs for the part that related to activities subject to VAT.

Cooperative A had allocated the input VAT between recoverable and non-recoverable based on the labour input used. The SAC confirmed that the right to recover the input VAT on costs could be made based on an allocation of the division of personnel's time (the labour input) used for the activities subject to VAT and to the activities that are not entitled to input VAT recovery.

In its rulings in these cases, the SAC did not give an explicit opinion on how the allocation of the input VAT on overhead costs should be made, it concluded that the applicable allocation method should be determined by the taxable person itself. In this respect, parent companies should consider the appropriate allocation method for input VAT recovery where they have some activities subject to VAT and some VAT-exempt activities or activities out of scope of VAT.

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

GERMANY

LATEST DECISIONS OF GERMANY'S FEDERAL COURT OF FINANCE ON VAT GROUPS

Background

Under the German VAT Act, a VAT group exists when, based on the overall actual conditions and circumstances, a legal entity (a controlled company) is financially, economically, and organizationally integrated into the business of a controlling company (the parent). However, the specific conditions that give rise to a VAT group in Germany are controversial because the national legislation currently does not provide special rules or procedures to determine the conditions needed for the existence of a VAT group. The Federal Court of Finance (BFH) recently commented on this issue in several decisions.

1. VAT groups with partnerships

Based on the wording of the German VAT Act, only legal entities can be considered subsidiaries of a parent company in a VAT group. Referring to the judgment of the European Court of Justice in Case C-108/14 (Larentia + Minerva) and Case C-109/14 (Marenave Schifffahrt) the Fifth Senate of the BFH ruled on 2 December 2015 (case ref. V R 25/13) that in specific situations, a partnership could be considered integrated into the business of the parent company and therefore a partnership could be part of a VAT group. This decision is applicable to all open cases. Consequently, taxable persons including partnerships that have intra-group sales can rely on this new case law and can benefit by being in a VAT group because they can treat the sales as non-taxable. The German fiscal authority, however, has always taken the position that only legal entities, not partnerships, can be controlled companies that can form VAT groups. They believe this treatment is explicitly required by Art. 2.8 Para. 2 Sentence 1 UStAE and the fiscal authorities have not yet reacted to the BFH's new ruling. Partnerships that would have unintentionally qualified as part of a VAT group and wish to apply this decision with retroactive effect would be wise to seek the opinion of the fiscal authority.

2. Non-entrepreneurs cannot be parent companies of VAT groups

In a second judgment dated 2 December 2015 (case ref.: V R 67/14) the BFH had to decide whether a "non-entrepreneur" can be deemed a parent company in a VAT group. In the case before the court the non-entrepreneur was a public body. The plaintiff argued that the entrepreneurial status of the parent company would result as a legal consequence of the VAT group. The BFH disagreed. The court was of the view that the entrepreneurial status of the parent company is a prerequisite, not a consequence of a VAT group. Therefore, the BFH concluded it was not possible to form a VAT group with a non-entrepreneur as the parent company.

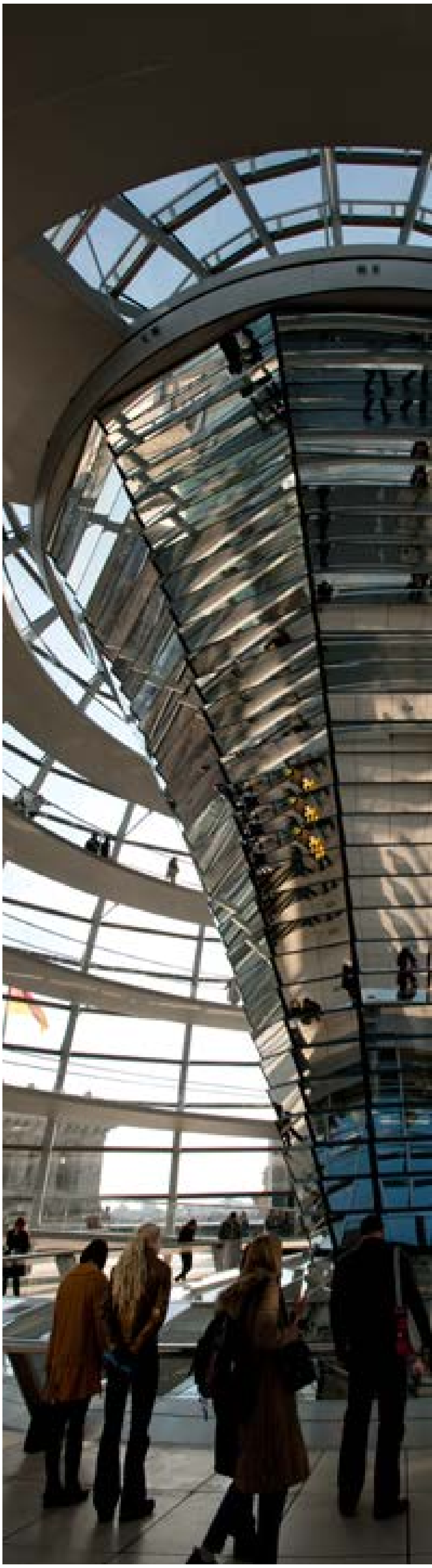
3. Affiliated companies cannot form VAT groups

In another ruling of 2 December 2015 (case ref.: V R 15/14) the BFH had to decide whether affiliated companies (without a parent company) could form a VAT group. The BFH concluded that a group of affiliated companies without a controlling company could not form a VAT group because they lack the necessary financial integration. Furthermore, a controlling company is needed because it is the only member of the VAT group that is liable for the group's VAT obligations and the only member that can assert enforcement rights against the other members to allow it to gather information necessary for it to make the required tax filings and payments. The BFH further asserted that the same outcome would result under European Union law because EU law requires a close link and that is missing among a group of affiliates.

4. Future VAT groups in Germany

With an eye to the future of VAT Groups in Germany, it is clear that taxpayers would benefit by the introduction of rules for determining how a VAT group is formed and how VAT groups can be structured.

ANNETTE POGODDA-GRÜNWALD
TIM LITZBARSKI
Germany – Berlin
annette.pogodda-gruenwald@bdo.de
tim.litzbarski@bdo.de



HUNGARY

FOCUS OF THE TAX AUDIT IN 2016 – INCREASING NUMBER OF VAT INSPECTIONS

The Hungarian Tax Authority recently published its Annual Policy on Tax Audits, which includes the trends and focuses of tax audits for 2016.

The Tax Authority auditors will continue to pay special attention to compliance with the obligations of the EKAER system (Electronic System for Controlling the Road Transport of Goods) and to electronic invoicing and online cash registers. Among the main business operations that are expected to be audited are online trading and online services, web hosting, taxpayers operating in the sharing economy (passenger transport and hotel services), and the wholesale of computers, software, electronic and telecommunications equipment.

Priority attention will also be paid to chain transactions. In Hungary, the supply and acquisition of services and goods within the EU must be reported under the VAT Information Exchange System (VIES). Furthermore, along the lines of VIES, from 2013 domestic transactions that exceed a certain threshold must be reported using a Domestic Sales and Purchase Listing report. The Tax Authority cross-checks the reported data and initiates an audit if it detects differences.

An increasing number of VAT audits are expected to be launched by the tax authority before it will pay a VAT refund and also after VAT returns are submitted. The auditors apply strict requirements on foreign companies. In the course of a VAT audit, the whole business structure is audited, with the auditors requesting contracts, invoices, and transportation documents. The whole process – from the ordering to the invoicing – is audited to verify compliance.

A standard focal point of such audits is an examination of whether the conditions of the VAT exemption exist in cases involving the intra-community supply of goods and exportation of goods to a third country. According to a ruling of the Hungarian tax authority for intra-community supplies of goods, the prime evidence they are looking for to determine authentic certification of delivery is a fully signed CMR document (the signature and stamp of the recipient are necessary on the CMR , otherwise the tax office requires a separate customer declaration). If the conditions of the tax exemption are not fully supported with the proper documents, the tax authority has the right to reclassify the transaction as a domestic supply of goods and to levy the appropriate tax and related sanctions.

ALEXANDRA HORVÁTH
ANGÉLA SZŐKE
Hungary – Budapest
alexandra.horvath@bdo.hu
angela.szoke@bdo.hu

IRELAND

VAT REVERSE CHARGE – GAS, ELECTRICITY, GAS AND ELECTRICITY CERTIFICATES

Finance Act 2015 introduced a VAT reverse charge mechanism for accounting for VAT on wholesale supplies of gas (excluding bottled gas) or electricity made by an Irish-based business to dealers operating in Ireland who supply those goods onward. The new rules also impact supplies of gas or electricity certificates by an Irish business to another Irish business. “A gas or an electricity certificate” is an electronic document that conveys information about the source and production of the energy. The new rules do not impact the supplies of gas or electricity made to an end customer for consumption.

Other supplies covered by the new reverse charge mechanism include:

- “Capacity charges” paid to generators by the Single Electricity Market Operator (SEMO), other than interconnector capacity charges.
- Supplies to power stations made by way of trading rather than for consumption.

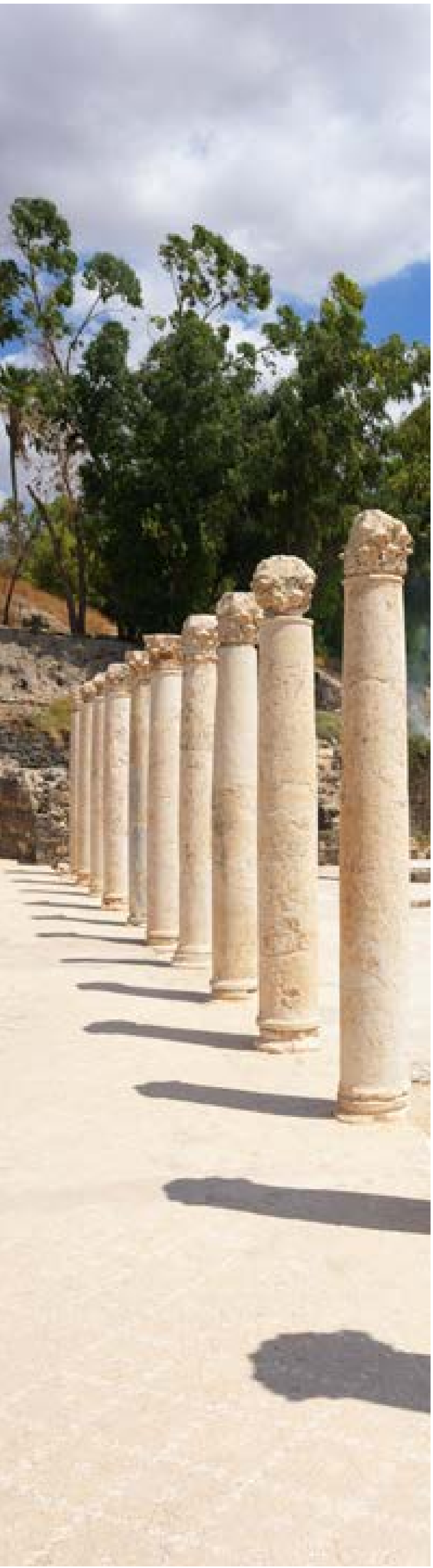
Certain charges excluded from the reverse charge mechanism include the Public Service Obligation Levy and gas shrinkage charges.

The new rules are in effect from 1 January 2016 so Irish-based generators no longer charge VAT on supplies of electricity. As a result, Irish-based customers must now account to the Irish Tax Authority for VAT on receipt of such supplies.

CATHERINE O’NEILL
Ireland – Dublin
coneill@bdo.ie

ISRAEL

GLOBAL COMPANIES WITH ISRAELI SUBSIDIARIES AND GLOBAL INTERNET COMPANIES – BE AWARE OF ISRAELI VAT



Foreign entities that receive services from Israeli suppliers should pay attention to the VAT charge on the invoice to see whether it is zero rated or full rated. The significance of a zero rate of VAT is that foreign entities are not eligible for refunds of Israeli VAT (similar to the refunds provided in the EU according to 13th Directive). Hence, Israeli VAT may be an additional cost to them.

According to the Israeli VAT law, services provided to a foreign entity may be subject to a zero rate VAT if various requirements are met. One of the requirements is that the entity meets the definition of "foreign resident" under the Israeli VAT law. In this article we focus on this issue because there have been two important developments related to it. First, in a petition recently filed in the Israeli court against the Israeli Minister of Finance,[1] it was argued that multinational corporations, such as Google and Facebook, that operate in Israel via the Internet, using a Hebrew website and collecting income in local currency when engaging with Israeli suppliers and clients, should be required to pay VAT in Israel with respect to their transactions in Israel. When the petition was filed, the VAT authorities informed the court that they intend to publish a circular to settle the matter and that the circular may provide an answer to the issues raised in the petition. As a result, the court ruled that it would wait for publication of the circular.

Following that case, the Israeli Tax Authorities issued a draft circular in April 2015 indicating that a foreign corporation that provides services to Israeli customers via the Internet should not be regarded as "foreign resident" for purposes of the application of the zero rate of VAT. That assertion affects Israeli suppliers (related or unrelated), that may be exposed to VAT at the full rate. Also, the draft circular states that such companies are obliged to register for VAT in Israel.

It should be noted that on the question of who will be liable to bear that VAT, this is determined based on the contractual agreement between the service provider and the foreign entity. Where the agreed price is VAT inclusive, it is the Israeli supplier who must bear it. Where the price is exclusive of VAT, it will be added to the agreed price, meaning the purchaser will pay it. If there is no reference to VAT, the price is considered inclusive of VAT, according to the Supreme Court.

In our view, the authorities' draft circular (which reflects the authorities' existing interpretation and it seems they are not waiting for a final version) doesn't distinguish between one activity of the foreign entity and other activities and, in practice, there are circumstances where there are good arguments to not apply it so that VAT should not apply.

The second development arose from another case (Easy Forex Technologies[2]) published in 2015. That case dealt with the applicability of VAT at the full rate following a ruling that the recipient of the services is not qualified to be treated as "foreign resident" for VAT purposes. The case included a discussion of the applicability of the zero rate of VAT for services performed by an Israeli company to a related Cypriot company. The Cypriot company owned a platform for online trading in foreign currencies. The Israeli company provided research and development services, maintenance support, and marketing services to the Cypriot company. Israeli VAT authorities argued that the Cypriot company can't be regarded as "foreign resident" and the court agreed. As a result, VAT at the full rate applied. In essence, the court concluded that the Israeli company was actually a kind of branch of the Cypriot company and that the Israeli company took an active part in the operation of the Cypriot company by presenting itself to clients as the service provider and by managing the trading room, controlling and managing the bank account where client deposits were, and so on.

It should be noted that in that case, the circumstances were extreme. The Cypriot company had a Hebrew website and focused on Israeli clients, the deposits of the Israeli customers were transferred to Israeli bank accounts and, actually, the Cypriot company had very little substance. But, it is not clear what implications the court's decision will have for other situations, such as where the foreign company's activities are with non-Israeli clients, but the Israeli subsidiary takes an active part in the supply.

Provided that proper substance exists and there is documentation to support the structure of the inter-company charges, also where the communications with clients and terms and conditions are handled carefully and all relevant conditions are met, a zero rate of VAT a should apply in Israel.

AYELET YITZHAKI
Israel – Tel Aviv
ayelety@bdo.co.il

[1] Supreme Court 6845/13 Guy Ofir v Director of VAT, Google, Facebook Tel Aviv (11.03.2014).

[2] District Court 29527-05-12 Easy forex technologies of VAT and purchase tax (1.03.2015).

ITALY

VAT CREDIT REFUNDS FOR NON-RESIDENT COMPANIES

In Italy, until 2014 non-resident companies with a VAT credit position faced some problems obtaining refunds of VAT credits from the Italian Tax authorities.

Non-resident companies that had an Italian VAT number, or that used an Italian VAT representative to receive VAT credits of more than EUR 15,000, were required to provide a bank or insurance guaranty to the Italian Tax Authorities. The purpose of this guaranty was to allow to the Tax Authorities a way to quickly recover a VAT credit already refunded if such a recovery was required as a result of an assessment of the VAT return.

In this respect, for non-resident companies that only have an Italian VAT number and no subsidiary or a permanent establishment in Italy, it was not easy get such a guaranty. Indeed, in some cases it was impossible and, in those rare cases when one was obtained, the guaranty was very expensive.

As of 1 January 2015, the rules regarding refund requests for the VAT credit have changed. In some specific cases, it is now possible to avoid the need to file a bank or insurance guaranty by filing a VAT return with a proper certification of conformity (a so-called "Tax Visa") provided by a qualified professional.

The following conditions must be met to by a taxpayer seeing to have a Tax Visa certified:

- The taxpayer must have fulfilled all formal VAT requirements , and the qualified professional must certify the accuracy of compliance with the requirements on a specific check list;
- The taxpayer must fill in a form called a "self-certification". The form must be made by a legal representative of the taxpayer who attests to the following:
  1. Various statements about the company's financial position, including that:
     - The company's net equity has not decreased more than 40% compared with its financial statements of the previous period;
     - The value of the buildings (or other immovable properties) owned by the company, if any, have not decreased as a result of extraordinary transactions (for example, mergers and acquisitions, spin-offs, contributions in kind, and so on) by more than 40% compared to the value reported in the previous financial statements; and
     - The company has not ceased doing business or been sold.
  2. The shares representing more than 50% of the share capital of the non-listed, non-resident company have not been sold in the year before the VAT credit refund request.
  3. Required social contributions have been regularly paid.

A taxpayer making a certification of conformity must check off a specific box on the VAT Return.

If any of the three above requirements are not met, or if the company is in a start-up period (in other words, any time within its first two years of activity) or if it has received a tax assessment above certain specified amounts, the taxpayer will have to file with the Tax Authorities a bank or insurance guaranty if it seeks a VAT credit of more than EUR 15,000.

In Newsletter n. 35/E of 27 October 2015 the Italian Tax Authorities indicated that the new rules are also applicable to non-resident companies that have an Italian VAT number and those that use an Italian representative to receive VAT credits. In such cases, the non-resident's certification of conformity must be certified by a non-resident notary.

Finally, regarding the timing of the refund procedure for the VAT credit, taxpayers should remember that:

- For a VAT credit of up to EUR 700,000 there is a simplified procedure that typically involves a 6 month delay before the amount is paid out by the tax collection office. Interest at 2% is accrued starting from the third month after the filing of the VAT return with the VAT credit refund request;
- For a VAT credit of more than EUR 700,000, depending on the location of the tax authority, it can take from one to two years to receive the credit amount.

RAFFAELE DI LANDRO
FRANCESCO QUARATO
Italy – Milan
raffaele.dilandro@bdo.it
francesco.quarato@bdo.it

ITALIAN CHANGES TO THE EU TRANSACTIONS REGIME

Following the decision of the ECJ in the DresserRand case (C-606/12 and C-607/12, dated 6 March 2012), in July 2015 the Italian government introduced some changes to its EU transactions regime to align Italian law with provisions included in article 17 paragraph 2, letter f of EU Directive 112/2006.

The previous Italian VAT rules, which were in effect before 1 January 2016, provided that:

a) The movement of one's own goods from an EU country to Italy was not treated as an EU acquisition if the goods, were dispatched or transported to other EU or Extra-EU country after additional work was done on them in Italy.

b) The movement of one's own goods from Italy to another EU jurisdiction was not considered an EU sale if the goods were valued or worked on in that EU state. Italian law did not include any reference to the final destination of such goods.

Italy's new VAT provisions introduced by article 13 of Law 115/2015 changes the above principles as follows:

a) The movement of one's own goods from an EU country to Italy is not to be treated as an EU acquisition ONLY where the goods are returned to the same taxable person in the country of their origin after work is done on them in Italy.

b) The movement of one's own goods from Italy to another EU state is not considered an EU sale if the goods are returned to the same taxable person in Italy after they are worked on.

These new provisions are in line with the EU Directive and they extend the scenarios where a transaction is treated as an EU transaction. If you have any questions about this, we would be happy to discuss this with you.

LORENZA CASARI
NICCOLÒ BISCEGLIA
Italy – Turin
lorenza.casari@bdo.it
niccolo.bisceglia@bdo.it

JORDAN

RATES OF GOODS AND SERVICES TAX

Jordan levies a Goods and Services Tax (GST) at rates ranging from 0% to 16%. The 16% rate is imposed on importation of goods and services. GST at various rates between 0% and 16% apply to different products and services.

GST of 16% is imposed on importation of goods & services.

Certain goods and services are tax exempt and others are subject to zero rate.

Zero rated goods and services fall into two main categories:

- Goods and services that are exported or that are supplied to the free zone, or to cities, or duty free shops.
- Goods and services sold to parties that are exempt or that are subject to the zero rate of GST.

Basis of taxation

Taxpayers must remit GST on the earlier of the following dates:

- The date they issue an invoice.
- The date they deliver a good or render a service.
- The date they are paid for the good or the service, whether payment is whole or partial, or whether the amount is paid on account or credit or by some other means.

Deductable

To be able to claim an input tax credit on a purchase, the good or service must be used by the taxpayer to make a taxable supply. Input tax can be deducted three years from the date the taxpayer makes the taxable supply.

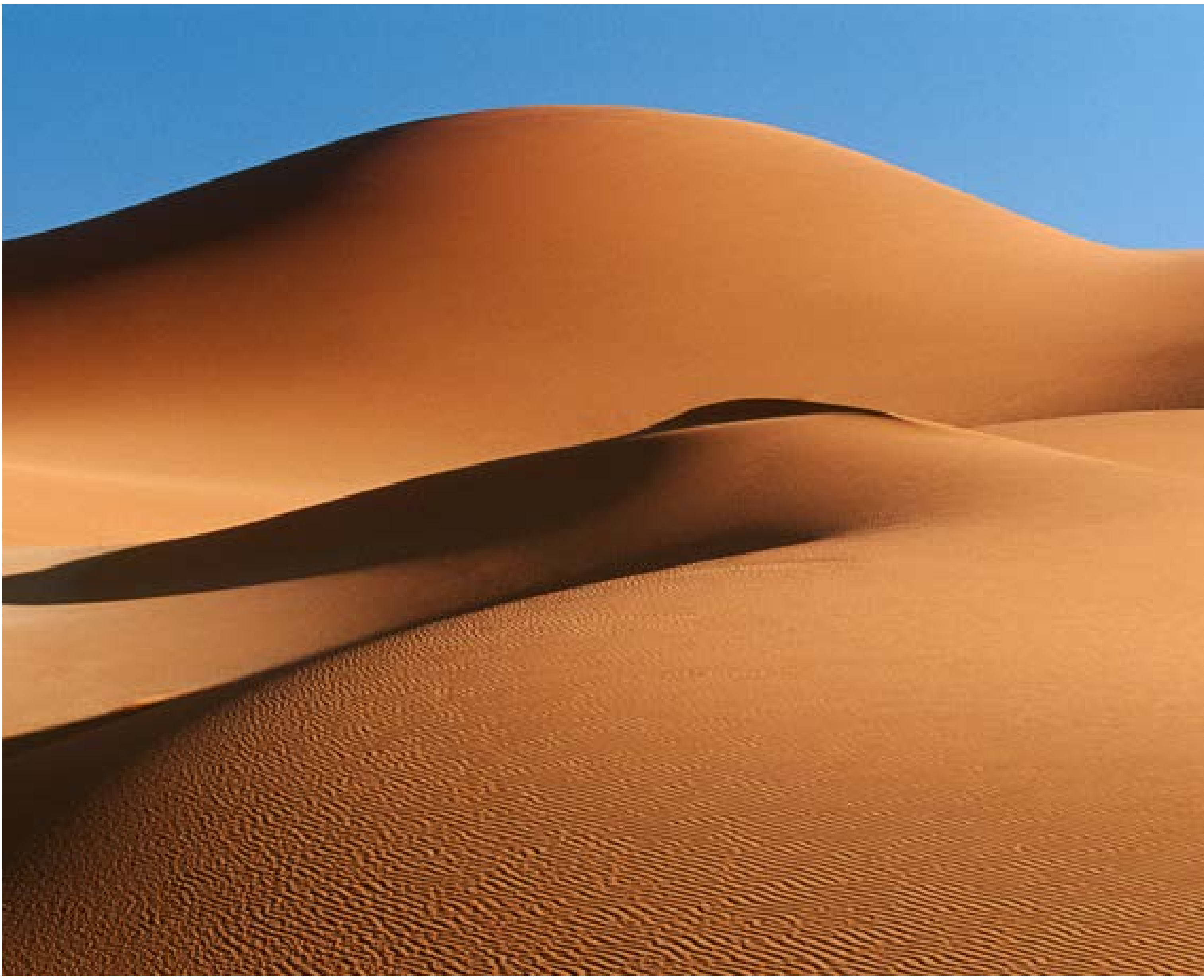
Filing requirements

A GST return must be submitted to the Tax Authority every two months. Each two months period is treated as a single tax period. GST must be forwarded to the Tax Authority within thirty days following the end of the tax period. So, for example, all transactions carried out in January and February should be included in the tax return that must be filed no later than 31 March. At that point the taxpayer must remit the GST to the extent it exceeds input GST.

MOHANNAD QUNIEBI
Jordan – Amman
mquniebi@bdo.com.jo

NAMIBIA

RECOVERY OF TAXES FROM THIRD PARTIES AND APPOINTMENT OF AN AGENT BY THE COMMISSIONER



The Namibian Minister of Finance may, where the Minister deems it necessary, declare any person to be the agent of any other person (or taxpayer) for the purposes of collection of Value Added Tax (VAT Act 10 of 2000, Section 36).

The VAT Acts specifies that where "any person liable" fails to make relevant payments by specific due dates, the Commissioner of Inland Revenue may, by notice in writing, require any other person "to pay … an amount equal to the amount of tax due to the Commissioner on or before the specified notice date."

All taxpayers should be mindful of this power, which the Commissioner of Inland Revenue is taking seriously. We know of situations where the Commissioner has taken such action to enforce tax compliance among taxpayers. As well, the Inland Revenue is stringently monitoring import VAT accounts.

VAT threshold and Sin Taxes

The VAT threshold was increased from NAD 200,000 to NAD 500,000 effective 1 January 2016. "Sin taxes", such as excise duties on malt beer, fortified and unfortified wine, tobacco, cigarettes, and so on, have also increased as announced in the annual 2016 Budget Review of Namibia.

CHANELLE VAN WYK
MAGDA NEL
Namibia – Windhoek
chanelle@bdo.com.na
magda@bdo.com.na

NETHERLANDS

PREVENT TAX INTEREST AND PROSECUTION BY FILING ADDITIONAL TAX RETURNS ON TIME

When an entrepreneur (for VAT purposes) has filed a VAT return in The Netherlands and the entrepreneur later realises that its VAT payable or receivable differs from the amount shown in the initial return, the entrepreneur must immediately file an additional VAT return. The Dutch Tax Authorities will then impose an additional VAT assessment or pay back overpaid VAT based on the information in the additional VAT return. If the difference between the payable/receivable VAT amount reported in the VAT return versus the amount that should have been reported is less than EUR 1,000, no additional VAT return needs to be filed. In that case, the difference can be included in the next VAT return.

Interest at 4% is levied on late payments of VAT and is paid by the Tax Authorities on overpaid VAT. Where the entrepreneur has to pay 4% interest, the interest is calculated from the first day after the year for which the original VAT return was filed until 14 days after the VAT assessment is imposed by the Tax Authorities. If an additional VAT return is filed within three months after the year for which the original VAT return was filed, no tax interest will be charged. That means that an entrepreneur who filed a VAT return for 2015 does not have to pay tax interest if the entrepreneur files an additional VAT return before 1 April 2016.

In The Netherlands entrepreneurs must file an additional VAT return if they find out that their payable/receivable VAT amount stated in a VAT return filed for the last five years was not correct. In case an entrepreneur does not file an additional VAT return immediately, the entrepreneur and his tax advisor can be prosecuted and, if convicted, a prison sentence can be imposed. In a recent case, a Dutch entrepreneur who filed an incorrect VAT return was sentenced for failing to file a timely additional return. The prison sentence was suspended, but clearly imprisonment can result.

Therefore, it is important to file an additional VAT return if it is determined that a Dutch VAT return needs to be corrected.

LIZZY VAN DEN BRAND
MARCO BEERENS
Netherlands – Breda
lizzy.van.den.brand@bdo.nl
marco.beerens@bdo.nl

NORWAY

VAT CHANGES FOR 2016

The following changes have been introduced to Norwegian VAT rates:

- The lower VAT rate has been increased from 8% to 10%, effective 1 January 2016.
- Electronic news services are exempt from VAT, effective 1 March 2016.

These changes should be of interest to anyone who has received an invoice from a Norwegian company in the past with a rate that may be different from the rate on a current invoice from that same taxpayer.

Reduced VAT rate goes from 8% to 10%

In mid-December 2015, the Norwegian Parliament announced its decision to increase the reduced VAT rate from 8% to 10%. The 10% rate applies to sales, withdrawals, and travel agent-type services related to:

- Passenger transport
- Accommodation services in hotels, etc., and
- Entrance fees to museums, theme parks and major sporting events

A registered taxable person that organises major sporting events must charge 10% VAT on rental services related to providing the sports arena's facilities. The 10% must also be charged by those engaged in brokering such rental services.

The 10% rate is also now applied to the transport of vehicles on vessels, cinema tickets, and broadcasting fees.

Advanced invoicing

Because the sale documents related to passenger transport, admission to museums, galleries, amusement parks, activity centres, and sports events can be legally issued up to one year before the actual delivery has taken place, there may be some confusion as to what rate should apply on such sales. Under Norwegian rules, the date of delivery (or withdrawal) determines what rate is to be applied and the billing time is decisive for application of VAT.

The matter of which VAT rate applies is a bit more complicated where the sales were completed before the VAT increase but the service are fully or partly delivered after the rate increase, for example, season tickets. Fortunately, the tax authorities have issued the following guidelines for such situations:

1. **Tickets for services provided up to 30 days**

   For tickets for services that last up to 30 days, and where the ticket was sold before 1 January 2016 and the service started before then but is partially delivered after 31 December 2015, the Tax Authorities will not require extra payment of additional VAT or invoicing for the additional VAT. This primarily applies to passenger transport.

2. **Passenger transport services that straddle 1 January 2016**

   For passenger transport services that started before 1 January 2016 but end after that date, VAT is calculated at 8%.

   Note that this treatment applies only where the same service continues or resumes after 1 January 2016.This will apply, for example, to one taxi drive or one flight trip. A change of taxi or flight along the way means that the requirement is not met.

3. **Tickets for events that occur over a period of more than 30 days**

   For tickets for events that occur over a period that spans more than 30 days, such as annual tickets, season tickets, etc., if the tickets were sold before 1 January 2016 and the entire service is delivered in 2016, the seller must report the output VAT at a rate of 10%. If part of the service was delivered in 2015, the seller must allocate a portion of the value of the tickets between the two VAT rates.

4. **Sporting Events in 2016**

   With respect to entry tickets sold in 2015 for a sporting event that will take place in 2016, and that is not covered by the exemption in the VAT Act Section 3-8, the seller must report the output VAT at a rate of 10%. (The exemption in Section 3-8 relates to sales of admission to isolated sporting events. Isolated sporting events are those that are organised by an individual organiser no more than once a year and not for two or more years in a row.)

   With respect to scenarios three and four described above, if the parties agreed on the terms before the VAT rates changed on 1 January 2016, the recipient is obligated to pay a supplement corresponding with the increased VAT. Alternatively, the seller company may choose to pay the full tax amount to the state itself.

Exemption for electronic news services

The Norwegian government has introduced a new exemption from VAT on all news and current affairs media aimed at the general public. As of 1 March 2016 the VAT on such electronic media is charged at 0%.

Before the change, the distribution of news via newspaper was treated different for VAT purposes than the treatment of news distributed digitally. The different treatment was considered a major obstacle to innovation and change in the media industry. Recognising the invaluable role the news media plays in democracy and public debate, the government has removed this obstacle.

The VAT exemption applies to electronic newspapers on tablet computers and mobile phones, as well as news and current affairs services with text, sound, and photos. To qualify for the exemption, the news service must not be aimed at just one sector or interest. The 0% rate applies to all media consisting mainly of news and current affairs content, including, for example, news based television channels such as TV 2 Nyhetskanalen, BBC World, and CNN. The exemption for electronic news services includes electronic services that meet the following conditions:

- The content includes wide coverage of news and current events
- The content is aimed at the general public
- The service has a responsible editor
- The information is published at least weekly.

KARI ELISABETH CHRISTIANSEN
HELENE AASLAND
Norway – Oslo
kec@bdo.no
helaa@bdo.no

PANAMA

VAT WITHHOLDING ON NON-RESIDENT COMPANIES

VAT of 7% (ITBMS) is levied on the transfer of movable goods and most services that take place in the Republic of Panama by sale, barter, cession, or any other acts, contracts or conventions that result in the transfer of property, or that serve to transfer movable goods or grant their use.

Determining VAT withholding obligations

Resident taxpayers that pay or credit amounts to non-resident vendors on transactions that would be subject to VAT in Panama if the transactions were with a Panamanian resident must withhold a corresponding VAT. (The corresponding VAT is calculated at 0.06542). The VAT in such cases is considered included in the fee for services provided in Panama and may be claimed as an input tax credit by the resident company.

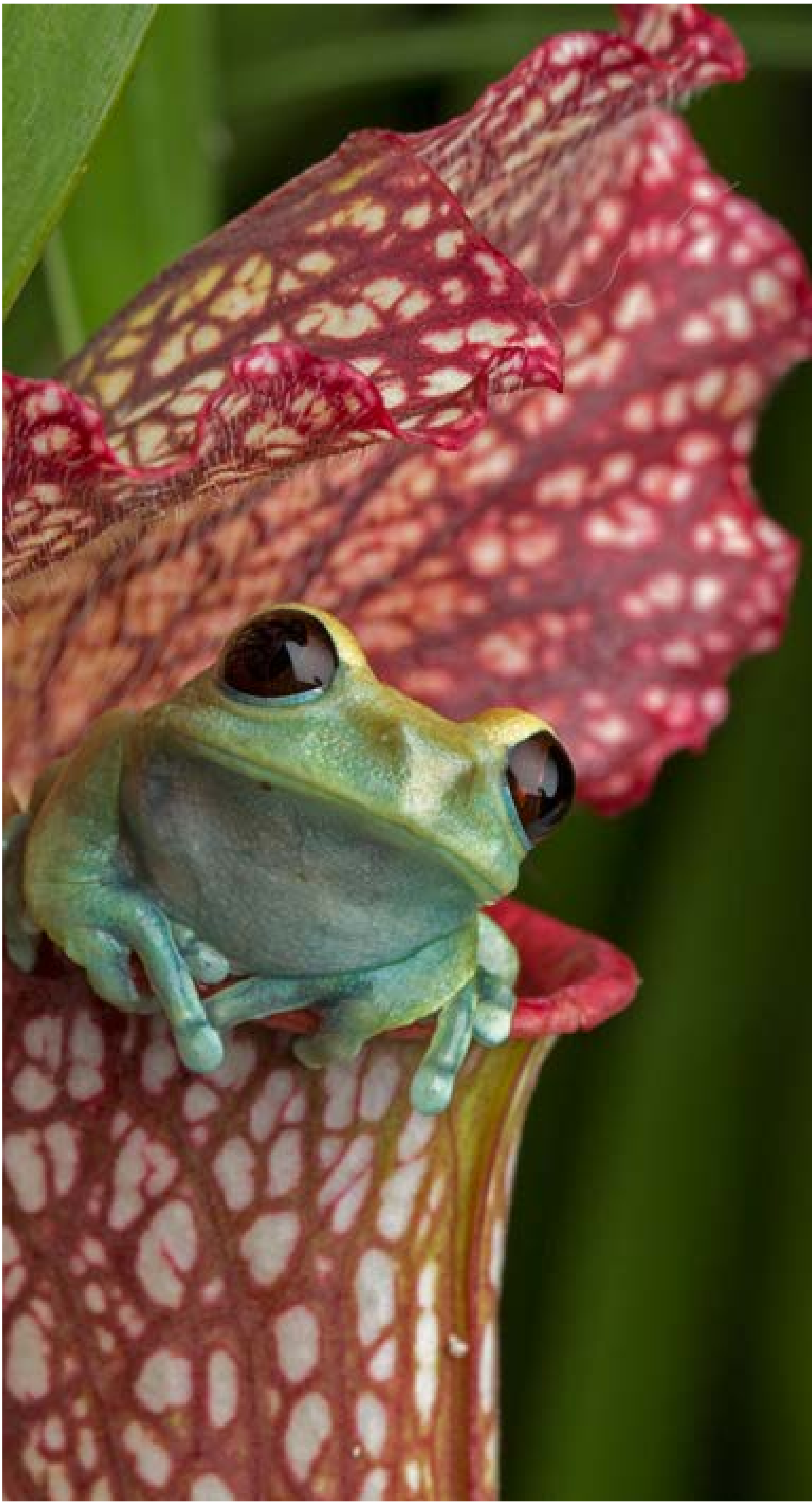
Therefore, for transactions that are not directly subject to Panamanian VAT, such as services rendered outside of Panama and payments for royalties and any other intellectual property rights (provided they do not constitute technical assistance), resident taxpayers must withhold corresponding VAT.

It should be noted that this withholding of corresponding VAT is in addition to withholding required for income tax and both taxes are deducted from the payment to the non-resident vendor.

As a result of a new program directed at creating private VAT withholding agents in Panama, the Tax Administration has been more active in enforcing VAT withholding tax obligations with respect to transaction with non-residents.

If you would like additional information or if you have any questions, please contact us at the Panama office.

SIMONE MITIL
Panama
smitil@bdo.com.pa



ROMANIA

FORCE OF ATTRACTION OF THE HEAD OFFICE IN ROMANIA

"Force of attraction" is a principle adopted by some EU Member States. It provides that a business establishment (head office) is the entity liable for paying VAT to the Member State of the customer, even if the head office does not have an active role in supplying the services.

Under the Romanian VAT legislation, a taxable person that has its head office in Romania is the entity liable to pay VAT in Romania where the services are taxable in Romania, even if:

- The services are supplied by a fixed establishment located in another Member State, and
- The head office does not play an active role in supplying the services.

It should be noted that under these rules, for example, where a company with a head office in Romania has a branch in France that renders services that are taxable in Romania, the person liable to pay VAT is the head office in Romania. Therefore, in such a case, the head office must invoice for the services rendered by the branch. This could result in a divergence with respect to the two entities' accounting, not to mention problems if the head office does not know about the timing of the delivery of the services rendered by the branch.

VLAD MADARAS
DAN BARASCU
Romania – Bucharest
vlad.madaras@bdo.ro
dan.barascu@bdo.ro

SINGAPORE

CLAIMING GOODS AND SERVICES TAX (GST) INCURRED BEFORE GST REGISTRATION

Businesses are aware that one of the primary benefits of registering for GST is the ability to recover GST incurred on the purchase of goods and services in the course of the business. However, many may not know about claiming of "Pre-registration GST".

"Pre-registration GST" is GST incurred on goods and services that businesses acquired before they become GST registered. Pre-registration GST can be claimed by businesses in their first GST return, subject to the general rules for input tax claims and pre-registration input tax claims under the GST (General) Regulations.

Generally, a business can claim GST it pays to the extent the goods or services it acquired are used, or will be used, for taxable supplies made after GST registration. Where goods and services acquired by a business before it registers for GST are used to make supplies that straddle the date of its GST registration, the business is required to apportion the GST incurred. Only the portion of GST attributable to the supplies made after GST registration is claimable.

Changes to pre-registration GST rules

The 2015 Singapore Budget announced changes to allow businesses registered for GST after 30 June 2015 to claim the full amount of GST on the following goods and services acquired within six months of their GST registration date:

1. Goods (for example, assets and equipment) held by the business at the point of GST registration; and
2. Property rent, utilities, and services that are not directly attributable to any supply made by the business before GST registration.

Businesses can refer to the e-tax guide published by the Inland Revenue Authority of Singapore (IRAS) for further details about pre-registration claims.

What the changes mean to businesses

As a result of these changes, businesses no longer need to apportion the pre-registration GST on the above-mentioned goods and services where:

1. The goods and services were used to make supplies straddling GST registration; or
2. Pre-registration GST is incurred on certain goods partially consumed before GST registration.

The changes should result in a higher amount of recoverable pre-registration GST for businesses that register for GST after 30 June 2015 than the amount recoverable by business registered for GST before 1 July 2015.

Businesses considering applying for GST registration in Singapore on a voluntary basis should perform a cost-benefit analysis. Such businesses should weigh the potential input GST creditable against the compliance costs and obligations of being GST-registered.

How BDO Singapore can help

While the IRAS's e-tax guide on the pre-registration input tax claims on goods and services provides clarity related to the GST rules relating to such claims, the different rules and apportionment bases applicable to different type of transactions can be complex. As a result, to avoid the risk of over-claiming input tax (and thereby possibly being subject to penalties) some businesses are choosing not to take advantage of the potential pre-registration input tax claims.

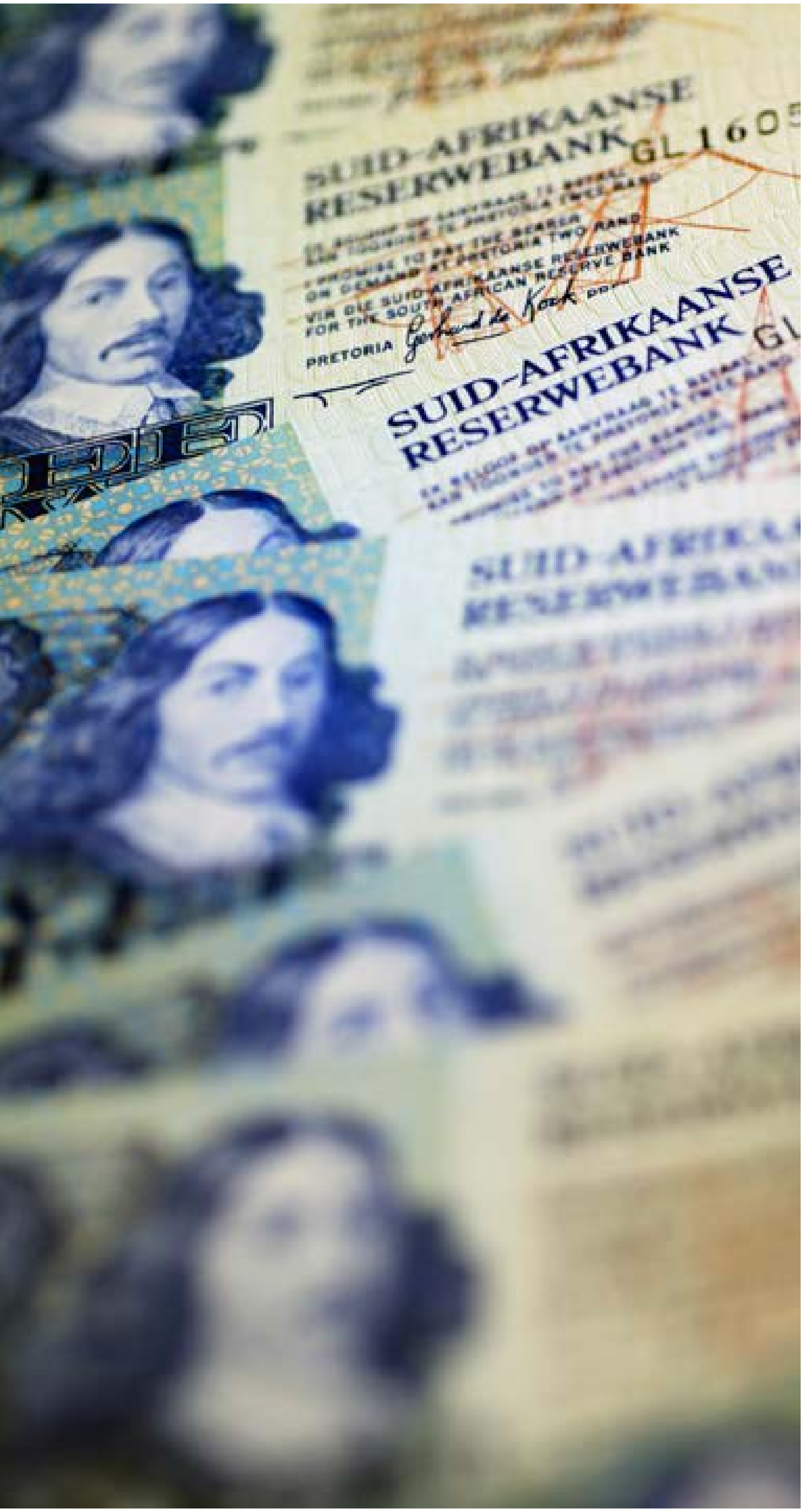
BDO Singapore can help businesses:

- Review their pre-registration purchases and expenses and help them make appropriate claims in their first GST return,
- Submit their GST registration application, and
- Review their GST returns to identify potential issues or errors and make adjustments before they e-file their GST returns.

CHIN SIEN EU
YVONNE CHUA
Singapore
chinsien@bdo.com.sg
yvonnechua@bdo.com.sg

SOUTH AFRICA

NEW SOUTH AFRICAN BINDING GENERAL RULING FOR ELECTRONIC SERVICES



South African Revenue Service (SARS) recently (23 February 2016) published issue 2 of VAT Binding General Ruling 28 (BGR 28) which clarifies the information that should be contained in a tax invoice, credit or debit note issued by foreign suppliers of electronic services.

A tax invoice issued by an electronic service supplier must contain the following:

a) Name and VAT number of the supplier;
b) Name and address of the recipient;
c) A serialised number;
d) Date of issue;
e) A description of the electronic services supplied;
f) If invoiced in ZAR, the invoice must contain the VAT amount charged or a statement that VAT was charged and the rate at which VAT was levied;
g) If invoiced in another currency, the amount in ZAR must either be reflected on the invoice or in a separate document reflecting the amount of tax charged in ZAR; and
h) The exchange rate used.

In addition to the above, credit and debit notes must also contain the following:

- A brief explanation of the circumstances giving rise to the issue of the debit/credit note;
- The increased/decreased consideration together with the increase/decrease in the tax amount and rate at which tax was levied.

Electronic service providers must use the exchange rate published by SARS, Bloomberg or the European Central Bank on the date of supply, the exchange rate on the last day of the month preceding the time of supply, or the monthly average exchange rate of the month preceding the supply. If a distortion in the exchange rate of more than 10% occurred in the period concerned, only the daily exchange rate may be used.

Electronic service providers may advertise and quote their prices exclusive of VAT if their websites contain a statement that VAT will be levied on the supply of electronic services.

BGR 28 applies until it is withdrawn or amended.

SAMANTHA KING
South Africa – Johannesburg
sking@bdo.co.za

SPAIN

VAT REFUND TO NON-ESTABLISHED COMPANIES

A company not established in Spain sought a refund of Spanish VAT under the Special Procedure set out in the VAT Directive. The Spanish Tax Administration rejected the application on the basis that the VAT refund did not meet the minimum amount required under the Spanish regulation for a refund application submitted on a quarterly basis rather than an annual application.

After its appeal before the Tax administration was rejected, the taxpayer appealed the decision to Spain's Economic Administrative Central Court. The court determined the following:

- That, by imposing certain limits, the legislator sought to simplify the administrative management of these refunds where the amount sought is low.
- The taxpayer's application referred to an annual period but, by mistake, the company used a quarterly statement. Rejection of the taxpayer's claim because of this mistake was disproportionately harsh.

Given these findings, the Court ordered the Tax Administration to reconsider the matter on the basis of whether the taxpayer met the subjective and material requirements necessary to qualify for the refund.

In our experience, the court's holding can apply in several other cases. What the Tax Administration must analyse is whether the taxpayer has the material right to the refund. A refund rejected based on failure to satisfy the formal requirements could violate the principle of neutrality. Taxpayers who may find themselves in a similar situation should consider seeking an expert's opinion.

ROSARIO ESTELLA
CARLOS BAUTISTA
Spain – Madrid
rosario.estella@bdo.es
carlos.bautista@bdo.es

SPANISH SUPREME COURT RULING ON IMPORT VAT DEFERMENT

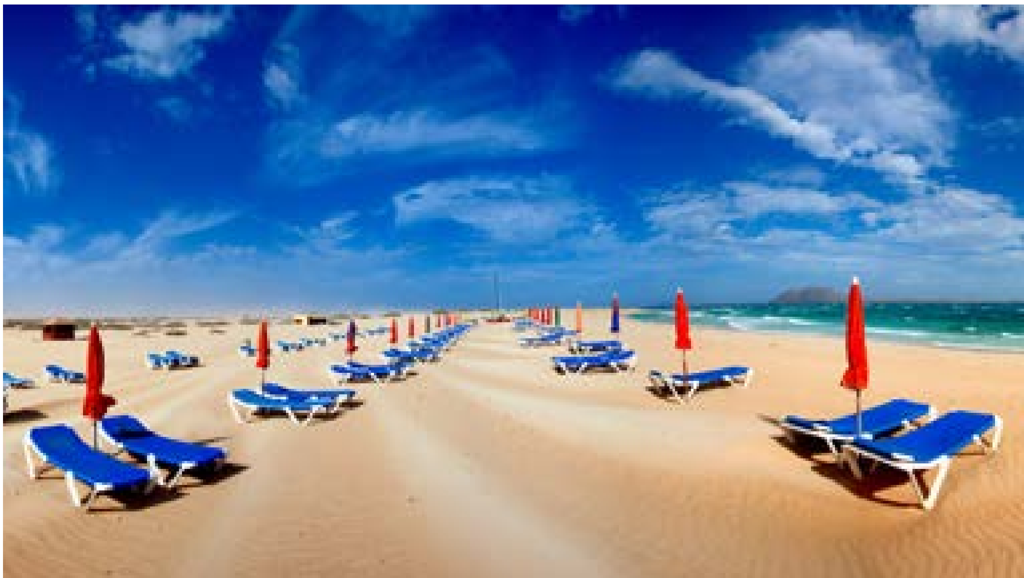
An import VAT deferment mechanism introduced in Royal Decree 1073/2014 came into force on 1 January 2015. It allows taxpayers to declare and deduct import VAT at the time they submit a VAT return, rather than having to make an advance VAT payment to the Excise authorities.

A recent Supreme Court case considered the contradiction that exists between the requirements that must be met to opt for the deferment mechanism and the special features in Spanish VAT law applicable for the Navarre and Basque regions. One such special feature of the Spanish VAT law relates to the obligation of Spanish taxpayers operating in the Navarre and the Basque regions to file VAT returns to these regions in addition to the one they submit to the Spanish Tax Authorities.

The Spanish VAT Act provides that to opt for the deferment mechanism, Spanish taxpayers must meet certain requirements. One of the requirements is that the taxpayer may only submit VAT returns to Spain. In other words, they cannot opt for the deferment mechanism if they submit VAT returns elsewhere. Therefore, taxpayers that submit to both Spain and the Navarre or Basque region cannot opt for the deferment mechanism.

On 9 February 2016 Spain's Supreme Court ruled that the requirement that the taxpayer only submit returns to Spain is discriminatory to those who must submit returns to Spain and to the Navarre or Basque regions. Consequently, the Court ruled that the deferment mechanism can be used by all Spanish taxpayers, regardless of the territory in which they are taxed.

DAVID SARDÁ
VERÒNICA TARGA
Spain – Barcelona
david.sarda@bdo.es
veronica.targa@bdo.es



UNITED STATES

SALES TAX NEXUS IN THE US – AN OVERVIEW

In the United States, nexus is the standard applied by states to assess whether a state has the jurisdiction to impose a tax, including indirect taxes such as sales and use taxes, on a vendor. With respect to sales and use taxes, nexus is based on decisions of the Supreme Court of the United States, which have historically required a physical presence in a state (such as rented or owned property or employees performing an employment related function) or attributional nexus (i.e. in-state agents or independent contractors that help to establish and maintain a market for a vendor's goods and services).

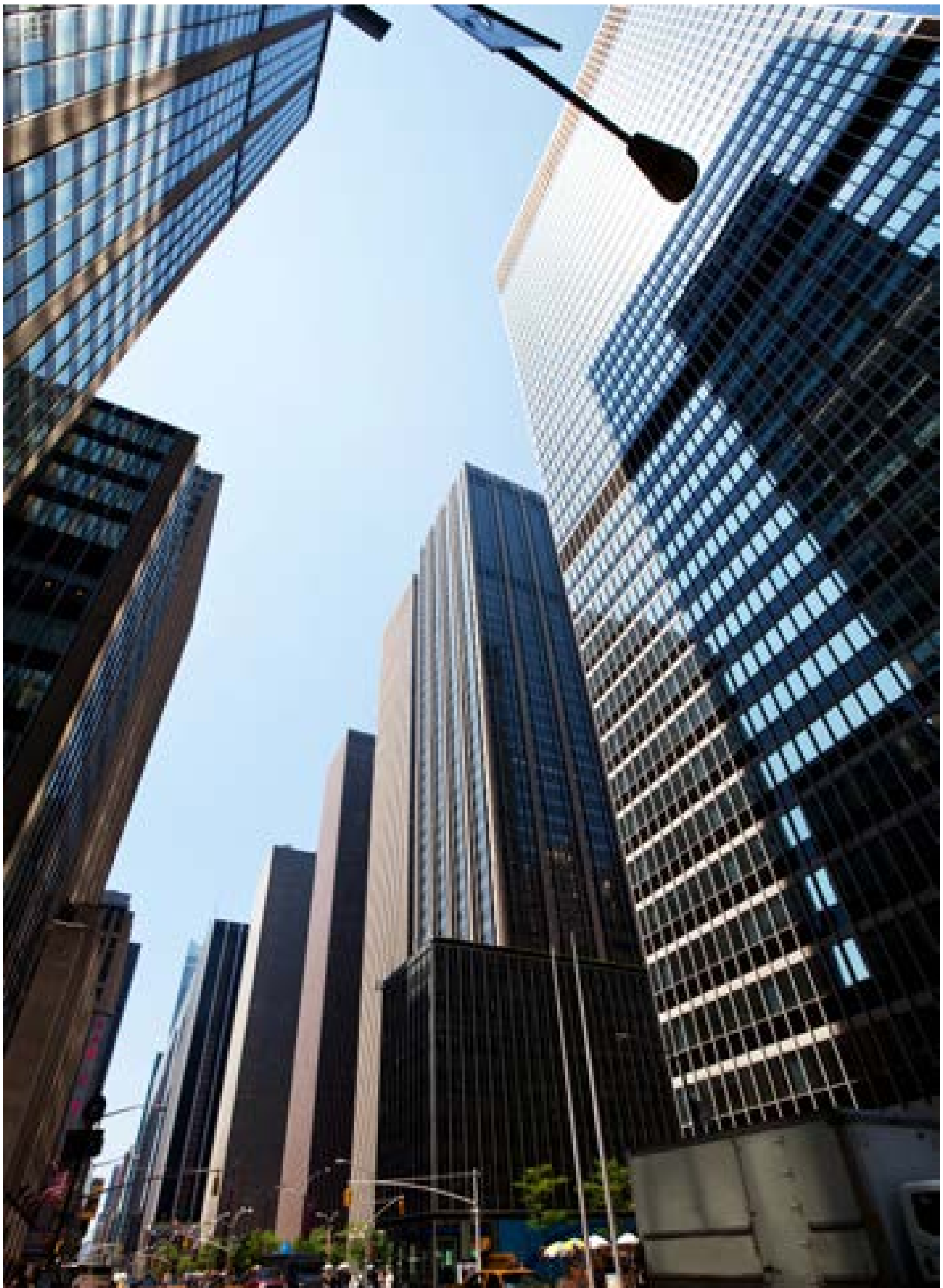
However, either through code, regulations or judicial authorities, many states have recently adopted alternative nexus approaches that do not require a physical presence, which have potential to bring out of state or non-US vendors within the scope of sales and use tax in that particular US state. These approaches include "click-thru" nexus (a variation of attributional nexus), affiliate nexus (another variation of attributional nexus), or, what seems to be the latest trend, economic nexus:

- Click-thru nexus may arise where a vendor has an agreement with an in-state resident pursuant to which the vendor pays a commission for referrals resulting in sales made though an Internet link on the in-state resident's website. States typically apply a minimum sales threshold amount (e.g., USD 5,000 or USD 10,000, depending on the state) before click-thru nexus is triggered under such an agreement.
- Affiliate nexus may arise where an affiliate of the vendor has a location in the state, and the vendor and its affiliate use a substantially similar tradename, trademark, etc. to promote sales or maintain an in-state market for the vendor's good and services.
- Economic nexus may arise where the vendor has a significant amount of in-state sales even if the vendor has no in-state presence, agent, or affiliate. For example, Alabama recently promulgated a regulation that imposes a sales and use tax reporting obligation on a vendor if its Alabama sales exceed USD 250,000 and it solicits sales through certain advertising directed at in-state consumers. Potential and evolving support for this and the other alternative nexus theories could be found in the United States Supreme Court's recent decision in *Direct Marketing Association v. Brohl*, 575 U. S. 2015 wherein Justice Kennedy suggested that it may be time to abandon the physical presence requirement for nexus as it relates to sales and use taxes.

Notwithstanding nexus principles derived from Supreme Court decisions or found in state law, in the United States, federal law reigns supreme, and the United States Congress has the authority to override Supreme Court decisions with respect to interstate and foreign commerce. Thus, Congress could legislate a new nexus standard that departs from the historic physical presence standard. The Marketplace Fairness Act of 2015 and the Remote Transactions Parity Act of 2015 are examples of bills that have been introduced in Congress, but have not been enacted. These bills would allow a state to impose a sales and use tax reporting and payment obligation on a vendor that makes sales into the state without a physical presence.

In brief, the nexus landscape in the United States is diverse, what constitutes nexus varies among the states, and the interpretation of nexus rules is constantly evolving. As such, what may constitute nexus and give rise to a sales and use tax reporting and payment obligation in one state for a vendor may not constitute nexus in another state. A state-by-state analysis is recommended, and the analysis should be re-visited periodically by a company to make sure it understands its nexus footprint in the United States and its corresponding sales and use tax reporting and payment responsibilities.

STEVE OLDROYD
United States – San Francisco
soldroyd@bdo.com



VIETNAM

GOVERNMENT FOCUS ON INDIRECT TAXES

As Vietnam continues its efforts to attract foreign direct investment through corporate tax reforms, including reducing the standard tax rate and easing corporate tax incentive and deduction rules, the government is shifting its tax focus to indirect taxes.

In recent years, indirect tax reforms in Vietnam have been focusing on VAT and excise tax (known as Special Sales Tax or SST) by bringing more goods and services into the scope of such taxes, increasing SST rates on "luxury products", narrowing tax concessions, and improving tax collection efficiencies.

Changes to the SST

Among the significant changes to the SST is the gradual annual increase (by approximately 5% per year) in SST rates on cigarettes and alcoholic beverages. The SST rates on cigarettes will increase gradually from 65% in 2015 to 75% by 2019; the rate on beer is increasing gradually from 50% in 2015 to 65% by 2018; and the rate on various types of liquor is increasing gradually in the range of 25% to 65% by 2018.

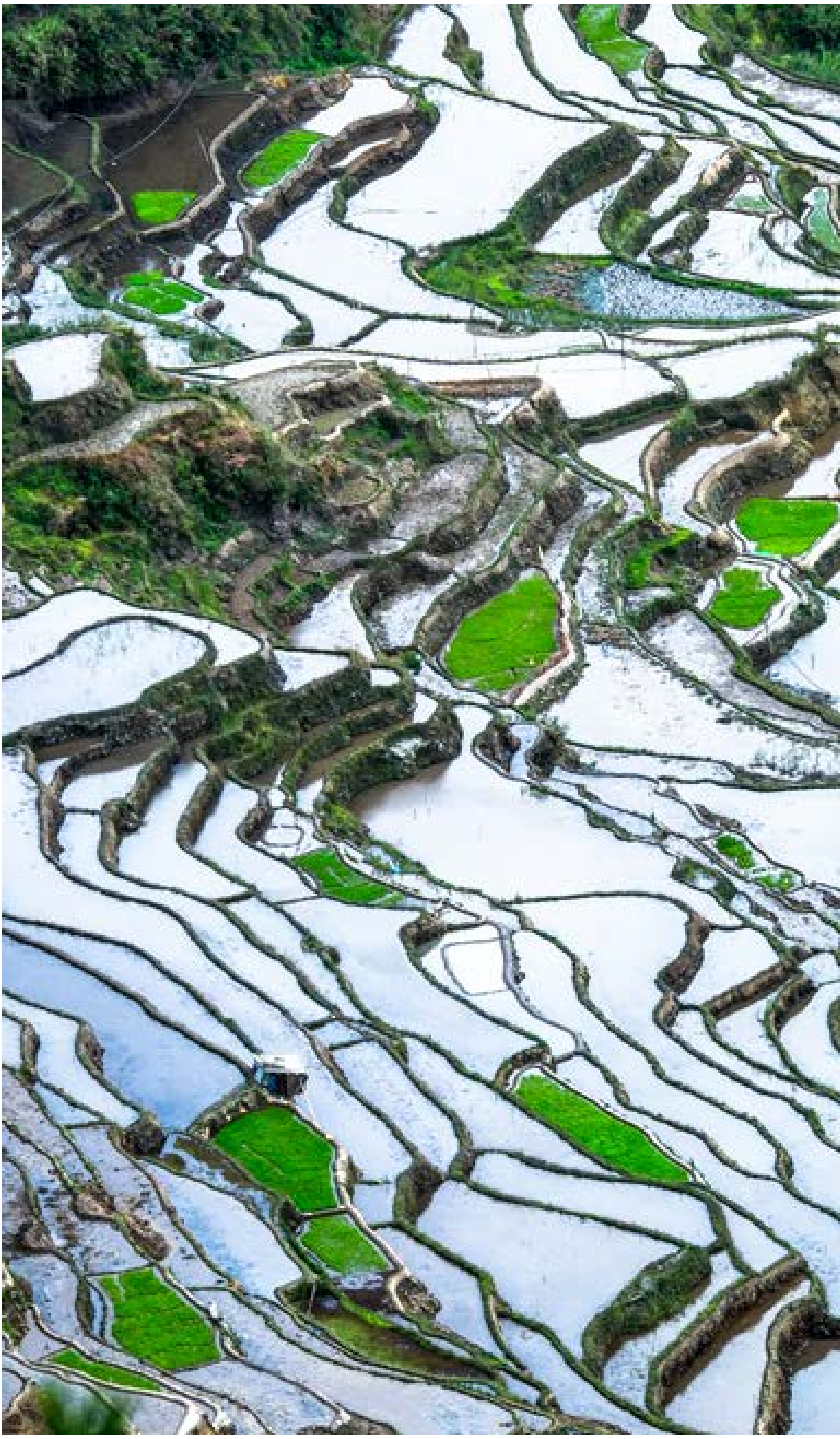
As well, while the SST rates applicable to automobiles remains steady (in the range of 15%-30% or 45%-60%, depending on the type of vehicle), the government is proposing a roadmap for gradual and annual changes in the SST rates over the next two to three years such that the SST rate would be reduced on some vehicles and increased on others, depending on the type of vehicle and the cylinder capacity.

There have also been major changes in the rules for determining the SST base. The changes include:

- The reduction from 10% to 7% in the allowable pricing margin between importers/manufacturers of certain SST products (including beer, liquor, cigarettes) and their distributors, and
- The introduction of the concept of parent/sister company relationships, which allows the tax authorities the power to assume a deemed price for tax purposes when they doubt the price otherwise claimed with respect to a particular transaction.

Changes to VAT

As for VAT, while there has been no change in the tax rate and only a few changes relating to the classification of certain goods and services from being taxable to being exempt (for example, some farming and aquatic products, fertilisers, animal feeds, and so on), there have been significant improvements in VAT administration, including the simplification of filing procedures and requirements, and the introduction of electronic invoices and tax returns.



For further details, please contact the author of this article.

NAM NGUYEN
Vietnam – Ho Chi Minh City
nam.nguyen@bdo.vn

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 18 March 2016.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.12692
Namibia Dollar (NAD)	0.05723	0.06450
South Africa Rand (ZAR)	0.05726	0.06450
Unites States Dollar (USD)	0.88726	1.00000

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	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

1603-03