

INDIRECT TAX NEWS

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MALAYSIA

MALAYSIA'S NEVER-ENDING STORY: WILL GST IMPLEMENTATION EVER FINISH?

GST is a transaction tax so taxpayer compliance requires constant vigilance. Though some tasks associated with implementation of GST, which came into effect in Malaysia on 1 April 2015, still require further government action, businesses must ensure that day-to-day compliance continues in an efficient manner.

First, a bit about some matters that may still require attention by taxpayers in terms of implementation. By now, businesses should have determined the GST classification of the supplies they make: in other words, whether their supplies are taxable at 6% or 0% (zero-rated), exempt, out of scope, or subject to relief. While some of the legislation regarding particular GST classifications was published by 1 April 2015, legislation related to other classifications is far from clear cut. It's important to note that Customs will not mind if a taxpayer has not claimed all input tax credits but it can penalise businesses that fail to collect the correct amount of GST.

Another matter that may adversely impact businesses is the specific anti-profiteering provisions introduced for GST. If a business charges GST on what should be a zero-rated supply, it is arguable the business is in breach of these provisions.

Some issues that arose before GST was implemented still linger. The unfortunate few who had sales tax-paid stock on hand at 31 March 2015 should already have conducted an inventory and put in a claim with Customs for a special refund. Claims for such refunds must be submitted by 1 October 2015. The audit processes required by Customs are quite onerous and any refund is only going to be paid back over a two year period. Also, it's highly likely that a material refund claim will result in a Customs audit.

For Malaysian GST, the property development and construction sector is one of the most challenging sectors in terms of the complexity and unresolved issues. History has shown that in other countries, disputes involving this sector and the revenue authorities can represent up to 25% of all GST disputes. While a major issue for this sector at 31 March 2015 was the valuation of existing work, this is by no means the only challenging issue faced by the sector and it is expected that many disputes will progress to legal proceedings.



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EDITOR'S LETTER

Dear Readers,

Greetings from sunny Dublin (Ireland) where we celebrated midsummer's day yesterday with a full 17 hours of daylight and a whopping 18.75 hours between dawn and dusk.

Whereas Ireland is not known to be an ideal holiday destination for sun worshippers, it is world famous as a fun place to visit and the growth in our economy is very evident on our streets and in our hotels, restaurants, and other hostelrys.

Over the next three days BDO is hosting three days of VAT training in Scharbeutz in Germany for junior specialists from about 30 of our international offices and here in Dublin we are in the process of putting the final touches to the agenda for this year's BDO International VAT & Customs Conference to be held in Budapest this September.

In the circumstances, if you are a BDO client and you have queries relating to indirect tax issues in another country, now is a good time to engage with your local BDO advisor to raise them.

Finally, as always, if you have any suggestions regarding future items you would like us to cover in Indirect Tax News, please email me at ifeerick@bdo.ie.

Take care!

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An area of particular concern for the property development and construction sector is where the business supplies residential property, which is exempt from GST, and commercial property, which is subject to GST at 6%. In such cases the business needs to identify what inputs relate to residential properties and what inputs relate to commercial properties so that they can correctly claim input tax credits. An apportionment needs to be made where a mixed-use development is involved and there are common inputs because not all are eligible for input tax credits.

Tax invoices are the cornerstone of the GST system and immediately after implementation of the GST is when most invalid documents can be expected. Customs will be extremely vigilant about ensuring that valid tax invoices are being issued by registered businesses and businesses run a huge risk regarding issuing or accepting invalid tax invoices. Customs recently stated that hand written tax invoices are not acceptable.

Leading up to GST implementation most Malaysian businesses had set up a dedicated group of people to manage and run the implementation project. Post implementation, some businesses have disbanded their GST team. We recommended that the core members of your GST team continue to maintain a watchful eye on GST going forward.

Experience in other countries has shown that, regardless of the complexity, the initial GST return takes an inordinate amount of time to complete simply because it is the first return. Though some businesses had an opportunity to use test data to generate a pro forma GST return, most businesses did not. We recommend that you put in place a detailed process plan and that you use qualified staff to prepare and review the return. Our experience is that the initial GST return may take from a week to a month (typically from 40-160 hours) to prepare.

One of the most important post implementation tasks is a review of the GST process, sometimes referred to as a health check. This is particularly important for companies that used internal resources for the GST implementation project and that had little or no external assistance. We believe it's a good idea for businesses to have such a health check in order to have some comfort that their processes will survive a Customs audit and that the returns filed are an accurate reflection of the transactions for the particular period, given that the penalties for incorrect returns are particularly onerous.

Revenue authorities are required to protect the integrity of the system and so, while they may be quite pleasant for a few months after implementation, they will soon undertake the duties they are statutorily required to perform audits. We expect that in such an audit Malaysia Customs will place emphasis on the ability of a business to produce a GST Audit File (a GAF). Malaysian authorities intend the GAF to be a file with information about all transactions for a particular period which taxpayers can produce on demand. The idea behind the GAF is that Customs will be able to recreate business records of a period and will be able to match data from suppliers and recipients. As you can imagine, this will provide a very powerful audit tool that will allow Customs to capture, store, and analyse data.

If experience from other countries is anything to go by, the next phase of GST implementation will involve challenges to GST classifications. Though GST Implementation is in some respects easy, life under a GST regime may not prove so simple.

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BELGIUM

VAT ON CATERING COSTS FOR PUBLICITY EVENTS: VAT AUTHORITIES GIVE IN



VAT incurred on costs for food and beverages offered during certain commercial events is now deductible after the Belgian VAT authorities put an end to the long-lasting controversy with the Belgian Supreme court.

Belgian Supreme Court as predecessor...

VAT law is clear on certain rules: VAT incurred on publicity costs is deductible, but VAT on reception costs is not. Food and beverages offered during events is a grey area on which the Belgian Supreme Court passed several court rulings between 2005 and 2012.

In 2005 the Supreme Court ruled that reception costs are to be considered publicity costs if provided as part of an event that aims to provide publicity.

In 2010 the Supreme Court confirmed its position: the VAT incurred on catering costs is deductible if the costs relate to a commercial event. The Court clarified that the activity concerned should be aimed at informing potential buyers of the existence and conditions of a product or service in order to increase the probability of selling, where before only the end buyer needed to be informed. This resulted in a further expansion of the scope for the VAT deductibility of publicity costs.

In 2012 the Supreme Court repeated that point of view, stating that *"an activity which directly and primarily intends to inform potential buyers of the existence and qualities of a product or a service in order to boost sales is to be considered an advertising activity on which costs are VAT deductible."* The costs of food and beverages used in such advertising activity were therefore VAT deductible.

... Conflicting with the position of the VAT authorities

The Belgian VAT authorities have for years obstinately adhered to their view that an exception applies to food and beverages, because a specific non-deductibility is provided for in the Belgian VAT Code.

In a new administrative decision of 2012, the VAT authorities held that the exclusion of the right to deduct input VAT in relation to food and beverages is applicable even when the costs are set to promote a certain product or service. This reasoning was underpinned by the fact that, according to the Administration, the legislator intended that such goods and services are analysed in view of their nature (non-deductible expenses for food and beverages) at the time of acquisition. The Administration also stated that the exceptions to the exclusion of the right to

input VAT deduction (exhaustively listed in Article 45, § 3, 3, a) and b) of the VAT Code) only refer in a secondary manner to the eventual use of the costs incurred (e.g. catering costs as part of an advertising service).

VAT authorities adopt a new position

In yet another administrative decision issued on 13 March 2015 the discussion has been brought to an end. From now on, the VAT incurred on costs of food and beverages offered at a commercial event is deductible to the extent that the purpose of the event addresses existing or potential clients to have certain goods or services promoted.

What about VAT incurred in the past?

Considering the three year prescription period, VAT payers can claim a VAT deduction or refund of the VAT incurred, which was not deducted or which was claimed for by the VAT authorities since 2012.

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GERMANY

GERMAN FEDERAL COURT OF FINANCE DECIDES ON THE TREATMENT OF INTRA-COMMUNITY CHAIN TRANSACTIONS

In two leading decisions dated 25 February 2015, Germany's Federal Court of Finance (BFH) has ruled on the allocation of the supply of goods with transportation in the course of intra-Community chain transactions involving three parties. It is hoped further legal clarification will be issued before the court's interpretation comes into practical effect.

In an intra-Community chain transaction involving three entrepreneurs (X, Y and Z) with two distinct supplies of goods carried out (X to Y and Y to Z) and where only one of the two supplies qualifies as a "supply with transportation", the court concluded that only the supply with transportation qualifies for zero-rating as an intra-Community supply. The supply without transportation does not qualify as a zero-rated intra-Community supply of goods.

In these decisions, the BFH had to rule on the allocation of the supply of goods with transportation in two distinct situations. In the first case the entrepreneur in the middle (Y) ordered the transport of the goods; in the second case the final recipient placed the order.

Based on previous German administrative treatment, the allocation of the transportation is determined based on which of the parties ordered the transportation. The BFH, however, did not use this approach in deciding the cases at hand.

The BFH concluded that the decisive factor is the time when the final recipient in the chain transaction (Z) has the power to dispose of the goods. Where the final recipient can dispose of the goods in the Member State the goods departed from, the final transport (Y to Z) qualifies as a supply with transportation. In all other cases, the first supply (X to Y) is deemed to be the supply with transportation.

The power to dispose of the goods is described as the authority to dispose of the object of the supply as owner. The transfer of this power is defined as the procurement of substance, value, and profit according to settled case law of the BFH. To assess the transfer of the power to dispose in a chain transaction, it is essential to know the circumstances of the individual case, in other words, the specific contractual agreements and their actual execution must be considered. Mere declarations and announced intentions of the entrepreneur in the middle (Y) to resell the goods to the final recipient (Z) are not relevant. Where the goods are personally collected by Z, the transfer of the power to dispose should normally be assumed to take place in the Member State of departure. However, the overall circumstances of each individual case are decisive.

Interestingly, the fiscal authorities have not so far adopted this new approach so there is some uncertainty regarding practical implementation of the BFH's decisions. As a result, it is recommended that taxpayers follow the previous provisions of the fiscal authorities, rather than strictly following the rulings of the BFH. Where transportation is ordered by the entrepreneur in the middle (Y) it is also recommended that the taxpayer pay special attention to the specific wording of the transportation order (particularly the terms and conditions of delivery, the so-called Incoterms). Moreover, to meet the allocation criteria of the jurisdiction, the time and place of the transfer of the power to dispose should clearly be defined in the delivery agreements. The BFH states that the supplying entrepreneur can minimise risk by obtaining assurance from the acquirer that the power to dispose of the goods will not be transferred to third parties before the goods have physically left the territory of the Member State of supply.

As for the future, it is hoped that a legal clarification will be issued as already suggested by the German Federal Council (Bundesrat). In its latest comment on the draft of a law to implement the recorded declaration regarding the "ZollkodexAnpG", the Federal Council asked for clarification of the rules related to chain transactions. The aim of such clarification would be to ensure a clear allocation of the transportation to the supplies in question in the course of chain transactions and its practical implementation. We will keep you informed about further developments in this regard.

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IRELAND

VAT TREATMENT OF EMPLOYMENT AGENCIES

The Irish Tax Authorities (Revenue Commissioners) have recently published some guidance outlining the VAT treatment of Employment Agencies in Ireland.

To determine the status of agency staff that are sourced by, placed by, or made available by Employment Agencies in Ireland, you must look at the contract in place or the working arrangements that exist between the agency staff and the organisation (the company, firm, body or other entity) the agency staff is working for.

In accordance with Section 37(1) of the VAT Consolidation Act 2010, VAT is charged at the standard rate on the full consideration the Employment Agency receives in relation to the supply of agency staff to the organisation, including all taxes, commission, fees, and other charges but not including VAT chargeable in respect of the supply.

If an Employment Agency is acting as a principal, then the full consideration the Employment Agency is entitled to receive in relation to the supply includes such remuneration as commission, fees, wages, employers PRSI, holiday pay, sick pay, and other remuneration under the *Organisation of Working Time Act 1997*.

When an Employment Agency is acting as an agent, however, the full consideration would normally exclude such remuneration due under the *Organisation of Working Time Act 1997*.

Employment Agency providing placement service only (staff employed by and paid by the organisation)

VAT must be charged on the full consideration the Employment Agency receives in connection with the supply of agency staff to an organisation where:

- Staff are placed by the Employment Agency and become employees of the organisation, and
- The contract between the staff and the agency provides that the Employment Agency is placing the staff and that the staff are employees of the organisation, and
- The Employment Agency receives written confirmation from the organisation confirming that the organisation is the employer of the staff.

Employment Agency providing placement services together with payroll service

VAT must be charged on the full consideration the Employment Agency receives in relation to the placement of agency staff and the payroll service provided where the Employment Agency provides a payroll service on behalf of the organisation and:

- A separate bank account is maintained by the Employment Agency into which the reimbursement of remuneration due under the *Organisation of Working Time Act 1997* is paid, and
- The funds in the account belong to the organisation and are held in trust by the Employment Agency until paid to the agency staff or returned to the organisation.

VAT is not chargeable on the direct reimbursement of remuneration due under the *Organisation of Working Time Act 1997*. This VAT treatment does not affect the existing position in relation to the operation of PAYE/PRSI (employment tax) in respect of the agency staff.

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LATVIA

EXTENSION OF USE OF FISCAL REPRESENTATIVES IN LATVIA

The Latvian Parliament has amended the VAT law to extend the rights of fiscal representatives. As a result of the amendments, fiscal representatives can now represent taxpayers performing VAT taxable transactions, even if the taxpayer is not registered for VAT purposes in another EU Member State.

The purpose of the amendment is to increase competitiveness of the transit and logistic industries to decrease the effect of economic sanctions introduced by the Russian Federation. The amendments refer to a limited scope of persons, nevertheless it was important for the legislation to be amended to ensure the continued operation of fiscal representatives. According to the amendments, persons not registered for VAT purposes in another EU Member State can use Latvia for transit and logistical purposes without having to register for VAT in Latvia if they use a fiscal representative in Latvia.

Now, as a result of the changes, a fiscal representative can act on behalf of a taxpayer of another EU Member State even if the taxpayer is not registered for VAT in that other EU Member State, for example, because it does not meet the other EU Member State's VAT registration threshold. In other words, VAT registration in another EU Member State is no longer required in order for a taxpayer to have a fiscal representative for VAT purposes in Latvia.

Furthermore, liability of fiscal representatives for the payment of tax has been extended so that fiscal representatives are liable for VAT payments for intra-Community acquisitions of goods that are further supplied to other EU Member States. However, if the fiscal representative carries out an intra-Community acquisition of goods from a person not registered for VAT in another EU Member State, the fiscal representative does not have to calculate or remit VAT.

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NETHERLANDS

NO DUTCH VAT ON DENTAL PROSTHESES IF THEY ARE SUPPLIED BY DENTISTS OR DENTAL TECHNICIANS

On 26 February 2015 the Court of Justice of the European Union (CJEU) ruled that the import or intra-Community acquisition of dental prostheses supplied by a foreign dentist or dental technician is exempt from VAT in the Netherlands. This judgment is relevant for entrepreneurs who buy and sell dental prostheses in cross border situations.

Background

The VAT Directive requires Member States to exempt the intra-Community acquisition or import of goods if the domestic supply of these goods by a taxable person would "in all circumstances" be exempt within their respective territory.

Under Dutch VAT law, the supply of dental prostheses is only exempt if they are supplied by dentists or dental technicians. Given that the exemption is limited in this way, the question arose as to whether the Netherlands' VAT exemption applies "in all circumstances", as required by the VAT Directive. If not, then the intra-Community acquisition or import of dental prostheses in the Netherlands cannot be exempt.

The Dutch tax authorities tried to argue that the import of dental prostheses is not exempt even if they are being supplied by a foreign dentist or dental technician because the VAT Directive does not require the Netherlands to apply its exemption, since it doesn't apply to all supplies of dental prostheses.

The issue was answered by the CJEU in three joint cases: VDP Dental Laboratory II, Noble Biocare, and X.

Judgment

The CJEU noted that the phrase "in their respective territory" in the applicable exemption in the VAT Directive refers to the Member State where the goods are destined. Therefore, to qualify for the exemption for intra-Community acquisition or import, the supply has to meet the same conditions as the domestic supply in the country of destination. This means the intra-Community acquisition of dental prostheses in the Netherlands is exempt so long as the dental prostheses are supplied by a dentist or a dental technician.

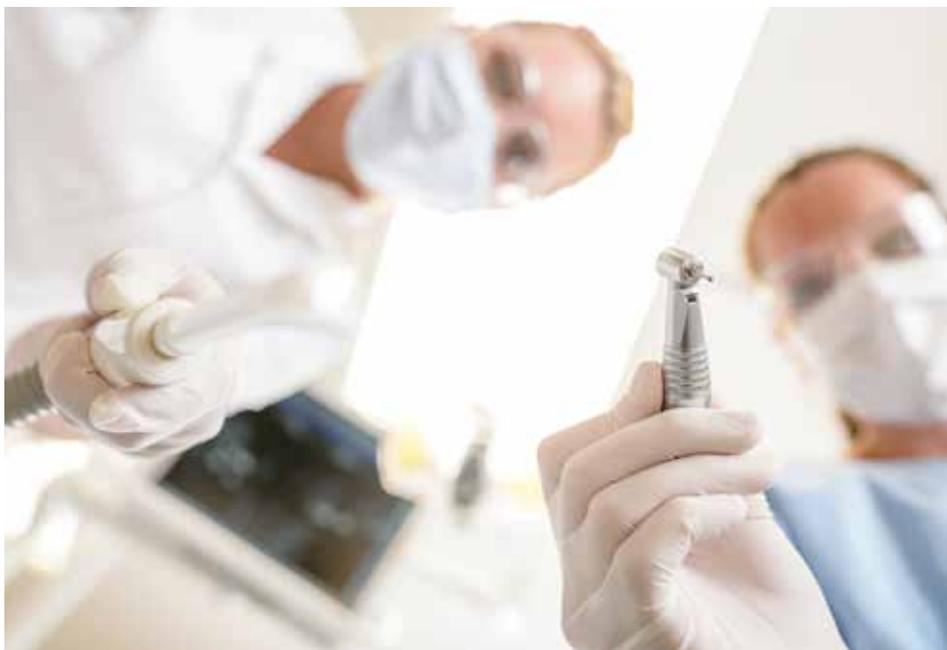
The exemption for the intra-Community acquisition may be applied even when the supply of dental prostheses is taxed in the country of origin. For example, in Germany the supply of dental prostheses is subject to German VAT and the supplier is entitled to the deduction of input tax. However, according to the CJEU, it is the regulations in the country of destination (in this case the Netherlands) that are decisive regarding the exemption for the acquisition. The regulations of the country of origin (Germany) are not relevant.

Furthermore, the CJEU noted that there is no legal requirement that the dental prostheses have to be delivered to a dentist or dental technician in order to be exempt in the Netherlands. Even if the importing party is not a dentist or a dental technician, the import or intra-Community acquisition in the Netherlands is only exempt if the dental prostheses are supplied by a dentist or a dental technician.

Implications

This judgment is particularly important for entrepreneurs who buy and sell dental prostheses in cross border situations. For the Dutch market, this ruling means that no additional VAT is charged on dental prostheses acquired from other EU-countries, so long as they are supplied by a dentist or dental technician in that country.

The CJEU noted that in some cases the VAT burden will be unfair. For example, where dental prostheses are supplied by a German dental technician to someone in the Netherlands, the supply will be subject to VAT in Germany so, if a Dutch dental technician relocates his or her business to Germany and supplies dental prostheses to a dentist in the Netherlands, an intra-Community supply occurs that is taxed at 0% VAT in Germany. This means the dental technician can deduct the VAT on the costs attributable to the intra-Community supply while the intra-Community acquisition of the dental prostheses in the Netherlands is exempt. If a dentist subsequently supplies the dental prostheses to a patient in the Netherlands, this too would be exempt from VAT. In this situation VAT has been deducted, but no VAT has been paid. This can occur in every situation in which dental prostheses are supplied by a dentist or dental technician established in an EU country where the supply is subject to VAT and the dental prostheses are supplied to a dentist or dental technician in the Netherlands. If, on the other hand, the dental prostheses are acquired by a merchant in the Netherlands who then supplies it to a patient in the Netherlands, the domestic supply will not be exempt. In such a case the merchant has to charge VAT to its customer and there will be no VAT-advantage.



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ROMANIA

ROMANIA EXTENDS REDUCED RATE OF 9% TO FOOD PRODUCTS

As of 1 June 2015 Romania has extended the reduced rate of VAT to a broad category of products intended for human and animal consumption. The 9% rate, which is reduced from the standard rate of 24%, now applies to the supply, import, and intra-Community acquisition of food products, including non-alcoholic beverages. The change applies to seeds, plants, and ingredients used in the preparation of food products and supplement and food substitutes. In implementing this change, Romania will adopt the CN (Combined Nomenclature) codes defined in Annex I to Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and the Common Customs Tariff, as amended by Council Implementing Regulation (EU) no. 1.101/2014 of 16 October 2014 on such goods.

The rate of 9% now applies to supplies of live animals and live birds from domesticated species, meat, fish and crustaceans, molluscs and other aquatic invertebrates, milk and dairy products, birds' eggs, honey, living plants used as food for humans or animals or as raw materials or ingredients for preparing food for humans or animals, vegetables, roots and tubers, edible fruits, citrus peel, coffee, tea, maté and spices, cereals falling within CN codes 1001-1008 (other than those used for sowing), oilseeds, grains and fruit, industrial or medicinal plants, straw and fodder, fats and oils of animal or vegetable origin and their cleavage products, prepared edible fats, sugar, prepared vegetables, fruits, nuts and other parts of plants, gums, resins and other vegetable extracts that are used as ingredients for preparing food for humans or animals, salt, vinegar, and other related food products specifically listed.

The reduced rate of VAT of 9% applies to all suppliers (producers and traders) in the entire economic chain, from production to sale to the final consumer. The reduced VAT rate is also applied to the supply, import, or intra-Community acquisition of prescribed food supplements, a list of which can be found on the website of the Romanian Ministry of Health or from the Institute of Food Bio resources.

Alcoholic drinks served in restaurants or by catering companies are not considered supplies of goods per se; instead, they are treated as restaurant or catering services and are taxed at the standard 24% VAT rate. It should be noted, however, that the provision of accommodations that include half board or full board, or all-inclusive, is subject to the VAT rate of 9%, even if it includes alcoholic beverages.

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SPAIN

SPAIN'S TREATMENT OF BUYING AND SELLING BITCOIN

Spain's Directorate General for Taxation (DGT) has recently issued two binding rulings with regard to the VAT treatment of the activity of buying and selling of Bitcoin through cash dispensers (ATMs), vending machines, and an Internet portal in exchange for a commission in Spain.

As a preliminary point, the DGT is of the view that the activities described above are within the scope of VAT because the supplier has the characteristics of an entrepreneur or professional carrying out the supply of goods and services in the development of a business or professional activity.

As for whether the transactions related to Bitcoin can be considered VAT exempt, based on application of article 135 of Directive 2006/112 and 20 of Spanish VAT, which exempts "*transactions including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection*", the DGT notes that the main problem is that neither the Directive nor Spanish Law establishes a definition of "other negotiable instruments" or "other payment orders". The DGT concludes that Bitcoins are used as a mean of payment and so they must be included under the concept of "other negotiable instruments" and, therefore, transactions involving them are subject to VAT but exempt from Spanish VAT as a result of application of the Directive.

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SRI LANKA

INDIRECT TAX UPDATES 2015

Sri Lanka has announced amendments to both VAT and Nation Building Tax (NBT). Though the Bills that include the changes have not yet been enacted, the changes have begun to be administratively enforced. All amendments described below are effective from 1 January 2015.

Value Added Tax

A key change included in the Bill is the reduction in the standard rate of VAT and the increase in thresholds for General VAT and Financial VAT which would mean that fewer businesses would be now entitled to VAT registration.

Reduction of standard rate of VAT

The standard rate of VAT in respect of both General VAT and VAT on Financial Services has been reduced to 11%.

Registration thresholds

The threshold for registration for General VAT has been increased from LKR 3 million per taxable period (or LKR 12 million per year) to LKR 3.75 million per taxable period (or LKR 15 million per year). The threshold for registration in respect of VAT on Financial Services has also been increased. The threshold is now LKR 3.75 million for a period of three months (or LKR 15 million per year).

The existing registration threshold of LKR 250 million for the chargeability of VAT on wholesale and retail trade has been reduced to LKR 100 million for a consecutive three month period in a calendar year. The reduction in threshold is likely to increase the number of wholesalers/retailers falling within the VAT net.

Nation Building Tax

The threshold for the applicability of the NBT has been increased from LKR 3 million per quarter to LKR 3.75 million per quarter. As a result, fewer businesses may now be liable to NBT.

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SWEDEN

SWEDEN'S DENIAL OF DEDUCTION OF INPUT VAT: A BREACH OF THE EU DIRECTIVE?

A Swedish limited company has been denied deduction of input VAT in respect of office refurbishment on the basis of an exemption set out in the VAT Directive.

For years, the company in question has had an office in the attic of a house. The house consists mainly of personal residence apartments. The company expanded its office space by buying the rest of the house's attic and renovating it to make a larger office. The company received invoices with VAT included for expenses related to this office, for example, for alarm systems, floors, walls, computers, and so on. In its VAT return the company deducted the invoiced input VAT but the Swedish Tax Agency denied the deduction. The case ended up in the Administrative Court and then in the Administrative Court of Appeal and in both cases the taxpayer lost.

Since the introduction of Swedish VAT in 1969, deduction of input VAT on the cost of a residence has not been allowed under Swedish domestic VAT law (ML 8: 9 ML). The theory behind denying claims of input VAT on the cost of a residence is prevention of deductions for expenses incurred for private consumption (prop. 1993/94 s. 212). Originally, this prohibition was intended to apply to the permanent residence of the company's owner or employee (SOU 1994: 88 page 252). In this case, however, though the space the taxpayer bought happened to be in a mixed-use structure that was used by others for private residences, the taxpayer did not use the premises it bought as a private residence.

In our opinion, the Swedish authority and Swedish courts' interpretation, which denies the deduction of input VAT in this case, breaches the EU VAT Directive. Community law allows deduction of input VAT on expenses that are not related to permanent residences. Though Member States are allowed to retain the tax treatment allowed under their national law at the date they acceded to the community (Sweden joined the EU on 1 January 1995), Sweden's prohibition of the deduction of input VAT relates to permanent residences. And, while Swedish VAT law does not have a definition of the term habitual residence, the term generally refers to a building or part of a building that is set up for permanent living.

The existing prohibitions that Sweden was allowed to keep when joining the EU should be interpreted with restriction. The extended interpretation applied in this case denies the deduction of input VAT simply because of where the office space was located; in our opinion this interpretation should not be allowed as it is likely to be in breach of the EU VAT Directive.

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SWITZERLAND

SWISS VAT LIABILITY OF FOREIGN COMPANIES

Foreign companies delivering goods on which work has been performed in Switzerland, such as construction work, installations, and similar work, are likely to need to re-evaluate their Swiss VAT obligations. If proposals currently being discussed are passed, the rules could change again as of 1 January 2016. If that happens, such companies would have to register for VAT fairly quickly.

Currently, foreign businesses that are not VAT registered in Switzerland that carry out construction, installations, assemblies, and similar work in Switzerland can only benefit from the reverse-charge mechanism if the revenues they generate in Switzerland are CHF 100,000 or less per year.

The Swiss VAT law might be significantly amended for 2016. This summer the Swiss parliament will discuss a new proposal by the Swiss government that would apply the annual VAT registration threshold of CHF 100,000 to a company's worldwide revenue, not just to its revenue derived in Switzerland. If this proposal is adopted, we expect that more companies will have to register for VAT in Switzerland. To register for Swiss VAT foreign companies must appoint a fiscal representative based in Switzerland. BDO Switzerland can act as a fiscal representative and we would be happy to discuss doing so with you.

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UNITED KINGDOM

ALCOHOL WHOLESALER REGISTRATION SCHEME

The UK's Alcohol Wholesaler Registration Scheme (AWRS) comes into effect on 1 October 2015. New and existing businesses involved in the buying or selling of alcohol in the UK will be required to comply with strict new authorisation and record-keeping requirements.

It is intended that the AWRS will combat risks of alcohol fraud, particularly the diversion of illicit (duty unpaid) alcohol into the wider market within the UK. An outline of the AWRS was included in the UK's Finance Act 2015 but the industry awaits more detailed guidance on its operation from HMRC, the UK tax authority.

Who will be affected?

The AWRS will affect most UK businesses that buy or sell alcohol. Examples include alcohol wholesalers, brokers, auctioneers, and alcohol retailers. We understand that HMRC will soon clarify who will be affected in more detail, but it seems likely that the AWRS and its obligations will in some cases apply to businesses that are not currently aware they will be affected.

Implications

The AWRS requires affected businesses to conduct appropriate due diligence checks on their supply chain, and in some cases, on their customers. Failure to comply with the regulations, restrictions, and conditions imposed by the scheme may result in a possible penalty.

HMRC intends to have reviewed all applications to join the scheme by 1 April 2017. From that date, all affected businesses will need to ensure that each UK supplier from which they purchase alcohol is registered with HMRC. If a business continues to purchase its alcohol from an unregistered supplier after that time, or continues to trade when it has not been approved, it will be committing an offence and be liable to a fine, imprisonment, or both.

What are the requirements?

Affected businesses must make an application between 1 October and 31 December 2015 to evidence that they are a "fit and proper person to carry on the activity". New wholesalers will be required to receive authorisation before they start trading, and must apply at least 45 days before trading commences.

HMRC has issued some initial guidance to indicate the criteria by which it will decide whether a trader is a fit and proper person. Broadly speaking, these concentrate on its compliance record and ability to show it has had no prior involvement or connection with illicit trading, fraud, or non-compliance.

Application and approval

Following the assessment of the application, the applicants may also be subject to a pre-registration visit carried out by HMRC. We expect that the implementation of this scheme will place a large administrative burden on HMRC so it would be advisable for any new businesses to apply as far in advance of trading as possible.

Once approved, an AWRS registered business must ensure it is only trading with HMRC approved businesses, and verify its trading partners' approval status by using HMRC's online lookup facility to check registration details. Additionally, it is likely there will be a regular requirement to maintain due diligence checks on the supply chain. New procedures may need to be implemented; including the insertion of the business's unique reference number on invoices.

A wider picture?

The AWRS has been put in place to manage a risk in the UK alcohol market rather than as a matter of EU policy, so only UK businesses and businesses with establishments in the UK will be required to register.

However, it is likely to have an effect on non-UK alcohol traders too, in so far as the UK based businesses may exert pressure on their overseas customers or suppliers to provide particular information or assurances to support the UK business's approval under the AWRS requirements.

Next steps

Further guidance on the details of the scheme is expected to arrive in the coming weeks. Whilst awaiting this, businesses trading in alcohol should start to conduct thorough reviews of their own record-keeping procedures and processes involving their supply chains, between now and the date of their application to the AWRS.

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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 22 June 2015.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Sri Lanka Rupee (LKR)	0.00655	0.00744
Swiss Franc (CHF)	0.95878	1.08813

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