DECEMBER 2018 ISSUE 4
WWW.BDO.GLOBAL

INDIRECT TAX NEWS

GERMANY
Update on consignment stocks, vouchers, and electronic marketplaces
READ MORE 6

ITALY
Italy invoicing – New requirements
READ MORE 9

MALAYSIA
Re-implementation of Sales and Service Tax
READ MORE 10

CANADA

QUÉBEC SALES TAX CHANGES FOR NON-RESIDENTS OF QUÉBEC FAST APPROACHING

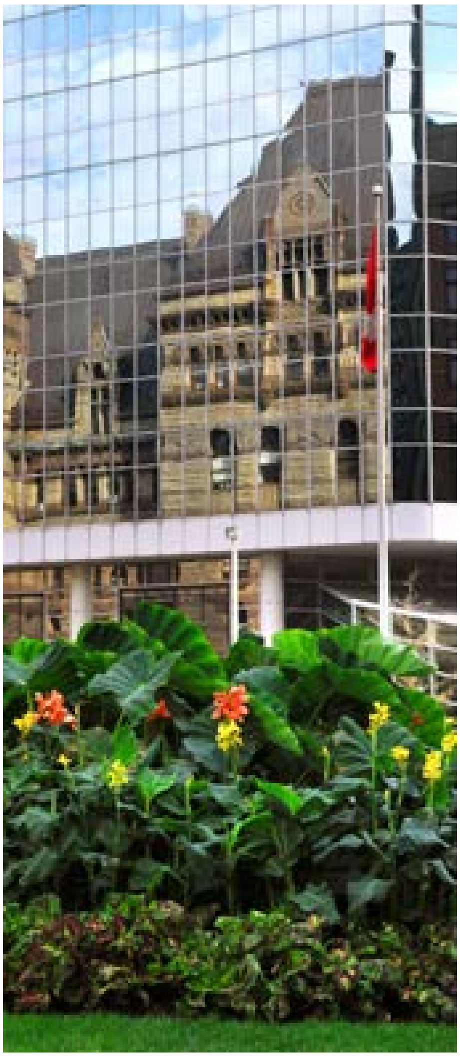
In 2019, the province of Québec will implement a system requiring non-residents of Québec (including some digital platform operators) to register and collect Québec Sales Tax (QST) on sales of intangibles (software and digitised products) and services made to persons in Québec who are not registered for QST (Québec specified consumers).

The requirement to register to collect QST from Québec specified consumers will apply only if a business has more than CAD 30,000 of these types of sales to individual consumers in Québec annually.

Starting 1 January 2019 non-residents of Canada not registered for GST/HST will be required to collect QST on their sales made to Québec specified consumers. On 1 September 2019, the scope of the new rules will be expanded to include residents of Canada that are not resident in Québec and to non-residents of Canada that are GST/HST registrants. These businesses will be required to register to collect QST not only on sales of intangibles and services sold to Québec specified consumers, but also on sales of tangible property delivered in Québec.

These new rules will apply only for QST registration and collection; QST is a VAT imposed at the provincial level. For now, obligations of non-residents of Canada selling to consumers in Canada to register for the federal GST/HST remain unchanged.

The registration system and filings are available on-line to ease compliance for non-resident businesses. The QST payments can be made in Canadian dollars, US dollars, and Euros. The new rules will have a significant impact on many Canadian and foreign businesses that sell on-line to non-QST registered customers in Québec. It is important for on-line businesses to determine if they must register for the new regime in Québec, and then set up their systems to charge, collect, and remit the tax.



SHELLEY SMITH
Canada – Montréal
ssmith@bdo.ca

BRUCE GOUDY
Canada – Toronto
bgoudy@bdo.ca

CONTENTS

EDITOR'S LETTER

Dear Reader,

Many thanks for taking the time to read the final BDO Indirect Tax News for 2018. As you no doubt will see, it features interesting news and insights from BDO International colleagues from across the globe.

The partners and staff at BDO in Ireland had the pleasure of hosting many of these individuals in Dublin in October. It was fantastic to see so many people from so many different countries enjoying the Irish experience. It's gatherings like this that really remind us how wide-spread our Irish heritage is, for though our population is only about 4.8 million, there are more than 70 million people of Irish extraction living in other countries around the world. Given this, it was not surprising that many delegates at our Conference in Dublin took the opportunity to check up on their ancestry during their short time here.

Needless to say, an imminent 'Brexit' also resulted in many individuals from the UK and other countries checking their ancestry to see whether they might be entitled to an Irish passport. As regards Brexit, though we don't generally have too much involvement with passports, we're well qualified to assist our clients and contacts with any VAT, customs, or other tax-related concerns or challenges Brexit may bring.

Finally, as this is the last ITN before Christmas, I'd like to take the opportunity to wish you and your family a happy and peaceful Christmas and a prosperous New Year!

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

ARGENTINA

REGIME FOR PROMOTING GENERATION OF RENEWABLE ENERGY

Law 27.424, which was recently enacted, creates a 'Promotion Regime for the National Manufacture of Systems, Equipment, and Supplies for Distributed Generation from Renewable Resources' (FANSIGED). Under this regime, foreign investors that partner with locals on renewable energy projects enjoy tax benefits for ten years. We summarise the main aspects of the regime here.

Relevant aspects

The regime establishes the following benefits for those who perform research, design, and development activities, as well as for investment in capital assets, production, certification, and installation service activities for the distributed generation of energy from renewable sources:

- A Tax Credit Certificate for manufacturing companies that they can apply against their national taxes;
- A Value Added Tax early refund;
- Accelerated depreciation for income tax purposes; and
- Access to investment financing at preferential rates.

It is important to highlight that legal persons (whether natural or legal persons) in both Argentina and abroad can access these benefits, as long as their ownership in the share capital of the project does not exceed 25%. This means that to qualify for participation in the regime, foreign investors will have to join with Argentine companies.

Finally, the Labour and Production Ministry is designated as the body in charge of establishing the requirements, the formalities, and the technical regulations related to the regime.

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

CANADA

USMCA 101 – WHAT IS IN NAFTA 2.0?

On 30 September 2018, Canada agreed to a last-minute deal to replace the existing North American Free Trade Agreement (NAFTA). This new trade agreement will bear the name United States-Mexico-Canada Agreement (USMCA) and it will maintain tariff-free access to goods, as in the original NAFTA. This 21st century trade agreement is expected to be implemented in 2020.

The newly agreed upon USMCA overcame a few important sticking points that arose between all three parties during the negations, such as:

Vehicle North American Content Requirements – The USMCA brings an increase in US, Canadian, or Mexican content in a vehicle from 62.5% to 75% and the vehicle must contain at least 70% North American steel and aluminium. There will also be new rules related to the labour content.

Section 232 US import tariffs on Canadian manufactured automobiles – There will be a 60-day exemption period on any future tariffs, including those on automobiles, under Section 232 of the Trade Expansion Act of 1962.

Canadian dairy and agricultural quotas – The USMCA will allow the US broader access to the Canadian dairy market and an agreement by Canada that it will limit dairy exports globally, so as not to compete with the US in the global market.

Intellectual property – Under the USMCA, Canada will extend the patent protection for prescription drugs, specifically biologics like Humira (used to treat Crohn's disease and arthritis), to ten years from eight years.

Online shopping – Under the USMCA, the de minimus threshold for online shopping imports will increase from CAD 20 to CAD 150 before attracting both Canadian duties and taxes. Import shipments below a new CAD 40 threshold will enter Canada duty and tax free. Shipments above CAD 40 will attract GST/HST but will be duty free. Shipments above CAD 150 will attract both GST/HST and duty.

Steel and aluminium industries – Under the USMCA, the existing 25% surtax on steel and 10% surtax on aluminium imposed by the US on Canadian steel and aluminium remain in place.

For international suppliers looking to leverage Canada as a means to access the US and Mexican markets, this new agreement results in many planning opportunities. Please contact us if you would like additional information or a comprehensive list of changes expected under the USMCA.

BRIAN MORCOMBE
CHARMAINE GODDEERIS
Canada – Toronto
bmorcombe@bdo.ca
cgoddeeris@bdo.ca

CURACAO

TURNOVER TAX

On 28 June 2018 the Government of Curacao introduced new tax legislation that included turnover tax amendments. This article explains these amendments and their implications.

E-zone

The Economic Zone (E-zone) facility in Curacao allows for goods to enter into the E-zone without being subject to turnover tax and import duties. The amendments that will be introduced beginning 1 January 2019 include some turnover tax changes with respect to E-zone companies:

- Goods leaving the E-zone that are imported into Curacao will be subject to a turnover tax rate of 9%;
- The release of goods from an E-zone company destined for a bonded warehouse is no longer exempt from turnover tax and import duties; and
- When entrepreneurs import goods from the E-zone, they may no longer request a turnover tax credit or exemption with respect to the goods imported.

Exemptions

The new tax legislation, which will enter in to force on 1 January 2019, has also amended a few of the applicable turnover tax exemptions:

- Foreign-oriented activities carried out by a Curacao investment company are no longer exempt from turnover tax;
- The sales of goods to cruise ship tourists are exempt from turnover tax;
- Certain services provided to entities and individuals that have been granted an exemption pursuant to the Foreign Exchange Transactions Regulations for Curacao and Sint Maarten are no longer exempt from turnover tax. As a result, they are subject to turnover tax at 6%. The services impacted by this change include those by lawyers, legal and tax consultants, asset managers, investment advisors, administration and trust offices, accountants, banks, and civil law notaries, including foreign-oriented activities of all these entities.

JASPER MUNS
ENRICO VAN DER MEIJ
Curacao
muns@bdotax.cw
meij@bdotax.cw

ECUADOR

ISD EXEMPTIONS AND VAT RATES

On 21 August 2018 the Organic Law for Productive Development, Attraction of Investments, Job Generation and Stability, and Fiscal Balance was published in the Ecuadorian Official Registry Supplement Issue No. 309. This law modifies various statutes. In this article we focus on some of the changes that relate to the Tax on Remittances Abroad (ISD for short) and Value Added Tax rates.

ISD exemptions

The law provides for exemptions on the Tax of Remittances Abroad for new production investment contracts with respect to payments for:

a) Imports of capital goods and raw materials necessary for the development of the project, up to the amount and period established in the contract; and

b) Dividends distributed by national or foreign companies domiciled in Ecuador, after payment of their income tax, in favour of effective beneficiaries who are:

  – Natural persons domiciled or residing in Ecuador or abroad; or

  – Shareholders of the company that distributes the dividend, provided that the entry of the foreign investment into the country is legally documented.

There is also an ISD exemption on payments of dividends made in favour of actual beneficiaries resident in Ecuador, for companies that reinvest in Ecuador at least 50% of their profits.

Offsets between receivable and payable accounts are not subject to ISD.

Payments made for the following items are not subject to ISD:

a) Transfers or remittances made to financial entities abroad in compliance with conditions established when the financial contract was entered into;

b) Amortisation of capital and interest on loans granted by financial intermediaries or other duly qualified institutions;

c) Payments made for shipyard maintenance.

Regular exporters are entitled to claim ISD on the imports of raw materials, inputs, and capital goods, as well as on commissions paid for incoming tourism services.

VAT rates

The law also specifies that a VAT rate of zero (0%) applies to purchases of:

a) Electric vehicles for private use, public use, and cargo transportation;

b) Batteries, chargers, and electric charging stations for hybrid and electric vehicles;

c) Solar panels and processing plants for wastewater treatment;

d) New fishing new vessels, if constructed in a shipyard.

A 0% VAT rate applies on construction services to low-income housing.

A 0% VAT rate applies on rental of land for agricultural use.

VAT refunds for exporters of services

Companies developing housing projects of social interest are entitled to a VAT refund on the VAT paid on local purchases of goods and services used in the development of a given project.

Taxpayers are entitled to a VAT credit for tax they paid on purchases and for VAT withheld by customers. However, taxpayers must claim VAT credits within five years.

Taxpayers can claim VAT refunds on amounts paid for audio-visual, television, and cinematographic production activities.

ANA LUCÍA ESCOBAR
Ecuador – Quito
aescobar@advice.com.ec

FRANCE

VAT DEDUCTION CLAIMED BY HOLD CO. FOR RENTING PREMISES TO SUBSIDIARIES

Marle Participations is the French holding company of the Marle Group, a manufacturer of orthopaedic implants. In addition to its shareholding activities, Marle Participations (Hold Co.) also rents out buildings to its subsidiaries. In 2009, in the context of a group restructuring, Hold Co. was involved in acquisitions and sales of shares in various subsidiaries. Hold Co. fully deducted input Value Added Tax (VAT) charged on various expenses connected with that restructuring operation.

After a tax audit, the French Tax Authorities reassessed Hold Co., disallowing the company's deduction of input VAT. Hold Co. objected to the reassessment and brought the case before the French High Court (Conseil d'Etat), which referred the following question to the Court of Justice of the European Union (CJEU):

> "Does the letting of a building by a holding company to a subsidiary constitute direct or indirect involvement in the management of that subsidiary, the effect of which being that the acquisition and holding of shares in that subsidiary are considered economic activities within the meaning of the [VAT] Directive, and, if so, under what conditions?"

In its decision, the CJEU referred to its settled case law for the following principles:

- If a holding company is only involved in the management of some of its subsidiaries, expenses connected with the transactions in subsidiaries' shares should only be regarded as partially belonging to general expenses and so the deduction of input VAT on such expenses should be limited.
- If a holding company is involved in the management of all its subsidiaries, expenses connected with the transactions in subsidiaries' shares are deemed to form part of the company's general costs so that the input VAT on such expenses would be fully deductible. (For example, this was the finding in the Larentia + Minerva case.)

The CJEU pointed out that the letting of a building by a holding company to its subsidiary does amount to involvement in the management of that subsidiary, which must be considered an economic activity if the following conditions are met:

- The supply of services is made on a continuing basis;
- The supply is carried out for consideration;
- There is a direct link between the supply and the consideration; and
- The supply is not VAT-exempt.

Applying these principles to the circumstances to Marle Participations, the VAT on the expenditures incurred by it for the purpose of acquiring shares in its subsidiaries is deductible.

Conclusion

This case is a continuation of the principles established in previous cases (Cibo Participations 09.27.2001, Larentia + Minerva 07.16.2015, and more recently, in Ryanair Ltd. 10.17.2018). However, this case is of interest as the precedent cases had not yet clearly defined what should be understood as 'involvement in the management of a subsidiary'.

Indeed, in the previous cases the CJEU had provided a list of activities that could qualify as economic activities, including administrative, financial, accounting, commercial, IT, and technical services. The CJEU confirmed that these examples are not exhaustive.

As such, the involvement in the management of a subsidiary should be defined, for VAT purposes, as covering all transactions constituting an economic activity performed by a holding company for the benefit of its subsidiary. In the specific Marle Participations case, this includes the letting of an immovable property to its subsidiaries.

DAVID HIRSCH
CONSTANCE BELLEVILLE
France – Paris
david.hirsch@avocats-bdo.fr
constance.belleville@avocats-bdo.fr

GERMANY

UPDATE ON CONSIGNMENT STOCKS, VOUCHERS, AND ELECTRONIC MARKETPLACES

Extension of the transition period regarding consignment stocks

In the December 2017 issue we wrote about new regulations related to the distribution of goods using warehouses or consignment stocks. Those new regulations were expected to apply to all open cases, subject to a transition period that was to run until 1 January 2019.

The transition period was recently extended for a year. This means that for transactions taking place before 1 January 2020, the German tax authorities will not challenge taxpayers that continue to apply the old treatment.

Implementation of the Voucher Directive in Germany

With respect to the EU Voucher Directive (Council Directive 2016/1065 dated 27 June 2016), Germany is on its way to implementing the directive into national law. Final legislation has been proposed in the German Bundesrat that is in line with the Voucher Directive. It is expected that the Directive will be implemented into German VAT law within the given deadline.

Germany implements liability regulations for electronic marketplaces

Germany has announced that it intends to implement regulations in 2019 that will make electronic marketplaces liable for VAT losses due to trade activities especially of foreign retailers selling goods to German customers on an electronic marketplace. Germany does not want to wait until 2021, when a European measure will be implemented for all EU Member States. Instead, it will fight the VAT losses by implementing a special national regulation.

Under this regulation, operators of electronic marketplaces will be expected to keep special records and data about entrepreneurs supplying goods using their electronic marketplaces. Additionally, a special certificate of VAT registration for the supplying entrepreneurs will be available. (It is expected that this certificate will be available in paper form at the beginning but an electronic version will be available shortly after).

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

HUNGARY

EXTENSION OF THE REDUCED VAT RATE AND VAT TREATMENT OF VOUCHERS

Major modifications of the VAT law were made by the Hungarian Parliament on 13 November 2018. In this article we focus on two of the most significant changes: the extension of the reduced tax rate of 5% on so-called new residential real estate properties and significant adjustments concerning the application of vouchers.

Extension of the reduced tax rate of 5%

Based on the newly adopted rules, the deadline for application of the reduced tax rate of 5% for the sale of new residential properties is extended for supplies until 31 December 2023, provided the final building permit was issued (or the notification made, where applicable) by 1 November 2018. Act Nr CXXVII of 2007 defines what constitutes new residential real estate property for purposes of VAT.

When the reduced rate was introduced on 1 January 2016, it was expected to apply until 31 December 2019. However, due to some difficulties interpreting relevant provisions (for example, the date of supply) and because of a lack of employment in the construction sector, the Hungarian government decided (after consultation with professional organisations) to extend the deadline for application of the reduced tax rate for the sale of new residential properties supplied until 31 December 2023.

Transfers of vouchers without consideration

The EU Voucher Directive (2016/1065/EU) was enacted in Hungarian law by Act Nr XLI of 2018, which was adopted earlier this year. The recent amendments include changes to the VAT treatment of the supply of vouchers without consideration. Where VAT incurred on costs related to a voucher sold without consideration, other than a supply by an issuer of a voucher, the supply of the voucher constitutes a taxable supply and is subject to VAT.

The rules are applicable for vouchers that will be issued starting 1 January 2019. Entities using vouchers in their sales activity will be affected by the new rules.

SZILVIA SÁRI
ANDREA KOCZIHA
Hungary – Budapest
szilvia.sari@bdo.hu
andrea.kocziha@bdo.hu

INDIA

ADVANCE RULING UNDER GST IN INDIA

Introduction of the Goods & Services Tax (GST) has been a giant forward leap for India. It is reforming the entire ecosystem of indirect taxation in the country, which had proliferated with multiple indirect taxes. New legislation, new processes and procedures, new ways of filing returns and a paradigm shift has inevitably resulted in some uncertainties and puzzles for taxpayers and administrators alike. To provide some clarity on things like: the applicability/liability of the tax, eligibility for exemption, classification of goods/services, and so on, the GST law provides for a scheme for obtaining an Advance Ruling.

An Advance Ruling is a decision provided by the Advance Ruling Authority (ARA) on a question of law with respect to tax payable on an activity undertaken or proposed to be undertaken. Advance Rulings are binding to the party that raised the question (the applicant), the jurisdictional officer, and the authorities subordinate to the jurisdictional officer.

The matters/questions that can be raised when seeking an Advance Rule include questions relating to, for example:

- Classification of any goods/services;
- Applicability of any notification;
- Admissibility of an input tax credit (ITC);
- Liability to pay tax;
- Registration;
- Whether the activity is a 'supply' that mandates application of the tax;
- The value and time of supply.

An ARA is not empowered to give any ruling on the question of the 'place of supply', which is the key determinant of the type of tax leviable on cross-jurisdictional supplies of goods or services.

An ARA is comprised of two senior officers, one each from the Central and State tax departments.

The ruling of an ARA can be appealed to the Appellate Authority for Advance Rulings', which is a separate panel that is comprised of two members, one each from the Central and State tax departments. The appeal must be made within 30 days of receipt of an Advance Ruling from the ARA. The Appellate Authority is expected to decide the appeal within 90 days.

Every State in India has an ARA and an Appellate Authority. ARAs and Appellate Authorities cannot review their own orders, other than to correct an apparent mistake on the record. Such corrections must be made within six months. While no mechanism is provided under the GST law for an appeal against the decision of an Appellate Authority, the taxpayer can approach a Court (High/ Supreme Court).

Numerous Advance Ruling applications/ appeals have been filed before these authorities in every State and rulings are being issued regularly.

Legal challenges

Public interest lawsuits (so called Public Interest Litigations, or PILs) have been filed before various High Courts challenging the constitutional validity of the provisions relating to ARAs and the Appellate Authority. The parties bringing these suits contend that since the ARAs and Appellate Authorities do not have a judicial member, they do not have proper jurisdiction and so their decisions should not be binding on the taxpayer. (In other words, the decisions are void based on the principle of coram non-judice). These challenges are pending before Indian courts.

Some of the recently issued advance rulings have been controversial. As a result, some of the established commercial practices and time-tested judicial principles have also come under a cloud.

Conclusion

Advance Rulings help applicants in planning their activities. Seeking an Advance Ruling is fairly simple and inexpensive and it provides certainty and transparency to a taxpayer with respect to an issue that may potentially cause a dispute with the tax administration. They also bring certainty in determining the tax liability, as the rulings are binding on the applicant and on government authorities. Further, they help avoid long, drawn-out, and potentially expensive litigation at a later date.

While the concept of being able to obtain Advance Rulings is a widely welcomed step, to ensure Advance Rulings achieve their objectives, some rough edges must be ironed-out. For example, conflicting Advance Rulings issued with respect to identical transactions carried out by similarly placed taxpayers lowers the credibility and confidence in the process. Having Advance Rulings issued by a central authority, as well as inclusion of a judicial member on the ARA and Appellate Authority would boost the confidence and effectiveness of the Advance Ruling mechanism.

AMIT KUMAR SARKAR
India – Mumbai
amitsarkar@bdo.in

INDONESIA

EXPORT OF TAXABLE SERVICES IN INDONESIAN TAX REGULATION

When carrying on business activities, taxable entrepreneurs (PKPs) must collect Value Added Tax (VAT) on supplies of goods and services, including on exports of taxable services.

Some taxpayers have made representations to the government of Indonesia about the negative consequences of charging VAT on exports of taxable services. They have pointed out that in addition to the added burden on businesses that must charge VAT and the fact that it makes their services more expensive, there is also the potential for double taxation. As a result of these representations, the Ministry of Finance is reviewing the tax treatment of all export services.

Goods exported are subject to VAT at 0%. Exports of services are generally subject to VAT at 10%. Based on Minister of Finance Decree (MoF) No. 70/PMK.03/2010, which was last amended in 2011 by MoF No.30/PMK.03/2011, Indonesia recognises three types of export services that qualify for VAT of 0%, namely:

1. Contract manufacturing services/Toll manufacturing services;
2. Repair and maintenance services related to movable goods used outside the Customs Area;
3. Construction Services, namely consulting services for construction work planning, construction work implementation services, and construction work supervision consulting services. To qualify, the services must be in respect of immovable property located outside the Customs Area.

On the export of service subject to VAT at a rate of 0%, a PKP still has an obligation to report it in their VAT returns.

The government plans to expand the types of services that will be subject to VAT of 0% to include, among others, shipping, telecommunications, and trade services. The expansion of the export of service sector that will be given this preferential rate shows the government's commitment to expanding the opportunities for Indonesian export services.

IRWAN KUSUMANTO
Indonesia – Jakarta
ikusumanto@bdo.co.id

IRELAND

BUDGET 2019

Increase in special reduced rate of VAT from 9% to 13.5%

A special reduced VAT rate of 9% was introduced on 1 July 2011 that applied to certain goods and services previously liable at the 13.5% rate. The special reduced rate applied to:

- Restaurant and catering services;
- Hotel and holiday accommodation;
- Admissions to cinemas, theatres, and certain musical performances;
- Admissions to museums and art gallery exhibitions;
- Fairgrounds and amusement park services;
- The use of sporting facilities;
- Hairdressing services; and
- Printed matter, such as brochures, maps, programmes, leaflets, catalogues, and newspapers.

In Budget 2019 the Irish Minister for Finance announced that, from 1 January 2019, the special reduced rate of 9% would no longer apply to any of the above-listed categories except newspapers and the use of sporting facilities.

It remains to be seen whether businesses will absorb the increased VAT cost or whether they will pass it on to consumers.

VAT on e-publications

The Minister also announced a reduction in the rate of VAT on e-publications from 23% to 9%. Included in the category of e-publications are: books, newspapers, and periodicals that are supplied electronically. Electronic publications that are wholly or predominantly devoted to advertising, or that consist wholly or predominantly of audible music or video content, are excluded.

These changes come into effect from 1 January 2019.

DEIRDRE PADIAN
Ireland – Dublin
dpadian@bdo.ie

ITALY

ITALY INVOICING – NEW REQUIREMENTS

On 23 October 2018 Law Decree 119/2018 was published in the Official Journal. This decree includes several VAT updates, particularly with respect to the mandatory E-invoicing.

Reduced penalties during the first period of mandatory E-invoicing regime

Starting on 1 January 2019, E-invoicing will be compulsory for Italian-established entities. The decree allows taxpayers to issue E-invoices late through the Exchange System for the first six month of Fiscal Year 2019. Penalties for those who issue E-invoices late will be as follows:

1. No penalties will be due if the E-invoice is issued by the VAT settlement deadline;
2. Penalties are reduced by 80% whenever the electronic invoice is issued by the VAT settlement deadline of the following period.

New terms for issue invoices and new rules for registration

From 1 July 2019, taxpayers can issue an invoice up to ten days after the tax point date, which is the date the transaction is considered performed for VAT purposes as determined under Italian VAT Law. In such a case, the invoice must indicate the invoice date and the tax point date. From a VAT accounting point of view, the taxpayer has to register the invoices issued by the 15th day of the month following the one in which the transaction was performed and it must contain a reference to the month of the tax point date.

Purchase registration number

According to the decree, the 'VAT protocol number' (the chronological registration number for purchases) is not required on invoices anymore because the Exchange System automatically assigns a unique identification code to each invoice.

New rules for deduction

According to the decree, input VAT can be deducted by the VAT settlement deadline in relation to the purchase invoices received and registered by the 15th of the month following the month in which the transaction is carried out.

E-invoice and non-resident companies

The decree provides that E-invoicing is mandatory only for entities that are resident/established in Italy for VAT purposes.

FRANCESCO GRANDOLFO
PAOLO LISI
Italy – Milan
francesco.grandolfo@bdo.it
paolo.lisi@bdo.it

TRANSFER PRICING ADJUSTMENTS – CLARIFICATIONS BY ITALIAN REVENUE AGENCY

Italy's Revenue Agency recently clarified the conditions necessary to qualify intercompany contributions as transfer pricing adjustments. This clarification was published in Ruling no. 60 of 2 November 2018.

The Ruling analysed a situation involving three companies that belong to the same multinational group:

- An extra-EU company acting as Principal (Beta);
- An Italian resident company acting as Contract Assembler (Alpha); and
- An Italian resident company acting as Contract Manufacturer (Gamma).

Beta and Alpha entered into an agreement under which the Alpha undertakes the obligation of organising the production and distribution of the goods, putting its equipment at the disposal of Gamma, a third-party manufacturer. Under the agreement, Alpha sells the goods to Beta at a price in line with the policy adopted by the Group, which applies transfer prices consistent with the arm's length principle.

If the profitability achieved by Alpha in a given tax period is lower than that identified based on the arm's length principle, Beta pays Alpha a contribution as an adjustment to comply with the arm's length principle.

The Italian Revenue Agency was asked to provide an opinion on whether such a payment/contribution may qualify as:

1. Consideration for a service; or
2. An increase (or decrease) in the sale price of the goods supplied in the intercompany transactions between Alpha and Beta.

As regards the first question, given that under the agreement between Alpha and Beta, Alpha is not obliged to do anything other than supply the goods, the Revenue Agency was of the view that there is no service for which the adjustment could be considered paid as consideration. So, the Revenue Agency held that the payment of such an amount does not qualify as remuneration for a specific service provided by Alpha to Beta so the contribution is not relevant for VAT purposes.

Regarding the second question, based on the conclusions of Working Paper 923 taxud.c.1(2016)1280928, the Italian Revenue Agency held that the adjustment may affect the VAT taxable amount of an intercompany transaction, only where the following conditions are met:

a. There must be a payment, either monetary or in kind;
b. Said payment must refer to a specific supply of goods or services;
c. There is a direct link between the payment/consideration and the supply of goods or services provided.

According to the Italian Revenue Agency, an adjustment can be considered an increase or decrease in the VAT taxable basis of an intercompany supply of goods or services only if all three conditions are met.

In the case at hand, the Revenue Agency concluded that transfer pricing adjustments are not relevant for VAT purposes because the above conditions are not met.

FABRIZIO PAPOTTI
Italy – Milan
fabrizio.papotti@bdo.it

LATVIA

INTRODUCTION OF AN INNOVATIVE 'TAXPAYER RATING' SYSTEM

The Latvian tax administration launched a new analytic tool called the 'Taxpayer Rating' system.

The rating is based on various criteria, including the company's financial indicators, the number of employees and the amount of employment taxes paid, the company's submitted tax returns, tax debt history, and other data.

The rating can be viewed and printed out from the taxpayer's Electronic Declaration System account. Entrepreneurs can decide whether they want to share their rating with business partners. Printed reports include a QR code so that the person receiving a printed-out version can verify the authenticity of the report.

The Latvian tax administration encourages entities to avoid risky business endeavours by requesting the risk score from their business counterparties. In this way, the tax administration thinks the Taxpayer Rating tool can be a valuable tool in VAT fraud prevention.

JELENA BARTULE
VALTS STURMANIS
Latvia – Riga
jelena.bartule@bdo.lv
valts.sturmanis@bdo.lv

MALAYSIA

RE-IMPLEMENTATION OF SALES AND SERVICE TAX

Following the repeal of the Goods and Services Tax (GST), Malaysia has re-implemented the Sales and Service Tax (SST) effective 1 September 2018. The SST replaces the GST. As a result, all GST registrants automatically ceased to be registered for GST as of that date. However, taxpayers that were GST registrants are still required to submit their final GST returns within 120 days of 1 September 2018, the date the GST Act was repealed.

Malaysia's new SST is a single-stage tax with no input tax deduction available. The Sales Tax is imposed at the rate of 5%, 10%, or a specific rate on taxable goods manufactured and sold by taxable persons, as well as on taxable goods imported into Malaysia. The Service Tax is imposed at the rate of 6% on most prescribed taxable services, other than certain exported services.

Proposed changes to the SST

In the 2019 Budget announced by Malaysia's Finance Minister on 2 November 2018, the government proposed the following changes in relation to SST:

- Imposition of the Service Tax on taxable services imported into Malaysia on business-to-business (B2B) transactions beginning 1 January 2019 and on business-to-consumer (B2C) transactions beginning 1 January 2020. For B2B transactions, the recipient of imported services must account, declare, and pay the Service Tax to the Royal Malaysian Customs Department. For B2C transactions, the foreign supplier is required to register and charge Service Tax;
- Implementation of Service Tax exemptions for specific B2B services provided by entities registered for Service Tax;
- Introduction of a credit deduction on Sales Tax for small manufacturers.

It is important to note that details related to the changes described above are expected to be contained in Finance Bill 2018 and the amended Sales Tax Regulations 2018 and Service Tax Regulations 2018, which have not yet been gazetted.

DAVID LAI
Malaysia – Kuala Lumpur
davidlai@bdo.my

THE NETHERLANDS

INCREASE OF THE DUTCH REDUCED VAT RATE

On 1 January 2019 the reduced VAT rate in the Netherlands will be increased from 6% to 9%. The Dutch Senate still has to give its approval to the increase, but it is very likely it will.

The following goods and services are among those that will be subject to the increase in the reduced VAT rate:

- Food and drinks;
- Medicines and various medical devices;
- Books;
- Art objects;
- Passenger transport;
- Restaurant services; and
- Hotel accommodations.

The result of the increase is that 3% more VAT will be due on these products. Entrepreneurs have to decide whether to pass on the VAT increase in the price of their products. In addition, it is wise to determine the impact of the increased VAT rate on prepayments and/or supplies sold in 2018 or before but that will not be supplied until 2019.

Prepayments

Where a prepayment is made, the VAT is due when the prepayment is received. So, if the prepayment is received in 2018, the reduced VAT rate of 6% applies, even if the supply takes place in 2019.

If all relevant elements of the future performance are known at the time the prepayment is made, then the prepayment date will be decisive for determining what VAT rate is applicable.

The Tax Authorities will not be lenient in case of prepayments with an abusive character.

Cash or invoice system

If the taxpayer is on a cash basis, the VAT is due at the time the payment is received. So, if the payment is received in 2018, the reduced VAT rate of 6% applies, even if the invoice is issued in 2019 or the performance is in 2019.

Obligation to issue an invoice

Where an invoice system is used and the taxpayer has an obligation to issue an invoice, the VAT is due at the time the invoice is issued. If there is no obligation to issue an invoice, then the VAT is due at the time of performance.

Conclusion

With the anticipated increase in the reduced VAT rate beginning 1 January 2019, now is a good time for some planning. Entrepreneurs should be considering whether they will be able to pass along the additional 3% in their prices. They should also consider the extent to which any performances can be conducted before 2019 or whether any prepayments can be made in 2018, thereby saving the additional 3%. And finally, they should consider whether it may be necessary to make adjustments to their administrative software (ERP) settings.

MARCO BEERENS
JOOST VERMEULEN
The Netherlands – Breda
marco.beerens@bdo.nl
joost.vermeulen@bdo.nl

SAUDI ARABIA

VAT PUBLICATIONS

Since VAT was introduced in Saudi Arabia on 1 January of this year, the General Authority for Zakat and Tax (GAZT) has published a wide range of taxpayer guides and manuals. Recent guides have included advice for agencies and an update of the VAT manual. New guidance is usually issued in Arabic only but subsequent translations into English have been issued for some of the guides.

This guidance material is welcome and can be a great help to taxpayers, many of whom are still struggling to come to terms with the complexities of the tax. However, one aspect of concern is that these publications normally come with a disclaimer that the guidance: "...is not binding on GAZT or on any taxpayer in respect of any transaction carried out and it cannot be relied upon in any way."

The result of inclusion of this statement is that, though taxpayers gain some comfort from having access to GAZT's views, the guidance does not provide as much certainty as many businesses feel they need. Unfortunately, even private rulings issued by GAZT to individual taxpayers often contain similar warnings. Many businesses and their advisors have raised concerns over these warning statements and it is hoped that in time, GAZT will begin to issue guidance and rulings that provide greater certainly for taxpayers.

Penalty update

In previous articles we have reported on the penalties that taxpayers have incurred as a result of errors identified by GAZT or as a result of late submission or non-submission of VAT returns.

Where the penalties arise from non-submission of returns, the penalty is based on an estimate of the VAT liability. As the estimate is usually far higher than the true liability, the result has been some disproportionally high penalty assessments. In recent weeks, GAZT has withdrawn some of these penalties once the VAT return has been submitted. This has not removed the taxpayer's liability to penalties completely but it has ensured that the penalty is based on the true tax liability, rather than the estimate.

Overseas businesses – Update

Registering a business for VAT in Saudi Arabia continues to be a problem if the business does not have a Saudi establishment. The main issue is that under a strict reading of the law, the taxpayer must appoint a 'tax representative' who will be jointly liable for the taxpayer's tax debts. Many businesses have found it very difficult (sometimes impossible) to find anyone willing to take on the onerous responsibility of being a tax representative.

It is understood that GAZT is working on a solution to this problem and that in the future it may be possible for non-established businesses to register without an agent, perhaps by arranging a bank guarantee as an alternative. There has been no official announcement at this stage, however.

BRIAN CONN
AHMED ALY
Saudi Arabia – Riyadh
brian.conn@bdo.ae
ahmed.aly@alamri.com

SPAIN

FINANCIAL TRANSACTION TAX AND DIGITAL SERVICE TAX

On 23 October 2018, the Spanish Ministry of Finance published the following draft tax bills together with their impact analyses.

- **Draft bill on Financial Transaction Tax (FTT)** – The government has proposed this tax to reinforce the principle of fairness and to contribute to the objective of consolidating public finances. In fact, the transactions that will be subject to this tax have not been effectively subject to any indirect taxation before;
- **Draft bill on Digital Service Tax (DST)** – The proposed DST will tax digital services in which there is an essential contribution by users in the value creation process of the company that provides those services, and through which the company monetises those user contributions.

These bills are in draft form, which means there could be further changes to them, and no effective date has yet been set for them.

Financial Transaction Tax

The FTT will be 0.2%. It will apply to the following taxable events with respect to shares of Spanish listed companies that have a market capitalisation of more than EUR 1,000 million:

- The acquisition of shares of such companies, regardless of the residence of the agents involved in the acquisition of the shares;
- The acquisition of negotiable depositary receipts regarding shares of such a company;
- The acquisition of securities related to shares and negotiable depositary receipts of such companies derived from the execution or liquidation of convertible debentures or bonds.

With respect to the FTT, the Spanish Ministry of Finance will annually publish (before 31 December each year) a list of the Spanish companies that had a market capitalisation value of more than EUR 1,000 million that year.

The draft FTT bill also includes tax relief for certain stock acquisitions. In general terms, the tax base of the FTT will be levied on the consideration paid in the transaction minus expenses, such as fees and commissions, paid to carry out the transaction.

The taxpayer will generally be the financial intermediary that transmits or executes the purchase order. Persons or entities that provide inaccurate or wrong information to a FTT taxpayer regarding determination of the tax base or application of tax relief will be deemed jointly liable for the FTT.

Digital Service Tax

The DST of 3% will apply to certain digital services rendered within the Spanish territory, as determined under location rules set out in the DST. The tax will apply to the following digital services:

- Online advertising services;
- Online intermediation services;
- The sale of data generated from information provided by the user.

The tax base will be the gross income, excluding the VAT or other equivalent taxes (if any), received by the taxpayer for provision of the digital services.

The tax will only apply to services by companies with a turnover in the previous year of more than EUR 750 million and whose revenues from digital services subject to the tax exceeded EUR 3 million. If the company is part of a group of entities, the mentioned thresholds will be calculated on a group level.

When a company´s activity that are subject to DST started in the immediately preceding year but were not carried out for the full year, their results will be annualised to determine whether the thresholds are met.

ROSARIO ESTELLA
ÁLVARO GÓMEZ-ELVIRA
Spain – Madrid
rosario.estella@bdo.es
alvaro.gomez@bdo.es

UNITED ARAB EMIRATES

PENALTIES MARK THE START OF A NEW CHAPTER FOR UAE VAT

The UAE's Federal Tax Authority (FTA) has started imposing penalties for VAT errors. Some of the penalties have been very large and, in many cases, the penalty is greater than the amount of VAT involved.

The penalties are triggered when taxpayers make 'voluntary disclosures' of errors they found in earlier VAT returns.

In this article we outline the voluntary disclosure rules and the penalties taxpayers face when making a voluntary disclosure. We also provide a brief roundup of the new information and guidance released by the FTA.

Voluntary disclosure

Taxpayers are obliged to correct any errors they discover in their VAT returns. If the error is less than AED 10,000, they can correct the error by making an adjustment in their next VAT return. In such cases, there will be no penalty.

If the error exceeds AED 10,000, the taxpayer is required to make a voluntary disclosure, which is similar to filing a revised return. These disclosures will attract three different penalties:

1. A fixed penalty of AED 3,000 for a first disclosure or AED 5,000 for subsequent disclosures.
2. A percentage-based penalty that is normally 5% of the error but may be higher if the taxpayer is aware the FTA is looking into, or intends to look into, its VAT affairs.
3. A late payment penalty, which is 6% of the error for the first month and 1% daily thereafter.

By far the most significant of these penalties is the late payment penalty. This is charged from the date the return was due to the date the tax is paid. At a rate of 1% per day, the penalty can quickly become far larger than the tax involved. This penalty can rise to a maximum of 300% of the tax.

It should be noted that in addition to these penalties for voluntary disclosures, there are other penalties, including penalties for late registration, incorrect issue of invoices, and late submission of returns.

Other news

The UAE continues to take a proactive approach to communication and a number of announcements and new guidance notes have been released in recent months. The most significant of these are summarised below.

Biannual tax periods for certain businesses

In a recent press release, the FTA confirmed it will introduce biannual tax periods for small businesses, commercial real estate owners, and board members.

Electronic tourist refund scheme

The first phase of the electronic tax refund scheme for tourists began 18 November 2018. Initially, refunds will only be available at Dubai, Abu Dhabi, and Sharjah airports. Nine additional locations will be added by 15 December 2018.

Guide on the VAT treatment of insurance

The FTA has published a guide on the VAT treatment of services in the insurance industry. It includes commentary on Islamic finance products, travel insurance, health insurance, and real estate insurance.

The guide also clarifies that while the VAT paid on health insurance for employees can be claimed as input tax, the VAT on health insurance for the employees' family members is not deductible unless there is a legal obligation to provide the insurance under local law. As labour law in the UAE is Emirate-specific, this will give rise to different treatment depending on which Emirate the taxpayer is based in.

Applications for Reconsideration

The FTA has issued an alert stating that if taxpayers wish to request reconsideration of any decision of the FTA, the request, and any supporting documents, must be in Arabic. Previously, English was allowed.

The change was made with immediate effect.

Charities guide

In the UAE, 'Designated Charities' can recover input VAT on non-taxable activities under a special VAT refund scheme. The FTA has now published a guide that provides the criteria a Designated Charity must meet. Charities that do not fulfil the requirements are obliged to apply the normal rules for input VAT recovery.

The guide also gives advice on the types of activities that often cause VAT issues for charities, such as receiving donations and distributing free goods and services.

Real Estate guide

The FTA has revised its guide on real estate. Most of the changes are small but there are some useful clarifications and simplifications in connection with the date of supply generally, and the date of supply for retention payments.

Payment user guide

The FTA has updated the payment user guide to include the SWIFT code for the FTA account. This will be a great relief to international businesses that previously struggled to pay VAT return liabilities from foreign bank accounts.

BRIAN CONN
NISHI JABEEN
United Arab Emirates– Dubai
brian.conn@bdo.ae
nishi.jabeen@bdo.ae

UNITED KINGDOM

'MAKING TAX DIGITAL' DEFERRED FOR NON-ESTABLISHED BUSINESSES

As reported in BDO Indirect Tax News Issue 2/2018, the UK will soon introduce Making Tax Digital for VAT (MTDfV), which will require almost all VAT registered businesses to keep digital records and file their VAT returns via 'functional compatible software'. MTDfV will be compulsory for entities that are VAT registered in the UK and have an annual taxable turnover exceeding GBP 85,000. This includes businesses based overseas, even those without a UK establishment.

While MTDfV is scheduled to come into force on 1 April 2019 for many UK businesses, HMRC, the UK tax authority, recently announced that mandatory use of MTDfV by certain organisations with more complex VAT requirements has been deferred to 1 October 2019. This delay will apply to:

- Overseas businesses which are UK VAT registered but do not have an establishment in the UK;
- Trusts and unincorporated charities;
- Local authorities and some public sector entities, including Government departments and NHS Trusts;
- Public corporations;
- Businesses with one or more of the following VAT profiles:
  - VAT group registration;
  - Divisional VAT registration;
  - Those required to make payments on account;
  - Those who use the annual accounting scheme.

HMRC's latest publications do not define these terms in any detail, so those potentially affected should check their position. More information on MTDfV can be found on the website of BDO in UK here.

MARTYNE PEARSON
United Kingdom – London
martyne.l.pearson@bdo.co.uk

MARK ELLIS
United Kingdom – Birmingham
mark.l.ellis@bdo.co.uk

UK ADOPTS EU VAT TREATMENT OF VOUCHERS

Despite its intention to leave the EU in the near future, the UK has nevertheless confirmed that it will adopt the new EU Voucher Directive, which harmonises the VAT treatment of vouchers across EU Member States. Legislation to implement the directive in the UK has now been finalised and will come into force on 1 January 2019.

The main practical changes that will arise for businesses issuing vouchers in the UK can be summarised as follows:

- The new definition of a Single Purpose Voucher will be wider than that the current UK definition. Under the current UK rules, a voucher that can be used for different goods or services is not a single purpose voucher, even if the underlying supplies are liable to VAT at the same rate, so VAT is only due when it is redeemed. However, from 2019, a voucher will be regarded as a Single Purpose voucher where the place of supply of the ultimate goods or services is known at the time the voucher is issued and where the voucher can only be used for goods/services at a single rate of VAT. VAT will be due on such a voucher when it is issued and not when the goods or services are actually provided, so VAT will still be due even if it is never used.
- As at present, a voucher that is not classified as a Single Purpose voucher will be classified as a 'Multi-Purpose voucher' for VAT purposes and VAT will only be payable by the issuer when the goods or services are actually provided. From 1 January 2019, the VAT will no longer be calculated on the price that the multi-purpose voucher was sold for. Instead, VAT will be due on the price paid by the last person who purchased the voucher or, if that price is not known, on the face value of the voucher.
- The sale of a multi-purpose voucher by an intermediary will no longer be treated as a supply for VAT purposes. This means that the intermediary will no longer be able to issue a VAT invoice for such a sale and will not be able to recover input tax in relation to the supply of the voucher. Intermediaries may therefore need to re-visit their business model and consider acting as an agent for the sale of such vouchers instead of selling them in their own name.

MICHAEL ASHDOWN
United Kingdom – London
michael.ashdown@bdo.co.uk

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 3 December 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Canadian Dollar (CAD)	0.66436	0.75238
Euro (EUR)	1.00000	1.13156
UAE Dirham (AED)	0.24037	0.27222
British Pound (GBP)	1.12515	1.27474

CONTACT PERSONS

The BDO International Indirect Tax Centre of Excellence consists of the following persons:

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