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LETTER FROM THE EDITORS



Dear Reader

In a recent case before the European Court of Justice, the Advocate-General began his Opinion as follows:

"In the case in hand the answer that seems at first sight to be obvious according to common sense is not corroborated by a detailed analysis of the principles governing the functioning of VAT." [unofficial translation]

For a report, see under 'European Union – Exempt/Zero-rated intra-Community supply by a fraudulent taxpayer' on page 4.

This may give you the impression that even for VAT experts, legal developments are sometimes surprising and hardly foreseeable.

In this latest issue of the BDO INDIRECT TAX NEWS you will find VAT news of practical importance in order to enable you to comply with your VAT obligations in your respective countries.

For further information please contact one of the contact persons listed on the back page of this issue. In case you need advice in respect of a country not mentioned there, please feel free to contact me, and I shall put you in touch with the appropriate specialist.

Ulrich Grünwald
Chair, BDO VAT Centre of Excellence

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BELGIUM

DEDUCTIBILITY OF VAT ON COSTS RELATED TO THE SALE OF SHARES

Following the decision of the Court of Justice of the European Union in *Skatteverket v AB SKF* (Case C-29/08), the Belgian Minister of Finance has recently revised the current nationally applicable policy in respect to the deduction of VAT paid on costs in relation to the sale of shares (Parliamentary question No 299).

The sale of shares is, depending on the situation, exempt from VAT or outside the scope of VAT. However, certain costs related to the purchase and sale of shares can, nevertheless, be because of their nature, subject to VAT.

VAT on incoming transactions is in principle only deductible where there exists a direct and immediate link with an outgoing transaction that is subject to VAT. Moreover, VAT deduction is also accepted where there is a direct and immediate

link between the costs incurred on the related services and the overall economic activity of the company (taking into account the overall right of input VAT deduction). This means that these costs are part of the overall expenses of the company and therefore considered as part of the price of the outgoing transactions subject to VAT.

Before the *SKF* decision of the ECJ, the Belgian VAT authorities allowed the deduction of input VAT on costs related only to the issue or purchase of shares.

The Minister has now confirmed that the VAT on costs related to the sale of shares may also be deductible in certain cases. As with the deduction of VAT on costs related to the issue or purchase of shares, it should in this case be proven that these costs could be linked to the overall economic activities of the company. However, if the costs

concerned can or have to be directly linked to the sale price of the shares, VAT deduction will not be possible as the outgoing transaction is exempt or outside the scope of VAT.

The Minister finally points out that a decision on VAT deductibility can thus only be made case by case, based on the factual circumstances.

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CANADA

ONTARIO AND BRITISH COLUMBIA UPGRADE TO VALUE ADDED TAX

On 1 July 2010 the indirect tax landscape in Canada changed significantly. Most notably, the provinces of Ontario and British Columbia joined Nova Scotia, New Brunswick, Newfoundland and Labrador in 'eliminating' their provincial sales tax (PST) regimes and adopting a value added tax system known as the Harmonized Sales Tax (HST), which combines the Goods and Services Tax (GST) and the PST for these provinces. The value added tax system will increase Canada's ability to compete on a global level as the previous provincial sales tax systems in these provinces often resulted in unrecoverable taxes. Following the implementation of the HST, commercial enterprises including non-residents will generally be able to transact with Ontario and British Columbia at a lower after-tax cost.

Although this change brings Canada one step closer to uniformity in its taxing system, the provinces of Saskatchewan, Manitoba and Prince Edward Island continue to have a provincial sales tax in addition to the 5% federal GST. Alberta will continue to collect only the 5% federal GST, and Quebec will continue to apply QST on top of the 5% GST.

As of 1 July 2010 the rates for Canada's indirect taxes are: British Columbia 12% HST; Alberta 5% GST; Saskatchewan 5% GST and 5% PST; Manitoba 5% GST and 7% PST; Quebec 5% GST and 7.5% QST; Nova Scotia 15% HST; Ontario, New Brunswick, Newfoundland and Labrador all 13% HST; and Prince Edward Island with 5% GST and 10% PST. Ontario will also continue to collect 8% PST for Insurance premiums in the province.

Restricted input-tax credits for registrant large businesses

During the first five years of the HST in Ontario and British Columbia large businesses and financial institutions will be required to restrict the provincial portion of their input-tax credits on certain purchases including specified energy and utilities, telecommunication services, certain vehicles under 3000 Kg, and meals and entertainment.

CHANGE IN PLACE-OF-SUPPLY RULES

In a Backgrounder entitled *Place of Supply, Self-Assessment and Rebate Rules for the Harmonized Sales Tax (HST)*, substantial changes have been proposed to the place-of-supply rules. In very general terms, the place-of-supply rules are intended to determine in which province a supply is made. As a result, these rules provide guidance with respect to whether GST-registered businesses should collect GST or HST on their Canadian sales and at what rate the GST/HST should be collected. The new rules will have the largest impact on registrants (both resident and non-resident) who make supplies in multiple provincial jurisdictions as the registrant will have to ensure it is collecting tax at the correct rate. The proposed changes to the place-of-supply rules will mainly impact general services and supplies of intangible personal property. It is strongly recommended that all GST registrants including non-residents review these rules to ensure that the proper tax rate is collected on supplies made in Canada.

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CZECH REPUBLIC

CHANGES TO THE OPEN-MARKET-VALUE RULES

At the end of April 2010, the amendment to the VAT Act abolishing the application of open market value to supplies effected between employers and employees, on which we reported in Issue 1 of this Newsletter, entered into force, when Parliament overruled the veto of the President. The amendment is valid retroactively and applies solely to supplies between employers and employees; therefore, in respect of other legal ties, such as those between companies bound economically one to the other, the open market value as a consideration still applies.

NEW AMENDMENTS IN PREPARATION

The Ministry of Finance has been preparing new VAT amendments, which should enter into force from 2011. Apart from implementation of the newest EU Directives, several new measures have been proposed, such as a bad-debt relief scheme, joint and several liability, and the extension of the domestic reverse charge on waste and scrap, construction work, emission allowances and fuel, subject to approval by the Commission and EU Council.

Given that a new government has just taken office, further amendments cannot be ruled out.

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DENMARK

DANISH INTERPRETATION OF THE SPÖ CASE

On 6 October 2009, the European Court of Justice held, in the *SPÖ* case (*Sozialdemokratische Partei Österreichs Landesorganisation Kärnten v Finanzamt Klagenfurt*, Case C267/08), that supplies of external advertising from a political party in Austria to its local branch organisations are not to be regarded as an economic activity. External advertising included in this case the holding of an annual ball.

The Court of Justice was asked for its interpretation of Article 4(1) and 4(2) of the former Sixth VAT Directive (77/388/EC). Former Article 4(1) (now Article 9(1) paragraph 1 of the VAT Directive, 2006/112/EC) provides that a 'taxable person' is "any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity". Former Article 4(2) (now Article 9(1) paragraph 2 of the VAT Directive) defined an 'economic activity' as including "all activities of producers, traders and persons supplying services" and "the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis".

The Court, noting that the only income obtained by the SPÖ (the Austrian Social Democratic Party) on a continuing basis came from public funding and members' donations and subscriptions, held, on this basis, that the activities in this case (the provision by a political party of external advertising to its local branches) could not be regarded as an economic activity. On the basis of that decision, the Danish tax authorities have announced in their turn that such activities cannot constitute an economic activity in any circumstances.

In our opinion, the authorities' interpretation of the decision shows no consideration for the circumstances on which the Court's decision was based, in particular the question of the necessary intensity and continuity for the existence of an economic activity.

As distinct from the Danish rules, Austrian political parties are according to Austrian law in principle to be treated as bodies governed by public law. This differs substantially from Danish VAT rules, as in Denmark, political parties are specifically exempted under section 13(1)(4) of the Danish VAT Act (corresponding to what is now

Article 132(l) of the VAT Directive, which allows for specific exemptions for activities in the public interest) and thus are taxable persons.

In Denmark, the holding of an annual ball against an admission fee (where actual payment for participation is made) or other activities that are performed by a political party in return for payment may in our opinion be a supply subject to VAT. The party would then account for VAT on the supply and be entitled to deduct the associated input VAT. We believe that this situation is unchanged, despite the announcement from the Danish Central Tax Administration.

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EUROPEAN UNION

VAT GROUPING

On 24 June 2010, the European Commission decided to refer the Czech Republic, Denmark, Finland, Ireland, the Netherlands, Sweden and the United Kingdom to the European Court of Justice for failure to respect the VAT grouping rules. VAT grouping is allowed for the purpose of administrative simplification under the VAT Directive, which gives Member States the option to treat entities or persons that are legally independent but closely bound to one another by financial, economic and organisational links as one single taxable person.

In July 2009, the Commission adopted a communication on the VAT-grouping option, setting out how the provisions on VAT grouping in EU legislation should be applied in practice, in a way that respects the basic principles of the EU VAT system and ensures that it has no adverse impact on the Internal Market. Having examined national provisions on this issue, the Commission found that the legislation in seven Member States was incompatible with the EU rules on VAT grouping. For the Czech Republic, Denmark, Finland, Ireland, the Netherlands and the United Kingdom, the incompatibility lies in the fact that these countries allow non-taxable persons to join a VAT group. This is not in line with the provisions of the VAT Directive. Proceedings against Finland and Sweden are due to the fact that these Member States limit the VAT-grouping system to financial and insurance services. EU VAT grouping rules do not allow for such a sectoral limitation.

EXEMPT/ZERO-RATED INTRA-COMMUNITY SUPPLY MADE BY A FRAUDULENT TAXPAYER

On 29 June 2010, Advocate-General Pedro Cruz Villalón delivered his Opinion in the *R* case (Case C-285/09). The request for a preliminary ruling on the VAT exemption of intra-Community deliveries was referred to the Court by the German Supreme Criminal Court. The question was essentially whether the Member State of origin of the goods may refuse exemption to a vendor who is established and liable to tax in that State if the vendor has actually effected an intra-Community delivery but has not declared specific facts concerning the operation and thereby enabled the purchaser in the Member State of destination to evade tax. According to the Advocate-General a tax exemption should be granted regardless of whether the vendor was in good faith or not. Even though a sanction would be desirable, the vendor would have to be sanctioned in a way compatible with the VAT Directive. The Court of Justice is not bound to follow the Advocate-General's Opinion, but generally does so.

ELECTRONIC-INVOCING DIRECTIVE ADOPTED

On 13 July 2010, the Council of the European Union announced that at the Council for Economic and Financial Affairs (Ecofin Council) meeting of that date, the Council of the European Union adopted a Directive amending the EU VAT Directive with respect to the VAT invoicing rules, in particular regarding electronic invoicing.



VAT REFUNDS BETWEEN MEMBER STATES

On 15 July 2010, the European Commission adopted a Directive proposal to postpone the deadline for the submission of 2009 VAT-refund requests by taxable persons established in other Member States from 30 September 2010 until 31 March 2011. The Directive proposal results from the fact that under the new VAT Refund Directive (2008/9/EC), which amends the VAT Directive, taxable persons may, with effect from 1 January 2010, request a refund of VAT incurred in another Member State via a web portal in their Member State of establishment, instead of applying to the authorities of the Member State concerned, as previously. However, some Member States were late in launching their web portals, whilst others had a number of technical problems in getting them operational. This has led to a situation in which taxable persons were not able to submit their refund applications on time.

FINLAND

CHANGE IN VAT RATES AS OF 1 JULY 2010

A general increase in VAT rates came into force on 1 July. Rates rose by one percentage point and hence the standard rate is now 23% and the reduced rates are 13% and 9%. At the same time, the applicable VAT rate on restaurant and catering services was reduced to 13%.

The reduced rate of 13% for restaurant services will not be applied to alcoholic beverages or tobacco products.

The new rates are applied when the goods are delivered or services are performed on or after 1 July 2010. An exception is made in the case of advance payments. If the advance payment accrued to the supplier by 30 June 2010, the

former rate is applied. The former rates will also be applied to credit notes and discounts, if the original transaction took place or the advance payment had accrued no later than 30 June. The reduced rate of 9% will permanently apply to e.g. pharmaceuticals and public transport, but only on a temporary basis (until 31 December 2010) also to hairdressing and minor repairs relating to bicycles, shoes, leather goods and clothing.

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FRANCE

REFORM OF THE VAT RULES ON REAL PROPERTY

Before March 2010, the following supplies relating to buildings were subject, under certain conditions, to the special VAT regime on real property:

- Sales of building land
- Sales of buildings under construction, as well as the first sale of a building within five years of its completion
- Self-delivery of building

Property dealers were subject to a special margin scheme.

As from 11 March 2010, however, France has adopted new VAT rules on real property in accordance with the VAT Directive.

From that date, VAT on supplies of real property will be applied depending on the status of the supplier, i.e. according to whether the supply is made by a taxable person in the course of that person's economic activity or not. The margin scheme for property dealers has been abolished.

Supplies by a taxable person in the course of his economic activity

The sale of building land in these circumstances is subject to VAT at the standard rate of 19.6% on the sale price or on the margin, depending on whether or not the initial acquisition gave rise to an entitlement to a VAT deduction. In addition, the sales are generally subject to transfer duty at 0.715%.

All the sales of buildings within five years of their completion are subject to VAT at 19.6%. Other sales of buildings are exempt, with the option to waive exemption. In either case, registration duty will be due at the rate of 5.09%. It is calculated on the purchase price, plus any other consideration provided.

SUPPLIES NOT IN THE COURSE OF AN ECONOMIC ACTIVITY

Such sales are generally outside the scope of the VAT and subject to transfer duty.

The only case where a sale in these circumstances would be subject to VAT is where buildings that were originally brought under the special régime applicable to sales of buildings under construction are sold within five years of their completion.

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GERMANY

REDUCED VAT RATE FOR SHORT-TERM HOTEL ACCOMMODATION

From 1 January 2010, the supply of hotel accommodation has become subject to the reduced rate of 7% as opposed to the standard rate of 19%, as had been the case previously. The standard VAT rate (19%) remains applicable to services such as breakfast. The reduced rate applies to short-term accommodation provided by hotels, guesthouses, boarding houses and pensions.

Consequently, the supplier will have to separate the price for accommodation (reduced rate) and breakfast (standard rate) and charge the appropriate rate, in order to issue proper VAT invoices.

Unfortunately, at the time of writing, there is still legal uncertainty regarding the applicable VAT rate for packaged services including hotel accommodation and e.g. breakfast (packages with breakfast included or similar), as no guidance has been issued by the German Ministry of Finance regarding any simplifications or exceptions to these new rules.

CHANGES REGARDING EC SALES LISTS AS FROM 1 JULY 2010

Measures transposing the new EU directives came into force on 8 April 2010. One of the most significant changes concerns the EC sales lists (*Zusammenfassende Meldungen*) in order to prevent potential tax fraud within the European Single Market. From the beginning of 1 July 2010, the following further changes and additional obligations came into force.

Generally, intra-Community supplies of goods (as well as deemed intra-Community supplies) and triangulations have to be declared monthly instead of quarterly in the EC sales list.

However, intra-Community services will now have to be declared (only) quarterly. Independently of the kind of transaction (intra-Community supply of goods, triangulation or intra-Community service), the VAT registration number of the customer established in the other Member State will have to be provided in respect of all supplies in the list.

However, for economic reasons, a taxable person can opt for a monthly declaration of intra-Community services (together with the intra-Community supplies and triangulations). In that case, no special application is necessary; the monthly EC sales list will simply contain services as well as goods. However, it should be noted that this option only applies where the relevant intra-Community supplies/triangulations are made by the taxable person concerned.

The EC sales lists will have to be sent electronically to the *Bundeszentralamt für Steuern* (the Central Federal Tax Office) **by the 25th day of the month following** that in which the intra-Community supplies (as well as deemed intra-Community supplies) and triangulations took place.

For quarterly declarations of intra-Community services, the EC sales lists will have to be filed **by the 25th day of the month following the respective quarter**.

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IRELAND

MANDATORY DISCLOSURE OF CERTAIN TRANSACTIONS

The Irish tax authorities have issued a consultation document and draft regulations in relation to 'Mandatory Disclosure of Certain Transactions', with a view to obtaining comments from tax practitioners and other interested parties. This proposed regulation is an anti-avoidance measure to prevent the design/promotion of schemes that will or might be expected to gain a tax (including VAT) advantage. The Irish tax authorities propose to impose an obligation on anyone who designs, promotes or uses a tax-saving scheme to advise them of the scheme (other than in the case of Revenue-approved schemes that have been specifically excluded from this proposal). There are certain timeframes in which disclosures must be made and non-disclosure may result in the imposition of penalties. Basically all schemes, whether or not designed with the sole purpose of gaining a tax advantage, which result in a tax advantage will have to be disclosed to the Irish tax authorities should this regulation be passed.

LOCAL AUTHORITIES

With effect from 1 July 2010, local authorities became taxable persons in Ireland in respect of certain services. Prior to this, all services provided by local authorities were treated as exempt from VAT. The services that are now subject to VAT include waste collection, recycling, off-street parking, the operation of toll roads and the operation of leisure facilities. This is as a result of an ECJ ruling in July 2009, which obliged public bodies to impose VAT on certain services to avoid distortion of competition between private and public operators.

CALL CREDIT

The VAT treatment of call credit has also changed with effect from 1 July 2010. Previously, VAT was accounted for at the time the call credit was sold. From 1 July, however, VAT is accounted for only when the call credit is redeemed. This does not apply to call credit sold to intermediaries.

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ITALY

MANDATORY DISCLOSURE OF TRANSACTIONS WITH 'BLACK-LISTED' PARTIES



As a means of fighting tax fraud, the Italian Ministry of Economy and Finance has introduced the obligation, for all VAT-registered taxpayers in Italy, to communicate electronically to the Italian tax authorities any supplies made to or received from persons resident in the jurisdictions designated in Ministerial Decrees DM 4.5.1999 and DM 21.11.2001 ('black-listed jurisdictions').

The new reporting rules apply to all transactions undertaken from 1 July 2010 onwards, on a monthly or quarterly basis, depending on the volume of trade.

Reporting must be made with regard to the following transactions:

- supplies of goods made by the taxable person
- supplies of services made by the taxable person
- supplies of goods received by the taxable person
- supplies of services received by the taxable person

where the other party (e.g. firms, professionals and entities) has its seat or residence in a black-listed jurisdiction.

Reporting must include information on all transactions registered or subject to registration for VAT purposes, whether they are taxable, zero-rated, exempt or not subject to VAT.

The periodicity of each return depends on the following factors.

QUARTERLY RETURNS

Persons who have in the last four quarters and in respect of each category of transactions (goods and services) not exceeded the quarterly limit of EUR 50 000 (a limit that must be applied separately to each of the four categories of transactions). The first return must be filed no later than 31 October 2010, with regard to transactions carried out in the third quarter of 2010.

MONTHLY RETURNS

Monthly returns must be made by persons exceeding any of the above quarterly limits. The first return must be filed no later than 31 August 2010, with regard to transactions carried out in July 2010.

Persons who have previously belonged to the quarterly category, but who exceed the EUR 50 000 limit, must send their return by the end of the month following the quarter in which the transactions have been carried out, and thereon on a monthly basis.

However, persons who are permitted to file on a quarterly basis may opt for monthly filing. This choice is binding for the entire year.

Failure to file a return or the filing of an incomplete or inaccurate return will trigger a penalty.

Black-listed jurisdictions are shown in Table 1.

| DM 4.5.1999 | DM 21.11.2001 |
|------------------------|--|
| Alderney | Alderney |
| Andorra | Andorra |
| | Angola The following companies: → Oil companies exempt from Oil Income Tax; → Companies benefiting from tax exemptions or reductions in key sectors of the economy; → Investments envisaged by the Foreign Investment Code |
| Anguilla | Anguilla |
| Antigua and Barbuda | Antigua Only international business companies not operating in the territory of Antigua such as those included in the International Business Corporation Act No 28 of 1982 and companies engaged in authorised productions according to Law No 18 of 1975 |
| Aruba | Aruba |
| Bahamas | Bahamas |
| Bahrain | Bahrain excluding companies engaged in exploration, extraction and refining in the oil industry |
| Barbados | Barbados |
| | Barbuda |
| Belize | Belize |
| Bermuda | Bermuda |
| British Virgin Islands | British Virgin Islands |
| Brunei | Brunei |
| Cayman Islands | Cayman Islands |
| Cook Islands | Cook Islands |
| Cyprus | Cyprus |
| Costa Rica | Costa Rica only companies whose revenues come from foreign sources, and high-tech companies |
| Djibouti | Djibouti |
| Dominica | Dominica only international companies that carry out activity abroad |
| Ecuador | Ecuador only companies operating in the Free Trade Zones that benefit from income tax exemption |
| French Polynesia | French Polynesia |
| Gibraltar | Gibraltar |
| - | Jamaica Only companies enjoying the tax benefits provided by the Export Industry Encouragement Act and companies located in areas identified by the Jamaica Export Free Zone Act |
| Grenada | Grenada |
| - | Guatemala |
| Guernsey | Guernsey |
| - | Herm* |
| Hong Kong | Hong Kong |
| Isle of Man | Isle of Man |
| Jersey | Jersey |
| - | Kenya Only companies located in the Export Processing Zones |
| - | Kiribati* |
| Lebanon | Lebanon |
| Liberia | Liberia |
| Liechtenstein | Liechtenstein |
| - | Luxembourg Only 1929 Holding Companies |
| Macao | Macao |
| Malaysia | Malaysia |
| Maldives | Maldives |
| Malta | Malta only companies whose revenues come from foreign sources such as those included in the Malta Financial Services Centre Act, in the Malta Merchant Shipping Act and in the Malta Freeport Act. |
| Marshall Islands | Marshall Islands |
| Mauritius | Mauritius only 'certified' companies dealing with export services, industrial expansion, tourism management etc that are subject to a reduced corporate tax, Off-Shore Companies and International Companies |

| DM 4.5.1999 | DM 21.11.2001 |
|-----------------------------|--|
| Monaco | Monaco excluding those companies deriving at least 25% of their turnover outside the Principality |
| Montserrat | Montserrat |
| Nauru | Nauru |
| Netherlands Antilles | Netherlands Antilles New Caledonia |
| Niue | Niue |
| Oman | Oman |
| Panama | Panama only companies whose revenues come from foreign sources, companies located in the Colon Free Zone and companies operating in the Export Processing Zones Puerto Rico* |
| - | only companies performing banking activities and companies under the Puerto Rico Tax Incentives Act of 1988 or under Puerto Rico Tourist Development Act of 1993 |
| Philippines | Philippines |
| Saint Helena | Saint Helena |
| Saint Kitts and Nevis | Saint Kitts and Nevis |
| Saint Lucia | Saint Lucia |
| Saint Vincent and Grenadine | Saint Vincent and Grenadine Samoa |
| San Marino | |
| Sark | Sark |
| Seychelles | Seychelles |
| Singapore | Singapore |
| | Solomon Islands |
| - | South Korea Only companies that benefit from tax relief provided by the Tax Incentives Limitation Act |
| Switzerland | Switzerland only companies not subject to cantonal and municipal taxes such as holding companies, auxiliary companies and 'domicile' companies |
| Taiwan | - |
| Tonga | Tonga |
| Turks and Caicos Islands | Turks and Caicos Islands |
| Tuvalu | Tuvalu |
| United Arab Emirates | United Arab Emirates excluding companies operating in the oil and petrochemical industry subject to taxation |
| - | United States Virgin Islands |
| Uruguay | Uruguay only companies performing banking activities and holding companies engaged exclusively in offshore activities |
| Vanuatu | Vanuatu |

In respect of those jurisdictions identified only in DM 21.11.2001 and in respect only of transactions with specific persons (in the case of Luxembourg, for instance, with 1929 Holding Companies only), the question arises as to whether the return should be made only where the transactions is with that specific type of entity or whether it covers all transactions with persons resident in those jurisdictions, whoever or whatever they may be.

It should be noted that the legislation explicitly clarifies the cases in which the application of specific provisions was linked to the other party's presence in the list in DM 21.11.2001, regardless of the limitation contained therein.

In the absence of such a specific reference, it could be assumed that the return obligation should apply only to transactions with the designated parties.

According to this interpretation, it would seem that, for instance, transactions carried out with persons resident in Luxembourg must be returned



only if that person is a 1929 Holding Company, and that transactions with residents of Monaco must be declared only if the other party is not a company deriving at least 25% of its turnover outside the Principality.

On this point we await clarification from the tax authorities.

However, as the tax authorities have not yet provided any clarification on the matter, it is advisable, as a precaution, to include all parties in such jurisdictions in the return. In other words for the moment, it is advisable to include all persons established, located or resident in the jurisdictions listed in the Decrees 4.5.1999 and 21.11.2001.

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THE NETHERLANDS

INTRODUCTION OF THE TOUR OPERATORS MARGIN SCHEME

The Netherlands Ministry of Finance plans to introduce a Tour Operators Margin Scheme (TOMS) in the Netherlands based on the VAT Directive.

Based on current regulations, tour operators established in the Netherlands usually do not have to charge VAT on the sale of their tours, or a reduced rate of 6% or 0% applies. The VAT on costs is in principle recoverable.

The consequences for tour operators in the Netherlands will be significant. For example:

- No deduction henceforth on VAT incurred on the purchase of tour elements

Price effect as a result of the VAT due on the profit margin (19% instead of no VAT or 6% or 0%);

The new rules will also have consequences for foreign tour operators as currently these can reclaim Dutch VAT on the purchase of transport, accommodation etc, but this will not be possible anymore in the future.

It is the intention of the Netherlands Ministry of Finance that the new law will be implemented in April 2011. However, in order for tour operators to have sufficient time to prepare for the major changes, the introduction of the new rules may be delayed.

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ROMANIA

VAT RATE AND EXCISE DUTY INCREASE

With effect from 1 July 2010, the standard rate of VAT has been increased from 19% to 24%. This measure is accompanied by an increase in excise duties, also with effect from 1 July 2010, for fermented beverages (excluding beer and still wines at EUR 100/hl) and intermediate products (increased from EUR 51.08/hl to EUR 165/hl).

ANTI-EVASION MEASURES

As measures to prevent tax evasion, certain categories of goods will be subject to the domestic reverse-charge procedure and intra-Community operations may in future be performed only by registered operators. The following supplies will become subject to the domestic reverse-charge procedure (provided that EU Council approval is obtained): cereals, technical equipment, vegetables, fruit, meat, sugar, flour, bread and bakery products. This measure will be enforced within 10 days of the EU Council approval date (this date will be published on the Ministry of Finance website and businesses will be informed).

Effective from 1 August 2010, taxable persons, as well as non-taxable legal persons, involved in intra-Community operations (supplies/acquisitions of goods and services) must register with the Intra-Community Operations Register (*Registrul Operatorilor Intracomunitare*). The registration procedure consists in the submission of a special registration application (Form 095) along with the certificate attesting to criminal-records checks for shareholders and directors where the taxable person is a company (for joint-stock companies only checks on the criminal records of the directors have to be undertaken). Persons who carry out intra-Community operations without prior registration with the Intra-Community Operations Register risk a fine of between RON 1000 and RON 5000 (approximately EUR 250 and EUR 1000, respectively).

Additional limitations have been imposed on the storage and transportation of excisable goods and significant changes are expected in the implementation regulations. Cash guarantees will have to be provided by the authorised-warehouse keepers of excisable products.

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NEW ZEALAND

FIRST GST RATE INCREASE SINCE 1989

From 1 October 2010 GST-registered businesses in New Zealand will be required to account for GST at 15% - an increase from the current 12.5% GST rate.

This increase in GST was part of a package of tax reforms, designed to be tax-neutral, announced in the 2010 New Zealand Budget, which included significant cuts in the personal and company income tax rates.

The last GST rate increase occurred in 1989 - more than 20 years ago - when the rate went from 10% to 12.5%. As a consequence there is a generation of GST-registered businesses and advisers who have not had to deal with such an increase before. Accordingly the Government has established a special GST Advisory Panel to assist with the transition to the increased GST rate. New Zealand runs a broad-based GST system with few exemptions. At this stage there are no specific transitional provisions proposed so GST-registered businesses will need to apply the 15% GST rate to all taxable supplies made after 30 September 2010.

This will have accounting and commercial implications for all GST-registered businesses. Among the issues to consider are the following:

- Updating accounting systems.
- Reviewing pricing of goods and services and marketing materials.
- Reviewing procedures for issuing credit/debit notes for old-rate sales/purchases and ensuring the correct issue of tax invoices under the new GST rate.
- Reviewing long-term contractual obligations to determine if the price can be increased for the increased GST rate.

- Review of contractual obligations for successive supplies such as lease agreements and credit contracts.
- Preparing for a GST return period that straddles the 1 October introduction date. This will require two GST returns to be filed for the period before and after 1 October.
- Increasing the amount of a deposit received on a transaction, where the deposit triggers the time of supply of the goods or services, rendering the vendor liable for the whole amount of the GST.
- Reviewing arrangements with New Zealand Customs under the deferred-repayment scheme to ensure there is sufficient credit available within the regime to cover the increased GST payments on imports.

CONCLUSION

The GST rate increase will present a number of challenges for GST-registered taxpayers to ensure they are able to accommodate the rate increase effectively on all supplies made on or after 1 October 2010.

The devil is in the detail and clients should contact their local BDO adviser to work through the GST implications for their business.

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SWITZERLAND

INCREASE IN VAT RATES AS FROM 2011

On 1 January 2011, the three rates of VAT will be raised as follows:

| | Previous rate | As of 1.1.2011 |
|--|---------------|----------------|
| Normal rate | 7.6% | 8.0% |
| Reduced rate | 2.4% | 2.5% |
| Special rate for supplies of accommodation | 3.6% | 3.8% |

For taxpayers it is important to achieve a smooth transition between the old and the new VAT rates. However, the application of the new VAT rates has already to be considered in 2010.

OLD OR NEW VAT RATE

Whether a supply is to be invoiced at the current or new tax rates is determined by the date the supply takes place. The date of invoicing or the date of payment is irrelevant. The new tax rates can already be applied and disclosed on invoices for supplies that will be made in the year 2011.

STRADDLING PERIODS

As a rule, supplies made partly in 2010 and partly in 2011 must be separated into the time period in which they are made. The invoice must clearly indicate the split between the separate periods (i.e. 2010 and 2011) and the respective tax rate applicable. Otherwise the higher rate will apply to all supplies performed with no distinction.

VAT RETURNS

The VAT return for the third quarter of 2010 is the first to consider the new tax rates together with the old tax rates valid until the end of 2010 (so-called dual system). The dual system will also be applicable in the VAT return for the first quarter of 2011.

RECOMMENDATION

Consideration should be given in priority to electronic data systems. Automatic entries using tax codes and the printouts on the invoice forms should be tested before 1 January 2011. We recommend that existing codes not be changed to the new rates, but that new codes be created. For the transition from the old to the new VAT rates, it is important that work in progress defined correctly by situation reports.

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