JULY 2016 ISSUE 2
WWW.BDOINTERNATIONAL.COM

INDIRECT TAX NEWS

CZECH REPUBLIC
Reverse charge for domestic supply of goods

READ MORE 5

HUNGARY
Invoicing requirements

READ MORE 10

NEW ZEALAND
GST on digital services

READ MORE 15

GULF CO-OPERATION COUNCIL STATES

BDO PREPARES FOR INTRODUCTION OF VAT IN THE REGION

As reported in the previous issue of Indirect Tax News, VAT will be introduced in the Member States of the Gulf Cooperation Council (GCC). These Member States comprise Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates (UAE). It has already been announced that the UAE will introduce VAT on 1 January 2018 at a rate of 5%, and since been confirmed that Kuwait will also introduce VAT at 5% on the same date.

The remaining four Member States of the GCC have the option of implementing VAT on the same date as Kuwait and UAE or by 1 January 2019, and we await their confirmation of when VAT will come into force in their territories. The VAT rate for these states (Oman, Bahrain, Qatar and Saudi Arabia) is expected to be between 3% and 5%. Recent press reports suggest that all four states have reached agreement to adopt the 5% rate, although no formal announcements have yet been made to this effect.

Also, on 15 June, a representative of the UAE Ministry of Finance explained that VAT will be introduced in the UAE in two phases.

In Phase 1, companies with recorded revenue of more than AED 3.75 million are obliged to register for VAT. Also within Phase 1, companies with revenue between AED 1.87 million and AED 3.75 million will have the option to register for VAT. In Phase 2, all companies will have to register for VAT, though the date for Phase 2 is still under discussion. This may indicate the manner in which other GCC countries will phase in VAT.

Recognising our international and local clients' need for support while VAT is implemented, the BDO Member Firms in the GCC will appoint an experienced VAT partner to be based in the GCC this year. Working with VAT experts from across BDO internationally – the BDO Member Firms in the GCC will also host seminars and workshops to provide practical advice on the VAT implementation and its impact on our clients' businesses.

If you would like further details in relation to this matter or would like to be included on our email listing for follow up briefings, please contact **rita.rosen@bdo.ae.**

RITA ROSEN
United Arab Emirates – Dubai
rita.rosen@bdo.ae

CONTENTS

EDITOR'S LETTER

Dear Readers,

Welcome to the latest edition of BDO's Indirect Tax News.

Over recent years, and particularly during the economic downturn, governments across the globe have opted to increase indirect tax rates — as opposed to personal tax rates — to help shore up deficits in their annual budgets, and it is my expectation that indirect taxes will become the main focus for increasing tax revenues in quite a number of countries going forward.

The main reason behind this approach is that, whereas personal tax liabilities are based on individual's earnings and it is mandatory to pay any taxes based on personal earnings, individuals potentially have an option as to what they spend their money on, so they could potentially lower their tax burden if they focus personal expenditure on goods and services which are not liable to VAT and GST.

Although the reality is that it is necessary in most instances for consumers to buy goods and services that attract positive indirect tax rates, it is generally more politically acceptable for economies to foster lower personal tax rates, as this, in turn, can lead to increasingly incentivised employees with increased spending powers and this, in turn, helps increase overall productivity.

I've just returned from a meeting with the Managing Partners of the BDO Member Firms in the Gulf States where VAT regimes will be introduced over the next 18-24 months to help to alleviate budgetary deficits partly contributed to by the sharp decrease in the price of oil over the past two years.

Whereas the indications are that the initial rate of VAT to be introduced will be to around 5%, once this system is implemented it will be relatively easy for the authorities there to increase the rate of VAT as required in future years.

It's encouraging to see how focussed the Managing Partners of BDO Gulf Member firms are in ensuring that they adopt a leadership role in guiding their clients and contacts through the introduction of a Value Added Tax system as this will obviously have a knock-on effect to other related services including basic accounting, software and ERP systems as well as on the way that businesses in the Gulf States contract with businesses and consumers both internally and externally.

If this matter is relevant to you, please contact your local BDO partner and he/she will make the necessary introductions.

Kind regards from Sunny Dublin!

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

ARGENTINA

VALUE ADDED TAX: AMNESTY PROGRAMME FOR TAX OBLIGATIONS

Recently, as part of a tax disclosure project, the National Government proposed a tax amnesty-type programme to collect various tax debts, including national direct and indirect taxes, such as Value Added Tax.

Taxpayers registered for any of the taxes included under the programme would be allowed to pay outstanding tax debts related to certain monthly obligations that have not expired and that were due by 31 May 2016.

The amnesty programme will also include tax debts that are under administrative review or that are the subject of legal proceedings. To participate, a taxpayer must unconditionally agree to the debt and, if appropriate, cease and waive any action against the Tax Authority.

Taxpayers who participate in this programme will benefit because they will be exempt from fines and penalties established by the Tax Procedure Law. As well, participants would not be subject to compensatory and/or punitive interest, which is usually calculated at significantly higher annual rates (currently 36% and 48%, respectively).

The debt may be repaid in monthly instalments up to 60 months. An initial payment of 5% of the consolidated debt will have to be paid, and financing interest of 1.5% a month will be applicable on the balance.

Though this amnesty programme has not yet been approved by the Congress, we expect it to be enacted soon.

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

BELGIUM

LEGAL ENTITIES ACTING AS DIRECTORS MUST CHARGE VAT FROM 1 JUNE 2016

Belgium's VAT relief on the remuneration received by a legal entity acting as administrator, director, or liquidator was abolished with effect from 1 June 2016. From this date, VAT registration is mandatory for those entities that receive remuneration for their directors' mandate. Private individuals who act as a company administrator, director, or liquidator remain outside the scope of VAT.

On 30 March 2016 the Belgian VAT Authorities issued an Administrative Decision (no. E.T. 127.850) to clarify their viewpoint on this matter. The Decision provides guidelines on the envisaged legal entities, the various remunerations falling within the scope of VAT, the place of supply of the service (which is important in an international context) and the applicable VAT rate of 21% when Belgium is the place of supply. By becoming subject to VAT, the legal entities acting as company administrators will also be entitled to the right of input VAT deduction. However, a historical VAT deduction will not be possible. The time of supply for VAT purposes will depend on the taxable event – for example a so-called "tantième" (directors' fee) will be subject to VAT depending on the date of the General Assembly that grants this "tantième". If the General Assembly was held on 31 May 2016 at the latest, the "tantième" will be exempt from VAT, regardless of when the payment is made or the invoice is issued.

The VAT charged by legal entities acting as a company administrator now has a financial impact on the "administrated" entities if they have a restricted right to deduct the input VAT (for example, finance and insurance companies, real estate sector, non-profit sector, and so on.). "Administrated" entities, which are entitled to deduct 100% of the input VAT, will encounter a cash flow impact because they now have to pre-finance the VAT that is charged to them.

In order to avoid the additional VAT cost, or to neutralise the pre-financing need, further consideration should be given to the possibility of establishing a VAT group. In the aforementioned Decision the VAT Authorities have introduced less strict conditions to set-up a VAT group. Also, the combination of directors' fees and other (exempt) remuneration is possible (a minimum of 25% of the total remuneration is considered a director's fee in case there is no objective and formal assessment of the different types of remuneration). Furthermore, the general VAT exemption for small enterprises can be applied if the annual turnover threshold of EUR 25,000 is not surpassed. Of course, each individual case needs to be assessed separately based on the actual circumstances.

BRIGITTE BRAECKMANS
ERWIN BOUMANS
Belgium – Brussels
brigitte.braeckmans@bdo.be
erwin.boumans@bdo.be

COLOMBIA

VAT REFUND FOR FOREIGN TOURISTS NOT RESIDING IN COLOMBIA

Foreign tourists not residing in Colombia have the right to a 100% refund of value added tax (VAT) paid on the goods taxed in Colombia under Decree 1903/2014. Foreign visitors who are merely transiting through Colombia have the same right with respect to the goods they purchase in the Special Units of Border Development. The following goods are eligible for the refund:

- Clothing
- Footwear
- Leather products
- Compact discs
- Handcrafts
- Toys
- Linens and underwear
- Appliances
- General jewellery
- Emeralds
- Perfumes
- Hardware items.

The purchase of taxed goods must be done in person and paid for using an international credit and/or debit card issued outside of the country.

The purchases must be from merchants registered in the common sales tax system and must be supported by sales receipts that specify the amount of sales tax.

Goods qualifying for the refund must be taken out of the country.

Colombians with dual nationality

Colombian nationals who hold dual nationality are not considered foreign tourists or foreign visitors non-resident in Colombia. Therefore, they do not have the right to the tax refund on sales under Decree 1903/2014.

Amounts subject to refund and maximum units of the same article

Refunds are available if the value of the purchases including VAT is equal to, or greater than, 10 Tax Value Units. For 2016, 10 Tax Value Units = COP 297,530.

The maximum refund amount is up to an equivalent value of 100 Tax Value Units. For 2016, 100 Tax Value Units = COP 2,975,300.

The amount of units of the same article with the right to refund is a maximum of 10.

Places authorised to file refund applications

Colombian Tax and Customs Authority Offices (DIAN) are located in international airports, ports, and at the control posts of Special Units of Border Development.

Requirements for submission of the refund application

People must declare their Colombian, non-resident, foreign tourist, or visitor status before the competent Section Office. People qualifying for the refund must meet the following requirements:

1. They must complete form 1344.
2. They must personally present the application when exiting the country (before checking in with their transportation provider). If their flight makes a domestic stop, they should present their applications at the location where they check their luggage.
3. They must show their passport, as well as their permission to enter and stay, migration card, or any other entry document that proves their migration status and that shows their entry and exit from Colombian territory.
4. They must submit a photocopy of the document that accredits their migration status.
5. They must submit photocopies of the sales receipt(s) made out to the refund applicant with the corresponding proof of purchase-payment receipt. In the case of foreign tourists, the receipts must be no more than six months old, and for non-resident foreign visitors in Colombia, the receipts must not be more than three months old.
6. Non-resident, foreign visitors in Colombia must have acquired the taxed personal property in the Special Unit of Border Development where they submit their refund application.
7. No more than one refund application may be submitted per quarter.

Refunds

Applicants have three months to apply for the refund.

The financial costs and notification expenses incurred are deducted from the value.

Submission of a refund application does not mean that the refund will be authorised. A validation procedure of the information supplied is carried out. The procedure establishes whether the requested refund is appropriate.

Notification

Persons applying for a refund are notified of the decision via e-mail.

Responsibility

Applicants for the VAT refund under Decree 1903/2014 are administratively responsible to the tax authority for the truth of the information and authenticity of the documents presented to obtain the refund.

Where to get Form 1344

Refund applications are made on Form 1344. It is available in the locations authorised for its registration (DIAN Offices located in international ports and airports, and the control posts located at Special Units of Border Development), as well as on the DIAN website through the following links:

http://www.dian.gov.co/descargas/Formularios/2016/Solicitud_Devolucion_IVA_a_Turistas_Extranjeros_1344_8_0.pdf (Spanish Version).

http://www.dian.gov.co/descargas/Formularios/2016/Vat_Refund_Application_Form_for_Foreing_Tourists_or_Visitors_Not_Residing_in_Colombia_1344_oct29.pdf (English version).

Follow-up of the application

Questions, concerns, complaints, and claims regarding the refund should be made to: devolucion_iva_turistas@dian.gov.co

No information related to the VAT refund is supplied to third parties. The information contained in Form 1344 is confidential.

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

CZECH REPUBLIC

REVERSE CHARGE FOR DOMESTIC SUPPLY OF GOODS AND OTHER CHANGES EXPECTED LATER THIS YEAR

An amendment to the Czech Act on VAT is currently making its way through the legislative process. The amendment should be linked with the new Customs Code but certain VAT changes go beyond the

importation and exportation issues. The main proposed amendments relevant to VAT are as follows:

1. Institution of a reverse charge for domestic supplies of goods – The reverse charge mechanism is expected to apply in the case of the domestic supply of goods where the following conditions are met:
   i. The supplier is a non-established taxable person and is not registered for the Czech VAT; and
   ii. The customer is a Czech VAT payer that has fulfilled the registration requirements (in other words, the customer has obtained a Czech VAT number).

   As a result, within six months of the time the amendment enters force, non-established persons that were previously required to register for VAT because they supplied goods within the Czech Republic to Czech VAT payers can deregister from the Czech VAT.
2. VAT invoice in respect of exportation – A standard sales invoice will serve as the invoice in respect of the supply of goods linked with exportation, instead of the current customs declaration on exit of the goods from the EU. The customs declaration will further serve as evidence of the exportation.
3. Non-established taxable persons will be registered with a different tax authority – Currently, non-established persons have to register with the Tax Authority for Prague 1. Under the proposed amendments, such registration will be with the Tax Authority for the Moravian-Silesian Region. Furthermore, all non-established taxable persons that are currently registered at the Local Tax Authority for Prague 1, will be transferred to the Tax Authority for the Moravian-Silesian Region. The shift in registration will be gradual over one year. No practical changes are expected as a result of this change.
4. Relief from certain penalties related to control statements.
5. The period within which a taxpayer can respond to a challenge in respect of control statements will be extended from five days to five business days.
6. The VAT exemption (zero rating) in respect of supplies of goods and services within customs free warehouses and zones is being cancelled.

   It is not clear when the new amendment will enter into force, but we expect it will be either from 1 August 2016 or from 1 September 2016.

RICHARD KNOBLOCH
Czech Republic – Prague
richard.knobloch@bdo.cz

DOMINICAN REPUBLIC

THE TAX ON THE TRANSFERENCE OF INDUSTRIALISED GOODS AND SERVICES (ITBIS)

The recent tax reform in the Dominican Republic (253-12 Law) established several tax rates for the so-called Tax on the Transference of Industrialised Goods and Services (ITBIS). The ITBIS, which is essentially a value added tax, applies to:

- The transfer of industrialised goods;
- The importation of industrialised goods;
- The performance of services; and
- The leasing of property.

Exempt goods, products, and services

There are exemptions from the ITBIS, such as:

- **Exempt services** – provision of the following services are exempt from the ITBIS: financing, including insurance policies; pension and retirement services; ground transportation; electricity; water; garbage collection services; rental housing; health care services; educational services; funeral services; beauty salon and barber shop services.
- **Exempt goods and products** – the following are some goods and products that are exempt: live animals, meat (fresh, refrigerated, or frozen), certain raw edible products, fuel, medicine, and fertiliser.

Who the ITBIS applies to

The ITBIS applies to natural and legal persons that perform taxed transfers.

(continues on next page)

ITBIS RATE

Generally, the ITBIS rate is 18%. There is a reduced rate for some basic products, as follows:

Description	ITBIS reduced rate over the years evolution			
	2013	2014	2015	2016
Yogurt and butter				
Coffee				
Animal and vegetable edible fat	8%	11%	13%	16%
Sugar				
Cocoa				

Withholding of ITBIS

There are four situations in which the ITBIS must be withheld by particular parties:

1. **Payments made using credit and debit cards**: A company that acts as an agent of administration on credit and debit cards payments must withhold and remit 30% of the ITBIS applicable on underlying credit and debit card payments to the Local Tax Administration (DGII).
2. **Payments to companies that rendered taxed services**: Companies that pay for so-called liberal professional services (such as legal services, accounting services, engineering services, design services, and so on) or for furniture rental services, must act as a withholding agent with respect to ITBIS. The applicable withholding tax is 30% of the value of the ITBIS invoiced.
3. **Payments when natural persons render taxed services**: When a natural person renders taxed services, the recipient of the service is responsible for withholding a portion of the ITBIS. When a company buys goods that are subject to the ITBIS from an individual and the individual does not issue an invoice that shows a fiscal number of the seller, the recipient company must withhold 75% of the value of the ITBIS invoiced.

   Similarly, if a natural person provides a taxable service to an incorporated legal person or sole proprietorship, the latter must withhold and remit the tax to the Local Tax Administration (DGII).

   In both the above-described situations, the service provider (the individual) must file an affidavit related to the ITBIS that was withheld. The law and regulations specifies the time within which the affidavit must be filed.
4. **Other ITBIS withholdings**: There are other special rules with respect to withholding of the ITBIS, such as the following:
   - When airlines and hotels pay commissions to travel agents on the sale of tickets and/or bookings, the airline or hotel must withhold and remit 100% of the ITBIS invoiced.
   - Legal persons that pay a non-profit organisation for advertising services or other services normally subject to the ITBIS must withhold 100% of the value of the ITBIS invoiced by the non-profit entity.
   - When companies pay fees for security services, surveillance services, and other such services the company paying the fees must withhold 100% of the value of the ITBIS invoiced.

When a party withholds ITBIS it must remit it to the Local Tax Authorities (DGII), regardless of whether the remitting party has a credit balance in their ITBIS return (IT-1).

EXCISE TAX

The Dominican Republic imposes an excise tax on:

- The transfer of some goods at the manufacturing level;
- The importation of some goods;
- Leasing services; and
- Certain other services.

The taxable base for the excise tax is determined as follows:

- In the case of goods transferred by a manufacturer, the tax base is the net price shown on the invoice.
- In the case of alcohol products, alcoholic drinks, and beer, the excise tax is based on the volume (in litres) of alcohol.
- In the case of cigarettes, the excise tax is based on the number of packets.
- In the case of imported goods, the excise tax is based on the total of the value for customs purposes plus customs taxes and import taxes, other than the ITBIS.

Examples of products subject to the excise tax include: caviar, cologne, snuff used for hookah, Jacuzzi tubs, and so on.

As well, some services are subject to the excise tax, for example:

- Telecommunications – the excise tax is 10%,
- Payments done through financial institutions – the excise tax is 0.0015 for each DOP 1,000,
- Insurance – the excise tax is 16%.

ALEX ANDERSON
RAFAEL MARTINEZ
Dominican Republic – Santo Domingo
alex.anderson@bdo.com.do
rafael.martinez@bdo.com.do

ECUADOR

TAXES IN ECUADOR

The Ecuadorian Government has enacted economic measures geared toward increasing tax collection and strengthening the tax structure.

Taxes related to earthquake recovery

To help the country recover from the earthquake that struck Ecuador on 26 April 2016, new taxes have been instituted, some of which are temporary, and existing taxes have been modified. The new and modified provisions, which are applicable since 20 May 2016, apply nationally, except for areas affected by the earthquake.

The changes were made under the Organic Law of Solidarity and Citizens' Co-Responsibility. The changes include the following:

- Imposition of a so-called solidarity contribution of 3.33%, calculated on income earned by individuals making USD 1,000 or more.
- Imposition of a solidarity contribution of 0.90% on assets of individuals making more than USD 1,000,000.
- A special contribution of the value of immovable property and rights representing existing capital in Ecuador owned by companies. The contribution is calculated based on the valuation of such property for 2016 and is assessed at 1.8% for companies resident in a tax haven and 0.9% for companies not resident in a tax haven and their property in Ecuador.
- Imposition of a solidarity contribution of 3% on profit obtained in 2015 (as determined on the income tax return) by companies, individuals, and commercial trusts.
- Incentives will be used to restore the affected areas, and companies and individuals in those areas will be exempt from the advance payment of annual income tax.
- Increase in the Value Added Tax from 12% to 14%.
- Deferral of interest payments and related penalties on late payment of taxes.
- An exemption from income tax on donations given to persons domiciled in areas affected by the earthquake.

Special Tax on Consumption (ICE)

Changes have been made to Ecuador's Special Tax on Consumption (ICE). The cost of airtime billed to companies engaged in marketing (commission, resale, and distribution agreements) is no longer subject to ICE. As well, the sale of soft drinks is now ICE tax exempt if they are naturally sweetened and the taxable base of this tax is:

- Soft drinks containing more than 25 grams/sugar per litre of beverage;
- Soft drinks containing less than or equal to 25 grams/sugar per litre of beverage;
- Syrups or concentrates.

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

GERMANY

IS AN ORIGINAL INVOICE REQUIRED FOR THE VAT RECLAIM?

The financial Court of Cologne had to decide whether an input VAT refund is possible if a foreign taxable person "only" provides a scanned copy of an invoice via the electronic VAT refund procedure.

In the case at hand, an Austrian taxable person filed an electronic VAT reclaim for 2010 with the German tax authorities asking for a refund of approximately EUR 17,000. The Austrian submitted a batch of invoices marked "COPY 1". The input VAT amount of those invoices was approximately EUR 10,000. The German tax authorities denied the input VAT deduction for those invoices based on the fact that the invoices submitted were only scanned copies but no scans of the original invoices were provided within the applicable deadline.

The Financial Court of Cologne decided in favour of the plaintiff. The court concluded that based on the provisions of Directive 2008/9/EC and its implementation under Germany's VAT law, the conditions for an input VAT refund were met. The German provisions applicable in the period in question stated that the applicant must attach to the electronically filed VAT reclaim form copies of the invoices as well as import documents.

In contrast, the German provisions applicable as of 30 December 2014 require that scans of the original invoices and import documents have to be attached to the VAT reclaim form.

The court concluded that without any doubt, the plaintiff attached copies of the invoices that were provided to the taxpayer by the issuer of the invoice and therefore the condition set forth by the German tax authorities were met. Additionally, the Financial Court of Cologne stated that after implementation of the electronic procedure, generally submission of the original (paper or electronic) invoices is no longer required. Only where there is reasonable doubt about the authenticity of the invoices may the tax authorities ask the applicant for the original invoices.

In contrast to the former VAT refund procedure, a check of the authenticity of the invoice, as well as the cancellation by punching the invoices by the German tax authorities, is no longer required.

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

GREECE

VAT, CUSTOMS, AND OTHER INDIRECT TAXES

The new tax laws ratified by the Greek Parliament introduce a set of rules aimed at increasing tax revenues and meeting budgetary targets. The new laws were enacted in the context of Greece's obligations to its creditors under the country's third bail-out programme.

Applicable VAT Rates

From 1 June 2016 the standard VAT rate increased from 23% to 24%.

Following last year's legislative change that will gradually abolish the 30% reduction in the VAT rate for Aegean Islands (in three stages: on 1 October 2015, 1 June 2016, and 1 January 2017), the new law defines the islands affected (from 1 June 2016): Syros, Thasos, Andros, Tinos, Karpathos, Milos, Skyros, Alonnisos, Kea, Antiparos, and Sifnos. On the less developed islands where the 30% reduction in VAT rates still applies, the standard VAT increased on 1 June 2016 from 16% to 17%.

There are no changes to the 13% reduced and 6% super-reduced rates.

Increase in excise duty rates on certain products

The excise duty rates were increased on the following:

- Diesel and kerosene for central heating – the rate of EUR 280/1000 litres applies from 15 October 2016.
- Beer – the rate of EUR 5 per PLATO degree/100 litres applies from 1 June 2016.
- The rate on motor fuels (gasoline, diesel, LPG, biodiesel) will be increased from 1 January 2017.
- Cigarettes – the rate of 26% applies from 1 January 2017.
- Fine cut tobacco – the rate of EUR 170/kg. applies from 1 January 2017.

Car registration tax

The car registration tax has been reduced to a range of 4% to 32% (previously it was 5%-50%), depending on the car's taxable value and its CO2 emissions. The reduction is effective from 1 June 2016. Hybrid cars are no longer tax exempt but qualify for a 50% discount on the applicable rate.

New duties and consumption taxes introduced

A 10% duty was imposed on subscription television services from 1 June 2016.

A 5% duty will be imposed on land line telephone services beginning 1 January 2017.

An Accommodation Tax will be imposed beginning 1 January 2018 on hotels, rooms, and touristic residencies. The rate will range from EUR 0.25 to EUR 4.00 per day, depending on the type and category of accommodation.

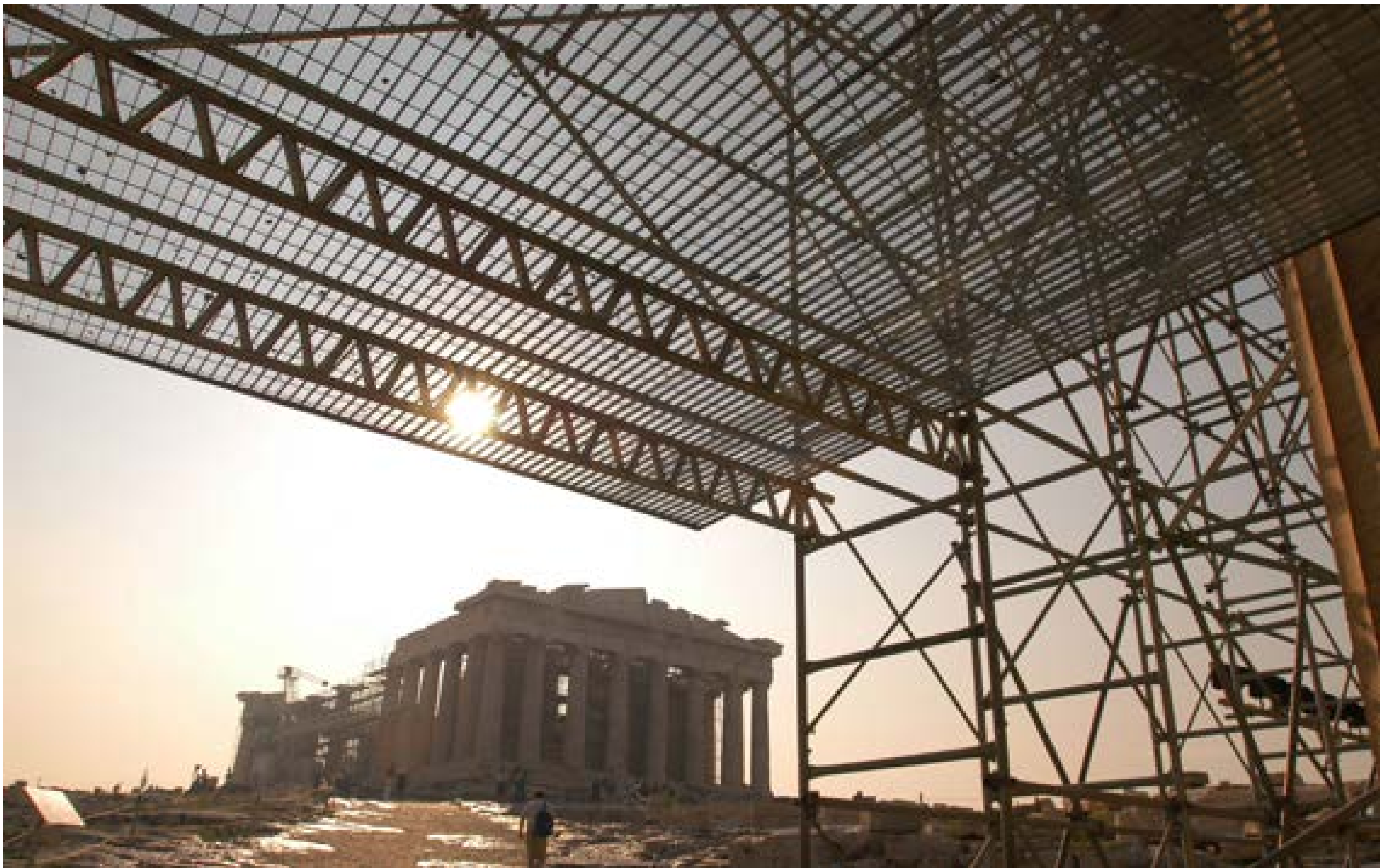
A new consumption tax of EUR 0.10/ml. on e-cigarette liquid fillers will be imposed beginning 1 January 2017.

A new consumption tax of EUR 2 to EUR 4/kg. on coffee products will be imposed beginning 1 January 2017.

Tax on beer was abolished

Beginning 27 May 2016 the 3% sales tax on beer (imported and produced in Greece) was abolished.

YANNIS KONTOS
Greece – Athens
ikontos@bdo.gr



HUNGARY

INVOICING REQUIREMENTS IN HUNGARY

Reporting obligations related to invoicing programmes

Hungary has special rules related to invoicing and strict requirements about invoicing programmes companies use. Since 2014, according to Hungarian regulations, details about the invoicing programme or online invoicing software a company uses must be reported to the Hungarian tax authority within 30 days after the company begins using the programme. The aim of the regulation is to allow the Tax Authority to more efficiently monitor companies' invoicing. The requirements of the regulation apply to companies established in Hungary and VAT-registered foreign companies.

The data to be reported is determined in the relevant Decree of the Ministry for National Economy.

Special requirements related to invoicing

As noted, there are special requirements applicable to invoicing in Hungary. Two important requirements are:

1. The invoicing programme must ensure that invoice numbers are sequential and that no number is duplicated.
2. Separate invoice number ranges must be ensured for the invoices issued under the Hungarian tax ID number. Using different invoice ranges is not objectionable, however we highlight that all number ranges have to be continuously increased.

New function of the invoicing programme – Data export

Since 1 January 2016 all invoicing software must have an independent function that makes the following data available to the tax administration with a single click:

- Invoices issued during any period that may be specified by the tax administration (in other words, from any start date to any end date specified by: year, month, day), and
- Invoices within a certain range of invoice serial numbers that may be specified by the tax administration.

This functionality, the so-called "data disclosure for tax administration audit" or data export, is intended to improve the efficiency of tax audits. It lets the tax administration quickly export data related to issued invoices in a consolidated structure. The Decree includes specifications for the schematic structure of the data export.

Based on our experience in recent tax audits, inspectors are increasingly reviewing this function.

Penalties

If any of the above requirements are not satisfied, the Hungarian Tax Authority can impose default penalties (for each failed requirement) of up to HUF 500 (approximately EUR 1600).

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

INDIA

SIMPLIFICATION OF PROCEDURES FOR INDIRECT TAXES

As India is marching toward becoming one of the world's super economies, the World Bank has applauded the efforts the current government has taken with respect to making it easier to do business in India. From a taxation standpoint, the country is witnessing steady and definite improvements, including with respect to simplification of procedures. In this article we discuss how the procedures are being simplified with respect to indirect taxes.

Customs

To facilitate trade and make it easier for businesses, the Central Government of India has implemented the "Indian Customs Single Window Project". Under the new programme, importers now only have to file a single "Integrated Declaration", rather than the nine different forms they used to file. The Integrated Declaration, which is filed electronically, is for obtaining clearance from different Government agencies.

The following information is included in the Integrated Declaration:

- The customs Bill of Entry,
- Customs valuation declaration,
- Application for import of livestock products,
- Application for import of pet animals/ aquatic/other animals, birds and poultry (chicks),
- Application for quarantine inspection, and
- The form for a No Objection Certificate (NOC) from the Food Safety Standards Authority of India.

The Integrated Declaration also gathers information and data for implementation of a system of selective inspection and testing by all Partner Government Agencies (PGAs), such as animal quarantine and drug control.

The Integrated Declaration has been in effect since 1 April 2016.

Central excise and service tax

In India, manufacturers and service providers must register under the Central Excise Act and Finance Act. Under a new trust-based registration, once an on-line application has been completed, registration is granted within two working days. The registration is issued online without the need for prior examination or verification of the documents.

VAT

Many procedural changes relating to India's VAT have been made, including the ability to register for VAT on-line. Tax Identification Numbers (TINs) are issued on a real time basis and, on receipt of a TIN, a business can start to provide goods and services immediately.

To sum up, India has done a lot to make it easier to do business in the country. The concrete steps discussed above show that the government is taking action, not merely talking about making India a hub for businesses.

NAVEEN RAJPUROHIT
SREERANJAN SHASTRY
India – Bangalore
naveenrajpurohit@bdo.in
sreeranjanshastry@bdo.in

IRELAND

EXEMPTED EDUCATION ACTIVITIES

Finance Act 2015 amended Schedule 1, Para. 4, subpara. 3 of the VAT Consolidation Act. The amendment includes a change in wording related to the exemption for the provision of children's or young people's education, school or university education, and vocational training and retraining.

Subparagraph 3 now refers to an exempt provision of education, vocational training, or retraining by a recognised body, instead of educational establishments. Additionally, the exemption referring to the provision by other persons of education, training or retraining has been removed. As a result, the exemption is now limited to provision by a recognised body, which has been defined in subparagraph 3(b) as a public body or other bodies, such as:

- A recognised school
- An education or training provider
- A body providing training for initial or continued access to a regulated profession
- A body providing a course leading to an award recognised within the National Framework of Qualifications
- A body included on a list published by the Minister for Justice and Equality
- A body providing a course leading to an award by an approved college.

As well, subparagraph 4 has been added by Finance Act 15, providing the continued exemption of tuition given privately by teachers and covering school or university education.

We expect Revenue will be providing further clarification of the implementation of the changes mentioned above.

DOMINIKA CHROBOT
Ireland – Dublin
dchrobot@bdo.ie

ISRAEL

PROPOSED VAT LEGISLATION ON E-SERVICES, BROADCASTING, AND TELECOMMUNICATION

According to a bill initiated by the Israeli tax authorities, foreign companies who do not have any presence or people in Israel will be obliged to register for VAT purposes in Israel via a special registration (expected to be an online registration that does not require an Israeli fiscal representative) and will be liable to Israeli VAT for electronically supplied services, broadcasting, and telecommunications supplied to Israeli consumers.

According to that proposed legislation, the liability will also apply to intermediaries such as app stores.

This proposal is generally based on the European model, which is increasingly gaining momentum in many other countries in the world too, and is backed by the OECD guidelines; determine this is a right model of applying indirect taxation by the "place of consumption" principle.

It should be noted that, according to the proposal, a VAT registered client, non-profit organisation, or a financial institution will be liable for the VAT on the services themselves (rather than the foreign supplier).

Comparing it to the European model, it seems that the Israeli proposal's definitions are very wide and don't refer to human intervention that may exclude its applicability.

Furthermore, the current proposal suggests that the special period VAT report will include only output VAT and there will be no deduction of input VAT available in respect of purchases from Israeli suppliers (such as advertisers and marketing suppliers). In this context, it should be noted that Israeli law has no VAT refund mechanism for foreign companies equivalent to those in the European Union (the 13th Directive) and other countries. As long as no solution will be provided for the Israeli VAT paid to Israeli suppliers, which may include Israeli related parties providing marketing, research and development services, technical support and so on, double taxation may be created. We hope that will be changed when the final version of the new law is enacted.

It should be noted that in preparation for the new expected law, there are many practical issues that foreign companies will have to take into consideration, such as: pricing to bring into account additional tax at a rate of 17% (otherwise the vendor will absorb it), an interface with the client that can identify and keep records, such as: place of residency of the consumer, whether it is an end consumer, business client, non-profit institution, or a financial institution. It is not yet clear what degree of evidence a foreign provider would have to keep and what validation of this data will be required. It is also not clear yet whether the foreign supplier will be able to deliver the VAT to the tax authorities via a foreign bank account, though it seems the registration will be an online so there is no need for local fiscal representative.

In summary, we expect that the Bill will go through changes before it is finalised, but politically, it does not seem to have many opponents and certainly will yield a significant increase in the treasury collection. Therefore, we recommend those concerned start preparation for the change now.

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

ITALY

DOMESTIC REVERSE CHARGE CHANGES

Italy has extended the reverse charge mechanism to the sales of some specific computer "hardware" products, while eliminating it on certain other supplies. The new rule is set out in Decree n. 24/2016, which adopts EU Dir. n. 42 and 43 of 2013 and is part of the anti-avoidance procedures allowed by art. 395 of the EU Dir. 112/2006. As well, in Circular n. 21/E/2016 the Italian Tax Authorities recently clarified how this rule is applied.

Extension of the reverse charge mechanism

According to new art. 17, par. 6, let. c) of the Italian VAT Decree (adopting art. 199 – bis, par. 1, let. h), the reverse charge is applicable on sales of the following, other than sales to final (retail) users:

- Games consoles (Customs code 9504 50 00);
- Tablet PCs (Customs code 8471 30 00);
- Laptops (Customs code 8471 30 00).

Sales the new extension applies to

For the sales relevant in Italy for VAT purposes, the reverse charge is applicable to all business-to-business (B2B) transactions, even if the taxable person is not VAT established or registered in Italy. In such a case, the foreign VAT subject must register for VAT purposes in Italy and then apply the reverse charge with its Italian VAT number.

The new rule is applicable to sales carried out from 2 May 2016 to 31 December 2018.

Elimination of the reverse charge mechanism

The Decree has also excluded/abolished the reverse charge mechanism on supplies of the following:

- Mobile-phone components and accessories;
- Stone materials provided directly from quarries and mines; and
- Supplies of goods to so-called hypermarkets, supermarkets, and discount food stores.

MICHELE MURATORI
GUIDO SEPE
Italy – Rome
michele.muratori@bdo.it
guido.sepe@bdo.it

LATVIA

LATVIA CONTINUES EXTENSION OF VAT REVERSE-CHARGE PAYMENT METHOD

VAT reverse-charge payment method for mobile phones, computers, and integrated circuit devices

Effective from 1 April 2016 the VAT reverse-charge payment method applies to the supplies of mobile phones, tablet PCs and portable computers, and integrated circuit devices (including microprocessors and central processing units).

VAT reverse-charge payment method for cereals

Effective from 1 July 2016 the VAT reverse-charge payment method applies to the supplies of cereals and industrial crops, including oil seeds and mixtures of such goods that are not normally used in their unaltered state for final consumption, such as wheat, rye, barley, oats, corns, buckwheat, triticale, soya, linseeds (whole or split), and rape/colza seeds (whole or split).

With respect to mobile phones, computers, and integrated circuit devices, as well as cereals and crops, the reverse-charge mechanism will only apply if the supplier and recipient of the goods are registered VAT taxable persons and payment is made in a form other than cash.

VAT standard rate applies on residential housing management services

With effect from 1 July 2016, the VAT exemption will no longer apply to residential housing management services, including services provided by housing co-operative societies to their members. In addition, providers of these services will be able to choose to apply the special VAT payment procedure if the total value of transactions during the year does not exceed EUR 2 million. By choosing this procedure, the service provider will be able to:

- Pay the VAT after receipt of the payment instead of after issuing the invoice, and
- Deduct input tax only after the payment for the goods and services has been made with respect to the residential housing management services.

SINTIJA FRIENBERGA
INITA SKRODERE
Latvia – Riga
sintija.frienberga@bdo.lv
inita.skrodere@bdo.lv

LITHUANIA

SUBMISSION OF REGISTERS OF VAT INVOICES AND TRANSPORT DOCUMENTS

Persons registered as VAT payers in Lithuania used to have to keep registers of issued and received VAT invoices and the State Tax Inspectorate (STI) had the right to require VAT registrants to submit the registers for review. Since 1 October 2016, such information must now be provided to the STI via a specialised system portal known as the SAF.

Whether they are subject to VAT or not, taxable persons that are engaged in economic or non-economic activities (for example, state and municipality functions) must report all issued and received VAT invoices related to economic and non-economic activities through the SAF. This information must be reported as of the month of the calendar year in which the person was engaged in economic activities and it must be reported through the end of the calendar year, irrespective of whether any activities were carried out during such periods.

Additionally, the submission to the STI of data from transport documents by electronic means has also been required since 1 October 2016. The transport document data must now be submitted via a specialised system portal known as the VAZ. The data creator must submit the information not more than seven days before they expect the goods to be dispatched and not later than the date the goods actually are dispatched.

Though some exemptions are applicable, this procedure is required when all of the following conditions exist:

- Goods are loaded and carried by road transport in the territory of the Republic of Lithuania;
- The consignor and the consignee of goods are natural or legal persons engaged in economic activity; and
- A commercial relationship exists between the consignor and/or the consignee; or between the transporter and transport operator or another person authorised by them.

ROKAS PEČIULIS
Lithuania – Vilnius
michele.muratori@bdo.it
rokas.peciulis@bdo.lt

NETHERLANDS

VAT TREATMENT OF FINANCIAL VERSUS OPERATIONAL LEASES ON MOVABLE PROPERTY

In Holland, the VAT treatment of a lease on movable property depends on whether the lease is considered a financial lease or an operational lease. If such a lease is considered to be a financial lease, for VAT purposes it is a supply of goods and the supplier must charge VAT on the full remuneration (at the applicable VAT rate). If the lease is considered an operational lease, it is a supply of services and the supplier must charge VAT on each lease term. The criteria for how to determine whether a lease of movable property is a financial or operational lease for VAT purposes is set out in a decree by the Dutch state secretary of Finance.

For VAT purposes, a lease qualifies as a financial lease (and thus a supply of goods) when all of the following criteria are met:

1. The goods are placed at the disposal of the lessee.
2. The lessee bears the costs of use, maintenance, and insurance of the goods from the moment the goods are at the lessee's disposal. This also applies to changes in value or loss of the goods.
3. The lessee has the right/option to buy the goods at the end of the lease term at such a low option price that it is obvious that the lessee will exercise this right.
4. At any given moment during the lease, the lessee has the right to obtain legal ownership of the goods by paying the remaining lease terms and option price as mentioned under 3.
5. During the lease period, the lease cannot be terminated by one side, other than as a result of an occurrence described under 4 or if the lessee does not meet the payment obligations.

If any of these criteria are not met, the lease does not qualify as a supply of goods and it must be treated as the supply of services.

It is important to note that the determination of how a lease on movable property is treated for VAT purposes can be very different from how the lease is treated for other purposes. For instance, a lease may qualify as a financial lease based on Dutch accounting rules if the original supplier of the goods or another party guarantees a residual value of the goods after a certain period of use. But, a lease that qualifies as a financial lease for accounting purposes could be treated as an operational lease for VAT purposes based on the five criteria set out above. Application of the Dutch VAT rules can also lead to non-taxation or double taxation in international lease transactions. It is important, therefore, that taxpayers be aware of the contradictions between the Dutch VAT rules and other rules, including the Dutch accounting rules and VAT rules applicable in other countries, because there can be significant VAT implications on leases on movable property.

MARCO BEERENS
Netherlands – Breda
marco.beerens@bdo.nl

NEW ZEALAND

GST ON DIGITAL SERVICES

Under New Zealand's current Goods and Services Tax (GST) legislation, GST is generally not collected on so-called cross-border remote services and intangibles supplied by offshore suppliers to New Zealand consumers.

This treatment is set to change, however, with the Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Act 2016, which received Royal assent on 13 May 2016. The new rules, which will come into force on 1 October 2016, will apply GST to cross border remote services (such as e-books, music, videos and software purchased from offshore suppliers) by requiring offshore suppliers to register and remit GST when their supplies to New Zealand consumers:

- Exceed NZD 60,000 over the previous 12 months, or
- Are expected to exceed NZD 60,000 over the next 12 months.

"Remote services" will be defined as a "service where at the time of the performance of the service, there is no necessary connection between the physical location of the recipient and the place of physical performance".

As a result, non-digital services, such as consulting, accounting, and legal services, will be subject to the new rules when they are supplied as remote services.

Thankfully, there is an exclusion for suppliers that are providing remote services on a business-to-business (B2B) basis, rather than on a business-to-consumer (B2C) basis. Offshore suppliers will not be required to remit GST on supplies made to New Zealand GST-registered entities. Such supplies can, however, be zero-rated, which will allow the offshore supplier to claim back the New Zealand GST costs incurred in making zero-rated supplies to GST-registered businesses.

Offshore suppliers will be required to presume that New Zealand resident consumers are not GST registered entities, unless the customers have notified the supplier of their status as a GST registered entity or provided the offshore supplier with their GST registration number or New Zealand Business Number.

It is important to note that when offshore suppliers deliver their services to New Zealand consumers through an electronic marketplace or intermediary, the latter will be treated as the supplier required to register for GST, rather than the principal offshore supplier. The rationale for this treatment is that, given their larger size and closer relationship with the consumer, an electronic marketplace or intermediary should be in a better position to remit the GST on these supplies.

The effectiveness of this new system will depend on the extent to which offshore suppliers that have no New Zealand presence abide by the voluntary compliance rules. Steps are being taken, however, to ease the burden of compliance. For example, offshore suppliers will be exempt from the standard domestic requirement of having a fully functional New Zealand bank account in order to obtain an Inland Revenue Department (IRD) number and to register for GST.

The New Zealand Inland Revenue is expected to issue further guidance as to how it will monitor and enforce compliance by overseas providers.

Offshore suppliers will be able to apply to be registered for GST beginning 1 August 2016 with registration taking effect from 1 October 2016.

IAIN CRAIG
New Zealand – Auckland
iain.craig@bdo.co.nz

NORWAY

NORWEGIAN VAT CHANGES FOR 2017

The following changes in VAT will be effective from 2017:

- A new Tax Report will be required
- Import VAT will no longer be paid at the time of importation.

A new type of sales return (a "Tax Report", or *skattemelding* in Norwegian) will replace the current sales returns for all businesses that are registered for VAT in Norway. As a result, businesses will have to modify their accounting systems.

Businesses that are registered for VAT in Norway and that import goods will no longer have to pay import VAT at the time of importation. Instead, the import VAT will be deducted on the new Tax Report. This will result in a liquidity advantage for such businesses as compared to the current system. Businesses that are not registered for VAT in Norway will still have to pay import VAT at the point of importation in accordance with the current system.

The new Tax Report, with its new posts and updated posts, will replace the current sales returns. As a result, all businesses must change their accounting systems to implement the new Tax Report and they must transfer the basis for calculation of import VAT from the customs declaration to the accounts. They must also ensure that the new requirements of the Bookkeeping Act are complied with.

Reporting for 2016 is to be submitted on the current sales returns. The new Tax Report concerns transactions from 1 January 2017. Businesses should begin adapting their accounting systems as soon as possible, so that they have them integrated before 2017.

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

ROMANIA

SERVICES RENDERED TO COMPANIES WITHOUT A FIXED PLACE OF BUSINESS

Under the general business-to-business (B2B) rule, the place of supply of services to a taxable person is the place where the business receiving the service is established. But, if the services are provided to a taxable person's fixed establishment located somewhere other than where the business is established, the place of supply of the services is the place where that fixed establishment is located. In the absence of such a fixed establishment, the place of supply of services would be the place where the taxable person receiving the services has its permanent address or usually resides.

There are some exceptions to the B2B supply rules. But, for situations that do not fall within an exception, when a service is rendered to a taxable person (a recipient) that does not have a fixed place of business in Romania, the place of supply of services is considered the place where the recipient's business is established, even if the recipient is registered for VAT in Romania.

So, for example, assume Company A has its place of business in Spain but it is also registered for VAT purposes in Romania even though it does not have a fixed place of business in Romania. Assume Company A receives services consisting of the transport of goods in Romania from Company B. Since transport services do not fall within an exception to the B2B rule and since Company A does not have a fixed place of business in Romania, the services are taxable in Spain (even though Company A is registered for VAT purposes in Romania). In this scenario, Company A must provide its business address and a valid Spanish VAT number to Company B, its Romanian supplier.

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

SINGAPORE

PURCHASE OF GOODS FROM ABROAD

GST is a tax on local consumption (in other words, it is levied on goods and services consumed in Singapore), regardless of whether the goods are purchased in stores or from overseas. Generally, all goods (except so-called "investment precious metals") imported into Singapore are subject to GST, regardless of whether the importer is GST-registered.

The importer is required to obtain an import permit and pay GST when importing goods into Singapore, unless the goods qualify for import relief or are investment precious metals. Import GST is levied on the imported goods' "taxable value", which includes the cost, insurance and freight (CIF), customs duty (if applicable), commissions, and other incidental charges.

Import relief

Subject to certain conditions, no GST is paid on importation of goods into Singapore where import relief is granted. In Singapore, import relief is administered by Singapore Customs and application for import relief is made through Singapore Customs before the goods arrive in Singapore.

Importation of goods by parcel post

Goods (except for investment precious metals and dutiable products) imported by parcel post are not subject to GST when the CIF value is SGD 400 or less. If the CIF value is more than SGD 400, GST is payable on the total value of the shipment. Therefore, where possible, many online shoppers spread out their purchases to avoid paying GST.

Goods hand-carried into Singapore for personal consumption

GST relief is granted for goods brought into Singapore for personal use and not meant for sale. This excludes cigarettes, tobacco, liquors, and petroleum products. If someone hand-carries goods into Singapore for others, the value of these goods is also included when calculating the total value of goods eligible for GST relief. Where the value of goods exceeds the GST relief limit, the difference between the value and GST relief limit is subject to 7% GST.

The GST relief depends on the number of hours the person spends outside Singapore as follows:

Period away from Singapore	Value of goods eligible for GST relief
48 hours or more	SGD 600
Less than 48 hours	SGD 150

Under the Customs Act, anyone found guilty of intentional evasion of GST is liable to a fine of up to 20 times the amount of tax evaded and/or a possible jail term of up to two years.

Over the past two years, there have been 15 cases where online retailers and importers have been prosecuted for evading GST exceeding SGD 440,000. In 2016, a retailer of branded handbags and wallets was fined SGD 190,000 for evading more than SGD 50,000 import GST on thousands of luxury products. He instructed suppliers to indicate the value of goods imported as below SGD 400 on import documents to avoid payment of GST.

The rise of online retailers and importers who intentionally evade import GST by under-declaring the value of the goods imported into Singapore or by hand-carrying the goods into Singapore has resulted in a loss of tax revenue. Hence, in recent years, Singapore Customs has actively taken steps to create more public awareness with regard to import GST payable on importation of goods that exceed the threshold regardless of whether the import is via postal or courier services, or hand-carried.

EU CHIN SIEN
JAN SEE
Singapore
chinsien@bdo.com.sg
jansee@bdo.com.sg

SPAIN

LOCALISATION OF SERVICES RENDERED TO TAX RESIDENTS IN THE EU WITHOUT VAT NUMBER

A company established in the Spanish VAT territory provided legal advice services to an entrepreneur established in another EU Member State. The entrepreneur did not have a VAT number.

The Spanish Tax Administration recently issued a binding ruling to clarify where the provision of advisory services are considered located for purposes of Spanish VAT.

According to the Spanish VAT regulations, so long as the services follow the general rule and no special rule of localisation is applicable, whether the services are considered located in Spain depends on whether the recipient is an individual (in other words, if the service is business-to-consumer (B2C)) or to an entrepreneur/professional (business-to-business (B2B)).

In the situation at hand, the Tax Administration referred to Council Implementing Regulation (EU) No 282/2011, which establishes a system of presumptions that suppliers can apply when providing services to entrepreneurs or professionals. Among the presumptions that are to be applied is the presumption that, unless the service provider has information to the contrary, the supplier may regard a customer established within the EU Territory as a non-taxable person, so long as the supplier can demonstrate that the customer has not provided an individual VAT identification number to the supplier.

In the situation analysed in the binding ruling, because the supplier's client did not have a VAT number, the supplier, absent information to the contrary, can consider the recipient a non-taxable person and so the service takes place in Spain for VAT purposes.

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

SRI LANKA

REVISED PROPOSALS ON VAT

In the December issue we touched on certain changes to the VAT on wholesale and retail trade, as well as on rate revisions. The original proposals were revised, as explained below.

VAT on wholesale trade and retail trade

The registration threshold for VAT on wholesale and retail traders who had a turnover in excess of LKR 100 million per quarter has been reduced to LKR 3 million per quarter or LKR 12 million per year. This category was originally excluded from chargeability to VAT and was brought into the VAT net from 2013 onwards. Over the years this threshold has gone down, resulting in more taxpayers having to register for VAT.

VAT rate revisions

The original budget proposal that a VAT rate of 12.5% would apply to the service sector, while manufacturers and importers would be liable to VAT at 8% was changed. Instead, the standard 15% rate will apply to both sectors. As well, a zero rate is applicable on exports of goods and services for payments in foreign currency.

Pending enactment, these changes are effective from 2 May 2016.

SARAH AFKER
Sri Lanka – Colombo
saraha@bdo.lk

UNITED STATES

SALES & USE TAX: REMOTE VENDORS BEWARE

One of the more concerning trends for international vendors selling into US states is the enactment of click-through, affiliate and economic nexus laws, and the imposition of use tax notice reporting requirements, developments which have a significant risk of impacting such vendors. See BDO Indirect Tax News, April 2016, Issue 1 for a more in-depth discussion regarding sales and use tax nexus, including click-through, affiliate, and economic nexus. Briefly, however, nexus is the standard applied by a state to assess whether it has the jurisdiction to impose a tax and/or reporting responsibility on a vendor).

Click-through nexus

In 2008, New York enacted a law that imposes a sales and use tax reporting obligation on a vendor that has an agreement with an in-state resident pursuant to which the vendor pays a commission for sales of more than USD 10,000 arising from customers that click-through an Internet link on the in-state resident's website. Since then, nineteen states have enacted similar laws. The following schedule shows states that have recently enacted click-through nexus laws, and the related effective date and sales threshold.[1]

State	Effective Date	Annual Sales Threshold
Illinois	1 January 2015	More than USD 10,000
Louisiana	1 April 2016	More than USD 50,000
Michigan	1 October 2015	More than USD 10,000 through affiliates and USD 50,000 in annual in-state sales
Nevada	1 October 2015	More than USD 10,000
Tennessee	1 July 2015	More than USD 10,000
Vermont	1 December 2015	More than USD 10,000
Washington	1 September 2015	More than USD 10,000

Affiliate nexus

Twenty-nine states have enacted affiliate nexus laws that impose a sales and use tax collection and remittance responsibility on a remote seller that has an affiliate with a location in the state, and the remote seller and its affiliate use a substantially similar tradename, trademark, etc. to promote sales or maintain an in-state market for the remote seller's goods and services. Louisiana is the most recent state to adopt an affiliate nexus statute (Louisiana enacted its law in March 2016, which applies to tax periods beginning on or after 1 April 2016). States that have adopted sales/use tax affiliate nexus statutes include the following:

Alabama	Illinois	Missouri	South Carolina
Arizona	Iowa	Nebraska	South Dakota
Colorado	Kansas	Nevada	Texas
Connecticut	Louisiana	New Mexico	Virginia
Georgia	Maine	North Dakota	Washington
Hawaii	Massachusetts	Ohio	West Virginia
Idaho	Minnesota	Rhode Island	Wyoming

[1] The other states with similar laws are Arkansas, California, Connecticut, Georgia, Kansas, Maine, Minnesota, Missouri, New Jersey, North Carolina, Pennsylvania, and Rhode Island.

Economic nexus

South Dakota enacted legislation earlier this year that imposes a sales and use tax collection and remittance responsibility on a remote seller that during a taxable year has:

i. Gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into the state that exceeds USD 100,000; or
ii. Sold tangible personal property, any product transferred electronically, or services for delivery into the state in 200 or more separate transactions.

However, the law contains a provision that prohibits the state from enforcing the law pending a court decision on a complaint challenging the law, and such a complaint has been filed. Thus, the enforcement of the law has at least been temporarily stayed.

Vermont enacted an economic nexus law on 25 May 2016, that applies to a remote seller that had 200 or more Vermont sales or sales that exceed USD 100,000 in the preceding twelve months. The Vermont law becomes effective on the later of 1 July 2017 or beginning on the first day of the first quarter after a controlling court decision or enactment of a federal law that abrogates the physical presence nexus requirement in *Quill Corp. v. North Dakota*. Connecticut and Minnesota recently followed South Dakota and Vermont, and introduced similar legislation. As of 10 June 2016, the Connecticut legislation is pending approval, and the Minnesota legislation was vetoed by the governor.

Alabama took a slightly different approach, and adopted an interpretive regulation that imposes a sales and use tax reporting obligation on a vendor with Alabama sales that exceed USD 250,000, and solicits sales through certain advertising directed at in-state consumers. The Alabama regulation applies to transactions occurring on or after 1 January 2016.

Use tax notice requirement

In 2010, Colorado enacted a law that requires an out-of-state vendor that is not subject to the sales tax to:

(i) Send a notice to Colorado customers that their purchases may be subject to use tax,
(ii) Send customers an annual purchaser summary if their aggregate purchases exceed USD 500, and
(iii) Annually report customer information to the state.

Colorado may impose a USD 10 penalty for each failure to provide notice and for each purchaser not reported to the state. In its decision in *Direct Marketing Association, Inc. v. Brohl*, which was issued on 22 February 2016, the US Court of Appeals for the Tenth Circuit held that the law was not unconstitutional. It is understood that a state court injunction prohibits Colorado from enforcing the law, which Colorado won't seek removal of until final resolution of the *Direct Marketing Association* matter.

Kentucky enacted similar legislation in 2013, but Kentucky exempts a vendor with less than USD 100,000 in Kentucky sales from this requirement. Oklahoma enacted a use tax notice requirement on 17 May 2016 with no exemption for sales under a certain threshold amount and no reporting requirement, which applies to transactions occurring on or after 1 November 2016. And, lastly, Vermont enacted a use tax notice requirement on 25 May 2016, that takes effect on the earlier of 1 July 2017, or beginning on the first day of the quarter after Colorado implements its use tax notification requirement.

Conclusion

International vendors making sales in the US and abroad should be aware of these aggressive US nexus and sales and use tax reporting trends. It is recommended that a company conduct a state-by-state analysis, and revisit it periodically, to confirm its state sales and use tax reporting and payment is consistent with changes in laws and US business operations.

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

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 27 June 2016.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Colombian Peso (COP)	0.00031	0.00034
Dominican R. Peso (DOP)	0.01938	0.02155
Euro (EUR)	1.00000	1.10986
Hungarian Forint (HUF)	0.00314	0.00348
New Zealand Dollar (NZD)	0.64051	0.71216
Singapore Dollar (SGD)	0.66414	0.73843
Sri Lanka Rupee (LKR)	0.00603	0.00670
UAE Dirham (AED)	0.24479	0.27218
Unites States Dollar (USD)	0.89939	1.00000

CONTACT PERSONS

The BDO VAT Centre of Excellence consists of the following persons:

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