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LUXEMBOURG

E-BOOKS NO LONGER ELIGIBLE FOR 3% VAT IN LUXEMBOURG

Since 2012 there has been no distinction between the supply of books and e-books in Luxembourg: both were subject to the super reduced VAT rate of 3%.

The European Commission, however, has taken the view that treating books and e-books the same is incorrect under the VAT Directive. As a result, the Commission started an infringement procedure against Luxembourg (and France, which also applied a reduced rate of 5.5% to e-books). The Commission argued that equal treatment distorts competition within the EU and is not compatible with the VAT Directive.

In its judgment dated 5 March 2015, the Court of Justice of the European Union ruled that e-books should not be taxed at reduced rates because they must be considered an electronically supplied service, not a supply of a good. The court reasoned that since e-books need a physical support to be read (e.g. a computer or an e-reader), e-books cannot benefit from any derogation granted to various services and goods listed in Annex III of the VAT Directive, such as paper books. In the absence of any express reference to the supply of digital books in the Annex, the court specified that digital books may not enjoy a reduced VAT rate.

The court was of the opinion that the VAT Directive excludes any possibility of a reduced VAT rate being applied to electronically supplied services and confirms that, in its view, e-books must be considered electronically supplied services as defined by the EU regulation 282/2011.

Given this decision, the Luxembourg VAT authorities have been forced to withdraw their circular 756 and, as a result, the standard VAT rate of 17% applies to e-books.

Though e-books currently represent only a small proportion of the turnover of publishers, it is expected that it will increase significantly in the near future. Luxembourg and France have already expressed their disappointment with the decision, which they say negatively impacts the growth of this industry and technological developments. Despite the court's decision, the two countries will continue to press for alignment of the VAT rates to books in any format.

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EDITOR'S LETTER

Dear Readers,

Greetings from Dublin where we have just concluded the celebration of our St. Patricks Day Festival, which consists of a whole host of events (cultural and otherwise) celebrating our Irish heritage.

As you are probably aware, although our population is less than 5 million, there are more than 70 million people of Irish descent throughout the world and this has resulted in the hosting of St. Patrick's Day Parades and the illumination of many famous buildings with (Irish) green lighting in many countries throughout the world as part of the festivities.

A little like Irish people and Saint Patrick's Day parades, indirect tax regimes are also finding their way across the world and at present our BDO Colleagues in Malaysia and India are preparing for the introduction of GST in their countries in 2015 and 2016 respectively.

In this regard, I'm pleased to assure our readership that the BDO Firms in both Malaysia and India are well placed to provide assistance to our International network and clients in relation to any issues of concern in relation to indirect tax and future editions of Indirect Tax News will provide updates.

Kind regards from Dublin!

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ARGENTINA

TAX BENEFITS FOR THE SOFTWARE INDUSTRY

Over the past few years, Argentina has benefitted by sustained growth in the software industry and related services thanks, in large part, to tax benefits aimed at helping the industry.

To strengthen this sector, which is considered important for the country's development, the national government and various provincial governments have provided relief from taxes on consumption (VAT) and sales (turnover tax) related to this sector.

At the national level, Law 25.922 Promotion of the Software Industry has set out for the industry a regulatory framework that grants important tax benefits (applicable through 31 December 2019), so long as certain requirements are met. The main benefits at the national level are:

- Application of a rate of 14% of Income Tax, versus the general rate of 35%.
- A tax credit of up to 70% of the social security contributions paid on account of VAT.
- Reimbursement of the VAT attributable to software that is exported.

In addition, several provinces have instituted measures that provide, under certain circumstances, exemption from provincial turnover tax. Such measures have been provided by the Autonomous City of Buenos Aires, the province of Buenos Aires, Mendoza, Santa Fe, and Córdoba, among others.

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AUSTRALIA

TO APPORTION, OR NOT TO APPORTION, THAT IS THE QUESTION!

In a recent case (*Rio Tinto Services Ltd.* v *Commissioner of Taxation* [2015] FCA 94), the Federal Court held that input tax credits were not available to the taxpayer, Rio Tinto Services (the Applicant), in relation to costs it incurred in providing and maintaining residential accommodation for its mining staff in the remote Pilbara region of north west Western Australia.

The Applicant argued that the construction, acquisition, repair, and maintenance of the residential accommodation it provided to its employees at reduced rates (approximately 2,295 houses and apartments of varying sizes) was made for a creditable purpose, meaning that any GST paid by the Applicant on these acquisitions could effectively be offset in full against the GST that arose on its supply of iron ore from its mining operations. The Applicant, having accepted that the provision of residential accommodation is ordinarily an input taxed supply (so no input tax credits were available to it), contended that the connection between the making of the input taxed supply must be the "moving cause" or "purpose" of the acquisition. Given its circumstances, the Applicant argued its supply of residential accommodation was only made in order to make the taxable supply of iron ore.

Alternatively, the Applicant argued that it should be able to at least apportion its entitlement to input tax credits based on the dollar value of the residential accommodation consideration it received as rent as a percentage of the combined receipts from both the mining operations and the rentals. This treatment would result in an entitlement to input tax credits of 99.88% (in other words, a "blockage" of only 0.12%).

The Commissioner of Taxation, not surprisingly, was of the view that no entitlement to input tax credits arose "… because the acquisitions in question had a direct and immediate connection with the supply of residential accommodation by way of lease, being an input taxed supply", rather than being connected with the Applicant's core business, which is the extraction and sale of iron ore.

Justice Davies concluded that "… on the uncontroversial facts of this case, the acquisitions in question all have a direct and immediate connection with [the Applicant's] provision of the leased accommodation and that direct and immediate connection constitutes a sufficient and material relationship …", so no entitlement, even on an apportioned basis, arose.

Justice Davies was also of the view that "… the question of apportionment does not arise for determination because the acquisitions in question related wholly to the provision of the accommodation".

On 18 March 2015 the taxpayer filed an appeal.

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FRANCE

IMPLEMENTATION OF THE REVERSE-CHARGE MECHANISM FOR FRENCH IMPORT VAT

From 1 January 2015 companies importing goods into France can elect, under certain conditions, to apply under a new regime that permits them to use a reverse-charge mechanism on their import VAT.

Scope of this new regime

The following companies can elect to apply this new regime:

- French companies subject to a Single Authorisation for Simplified Procedure (SASP) (*procédure de dédouanement simplifiée avec domiciliation unique*);
- Companies established in the European Union subject to an intra-EU SASP (*procédure de dédouanement simplifiée avec domiciliation unique communautaire*) (Article 76 of the European Customs Code);
- Companies established in a third country, if they have appointed a customs agent subject to a SASP.

How to elect for this new regime

To benefit from the reverse-charge mechanism on import VAT, French and foreign companies must elect to have the regime apply. The election is effective for three years and can be automatically renewed for an additional three year period.

To qualify, eligible companies must fulfil certain requirements that depend on their treatment under French VAT. The requirements depend on where the company is established.

- French companies must:
  - Send a request to the French customs authorities in order to benefit from the SASP;
  - Opt for the reverse-charge mechanism.
- Companies established in the European Union must:
  - Request a prior bilateral or multilateral agreement between France and the company's home state in order to be subject to the SASP;
  - Obtain a formal acceptance by the government of the company's home state to benefit from the SASP;
  - Claim their registration for French VAT purposes.
- Companies established in third Countries must:
  - Opt for the reverse-charge mechanism through their customs agent;
  - Claim their registration for French VAT purposes.

Advantages to electing for this new regime

One of the advantages to electing to have this new regime apply is that import VAT will be collected and deducted on the same French VAT return. As well, such treatment can help with cash flow issues that can arise because of import VAT.

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SPAIN

SPAIN'S NEW REGIME FOR DEFERRING VAT ON IMPORT

Law 28/2014, which was published on 27 November 2014, amended various laws, including the Spanish Value Added Tax. The amendments to the VAT introduced an optional "deferral import regime" that allows taxpayers that fulfil certain requirements to defer the payment of the VAT related to an import until such amount is included in their tax return. This regime is applicable as of 1 January 2015.

Before this amendment, the settlement and collection of import VAT (along with the custom duties) took place in the customs office at the moment the goods entered Spain but the input VAT was not deducted until the taxpayer filed the VAT tax return related to the period in which the import documentation was received.

As a result of changes applicable from 1 January 2015, the import VAT quote (which is comprised of the output VAT related to the amount declared but not paid at the customs office and the input VAT) is included in the tax return related to the period in which the custom clearance is carried out.

Therefore, under this new regime, companies can avoid the financial hardship that often arose under the former regime because of the lag between the settlement/payment of the import VAT at the customs office and the deduction of import VAT on the quarterly or monthly tax return filed. Previously, the lag could range from 50 days (in the case of a taxpayer filing monthly VAT returns) to 110 days (for taxpayers filing quarterly VAT returns).

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GERMANY

VAT TREATMENT OF MEALS IN CONNECTION WITH THE PROVISION OF ACCOMMODATION IN THE HOTEL SECTOR

Germany is to amend its law to confirm that provision of meals by a hotel is subject to VAT at the standard rate of 19%. This applies even if the meal is included in the price of hotel accommodation. Hotel accommodation in Germany benefits from a reduced rate of VAT (currently 7%).

Contents of the regulation

In a circular dated 9 December 2014 the Federal Ministry of Finance (the Ministry) commented on the VAT treatment of the provision of meals as part of the provision of accommodation in the hotel sector. Special focus is placed on the question of whether providing meals is an ancillary service to the main service of providing hotel accommodation.

In a ruling on 15 January 2009 the Federal Court of Finance (BFH) had decided that providing meals to hotel guests is an ancillary service to providing overnight stays. The Ministry reacted to this ruling by issuing a non-application decree in a circular on 4 May 2010. In that circular, the Ministry stated that it considers that the court decision is not generally applicable.

However, the legal opinion expressed in the 4 May 2010 circular was later set aside by the Ministry in its circular of 9 December 2014. The current circular states that according to Section 12, para. 2, no. 11, sentence 1 of the German VAT Act, only renting out of living rooms and bedrooms by a taxable person for the provision of accommodation in the hotel sector is subject to the reduced VAT rate. Furthermore, Section 12, para. 2, no. 11, sentence 2 of the German VAT Act clarifies that the reduced VAT rate does not apply to services that do not directly serve the purpose of the rental, even though they may be ancillary to the lodging and included in the rental charge. Consequently, the principle that the ancillary service follows the VAT treatment of the main service is replaced by the statutory requirement of splitting the respective services. This legally binding rule of splitting uniform services supersedes the general principle against separating main and ancillary services.

Therefore, only the services that directly serve the purpose of the rental (lodging) benefit from the reduced VAT rate. The provision of meals is subject to the general VAT rate (19%) even if the lodging and the meals are both offered for one lump-sum.

The principles of the 9 December 2014 circular are being applied in all open cases. The sections in the German VAT Application Decree will be amended accordingly. However, for purposes of the input VAT deduction, with regard to the provision of meals before 1 January 2015 that were declared as independent services based on the Ministry's 4 May 2010 circular, the tax authorities will not object to a taxpayer's input VAT treatment.

Practical tips

In its VAT Application Decree the Ministry has listed various services that it deems directly related to lodging services, for example, electricity, the provision of bed linens, towels, bathrobes, and the cleaning of the rooms rented. The Ministry has said it considers the following services as not directly related to lodging services:

- Minibar supply of beverages
- Use of communication networks (especially telephone and internet)
- "Pay per view" television services
- Rental of sports equipment
- Laundry/ironing services, shoeshine service
- Transfers from/to airports or train stations.

With regard to the ancillary services listed above, therefore, the Ministry confirms that the VAT rate applicable is determined by splitting the respective services from the provision of lodging and so on such services the standard VAT rate (currently 19%) applies. Given all of the above, we believe the chances of a taxpayer succeeding in claiming otherwise with regard to the treatment of these ancillary services is relatively low.

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HUNGARY

HUNGARY'S ELECTRONIC SYSTEM FOR CONTROLLING THE ROAD TRANSPORTATION OF GOODS

As of 1 January 2015 Hungary requires the electronic reporting of certain data to the tax authority in connection with the transportation of goods on public roads. Hungary's online goods monitoring system is called the Electronic System for Controlling the Road Transport of Goods (EKAER). EKAER is accessible "24/7" at www.ekaer.nav.gov.hu.

The objective of the EKAER system is to make circulation of goods more transparent. EKAER also serves as a tool for the Hungarian Tax Authority to identify tax fraudulent transactions and to detect tax evasion by related entities.

EKAER reporting generally applies to the transport of goods on public roads by vehicles that weigh more than 3.5 tons and that are subject to e-toll payments. EKAER reporting also applies to the transport of so called "risky foodstuff" and "other risky products" (together referred to as "risky goods"), regardless of the vehicle weight or whether it is subject to e-toll payments.

Though one might expect that the EKAER registration obligation lies with the transportation service provider, that is not the case. The EKAER registration obligation applies to the domestic taxpayer "who engages in activity connected to public road transportation", which means the person that is actually affected by the sale or acquisition, or who otherwise causes transportation of the product.

As a result, as of 1 January 2015, taxpayers must obtain a valid EKAER number before any of the following: inward transportation of goods from the European Union to the territory of Hungary, the supply (or outward transportation) of goods into a member state of the European Union, or before the first domestic sale of products subject to tax payment to non-end users within the country.

The law includes severe penalties. In case of a failure to satisfy a reporting obligation, the unreported product will be regarded as being of unverified origin and a default penalty can be imposed on the taxpayer of up to 40% of the value of the goods concerned. In certain cases the tax authority is entitled to seize the transported goods.

The EKAER reporting obligation includes specific data that must be provided with regard to the transportation of goods. The following data, for example, must be provided through the EKAER system: data about both the consignor and consignee, the address where the goods are loaded and unloaded (in other words, the address of where the goods are received), a general description and the customs tariff number of products covered by the EKAER number, the gross weight in kilograms, the reason for the transportation, and the registration number of the vehicle. Where goods are transported from the EU or sold domestically, the data must include the time of arrival at the location where the goods are unloaded from the vehicle. In the case of transportation to the EU, the time the loading of the vehicle began must be reported.

In case of risky products, other data must also be reported, such as the consideration or purchase price without tax or production cost. In addition, with respect to risky goods, unless there is a specific exemption, the taxpayer must provide a security deposit to the Tax Authority or a financial guarantee of up to 15% of the net counter value of the goods.

It should be noted that the law includes some exemptions from the EKAER reporting obligation. In addition to general exemptions based on product types, there are exemptions tied to certain threshold levels related to value and weight.

Given the requirements, it is clear that EKAER reporting requires close cooperation between the party subject to the EKAER reporting obligations and forwarding companies, as much of the information to be reported can only be provided by the forwarding companies.

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INDIA

INDIA TO IMPLEMENT GOODS AND SERVICE TAX BY 1 APRIL 2016

India is on the cusp of a massive tax reform, replacing all its indirect taxes with a so-called Dual Goods and Services Tax (GST) Regime beginning 1 April 2016. The system will essentially be two-tiered, made up of a GST at the federal level and at the state level.

The much awaited GST regime was initially announced way back in 2006 but it never got off the ground because of a lack of political consensus. The idea of implementing a GST was reinvigorated when the new federal government took over in 2014.

The new government announced its intention to implement the GST in its Union Finance Budget in May 2014. This was followed by introduction of the revised Constitutional Amendment Bill in the Parliament on 19 December 2014. In the Union Budget 2015, which was announced at the end of February, the Union Finance Minister underlined the importance of GST and reiterated the federal government's commitment to bringing it into force beginning 1 April 2016. The federal government believes the GST will be a game changing reform for the Indian economy.

While much remains to be done by the federal government to implement the GST beginning 1 April 2016, the clock has started ticking. Corporations should take note and begin gearing up for the GST.

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IRELAND

VAT TREATMENT OF STOCK EXCHANGE FEES

The Irish Tax Authorities (Revenue Commissioners) have recently published some guidance in respect of their interpretation of the VAT treatment of various stock exchange-related fees.

The Revenue Commissioners have indicated that the following trading and regulation fees come within the exemption from VAT as provided for in Schedule 1 of the VAT Consolidation Act 2010:

- ISE Xetra® Order Book trade execution and annual trading membership fees for membership in the Irish Stock Exchange (ISE).
- Fees payable for access to the trading platform and interface of a stock exchange. (Fees payable for connection to the trading platform and interface are taxable at the standard rate, however.)
- Initial membership fees for membership in the ISE as a Primary Dealer in Irish Government Bonds, together with the fixed annual fee for continued membership as a primary dealer.
- Fees for Non-Primary Dealers in Irish Government bonds.

In the published guidance the Revenue Commissioners also confirmed that fees charged by the ISE to list securities on any of the stock exchange markets and to maintain this listing are exempt from VAT.

They also confirmed that certain fees are subject to VAT at the standard rate, including:

- The fee payable in respect of a publication of a formal notice on the ISE's Daily Official List.
- Fees payable on application for approval as a sponsor and for continued inclusion on the register of sponsors.
- Fees payable on application for approval as an ESM advisor and for continued inclusion on the register of ESM advisors.
- Legal Entity Identifier (LEI) Initial Application Fees and LEI Annual Renewal Fees.
- The fees charged to file and publish a debt announcement.

In addition, the ISE provides the following information products that it charges fees for and which the tax authorities have confirmed are all subject to VAT at the standard rate:

- Real-time Continuous Datafeed Services
- Snap-shot Information Packs
- Company Announcements Service
- Ad-hoc Customised Solutions
- Periodic Publications and Statistical Updates.

Finally, and not surprisingly, the Revenue Commissioners confirmed that a licence granted by the ISE to use the ISEQ® Trademark is subject to VAT at the standard rate (currently 23%).

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ISRAEL

IMPACT OF NEW EU CUSTOMS REGULATIONS ON NON EU VENDORS

On 1 May 2016 new customs regulations of the European Union are expected to come into force, replacing the existing regulations. The new regulations, known as the Union Customs Code (UCC), are intended to simplify, streamline, and create uniformity and clarity with regard to customs matters in Europe. The UCC is also meant to reduce the need for paperwork and facilitate the switch to an electronic work environment. However, the framework includes some changes that, though still under discussion, could have significant implications for non-EU companies that export to Europe.

One of the proposals concerns the customs value to be applied to the imported goods where no free trade agreement applies. According to the text of the proposed regulations, the value of goods imported to Europe will be determined at the time of acceptance of the customs declaration and on the basis of the transaction that takes place immediately before the goods enter the EU. This is in contrast to EU's current application of the "first sale for export" rule, which considers the value when a series of transactions occur prior to the importation of goods to the EU, such as a transaction between the manufacturer and the distributor (first sale) and a transaction between the distributor and the company importing the goods to Europe (second sale). Under the right conditions, EU customs authorities will recognise the price stated in the first sale as the value for customs, not the value stated in the second sale which is, naturally, higher. In other words, under the proposed regulations, the first sale for export rule will no longer apply.

One of the main arguments being put forward against the UCC is that, in this respect, it is contrary to the principles of Article VII of the World Trade Organisation's (WTO's) General Agreement on Tariffs and Trade 1994, which basically adopts the principle of first sale for export.

The European Commission's response to concerns about cancellation of the first sale for export rules is that eliminating the rule better suits the economic reality that prevails today. According to the EU authorities, determining the value of goods for customs according to the last transaction price more accurately reflects the essence of the overall transaction.

The wording of the proposed regulations also includes a broader interpretation regarding the inclusion of royalties in the value for customs purposes when importing into Europe, and will increase the scope of royalties that count towards the customs value.

The trend of the European Commission to broaden the regulations in ways that generally increase the value of goods for import purposes seems to contradict the efforts EU Member States have made to facilitate imports to their territory and to encourage international trade, for example by providing relief on import VAT.

As already known, import VAT applies generally with the release of the goods from customs supervision and, under the right conditions, it is deductible in the periodic return submitted to the VAT authorities. In cases of a refund claim (when input tax exceeds the transactions tax in a reporting period), the refund may be delayed in accordance with the rules and policies of each country. This creates a timing difference between the import VAT payment date and the date of its receipt back through offsetting input tax.

It should be noted in this regard that there may be a significant gap between the date import VAT for imported stock is paid and the date VAT for sales is collected from customers. Furthermore, for intra-EU supplies no output VAT is collected at all, increasing the chance of a VAT refund return resulting in a financing gap from the time of import VAT payment.

To resolve this issue, some member states offer procedures allowing the reporting of import VAT as output and input VAT in the same periodic VAT return which creates a zero sum game and no financial gap for the VAT.

What about Israel? While Israel's customs law is, in general, formulated in compliance with the WTO Agreements regarding the application of the first sale for export rule, the import VAT financing issue has never been answered. If the Israeli authorities were to "import" mechanisms similar to those applied in various European countries in order to remove this difficulty, this would make the Israeli market more attractive to traders.

Given the proposed changes in Europe, we recommend that companies that sell goods to Europe that may be subject to customs duty and are not covered by a certificate of origin (EUR1) take action to prepare for the forthcoming changes. This applies especially to those who import goods into Europe directly themselves (DDP transactions, for example where title is transferred following the importation in the country of importation) or through local subsidiaries. Given that these changes may have a material impact on their business, such companies may want to examine various alternatives for maximising free trade agreement options.

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ITALY

CHANGES AND SIMPLIFICATIONS MADE TO ITALY'S VAT

Stability Law – Main VAT changes

The 2015 Stability Law (Law n. 190/2014) has introduced numerous changes to Italy's VAT. This article describes some of the more significant ones:

Extension of the reverse charge mechanism

To implement Articles 199 and 199 *bis* of the EU Directive 2006/112, as of 1 January 2015 the reverse charge mechanism is extended to apply to services relating to:

a) Cleaning, demolition, equipment installations, and provision of completion services to "buildings". (Note that under Italy's law the concept of "building" relates to a construction and so it is different from the broader term "immovable property" used in the directive);

b) The transfer of greenhouse gas allowances, as defined in article 3 of EU Directive 2003/87 dated 13 October 2003, so long as the transfer is in accordance with that directive;

c) The transfer of other units (so-called "green certificates", "white certificates", and "guarantee of origin certificates") that may be used by operators to conform with EU Directive 2003/87;

d) Supplies of gas and of electricity to a taxable dealer established in the Italian territory;

e) Supplies of pallets recycled after the first use.

The provisions set out in (b), (c), and (d) above are valid until 31 December 2018.

Furthermore, the reverse charge mechanism has been extended for a four year period on supplies of goods made to hypermarkets, supermarkets, and discount food retailers. This provision is subordinated to specific prior authorisation pursuant to article 395 of EU Directive 2006/112.

Operations with Public Entities: introduction of a "split payment" mechanism

The Stability Law has introduced an innovative mechanism, the so-called "split payment", for supplies of goods and services to the Italian State or any of its Public Entities. Under the split payment mechanism, the recipient of the supply must pay the VAT directly to the Treasury, rather than to the supplier. Though the VAT is paid by the Public Entity, the invoice must still show the VAT and there must be an indication that VAT is being paid by the customer pursuant to art. 17-ter of Presidential Decree 633/72.

The split payment mechanism does not apply to supplies where the Public Entity is liable to tax on the basis of the reverse charge method or where the fees for the provision of services are subject to withholding tax.

The following entities are included in the definition of Public Entity:

- States and State bodies, regardless of whether they have a legal personality;
- Local authorities and consortia established among them;
- Chambers of Commerce, Industry and Agriculture;
- Colleges;
- Hospitals and institutes that provide treatment of a scientific nature;
- Public assistance authorities and charities, as well as social security authorities.

The split payment mechanism applies to operations invoiced as of 1 January 2015 for VAT that is chargeable after that date.

Accommodation facilities and services at "marine resorts"

Application of the favourable 10% VAT rate has been extended to 31 December 2015 on the provision of facilities to allow tourists sleeping in their own pleasure crafts moored at specially equipped waterparks (so-called "marine resort"). The favourable 10% VAT rate also applies to services provided to persons so overnighting at marine resorts.

Administrative simplifications

Legislative Decree No. 175/2014, the so-called *Decreto Semplificazioni*, included various measures aimed at simplifying VAT obligations. Here is a brief summary of some of them:

VAT refunds

The VAT amount that can be refunded without the taxpayer having to provide a guarantee or to meet any other requirements, has been increased from EUR 5,164.57 to EUR 15,000.00. This new threshold applies to the calendar year.

On the other hand, for amounts over EUR 15,000.00 a guarantee still has to be provided and can only be avoided if the following conditions are met:

- The yearly VAT return or the application for the VAT refund is endorsed with a *visto di conformità* (conformity endorsement) or the return is approved by the firm in charge of the taxpayer's accounting controls and auditing.
- The taxpayer provides a statement in lieu of a notarised document confirming that certain capital and corporate requirements are met and that its social security contribution was regularly paid.

It should be noted, however, that a company cannot apply for a VAT refund for over EUR 15,000.00 without providing a guarantee in the following situations:

- The company is seeking the refund because its business is closing down;
- The company has been in business for less than two years;
- The company has undergone tax assessments in the two previous years.

VIES registration

Registration on the VIES system, which allows European companies to operate without applying VAT in connection with exchanges with other European operators, will be available immediately, provided the taxpayer requests it at the same time as the taxpayer seeks a new VAT Number.

In another change to VIES, if a company does not disclose intra-community exchanges using Intrastat forms for four consecutive quarters, the company will be automatically removed from the VIES List. In such a case the Italian Tax Authority will send to the company advance notice of this. The provisions related to VIES registration came into force on 13 December 2014.

Intrastat communication

Intrastat reporting of the provision of intra-community services provided or received by a taxpayer has been simplified, in accordance with art. 264 of EU Directive 2006/112. As a result, taxpayers need only provide the following information:

- Operators' VAT Number;
- Total amount of transactions;
- Type of services made or received (using the ID code included in the specific list);
- Country in which payments are made.

The above provisions apply to Intrastat forms related to period starting 1 January 2015.

New procedures in force for Letters of Intent regarding VAT exempt purchases applied by habitual exporters

As of 12 February 2015, VAT exempt transactions by habitual exporters must be made in compliance with the new VAT rules.

According to new provisions, regular exporters must:

- Issue Letters of Intent (*dichiarazioni di intento*) per the terms of a new form;
- Electronically submit to the Tax Authorities the Letter of Intent issued;
- Send a copy of the already submitted Letter of Intent, together with a copy of the return receipt, to their suppliers.

To carry out operations without applying VAT, habitual exporters' suppliers must make sure that the Letter of Intent has actually been received by the Italian Revenue Authority, in compliance with the provisions of Article No. 8, paragraph No. 1, sub-paragraph c) of Presidential Decree No. 633/72. Receipt of Letters of Intent can be confirmed by accessing a specific section of the Tax Authority's website.

A supplier that issues a zero rated invoice to a habitual exporter without having previously received the relevant Letter of Intent or verification that the Letter of Intent was received by the Italian Revenue Authority is subject to an administrative penalty ranging from 100% to 200% of the VAT due.

Blacklist communication

The threshold under which no monitoring for blacklist operations is required has been raised from EUR 500.00 to an overall yearly amount of EUR 10,000.00. The communication of blacklist operations must be delivered on a yearly basis instead of a monthly basis. This provision has been applicable since 2014.

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LATVIA

LATVIAN GOVERNMENT REJECTS APPLICATION OF REDUCED VAT RATE TO FOOD

The only category of foodstuffs currently subject to application of a reduced VAT rate (12%) in Latvia is specialised food for babies.

Over the past few years, proposals to amend the VAT to allow for application of a reduced VAT rate on other food products were initiated by various political parties and non-governmental organisations. Public discussions took place and the proposed amendments were publicly criticised. Despite the arguments against the proposals, the Cabinet of Ministers in Latvia formally reviewed the matter at the beginning of this year.

The Cabinet of Ministers evaluated and analysed the situation in other EU Member States and calculated the impact the reduced VAT rate would have in Latvia. The Ministry of Finance estimated that application of the reduced VAT to food would have a significant negative effect on the state budget, decreasing government revenues by approximately EUR 194.8 million. Moreover, application and administration of various VAT rates for different categories of products would be burdensome for taxpayers and for the State Revenue Service. As well, it is not clear that the change would achieve the goal of financially supporting less secure people rather than the whole society.

Considering all the circumstances, the government rejected amendments to the VAT that would reduce the VAT rate applicable to food.

So, the scope of goods and services subject to the reduced VAT remains unchanged. And, given that it took several years for the proposed amendments to be discussed and evaluated, it seems unlikely the issue will come up again before the next parliament elections.

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ROMANIA

ROMANIA EXTENDS THE VAT REDUCED RATE TO "ALL INCLUSIVE" ACCOMMODATION SERVICES

As of 20 January 2015 a reduced VAT rate applies to accommodation services. As a result, a reduced VAT rate of 9% (rather than the normal rate of 24%) now applies to all types of tourist packages. Applying the VAT reduced rate of 9% to the cost of accommodation services with half board/full board and "all inclusive" services was negotiated with IMF representatives in December 2014. The budgetary impact of this measure is estimated to be approximately RON 100 million, but the change is expected to attract more tourists to local markets.

Through this change, Romanian authorities have introduced into the law the definition of "accommodation packages". The change is meant to reduce the prices of tourist services with a view toward increasing the number of tourists and, it is hoped, reduce tax evasion in this economic sector.

Before this change, the VAT rate of 9% used to apply to simple accommodations and accommodations where the breakfast was automatically included in the price, as well as to the renting of land for camping facilities.

Effective beginning in 2015, the law was amended so that the following accommodations are subject to VAT at 9%:

- Accommodation without breakfast;
- Accommodation with breakfast included in the total price;
- Accommodation with half board, which can be a combination of accommodation services with breakfast, lunch, or dinner included in the total price;
- Accommodation with full board, which is accommodation services with breakfast, lunch, and dinner included in the total price;
- "All inclusive" accommodation, which is accommodation services with breakfast, lunch, dinner, snacks, and tourist recreational services all included in the total price.

As for what constitutes "accommodation" that qualifies for the VAT reduced rate, it includes: hotels, apartment-hotels, motels, villas, cottages, bungalows, holiday villages, camping, rooms for rent in family houses, river and sea vessels, guesthouses, and other agro tourist units that provide accommodation.

The VAT reduced rate of 9% also applies to persons that re-invoice the cost of accommodation services. So, for example, if a company incurs accommodation costs on behalf of another person, the company that incurred the costs can "re-charge" (in other words, re-invoice) the other person at the same VAT rate they paid.

Travel agents may apply a special regime of VAT (the standard VAT rate of 24% applied to the agency margin/commission, exclusively of VAT) or the VAT rate of 9% applied to the tax base including profit margin. But, if a regular taxable person re-invoices the expenditures related to accommodation services, in other words acts as a buyer-reseller, they must apply the VAT reduced rate of 9% to the exact cost of these operations.

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SLOVENIA

SPECIAL SCHEME FOR OCCASIONAL TRANSPORT OF PASSENGERS IN INTERNATIONAL ROAD TRANSPORT

Passenger transport services are subject to VAT in the country where the transport takes place. As a result, non-Slovenian taxable persons are subject to VAT in Slovenia when they transport international passengers across Slovenia. Because many foreign transporters find the administrative burden of acquiring a VAT identification number in Slovenia high, many have not done so.

As a result, Slovenia has introduced a special scheme aimed at simplifying the administrative obligations applicable to non-Slovenian taxable persons that occasionally provide international passenger road transport across Slovenia. Such persons can make use of the special scheme if they satisfy the following three conditions:

- They occasionally perform international road passenger transport across Slovenia by means of transport not registered in Slovenia,
- They do not claim the VAT deduction or a VAT refund,
- They do not perform any other transactions subject to VAT in Slovenia.

Under the scheme, qualifying foreign transporters must apply for a tax and VAT identification number before providing transport services. This can be done by e-mailing prescribed forms and documents to the Slovenian financial authority. When performing occasional international passenger road transport across Slovenia, the taxable person must have in the vehicle confirmation of their Slovenian VAT identification number (or a copy of the confirmation) or confirmation that they have applied for such a number.

They must file a VAT return electronically on a yearly basis (the tax period is the calendar year). The deadline for filing the VAT return and payment of VAT is the last working day of the month following the tax period.

They must inform the Slovenian financial authority in advance about every passenger transport service they perform under this special scheme. This notification must be in electronic form and it must include the following information: their VAT identification number, registration number of the means of transport, the date when the passenger transport will be performed on Slovenian territory, and the planned route in Slovenia.

The special scheme will be used beginning 1 April 2015 but taxable persons can apply for a VAT identification number beginning 1 March 2015.

The special scheme is less burdensome to qualified foreign transporters than the regular VAT identification process because the special scheme allows qualified taxpayer to:

- Submit an annual VAT return instead of 12 monthly VAT returns, and
- Make one VAT payment per year instead of 12.

But, in deciding whether to apply under the special scheme, foreign transporters should take into consideration the fact that any VAT they paid in Slovenia (for example on fuel) cannot be refunded or deducted.

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UNITED STATES

UNITED STATES SALES TAX AND DIGITAL GOODS

There is no consistent approach to the indirect taxation of digital products in the US. Steve Oldroyd outlines the key issues for businesses trading in the United States e-commerce market.

Introduction

As outlined in my previous articles on US Sales and Use taxes, the United States does not have a value added tax at either the federal or the state level. Sales and use taxation in the United States is operated independently by each of the 50 states. Sales taxes are administered by every state except Alaska, Delaware, Montana, New Hampshire, and Oregon. Although in these five states a state-imposed general transaction tax is not present, localities may tax transactions or there may be a state-imposed tax on specific items (e.g. gas, car rentals, alcohol). The sales tax rates vary from 2.9% to over 10%.

New VAT rules in the European Union

In 2015 new VAT rules came into effect in the EU, which mean that telecommunications, broadcasting and electronic services are now taxable at the place where the customer is resident, not where the supplier is based. This means that the non EU supplier selling into Europe will have to deal with 28 different VAT rates and may have to register for VAT and file VAT returns in 28 different EU Member States. In the United States we have many of the same taxing and sourcing challenges regarding digital goods and services.

United States: overview of digital goods

The United States, along with the rest of the world, has embraced the value and convenience of the e-commerce marketplace. We purchase our music, books, movies, apps, and other online products and services and have them seamlessly delivered directly to our phones, tablets or other storage devices. In the last decade alone, billions of books, movies, and apps have been electronically delivered to consumers around the world.

In the US, many states believe that the recent downturn in their tax revenue collections has been caused by consumers increasing their online purchases of digital goods. Therefore, states have been looking for ways to impose taxes on digital products or electronic transactions. The states have applied a variety of ways to tax digital goods. Some states simply use their existing sales and use laws. Other states have enacted new laws specifically aimed at the taxation of digital products that are either accessed or downloaded over the Internet.

What is a digital good?

Digital goods, sometimes referred to as electronic goods or e-goods, is a generic term that is used to describe any goods that are stored, delivered, and used in an electronic format. Digital goods are shipped electronically to the consumer through e-mail or downloaded from the Internet. A digital good is usually received as an e-mail attachment or is downloaded from a secure web-site link. The most common examples of digital goods include e-books, music files, software, digital images, and manuals delivered in electronic format. In reality, a digital good could be any item that can be delivered in an electronic format. However, transactions that involve electronic banking are traditionally viewed as outside the definition of a digital good. Also, digital goods generally do not include online web-hosting, software, data processing, or information services.

Taxation of digital goods under the states' sales tax rules

Approximately 20 of the 45 states currently do not have rules to tax digital goods because they either do not have the ability to tax electronically delivered products or they have specifically identified digital goods as not subject to sales tax.

The remaining states do not agree on a universal methodology for taxing a digital good. There are four general classifications for a State to have the ability to tax to a digital good:

1. Enumerated digital products
2. Tangible personal property
3. Tangible functional equivalents
4. Services.

Enumerated taxable digital products

Some states have specifically identified and defined which digital goods are subject to sales tax. For example, one State has identified digital property to include these items that are delivered or accessed electronically:

- An audio work;
- An audiovisual work;
- A book, magazine, newspaper, newsletter, report, or other publication; and
- A photograph or greeting card.

Therefore, if the digital good is not specifically identified above then the product would not be categorised or taxed as a digital good in the State.

Tangible personal property

Even though many states have not specifically identified digital goods as subject to tax, some of these states are imposing a sales tax-based provision that applies to the taxation of tangible personal property. For example, all states impose a sales tax on tangible personal property. Many of these states have tax rules that define tangible personal property to include "personal property that may be seen, weighed, measured, felt, touched, or that is in any **other manner perceptible to the senses**". In order to tax digital goods, many states have characterised digital goods under this very broad definition of tangible personal property "anything perceptible to the senses".

Tangible functional equivalents

Some states will impose sales tax on a digital good if the product has a tangible personal property equivalent. These states have taken the position that the "method of delivery" of the product or good is irrelevant. Therefore, if the product would have been taxable if delivered in a tangible format, then the product remains taxable even if delivered through electronic means.

Services

Some states do not tax digital products as tangible personal property but instead classify them as taxable services.

This contrasts strongly with the VAT position in the European Union, which treats digital products as supplies of taxable services in all 28 member states.

Sourcing of digital goods or services

As difficult as it is to determine whether a digital good is subject to sales tax, it can be equally challenging to determine how to source the sale of the digital good or service. Unfortunately many states have not directly addressed the sourcing rules for digital goods and are instead relying on the sourcing rules applicable to tangible personal property. The lack of a uniform digital good sourcing rule for all states to follow has created an environment that is encouraging double taxation. That happens where two different states are legally entitled to tax the same digital good transaction.

The Streamline Sales Tax Project (SSTP) has tried to create uniform definitions of digital goods and sourcing rules. They have received input from over 40 states on this topic but only about a dozen states have currently adopted the SSTP sourcing rule.

Under SSTP rules, sales of digital goods are sourced as follows:

- Source the sale to the seller's place of business if the purchaser receives the digital good at the seller's place of business.
- Source the sale to the location where the purchaser receives the item if the purchaser receives the item at a location other than the seller's place of business.
- Source the sale to the purchaser's address available in the seller's business records (use of this address cannot represent bad faith).
- Source the sale to the purchaser's address obtained at the time of sale (e.g., purchaser's payment instrument).

Should the sourcing rules above not work, default to the origin sourcing rules: digital goods are sourced to the address where the item is first made available for transmission by the seller.

Looking to the future

To resolve the complexity of the taxation and sourcing issues related to digital goods, the United States Congress had introduced the Digital Goods and Services Tax Fairness Act of 2013. This bill was designed to promote neutrality, simplicity, and fairness in the taxation of digital goods and digital services. However, this bill and similar bills that were submitted in previous years have not been enacted by the United States Congress. We will need to wait to see if Congress can provide the necessary legislation in the near future to help provide uniform rules for the taxpayers to follow.

In today's business environment where the position on the taxability of digital goods varies in each state, sellers of digital goods must take the responsibility upon themselves to perform a state by state analysis to determine the sales tax treatment of their digital product. Sellers should carefully review the individual statutes, regulations, rulings, and policy statements for each state they are conducting business in to make sure they are compliant with its sales tax laws.

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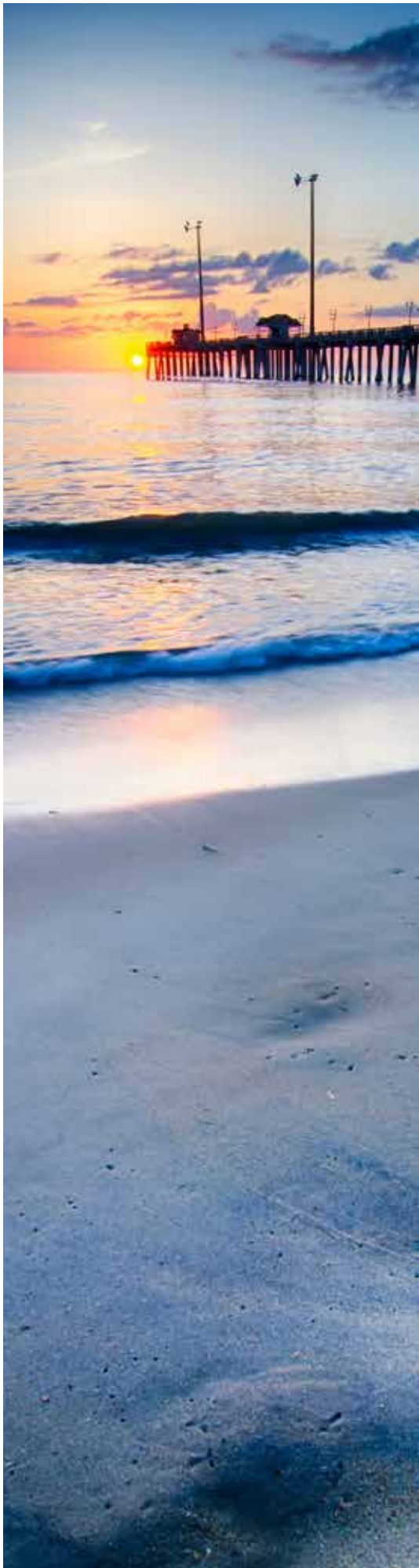

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 25 March 2015.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Euro (EUR)	1.00000	1.09383
Romanian New Lei (RON)	0.22674	0.24806

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