Landmark ECJ judgment in cross-border VAT grouping case

This month’s edition of VAT News highlights the European Court of Justice’s decision on the VAT treatment of supplies from overseas head offices to an EU VAT-grouped branch; the registration opening date announcement for the UK Mini One Stop Shop prior to the 2015 place of supply rule change; extension of priority refunds to an additional category of businesses in Italy; and new reporting requirements for companies operating under the temporary importation scheme, IMMEX, in Mexico.

European Court of Justice
The ECJ held that VAT is due on supplies from a non-EU parent to a branch, when the branch is a member of a VAT group in the EU

VAT News, Issue 17 (May 2014) provided commentary on the Advocate General’s opinion in the matter of Skandia America Corporation USA group (C-7/13), that services supplied within a Swedish VAT group should be taxed in Sweden, even though the services were acquired in the US by a US parent and supplied by a Swedish branch of the US parent. The ECJ ruled that, in principle, when there is an EU branch of an overseas entity in a VAT group, charges made from the overseas head office to the branch are not to be disregarded for VAT purposes as previously understood.

The taxpayer, Skandia America Corporation USA (Skandia), a branch of a US parent, consumed software and software maintenance
services acquired by its US parent company. The Swedish branch is registered for VAT in Sweden as a member of a VAT group. Typically, supplies between a head office and its branch are not subject to VAT. In addition, the supply of most goods and services between VAT group members are disregarded for VAT purposes.

The costs of the services consumed by the branch were reallocated at cost +5% for transfer pricing purposes. The Swedish branch, through its local resources, supplies such services to members of the VAT group. The Swedish tax authority registered the US entity as a non-established taxable person and made an assessment for output VAT due on the supply of the services.

On appeal, the Swedish court decided to refer the following questions to the ECJ for a preliminary ruling:

- Do supplies of externally purchased services from a company’s main establishment in a third country (in this case the US) to its branch in an EU country (in this case Sweden), with an allocation of costs for the purchase to the branch, constitute transactions subject to VAT if the branch belongs to a local VAT group?

- If the answer to the first question is yes, is the purchaser of the services required to self-account for VAT on a reverse charge basis when the supplier (i.e., the US company) is not established in the same country as the purchaser?

The ECJ ruled that, for VAT purposes, when services are received by a branch from its head office and that branch is a member of a VAT group, those services are considered to be supplied to the VAT group as a whole. Although this case considered the importation of services from a country outside of the EU, the principles may equally apply within the EU.

Specifically the court ruled that:

- Articles 2(1), 9 and 11 of Council Directive 2006/112/EC mean that supplies of services from the head office of a business located in a non-EU country to a branch established in the EU that is part of a VAT group constitute taxable transactions.

- According to Articles 56, 193 and 196 of Council Directive 2006/112/EC, the VAT group becomes liable for VAT payable on the supply by the head office to the branch.

The ECJ has distinguished between ‘intra entity’ (i.e., branch and its head office neither of which are part of a VAT group) transactions that remain outside the scope of VAT, and transactions which fall within the scope of VAT due to a VAT group being in place (i.e., the VAT group, of which the branch or head office is a member, is considered a separate taxable person to the head office/branch which is not part of the group).

The full implications, including the financial cost of this decision for those businesses affected, are not clear at this point in time. The individual tax authorities in each EU member state need to consider the ECJ’s decision and consider how it impacts local VAT grouping legislation. Businesses with international head office/branch structures that use EU VAT grouping provisions should pay close attention to how the tax authorities in those EU member states interpret and apply the judgment in local legislation.

**European Union**

**United Kingdom**

*Mini One Stop Shop registration opens for business October 20, 2014*

Effective January 1, 2015, the place of supply rules for business to consumer (B2C) supplies of telecommunications, broadcasting and electronic services will be sourced to where the customer is located. This change will require businesses providing such
supplies to private customers to charge and account for VAT in each EU Member State in which the customer is located. Such a requirement would ordinarily place a significant administrative burden on such businesses by requiring them to register and file VAT returns in multiple EU Member States. To ease this burden, the mini one stop shop (MOSS) is a mechanism that allows a business to register in one EU member state of choice only. Under the MOSS scheme, the taxpayer is permitted to file a single VAT return containing information on the VAT charged and collected from private customers in all EU Member States. Rather than submitting up to 28 separate VAT returns in each EU Member State, a single return can be submitted to the EU Member State in which the taxpayer has registered under the MOSS scheme.

The UK recently announced that businesses can register for the MOSS in the UK beginning October 20, 2014 (although the system itself will not go live until January 1, 2015). The 2015 place of supply rule change is drawing near and affected businesses with a potential requirement to register in a number of EU Member States should begin to consider the options for registering under the MOSS scheme in the EU Member State of its choice.

**Greece**

*Changes to annual and periodic VAT returns*

The Greek Ministry of Finance has implemented changes to the reporting requirements for both the annual VAT return and the periodic VAT returns. For tax years ending after January 1, 2014, the submission of annual VAT returns is no longer required.

The periodic VAT return has been amended, effective for filing periods after January 1, 2015. To date, the Ministry has not issued specific guidance on how the amended periodic VAT return should be completed, however, the layout of the VAT return has changed considerably. Details on how the return should be completed will be forthcoming.

Businesses registered for VAT in Greece should note these changes in filing requirements.

**Italy**

*Priority VAT refunds for manufacturers of aircraft, spacecraft and related devices*

The Italian tax authorities have expanded the eligibility requirements for companies allowed to apply for priority VAT refunds. Businesses with the activity code 30.30.09 (manufacturers of aircraft, spacecraft and related devices) may now apply for priority VAT refunds within three months of the request submitted with the annual VAT return, or via quarterly refund claims.

Beginning in the third quarter of 2014, businesses falling within the detailed activity code have to meet all of the following conditions to obtain a priority VAT refund:

- The business must have been carrying out business in Italy for at least 3 years.
- The VAT refund request has to be a minimum of 10,000 EUR in the case of an annual VAT return, or 3,000 EUR in the case of a quarterly refund.
- The VAT refund request has to be at least 10% of the total VAT amount accounted for on purchases and imports in the period to which the refund refers.
- The business carries out one of the following activities for an amount greater than 25% of the total amount of all transactions carried out:
  - activities which are exempt with a right to credit, i.e. export supplies
  - activities related to export supplies
  - activities of international services or services connected with International trade.
Businesses that fall within the activity category 30.30.09 that have difficulties obtaining VAT refunds in a timely manner should take note of this change in policy.

**Spain**

*Proposed reforms to the VAT system for 2015*

Draft bills presented to the Spanish Council of Ministers propose a number of VAT changes, including, but not limited to:

- The rules are amended regarding the place where telecommunication, radio and television services are provided to individuals, which will be at the recipient’s establishment effective January 1, 2015.
- The ‘reverse charge’ mechanism is established for supplies of mobile telephones, video games consoles, laptop computers and digital tablets.
- Health products and medical equipment will be taxed at 21%. As an exception, some pharmaceutical products, feminine hygiene products, contraceptives and products to relieve or treat physical, mental, intellectual or sensory ailments listed in an appendix will continue to be taxed at the reduced rate of 10%.

Taxpayers with operations in Spain should take note of the proposed VAT amendments effective January 1, 2015.

**Americas**

**Mexico**

*New reporting requirements for VAT certified IMMEX companies*

The Mexican tax authorities have established a new reporting requirement for companies operating under the temporary importation scheme, IMMEX, that have been granted VAT credit for temporary importations. IMMEX registered companies are now required to report to the Mexican tax authorities the balance of importations on December 31, 2014. The deadline for completing this report is January 15, 2015. Furthermore, such companies are now required to provide the export status report of goods temporarily imported in to Mexico under the IMMEX program, monthly or once every other month, to allow the Mexican Customs authority to update the temporary importation open balance for each IMMEX company.

The new requirements create an urgent need for VAT certified IMMEX companies in Mexico to reconcile the difference between the physical inventory and the customs system (Annex 24 system) inventory.

**Africa**

**Uganda**

*Changes announced following National budget for 2014-2015*

The Uganda National Budget for fiscal year 2014-2015 has been announced and a number of changes are proposed affecting the VAT rate applicable to certain goods and services. VAT exemptions and zero rating have been repealed for a number of goods and services including:

- new computers, desktop printers, computer parts and accessories, software and software licenses
- liquefied petroleum gas
- insurance services, exempt life and medical insurance
- printing services for educational materials
- supply of machinery and tools for agriculture.

Taxpayers with operations in Uganda should take note of the proposed VAT amendments announced in the budget.
Let’s talk

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