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Global VAT Newsletter

Members of the MGI Worldwide Global VAT Group set out some of the recent changes to VAT in their respective countries.

Poland: Law developments

New deadline for the introduction of e-invoices

The Polish Ministry of Finance announced a new timeline for the implementation of an obligatory National E-invoicing System (KSeF) in Poland. For large enterprises, the new implementation date will be 1 February 2026. For other entities, the new implementation date will be 1 April 2026.

In announcing the new dates, the Minister emphasised the critical importance of the KSeF in protecting the tax system. Nonetheless, implementation will be postponed to help improve stability of the economy, as several major flaws were detected in the original system during systems audits.

The Minister of Finance assured that he will make every effort to ensure that taxpayers who have already implemented KSeF will not have to make significant changes and incur additional costs as a result.

Reduction of VAT rate to 8% for beauty industry services

Starting 1 April 2024, a reduced VAT rate of 8% will be applied to services in the beauty industry. The reduced rate will apply to beauty treatment, pedicure, and manicure services (including those rendered at home) and other beauty treatment services.

End of the anti-inflation shield on food products

The Polish Ministry of Finance announced that the 0% VAT rate on basic food products such as fruit, vegetables, meat, dairy products and cereal products will not be extended after 31 March 2024.
The reduction of VAT on basic food products was effective from 1 February 2022 as part of the government's "Anti-Inflation Shield" package and was due to expire on 31 December 2023, however it was further extended till the 31 March 2024.

As of 1 April 2024, the VAT rate for the basic food products will return to 5%.

Poland: Important judgements of CJEU in Polish cases

The ruling of the Court of Justice of the European Union (CJEU) of 8 May 2024 (C-241/23) – VAT taxable amount in the case of a contribution in kind

The Court held that the taxable amount under Article 73 of the VAT Directive should be determined in accordance with the consideration actually received. Thus, if the parties agreed that the consideration would be the issue value of the shares, it is this value that should constitute the taxable amount.

Poland: Important judgements of CJEU in Polish cases

The ruling of the CJEU of 21 March 2024 (C-606/22) – Correction of overstated VAT in B2C sales is possible

The Court of Justice of the European Union, in its judgment of 21 March 2024 (ref. no. C 606/22), ruled that in the light of EU regulations, an entrepreneur has the right to correct sales taxed with an overstated VAT rate – also when such sales were made to consumers (in a B2C relationship) and the transaction was documented by the seller with a fiscal receipt.

The ruling of the CJEU of 30 January 2024 (C-442/22) – Tax consequences of issuing a false invoice

The Court ruled that where an employee of a VAT taxpayer has issued a false invoice showing VAT using the employer's identity as a taxpayer without the employer's knowledge and consent, the taxpayer should not be liable to pay VAT unless the taxpayer failed to exercise the due diligence reasonably required to control the actions of the said employee.

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Italy: VAT treatment of provision of online gaming services

With the ruling no. 416 of 4 August 2023, the Italian Tax Authorities clarified the VAT regime to be applied to the following services provided indirectly by a company to "private consumers", availing of professional gamers as agents:

- "avatar enhancement," which is the request of customers to find third parties willing to play on their behalf for the advancement of their avatar's level within an online video game;
- "coaching," or hours of instruction that customers can purchase from professional gamers.

The ruling clarifies that these services do not fall within the electronic services definition (Art. 7 of EU Regulation No. 282/2011). The Italian Tax Authorities stated that:

- "avatar enhancement" must be qualified as a complex service territorially relevant for VAT purposes in Italy (place where the supplier is located), pursuant to art. 7-ter paragraph 1 letter b) of Presidential Decree 33/72, with the application of the ordinary rate of 22%
- "coaching" falls within the scope of teaching activities (interactive and non-automated) that are carried out in the territory of the State when they are materially carried out there pursuant to Art. 7-quinquies paragraph 1 letter a) of Presidential Decree 633/72.

Irrelevance of tax representative for the right to VAT refund

The Italian Supreme Court, in its decision no. 24207 of 9 August 2023 upheld that taxpayers who do not have their domicile or residence in Italy but in another EU member state and appoint a tax representative in Italy have the right to a VAT refund.

The ruling, which reiterates the conclusions already present in the decision of the same Italian Supreme Court no. 21684 8 October 2020, is in line with EU case law.

Indeed, the European Court of Justice has stated, in the past decision on case C-323/12, that the mere appointment of a tax representative is not sufficient to consider that the taxable person has "a structure with a sufficient degree of stability" and personnel in charge of managing its economic activities.

Art. 38-ter of Presidential Decree no. 633/72, as it read during the facts of the case (the case relates to a VAT refund for the year 2008), allowed a VAT refund to persons domiciled or resident in Member States who lacked not only a permanent establishment but also a tax representative in Italy; the European courts upheld that this the rule was contrary to Directive 79/1072/EC (later repealed and replaced by Directive 2008/9/EC) in its part mentioning the tax representative.

The Italian Supreme Court confirms in its judgement that the presence of a tax representative does not affect the right to a VAT refund.

The head-office is not entitled to VAT refund if it has a permanent establishment in Italy

According to the Italian Tax Authorities (ruling reply no. 87 of 8 April 2024), the existence of a permanent establishment in Italy prevents the foreign head-office from claiming a VAT credit refund.

Moreover, if the head-office is an English-registered entity belonging to a VAT Group in the United Kingdom, the services provided to it by the permanent establishment are irrelevant for VAT purposes.

Hence, it is not possible to recover the credit under Article 30(2)(d) of the Presidential Decree 633/72; furthermore, the VAT refund under Article 38-ter of Presidential Decree 633/72, which is allowed for purchases and imports directly made by the non-resident in the territory of the Italian State, is not applicable.

Indeed, in the case examined in the ruling, the passive transactions are attributable exclusively to the permanent establishment and only the permanent establishment (not the head-office) can claim the refund of the excess, if the conditions are met.

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Germany: Will the ECJ continue its path on strengthening the principles of a uniform supply?

This article focuses on the submission to the European Court of Justice (ECJ) by the Federal Fiscal Court (BFH XI R 11/23 dated 10 January 2024) regarding the applicability of the principles of a uniform supply. The pending case deals with services in connection with overnight accommodation services but may be transferred to various other constellations where multiple supply elements are involved.

Considering previous decisions of the ECJ one might get the impression that the ECJ intends to let the principles of a uniform supply overrule national "lex specialis" provisions allowing an individual tax treatment. The outcome will be very relevant for the current tax practice. In essence, this submission to the ECJ deals with the following:

- It is questionable, whether the reduced tax rate for overnight accommodation services also applies to ancillary services that are not exclusively related to the overnight stay (such as breakfast services or the provision of parking spaces, WLAN provision) and are already included in the overnight accommodation charge.

- The current practice in Germany is, that according to sec. 12 par. 2 no. 11 sentence 1 VATL overnight accommodation services are taxed at a reduced rate. Whereas breakfast services, the provision of parking spaces and the access to the wellness and fitness area are taxed at the regular tax rate sec. 12 par. 2 no. 11 sentence 2 VATL - because these services are not directly related to the overnight stay (this view must be questioned, see additional ECJ referrals at the end of this article). It is not decisive whether this fee is separately charged or not.

- The Federal Fiscal Court initially suspends the proceedings XI R 11/23, XI R 34/20 and refers the matter to the ECJ by means of a request for a preliminary ruling. The Federal Fiscal Court asks for clarification as to whether the taxation of the above-mentioned ancillary services should also fall under the reduced VAT rate although these services are not exclusively related to the overnight accommodation service.

The question referred to the ECJ must be seen against the background of the basic VAT principle that ancillary services should share the VAT treatment of the underlying main supply. If the main service of the overnight accommodation is taxed with the reduced rate, the dependent ancillary services to the overnight accommodation service may consequently also be taxed with the reduced rate.

A brief historical overview on the principle of a uniform supply

ECJ dated 6 July 2006 C-251/05 Talacre Beach Caravan Sales

- The ECJ has confirmed the possibility of different tax rates for the same revenue.

- However, the ECJ has also strengthened the applicability of the principle of a uniform supply.

ECJ dated 18 January 2018 C- 463/16 Amsterdam Stadion

- According to the ECJ, a uniform service consisting of a main component and an ancillary component can only be taxed as one single supply at one tax rate. A single service cannot be artificially split up. The applicable tax rate is identified in accordance with the main component of the supply. As per the ECJ, this is also applicable if the price of each component can be determined.

ECJ dated 4 May 2023 C- 516/21 Finanzamt X

- Considering the judgement of the ECJ dated 18 January 2018 C- 463/16 Amsterdam Stadion, the Federal Fiscal Court asked the ECJ whether sec. 4 no. 12 sentence 2 VATL violates EU law. In its decision dated 4 May 2023 C- 516/21 Finanzamt X, the ECJ ruled that the rental of operating equipment in connection with the rental of buildings may be considered as a uniform supply falling under the VAT exemption.

What does this mean for entrepreneurs?

It is questionable to what extent the above mentioned ECJ rulings can be transferred to the underlying ECJ referral in connection with hotel revenues. It will be interesting to see whether the ECJ will further continue its current path which could mean that the underlying ancillary services in connection with overnight accommodation services should also fall under the reduced tax rate – as single service which cannot be artificially split up.

Please be aware that further submissions to the European Court of Justice (ECJ) by the Federal Fiscal Court dated 10 January 2024 are pending (Federal Fiscal Court XI R 13/23 and XI R 14/23). These pending proceedings also concern the question whether the taxation of ancillary services should also fall under the reduced VAT rate although these services are not exclusively related to the overnight accommodation service.

We recommend that same or similar scenarios involving ancillary services, which may or may not share the VAT treatment of the underlying main supply, should be kept open with reference to the submission by the Federal Fiscal Court to the ECJ on 10 January 2024.

With our team of experienced VAT specialists, we are able to provide the support that our clients need. Therefore, please let us know in case you wish our support from a German and/or EU VAT point of view.

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Denmark: New requirements of information on the Danish VAT return

If you have VAT-registered clients in Denmark having both VAT exempt and subject to VAT activities, we recommend that you pay a new requirement in Denmark as those clients are required to give information on the Danish VAT return regarding the VAT exempt activity.

What information must be reported?

The information required is:

- The amount of VAT free sales in the previous financial year
- The deduction percentage used by the company during the settlement period in question
- The end date of the last year's accounting period

For example, a company that has an accounting period from 1 January to 31 December and that has had VAT-exempt activity in the financial year 2023 must provide information about the VAT-exempt revenue for the financial year 2023. The deduction percentage used in the financial year 2024 must be stated and the end date for the last year's accounting period will be 31 December 2023.

This information must be reported once a year on the VAT return which includes June. The first VAT return this applies to will be the VAT period in 2024 which June 2024. For companies who has a quarterly filing the information should be given on the VAT for Q2 2024 (deadline on 2 September 2024).

Please note that these requirements do not apply to transactions included by the reverse-charge rules etc. included by article 44 or 138 in the EU-VAT Directive.

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