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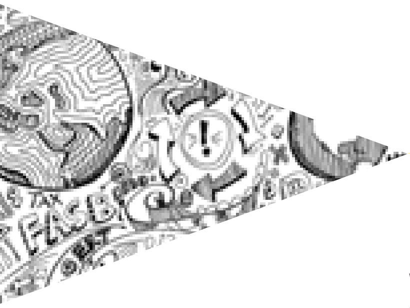
VAT newsletter



Introduction

Welcome to the first issue of Ernst & Young LLP's 2014 *VAT Newsletter* for the US. These newsletters cover a variety of topics, as VAT can impact businesses in many ways. Approximately 150 countries around the world now have a VAT, goods and services tax (GST), consumption tax, service tax or similar VAT, and the laws and regulations are constantly changing. We use this newsletter as a way of informing you of significant changes taking place.

At the end of this newsletter you will find contact details for the senior members of our team who can help answer any questions you may have about the articles in this newsletter, or any other VAT questions.

We are interested in your feedback on the items covered and what topics you would like to see covered in the future. Please provide any feedback to Howard Lambert at howard.lambert@ey.com.

Summary of items included in this newsletter

EY

Building a better working world

Global

EY's *Indirect Tax Briefing*, Issue 9

"Recent media reports indicate that the global economy is improving. However, this development has not halted the reliance by governments around the world on indirect taxes to raise revenue," says Philip Robinson, Global Director of Indirect Tax. You can access the Briefing here.

Americas

Brazil — Sao Paolo expands VAT breaks for machinery, manufacturing

The tax department of the state of Sao Paulo will increase the number of companies that qualify for a reduction in the state VAT on domestic sales of industrial machinery and equipment. Half of Brazil's industry is located in the state, which also is home to a majority of the country's multinationals.

Peru — VAT withdrawal system: formal requirements adjusted

The tax authority's Resolution No. 317-2013-SUNAT was published in the *Official Gazette* on 24 October 2013. The resolution took effect from 1 November 2013.

This latest resolution modifies the tax authority's resolutions No. 183-2004-SUNAT, 266-2004-SUNAT and 073-2006-SUNAT, which regulate the VAT withdrawal system. The main changes introduced are related to the:

- Inclusion of the tax period as part of the minimum information required in the certificate of payment
- Use of the same withdrawal form for several payment receipts only when all of them belong to the same tax period
- The establishment of the tax period as a rectifiable formal requirement

According to the regulations of the Peruvian VAT withdrawal system, the tax authority is able to collect the withdrawn VAT (deposited in a bank account opened in the name of the taxpayer) and use the collected amounts to cancel any tax debt owed by the taxpayer, provided that any specific situations foreseen in the law for such collection occur.

One of these situations could occur where an inconsistency arises between the amounts of the transactions subject to the VAT withdrawal that were declared by the taxpayer through tax returns and the amounts contained in the certificates of payment/deposit of the VAT withdrawals themselves.

Resolution No. 317-2013-SUNAT has specified that in the case of inconsistency referred to above, the actual VAT withdrawal should be determined according to the tax returns and the certificates of payment/deposit corresponding to transactions that belong to the same tax period.

Asia-Pacific

China — Administrative measure for VAT exemption on cross-border services

The Chinese State Administration of Taxation (SAT) has recently released SAT Announcement [2013] No. 52 (Circular 52), which sets out the trial measures for the VAT exemption of cross-border services. Circular 52 is dated 13 September with an effective date of 1 August 2013.

Companies, including most multinational corporations set up in China, would be affected by this circular, as it has set out the administrative procedures for companies providing VAT-exempt cross-border services to be registered with their tax bureau. This circular not only applies to taxpayers that have not obtained the VAT exemption but also to companies that have successfully obtained temporary VAT exemption from their in-charge tax bureau before the issuance of this circular.

Click here to access the Ernst & Young (China) Advisory Limited VAT alert.

Korea — Tax Revision Bill 2013

The VAT changes as part of the Tax Revision Bill 2013 can be summarized as follows:

- VAT on hotel accommodation for foreign visitors will be refunded for one year between April 2014 and March 2015.
- VAT will apply to cosmetic surgeries from 1 January 2014.
- VAT credits applied to processed food made from tax-exempt agricultural and fishery products will be limited to 30% of revenues from 1 January 2014.
- VAT credits for recycled product purchases will be reduced from 1 January 2014.

New Zealand — Review of low-value import threshold

Similar to many jurisdictions, New Zealand is currently trying to address the difficult issue of the indirect taxation of low-value imports, particularly in light of the explosion of online shopping and digital products from overseas suppliers. With a formal review under way and non-compliance in the spotlight, New Zealand appears ready to make changes.

Current indirect tax treatment of low-value imports

New Zealand adopts a unique approach by using an amount of duty method for determining the low-value import threshold, rather than using a consignment value. The current threshold is NZ$60 (approximately US$50) of duty including goods and services tax (GST). If the duty is less than the threshold amount, the goods can be imported into New Zealand free of any charges from New Zealand Customs. If the duty is equal to or above the NZ$60 threshold amount, then duty, GST and an import entry transaction fee will be imposed on the importer.

In practice, this means that duty-free goods with a consignment value of up to NZ$399 (approximately US$330) in value (including freight and any associated insurance) can be imported free of any changes (given the current GST rate of 15%). If the goods are subject to duty, then the de minimis threshold will apply at a lower consignment value (based on the product's applicable rate of duty). The difficulties in making this calculation led Customs to launch an online tool (www.whatsmyduty.org.nz) to assist consumers buying goods online.

Digital products (e.g., music downloads and digital books) are generally regarded as services for GST purposes and are taxed through the reverse charge mechanism. This mechanism only applies to end consumers in New Zealand that import more than NZ$60,000 (approximately US$50,000) of digital products per year, which is the level that requires GST registration. As such, the reverse charge often has very limited practical effect in the context of online shopping of digital products.

Review of the low-value import threshold

In 2011, New Zealand Customs reviewed the low-value import threshold. No changes were made as a result of the review, except to increase the threshold amount to take into account the increase in the standard GST rate from 12.5% to 15%.

However, the low-value import threshold is already under review again by New Zealand Customs, Treasury and Inland Revenue. A Government Decision Document is expected to be released shortly. This review appears to be a consequence of the significant increase in online shopping; lobbying by the local retail industry; and debate concerning base erosion, profit shifting and indirect taxation. In this respect, the current review includes an assessment of the indirect tax treatment of products that can be downloaded from the internet and the cross-border sale of goods.

Some of the options widely covered in the media debate on online shopping include:

- Abolishing or reducing the low-value import threshold and requiring consumers to pay indirect taxes at a point of collection of the goods from New Zealand Customs or New Zealand Post
- Imposing requirements on credit card companies and payment solution providers to charge and collect indirect taxes on Internet transactions
- Requiring overseas suppliers to register for GST by changing the place of supply rules in New Zealand

Notwithstanding the conclusions of the current review, it is clear that New Zealand Customs is getting ready for potential changes. The Border Processing (Trade Single Window and Duties) Bill was introduced to Parliament on 1 July 2013 and contains a proposed amendment that will empower the Comptroller of Customs to prescribe a valuation method (i.e., not necessarily based on an amount of duty) and a low-value threshold amount below which duty and GST need not be collected.

Non-compliance by overseas suppliers in the spotlight

New Zealand Customs recently completed an operation to examine consignments cleared through the use of Electronic Cargo Information, which is designed for low-value imports. Out of 2,562 consignments, Customs identified 733 (almost 30%) that were incorrectly declared as low-value imports.

The Minister of Customs stated in a media release issued on 9 September 2013: "If this operation is anything to go by, the loss of revenue adds up to millions of dollars a year. This is an unacceptable abuse of the express pathway."

Customs has increased the monitoring of goods being processed through the Electronic Cargo Interchange, and we anticipate that the agency will seek to use its full power in cases of non-compliance. In this respect, it may be difficult for reputable overseas suppliers to distinguish genuine mistakes from cases involving fraud. This provides a timely reminder for overseas suppliers to regularly review their processes and communications concerning the sale of goods through the internet and the way in which these goods are declared for Customs purposes.

Europe

EU — 2015: Commission publishes practical guidelines for businesses on new VAT rules

On 29 October 2013, the Commission published practical guidelines to prepare businesses for the new VAT rules for telecoms and e-services, which will enter into force in 2015. The aim is to help businesses to be fully prepared on time for the changeover, whereby VAT will be charged where the customer is based, rather than where the seller is.

A one-stop shop will enable telecoms, broadcasting and e-services businesses to comply with all of their VAT obligations in all Member States from their country of registration. This is consistent with the Commission's goal of reducing tax obstacles and administrative burdens for cross-border companies in the single market.

The guidelines focus on the information that will be requested to register and account for VAT, the formats in which it will be requested, the submission deadlines and all practical details on the payments. With this information, businesses will able to properly prepare their processes and configure their IT tools to collect the information that they will have to submit from February 2015. Additional guidelines will be published next year on the new place of supply rules.

For the guidelines, see document: "One-stop-shop guidelines."

European Commission/Council — Proposal for a standard EU VAT return

On 23 October 2013, the European Commission tabled a legislative proposal (COM(2013) 721) for a standard EU VAT return. The aim of this initiative is to reduce administrative burdens for businesses, ease tax compliance and make tax administrations across the EU more efficient. To this end, the proposal envisages a simplified and uniform set of information that businesses will have to provide to tax authorities when filing their VAT returns, regardless of the Member State of submission. The standard VAT return, which will replace national VAT returns, will ensure that businesses are asked for the same basic information, within the same deadlines, across the EU.

Specifically, the standard VAT return will have only five compulsory boxes for businesses to complete (chargeable VAT, deductible VAT, net VAT amount (payable or receivable), total value of input transactions and total value of output transactions). In addition, Member States will be entitled to ask for up to 21 boxes of additional standardized information, covering, for example, the split between tax rates or details of cross-border transactions.

The Commission considers that this is a vast improvement on the current situation, whereby some Member States require up to 100 information boxes to be completed. The standard VAT return will have to be submitted in the language of the Member State of submission. However, since the content of the information boxes will be the same in all Member States, and the description will be available in all EU languages, the Commission envisages that it will be easy to understand what is expected or to file a return in a foreign language.

Most businesses will file the standard VAT return on a monthly basis, while smaller businesses will only be required to file on a quarterly basis. The requirement to submit a recapitulative annual VAT return, which some Member States currently demand, would be abolished. The proposal also encourages electronic filing, as the standard VAT return will be allowed to be submitted electronically throughout the EU.

The Commission's proposal will have to be adopted by Member States in the European Council, after consultation of the European Parliament. On this basis, the Commission envisages that the proposed Directive should enter into force on 1 January 2017.

The Commission's press release, a set of frequently asked questions and the proposed Council Directive can be accessed by clicking here, here and here respectively.

EU — VAT rates in the EU as of 1 January 2014

The European Commission has published the rates of VAT applicable in the EU as at 1 January 2014. The document can be accessed here.

EU — Publication of the 2014 version of the Combined Nomenclature

On 31 October 2013, the European Commission published the 2014 version of the Combined Nomenclature. Specifically, Commission Implementing Regulation (EU) No. 1001/2013 of 4 October 2013, which contains the 2014 Combined Nomenclature, was published in the *Official Journal of the European Union*, L 290 of 31 October 2013.

All goods imported into or exported from the EU must be classified for Customs purposes. Each separate product is assigned a particular classification code. The Combined Nomenclature sets out the general rules for the classification of goods to an eight-digit level and is updated on a yearly basis. The 2014 Combined Nomenclature replaces the 2013 version and contains all eight-digit tariff code changes effective from 1 January 2014.

The Commission Implementing Regulation can be accessed by clicking here.

EU — Study on the VAT Gap

The European Commission has published a study that sets out detailed data on the VAT Gap (i.e., the difference between the amount of VAT theoretically due and the amount actually collected) in 26 of the 28 current EU Member States (Cyprus and Croatia excluded) between 2000 and 2011. The main factors contributing to the VAT Gap are also presented, along with an overview of the effect of the economic crisis on VAT revenues.

The Commission press release and the study can be accessed by clicking here and here respectively.

Bulgaria — VAT amendments

The following VAT amendments took effect from 1 January 2014:

- An optional cash accounting scheme for VAT has been introduced. Following a special registration, the scheme could be applied by taxable persons whose taxable turnover for the last 12 consecutive months is not more than €500,000 (approximately US$682,000). A supplier applying the scheme has an obligation to charge VAT after payment is received. The right to deduct input VAT by taxable persons using the scheme, or for purchases from suppliers applying the scheme, would arise after payment is made.
- In the case of financial leasing contracts concluded after 1 January 2014, VAT on the total price of goods would become chargeable upon handing over the goods if the total amount of the lease installments, less the interest payments, equals the fair value of the leased goods. This provision creates uncertainty and requires a review of the clauses of financial leasing contracts concluded after 1 January 2014.
- The use of company standards justifying certain shortages of goods will now relieve taxable persons from having to make an input VAT adjustment.
- It is clarified that VAT would be chargeable for supplies without consideration when provided for personal use or for purposes other than those of business.
- A reverse-charge mechanism for domestic supplies of cereals and industrial crops will be temporarily introduced until the end of 2018.

France — Various VAT changes

The VAT changes applying from 1 January 2014 are as follows:

- Movie theater tickets have been reduced from 7% in 2013 to 5.5% in 2014.
- The VAT rate on social housing construction and renovation has been reduced from 7% in 2013 to 5.5% in 2014.
- A reverse charge mechanism (VAT self-assessment) in the construction sector will be limited to certain services provided on a building when performed by a subcontractor on behalf of a taxable person (the principal).

France — Infringement proceedings: reduced rate for digital books

The European Court website shows a referral to the Court of Justice of the European Union (CJEU) in infringement proceedings, C-479/13 European Commission v French Republic brought by the European Commission against France for applying a reduced rate of VAT to the supply of digital (or electronic) books.

The Commission alleges that, by subjecting the supply of electronic books to a super-reduced rate of 7% from 1 January 2012, and then of 5.5% from 1 January 2013, the national legislation is not compatible with the VAT Directive.

Italy — European Commission to file infringement proceedings against the Government of Italy for delays in processing VAT refund claims

The European Commission is preparing to initiate infringement proceedings against Italy for the delay in processing VAT refund claims. Specifically, the Commission sent a formal request for information to the Italian Government.

According to the Commission, the time frame for making VAT refunds in Italy is so long that it violates the neutrality principle. Moreover, the maximum term of four years provided for by the Italian VAT legislation to refund VAT credits appears to be unreasonably excessive.

It is worth noting that the Commission has addressed not only the timing of refunds but also the conditions for being eligible to use the "fast track" refund procedures and to avoid the obligation to provide a three-year guarantee, which may constitute discrimination between taxpayers and conflict with the principle of fiscal neutrality.

Latvia — Introduction of the euro

Latvia adopted the euro as its currency with effect from 1 January 2014.

Luxembourg — Infringement proceedings: reduced rate for digital books

The European Court website shows a referral to the CJEU in Infringement proceedings, C-502/13 European Commission v Grand-Duchy of Luxembourg brought by the European Commission against Luxembourg for applying a reduced rate of VAT to the supply of digital (or electronic) books.

The Commission alleges that, by subjecting the supply of electronic books to a super-reduced rate of 3% from 1 January 2012, the national legislation is not compatible with the VAT Directive.

Moldova — Mandatory registration of invoices: amendments

Law No. 172 of 12 July 2013 for amendment and completion of certain normative acts was published in The Official Gazette No. 173-176 on 9 August 2013.

The new law establishes that invoices will be subject to mandatory registration in the general electronic fiscal invoices register, where the taxable amount of a supply exceeds MDL100,000 (approximately US$7,700). Registration of such invoices will be mandatory within 10 working days by the issuer of the invoice.

However, buyers will be allowed to credit VAT provided that the tax authorities are informed that the supplier did not execute its obligation to register the invoices. In addition, to claim a VAT credit from September 2012 onwards, buyers may submit revised VAT returns after the deadline even if a tax audit was performed and a decision was issued by the tax authorities.

The above amendments apply retrospectively from 14 September 2012.

Netherlands — Revised decree on VAT representatives

Businesses that are neither resident nor having a VAT fixed establishment in the Netherlands are generally not obliged to appoint a Dutch VAT representative. Nevertheless, such businesses frequently (voluntarily) use a Dutch VAT representative to be able to enjoy certain beneficial VAT schemes, such as the import VAT deferment and VAT zero rating under the VAT warehouse and/or excise suspension regimes.

On 24 December 2013, the Dutch Secretary of Finance published a revised decree regarding VAT representatives. One of the most important changes is that, in order to ensure the uniformity of the Dutch Tax Authorities' policy regarding the guarantee to be set for general VAT representation, the decree contains new guidelines for determining those guarantees, including the maximum guarantee amounts. The amount of the guarantee is relevant for both parties: for the represented business because the costs of a guarantee (mostly in the form of a bank guarantee) usually depend on the amount of the guarantee, and for the VAT representative because the amount of the guarantee may cap its joint and several liability.

In most situations the changes may lead to a more favorable outcome.

There are two types of VAT representatives: general VAT representatives and limited VAT representatives. The following discusses the impact of the new rules for the most commonly used type of representation: the general VAT representative.

Rules before 25 December 2013

Until recently the amount of the guarantee was calculated, inter alia, as the higher amount of either (i) the average VAT payable per quarter, or (ii) the average VAT amount per month that would be due if no VAT exemptions or zero rates (0%) would apply. The tax authorities had the discretion to mitigate the guarantee to a minimum of 5% of that "guarantee base amount" but were not obliged to apply such mitigation. In some cases this resulted in relatively high guarantees. On the other hand, some tax offices informally applied maximum guarantee amounts. As a result, this often leads to inconsistencies in the approach taken by the various tax offices.

Rules as of 25 December 2013

As of 25 December 2013 the following standards are set for determining the amount of the guarantee. The new rules introduce a mandatory mitigation of the guarantee base amount in line with the table below. We note that it is still unclear whether supplies that are subject to the reverse charge (i.e., for which the liability to account for VAT has been shifted from the represented business to its customer) should be taken into account for the calculation of the guarantee base amount.

Category of goods	Percentage of the guarantee	Minimum amount of the guarantee	Maximum amount of the guarantee
1. Bulk goods, semi-finished products, etc.	5%	€5,000 (approx. US$6,775)	€100,000 (approx. US$135,525)
2. Consumer goods	5%	€5,000 (approx. US$6,775)	€500,000 (approx. US$677,555)

In general, category 2 goods include all goods that, inter alia, are eligible for consumption without further processing. When in doubt about the classification of the goods, the goods should be classified in category 2.

However, in cases where there is an increased risk of fraud (whether by the represented business or by the VAT representative), the tax authorities may demand a higher guarantee amount. The decree does not make clear in which cases such increased risk of fraud is considered to apply (e.g., whether it merely depends on the nature of the goods or whether all specific facts and circumstances are to be taken into account). Also, the decree does not make clear whether that higher guarantee amount is still tied to the limitations of the above table, or whether in that case no limitations apply (as before).

Current guarantees

Businesses that have already set a guarantee for their VAT representation may request the competent tax office to adjust the amount of the guarantee in accordance with the standards set in the table above, as per the new decree, and request the guarantee be replaced/renewed by a guarantee for the lower amount.

We recommend that businesses that already have a VAT representation in place review whether the new rules may lead to a more beneficial outcome regarding the guarantee amount.

Example

In practice, the new rules will lead to the following outcome:

*A company's average monthly sales is €60 million (approximately US$81.3 million. This is the base guarantee amount. The guarantee required before 25 December 2013 would have been €60,000,000 * 21% = €12,600 (approximately US$17,075). The guarantee required beginning on 25 December 2013 would, in principle, be €60,000,000 * 21% * 5% = €630,000 (approximately US$853,700). However, the maximum amount of the guarantee for consumer goods is €500,000. For bulk goods, semi-finished goods, etc. the maximum amount of the guarantee would be €100,000 (approximately US$135,525). Therefore, the guarantee will be limited to the maximum of the applicable category.*

Poland — Significant VAT changes from 1 January 2014

On 1 January 2014 significant amendments to Polish VAT law will come into effect. The forthcoming amendments affect the fundamental elements of the VAT system, in particular the tax point, the point of input VAT deduction, the invoicing process and the taxable amount. This broad scope of changes implies their importance to Polish VAT payers, as all of them will be affected to some extent.

General changes

Tax points

In 2014, the tax point general rules will change. Until now, the VAT point had been recognized by reference to the invoice date, and from 1 January 2014 onward it will be recognized by reference to the date of delivery of goods or provision of services. This means that the tax point will be recognized earlier, and consequently, VAT might be payable to the tax office earlier than before.

Polish VAT law offers a wide range of specific tax point rules, covering, telecommunications, energy, transport, construction, rental and many others sectors. Now these special rules will be removed in some cases, and the basic tax point rule will be applicable instead, while in other cases the specific tax point rules will be modified and the tax point will be triggered by different events than now.

The above changes imply that taxpayers will have to identify and track various events to recognize the tax point correctly. To do it, some adjustments in the enterprise resource planning systems and procedures governing the flow of information and documents might be necessary. Also, commercial contracts concluded in the past may prove not to accommodate the new rules properly and should be reviewed to avoid any adverse effects of VAT law once it is changed.

Input VAT deduction

According to the new provisions of VAT law, the taxpayer's right to deduct input VAT will depend on two dates: the date when the tax point arose for the supplier and the date when the invoice documenting the supply was received. Until now, in most cases the crucial date for deduction had been the invoice receipt date (a certain period during which the taxpayer could wait for the completion of the service or transfer of the right to the goods was allowed), and in general the recipient is not obliged to track when the supplier should recognize the tax point.

Now, the new rules combined with greater flexibility to issue invoices before and after the supply could make it more difficult to correctly determine the time of input VAT deduction. In particular, the implementation of the changes requires good communication between a company's various departments and awareness of what information is needed.

There are also further complications concerning input VAT deduction. The new provisions concerning foreign transactions (intra-community acquisitions (ICA), acquisition of reverse-charge services subject to VAT in Poland), already in force since 1 April 2013 allow the taxpayer to deduct input VAT only if the output VAT was reported in the correct VAT return. Further restrictions have been also introduced with respect to the intra-community acquisition of goods — from 2014 onward taxpayers will have the right to deduct the input VAT on the ICA only if they collect the commercial invoices issued by their supplier. Thus, the timely collection and processing of foreign commercial invoices will be required in order to fully benefit from the right to deduct the input VAT.

Invoicing process

The rules of issuing and filing VAT invoices will change as of 1 January 2014, too. In particular, it will be possible to issue a VAT invoice 30 days before the actual delivery of goods takes place. It will also be possible to issue an invoice much later than now — the general invoicing deadline will be extended from seven days after the supply to up to several dozen days (15th day of the month following the month of the supply). The special invoicing deadlines will be set for specific types of supplies.

Consequently, changes in the invoicing rules give taxpayers much more flexibility in choosing when to issue an invoice — an invoice may be issued either earlier or later compared with the deadlines in the current provisions. This, combined with changes in the input VAT deduction rules, will affect invoice issuers and invoice recipients.

It is also worth noting that greater flexibility in invoicing processes can be recently noticed in Poland (e.g., as concerns issuing invoices on behalf of another taxpayer or filing and archiving the documents electronically).

Other changes

In addition, the amendments to the VAT Act cover certain specific provisions. In particular, the provisions concerning the taxable amount have been completely rewritten, and the conditions governing the exemption applicable for the sale of second-hand assets have been revised.

Portugal — Budget for 2014: indirect taxation

The following VAT changes took effect from 1 January 2014 as a result of the 2014 Budget:

Regime of goods in circulation (Regime de Bens em Circulação)

The transport of the following goods will be excluded from the scope of this regime:

- Goods from aquaculture producers
- Goods intended for agricultural production, beekeeping, forestry and aquaculture, or animal production when transported by producers or on their behalf
- Waste similar to urban solid waste when collected by the competent authorities
- Hospital waste accompanied by the relevant identification form
- Goods to be delivered by private institutions of social solidarity to beneficiaries
- Goods collected by nonprofit organizations for social solidarity campaigns purposes

Goods necessary to carry out the business activity of state-owned companies in the areas of water supply management, sanitation and/or waste disposal goods are also excluded from the scope of the above-mentioned regime.

When a global transport document is issued, the issuance of the following documents is mandatory:

- On an effective supply of goods, a delivery note, invoice or simplified invoice. Such documents must be issued in duplicate, and one of them must justify the exit of the goods.

- In the case of goods to be incorporated within a supply of services, a document (e.g., work sheet) issued under the conditions established for the issuance of delivery notes. This cannot be an internal document; it must be a proper document such as a work sheet or an equivalent/similar document.

Third parties will be able to issue transport documents in the name and on behalf of the sender, subject to a prior agreement. The transport documents will need to be issued before goods are placed into circulation.

Service providers will be able to issue transport documents in the case of transport of goods that were or will be subject to improvements or repairs.

The seizure of goods in circulation will be limited to cases where there is suspicion of criminal offense. The seizure of goods only occurs if the authorities demand to know the origin or destination of the goods and such information is not provided.

Recovery of VAT on bad debts and irrecoverable debts

VAT related to bad debts and irrecoverable debts will only be recoverable within a two-year period, starting from the first day of the year following the supplies concerned. These include:

- Credits equal to or lower than €750 (approximately US$1,000) including VAT that have been outstanding for more than six months when the debtor is a private person or a taxpayer that performs exclusively exempt operations without the right to deduct
- Irrecoverable debts

Additional note: the limit of two years is only applicable for debts qualified as such from 1 January 2013. VAT reliefs for prior debts will be under the old regime.

The right to deduct VAT has been extended to the use of diesel, liquefied petroleum gas), natural gas and biofuels in machines with registration plates attributed by the competent authority.

Waiving of VAT exemption related with real estate transactions

Taxpayers may opt for waiving VAT exemption whenever the refurbishment works result in an increase of 30% in the tax registration value of the property. This option is only valid for the first transmission or tenancy after the refurbishment.

VAT cash scheme

The proposal introduces a new rule that allows customers in Portugal the deduction of VAT in the respective period or the period immediately after the invoice, regarding the goods and services acquired from taxpayers under the VAT cash scheme regime. This provision is only applicable to customers who do not operate under the VAT cash scheme.

Invoicing

For supplies of insurance, reinsurance and financial services that are exempt from VAT and that are provided to EU taxpayers, the supplier of such services will not be required to issue any invoices. Taxpayers must be established in the EU and have VAT-able entities.

Real estate VAT clawback rules

Taxpayers are required to pay back the full or partial VAT recovered in the acquisition or construction of immovable property whenever that immovable property has not been used in the taxpayers' activity for the last five years. No such repayment will be required if the property has been used by a taxpayer in the provision of taxable supplies.

Social security public institutions and Lisbon Charity

The special VAT refunds scheme will apply from 1 January 2014 (a VAT refund mechanism that was abolished is now in place for 2014).

VAT rates in the Autonomous Region of Azores

The Portuguese State Budget Law for 2014 increased the VAT rates applicable in the Azores as follows:

Azores VAT rates		
	Current rate	From 1 January 2014
Standard	16%	18%
Medium	9%	10%
Reduced	4%	5%

The aforementioned rates will only be applicable for operations located in Azores, as VAT rates on the mainland have remained unchanged.

Romania — Procedure amended for issuance of VAT deferment certificate

Romania has recently introduced two new categories of taxable persons who may request the issuance of a VAT deferment certificate:

- Authorized economic operators registered for VAT purposes in Romania who have obtained a certificate of authorized economic operator
- Taxable persons registered for VAT purposes in Romania who have obtained an authorization for local clearance procedure

Furthermore, the criminal record issued for the legal representative of the taxable person is no longer required for the issuance of the VAT deferment certificate.

Russia — Intermediary services by foreign providers not liable for VAT

Intermediary services should be deemed rendered in Russia and therefore liable for VAT only if a foreign provider has a permanent establishment in Russia. In letter No. GD-4-3/20826, released 21 November 2013, the Russian Federal Tax Service issued new mandatory guidelines on VAT liabilities in situations when imports of goods into Russia are facilitated by foreign intermediaries. In accordance with Section 2, Article 148 of the Russian Tax Code and the Finance Ministry's letter No. 03-07-15/41196, intermediary services provided in connection with imports of goods into Russia by a foreign business without a permanent establishment in the Russian Federation shouldn't be regarded as rendered in Russia, and these services aren't liable for VAT.

Russia — Changes to rules on corrected VAT invoices

The Russian Government moved to revise VAT reporting rules and released guidelines to clarify new procedures to file VAT returns that take effect 1 January 2014. On 29 October 2013, the Government released Decree No. 952 on VAT reporting. The decree allows businesses to file a corrective VAT invoice that would amend earlier invoices. Decree No. 952 stipulates that these corrective VAT invoices, issued where the VAT amount is corrected as a result of a change to the taxable amount, must be reflected on the VAT returns.

Slovakia — New filing obligation: detailed VAT ledger

To fight against fraud in the area of VAT, the Slovak Ministry of Finance has enacted an obligation for VAT payers to submit a detailed VAT ledger along with the VAT return. The proposed Amendment to the Slovak VAT Act introducing this obligation is to be discussed in Parliament in September and shall take effect from 1 January 2014.

When does the obligation to submit VAT ledger arise?

VAT payers will be obliged to submit VAT ledger reports along with each VAT return. The obligation arises for each VAT period (except when zero returns are filed or re-exports of imported goods are done). There is no de minimis threshold stipulated in the proposed legislation.

What information will need to be declared and in what form?

The VAT ledger report will have to match the data declared in the VAT return for the specific tax period (month) as to the transaction values declared. The report should include the information for every invoice received or issued by the VAT payer (including adjustment invoices and down payment invoices, but excluding simplified invoices issued by the VAT payer and invoices for zero-rated and exempt supplies).

Items to be declared for each invoice include, for example, VAT identification numbers; document numbers (a reference to the original invoice number in the case of an adjustment invoice); relevant dates and transaction values; amounts of deducted VAT; and in the case of certain goods subject to domestic reverse charge, their type, volume and a reference to the Customs Harmonized System tariff code.

Simplified invoices issued by the VAT payer (e.g., cash-register receipts) are to be reported in aggregate turnovers for the tax period net of tax per each cash register code. The amount of VAT should be declared separately per VAT rate applied.

The above information will need to be compiled by the VAT payer electronically, most likely in XML format, and filed by means of electronic filing portal provided by the Slovak Financial Directorate. The Slovak Ministry of Finance should be issuing a guideline providing more detailed information on VAT ledger reporting in a few months.

Deadline for submission of VAT ledger

The VAT ledger will need to be filed electronically within 25 days after the end of the VAT period, but no later than the day of VAT return filing. A supplementary VAT ledger should be submitted to declare changes or additions to the transactions reported within the end of the month following the tax period in which the omission was identified.

What are the penalties for non-compliance?

For non-compliance (failure to submit, submission of the VAT ledger after statutory deadline, or declaration of incomplete or incorrect information) the tax authority is obliged to impose a penalty. The penalty can be up to €10,000 (approximately US$13,700) for initial omission. In the case of repetitive omission, the penalty range is up to €100,000 (approximately US$137,000). Current wording suggests that penalties also apply to any adjustments reported, regardless of the character of the change.

What needs to be done before the first VAT ledger filing is made for January 2014?

Through information declared in the VAT ledger, the tax authority will obtain detailed information on virtually every business transaction performed by the VAT payer. This will likely serve as a basis for selection of VAT payers subject to VAT inspections (cross audits as well), the number of which may significantly increase after introduction of the new filing obligation.

VAT payers should be prepared in advance to ensure seamless reporting and compliance with the new statutory obligation from its beginning. Questions such as those below should be dealt with:

- Do all invoices, credit/debit notes and cash register receipts received from your suppliers contain all information required to be declared in the VAT ledger? If yes, is this information stored in the Enterprise Resource Planning (ERP) system? If not, can this be easily extracted from the documents and imported to ERP?
- Are situations captured properly by the ERP system where VAT is to be declared based on documents other than invoices? Are current manual adjustments sufficient to cover these situations? (e.g., down payment situations, goods acquired prior to invoice receipt, services completed by cross-border providers with invoice not available, free-of-charge supplies, adjustments without credit notes and debit notes formally issued). Is information for such transactions easily extractable from contracts, purchase orders, warehouse receipts or delivery notes so that it can be itemized and reported in VAT ledger per each transaction separately?
- Could there be cases in which certain transactions reported correctly in your VAT return might be declared incorrectly in the VAT return by your supplier or customer (e.g., different tax period reporting, different values, different VAT treatment)?
- How likely it is that there will be differences (even immaterial) occurring between VAT ledger reports itemized per transaction and the cumulative figures reported in the VAT return (penalties likely applicable)?

UK — Proposed Council decision: right of deduction on the hire or lease of cars

The European Commission has published a Proposal for a Council Implementing Decision (COM(2013) 633) authorizing the UK to continue to apply a 50% input tax restriction to charges for the hire or lease of a car where the car is not used exclusively for business purposes, and consequently to relieve taxable persons from the obligation to account for VAT on the private use of such vehicles, as a special measure derogating from Articles 26(1)(a), 168 and 169 of the VAT Directive.

The existing derogation is due to expire on 31 December 2013, and the Commission has proposed that this should be extended until the date of entry into force of EU rules determining the expenditure relating to motorized road vehicles that are not eligible for full deduction of VAT or until 31 December 2016, whichever is earlier.

The Proposal can be accessed by clicking here.

Ukraine — Further clarifications regarding applicability of the VAT exemption to supply of software products

The Ministry of Revenues and Charges published Tax Consultation No. 536 on 7 October 2013, which provides further clarifications regarding the VAT exemption on the supply of software products.

The Ministry of Revenues and Charges confirmed that the application of the VAT exemption on supplies of software products is mandatory. It does not depend on whether the taxable person is performing activities in the information technology industry, as a registered entity and exemption cannot be waived by a taxable person involved in making such supplies.

The main clarifications provided regarding the application of the VAT exemption can be summarized as follows:

- The supply of software products should be exempt from VAT even where such a supply is downloaded from the internet.
- Service fees for technical support (e.g., installation, debugging, testing) should be exempt from VAT provided the price of the technical support services is included in the price of the software product supplied and is rendered by the software developer.
- The VAT exemption applies even in cases where the results of the computer programming are supplied by taxable persons other than the software developers.
- Components of software products should be exempt from VAT provided they could be regarded as separate software products.
- The VAT exemption does not apply to software products supplied as part of equipment and technical systems purchased by a customer in Ukraine, unless such software products can be separated from the equipment and are supplied separately.
- The VAT exemption does not apply to supplies of software development services rendered by software developers if they do not acquire legal title to the software products, or their components and the legal title is transferred to the customer upon completion of the software development.
- The supply of encryption-based safeguards should be exempt from VAT, provided that the supplier has an authorization to carry out these business activities.

Middle East, India and Africa

Angola — Payment of consumption tax on services rendered to oil and gas companies

Executive Decree No. 333/13 dated 8 October 2013 established that all entities providing services (subject to consumption tax) to oil and gas upstream companies should assess the consumption tax due in the respective invoices and equivalent documents.

This new taxation regime is derived from the fact that there are no subjective exemptions foreseen in the consumption tax law; therefore, although subject to a special tax regime, oil and gas upstream companies are not entitled to consumption tax exemption.

Consequently, oil and gas upstream companies, when paying the services related to those invoices or equivalent documents, must pay only the amount due as consideration for the services rendered (except with respect to water and electricity supplies, telecommunications, lodging, tourist or similar services) and should hold the consumption tax amount included therein since they are liable for delivering such tax amount at the respective tax office.

Non-compliance or any delay of the payment of the tax due may imply that the consumption tax accounted for as a cost at the level of oil and gas upstream companies is not deductible for petroleum income tax purposes (*Imposto sobre o Rendimento do Petróleo*).

This Executive Decree came into force at the date of its publication (8 October 2013) and revokes any provisions contrary to the ones included therein.

India — Standing Committee on Finance approves GST legislation, recommends important amendments

On 7 August 2013, the Standing Committee on Finance approved the Constitution (One Hundred Fifteenth Amendment) Bill, 2011. The bill seeks to bring fundamental reforms to indirect taxes by integrating and harmonizing the tax rates across India by way of a GST. The committee also proposed various recommendations in the bill. The observations and recommendations can be accessed here.

Malaysia — Introduction of GST

The Honorable Minister of Finance announced the implementation of GST at the rate of 6% in the 2014 Budget. It will come into operation on 1 April 2015.

What is it?

GST is a broad-based consumption tax, applied at each stage of the supply chain. A GST-registered business can offset the GST incurred in making its supplies against GST charged on the supplies it makes. This credit mechanism means that GST is levied on the value added at each stage of production, and it can be cost neutral to a business with the burden falling on the final consumer who cannot recover the GST. GST becomes due when a sale is made and not necessarily when payment is received. This is a move away from the present single-stage sales tax and service tax system.

What does it apply to?

GST is charged on any taxable supply of goods or services, made in the furtherance of any business, by a GST-registered person in Malaysia. It is also charged on the importation of goods and services into Malaysia. As a broad-based tax, the default position is for GST to be applied at the standard rate unless there is a provision that states that it can be treated differently. This means there is no list of what is treated as standard rated; instead, there are some limited reliefs and exemptions for certain specific goods and services:

Zero rated: this is a taxable supply, meaning GST incurred on the supply can be recovered and the onward supply GST is levied at 0%. If you make wholly zero-rated supplies, then it is likely that you will be in a refund position with Customs. Examples include certain agricultural products, foodstuff, water to domestic consumers, electricity supply (with limits) to domestic users, export of goods and international services.

Exempt: this supply means no GST is charged on the supply, but this does not mean that you are GST-free. It also means that there is no entitlement to recover GST incurred in making those exempt supplies. If you make wholly exempt supplies, then you will not be able to register for GST, and GST would become a cost to the business. Examples include residential property, private healthcare and private education and certain financial services.

Out of scope: these supplies are outside the GST system. Examples are limited but include transfer of going concerns and supplies made by the Government, such as issuance of passports and licenses, except some supplies of services prescribed by the Minister of Finance.

Who will be affected?

Everyone in Malaysia who consumes goods or services will be affected upon implementation of GST. In particular, businesses that are registered for GST will need to account for GST on their business activities on a regular basis and pay the GST due to the Customs Department. The threshold to become GST registered is RMB500,000 (approximately US$152,000) in a 12-month rolling period or where there is an expectation that this threshold will be breached.

What is the impact on other taxes?

The Government is abolishing the current sales tax of 5% and 10% and service tax of 6%. These taxes will come to an end when GST starts. In addition, it was stated in the 2014 Budget that some assistance will be given to individuals and businesses to assist them with the introduction of GST.

Assistance from the Government

Individuals

The following measures will be effective from 2015:

- Individual income tax rates to be reduced by 1% to 3%
- Individual income tax structure to be reviewed to ensure a more progressive tax structure, including increasing the chargeable income subject to the maximum rate from in excess of RMB100,000 (approximately US$30,400) to in excess of RMB400,000 (approximately US$121,750)

Businesses

The following measures will be effective from 2015:

- Corporate income tax will be reduced by 1% from 25% to 24%.
- The income tax rate for small and medium enterprises (SMEs) will be reduced by 1% from 20% to 19%. Both reductions will take effect in the year of assessment 2016.
- The cooperative income tax rate will be reduced by 1% to 2% from the year of assessment 2015.
- Secretarial and tax filing fees (subject to limits) are allowed as tax deductions from the year of assessment 2015.
- Accelerated capital allowances on the cost of information and communications technology (ICT) equipment and software are extended to the year of assessment 2016.
- Expenses incurred for training in accounting and ICT relating to GST are to be given a further tax deduction for the years of assessment 2014 and 2015.
- Grants for GST training of employees in 2013 and 2014 and financial assistance to SMEs for the purchase of accounting software in 2014 and 2015 will be provided.

How to implement GST in 15 months

The following business decisions need to be considered:

- Budget for cost of implementing GST, e.g., consultant fees, configuration of accounting systems, training expenses, hiring of additional finance support
- Manage cash flow as GST is paid on accrual basis
- Analyze the capabilities of existing accounting system
- Review the accounts payable process to ensure tracking and posting of expenses are done in a timely manner
- Review employees' benefits and the process of approving claims
- Determine the necessary changes required for existing documentation
- Analyze and understand transitional issues on supply of goods and services spanning the GST implementation period
- Evaluate the impact on pricing of sales and suppliers spanning the GST implementation period
- Train employees to appreciate the impact of GST
- Identify the legal implications of existing long-term contracts spanning the GST implementation period

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EY newsletters and alerts

If you would like a copy of a green paper, newsletter or alerts covering some of the topics mentioned below, please contact Howard Lambert at howard.lambert@ey.com.

Belgium – Alert: recovery of VAT on company assets

Croatia – EY Tax News, June 2013

Czech Republic – EY Tax News, October 2013 and November 2013

Financial Services and VAT: overview, September, October and November 2013

France – VAT rates changes effective 1 January 2014: reduced rate to remain 5.5%

Hungary – EY Tax News, September 2013 and October 2013

Ireland – Budget 2014: indirect tax measures

Ireland – VAT treatment of foreign suppliers doing business in Ireland

Ireland – Budget 2014: air travel tax to be removed from 1 April 2014

Italy – Penalty amnesty re VAT rate increases

Japan – Government confirm initial increase in consumption Tax rate: Alert

Lebanon – Mandatory electronic registration and declaration

Malaysia – Introduction of GST

Mexico – Impact of recent changes in customs, VAT and excise laws

Middle East North Africa (MENA) Tax Insight October 2013

Netherlands – Tax Update Weekly, issues 41, 42, 43, 44, 45, 46 and 48

Poland – Significant VAT changes effective 1 January 2014

Slovakia – EY Tax News, September 2013

South Africa – Foreign suppliers of electronic services: registration

UK – VAT News, weeks ending 23 and 30 September 2013; 7, 14, 21 and 29 October 2013; 4, 11 and 25 November 2013; 2 and 9 December 2013

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