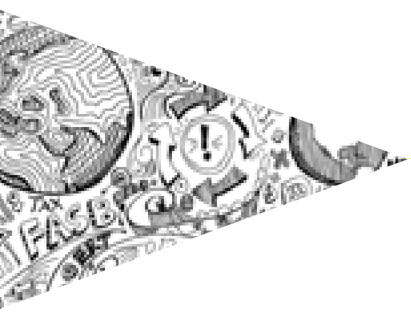
Issue No. 3, 2014

VAT newsletter



Introduction

Welcome to the third 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

EY

Building a better working world

Global

New report launches at Global Indirect Tax Symposium

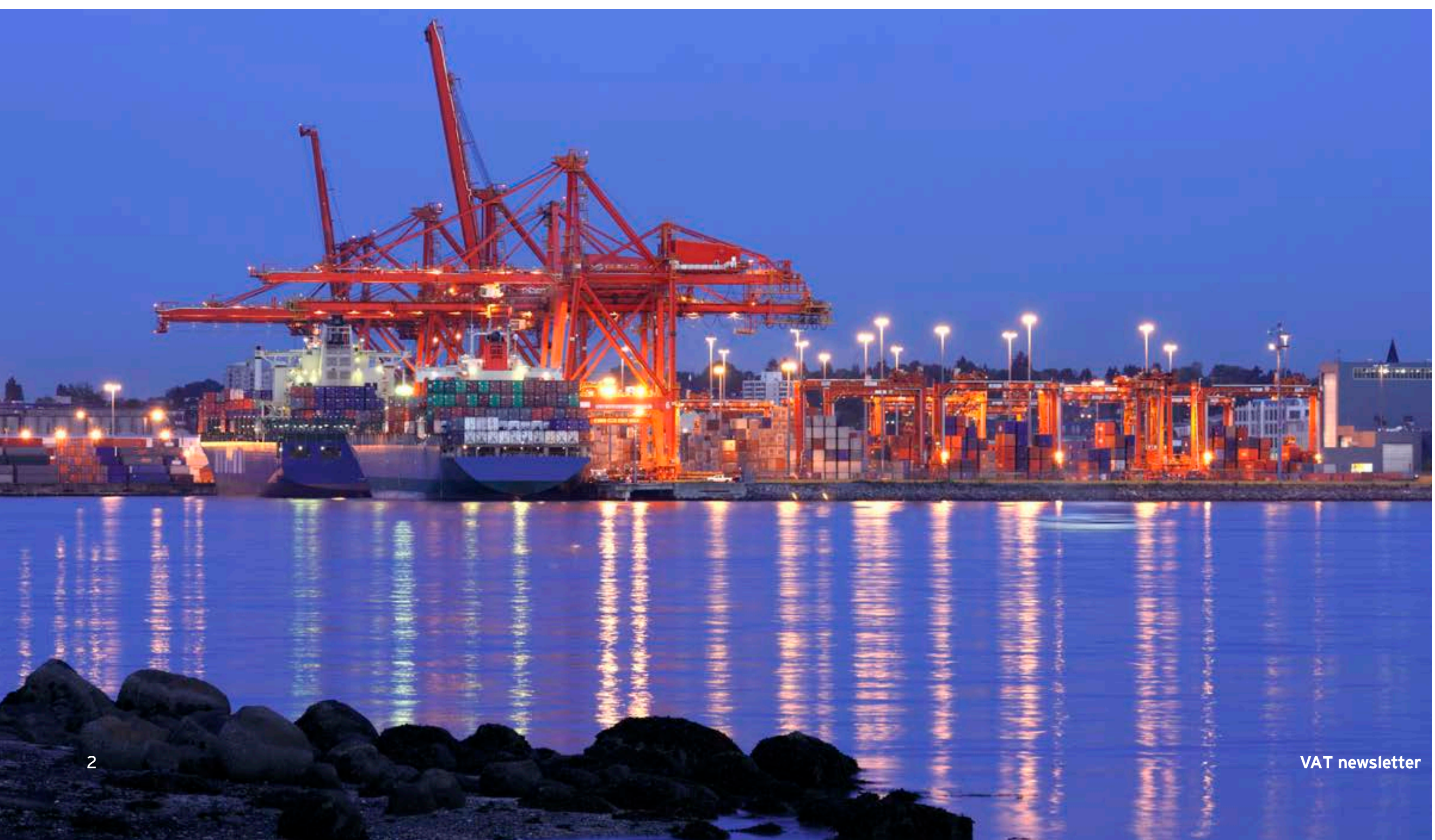
A new thought leadership report, *Managing indirect tax data: gaining insight and control in the digital age,* was launched at the recent EY Global Indirect Tax Symposium in Rome.

Philip Robinson, Global Director of Indirect Tax, says accurate data management and reporting is more important to our clients than ever before. "In recent years, the tax affairs of popular household brands have made front page news, potentially risking the firms' reputations. Although much of the focus up until now has been on direct taxes, companies' indirect tax affairs have also come under the spotlight, so securing and analyzing accurate global indirect tax data have never been more important."

Our new report answers key questions

What is driving this trend? How can companies use technology to improve oversight of their indirect tax position? How can they manage indirect taxes and associated costs more effectively? And why is this issue "front of mind" for today's global companies?

Philip explains why our new report is helpful to firms facing this daunting data challenge: "The massive quantity of complex transactional data required by different jurisdictions presents a range of logistical issues. In this report, we consider challenges that multinational companies' tax, trade and finance departments typically face in managing indirect taxes, and we outline management approaches and technology tools that can help them achieve their goals."



Americas

Bahamas: Introduction of VAT

The Bahamian Government has published the draft of the *VAT Bill and Regulations*. A VAT is to be introduced in the Bahamas on 1 July 2014.

We cover three areas in this edition of our *VAT Newsletter* for the US that are noteworthy in the draft VAT Bill and Regulations.

Banks and other financial institutions

Financial services (FS) provided by FS entities in the Bahamas will be exempt when provided to customers located or resident in the Bahamas. However, the same services will be zero rated when provided to customers resident or located outside of the Bahamas. FS entities will likely have to apportion most of the VAT that they incur on cost of sales, asset purchases (real estate, computers, etc.) and sales and general administrative expenses and will only be able to claim refunds of VAT that relate to the zero rated international services, if the draft VAT Bill and Regulations are put into law.

Non-resident business supplying telecommunication services and electronic commerce to persons in the Bahamas

From the draft VAT bill, it would appear that non-resident businesses will need to register for VAT in the Bahamas if they supply telecommunication services and electronic commerce to persons resident or located in the Bahamas.

"Telecommunication services" is defined in the draft VAT bill as services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or electromagnetic systems, including the provision of access to global information networks and the related transfer or assignment of the right to use capacity for such access, transmission, emission or reception.

"Electronic commerce" includes business transactions taking place through the electronic transmission of data over communications networks, such as the internet.

The draft VAT bill provides examples of telecommunications and electronic commerce as follows:

- Websites, web-hosting, distance maintenance of programs and equipment;
- Software and updating of software;
- Images, text and information and databases available;
- Political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; and
- Distance teaching.

In such cases, the non-resident businesses will be required to collect and remit VAT in relation to sales of telecommunication services and electronic commerce to customers resident or present in the Bahamas. The draft VAT bill does not seem to distinguish between sales made to private individuals and sales made to customers that are in business. This is because a ''person'' in the draft VAT bill is defined as:

- The Government;
- A natural person, corporation, company, trust partnership; or
- An un-incorporated association or body.

This could have implications for businesses located outside of the Bahamas that supply telecommunications and electronic commerce to persons in the Bahamas, although the draft VAT bill provides for a registration threshold of US$100,000 of sales to persons in the Bahamas below which a non-resident business will not have to register for VAT or collect VAT on such sales. In 2012, the total population of the Bahamas was 371,960. The draft VAT bill states that the penalty for failing to register for VAT in the Bahamas at the correct time will be US$10,000.

Staple food

It would appear that sales of basic food items will be exempt from VAT. This proposal is a departure from VAT regimes in other countries, where sales of such basic food items are zero rated or are subject to a lower rate of VAT. If this VAT treatment goes through to the final VAT bill, this could have implications for supermarkets and other food outlets (not restaurants or hotels, where food sold by way of catering will subject to a 10% VAT rate) in the Bahamas in terms of their ability to claim VAT refunds on purchases of assets (real estate, computers, fixtures fittings, etc.) and SG&A expenses. The draft VAT bill indicates that persons making exempt supplies will not be able to recover VAT on such purchases and expenses if these expenses are related to a sales activity that is exempt from VAT.

Please click here and here if you would like to review the draft *VAT Bill and Regulations.*

Canada — GST/HST election for closely related persons

Section 156 of the *Excise Tax Act* (ETA) currently allows registrants that are resident in Canada, exclusively engaged in commercial activities and members of a closely related group, to file an election that will relieve them of the requirement to account for tax on certain transactions between the members of the group. The election is currently unavailable where a new member of the related group acquires assets from another member of the group and where, before that time, the new member had not yet acquired any other property, or made a taxable supply. This restriction will be eliminated to make the election available in these circumstances, provided that it is reasonably expected that the new member of the group will be exclusively engaged in commercial activities and will be making taxable supplies throughout the 12-month period following the time when the election is made.

New filing requirement

Under existing legislation, there is no requirement for the parties to an election under section 156 to file the election form with the Canada Revenue Agency (CRA). Instead, the election must simply be completed by both parties and retained with their books and records.

It is proposed that, effective 1 January 2015, the parties to an election under section 156 will be required to file it with the CRA by the earliest date when any of the parties are required to file a return for the period in which the election is to take effect.

Where elections are already in place on 1 January 2015, parties will have until 1 January 2016, to file the election with the CRA.

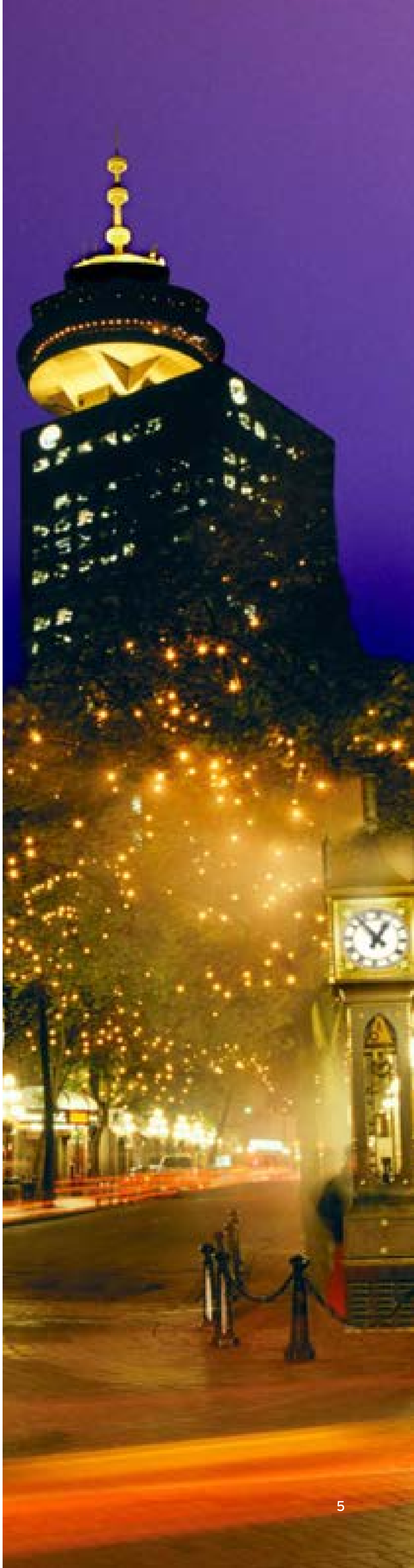
Expansion of liability

It is also proposed that parties to a new, or existing, election effective on or after 1 January 2015, will be subject to a new joint and several (or solidary) liability provision with respect to tax that may arise in relation to supplies made between them, on or after that date.

Matters requiring clarification

Based on the draft legislation, the following are a few areas of uncertainty that hopefully will be clarified before the provisions become effective:

- What if the new member intended to exist for 12 months but does not? What evidence will the CRA require to show that the new entity reasonably intended to exist for 12 months?
- If the new entity acquired a development property and does not end up making any supplies for the 12-month period after the purchase, will the election apply?
- Will a group of more than two related parties be able to file one election for the group? The draft legislation implies that groups of two parties will have to elect with each other. Where there is a large group of related parties, this could get complicated and require a significant number of election forms to be filed.
- Will the CRA accept elections already on file, or will new forms be required to be completed again and filed?



Asia-Pacific

China — Government to extend VAT to Telecom sector by 1 April 2014

The Chinese government announced, during its annual legislative meeting in Beijing, that it will expand its value-added tax regime to the telecom sector by 1 April 2014, as part of a series of tax and fiscal changes for the year. China's leadership identified "tax reform" among the government's top priorities for 2014, pledging to push forward with a VAT overhaul and speed progress on a property tax and a tax for environmental protection. "We will give high priority to reforming the fiscal and tax systems," Premier Li Keqiang told delegates at the opening of the second session of the 12th National People's Congress on 5 March 2014. The government will extend the VAT pilot program to railway transport, postal and telecommunications service industries; move forward with legislation on a property tax plus an environmental protection tax; and grant additional tax breaks to small businesses.

Singapore — GST treatment for sale of virtual currencies

For GST purposes, virtual currencies (e.g., Bitcoins) will be treated as a supply of services, which does not qualify for GST exemption.

Businesses that buy goods or services using virtual currencies

If virtual currencies are used to pay for goods or services, the transaction will be considered a barter trade.

There are two supplies made — one by the supplier who supplies the goods and services, and another by the buyer who uses virtual currencies to pay the supplier. GST will be charged on each supply if the respective supplier is GST-registered.

However, if the virtual currencies are used to pay a supplier based outside of Singapore, the supply of the virtual currency will be zero-rated and GST will not be applicable.

As a concession, the purchase of virtual goods or services within the gaming world using virtual currencies will not be charged with GST until they are exchanged for real monies, goods or services.

Businesses that sell virtual currencies

GST-registered businesses that sell virtual currencies as a principal must charge GST on the sale of the virtual currencies.

If the business acts as an agent for another party when selling the virtual currencies, GST must be charged on the commission fees received.

Trading fees charged by a virtual currency exchange located in Singapore are subject to GST if that exchange is GST-registered.

GST will not be applicable on any sale of virtual currencies (as a principal) or supply of services (as an agent) to a person based outside Singapore.

Businesses that import goods paid for using virtual currencies

The same import GST rules and reliefs as for goods imported and paid for using real currencies will apply.

Europe

European Commission — Improving VAT collection and administrative cooperation within the EU

On 12 February 2014, the European Commission adopted two reports that shed more light on problems linked to fighting VAT fraud within the EU, and that identify possible remedies. The first report looks at VAT collection and control procedures across the Member States. It concludes that Member States need to modernize their VAT administrations in order to reduce the VAT gap. Recommendations are addressed to individual Member States on where they could make improvements in their procedures. The second report looks at how effectively administrative cooperation and other available tools are being used in order to combat VAT fraud within the EU. It finds that more effort is needed to enhance cross-border cooperation, and recommends solutions such as joint audits, administrative cooperation with third countries, more resources for enquiries and controls and automatic exchange of information amongst all Member States on VAT. Both reports form part of the Commission's action plan to fight against tax fraud and evasion.

The Commission's press release and the two reports can be accessed by clicking here, here and here respectively.

Italy — VAT Exemption: Ready for Milan Expo 2015

Introduction

By means of Resolution No. 10/E of 15 January 2014, the Italian Tax Authorities provided clarifications on the application of the VAT exemption related to purchases of goods and services concerning the official activities carried out by the Commissariats General of Section[1] joining Milan's Universal Exposition "Feeding the Planet, Energy for Life" (Expo Milano 2015).

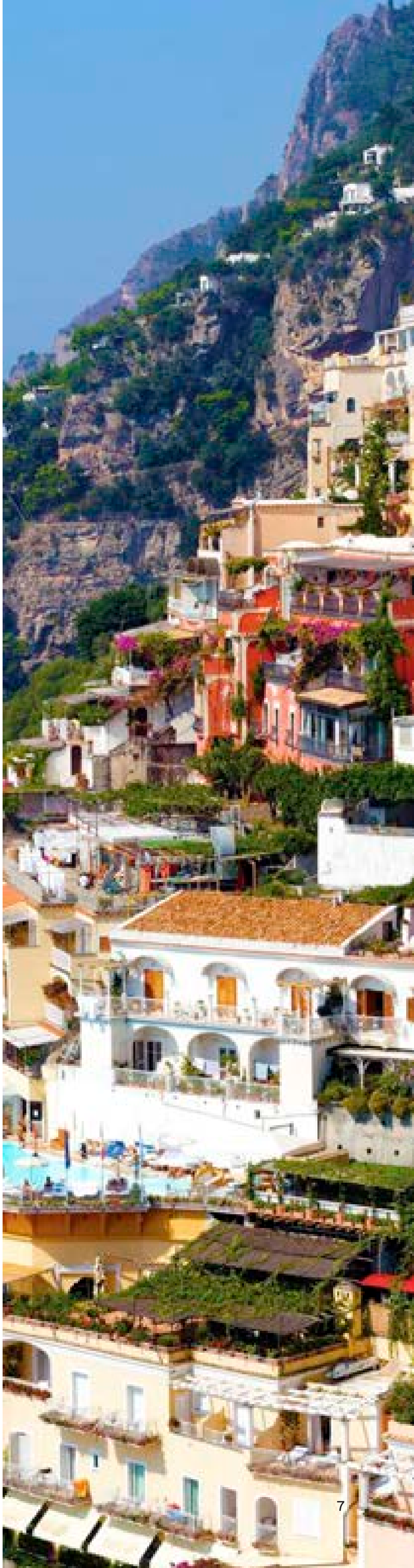
The Universal Exposition is a strategic global event that is expected to bring 140 countries and 20 million visitors to the city of Milan for a period of six months.

Specifically, the VAT exemption applies to purchases of goods and services, as well as for imports of goods, related to the official activities carried out by the mentioned structures, which will support in Milan the Governments of any nation and international organization participating in the 2015 Universal Exposition.

The VAT exemption

The VAT exemption shall apply to purchases of goods and services and imports:

1. Related to the official activities carried out by the Commissariats General of Section; and
2. Whose amount is higher than € 300.00 (approximately US$420)[2].



1 These are structures created ad *hoc* by each Country or International Organization participating in Expo Milano 2015.
2 Such a limit is set out by Article 72, paragraph 2 of d. P.R. n. 633 of 26 October 1972.

How to apply the VAT benefit

Even though not specifically provided by the above mentioned agreement and the related implementing Italian Law provisions, in order to speed up and facilitate the application of such benefits, the Italian Tax Authorities have recently disclosed a draft of the statement, which the beneficiary shall use, to request the VAT exemption.

In particular, by filing the sample of statement attached to the mentioned Tax Resolution, Commissariats General of Section shall be immediately entitled to claim the VAT benefit from their suppliers. The statement must report the relevant Law reference (i.e. Article 10, paragraph, 5, of the agreement between the Italian Government and the Bureau International des Expositions of July 11, 2012) and the purpose of the purchase.

In fact, through the said statement, Commissariats General of Section declare (under their own responsibility) that they are willing to purchase goods and services (duly identified) for the purposes of the official activities related to their participation in Expo Milano 2015.

Upon receipt of such a statement, the suppliers shall recognize the transactions as zero-rated.

Sample statement

According to the Italian Tax Authorities, Commissariats General of Section must declare the following information.

Section A:

Beneficiary data:

i) The beneficiary (denomination of the Commissariat General of Section or its delegate);

ii) The Italian address of the Commissariat General of Section or its delegate;

iii) The Country joining the Universal Exposition.

Section B:

A declaration through which the beneficiary attests that:

i) The goods and services as listed below (in Section C of the form) are purchased for the official Expo Milano 2015 activities;

ii) The goods and services are compliant with the requirements set out by Article 10, paragraph 5, of the agreement between the Italian Government and the Bureau International des Expositions (acknowledged with Italian Law No. 3 of 14 January 2013);

iii) The purchases of goods and services are not subject to VAT with right of deduction; and that

iv) The data and information declared are declared in good faith.

Section C:

List of goods and services:

i) Supplier data (name, its VAT No., address);

ii) Details of goods and services purchased (No., Description, Quantity, and Consideration excluding VAT- both for each unit and for the total amount).

The form must be issued in two copies (one for the supplier and one for the Commissariat General of Section to be kept for VAT purposes), dated and duly signed by the beneficiary.

VAT adjustment

Finally, the Italian Tax Authorities clarified that if VAT has been already been, incorrectly, charged to Commissariats General of Section before the clarifications given by the mentioned Tax Resolution (i.e., until 15 January 2014), the suppliers can issue a VAT Credit Note (within one year).

UK — HMRC releases details on the VAT treatment of Bitcoins

The UK revenue agency issued a brief to clarify the tax treatment of Bitcoins, saying value-added tax would not apply to Bitcoin mining, trading, processing and exchange activities, but would be levied in the normal way for the sale of goods or services in exchange for Bitcoins and other similar cryptocurrencies. Her Majesty's Revenue and Customs Brief 09/14, issued March 3, details the agency's provisional tax treatment of cryptocurrencies, specifically for VAT, corporate tax, income tax and capital gains tax. The tax authority said these rules may change depending on further European Union-wide developments, especially with respect to the regulatory and EU VAT position. However, any changes announced by HMRC following EU changes will not have retrospective effect, it said.

3 See Article 26, paragraph 2 and 3, of d. P.R. n. 633 of 26 October 1972

Middle East, India and Africa

Benin — Finance Law for 2014 — indirect taxation

On 2 January 2014, the Finance Law for 2014 (Law No. 2014-01) was introduced by the President. Unless indicated otherwise, the indirect tax changes outlined below apply from 1 January 2014.

The VAT and Customs measures outlined below reference the following taxes:

- T. STAT — statistical tax (*taux de la taxe de statistique*)
- RS — statistic fee (*redevance statistique*)
- PCS — community solidarity levy (*prélèvement communautaire de solidarité*)
- PC — community levy (*prélèvement communautaire*)
- TV — road tax (*taxe de voirie*)

Temporary exemptions extended

The exemption from customs duties and VAT applicable on the following products is extended to 31 December 2014:

- Computer equipment, including software, printers and their spare parts, even when imported separately; information technology consumables, such as ink cartridges, thumb drives, papers, inverters are excluded from this exemption
- Buses and minibuses of all categories, imported, manufactured or sold new in Benin for public transport purposes
- Imported and local new equipment and materials used for the construction of oil service stations, oil and diesel tanks and new equipment imported for the renovation of these stations and tanks
- New tanker trucks imported for the distribution of oil products

Notwithstanding the exemption from customs duties and VAT:

- (1) and (2) above will remain subject to PCS, PC and T. STAT; and
- (3) and (4) above remain subject to RS, PCS and PC.

The exemptions in (3) and (4) are extended to T. STAT.

New exemptions introduced

The following products are exempt from customs duties and VAT:

- Agricultural machinery and equipment and small processing units and storage of agricultural products, including their spare parts and accessories
- Machinery and equipment for animal husbandry (including aquaculture) and fisheries, small processing and conservation units of livestock products and fisheries, including their spare parts and accessories
- Products intended for livestock breeding, poultry and aquaculture. This exemption is extended to T. STAT; these products are only subject to RS at the rate of 1%

Notwithstanding the exemption from customs duties and VAT, (1) and (2) immediately above are subject to PCS, PC, T. STAT and TV.

Other VAT measures

- The list of products that are exempt under annex 1 of the VAT chapter in the General Tax Code is extended.
- The right to deduct input VAT is exercised on the tax return of the month in which the booking took place with regard to the invoice, or any other equivalent document. Deductions not taken into account on the tax return of the relevant month may be included in the following tax returns, up to 30 April of the year following the one in which the omission took place.
- Oxygen used for medical purposes in hospitals and healthcare centers is exempt from customs duties. However, PCS, PC, RS and TV are still applicable.

Morocco — Finance Law 2014 — VAT

On 31 December 2013, The Finance Law for 2014 was enacted and published in Official Gazette No 6217. Unless the law specifically provides otherwise, the new provisions apply to transactions taking place on or after 1 January 2014. Details of the Finance Law regarding VAT are summarized below.

Optional reverse charge mechanism

Before 1 January 2014, non-resident suppliers with no permanent establishment (PE) in Morocco had the obligation, to appoint an accredited representative domiciled in Morocco who would be responsible for compliance with VAT regulations for the non-resident suppliers. However, the Finance Law introduced an optional reverse charge mechanism for non-resident suppliers.

Under this regime, in the case that no accredited representative is appointed, the Moroccan resident client becomes the legal taxpayer (le redevable légal). A self-liquidation mechanism (un système d'autoliquidation) enabling the client to use its own VAT tax return for filing and paying the output VAT of the non-resident supplier was also introduced.

Time of deduction of input VAT

Before 1 January 2014, input VAT on expenses was deductible 1 month after the payment of the related expenses. From 1 January 2014, input VAT on expenses can be deducted in the same month of their payment.

Refund of the recurrent VAT credit.

In general, under the previous VAT regime, when the amount of deductible input VAT at the end of any tax period exceeded output VAT, the excess VAT was not refunded, but carried forward as a tax credit. However, if the conditions of the business activity of the taxpayer are such that the input VAT is levied at a higher rate compared to the output VAT rate, the Finance Law now allows the refund of the accumulated VAT credit. This measure is meant to avoid situations that are likely to generate a recurrent excess VAT credit. Refund conditions and implementing rules will be regulated in a yet to be released Decree.

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ED None

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.

Financial Services Overview – February 2014, read more here

Canada: Federal Budget 2014, read more here

Canada: Invoices of accommodation: important Tax Court of Canada decision in Salaison Lévesque Inc., read more here

Czech: EY Tax News – February 2014

Hungary: EY Tax News – February 2014

Latvia: Tax Newsletter – February 2014

Netherlands: Tax Updates Weekly, editions 7, 8, 9 and 10

Slovakia: EY Tax News – February 2014, read more here

UK: VAT News – Weeks ending 10, 17 and 24 February 2014 and 3 March 2014

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