

VAT newsletter

Introduction

Welcome to the fourth 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

Global

- EY's 2014 Worldwide VAT, GST and Sales Tax Guide
- Managing indirect tax data – gaining insight and control in the digital age
- Indirect tax in 2014 – shaping the global indirect tax landscape

Americas

- Canada – Department of Finance releases draft legislation for sales tax technical amendments
- Uruguay – VAT exemption regime - new goods and services included

Asia-Pacific

- Japan – Increase of consumption tax rate

Europe

- European Commission – Annual report on the European Union's activities in the field of tax

European Commission – Publication of explanatory notes on the EU VAT place of supply changes from 2015

European Court of Justice – ATP Pension Service A/S: case summary in this Danish referral concerning the VAT exemption for the management of defined contribution pension schemes

Greece – VAT registration procedure for non-established businesses

Italy – Partial repeal of the 'Google tax provisions'

Ukraine – Introduction VAT on pharmaceuticals and medical products

Middle East, India and Africa

Malawi – Use of electronic fiscal devices mandatory for registered VAT operators

South Africa – New VAT registration requirement for foreign suppliers of electronic services: implementation postponed



Building a better
working world

Global

EY's 2014 Worldwide VAT, GST and Sales Tax Guide

You can access the latest guide [here](#).

Managing indirect tax data: gaining insight and control in the digital age

Our latest Indirect Tax thought leadership report *Managing indirect tax data: gaining insight and control in the digital age* was launched on 3 April 2014. To download the report; see the results of the survey about electronic filing and data extraction for VAT and GST, as well as electronic invoicing, archiving and storage; or to access the deployment materials, please click [here](#).

Indirect tax in 2014 – shaping the global indirect tax landscape

Developments in VAT, GST, excise and customs duties, and other indirect taxes are shaping the global tax landscape, and governments are improving and enhancing their indirect tax systems. These multilayered developments make great demands on companies that want to meet their obligations.

Our annual roundup of global indirect tax developments and updates, *Indirect tax in 2014* details developments in more than 100 countries. These include changes in tax rates, the introduction of new taxes and additions to the growing network of free trade agreements.

Keep up to date with the five significant global trends in indirect tax identified in this report:

- ▶ The indirect tax shift continues.
- ▶ Legislation continues to change rapidly.
- ▶ Excise taxes continue to rise.
- ▶ The landscape in global trade continues to change rapidly.
- ▶ Tax authorities are increasing cooperation and focusing on enforcement.

The sheer number of changes and the pace of change are making great demands on international companies that want to meet their compliance obligations. The implications and impact of these trends for businesses are significant.

For a copy of this EY report, click [here](#).



Americas

Canada – Finance releases draft legislation for sales tax technical amendments

On 8 April 2014, the Department of Finance released for public comment draft legislative proposals and explanatory notes relating to technical changes to the Excise Tax Act and related regulations. The proposals include:

- ▶ Amendment to the definitions of “builder” and “substantial renovation”
- ▶ Subsidized housing
- ▶ Public service body rebate for nonprofit organization operating a health care facility
- ▶ Zero-rating the refining of metals services supplied to a nonresident not registered for GST/HST purposes
- ▶ Temporary importation of certain railcars
- ▶ GST/HST relief upon re-entry of goods on which duty has been paid (Canadian goods returned)

Interested parties are invited to provide comments on the draft legislative proposals by 8 May 2014. Please click [here](#) for a copy of the alert issued by our Canadian colleagues.

Uruguay – VAT exemption regime - new goods and services included

On 26 March 2014, the President enacted Law 19,197 amending, with effect from 1 March 2014, the VAT exemption regime with respect to specific goods and services. Executive Decree 70/2014, of 27 March 2014, provides regulations to the law. The main amendments are as follows:

Services exempt from VAT include:

- ▶ Provision of electricity to dwellings
- ▶ Land-line telephone services provided to final consumers.

In the case of these services, a credit is granted for the VAT paid on acquisitions or imports of goods and services destined for the provision of the specific service. The credit procedure will be the same as that applicable to exporters.

The sale of specific vegetables within the period 1 April to 30 June 2014 is subject to the zero rate, and the import of those products is exempt from VAT.



Asia-Pacific

Japan – Increase of consumption tax rate

The standard rate of consumption tax was increased on 1 April 2014 from 5% to 8%.

Europe

European Commission – Annual report on the European Union's activities in the field of tax

The European Commission has published its annual report for 2013 on activities of the European Union in the field of tax.

From a VAT perspective, the report makes reference to:

- ▶ The changes to the EU VAT place of supply rules for telecoms, broadcasting and electronic services, which will enter into force in 2015
- ▶ The adoption of two directives (including the Quick Reaction Mechanism) enabling Member States to better combat VAT fraud
- ▶ Proposed changes to the EU VAT treatment of vouchers
- ▶ The formation of the VAT Expert Group and the EU VAT Forum
- ▶ VAT derogations granted to individual Member States

- ▶ The review of existing reduced VAT rates applied in the EU
- ▶ The proposed introduction of a standard EU VAT return.

The report can be accessed by clicking [here](#).

European Commission – Publication of explanatory notes on the EU VAT place of supply changes from 2015

On 4 April 2014, the European Commission published a set of explanatory notes that have been prepared in order to provide a better understanding of the EU legislation relating to the changes to the VAT place of supply rules for telecoms, broadcasting and electronic services supplied to EU resident individuals, which will take effect from 1 January 2015. From this date, instead of VAT being payable in the Member State where the EU supplier is established, it will become due where the customer is located.



The explanatory notes focus on the place of supply implementing measure (principally Council Implementing Regulation (EU) No 1042/2013) that applies across all Member States. The Commission intends that this information will help businesses to prepare for and comply with the new VAT rules. It should be noted that these explanatory notes are not legally binding but rather provide practical and informal guidance reflecting the Commission's views on how EU law should be understood and applied.

The explanatory notes and more information on the 2015 changes can be accessed by clicking [here](#) and [here](#), respectively.

European Court of Justice – ATP Pension Service A/S: case summary in this Danish referral concerning the VAT exemption for the management of defined contribution pension schemes

The European Court released its judgment on 13 March 2014 in this Danish referral asking whether the VAT exemption for the management of special investment funds, within Article 13B(d)(6) of the Sixth Directive (now Article 135(1)(g) of the VAT Directive), extends to defined contribution pension schemes. For completeness, the CJEU delivered the Opinion of Advocate General Cruz Villalón on 12 December 2013. Significantly, as with the Advocate General, the CJEU answered this question in the affirmative. Our tax alert (below) provides more detailed comments on this judgment.

The Court summary judgment reads:

- ▶ “On a proper construction of Article 13B(d)(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, pension funds such as those at issue in the main proceedings may fall within the scope of that provision if they are funded by the persons to whom the retirement benefit is to be paid, if the funds are invested using a risk-spreading principle, and if the pension customers bear the investment risk. In that regard, it is of little consequence that the contributions are paid by the employer; that the amount paid in is based on collective agreements between labor-market organizations; that there are different ways of paying out the funds invested; that contributions are deductible under income tax law; or that it is possible to add an insurance element which is ancillary to the other services provided.”
- ▶ “On a proper construction of Article 13B(d)(6) of the Sixth Directive, the term ‘management of special investment funds’ used in that provision covers services by means of which an undertaking establishes the rights of pension customers vis-à-vis pension funds through the opening of accounts in the pension scheme system and the crediting to such accounts of the contributions paid. That term also covers accounting services and account information services such as those listed in Annex II to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by Directives 2001/107/EC and 2001/108/EC of the European Parliament and of the Council of 21 January 2002.”





- ▶ “On a proper construction of Article 13B(d)(3) of the Sixth Directive, the VAT exemption laid down in that provision for transactions concerning payments and transfers covers services by means of which an undertaking establishes the rights of pension customers vis-à-vis pension funds through the creation of accounts for those customers within the pension scheme system and the crediting to those pension customers’ accounts of the contributions paid, and any transactions which are ancillary to those services or which combine with those services to form a single economic supply.”

The full judgment can be accessed by clicking [here](#).

Greece – VAT registration procedure for non-established businesses

Prior to the implementation of the procedure described below, EU-based VAT-able persons who did not have an establishment in Greece for corporate tax purposes had to appoint a VAT representative (article 36 par. 4 ε Greek VAT Code), pursuant to a relevant power of attorney granted to the representative, prior to undertaking any VAT taxable activities in Greece. The VAT representative had to be a Greek tax and VAT-liable resident. The VAT representative had to fulfill all the VAT compliance obligations on behalf of its EU principal. In addition, the VAT representative could be held jointly liable for VAT debts and liabilities.

Simplified VAT registration procedure for businesses established in the EU outside Greece

Businesses established in the EU, but not established in Greece, now have the option of directly registering for VAT in Greece and obtaining a Greek VAT number without having to appoint a local VAT representative. This option (non-appointment of a fiscal representative) has been recently introduced on the basis of a Ministry of Finance decision (POL 1113/2013) under which the previous obligation to appoint a fiscal representative has been abolished, but only for entities established in the EU but outside Greece.

The following describes the steps required to apply the simplified registration procedure:

- ▶ An EU (non-Greek) business undertaking VAT activities in Greece must submit a VAT registration application with the competent tax authorities in Greece. The application has to be submitted via email to the competent tax office (Athens Tax Office A) Using the e-mail address doyaathinon@1836.syzefxis.gov.gr. The application is written in both in Greek and English, and it provides explanatory notes by the tax authority.
- ▶ After cross-checking the details of the EU business applicant with the VIES database, the competent tax office will issue a Greek VAT registration number to the business. This is emailed to the business. The VAT Directorate of the Ministry of Finance (VIES department) is also notified.

Note that in the following cases the competent tax office will not grant a Greek VAT registration number to a business:

- ▶ The application form is not fully completed.
- ▶ The details of the business as mentioned in the registration return cannot be cross-checked with VIES.
- ▶ The business has already obtained a Greek VAT registration number, either through the appointment of a VAT representative, or for any other reason.

Note that no other documents should accompany the initial VAT registration declaration.

VAT payment procedure

In principle, VAT payments are expected to be made via local bank accounts. Where an EU business, established outside Greece, cannot pay the tax via a bank in Greece, it can make a payment by credit transfer order (SEPA credit transfer) via any bank included in the Single Euro Payment Area (EU Directive 2007/64/EU), showing the details (see below) of the Greek State bank account, held in the Bank of Greece, for VAT purposes:

- ▶ BIC: BNGRGRAA
- ▶ IBAN: GR8801000230000000481090500
- ▶ Remittance Information (unstructured): the payment code granted by the Ministry of Finance (mentioned in TAXISnet, the online VAT return filing system) for the purpose of correlating the VAT return with the remitted amount or the payment code granted by the Ministry of Finance (mentioned in TAXISnet) for the purpose of paying the remaining amount or an installment thereof

The remittance information details shown above are obligatory, and in order for the VAT return and the payment to be accepted and considered as valid, the remitted amount should match exactly the amount stated in the return.

Bookkeeping obligations/issuance of invoices

EU-established persons that are VAT-registered in Greece (without any establishment locally) should be exempt from any obligation to keep books and issue invoices as per the provisions of the Greek Transactions' Tax Reporting Code (TTRC). The EU business may issue its invoices from abroad mentioning its Greek VAT registration number thereon.

Italy – Partial repeal of the 'Google tax provisions'

We previously reported that the new tax provisions may have important VAT implications for businesses operating in the digital economy. The impact of the new law was on companies that purchased online advertising space and sponsored links on search engine pages, to be viewed by customers in Italy, with the requirement that such services had to be purchased from an Italian VAT-registered entity with effect from 1 July 2014. In addition to doubts about the compatibility of the new provisions with EU law, concerns were also expressed as to their rationale and lack of clarity. Consequently, the Italian Government has now repealed the aforementioned rules with the apparent aim of reconsidering other types of digital economy taxation in the future and in a more coordinated way with the other EU Member States.





With Law Decree no. 16 of 6 March 2014 (in force as of the same day), the Italian Government repealed part of the recently introduced tax rules concerning certain digital-economy activities generally referred to as “Web Tax.” The Parliament now has 60 days to convert the Law Decree into a final ordinary law.

Specifically, the Government repealed Article 1, paragraph 33 of the 2014 Stability Law, which, among other things, required foreign groups selling advertising services and sponsored links online to obtain an Italian VAT registration in the case of sales to Italian companies.

Background

The 2014 Stability Law provided important changes for groups involved in certain online businesses.

From a VAT perspective, the new legislation (Article 1, paragraph 33 of the 2014 Stability Law) provided that, as of 1 July 2014, advertising services and sponsored links purchased online, as well as online advertising space and sponsored links appearing in the results pages of search engines (search advertising services) viewable in the Italian territory, had to be purchased exclusively from entities holding an Italian VAT registration.

The enacted provisions appeared immediately questionable from a European Law perspective as they seemed to infringe upon the freedom of establishment principle as well as Article 196 of Directive 2006/112 regarding the person liable to pay VAT on cross-border business-to-business (B2B) services.

In addition to issues of incompatibility with EU principles, commentators started questioning the actual rationale of the new rule and highlighted its lack of clarity. They also questioned the purpose of the VAT registration since VAT is generally neutral for businesses (i.e., broadly speaking, sellers charge VAT to buyers and buyers recover the VAT by deduction or refund claim – VAT is instead charged to and paid by final consumers who have no right to deduct/ refund). Therefore, some commentators thought that the purpose of this rule was to make the foreign providers more visible to the Italian tax authorities who could better monitor them for income tax assessments (e.g., assessing potential permanent establishments). In addition, it was not clear whether VAT registration was intended as the mere obtaining of a VAT number in Italy, or whether it implied that the qualifying foreign company needed to register a branch in Italy. Had the obligation implied the registration of a branch, this could have in principle raised income tax liability issues (i.e., whether the company should also be attributed income tax profits).

Due to this controversy with the mentioned Law Decree, the Government has now entirely repealed the above rules with the apparent aim of reconsidering other types of “Web Taxation” in the future and in a more coordinated way with the other EU countries. From a transfer pricing perspective, the new rules (Article 1, paragraph 177 of the 2014 Stability Law) provide that entities involved in the collection of online advertisement and in related auxiliary services on behalf of foreign group companies must use profit-level indicators other than those applicable to the costs incurred in the conduct of their business unless they reach an advance pricing agreement (APA) with the Italian Revenue Agency.



Moreover, for the purchase of online advertising services and related ancillary services, the new legislation (Article 1, paragraph 178 of the 2014 Stability Law) states that it is mandatory to use bank or postal accounts or any other means of payment allowing full traceability of transactions, including the VAT identification number of the supplier (as a consequence of the repeal this should supposedly apply only to Italian established suppliers). The Revenue Agency will define the pattern of transmission of the information required.

These rules concerning transfer pricing and the payment of the relevant consideration (mentioned in paragraphs 177 and 178) remain valid and fully in force.

Ukraine – Introduction VAT on pharmaceuticals and medical products

Registered pharmaceuticals

On 10 April 2014, the Ukrainian Parliament adopted the law that remedies the uncertainty regarding the import of registered pharmaceuticals. This law establishes that 7% VAT should apply to both imports and supplies of registered pharmaceuticals and medical products in the Ukrainian customs territory.

Pharmaceuticals for clinical trials

Moreover, 7% VAT on imports and on supplies of pharmaceuticals for clinical trials should apply. Importantly, the law does not address some other critical issues relevant for those entities that are engaged in clinical trial matters (e.g., the law is silent on the importer's right to credit import VAT and does not explain what particular transactions should be treated as "supplies in the Ukrainian customs territory" that are subject to 7% VAT, nor does the law clarify which amount should serve as the tax base in this particular case, given that pharmaceuticals used in clinical trials are generally not intended for business purposes).

If you would like a copy of Ernst & Young LLC VAT Alert, please let us know.



Middle East, India and Africa

Malawi – Use of electronic fiscal devices mandatory for registered VAT operators

Effective 6 March 2014, the Malawi Revenue Authority (MRA) implemented the required use of electronic fiscal devices (EFDs) for VAT operators. EFDs are an advanced version of electronic cash registers that record all sales transactions and provide indisputable evidence of transactions to the MRA. The amendments make it mandatory for all VAT operators to acquire and use these machines for each sale transaction.

South Africa – New VAT registration requirement for foreign suppliers of electronic services: implementation postponed

We previously reported that South Africa had proposed new rules which will require foreign suppliers of electronic services to register and account for VAT in South Africa from 1 April 2014, once the value of their supplies to South African customers exceeds ZAR50,000 (approximately US\$4,750). At the time, we advised that unlike in many other jurisdictions around the world, the new provisions will apply to business-to-business (B2B) transactions as well as business-to-consumer (B2C) transactions, including intercompany transactions.

On 28 March 2014, the South African National Treasury published the final Electronic Services Regulations (which prescribe those electronic services covered by the new rules) and announced that their implementation has been postponed by two months to 1 June 2014 to allow businesses sufficient time to get their systems ready, although registration will be open from 7 April 2014. In addition, following concerns raised by businesses and tax advisors that the scope of the regulations was too wide as it included certain types of electronic services that are predominantly of a B2B nature, their scope has been reduced and certain electronic services have been excluded from the regulations. A possible increase in the registration threshold remains under review.

The final regulations and an accompanying press release can be accessed by clicking [here](#) and [here](#), respectively.

Our colleagues have advised that, as a result of these changes, the biggest risk to businesses is the force of attraction. If an element of the services provided is electronic, the entire combined services may be treated as electronic. Clients will therefore need to take care with subscriptions, platforms, e-learning and images. When in doubt, a ruling from the South African tax authority should be sought as soon as possible. A more detailed update will be provided by Ernst & Young Advisory Services Proprietary Limited in due course.

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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.

Financial Services Overview March 2014.
[Read more here.](#)

Slovakia: EY Tax News 3/2014.
[Read more here.](#)

Czech: EY Tax News – March and April 2014

UK: VAT News – Weeks ending 10, 17 and 31 March 2014.

Hungary: EY Tax News – 03-04/2014

Netherlands: Tax Updates Weekly, editions
[11](#), [12](#), [13](#) and [14](#).

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