Issue No. 7, 2014

VAT newsletter

Introduction

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

At the end of the 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 or any other VAT issues.

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

If you would like to subscribe to receive EY's *Indirect Tax* updates, please click here.

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EY

Building a better working world

Global

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

You can access the latest guide here.

EY's *Indirect Tax Briefing*, 10^{th} edition

You can access the latest briefing here.

Americas

Peru — VAT withdrawal system — amended rate

The tax administration's Resolution No. 203-2014/SUNAT (the Resolution) was published in the Official Gazette on 30 June 2014. It amended the rate of the VAT withdrawal system applicable to transactions indicated in Nos. 5 and 10 of Annex III of the tax administration's Resolution No. 183-2004/SUNAT. The rate was reduced from 12% to 10%. The new rate applies to services such as:

- Legal
- Accounting
- Market and opinion research
- Architecture, engineering and activities related to technical assistance
- Business consulting regarding business management
- Advertising

The Resolution became law on 1 July 2014.

Uruguay — Parliament approves new requirements for local buyers and sellers of goods and services

On 24 April 2014, the Parliament of Uruguay approved a law establishing requirements for local buyers and sellers of goods and services. The law is intended to promote the social inclusion of all Uruguayan people into the financial system (i.e., to grant free access to bank accounts).

The VAT changes are as follows:

Article 87 states that the VAT rate will be reduced by two percentage points beginning 1 August 2014, for sales of goods and services supplied to final consumers when the payment has been made through electronic instruments.

The law also establishes additional interim VAT reductions for transactions valued at less than 4,000 indexed units.

Asia-Pacific

India — Finance minister seeks to introduce a GST by the end of the new financial year

On 10 July 2014, Finance Minister Shri Arun Jaitley issued the budget for 2014-15, indicating that he sees no reason why a national GST cannot be introduced by the end of the 2014–15 financial year. The GST, if introduced, will seek to replace India's multistate indirect taxes with a tax that will apply uniformly across all Indian states and that will seek to function like other VAT or GST systems in other parts of the world.

Japan — Increase in consumption tax rate?

On 1 October 2013, the Japanese Government formally approved an increase in the rate of *shouhizei*, or consumption tax (national and local combined), from 5% to 8%, effective 1 April 2014. In order to mitigate the expected backlash and avoid a negative impact on the economy, an additional economic support package was also announced.

The ¥5 trillion (approximately US$51 billion) package includes a variety of tax measures designed to stimulate private sector investment, as described in the Japan tax newsletter *Tax reform outline to stimulate private sector investment*. The outline details a number of new measures to lower taxes for corporations. These reforms are being introduced separately from the regular annual tax reform outline, which was released in December.

The most notable tax reduction measure is the repeal of the special reconstruction corporate tax, which in 2012 increased the effective corporate tax rate to 38.01%. Considering this repeal and the 2011 measure to reduce Japan's headline corporate tax rate by 4.5 percentage points (from 30% to 25.5%), the effective rate fell to 35.64% in 2014. Many other tax incentives for corporations were introduced in the outline, and significant international tax reforms were announced in the 2014 Tax Reform Outline, released 12 December 2013.

Historic opposition to consumption tax increases

Although previous governments have attempted to raise the consumption tax rate, such a move has historically been met with strong opposition. The rate increase of 2014 is the first in 16 years.

Prime Minister Shinzō Abe stated that he made the decision in order to maintain confidence in Japan and to create a sustainable social security system for future generations. The consumption tax increase, the main pillar of comprehensive tax and social insurance reform, has been confirmed. The second consumption tax rate increase, from 8% to 10%, will be implemented on 1 October 2015. The decision on this second increase should be confirmed at the end of 2014, depending on prevailing economic conditions.

It's unclear whether 10% will be sufficient over the long term. Compared to other developed countries, Japan's consumption tax rate of 10% is still considered to be low, particularly in relation to the 2013 OECD average of 18.9%. However, due to the increasing costs of social insurance caused by the low birth rate, further such tax increases may prove unavoidable.

Malaysia — Goods and services tax bill published

On 19 June 2014, the Goods and Services Tax Act 2014 was published. The published Act does not vary significantly from the GST Bill 2014.

A copy of the GST Act 2014 is available at e-Federal Gazette.

Europe

European Commission — US conference on the 2015 VAT place of supply rules and the Mini One-Stop-Shop

The European Commission has announced that a conference will be taking place in Santa Monica, California, on 16 September 2014 to inform businesses about the changes to the EU VAT place of supply rules as of 1 January 2015, for telecoms, broadcasting and electronic services supplied to EU residents and the introduction of the VAT Mini One Stop Shop. More information on this event and the 2015 changes can be accessed by clicking here and here, respectively.

European Commission — Feasibility report on the 2015 VAT place of supply rules and the Mini One-Stop-Shop

On 26 June 2014, the European Commission issued a feasibility report (COM(2014) 380) to the Council of the European Union on the application of the new EU VAT place of supply rules, effective 1 January 2015, for telecoms, broadcasting and electronic services supplied to EU resident individuals and the introduction of the VAT Mini One-Stop-Shop. The report focuses on the action taken to determine proper and efficient implementation of the new rules as of the effective date.

The Commission considers that sufficient measures have now been taken to provide stakeholders with a clear view on how the forthcoming changes are to be applied to confirm legal certainty and to limit the administrative burden on tax administrations and economic operators in the period needed to adapt to the new rules. The Commission therefore concludes that efficient application of the new place of supply rules as of 1 January 2015, is feasible.

As regards further steps to be taken before the new rules become law, the Commission calls on the Member States to bring the project to a successful conclusion and make sure that the new rules will be efficiently applied as of 1 January 2015. In order to further simplify the compliance of economic operators, the Commission considers that Member States should refrain from requiring businesses to issue invoices to consumers for supplies covered by the Mini One-Stop-Shop. The majority, including the UK, do not require the issue of VAT invoices for such supplies. In the absence of a specific mechanism for resolving double taxation disputes, the Commission also urges the Member States to establish an easily accessible contact point and to communicate details to the Commission so that a comprehensive list can be published on its website. This would be a first port of call in the search for solutions to cases of double taxation due to differences between Member States on the taxation of these services.

The report can be accessed by clicking here.

Czech Republic — VAT law amendment on VAT rates submitted to Parliament

It has been reported that the Government of the Czech Republic has submitted to Parliament a VAT law amendment that would introduce changes to the VAT rates effective as of 1 January 2015.

To become law, the bill must be approved by both chambers of Parliament and be signed into law by the president.

Currently, the standard VAT rate is 21%. Some goods, most notably foodstuffs, pharmaceutical products and some services, are subject to a reduced rate of 15%.

In line with the tax priorities of the new coalition government, the bill would introduce a second reduced VAT rate of 10%, which would apply to medicines, books and essential child nutrition. According to the explanatory report to the bill, in light of the previous European Commission actions against the Czech Republic, the reduced VAT rates will not apply to children's diapers.

In addition, the bill would abolish the provisions of the VAT law under which a 17.5% unified VAT rate was due to apply effective as of 1 January 2016.

Hungary — Changes to invoicing rules

The Hungarian Minister for National Economy has published a new decree (NGM Decree) that changes the rules on the identification of invoices and cash receipts for tax administration purposes and the rules on the tax authority audit of invoices stored in electronic format.

Although the new NGM Decree became law on 1 July 2014, certain provisions will only be applied as of 1 October 2014, or 1 July 2015. Below we summarize the changes to the rules on the identification of invoices and cash receipts.

The most substantive change to content is that enterprises have an obligation to inform the tax authority of the software they apply for issuing invoices. As a new element of the decree, this reporting obligation has been extended to online invoicing systems as well, although with different content.

Key changes concerning the invoicing program

1. Invoicing software can only be sold to registered taxpayers.
    - The supplier of the invoicing software must also include the tax number of the customer (i.e., the entity using the invoicing software) on the invoice.
2. The user of the invoicing software should possess detailed documentation of the software.
    - The invoicing software should only perform functions that are detailed in the user documentation.
    - From now on, developers are not obliged to provide a declaration on the compliance of the software with the legislation, but they are liable to retain the complete documentation — electronically or by other means — within the limitation period.
3. Users' reporting obligations in relation to invoicing software and online invoicing systems become law on 1 October 2014.
    - The commencement and the end of use (as well as other data as set out in the decree) should be reported to the tax authority. The decree prescribes different data content requirements for invoicing software and online invoicing systems.
    - The reporting deadlines are:
        - 15 November 2014, for those who currently have invoicing software or obtain it before 15 October 2014
        - Thirty days for those who purchase or start using invoicing software or start using online invoicing services after 15 October 2014
    - According to the information provided by the tax authority, the form is currently in the planning phase; it is expected to be called "SZAMLAZO." The tax authority intends to issue the form on 1 October 2014.

Provisions relating to computer-generated cash receipts

Based on the decree, the definition of computer-generated cash receipts applies equally to those issued electronically or in paper format. However, cash register-generated cash receipts refer to those that have been issued either by traditional or online cash registers (with or without electronic recording). Therefore, in relation to the new legislation, it is important to highlight that computer-generated cash receipts and those issued by cash registers are not equivalent.

Based on the above and pursuant to Annex 1 of Decree No. 48/2013 (XI.15.) of the Minister for National Economy, a taxpayer who can only comply with its invoicing obligations using a cash register may not issue computer-generated cash receipts instead.

Changes relating to the electronic data interchange (EDI) system

If the parties intend to create and forward electronic invoices in the EDI system as electronic data, they can also comply with their prior written agreement obligation — set forth in the relevant provisions of the Act on VAT regarding the application and usage of EDI — by concluding a contract prescribed in Annex 1 of the decree.

Italy — New e-invoicing regime for supplies to public administrations

Mandatory electronic invoicing (e-invoicing) for supplies to public administrations (PAs) was introduced in Italy with the Finance Act 2008 but has only been effective starting from 2014. The legislation prevents PAs from accepting and paying analogic invoices and also provides for the setup of an electronic exchange system (EES) to manage the e-invoicing process for the PAs. The new invoicing regime does not apply to supplies made by foreign businesses not registered for VAT in Italy.

Time frame

Electronic invoicing for PAs is effective from:

- 6 June 2014, for supplies to some central administrations (ministerial bodies, tax agencies) and national social security and welfare bodies
- 31 March 2015, for supplies to all remaining PA entities, including local authorities (e.g., regions, provinces, municipalities).

Technical requirements

Electronic invoices to be issued to PAs must have the following requirements:

- The content is structured in an extensible markup language (XML) file. This format is the only one accepted by the EES.
- The authenticity of origin and the integrity of the content are guaranteed through a certified electronic signature or a digital signature on the invoice.
- The file must be named in the appropriate way so that it can be accepted by the EES (country code + Transmitter's Unique Identity Code_ Progressive Unique File Code).

In addition, electronic invoices must contain not only the relevant fiscal data foreseen by Art. 21 of Italian VAT Law (i.e., Presidential decree n. 633 of 26 October 1972), but also:

- The indication of the unique identification code of the public office to which the invoice is addressed, listed in the Public Administration Index (IPA) — in the case that the office to which the invoice is addressed cannot be identified, the invoice can be sent to a "central" electronic invoice office, called "Uff-eFatturaPA"
- The "Tender Identification Code" (CIG), with some exceptions (with reference to contracts that cannot be considered "tender contracts")
- The "Unique Project Code" (CUP), in the case of invoices related to public works, extraordinary repairs, activities financed by EU funds and pursuant to Art. 11 of the Law n. 3 dated 16 January 2003

Finally, both suppliers and PAs must keep electronic invoices only in digital format (including delivery receipts received) in accordance with Italian electronic storage (e-archiving) regulations provided by decree 17 June 2014.

Features of the EES

EES operates as follows:

1. The supplier creates an e-invoice in XML format, including the unique identification code of the competent public office.
2. The electronic invoice is sent to the EES.
3. The EES receives the electronic invoice and performs the technical checks necessary to verify its formal correctness (the invoice may be accepted or rejected).

Where the invoice is rejected, EES sends the supplier a rejection notification. If checks are passed, EES sends the electronic invoice to the PA and a delivery receipt to the supplier confirming that the invoice has been addressed to the recipient.

Where EES is unable to deliver the e-invoice to the PA (e.g., because of technical issues), the EES sends the supplier a delivery failure message. At this point, the EES sends a message to the PA involved to resolve the issue.

Once the electronic invoice is successfully delivered to the PA, the EES issues a delivery receipt, attesting to the supplier that the invoice has been correctly delivered to the recipient.

On the basis of the guidelines provided by the tax authorities with Clarification Letter n. 1 of 31 March 2014, the delivery receipt or the delivery failure message is proof of the issuance of the invoice.

Conclusion

The mandatory e-invoicing regime for PAs should be regarded by taxpayers as a starting point for a cultural change aimed at the final goal of full integration and dematerialization of the whole administrative process. However, since important operational changes are usually difficult to manage, it is important for businesses to seek VAT advice to guide them through the transition to e-invoicing and e-archiving.

Romania — Government amends VAT refund rules for taxable persons not established in Romania

The Romanian VAT legislation on VAT refunds to taxable persons not established in Romania (under the 8th or 13th VAT Directive) has been amended. Specifically, the condition that such refunds would only be granted subject to payment of the related VAT (properly demonstrated) has been removed.

Under the former provisions, non-established taxpayers were refused VAT refunds from Romania on the grounds that the related VAT had not been paid by the time of the refund request or the documents presented were found insufficient to attest the payment.

After the change of Romanian VAT law, the payment of the input VAT will no longer create a VAT refund issue (the current legislation now being in line with European case law). The change concerns both EU and non-EU businesses that have incurred Romanian input VAT (in case of non–EU businesses, the limits in the reciprocity agreements should be observed).

In addition, the new rules provide that taxable persons not established in Romania, whose refund requests were refused on grounds of non-payment, are now entitled to claim back Romanian input VAT incurred on invoices issued during the period from 1 January 2009 to 31 December 2013, without having to prove the payment of such invoices. For this purpose, a VAT refund request should be submitted to the relevant authorities by 30 September 2014.

State of uncertainty

Currently, although the VAT legislation has changed in favor of taxpayers, there is no specific procedure in place for VAT refunds related to past periods as a result of the change. However, as per our informal discussions with the Romanian tax authorities, such a procedure is in progress and is expected to be finalized expeditiously in order to counter any potential practical difficulties that may arise (e.g., VAT refunds that are currently under litigation on grounds of non-payment, which could benefit from a VAT refund under the new provisions).

Furthermore, it is unclear how taxpayers that are currently contesting refusals of VAT refunds based on the non-demonstration of the payment of VAT should act with respect to the resubmission of their VAT refund claims.

Implications

Businesses that may have faced VAT refund denials on grounds of non-demonstration of the VAT payment should be aware of the recent legislative changes allowing the possibility to recover such input VAT incurred between 1 January 2009 and 31 December 2013 by submitting a new refund request by 30 September 2014 (subject to meeting all other conditions imposed by law).

However, due to the uncertainties and practical problems cited above, taxpayers should consider an action plan as soon as possible to safeguard their right to the VAT refund (which could include relevant legal actions). EY can assist in this respect.

Furthermore, if taxpayers faced similar refusals of VAT refunds in 2007 and 2008, they might consider (although not allowed by the current Romanian legislation) resubmitting a VAT refund claim for these years as well. Although there is no certainty of a successful outcome, there could be arguments to sustain such action in the courts eventually.

It should also be noted that in case of successful resubmission of VAT refund claims, taxpayers can consider claiming late payment interest for late refunds.

Russia — Application of the VAT place of supply rules to services by a foreign entity with a taxable presence in Russia

Determination of the place of supply of services for VAT purposes can be a source of controversy when the supply involves a foreign entity with a registered branch and/or representative office in Russia.

The rule applicable to determining the place of supply of services depends on the type of service. It may be based on various parameters, but in most cases it is linked to the place where one of the parties to the supply (either the customer or the service provider) carries on its operations. The purchaser is the relevant party in the case of various services listed in clause 4 of Article 148.1 of the Tax Code, including consulting, legal, accounting, auditing, engineering, advertising, information processing and R&D. Where the seller carries out its activities determines the VAT place of supply for services for which no specific rule is provided in the Tax Code.

As a general rule, a company is deemed to be carrying on operations in Russia for this purpose when it has an actual presence in Russia based on its state registration (i.e., it was incorporated under Russian law) or when it has no place of state registration in Russia, but meets the following criteria:

- The place is mentioned in its constituent documents (e.g., articles of association)
- Its place of management is in Russia
- The location of its permanent executive body is in Russia
- The location of its permanent establishment (PE) where the services are rendered through such PE is in Russia

Where these criteria are not met — e.g., in the case of a foreign company with a Russian branch that is not a PE — one may conclude that the company should not be deemed to have a place of activity in Russia for the purposes of VAT.

In practice, when the relevant party is a foreign company, the tax authorities are likely to check, when auditing VAT compliance, whether it has a PE in Russia and, if so, whether the services are "rendered through" that PE. If the service relates exclusively to a place where the foreign company carries on activities outside Russia, Russia should not be deemed the place of its activities for the purposes of deciding the place of supply of the service, even if it has a registered presence (including a PE) in Russia.

Alternatively, when the service relates to a Russian branch or representative office of a foreign company (either acquiring services for its own purposes or rendering services using local personnel), then the tax authorities may note that the company is carrying on activities in Russia and decide that the place of those activities is the place that determines the VAT treatment of the services.

In determining the relevant place of activities of a foreign company, the tax authorities may use numerous criteria, including the involvement of local personnel, the place where the contract was signed, the place where the person who signed the contract is employed and the location of the bank accounts used to pay for the services.

In a recent letter, the Ministry of Finance confirmed that Russia should not be deemed the place of activities of a foreign company with a Russian branch for VAT purposes if the services in question are rendered directly to such a foreign company (i.e., directly rather than through the company's Russian PE). This will be true even if the service agreement has been signed by its Russian branch or representative office.

In order to avoid disputes with the tax authorities, it is worthwhile for foreign companies with registered places of business in Russia (including any that are not PEs) to take particular care in documenting their transactions to avoid needless uncertainty as to the place of supply of services and related VAT risks.

Middle East, India and Africa

East African Community — Decisions made at the pre-budget consultations by the ministers of finance

The East African Community (EAC) is the regional intergovernmental organization of the Republics of Burundi, Kenya, Rwanda, the United Republic of Tanzania and the Republic of Uganda. Its headquarters are in Arusha, Tanzania.

The EAC of Finance recently agreed to the introduction of a 1.5% infrastructure levy on selected imports into EAC to finance railway infrastructure development.

Rwanda — Budget for 2014–15

Executive summary

On 12 June 2014, the Rwandan Finance Minister, Ambassador Claver Gatete, presented the Rwanda National Budget to Parliament. Among the highlights of his budget speech were the tax proposals for the financial year 2014–15.

The key indirect tax proposals are as follows.

General proposals:

- Expand the tax base (e.g., to include some of the informal sector)
- Encourage citizens to comply with tax obligations
- Use modern technology in tax collection to simplify tax payments for taxpayers

VAT proposals:

- Increase use of the Electronic Billing Machine (EBM), which was introduced during the last financial year, to improve VAT collections

Excise duty proposals:

- Increase excise duty on telephone air-time from the current 8% to 10%

Customs duty proposals:

- Telecommunication equipment, 0% import duty
- Reduction of import duty on road tractors for semitrailers from 10% to 0%
- Reduction of import duty on road tractors for semitrailers of 5 to 20 tons from 25% to 10%
- Reduction of import duty on road tractors for semitrailers above 20 tons to 0%
- Passenger vehicles with a seating capacity of less than 25 people, 10% import duty
- Passenger vehicles carrying more than 25 people, 0% import duty
- Wheat flour, import duty reduced from 35% to 0%
- Sugar, import duty reduced from 100% to 0%; the importation will instead be regulated
- Unprocessed rice, import duty reduced from 75% to 45%
- Cement, import duty reduced from 35% to 25%

It should be noted that Rwanda does not normally make pronouncements relating to all proposed tax amendments during the reading of the national budget. Therefore, it is possible that other changes, especially relating to income tax and VAT, may be proposed later through the tax amendment bills that will be issued by the Finance Ministry.

Uganda — Budget for 2014–15

Executive summary

On 12 June 2014, Uganda's Finance Minister, the Honorable Maria Kiwanuka, presented the Uganda National Budget to Parliament. Among the highlights of her budget speech were the tax proposals for the financial year 2014/15.

The objectives of the various tax measures for the financial year 2014–5 are to raise revenue, enhance transparency in collection and enforcement, improve and encourage compliance. The following tax proposals have been put forward.

VAT proposals

Termination of exemptions under the second schedule of the VAT Act

The following supplies will be subject to 18% VAT (i.e., will no longer be exempt):

- Supply of new computers, desktop printers, computer parts and accessories and computer software licenses
- Supply of hotel accommodation in tourist lodges and hotels outside the Kampala District
- Supply of liquefied petroleum gas
- Supply of feed for poultry and livestock
- Supply of agriculture and dairy machinery
- Supply of packaging materials to the dairy and milling industries
- Supply of salt
- Supply of insurance services except medical and life
- Supply of specialized vehicles, plant and machinery services and civil works related to road and bridge construction, agriculture, water, education and health

Termination of zero-rated supplies under the third schedule of the VAT Act

The following supplies have been excluded from zero-rating and will therefore be subjected to 18% VAT:

- Supply of printing services for educational materials
- Supply of cereals grown, milled or produced in Uganda
- Supply of processed milk and milk products
- Supply of machinery and tools for agriculture
- Supply of seeds, fertilizers, pesticides and hoes

EY newsletters and alerts

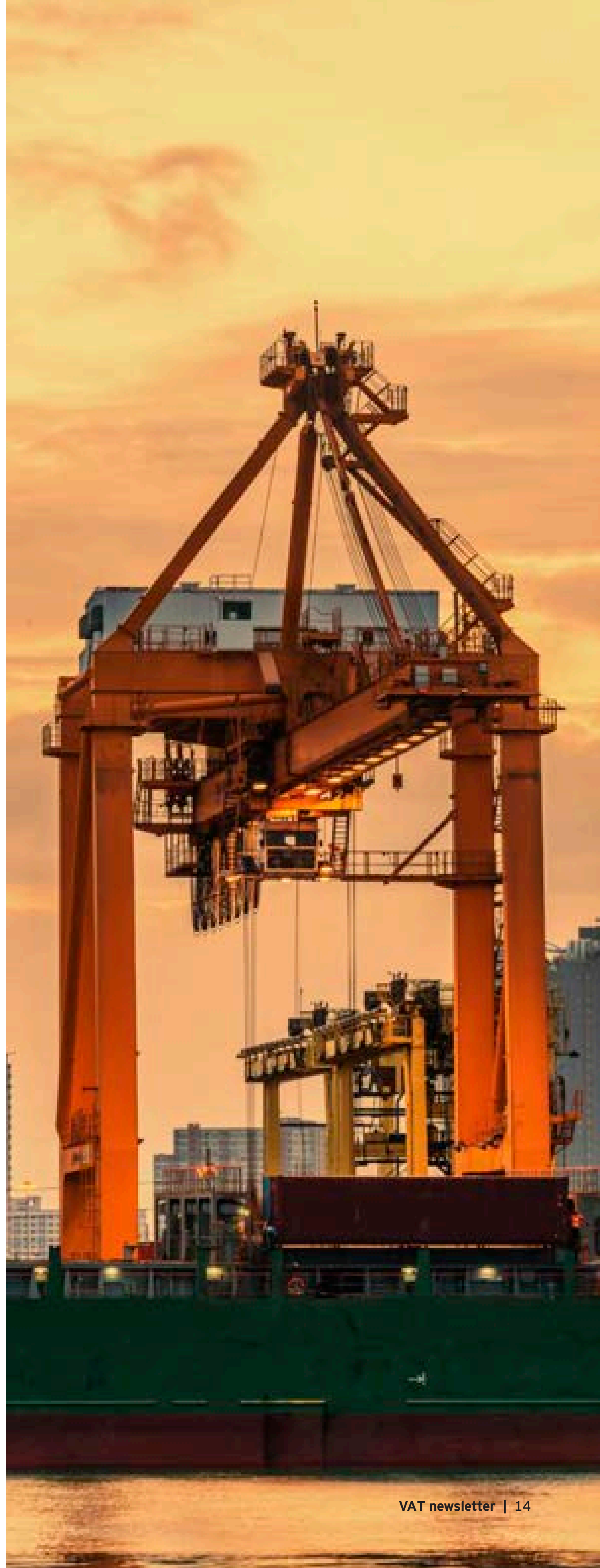
If you would like a copy of a green paper, newsletter or alerts covering some of the topics mentioned below, please contact Howard Lambert at howard.lambert@ey.com.

Latvia: Latvia recently issued the June 2014 edition of its regular *Tax Newsletter*.

Netherlands Tax Update Weekly: Issue 25, 2014, Issue 26, 2014, Issue 27, 2014 and Issue 28, 2014 — weekly client e-newsletter — a roundup of VAT news from the Netherlands, EU and other countries

Slovak Republic: *EY Tax news* 5/2014

UK: VAT news: weeks ending 16 June 2014, 23 June 2014, 30 June 2014, 7 July 2014, and 14 July 2014 — weekly client e-newsletter, a roundup of VAT news from the UK, EU and other countries



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