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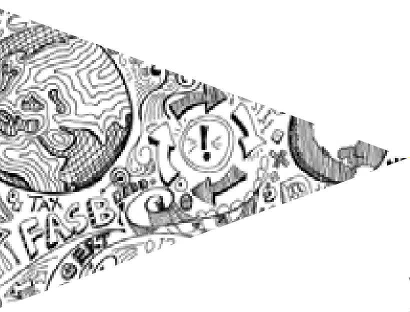
VAT newsletter



Introduction

Welcome to the ninth issue of Ernst & Young LLP's 2013 *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.

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Building a better working world

Americas

Colombia — VAT regulations issued for exported services

The long-awaited Decree No. 2223 of 2013, by which the government regulates the requirements for exempting exported services from VAT, has been issued. We highlight the main aspects of this regulation:

- It reiterates the definition of an exported service as being a service provided in Colombia to be used or consumed exclusively abroad by companies without a business or activities in Colombia.

  In this respect, the decree confirms the provisions of Decree No. 1805 of 2010, which defines "companies or individuals without business or activities in Colombia" as those who "live abroad but have some kind of economic link in Colombia and are direct beneficiaries of the services provided in Colombia, to be used or consumed exclusively abroad." This ensures that a foreigner holding a branch, a permanent establishment or a subsidiary in Colombia can benefit from this exemption, provided that the service is for the benefit of the foreign operation.

- The latest Decree ends the discussion on the need for a registration with the Dirección de Impuestos y Aduanas Nacionales (DIAN) as a condition of the exemption, expressly stating that it is not required to register a contract or an invoice, and further clarifying that between 26 December 2012 and the date of the decree, a registration is not required. This implies that VAT collections made since 1 January 2013 as a result of not having a registration with the DIAN are recoverable through mechanisms provided for this purpose.
- The Decree sets new documentary requirements for the exemption, providing greater flexibility for the taxpayer to provide proof of export and thus the VAT-exempt treatment.

  In this regard, we reiterate the need to be registered as an exporter in the Registro único tributario (RUT) and to retain documentation proving that the service has been exported, for example a valid invoice, a contract or agreement, offer (with agreement) or purchase order. This documentation should show a description of the service, its value, the country to which the service is exported and the name and address of the beneficiary and his/her domicile or residence.

  It also adds a new element that a certification is needed from the service provider on the invoice stating "that the service was provided to be used or consumed exclusively abroad and that the recipient of the service has been notified of such fact."

Mexico — Impact of recent amendments to Mexico's Customs Law, Value Added Tax Law and Excise Tax Law on foreign trade operations

Important amendments to the Mexican Customs Law, Value Added Tax (VAT) Law and Excise Tax Law were approved by the Mexican Congress on 31 October 2013. These amendments significantly affect foreign trade operations in Mexico. While most of these changes will be in force on 1 January 2014, some will be deferred for a limited period. The most relevant amendments affecting foreign trade operations are summarized as follows.

Use of customs brokers is no longer mandatory

It will no longer be mandatory for importers/exporters to engage the services of a customs broker in order to file import/export entries or "pedimentos."

While importers/exporters may opt to continue using a customs broker to perform customs clearance procedures, they also may choose to perform such procedures on their own behalf by designating a legal representative or "customs representative" who will be responsible for preparing and filing of documentation for import/export.

Note that the customs representative will be jointly liable with the importer/exporter for the payment of duties and other taxes due upon the import/export of goods.

The Mexican tax authorities will establish the mechanisms to be used by importers/exporters performing the customs clearance procedures on their own behalf no later than one year after this amendment is published.

Strategic bonded warehouse "recinto fiscalizado"

The amendments to the Mexican Customs Law allow the establishment of a strategic bonded warehouse (similar regime to a US Foreign Trade Zone) anywhere in the country.

While these amendments allow more flexibility when establishing a strategic bonded warehouse, goods that are temporarily imported under the Regimen de Recinto Fiscalizado Estratégico regime will be subject to VAT. Therefore, the benefit of using such regime is significantly reduced.

Expedited customs clearance process

Since 1 June 2012, the use of an electronic foreign trade platform, commonly referred to as the "single window" "ventanilla única "became mandatory in order to perform customs clearance of products in Mexico.

The amendments to the Mexican Customs Law merge the former single window platform into a new Electronic Customs System. Under this new system, all filings required for customs clearance will be performed electronically and through digital documents, including the import/export entries (pedimento) and supporting documentation (commercial invoice, bill of lading, certificates of origin, etc.).

As part of the new Electronic Customs System, importers will have to transmit an electronic declaration with information on the value of the imported goods. The amendments to the Customs Law establish a new fine, ranging between USD1,500 and USD2,500, that may be imposed on importers if they declare inaccurate or false data in the electronic value declaration.

Also, in order to expedite the customs clearance process, the secondary review of goods during the import customs clearance is eliminated.

More flexibility on post-entry amendments

Mexico's Customs Law currently limits the importer's ability to make amendments to import/export entries (pedimentos). For example, when adjusting the value, an importer is generally limited to correct the information on import/export entries twice on downwards price adjustments. Additionally, some fields in the import/export entry, such as the country of origin or the description of the goods, cannot be amended.

The amendments to the Customs Law allow for changes to be made regarding the information contained in the import/export entry at any time and as many times as required, with some exceptions in which the Mexican tax authorities will need to issue prior authorization.

The scenarios in which prior authorization will be required are still to be determined by the Mexican tax authorities through General Foreign Trade Rules.

"Regularization" of expired temporary imports

Under current law, expired temporary imports cannot be brought into compliance through the regularization procedure, which allows importers to create the corresponding import documentation and pay the applicable duties and VAT.

The amendments approved by Congress specifically acknowledge in Mexico's Customs Law the possibility for importers to apply the regularization procedure on expired temporary imports, limiting the importer's exposure to the payment of omitted duties, if any, and VAT.

Change of regime of temporary imported goods is extended to non-IMMEX-related imports

The Mexican Customs Law only allowed a change of regime to permanent importation of goods that were temporarily imported for manufacturing, transformation or repair purposes (for example, goods imported under an IMMEX program). The amendments to Mexican Customs Law now allow the possibility of changing the customs regime of other goods that may be temporarily imported, such as samples and goods imported by foreign residents.

VAT to be paid on temporary importations

The VAT is currently waived when goods are temporarily imported into Mexico (i.e., under an IMMEX program). In accordance with the amendments to the VAT Law, import VAT at 16% will have to be paid on all temporary imports, at the time the temporary import entry is filed. While the VAT paid upon importation may be recovered through a credit or refund, the recovery process may take significant time and effort. Companies should carefully evaluate the cash flow implications arising from this new obligation.

To avoid the negative cash flow implications, companies may obtain certification from the Tax Administration Service if they demonstrate compliance with requirements regarding adequate controls of their temporary imports. While these requirements have not been clarified, this certification should allow companies to apply a tax credit against the VAT that has to be paid for the temporary importation of goods. The certification will be valid for one year and must be renewed 30 days prior to its expiration date.

Alternatively, those companies that choose not to obtain certification should be able to avoid the payment of VAT on their temporary imports as long as they guarantee the VAT payments through a bond issued by an authorized institution.

The obligation to pay VAT upon the temporary importation of goods will become effective one year after the Tax Administration Service publishes the rules regulating the certification process and the mechanism through which the tax credit will be applied.

VAT to be paid on sales of temporarily imported goods

The VAT exemption on sales of temporarily imported goods between non-Mexican residents and Mexican residents (i.e., maquiladoras) is eliminated. Even though such sales will be subject to VAT at the 16% rate, the VAT should be recoverable by the Mexican resident who purchases the goods.

VAT in Mexico's border region to be increased

The VAT rate of 11% for Mexico's border region is eliminated and a 16% VAT rate will be in force across the country as of 1 January 2014.

Excise tax to be paid on temporary importations

The excise tax, which applies on the importation of beverages with alcohol content, beer, cigarettes, gasoline and diesel fuel, was usually waived when such goods were temporarily imported into Mexico. In accordance with the recently approved amendment, the excise tax will now have to be paid on all temporary imports of the applicable products at the time the temporary import entry is filed.

Similar to the VAT mechanism, in order to minimize the excise tax paid upon importation, companies may obtain a certification from the Tax Administration Service in order to apply a tax credit against the excise tax that has to be paid for the temporary importation of goods or guarantee the excise tax payments through a bond issued by an authorized institution.

The obligation to pay the excise tax upon the temporary importation of goods will become effective one year after the Tax Administration Service publishes the rules regulating the certification process and the mechanism through which the tax credit will be applied.

Peru — Simplification of applicable rates to VAT Withdrawal System and reduction in penalties

1. The tax authority's Resolution No. 265-2013/SUNAT, published in the *Official Gazette* on 1 September 2013, modified the rates of the VAT Withdrawal System *(Detraccion del IGV)* applicable to certain supplies of goods and services. The new rates apply from 1 November 2013.

A summary of the modifications is presented below.

Annex 1: Sales of goods subject to the VAT Withdrawal System

Section	Concept	Rate applicable until 31 October 2013	Rate applicable from 1 November 2013
1	Sugar	10%	9%
2	Ethyl or Ethanol alcohol	10%	9%
3	Cotton	12%	9%

Annex 2: Sales of goods subject to the VAT Withdrawal System

Section	Concept	Rate applicable until 31 October 2013	Rate applicable from 1 November 2013
2	Hard yellow corn	7%	9%
3	Raw cotton without removing	15%	9%
4	Sugar cane	10%	9%
5	Sand and stone	10%	12%
7	Sales of goods levied with the VAT because of the waiver to the exemption	10%	9%
17	Paprika and other fruits of the "Capsicum" genus or pepper	12%	9%
18	Asparagus	12%	9%
21	Gold and other metallic minerals exempt from VAT	5%	4%
22	Other non-metallic minerals	6%	12%

Annex 3: Supply of services subject to the VAT Withdrawal System

Section	Concept	Rate applicable until 31 October 2013	Rate applicable from 1 November 2013
3	Maintenance and repair of goods	9%	12%
9	Construction contracts	5%	4%
10	Other services levied with the VAT	9%	12%

1. In addition, the tax authority's Resolution No. 277-2013/SUNAT, published in the Official Gazette on 7 September 2013, relaxed the application of penalties in the VAT Advanced Collection System (Percepción del IGV). The Resolution is in force from the day after it is published in the *Official Gazette*.

Turks and Caicos Islands — Proposed GST on certain services abandoned

The Government of Turks and Caicos Islands has decided that it will not proceed with the introduction of a general services tax (GST) on professional services and a "temporary licensing fee" (visitor's driving permit), which was scheduled for 1 October 2013.

In order to collect the revenue required, effective from 1 October 2013, the following tax amendments were introduced:

- Increase to 12% the stamp duty on vehicle hire
- Increase to USD0.85 per gallon on fuel duty
- Increase to 12% the communications tax
- Introduction of an USD0.10 per minute levy on incoming international phone calls

Asia-Pacific

Taiwan — Helpdesk established for foreign taxpayers

The National Taxation Bureau of Taipei has established a foreign taxpayer helpdesk to help foreign taxpayers who do not speak Chinese with their tax issues. The helpdesk will cover all types of tax issues including profit-seeking enterprise income tax; individual income tax; estate and gift tax; value added tax; business tax; security and future transfer taxes; special goods and service tax; and tax evasion matters.

The aim of the helpdesk is intended to provide tax information or a better understanding of local tax laws and regulations, and also to serve as a tool for resolving taxpayers' tax problems and protection of their legal rights.

Vietnam — Decree 92/2013 on implementation of VAT

The Government's Decree No. 92/2013/ND-CP provides guidance on VAT as follows:

- The 5% VAT rate applies to sale, lease and hire purchase of social residential housing on contracts signed from 1 July 2013 and to payments made from 1 July 2013 on a contract signed before 1 July 2013.
- In the case of lease of social residential housing, the 5% VAT rate applies depending on the time of collection of money pursuant to the contract (including cases of collection of rent in advance for a number of periods) as of 1 July 2013. If the enterprise has not received rental payments as of 1 July 2013, such 5% VAT rate shall apply depending on the time when the invoice is sent.
- The 50% VAT reduction applies as of 1 July 2013 until the end of 30 June 2014 to sale, lease and hire purchase of commercial housing being finished apartments with a floor area smaller than 70 square meters and a selling price of less than VND15 million/m2 (approximately USD710/m2).
- For sale and hire purchase contracts of commercial residential housing, 50% VAT reduction applies to the amount of money paid in the period from 1 July 2013 until the end of 30 June 2014.

Determination of purchases from one seller in a day

Pursuant to The General; Department of Taxation (GDT) Official Letter No. 2481/TCT-KK dated 2 August 2013 regarding the condition on payment via bank for VAT input deduction purpose, purchase on one occasion is based on each invoice received from seller. In case the purchaser receives many invoices from one seller in the same day, it is determined as multiple purchases from one provider in the same day.

VAT declaration on extra-provincial sales

The GDT Official Letter No. 2484/TCT-CS dated 2 August 2013 confirms that where enterprise performs extra-provincial business activities in a location but pays VAT in province where it is headquartered, it shall not pay additional VAT amount in the location of where business activities are carried out. However, administrative penalty shall be imposed.

VAT on promotion activities

Pursuant to GDT Official Letter 2681/TCT-CS dated 16 August 2013, where promotion activities exceeding regulated limit or violating promotion regulations, leading to cancellation decision by authorized authority, enterprises must declare, calculate and pay VAT on the excessive promotion value or the amount not in accordance with the laws.

Europe

EU — Council Implementing Regulation — Place of supply of services — 2015 changes

Official Journal L 284 of 26 October 2013 includes the final agreed text of a Council Implementing Regulation (EU) No. 1042/2013) of 7 October 2013 amending the Implementing Measures Regulation (officially titled Council Implementing Regulation (EU) No. 282/2011) as regards the place of supply of services. This Regulation, which applies from 1 January 2015, primarily seeks to strengthen some of the changes to the VAT place of supply rules for telecoms, broadcasting and electronic services supplied to EU resident individuals (e.g,. relating to the precise services covered and the determination of the customer's status and location). However, the Regulation also seeks to address some wider issues relating to the place of supply rules for services, including an attempt to clarify the borderline between land-related services and "general rule" services, and clarification of the place of taxation where tickets granting access to cultural, sporting, entertainment or similar events are sold by an intermediary rather than directly by the organizer.

Non-EU companies have been required to collect and remit VAT on supplies of telecoms, broadcasting and electronic services made to non-business customers resident in the EU and according to rate applicable in each non-business customer's EU country for quite some time now. However, EU-based suppliers are only required to collect VAT on such sales at the rate applicable in each vendor's EU country. This has created an uneven approach. However, by way of recap, from 1 January 2015, the country of taxation for supplies of telecoms, broadcasting/media and digital content to EU resident individuals is changing. Instead of VAT being paid in the Member State of the EU vendor, it will become payable where the customer is a resident. This means that affected businesses will have VAT-reporting obligations for every Member State in which they have non-business customers, although a mini One-Stop Shop will enable such businesses to comply with all of their VAT obligations in all Member States from their country of registration. In this regard, on 29 October 2013, the European Commission (EC) published practical guidelines to prepare businesses for these new VAT rules. These guidelines deal with the practical application of the mini One-Stop Shop (e.g,. 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 required). With this information, the EC envisages that businesses will able to properly prepare their processes and configure their IT systems to collect the information that they will have to submit from February 2015. Additional guidelines on the new place of supply rules (e.g., relating to the status of the customer) will be published next year.

The Council Implementing Regulation and the EC's new guidelines can be accessed by clicking here and here respectively.

European Union — Proposed unified EU VAT return

On 23 October 2013, the European Commission (EC) put forward a legislative proposal for a standard value added tax (VAT) return. The EC states that the aim of the standard VAT return is to reduce administrative burdens for business, ease tax compliance and make tax compliance across the European Union (EU) more efficient. 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.

Around 13% of VAT payers in the EU submit VAT returns in more than one Member State. Currently, although the objectives and logic behind a VAT return are the same in all Member States, the content and format of VAT returns vary significantly between them. This is a source of complexity and administrative burden for businesses. It is estimated that, if adopted, the new return could cut costs for EU businesses by up to EUR15 billion a year. As such, it reflects the EC's stated commitment to delivering more insightful regulation and reducing administrative burdens for businesses. Another possible benefit of the standard VAT return is that, in simplifying the process for taxpayers, it should also improve tax compliance and increase tax revenue collection.

Details of the proposed return

The proposed 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 EC 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 EC 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 quarterly. The requirement to submit an additional 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.

Next steps

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

European Union — VAT fraud cost EU Member States USD260 billion in 2011; European Commission says overhaul needed

According to the European Commission (EC), value added tax fraud in the EU cost 26 member states more than USD260 billion in 2011 — or 1.5% of the bloc's annual gross domestic product — and, despite a host of recent measures adopted to reduce what is referred to as the VAT gap, a significant overhaul of the VAT system is needed. Coming at a time when many EU Member States' budgets are strained and some are planning VAT increases to cover fiscal shortfalls, the EC indicated in its 19 September report, issued in Brussels, that a crackdown on fraud would be a wise policy choice compared to VAT rate increases. To review the report, please click here.

European Union — New campaign to tackle tax fraud and evasion

The European Commission has announced the launch of a new campaign to tackle tax fraud and evasion.

Click here to access the EC's new webpage and video.

European Union — Proposed Council decision — Denmark and Sweden — Recovery of VAT on cross-border tolls

The European Commission (EC) has published a Proposal for a Council Implementing Decision (COM(2013) 584) authorizing Denmark and Sweden to extend an existing derogation (due to expire on 31 December 2013) which provides for simplified rules on the recovery of VAT in connection with tolls on the Öresund fixed link between the two countries. Under the normal VAT rules, as the fixed link is located partly (50%) in the territory of Denmark and partly (50%) in the territory of Sweden, 50% of the VAT paid on the toll charge for using the link would be recoverable from Denmark and 50% from Sweden. The existing derogation simplifies the VAT rules by allowing a single claim for the recovery of VAT in relation to the toll. Specifically, taxable persons established in Denmark and Sweden are entitled to deduct, on their domestic VAT return, the full amount of deductible VAT on the tolls, whereas claims by taxable persons established in other Member States and 13th Directive claims should be made to the Swedish tax authorities only. The EC proposes that these existing simplification rules should be extended for a further seven years (i.e., to 31 December 2020).

The Proposal can be accessed by clicking here.

Belarus — Proposed increase in the standard rate of VAT

The Ministry of Finance and Ministry of Taxation together with the National Centre of Legislation and Legal Research made public a draft law to amend the Tax Code.

Among the proposed changes is a proposal to increase the standard rate of VAT from 20% to 22% with effect from 1 January 2014.

The draft law is expected to be submitted to the House of Representatives of the National Assembly in the near future.

Croatia — New fiscal package

The Croatian Government has introduced long-term and short-term measures for fiscal consolidation aimed at reducing the budget deficit.

VAT rate increase

One of 37 measures that have been introduced relates to a change in the reduced rate of VAT from 10% to 13%. The increased rate should come into effect on 1 January 2014. According to the current VAT Act, the reduced rate of 10% applies to accommodation in hotels (and similar places), camps and vessels; the preparation of food; the preparation and serving of drinks; newspapers and magazines with less than 25,000 words; edible oils and fats; baby food; the water supply; white sugar; concert tickets; and arts and culture magazines.

The Croatian Government is also considering applying the minimum VAT rate (currently 5%) to accommodation in tourism which is currently subject to 10% VAT. If this is enacted, it is likely that minimum VAT rate will increase. The standard VAT rate of 25% should remain unchanged.

France — European Court Case — C-388/11 Société le Crédit Lyonnais

The Court of Justice of the European Union (CJEU) released its judgment on 12 September 2013 in this French referral concerning the partial exemption pro-rata VAT recovery calculation of a bank. For completeness, the CJEU released the Opinion of Advocate General Cruz Villalón on 28 February 2013.

Crédit Lyonnais is a bank that has its principal establishment in France and branches in other EU Member States and in countries outside the EU. For the purposes of its turnover-based pro-rata VAT recovery calculation in France, Crédit Lyonnais sought to include the income generated by each of its branches from supplies to third parties, on the basis that those branches together with the principal establishment constituted a single taxable person. The French tax authorities objected to this approach. In these circumstances, the referring court asked essentially whether EU law (specifically, Articles 17 and 19 of the Sixth Directive) should be interpreted as meaning that, for the purposes of its turnover-based pro-rata calculation, the principal establishment of a company situated in one Member State may take into account the turnover of its branches established in other countries both inside and outside the EU. In line with the Advocate General's Opinion, the CJEU answered this question in the negative. In this regard, the CJEU held that it was irrelevant whether the Member State made provision for a sectorized partial exemption (i.e., special) method, as the reference in the third subparagraph of Article 17(5) to "sectors of business" referred to different business activities and not different geographic areas.

The CJEU's summary judgment reads:

I. Article 17(2) and (5) and Article 19(1) of the 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, must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in other Member States.

II. Article 17(3)(a) and (c) and Article 19(1) of the Sixth Directive 77/388 must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in third States.

III. The third subparagraph of Article 17(5) of the Sixth Directive 77/388 must be interpreted as not permitting a Member State to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorizes that company to take into account the turnover of a branch established in another Member State or in a third State.

The full judgment can be accessed by clicking here.

The CJEU has also issued a press release on this judgment which can be accessed by clicking here.

Ireland — Guide to VAT issued by the Revenue Commissioners

The Irish tax authority, Revenue Commissioners, has issued an updated version of *The VAT Guide*.

To access *The VAT Guide*, click here.

Italy — VAT rate increased

From 1 October 2013, the increase of the standard VAT rate from 21% to 22% became fully effective in Italy.

In fact, the increase of the standard VAT rate to 22% (originally provided by Article 40, 1st Tier of Law Decree 6 July 2011 n. 98) should have entered into force on 1 July 2013, but it was postponed to 1 October 2013.

No further legislative measure was enacted to provide a further postponement.

The Italian tax authorities recently announced in an official press release that for the first three months no penalties will be applied where taxpayers did not manage to issue invoices with the new VAT rate due to difficulties in updating their invoicing/ accounting system accordingly.

Specifically, no penalties would apply provided that the incorrect invoices are properly amended through the issuance of debit notes according to Article 26 of Italian Presidential Decree n. 633/1972 and that the correct VAT amount (i.e., 22%) plus any interest due is paid to the Italian Treasury within the following deadlines:

VAT calculation period	Invoicing period	Payment deadline
Monthly	October and November	27 December 2013
Monthly	December	16 March 2014
Quarterly	IV quarter	16 March 2014

In order to determine when the new VAT rate must be applied, reference should be made to the general criteria for determining when a transaction is deemed to occur for VAT purposes (i.e., "VAT point").

Italy — Proposed EU Council decision — Right of VAT deduction in relation to expenditure on certain motorized road vehicles

The European Commission (EC) has published a Proposal for a Council Implementing Decision (COM(2013) 610) authorizing Italy to continue to restrict to 40% the right of deduction in relation to expenditure on certain motorized road vehicles, as a special measure derogating from Articles 26(1)(a) and 168 of the VAT Directive.

The EC proposes that authorization should be granted until the end of December 2016. The Italian Government will need to present a new report if a new extension request would be envisaged beyond that end date. The Decision would in any case expire if EU rules governing restrictions on the right of deduction in this area come into force before that end date.

The Proposal can be accessed by clicking here.

Poland — Amendments to combat carousel fraud

On 30 August 2013, the President signed the amendments to the VAT law and the Tax Code introducing, among other issues:

- A reverse charge VAT mechanism (VAT self-assessment) for certain commodities, such as steel products, petrol, diesel oil, unprocessed gold, waste and secondary raw materials, to combat tax fraud, mainly "carousel transactions," in trading within these sectors. Under the new arrangement, it will be the consumer of the commodities rather than the supplier who will be liable to pay VAT.
- An obligation for monthly, instead of quarterly, VAT settlements for entities trading in sensitive commodities, subject to exceptions (e.g., where the total value of the supplies of sensitive commodities does not exceed PLN100,000 in a month).
- A joint liability and several tax liabilities of the purchaser acquiring the above commodities if the value of a transaction with the vendor exceeds PLN50,000 (approximately USD16,000) in a month, or the purchaser knows or suspects that the vendor will not pay taxes.

The amendments came into force on 1 October 2013.

Portugal — recovery of VAT on irrecoverable debts and bad debts

Following the changes introduced by the Portuguese Budget Law for 2013 regarding bad and doubtful debts, with emphasis on the creation of new mechanisms of VAT recovery applicable to credits elapsed from 1 January 2013 onwards — as foreseen by articles 78-A to 78-D of the Portuguese VAT Code. The Portuguese tax authorities are now implementing new procedures to gather all relevant information about each default credit and the debtor identity that might enable the Portuguese tax authorities to effectively control the VAT adjustments performed by the taxable entities.

Therefore, and with the main purpose of monitoring the VAT adjustments performed through these mechanisms, the Portuguese Government has approved, through Ruling nr 255/2013, two new annexes concerning box 40 (VAT adjustments on behalf of the taxable entity) and box 41 (VAT adjustments on behalf of the Portuguese tax authorities) of the VAT return.

Nevertheless, it is important to point out that these annexes regard not only to bad and doubtful debts, but also relate to other type of VAT adjustments resulting from:

(i) Cancellation/correction of invoices, arising from the invalidity, termination, rescission or reduction of contacts, as well as deriving from the return of goods or discounts granted by the supplier

(ii) Cancellation/correction of inexact invoices

iii) Correction of material or calculation errors

(iv) Other VAT adjustments not foreseen by article 78 and the new regime set forth by articles 78-A to 78-D of the Portuguese VAT Code, i.e., VAT adjustments foreseen by articles 23 to 26 (of the same Code), as for example the VAT adjustments on fixed assets, as well as other VAT adjustments, for instance, arising from mergers

Note that the new annexes of the VAT return should be used from the taxable period of October 2013 onward, that is:

- For taxable entities registered in the VAT monthly regime, these annexes (if applicable) should be submitted, jointly with the VAT return, until 10 December 2013
- For taxable entities registered in the VAT quarterly regime, these annexes (if applicable) should be submitted, jointly with the VAT return, until 15 February 2014

UK — Consultation on changes to the zero-rating of exports from the UK

On 10 September 2013, Her Majesty's Revenue & Customs (HMRC) published responses to a consultation document regarding changes to the VAT zero-rating of exports from the United Kingdom.

Details of the consultation responses are available on the UK Government website.

Middle East, India and Africa

Kenya — 2013 VAT Act become effective

The VAT Act 2013 became effective on 2 September 2013 following the publication of a notice on 30 August 2013.

EY | Assurance | Tax | Transactions | Advisory

EYG no. YY3159
BSC no. 1311-1165093

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.

Austria: *International Tax Review* September 2013

Czech Republic: *Tax News* August and September 2013

France – *EY Alert on European Court of Justice Case on Crédit Lyonnais*

Slovakia: New filing obligation – detailed VAT ledger

Slovakia: *EY Tax News* July and August 2013

UK: *VAT News* – Weeks ending 12, 19, 26 of August 2013 and 2 and 9 September 2013

Financial Services and VAT – Overview – August and September 2013

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