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Indirect tax updates from around the world

August 2013



Message from David Raistrick, Global Indirect Tax Leader

Welcome to the August 2013 edition of GITN, containing updates from the Americas, Asia Pacific, and EMEA regions.

Highlights of this edition include further news from China on the VAT reform pilot program and the enactment in Russia of VAT rules relating to the Sochi Winter Olympic and Paralympic Games. In keeping with global trend for introducing VAT/GST regimes, GST is expected to be introduced in the near future in Malaysia, and Deloitte Malaysia is running a series of GST workshops (see the [workshop brochure](#)).

If you have any queries or comments about the GITN, I would be delighted to hear from you.

David Raistrick

Global Indirect Tax Leader

Country summaries

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Americas

Bahamas

VAT to be introduced

The government has announced that a VAT will be introduced from 1 July 2014 at the rate of 15%. The VAT threshold will be set at BSD 50,000, and VAT returns and payment will be made on a monthly basis.

The VAT will apply to a wide range of goods and services. A 10% rate will apply to hotels, replacing the current Hotel Occupancy Tax.



Zero-rating will apply to exported goods and services and the international transport of goods and passengers. Certain goods and services will be exempt from VAT, including financial services, transfers of leases and residential buildings, agriculture and fisheries, health and education services, and social and community services.

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Canada

Retail sales tax increase in Manitoba from 1 July 2013

On 16 April 2013, the government of Manitoba announced that it would be increasing the provincial sales tax (PST) from 7% to 8% with effect from 1 July 2013.

The rate increase will assist with infrastructure funding. The rate will return to the prior rate on 1 July 2023.

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Colombia

Draft decree would remove requirement to register contracts for the export of services

At present, the export of services can only be treated as exempt (with credit) if the contract for the services has been reviewed and registered by the tax authorities as having met prescribed conditions. Any subsequent review by the tax authorities is limited to verifying that the conditions are being complied with.

The government has proposed a decree to remove the requirement to register contracts, and therefore the exemption will depend on the fulfillment of other requirements. This regulation will only apply after the decree is issued.

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Asia Pacific



China

Imminent release of national implementation rule for VAT exemption under VAT reform pilot program

The long-awaited implementation rule for VAT exemption treatment, at the national level, is likely to be announced by the State Administration of Taxation (SAT) very soon. The exemption treatment is very likely to take retroactive effect from 1 January 2012, when the VAT reform pilot program was launched. The draft is understood to be awaiting sign off with central government. Whilst it had been expected that the

implementation rules would have been issued by now, it is understood that they are still under internal review. However, the release is expected to be imminent.

Under the VAT reform pilot program, the provision of certain pilot services (such as consulting for overseas companies) should be exempt from VAT. Although it is not stipulated in the rule, in practice the application of VAT exemption must be pre-approved by the tax authorities. Due to the lack of detailed implementation guidance, the local tax authorities have no basis to review and approve the application, and therefore, it is not possible to apply the exemption; accordingly, VAT must be charged.

The implementation rule will therefore be welcomed by impacted companies. In particular:

- The rule will provide detailed requirements for the eligibility of services for VAT exemption.
- In terms of the application procedure, it is likely that confirmation from other authorities, such as (local branches of) the Ministry of Commerce, regarding the nature of services rendered will be provided.

In view of the above, it is recommended that impacted companies continue to monitor developments to ensure they are able to apply the VAT exemption, if it is available.

Implementation rule announced regarding VAT collection and administration under VAT reform pilot program

With the national roll out of the VAT reform pilot program, which took effect on 1 August 2013, SAT issued Bulletin 39 on 10 July 2013 to specify the VAT collection and administration requirements under the program. The highlights of Bulletin 39 include the following:

- Freight invoice issuance

As the supply of freight services is subject to VAT under the national VAT reform pilot program, rather than the previously charged Business Tax (BT), SAT has updated the freight invoice issuing system and the template for freight VAT invoices.

- Transition rule for issuing red-letter BT invoices

“Red-letter BT invoices” refer to the BT invoices that can be used as a credit note to offset the original BT invoices issued.

Where a taxpayer provided services that were subject to BT and issued a BT invoice prior to the VAT reform pilot program and the BT invoice was credited due to specified reasons (e.g., the information on the invoice was incorrect), the taxpayer shall apply to the in-charge tax bureau by 31 March 2014 to issue a red-letter BT invoice (rather than a red-letter VAT invoice or freight VAT invoice).

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India

Trade secrets and confidential information not intellectual property rights under service tax law

The tax authorities considered that the transfer of trade secrets and confidential information acquired as a co-owner was the receipt of a service subject to service tax, as an "intellectual property rights" service.

In a recent case, the Mumbai Tribunal observed that there was no law governing trade secrets or confidential information in India and the rights, therefore, did not constitute intellectual property rights as then defined in service tax law. (Prior to 1 July 2012, service tax was leviable on the temporary transfer of intellectual property rights that were protected by any law in India.)

The Tribunal further observed that the appellant had become a co-owner of the intellectual property, implying that the transfer was permanent and the permanent transfer of intellectual property rights does not amount to the supply of services. Therefore, the transaction is not an "intellectual property rights" service.

Clarification of Voluntary Compliance Encouragement Scheme, 2013 (VCES)

The Central Board of Excise and Customs has issued clarifications of certain issues encountered by trade and industry in respect of the VCES, an amnesty scheme introduced for the payment of service tax dues.

The clarification paves the way for declaring and paying the tax dues for the period October 2007 to December 2012 without interest and penalties.

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Korea

Legislative changes

The Ministry of Strategy and Finance (MOSF) has announced amendments to the VAT law with effect from 1 July 2013 to rearrange and reclassify articles, paragraphs and subparagraphs to assist taxpayers' better understanding of the law.

The amended law also clarifies the following issues:

- The definition of business place;
- The definition of supplementary provision (the definition provides that the supply of goods or services indispensably annexed to the supply of goods that is the main transaction is deemed to be included in that supply of goods; similarly, the supply of goods or services indispensably annexed to the supply of services that is the main transaction is deemed to be included in that supply of services);
- The issuing of tax invoices on the receipt of cash;
- The zero-rating rules;

- The calculation of fair market value where the parties to the transaction are affiliated;
- The rules regarding import VAT invoices.

The MOSF published a further amendment to the VAT law providing that from 26 July 2013, an amended import VAT invoice can only be issued where:

- The importer has voluntarily filed an amended custom clearance, or
- There has been no substantial error made by the importer before the tax authorities commence the custom clearance inspection process.

Also, from 26 July 2013, if the import value is increased due to a customs audit, the related input VAT will not be refunded.

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Malaysia

GST workshop series

GST has been on the Malaysian tax reform agenda over the last several years. It is widely recognised as a vital part of Malaysian tax reform and the government has consistently stressed the efforts being made to ensure a successful implementation. With the newly-formed government given a fresh mandate, GST will undoubtedly be given a priority moving forward. In the recent months, an increasing number of new GST guidelines have been issued. It is anticipated that campaigns to enhance general public understanding and acceptance of GST will be rolled out next.

Whilst GST is ultimately a consumption tax, businesses are responsible to properly account, report, and remit their tax to the Royal Malaysian Customs. The requirements and responsibilities placed on businesses impact across a number of business operations; policies, contracts, systems, and procedures may need to be changed and people trained to implement the new GST requirements effectively.

With that in mind, the Deloitte Malaysia GST team is holding a series of GST workshops designed to update attendees on developments surrounding the Malaysian GST regime which is expected to be introduced in the near future. Delivered by GST leaders with a passion for the subject and focused on both technical and practical issues, these workshops will provide a clear understanding of how the Malaysian GST will operate, obligations and how it would affect business operations.

The topics and dates for the workshop series are as follows:

- Session 1: Malaysian GST Fundamentals – 20 August 2013
- Session 2: Manufacturing and export – 18 September 2013
- Session 3: Freight and passenger transportation – 10 October 2013
- Session 4: Retailing and services – 19 November 2013
- Session 5: Construction and property developer – 10 December 2013

For more information, see the [workshop brochure](#).

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EMEA



Bulgaria

Domestic reverse charge

The government plans to introduce a reverse charge mechanism on domestic supplies of unprocessed cereals, as a measure against VAT fraud. It is expected that the new rules will apply from 1 January 2014 until the end of 2018. The draft amendment to the Bulgarian VAT Act has been released, but the legislation is still to be discussed and approved by the parliament.

CJEU rules that VAT on expenses relating to subcontract staff was recoverable

The Court of Justice of the European Union (CJEU) has gone straight to judgment in the Bulgarian case of *AES-3C Maritsa Iztok I EOOD*, about the recovery of input VAT on transport costs, work clothing, and safety gear used by staff provided to it (and employed) by another entity and the expenses incurred on business trips that they took on behalf of the company. The judgment suggests that, in general, as long as costs incurred by a taxpayer relate to that taxpayer's taxable economic activities, the fact that another party (e.g., a sub-contractor or agency staff member) is involved should not prevent input VAT recovery.

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Germany

CJEU Advocate General suggests that holiday discounts should generally reduce VAT

The A-G has delivered his opinion in the German case of *Ibero Tours*. The Opinion suggests that travel agents should be able to reduce the amount of VAT they pay to reflect discounts that they have funded out of commission payable by the tour operator – provided that an EU holiday is involved.

It remains to be seen whether the CJEU will agree with the A-G's Opinion when it decides the case (probably later this year or early in 2014).

If the CJEU follows the A-G's opinion this will not only confirm and harmonize the current treatment of discounts given by travel agents but also by other agents, e.g., in the automotive sector.

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Italy

Stamp duty increase

From 26 June 2013, the fixed stamp duty rate of EUR 1.81 increased to EUR 2.00; the fixed stamp duty rate of EUR 14.62 increased to EUR 16.00.

New VAT regime for goods enclosed with books and magazines

From 1 January 2014, there will be an amendment to the definition and treatment of "integrative supports" and gadgets to publishing products and to the related VAT rate and VAT treatment.

The new provision makes a distinction between "integrative supports" (tapes, disks, video tapes, and other audio and video storage formats) and goods other than integrative supports.

Where integrative supports are sold in a single package together with books, newspapers or periodicals, with a single price and with no other commercial use, these supports are considered to be ancillary to the books, etc. and therefore fall under the special VAT regime, with the same (reduced) VAT rate that applies to books, etc.

For integrative supports that do not meet the above conditions (e.g., there is not a single price and/or there may be other commercial uses) and for other kinds of goods (such as gadgets) enclosed with books, etc., the ordinary VAT rate of these goods must be applied, where the value of the enclosed goods is less than 50% of the total value of the supply, the VAT (at the ordinary rate of the different goods) can be calculated in accordance with the special VAT regime.

VAT refund to travel agencies and tour operators

In accordance with a CJEU interpretation of Article 310 of the Principal VAT Directive, a recent law decree clarifies that, with effect from 21 June 2013, VAT incurred on purchases of goods and services falling under the Tour Operators Margin Scheme is not refundable where the goods and services are acquired by tour operators established outside the EU for the direct benefit of travelers.

Joint liability of contractor and subcontractor for VAT due by subcontractor

From 21 June 2013, contractors and subcontractors will no longer be jointly and severally liable (to the extent of the amount of the consideration due) for the payment of VAT due by the subcontractor.

Rental and supply of immovable property

The tax authorities have published a circular dated 28 June 2013 summarizing the VAT regime for the rental and supply by way of sale of immovable property, including tables with the VAT and register tax applicable.

The circular also clarifies a change to the rules applying to the rental of immovable property which applied from 26 June 2012. A decision dated 29 July 2013 includes the new form that must be submitted electronically to the tax authorities in order to opt to tax the VAT on the rental of housing, for agreements in force on 26 June 2012.

VAT credit accrued in years for which VAT returns have been omitted

In a circular dated 25 June 2013, the tax authorities clarified that a VAT credit accrued in years in which VAT returns have not been filed can be offset by the tax authorities against the tax debit arising from the communication of irregularity. Where a taxpayer is utilizing a tax credit in respect of a VAT return that has not been filed, the tax authorities will send a communication of irregularity, claiming back the amount of the credit, which can be used for the offset. Interest and penalties may also be imposed for the part of the credit actually offset. The taxpayer may provide proof of the actual existence of the tax credit within 30 days of receipt of the communication of irregularity.

New rules to file the “spesometro” and other communications

On 2 August 2013, a provision was published setting out the new form, new rules, and technical instructions (tracking records) of the “spesometro” communication (the client and suppliers list). The provision clarified the due dates for the 2012 and subsequent years.

The communication for the year 2012 must be submitted in November 2013 – by 12 November for taxpayers submitting spesometro with monthly VAT computations and by 21 November for other taxpayers.

Communications for subsequent years must be filed in April of the year following the year to which it relates – by 10 April for taxpayers submitting spesometro with monthly VAT computations and by 20 April for other taxpayers.

The provision also clarified that the new form must be used for the following communications:

- By taxpayers required to communicate supplies of tourism services to non EU individuals resident outside Italy paid for in cash with a value of EUR 1,000 or greater.
- By taxpayers in the business of leasing or renting cars, caravans or other vehicles, leisure boats, or aircrafts, if they elect to use this form instead of the existing communication method.
- From 1 October 2013, by taxpayers required to report to the Italian tax authorities purchases made from suppliers established in San Marino. In this case, the electronic filing must be made by the end of the month following the registration of the purchase.

- From 1 October 2013, the report to the tax authorities of transactions with organizations established, resident, or domiciled in “black list” countries.

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Malta

Reduced VAT on short-term yacht charters starting in Malta

On 29 July 2013, the VAT Department published guidelines in relation to the VAT treatment of short-term yacht charters starting in Malta. These guidelines follow to a large extent the interpretation currently being applied to long-term yacht leases.

Guidelines

In terms of the guidelines, a short-term charter of a yacht is an agreement whereby the yacht owner/operator contracts the use of the yacht, for a consideration, with a crew or on a bare boat basis for not more than 90 days. In the absence of the new interpretation, where such yacht is put at the disposal of the customer in Malta and will be used for leisure purposes, VAT of 18% would have been due on the charter fees charged. As a result of the VAT Department’s interpretation, however, the Malta VAT chargeable on the charter is limited to that portion of the use of the yacht within the territorial waters of the EU.

The guidelines set out to establish the estimated percentage of the VAT taxable portion of the charter fees based on the time that the yacht is made use of within the territorial waters of the EU. The percentages are set according to the length of the yacht and its means of propulsion (power or sailing). 18% VAT is then applied only on the established percentage of the charter deemed to be related to the use of the yacht within EU territorial waters. The table below indicates the applicable percentage portions.

Yacht type	% of charter deemed to be taking place in the EU	Computation of Malta VAT
Sailing boats or motor boats over 24 meters in length	30%	30% of taxable value x 18%
Sailing boats or motor boats between 20.01 and 24 meters in length	40%	40% of taxable value x 18%
Motor boats between 16.01 and 24 meters in length	40%	40% of taxable value x 18%
Sailing boats between 10.01 and 20 meters in length	50%	50% of taxable value x 18%
Motor boats between 12.01 and 16 meters in length	50%	50% of taxable value x 18%
All other boats	100%	100% of taxable value x 18%

Conditions

Prior to applying the above VAT treatment, the owner/operator of the yacht must seek approval in writing from the Malta VAT Department, which may grant such approval provided the following conditions are satisfied:

- The supplier of the yacht is a person registered for VAT in Malta;
- The yacht charter contract indicates the place where the charter commences (i.e., Malta), the charter price, and a statement that the yacht shall sail outside EU waters;
- Upon application, the supplier of the charter produces sufficient documentation to identify the yacht with regards to hull number, port of registry, registration number, and any further documentation confirming the size and type of yacht.

The VAT Department may request proof of any payment in connection with the charter.

Recovery of input tax

The guidelines confirm that the owner/operator may reclaim input tax incurred on the fuelling and provisioning of the yacht, insofar as such costs are recharged to the client at the standard VAT rate. If, on the other hand, the owner/operator pays fuelling, provisioning, and similar costs on behalf of the client and merely recharges such costs at no mark up (as is typically the case where the client pays an Advance Provisioning Allowance before the charter starts), no input tax may be claimed by the owner/operator and no VAT would be chargeable on the relative claim for reimbursement of such expenses.

The supplier of the charter would, subject to the normal provisions of the law, be entitled to claim input tax incurred on fuel purchased for the outward journey of the yacht to its next port of destination after completion of the charter.

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Netherlands

VAT return letter to be abolished from 1 January 2014

Resident taxable persons and nonresident taxable persons with a tax representative must electronically file their VAT returns. Taxable persons currently receive a so-called return letter (aangiftebrief) by mail, reminding them to file their VAT returns. These letters also include giro collection forms that can be used to pay the VAT due.

In a notification published on its website, the tax authorities recently announced that these VAT return letters will be abolished. Entrepreneurs will then have to monitor the due dates for filing their VAT returns themselves.

Early in January 2014, VAT taxpayers will receive a list of VAT return periods, due dates for filing and payment, and payment references to facilitate a smooth transition. If taxpayers wish to receive email notifications to remind them to file VAT returns, they

must access the secured part of the tax authorities' website, enter their email address in the user settings, and tick the box indicating they wish to receive email messages.

From December 2013, giro collection forms will no longer be included with VAT returns.

Contract for asset management with employer instead of with pension fund may have a positive tax effect

The CJEU has ruled in the Dutch case *fiscale eenheid PPG Holdings BV c.s* that an employer may deduct VAT on costs it pays for the asset management and administration of a pension fund if there is a direct and immediate link between these costs and the company's economic activity as a whole.

As to the question whether the costs qualify for the VAT exemption for collective asset management the CJEU refers to its judgment in the *Wheels Common Investment Fund Limited* case, which states this not to be the case.

This judgment seems to be an extension compared with the Dutch tax authorities' current policy. Based on this CJEU judgment, an employer may technically deduct VAT on costs it is charged for the management and business operations of a pension fund. Entitlement to deduction means the contracts and invoices for the asset management and the administration must be in the name of the employer. In addition, the costs must be classified as general costs. If so, the VAT on the costs may be deducted based on the employer's applicable pro rata entitlement to deduct VAT. As the employer generally has a 100% entitlement to deduct and a pension fund commonly only deducts part of the VAT, this may result in a considerable benefit.

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Poland

Planned changes to tax point rules

As advised in previous editions of GITN, from 1 January 2014 a number of changes to the Polish VAT Act will come into force.

However, the Polish parliament recently agreed a bill amending the new law insofar as it relates to tax point recognition. In particular, it is proposed that the tax point for certain services including telecommunications, leasing, etc. and for the distribution and supply of energy will be upon the issue of an invoice.

This is a change in the tax point recognition rule in comparison with the current wording of the VAT Act and the wording of the amended VAT Act effective from 1 January 2014.

The bill is now due to be agreed by the upper chamber and signed by the Polish president.

Minister of Finance rules on tax point for transportation services

In August 2013, the Polish Minister of Finance issued a general tax ruling on the tax point for transportation services. The Minister referred to the Polish case *TNT Express Worldwide (Poland) sp. z o.o.* where the CJEU ruled that the Polish VAT provisions on tax point recognition in respect of transportation services were not compliant with the

VAT Directive.

The ruling stated that Polish taxpayers may elect when to recognise the tax point with respect to transportation and forwarding services; taxpayers can either account for VAT in relation to these services according to the specific tax point rules in the Polish VAT law (i.e., receipt of payment but not later than 30 days from the completion of the service) or according to the general rule (i.e., the issue of an invoice but not later than seven days from the performance of the service).

It could be argued that the ruling could also apply to other types of transactions subject to specific tax point regimes that are not compliant with the VAT Directive.

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Portugal

Validation of Portuguese VAT numbers in the VIES system

A ruling was released on 25 July regarding the registration of Portuguese VAT numbers in the VIES system. Under this ruling, only taxpayers that declare in their VAT registration declaration or amendment declaration that they will perform intra-community operations will be included in this system (previously all VAT taxpayers were included).

Additionally, the data already included in VIES is to be reviewed as follows:

- If the taxpayer has not indicated an intention to perform these operations and has not performed any, its VAT number is no longer valid in the VIES system;
- If the taxpayer has not indicated the intention to perform these operations but has performed at least one, it must file an amendment declaration further to which its VAT number will remain valid; and
- If the taxpayer has indicated the intention to perform these operations but it has not performed any since January 2012, it must file an amendment return if it does not intend to remain in the VIES system.

Taxpayers must communicate the above changes by 31 December 2013.

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Russia

VAT relief relating to the Sochi Olympic and Paralympic Games

A new law enacted on 23 July 2013 establishes VAT relief for the XXII Winter Olympic Games and the XI Paralympic Games (the Games). In particular, the law stipulates that the foreign organizers of the Games, foreign marketing partners to the International Olympic Committee (including official broadcasting companies), and their Russian branches and representative offices are not required to act as tax agents and pay to the tax authorities reverse charge VAT with respect to goods, services and property rights purchased in connection with the Games.

The law also provides that the zero VAT rate will apply to purchases made by the foreign organizers of the Games, foreign marketing partners to the International Olympic Committee (including official broadcasting companies), and their Russian branches and representative offices made in connection with the Games. The procedure for applying the zero VAT rate will be established by the Russian government.

According to the law, the Russian government will also establish a procedure for the reimbursement of VAT amounts incurred by the abovementioned organizations from 1 January 2011. Reimbursement will also apply to VAT amounts incurred before their tax registration and before receiving the status of foreign organizers and marketing partners to the Games.

The law also provides that the following transactions will not be subject to VAT:

- The free-of-charge provision to use Olympic facilities that are of “federal importance” (as defined by the Russian government) to the Organizational Committee of the Games, and
- Free-of-charge transfer of title to the Olympic facilities of “federal importance” to federal or municipal ownership, as well as to the State corporation “Olympstroy”.

The law also provides that input VAT incurred by taxpayers in connection with the construction of Olympic facilities of federal importance can be claimed for recovery.

The provisions of the law regulating VAT relief take effect from 1 October 2013. The provisions relating to the free-of-charge transfer of (provision to use) Olympic facilities of federal importance and relevant VAT recovery will apply until 1 January 2017.

New measures aimed at counteracting illegal financial transactions

A new law introduces amendments to a number of areas of the Russian law (civil, banking, anti-money laundering, bankruptcy, criminal, etc.) and reinforces measures aimed at combating illegal financial transactions. Among other measures, the law introduces the following amendments to the VAT legislation:

- From 1 January 2014, electronic VAT filing will become mandatory. All VAT payers (including tax agents) and non-VAT payers (which includes, in particular, entities and individual entrepreneurs applying special tax regimes, such as the simplified taxation system and the taxation system applicable to agricultural producers, allowing for VAT not to be charged on sales) that have issued VAT invoices with VAT amounts indicated in a separate line are required to file VAT returns electronically. Certain exceptions apply to tax agents not treated as VAT payers.
- From 1 January 2015, the tax authorities will be able to request VAT invoices, primary documents, and other documents relating to particular transactions included in VAT returns if, during an in-house tax audit, contradictions or inconsistencies potentially influencing the VAT payable (or refundable) are identified.

- From 1 January 2015, the tax authorities will be able to conduct site inspections in the course of an in-house tax audit if a refund of VAT is claimed or if contradictions or inconsistencies are identified.
- From 1 January 2014, non-VAT payers acting as agents or commission agents under contracts of delegation, commission agreements or agency agreements are required to maintain journals of issued and received VAT invoices. The relevant journals must be filed by the non-VAT payers electronically from 1 January 2015.

The law also introduces other amendments to the Russian tax legislation, in particular:

- From 30 July 2013, in certain specific cases (e.g., the transfer of assets after the commencement of a tax audit) the tax authorities are able to collect a taxpayer's tax arrears from its shareholders or affiliated organizations.
- From 30 July 2013, the tax authorities will be required to send official correspondence to the taxpayer's legal address stated in the Unified State Register of Legal Entities, unless another address is communicated by the taxpayer to the tax authorities.
- From 1 January 2015, taxpayers must notify the tax authorities that they have received requests for documents, explanations, notifications, etc. via electronic communication channels within six days of the sending date, otherwise their bank accounts can be blocked.

The law takes effect from the date of its official publication. Some of the provisions of the law take effect from one month from the date of its publication, or from 1 January 2014, 1 July 2014, or 1 January 2015 respectively.

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Serbia

VAT refunds for nonresident taxpayers

The last amendments to the VAT Law reintroduced VAT refunds for nonresident taxpayers not VAT-registered in Serbia. The amendment will apply with effect from the 2013 year. (Prior to this amendment, a VAT refund was only available for nonresidents that were participating in exhibition fairs in Serbia.)

A VAT refund will only be allowed where there is reciprocity between Serbia and the other state, in other words, there must be a tax refund procedure in place in that other state.

Accordingly, the tax authorities have recently published on their website a list of countries with which reciprocity exists. At present, the following countries are on this list: Austria, Belgium, Bosnia and Herzegovina, Croatia (only for trade fairs), Denmark, Germany, the Netherlands, Slovakia, Slovenia, FYR Macedonia, and Montenegro. It is expected that this list will be expanded in the future.

The request for a VAT refund must be submitted by 30 June of the year following that in which the goods and services were acquired in Serbia. VAT refunds will be available from 2014, i.e., a VAT refund may be requested for goods and services acquired from 2013.

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United Kingdom

VAT avoidance using offshore entities

Following the CJEU judgment in the “off-shoring” case of *Paul Newey T/A Ocean Finance*, the tax authorities (HMRC) have now issued **an update on the case for taxpayers and their advisers**. According to the HMRC Brief, “... [t]he guidance from the CJEU confirms HMRC’s view that economic reality must be considered and that contractual relationships do not necessarily determine VAT issues.” However, the Brief recognises that it is now for the Upper Tribunal (which referred the questions about the EU law position to the CJEU) to decide the case in the light of the CJEU’s replies.

There can be little doubt that the Upper Tribunal will now need to hear argument about the “economic reality” in the case, which was decided in favour of the taxpayer by the First-tier Tribunal.

The Brief confirms that “HMRC will continue to mount in-depth investigations where it believes that a tax advantage may have been claimed artificially.”

It is essential that taxpayers consider carefully the VAT implications of any new and existing business arrangements involving an offshore structure. It is also important for those trading with businesses located offshore to review their own VAT arrangements.

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