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In this issue:
Country summaries
Americas
Asia Pacific
EMEA

Related links:
Global Indirect Tax
GITN archive
Indirect tax rates around the world

Contact us:
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Global Indirect Tax News

Indirect tax updates from around the world

September 2013

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

Features of this edition include an increase in the Italian VAT rate, the potential introduction of a domestic reverse charge in Denmark, and further news from China on the VAT reform pilot program and from Russia in respect of the VAT rules for the Sochi Winter Olympic and Paralympic Games.

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

Americas

Colombia: Two decrees have recently been enacted amending VAT and Consumption Tax. **More**

Mexico: The President has announced tax reform proposals for 2014. **More**

Uruguay: A new tax has been proposed on alcoholic beverages. **More**

Asia Pacific

China: There have been changes to the zero-rating rules. **More**

India: The treatment of marketing and construction services has been clarified. **More**

EMEA

Denmark: A bill introducing a domestic reverse charge has been released for consultation. **More**

France: The judgment in a recent case allowed VAT to be deducted on acquisition costs incurred by a French holding company. **More**

Germany: There is more information regarding the new rules for the evidence required for intra-community supplies. **More**

Italy: There has been a VAT rate increase, and a number of other indirect tax developments. **More**

Netherlands: Self-supply provisions for newly constructed property may be abolished. **More**

Poland: There are changes to the law on joint liability and the tax base for the calculation of commissionaire structures. **More**

Portugal: New annexes have been added to the VAT return and the structure of the SAF-T (PT) files has been modified. **More**

Russia: The list of VAT exemptions has been amended and the VAT recovery procedure for the Sochi Olympic and Paralympic Games has been enacted. **More**

Switzerland: Businesses that do not reach the annual compulsory VAT turnover threshold may apply for voluntary Swiss VAT registration from 1 January 2013. **More**

United Kingdom: Remote gambling is to be taxed on a "place of consumption" basis from 1 December 2014. **More**

Americas

Colombia

VAT and Consumption Tax reform

The Ministry of Finance has recently issued two decrees amending VAT and Consumption Tax. These decrees apply from 21 August 2013.

A decree further regulates the VAT exclusion for the following goods:

- Smart mobile devices, the main function of which is the provision of mobile telephone services;
- Rice and corn intended for human consumption;
- Bread baked and produced from grain,
- Raw materials for the production of vaccines;
- Food for human consumption donated to food banks;
- Goods and aviation fuel sold in the Colombian departments of Guainía, Amazonas, Vaupés, Arauca, Vichada and San Andres Island; and
- School books.

The decree also stipulates the retention rates (withholding tax) for VAT.

- The standard rate of the withholding tax is 15%. However, for taxpayers with a positive VAT balance for six continuous periods the withholding rate is 10%.
- The rate for scrap sales and tobacco sales is 100%.

The decree provides that a VAT rate of 5% applies to the following:

- Certain cleaning and cafeteria services supplied by for-profit legal persons; and
- Monitoring services, supervision, counseling, employment, and temporary cleaning services.

The new reporting periods for VAT are two monthly, quarterly and annual.

Changes have also been made to the Consumption Tax, including the following:

- A requirement for all taxpayers to update the tax registry by dates to be published by the tax authorities.
- A rate of 8% will apply to certain pickup trucks with a FOB value of less than USD 30,000 and of 16% where the FOB value is equal to or more than USD 30,000.

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Mexico

2014 tax reform proposals

On 8 September 2013, the President of Mexico announced tax reform proposals for 2014, which are currently being reviewed by the Mexican Congress (and have not yet been approved or published in the Mexican Official Gazette).

The VAT changes included in the proposals include the following:

- The standard VAT rate in the border region will be 16%, an increase from the current rate of 11%.
- VAT exemption will no longer apply for temporary imports carried out under the IMMEX Program, automotive bonded warehouses or strategic fiscalized premises. Financial mechanisms will be introduced to reduce the financial VAT impact of this change.
- Zero-rating will still apply to export sales made under the IMMEX Program, automotive bonded warehouse or strategic fiscalized premises.
- A credit for VAT paid on temporary imports will be available when the goods are exported.

- The VAT exemption for the sale between residents abroad or between a resident abroad and a maquiladora of goods previously imported by a maquiladora will be abolished.
- The VAT exemption for the sale of goods that takes place within a strategic fiscalized premises will be abolished.
- Sales from national suppliers to maquiladoras will no longer be subject to a withholding tax.
- The taxable base for temporary imports, bonded warehouses and strategic fiscalized premises will be the same as that which applies to permanent imports.

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Uruguay

Proposed new tax on beverages

Alcoholic beverages are currently taxed under the specific consumption tax (IMESI), which is levied at various rates on the first sale made by importers or manufacturers.

The government has introduced a bill to Parliament creating the Alcoholic Beverages Regulatory Unit (URBA), intended to manage the risks and reduce the damage created by problematic alcohol consumption and also to regulate activities such as distribution, commercialization, expenditure, consumption, promotion and publicity of alcoholic beverages.

URBA will obtain its resources from:

- A new tax levied on sales of alcoholic beverages;
- The income from licenses granted by URBA; and
- The income from fines the URBA may impose.

The new tax included in the bill will have the following characteristics:

- It will be levied on the first sale of alcoholic beverages;
- It will be paid by manufacturers, importers and Tax Free Shops' suppliers;
- The tax rate will be determined by the Executive Branch, with a maximum rate of 4.2%;
- It will be applied to the same taxable amount as IMESI; and
- The Executive Branch will establish the filing period, documentation and control of the tax.

Exports and sales to maritime suppliers will not be taxed.

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Asia Pacific

China

Changes to zero-rating rules

On 28 August 2013, China's State Administration of Taxation (SAT) released Bulletin 47, which provides nationwide implementation guidance for the application of zero-rated VAT treatment for qualifying taxable services.

Bulletin 47 applies retroactively from 1 August 2013 and supersedes the guidance issued in 2012 on the procedures for claiming zero-rated treatment for taxable services under the VAT reform pilot program (Bulletin 13).

Bulletin 47 retains the main provisions of Bulletin 13, but it also makes the following changes/clarifications:

- Where international transport is provided using vehicles obtained under a voyage charter, time charter or wet lease, the lessee, rather than the lessor, can apply for zero-rated VAT treatment.
- The "exempt and refund" method applies to trading companies that provide services eligible for zero-rated VAT treatment. The VAT refund mechanism under this method is generally less complicated than that under the "exempt, credit and refund" method, which requires taxpayers to make an additional calculation to determine the amount of VAT that is refundable but effectively credited against the VAT payable from domestic sales.
- The tax base for the exempt, credit and refund method is the total amount charged for the provision of qualifying services, whereas the tax base for the exempt and refund method is the amount on the VAT special invoice for domestically purchased services or the amount on the VAT withholding certificate for imported services.
- Where a non-trading company that provides zero-rated services also exports goods and provides processing, repair and replacement services to overseas customers, the VAT refund in respect of these different types of business can be calculated together because the applicable calculation method will be the same in all cases (i.e., the exempt, credit and refund method). However, when the tax authorities are examining and approving an export VAT refund, the total amount of the refund must be apportioned based on the relevant percentage of each business (i.e., the proportion of zero-rated services, the goods and the processing, repair and replacement services).

- The six-month monitoring period for companies newly engaged in the provision of zero-rated services is abolished.
- Taxpayers can elect to relinquish the right to apply zero-rated treatment and elect for VAT-exempt treatment or pay VAT for the provision of zero-rated services. Once such an election is made, however, it cannot be changed for 36 months.

The flexibility provided under Bulletin 47 allows taxpayers to elect to relinquish zero-rated treatment and, instead, elect VAT exempt treatment or pay VAT on the provision of qualifying services to overseas customers. This is beneficial for a company with limited input VAT recovery, as electing for an exemption will minimize compliance costs.

The abolition of the six-month monitoring period for companies newly engaged in the provision of zero-rated services is also welcome. Under the original rule, during the monitoring period taxpayers could apply for a VAT refund on a monthly basis, but the refund would not be paid until the end of the monitoring period. Now, a tax refund can be paid on a regular basis, thus providing a cash flow advantage.

Companies providing services to overseas customers that have not enjoyed the preferential zero-rated VAT treatment should take the following steps:

- Review the nature of services provided to overseas customers and assess whether the services can qualify for zero-rated treatment; although there remain some areas of uncertainty, if a company can demonstrate a good business case, an argument can be made for zero-rating;
- Establish proper internal control processes and track all information required to request zero-rated treatment;
- Collect the necessary information and apply for zero-rated treatment; and
- Explore options, such as business model restructuring to separate zero-rated services from other services or businesses, to maximize VAT savings.

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India

Place of provision of service in respect of marketing and sales support service to persons outside India

The Authority for Advance Ruling has held in respect of proposed marketing services supplied by an Indian entity to its group company for the distribution of products manufactured outside India that the place of provision of service is the location of the service recipient, i.e., outside India. Further, the services would qualify as an export under the service tax law, as they satisfy all the prescribed conditions in this regard.

Though the advance ruling is specific to the applicant, this decision may be of persuasive effect in respect of similar agreements for determining the place of provision of service.

Value of materials supplied free by the service recipient not included in value of construction services subject to service tax

Service tax is levied on the “gross amount charged” by the service provider for the provision of services. The tax authorities included the value of free supplies of goods and materials made to a construction service provider in the “gross amount charged”, as non-monetary consideration.

The Larger Bench of the Delhi Tribunal observed that the gross amount charged means an amount charged to the service recipient by the provider and the same should accrue to the benefit of the latter. Free supplies of goods and material incorporated into construction would not constitute a non-monetary consideration since no part of the goods and materials so supplied accrues to or is retained by the service provider.

Thus the value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service would not be included in the taxable value or the gross amount charged for the purpose of the service tax.

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EMEA

Denmark

Domestic reverse charge introduced

A bill introducing a domestic reverse charge for taxable persons buying cellphones, laptops, gaming consoles, tablets and integrated circuit devices has been released for consultation. The bill will be tabled in autumn and is to take effect from 1 January 2014.

All business-to-business (B2B) sales are covered by the new rules, including wholesale and retail sales, and customers making taxable and exempt supplies.

As a consequence of the reverse charge, buyers may need to register for VAT.

The new rule has substantial implications for both sellers and buyers.

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France

The judgment in the case of *L’Air Liquide*, delivered on 24 June 2013, resulted in a favourable outcome to the taxpayer, allowing VAT to be deducted on acquisition costs incurred by the French holding company L’Air Liquide.

The case is consistent with CJEU case law on this issue, in particular *Abbey National* and *Cibo Participations*.

The fact pattern is relatively straightforward: a French holding company incurred costs for the purpose of acquiring part or all of the affiliates of another company. The holding

company has substance and regularly invoices management fees to its worldwide affiliates (generally based on their turnover and on individual services provided). Despite the investigative studies and due diligence undertaken, not all of the targets were acquired. Some of the other targets were purchased not by the top holding company itself, but by one of its sub-holding companies, which was a purely passive holding company.

The tax authorities challenged the VAT deduction on the basis that the top holding company had not incurred the costs for a business purpose, as it did not make the acquisition.

A previous French case (*CE AXA* October 2008, n° 299265) had disallowed the deduction of VAT incurred on acquisition costs in a similar scenario on the basis that the top holding company in that case could not demonstrate a business purpose for incurring the acquisition costs. Although the case does not specifically mention this, in the *AXA* case, the top holding company was not invoicing management fees to any of its subsidiaries.

In the *L'Air Liquide* case, the Supreme Court confirmed that, taking into account the organization of the group, the top holding company was the only company in the group capable of delivering management services to all its subsidiaries and sub-subsidiaries, so that expenses incurred in the course of the acquisition (both costs that resulted in an acquisition and costs that did not result in an acquisition) represent general expenses (overhead expenses) incurred for the continuation and the extension of its business purposes, despite the shares being acquired by a sub-holding company. Hence, the VAT incurred on all the expenses was held to be deductible.

The *L'Air Liquide* case confirms that any M&A transaction needs be extremely well-documented so as to track and trace the expenses (on which input VAT is incurred) to transactions that are undertaken or to services that are supplied (with output VAT). The actual wording of invoices and/or of share purchase/sale agreements become critical factors according to the case law.

This case has been before the courts for a long time, as the taxpayer had lost at the first instance and at the Court of Appeals.

As the tax authorities have audited a number of holding companies in relation to this issue, the judgment provides an opportunity for French groups to revisit this issue to review the VAT treatment of previous transactions and to consider future transactions.

The case provides a new perspective on French M&A transactions.

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Germany

New rules for evidence required for intra-community supplies

New rules regarding the evidence required for intra-community supplies ("Gelangensbestätigung") came into force on 1 October 2013. On 16 September 2013, the German Ministry of Finance published explanatory notes including details of the

evidence that must be provided.

The details mainly concern practical aspects where goods are shipped by way of courier services, as well as the electronic transmission and archiving of the Gelangensbestätigung.

The Ministry of Finance has granted a further transition period until 31 December 2013, during which the evidence for intra-community supplies can be provided in line with the rules that applied until 31 December 2011.

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Italy

Standard VAT rate increase on 1 October 2013

On 1 October 2013, the Italian standard VAT rate increased from 21% to 22%.

Special rules apply from October to December 2013 to allow taxpayers to update their accounting systems without incurring penalties.

EXPO 2015

A recent law has clarified that the reverse charge mechanism applies to architecture and engineering services (indicated in chapter IV, section I of the D.lgs. no. 163 dated 12 April 2006) rendered to EXPO 2015. The provision applies from 21 August 2013.

Furthermore, admission fees to EXPO 2015 will be subject to the reduced VAT rate of 10%.

Electronic communications to be simplified

Under a recent amendment, from 1 January 2015, taxpayers can opt for daily electronic filing of analytic data from the VAT ledger, including purchase and sale invoices for goods and services (including credit and debit notes) and consideration for transactions for which invoices are not required.

By opting for daily electronic filing a taxpayer would:

- No longer be required to submit the “spesometro” return (the client and suppliers list);
- No longer be required to submit the “black list” return;
- No longer be required to submit the “lettere d’intento” received from frequent exporters;
- Be excluded from the joint responsibility provisions for supplies with consideration below normal value;
- No longer be required to submit certain contracts and supply agreements; and
- Be excluded from the joint and several liability applying to contractors (with subcontractors) for the payment of withholding taxes on employment income.

The implementation of this amendment is subject to a specific ministerial provision that is still to be adopted. The provision will also define the VAT ledger requirements, to align them with other electronically filed data.

Amendment to services that must be reported on the Intrastat form

Under a recent amendment, services received by Italian taxpayers from EU suppliers falling under the main place of supply rule will no longer have to be reported to the Italian tax authorities through the Intrastat return.

The implementation of this new rule is subject to a specific ministerial provision that is still to be adopted.

Supply of food and beverages in vending machines

A recent law has clarified that, as from 1 January 2014, the supply of food and beverages through vending machines will be subject to the reduced VAT rate of 10%, irrespective of where those vending machines are located.

Taxation of private aircraft

Under a recent law change, the private aircraft tax will apply also to private aircraft not registered in the Italian Public Register that remain in Italy for longer than 6 months in a 12 month period, even if that 6 months is not consecutive. The law also clarifies that the tax is due from the start of the month in which the 6 month limit is exceeded. These changes apply from 4 September 2013.

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Netherlands

Possible abolition of self-supply for newly constructed property

The Dutch government has announced the abolition of the self-supply for newly constructed property in an agreement with housing corporations. It is unclear at this stage whether the abolition will be limited to housing corporations or if other taxable persons will also benefit from the abolition.

The abolition is expected to take effect from 1 January 2014. It is not yet clear whether transitional rules will be implemented.

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Poland

Changes to law regarding joint liability

Under a bill adopted by the Polish parliament, from 1 October 2013 contractors will have joint responsibility for VAT liabilities in respect of specified commodity goods, such as fuel, steel or, in some cases, gold. This law will apply in specific situations and for transactions greater than PLN 50,000. In particular, joint liability will be assessed when

the supplier does not pay the output VAT on a supply of the abovementioned goods and the contractor knew, or could have known, that the supplier had avoided paying the VAT liability.

Taxable basis in commissionaire structure

As mentioned in previous editions of this newsletter, as from 1 January 2014, a number of significant changes in Polish VAT law will come into force.

One change concerns the taxable basis for commissionaire structures. From 1 January 2014, the specific rule concerning the calculation of the taxable basis for commissionaire structures will no longer apply, and taxpayers will have to follow general rules.

As a result, it is difficult to predict what the approach of Polish tax authorities will be in respect of charges made between participants in commissionaire structures (e.g., the tax authorities may take the view that there is a service rendered between the commissionaire and the principal, which should be documented with a VAT invoice issued by the commissionaire).

Accordingly, it would be advisable for businesses involved in commissionaire structures in Poland to review their current practices and consider whether to apply for an individual binding ruling, which can take up to three months for the tax authorities to issue.

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Portugal

New annexes for VAT return

A Decree-Order published on 12 August 2013 provides for two new annexes to the periodical VAT return, which will have to be filed by taxpayers when VAT adjustments are made (boxes 40 and 41 of the VAT returns).

The new annexes will apply for VAT periods from, and including, October 2013. In other words, they apply to VAT returns to be filed for October 2013 or the fourth quarter of 2013 for quarterly filings, and for future VAT periods.

According to the instructions published, when VAT adjustments are made in the periodical VAT returns, related to credit or debit notes issued or received or to VAT bad debt adjustments, information on each type of VAT adjustment must be included in the return. For each VAT adjustment, the legal basis (the specific provisions of Article 78 of the Portuguese VAT Code), the taxable amount, and the VAT adjusted must be disclosed in the relevant annex. The tax number of the acquirer or supplier, as applicable, must also be included. Additional information may also have to be disclosed in the annexes, depending on the specific circumstances of each VAT adjustment.

Changes to the SAF-T (PT) file structure

A Decree-Order published on 21 August 2013 republished the data structure of the file SAF-T (PT), in particular to include the necessary adjustments for the special VAT cash

basis system. A new table has been introduced, 4.4., in which the issued receipts must be included.

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Russia

List of services directly connected with exempt services

Services that are “directly connected” with certain VAT exempt services rendered under licensed activities are also treated as VAT exempt. The Russian Government has recently published the list of services that are treated as “directly connected” with the VAT exempt services supplied by registrars, depositaries (including specialized depositaries and the central depositary), dealers, brokers, securities managers, management companies of investment funds, mutual investment funds and non-state pension funds, and clearing organizations. For example, the implementation of the functions of a certifying center in connection with the provision of services to clients in the securities market, provision of software and/or means of remote access, processing of documents, preparation of reports/documents, provision of information, recognition of a person as a qualified investor supplied by securities managers are treated as “directly connected” with VAT exempt services.

The list applies to supplies made on or after 1 January 2013.

Procedure for applying a zero VAT rate in relation to the Sochi Olympic and Paralympic Games

The Russian Government has established a procedure for the foreign organizers of the XXII Winter Olympic Games and the XI Winter Paralympic Games in Sochi (“the Games”), foreign marketing partners of the International Olympic Committee (including official broadcasting companies) and their Russian branches and representative offices (together, “the foreign organizers”) to apply a zero VAT rate with respect to goods, work, services, and property rights purchased in connection with the Games.

The zero VAT rate is applied via the reimbursement by the tax authorities of VAT incurred by the abovementioned organizations. For an organization to receive the VAT reimbursement, an application must be submitted on behalf of the organization (which must be registered with the tax authorities) and submitted at the organization’s place of registration.

To confirm the validity of the VAT reimbursement, the following documents (copies certified by the organizations) must be submitted to the tax authorities simultaneously with the application:

- The agreement to purchase goods, work, services, and property rights in connection with the Games;
- VAT invoices issued by sellers with the amount of VAT separately indicated in the VAT invoices; and
- Payment document confirming the actual transfer of funds to the seller.

Where the sale of goods, work, services and/or property rights is carried out without an agreement committed in writing, the taxpayer should submit VAT invoices and payment documents to the tax authorities.

Where payment for the sale of goods, work, services and/or property rights is made in cash or using payment cards, the taxpayer should submit to the tax authorities payment and settlement documents, cashier's checks, strict reporting forms, or other documents (or copies) confirming the actual payment. If the VAT amount is not indicated in the payment and settlement documents, the tax authorities will determine the amount of VAT to be recovered based on current VAT rates.

To confirm the validity of VAT reimbursement with respect to hotel services rendered in connection with the Games, the following documents (copies certified by these organizations) must be submitted to the tax authorities simultaneously with the application:

- Agreement on the organization of accommodation, concluded with the Organizing Committee of the Sochi 2014 XXII Winter Olympic Games and the XI Winter Paralympic Winter Games in Sochi (the OrgCommittee);
- The report on the hotel services, prepared by the OrgCommittee (with the name of the hotel, the period of stay, number of rooms, cost of the services provided with an indicated amount of VAT, and other information);
- Payment documents confirming the actual transfer of funds to the OrgCommittee and payment documents confirming the actual transfer of funds from the OrgCommittee to the hotels;
- VAT invoices issued by the hotels to the OrgCommittee with the indicated amount of VAT; and
- Acts of acceptance issued by the hotels to the OrgCommittee.

Where the foreign organizers purchase hotel services on the basis of a contract concluded with the hotel directly (without signing an appropriate agreement with the OrgCommittee), in addition to the above, the taxpayer should submit an act of acceptance and/or other documents on the provision of the services issued by the hotel to the foreign organizers.

The application and documents must be submitted to the tax authorities no later than three years after the latter of the following dates:

- The date of the VAT invoice; and
- The actual date of payment for the goods, work, services and/or property rights.

The tax authorities must verify the reasonableness of the amount claimed for reimbursement of VAT within three months of receiving the application and documents. During a tax audit, the tax authority will be entitled to demand documents in respect of a specific transaction from a participant of the transaction or from other parties in possession of the documents relating to the transaction. The reimbursement of VAT will be made by transferring the refunded amount of VAT to the accounts of the respective

organizations with authorized banks in the Russian Federation.

This procedure applies to supplies made from 1 January 2011.

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Switzerland

Voluntary registration

The annual turnover threshold for compulsory VAT registration is CHF 100,000. In calculating annual turnover, the following must be considered:

- Taxable supplies of goods made within Switzerland and the Principality of Liechtenstein, including exported supplies of goods;
- Taxable supplies of services;
- Taxable supplies of services within Switzerland and the Principality of Liechtenstein that are VAT exempt with credit;
- Supplies of goods from abroad to Switzerland and the Principality of Liechtenstein provided the simplified import procedure “Unterstellungserklärung” has been applied by the supplier at the time of importation.

With effect from 1 January 2013, businesses that do not reach the annual turnover threshold of CHF 100,000 may apply for voluntary VAT registration.

Businesses must apply to the Swiss Federal Tax Administration for voluntary registration for the tax period 2013 by 31 December 2013 at the very latest. Voluntary registration must be maintained for at least for one tax period (i.e., calendar year). It will not be possible to apply for retrospective VAT registration

Voluntary VAT registration is an advantage where a Swiss-domiciled business has acquired services from abroad (such as intellectual property rights or management fees which are subject to acquisition VAT which may not be recoverable if the business is not VAT registered) and/or the Swiss-domiciled business incurs expenditure that is subject to VAT. If the business is not VAT registered, the input VAT incurred would have to be borne as a final non-recoverable cost.

Businesses should review their annual turnover and input VAT position in light of the above and consider whether voluntary Swiss VAT registration would be relevant and beneficial.

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United Kingdom

Remote gambling to be taxed on a “place of consumption” basis from 1 December 2014

The tax authorities (HMRC) and the Treasury have published a **summary of the**

responses to the consultation on the proposal to tax remote gambling on a "place of consumption" basis. The summary of responses confirms that the Government plans to introduce legislation in the Finance Bill 2014, with a view to implementation of the change from 1 December 2014. It also includes an early draft of the amending legislation. A later version of these clauses is to be published for technical consultation in autumn.

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