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April 2013

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Americas

Colombia

VAT on petroleum production

As from 3 January 2013, if a petroleum producer outsources production to outside a free trade zone, the producer, the importer and any related parties will become liable for any VAT payable. The Ministry of Mines (and not the tax authorities) determines the relevant percentages of materials that must originate within a free trade zone to qualify for the free trade zone benefits.

Import of goods for construction of prisons not subject to VAT or import duty

Effective 10 December 2012, VAT and import duty no longer apply to the importation of equipment for the construction of a prison, provided the construction budget has been approved by a prison authority. In this context, “equipment” includes goods required for the assembly, installation, staffing and operation of the prison.

This exclusion only applies to goods, and not to construction services.

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Costa Rica

GST input tax credit mechanism amended

Previously in Costa Rica, GST input tax could only be claimed in respect of GST incurred on raw materials and machinery physically incorporated or directly used in the production of goods and services subject to GST.

On 12 March 2013, Costa Rica’s Legislative Assembly approved an amendment to extend the ability to claim GST input tax, with effect from 12 April 2013.

Under the amendment, GST input tax will be able to be claimed in respect of GST incurred on any supplies used in the process of producing, marketing or distributing goods that are subject to GST (including exported sales), including raw materials, containers, packaging materials, machinery and electricity. In other words, physical or chemical incorporation is no longer a requirement for claiming a GST credit, meaning that the GST in Costa Rica has become more akin to the international model of a consumption tax. The amendment has eliminated some of the legal uncertainties of the previous law and improved Costa Rica’s international competitiveness.

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United States

Utah: New law permits 18% discount for remote sellers volunteering to collect tax

As from 1 January 2014, a new law authorizes certain remote sellers not otherwise required to collect or remit Utah sales/use tax under state or federal law and who voluntarily agree to collect such tax on their Utah sales to retain a portion of the collected taxes (i.e. an amount equal to 18% of any amounts the seller otherwise would have remitted to the Utah State Tax Commission).

Arkansas: Manufacturing exemption extended for machinery and equipment used in certain petroleum refinement

A new law expands Arkansas' sales/use tax manufacturing exemption to include machinery and equipment required by state or federal law or regulations to be used in the refining of petroleum-based products to remove sulfur pollutants from the refined product, as well as any related repair parts and repair labor for such qualifying machinery and equipment.

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Uruguay

Definition of "detergents" for application of reduced VAT rate

A new definition of "detergents for family use" applies as from 1 May 2013. Such detergents qualify for the application of the 10% reduced VAT rate (rather than the 22% standard rate).

The change effectively distinguishes between detergents for family use and those for industrial use (the difference relates to the active agent concentration and the volume of the containers in which they are marketed; detergents for family use qualify for the reduced VAT rate, whereas detergents for industrial use are taxed at the standard rate).

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Asia Pacific

China

New update on VAT reform pilot program

On 10 April 2013, China's State Council announced the following key points regarding the VAT reform pilot program:

- The pilot services (i.e. transportation and the six groups of modern service sectors) covered under the reform pilot program will be rolled out to the whole country starting from 1 August 2013.

- TV, radio and film production, broadcasting and distribution sectors will be included within the scope of the pilot as new services, although the date for inclusion is still unknown.
- Railway transportation, postal and telecommunications service may be covered in the pilot but the specific timing is unknown.
- Confirmation that, as expected, the government would try to complete the reform within the "twelfth-five year" period (i.e. 2011-2015).

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India

International roaming facility provided to customers of foreign service provider while in India

In a recent case in the Mumbai Tribunal, the appellant provided telecom services in India to the customers of a foreign telecom provider as part of an international roaming facility. It was held that the service recipient in such a case is the foreign telecom entity to whom services have been provided by the Indian telecom service provider, and not the customer to whom the services have been provided at the behest of the service recipient. Therefore, the telecom services provided by the appellant were held to qualify as an export of services.

Taxability of services relating to issue of foreign currency convertible bonds

In a recent case, an Indian company used the services of a company located outside India for the issuing of foreign currency convertible bonds (FCCB) and underwriting the issue. The Delhi Tribunal, applying the relevant parameters under the Export of Service Rules, 2005, held that services relating to the issue of FCCBs qualifying under the category of Banking and Other Financial Services are subject to service tax under the reverse charge mechanism when received from a lead manager located outside India. However, the services in relation to the underwriting, which are taxable at the place of performance, cannot be said to be the import of services, since no activity in relation to the underwriting of the issue was performed in India, and therefore will not be subject to service tax in the hands of the service recipient.

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Europe

Belgium

Deregistration threshold for SMEs

The threshold for the VAT exemption for small and medium-sized enterprises in Belgium will be increased from EUR 5,580 to EUR 25,000. In its Implementing Decision of 22 January 2013, the Council of the European Union has authorized Belgium to increase the threshold.

The new threshold likely will apply as from 1 January 2014, rather than 1 July 2013, as initially intended.

Registration duties

The government has agreed to increase certain registration duties from 1 July 2013:

- Registration duties on long-lease rights will increase from 0.2% to 2% (0.2% to 0.5% for nonprofit organizations).
- The fixed registration duty per deed will increase from EUR 25 to EUR 50.

Postponed accounting for import will be broadened

Postponed accounting (in Belgium, the "E.T. 14.000 license") allows VAT taxable persons in Belgium to declare the import VAT in their periodic VAT return, rather than at the time of import, which avoids the pre-financing of import VAT.

Application of the postponed accounting scheme in Belgium was subject to two conditions, i.e., a *deposit* and *regular* import activities.

The first condition was abolished in 2012 and now the government has decided to abolish the second condition. This would mean that for a one-off import (e.g. investment goods), a VAT taxable person could apply for postponed accounting.

A license is mandatory, but it will no longer be necessary to satisfy the above conditions to obtain the license. It is unclear when the second condition actually will be abolished, but it likely will be this summer.

Budget Control

During the Budget Control 2013, which took place at the end of March, the Belgian government discussed two changes to Belgian VAT law, but decided not to adopt them: (1) an increase in the standard VAT rate from 21% to 22% and a decrease in the reduced rate from 6% to 5.5%; and (2) abolition of the VAT exemption in Belgium for European lawyers. Neither proposal passed.

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Bulgaria

CJEU rules that VAT charged in error can be reclaimed by supplier

The Court of Justice of the European Union (CJEU) has gone straight to judgment in the Bulgarian case of *Rusedespred OOD* about whether VAT that was charged in error should be refunded to the supplier. Rusedespred charged VAT on a supply that was found to be exempt following an audit of its customer by the tax authorities. As a result of the audit, the customer's claim to deduct the tax charged was denied.

The definitive denial of the customer's input VAT claim meant that the process for correcting the error provided in Bulgarian law was no longer available and the Bulgarian tax authorities took the view that as a result there was no mechanism for Rusedespred to recover the overcharged VAT. The CJEU concluded that this was not permitted under EU law.

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Croatia

Accession to EU

Croatia is making numerous changes and improvements to ensure harmonization with EU rules and regulations in light of its impending accession to the EU on 1 July 2013. The Ministry of Finance has presented a VAT bill to parliament that should come into force on the date of accession.

The most significant features of the bill are as follows:

- The supply of construction plots will no longer be VAT exempt as from 1 January 2015;
- The supply of buildings and attached land more than two years old, starting from the time of occupation, will be VAT exempt as from 1 January 2015;
- The concept of triangulation will be introduced and Croatia will adopt the same wording as the EU VAT Directive; and
- The proposed distance selling threshold will be HRK 270,000 (about EUR 36,000).

Numerous rules and exceptions apply to some provisions in the bill. Further clarification of these items is expected in a new VAT bylaw.

The new Excise Duties Act came into force on 2 March 2013; this act governs the system of excise duties levied on alcohol, alcoholic beverages, tobacco products, energy products and electricity produced in Croatia, supplied into Croatia from another EU member State or imported into the EU. More information on can be found via this **link**.

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Italy

Clarification regarding proof of intra-Community supply

On 25 March 2013, the Italian tax authorities published an important clarification of the evidence that taxpayers must collect to prove the transport of goods to another EU member State (especially under “ex works” conditions).

In particular, the authorities clarified that in light of commercial developments, proof can be provided by the electronic consignment note (e-CMR) signed by the supplier, carrier and consignee, which includes the same information as the paper CMR. The e-CMR can be provided in pdf format through an electronic platform shared by the supplier and the carrier.

According to the tax authorities, other documents can also evidence proof of transport to another EU member State if the documentation contains the same information as the paper CMR and the signatures of the parties (supplier, carrier and consignee) can be extracted. This could include information from the IT system of the carrier, from which it can be verified that the goods left Italy and were delivered to another member State.

The tax authorities also clarified that the relevant documents must be collected by the supplier “without delay,” i.e. as soon as the commercial practice makes it possible, and they must be retained until the deadline for VAT assessment.

Filing of “Spesometro” (client and suppliers list)

On 5 April 2013, the Italian tax authorities published an alert on their website to advise that the filing of the Spesometro with the relevant data for 2012 cannot be processed via the same procedure as in previous years. It has been confirmed that the original deadline (30 April) should be considered no longer applicable, although the new due date has not yet been communicated.

Thus, it will be necessary to wait for the new technical details and the new form, which will soon be published and made available for download on the website.

Application of reduced VAT rate

It has been clarified that the 10% VAT rate applies to oils and fats of animal and vegetable origin, classified in the TARIC codes from 1507 to 1518, if they are used as fuel to generate electricity (directly or indirectly) with an installed capacity of more than 1 kW.

It has recently been clarified that, with effect from 4 March 2013, the mandatory periodic maintenance of heating installations for condominium or individual use, installed in buildings for private housing is considered routine maintenance and therefore subject to the 10% VAT rate.

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Poland

VAT law amended

A number of far-reaching changes to the Polish VAT law came into force on 1 April 2013. The following changes are likely to impact businesses, whether resident or simply registered in Poland for VAT purposes:

- Abolition of the mandatory reverse charge mechanism. Foreign-established entities that do not have a fixed place of business in Poland and that supply goods locally must charge output VAT on their supplies to Polish-based VAT taxpayers (i.e. on transactions that would have been subject to the reverse charge mechanism by Polish-based purchasers before 31 March 2013). This will result in changes to the VAT position of many foreign Polish-VAT-registered entities (from VAT refunds to VAT payable).

  Additionally, the wording of invoices will need to be amended; invoices will need to include information on the appropriate VAT rate and the VAT amount in PLN, instead of a statement that VAT is to be settled by the purchaser. Other elements of the invoice may remain unchanged.

- Abolition of the deadlines and terms determining whether the temporary movement of own goods into and outside Poland constitutes an intra-Community acquisition or supply of goods. This has been the source of discrepancies between Poland and other EU member States and has triggered an obligation for foreign entities to register for Polish VAT purposes due to such shipments.

- Introduction of a new definition of “export” and a list of documents that are required to confirm the departure of goods from the EU (thus confirming VAT zero-rating).

- Introduction of the ability to import goods into Poland without being required to VAT register in Poland, provided the goods are subsequently supplied as an intra-Community supply of goods to another EU member State by the importer of the goods.

- Free of charge supplies of goods. Printed advertising and information materials will be subject to VAT (previously outside the scope of Polish VAT) and there is a new definition of “sample,” which implements the CJEU decision in the *EMI* case with respect to the scope of the VAT exemption. Finally, small gifts and samples will be treated as outside the scope of Polish VAT if they relate to the business activity of the taxpayer.

- The requirements for the format of intra-Community supply invoices (which allow for VAT zero-rating) have been abolished.

- Input VAT on intra-Community acquisitions is to be recovered in the reporting period in which output VAT on the intra-Community acquisition is declared, provided the intra-Community acquisition is reported in the correct reporting period. Such a provision may lead to situations where, if an incorrect intra-Community acquisition reporting is identified by the authorities, theoretically they

might require the output VAT obligation to remain in the reporting period in which it was reported, but disallow the input VAT recovery. Consequently, it has become even more important to ensure intra-Community acquisitions are reported correctly.

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Portugal

Communication of transport documents to the tax authorities

On 2 and 4 April 2013, Portugal's tax authorities updated the instructions regarding the communication of transport documents to the tax authorities before a transport commences. An Administrative Decree has also been published on 23 April, clarifying several rules and postponing the entry into force of the new communication rules to 1 July 2013.

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Russia

Tax code amended regarding taxation of bonuses/incentives

The law amending Russia's tax code was officially published on 8 April 2013. The three main VAT amendments, which generally will come into effect with respect to adjustments of value made on or after 1 July 2013, are as follows.

No adjustment to seller's tax base (and consequently buyer's input VAT deductions) following the payment of bonuses or incentives

Bonus and incentive payments made by the seller of goods, work or services under a supply agreement, including those due to a certain volume of acquisitions, will not decrease the value of the goods for purposes of calculating the seller's VAT taxable base (and the VAT input tax deduction of the buyer), except where the supply agreement specifically provides that the payment of bonus or incentive payments will constitute a decrease in the price of the goods, work or services. If there is a decrease in such price, the seller should adjust the VAT taxable base, and the buyer should adjust the amount of the VAT input tax deduction.

Adjustment of the seller's tax base due to an increase in the value of shipped goods, executed work, executed services or property rights in the period of issuing documents for the change in value

An increase in the value (excluding taxes) of shipped goods, executed work, executed services or transferred property rights due to an increase in the price or tariff and/or an increase in the volume of the shipped goods, executed work, rendered services or transferred property rights must be included in the value of the VAT base in the tax period in which the documents that serve as the basis for issuing an amended VAT invoice (i.e. contract, agreement, or other primary document confirming the consent (fact of notification) of the buyer for the change in value) are issued.

Ability to issue a single amending VAT invoice with respect to several VAT invoices

A taxpayer will be able to issue a single amended VAT invoice for a change in the value of shipped goods, executed work, rendered services or transferred property rights covering two or more VAT invoices previously issued by the taxpayer.

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Sweden

CJEU rules on VAT treatment of cosmetic surgery

The CJEU has gone straight to judgment in the Swedish case of *PFC Clinic AB* about the VAT treatment of cosmetic procedures.

The clinic filed a claim for a VAT refund, which was refused by the Swedish tax authorities on the basis that the supply of cosmetic and other medical treatments provided by the clinic were exempt from VAT. The Supreme Administrative Court eventually referred a series of questions to the CJEU to determine the scope of the "medical services" exemption under EU law.

The CJEU has decided that cosmetic procedures can be exempt under EU VAT law, but only if they are carried out for a "medical reason". The decision indicates that the patient's reasons for seeking a cosmetic procedure cannot be used to justify exemption. Hence providers of such procedures likely will need a medically qualified person to confirm that a procedure is for a medical reason in order to justify exempting the procedure from VAT.

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United Kingdom

VAT registration and deregistration thresholds

As announced in the UK Budget on 20 March 2013, the VAT registration and deregistration thresholds are increased with effect from 1 April 2013, to GBP 79,000 and GBP 77,000, respectively (previously, the thresholds were GBP 77,000 and GBP 75,000). The revised thresholds also apply to registrations prompted by acquisitions from other EU member States.

Northern Irish "carrier bag tax"

The UK tax authorities have issued guidance on the VAT and corporation tax treatment of the Northern Irish levy on "single use" bags, which came into effect on 8 April 2013.

The guidance confirms that the levy is subject to corporation tax and that, where businesses charge more than the minimum 5p levy, the whole amount charged (and not just the excess over 5p) is subject to VAT.

However, unlike the treatment of the corresponding levy introduced in 2011 in Wales, if suppliers charge only the 5p levy, the guidance confirms that the Northern Irish levy, which is payable to the Department of Environment Northern Ireland, will not be subject to VAT (in Wales, the levy belongs to suppliers who are encouraged to apply it to suitable good causes and whatever amount is charged is seen as payment for the bags). As is the case in Wales, the Northern Irish levy applies to a wide range of bags (not just single use carrier bags that are commonly provided by retailers), although there are exceptions, which mean that many bags, particularly small paper bags and bags used to contain fresh produce, will escape the levy.

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