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## Global Indirect Tax News

### Indirect tax updates from around the world



January 2014

Welcome to the January 2014 edition of GITN, containing updates from the Americas, Asia Pacific, and EMEA regions.

A number of VAT rate changes took effect in January. These include an increase in the standard rate of VAT in France from 19.6% to 20% and an increase in the French 'intermediate' rate from 7% to 10%. The lower reduced rate in France (5.5%) remains unchanged and there are some detailed changes to the coverage of the reduced rates as well as the introduction of a domestic reverse charge regime for subcontractors in the construction industry. The French changes took effect on 1 January.

Also from 1 January, Croatia's reduced VAT rate was increased from 10% to 13%, Serbia's reduced rate went up from 8% to 10%, the Azores VAT rate went up from 16% to 18%, and Corsica's 8% rate went up to 10%. On 13 January, the long-planned increases in the Cypriot standard and reduced rates (from 18% to 19% and 8% to 9% respectively) came into effect.

1 January 2014 also brought in a number of other indirect tax changes including in Mexico, Poland and Portugal.

With these changes and the numerous ongoing judicial proceedings in a number of VAT/GST jurisdictions, 2014 looks to be another busy year for all indirect tax professionals.

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

**David Raistrick**

Global Indirect Tax Leader

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United Kingdom: The CJEU has issued its judgment in a case on the VAT treatment of green fees charged by a golf club to non-members. The Intrastat thresholds have been amended.

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### Americas

#### Colombia

**VAT exemption for tourism and hotel services provided in Colombia to foreigners**



Tourist and hotel services provided in Colombia to foreigners are VAT exempt. From 20 November 2013, for the exemption to apply, tourist services must be provided as part of a tourism plan or package supplied by travel agencies and hotels must be listed on the National Tourism Register.

## **Transportation of oil through pipelines not subject to territorial taxes**

The Petroleum Code provides that activities related to the transportation of oil through pipelines are not subject to territorial taxes. A court decision has confirmed that companies dedicated to transporting oil through pipelines should not pay industry and commerce taxes in those municipalities through which the pipelines run.

## **Income tax treatment of VAT paid on the purchase or import of capital goods**

Under Article 498-1 of the Colombian Tax Code, VAT paid on the purchase or import of capital goods is deductible for income tax purposes.

From 20 December 2013, Decree 2975 of 2013 defines 'capital goods' in this context as fixed assets used in the production of goods and services. The Decree has also regulated the requirements for applying the tax credit.

## **VAT on building materials**

The Government has amended the rules for claiming VAT on the purchase of building materials for affordable and priority housing. From 17 December 2013, only house builders will be able to claim the VAT on these expenses.

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## **Mexico**

### **Amendments to VAT and excise laws to apply from 1 January 2014**

As reported in previous editions of this newsletter, there have been a number of amendments to the VAT and excise laws. These amendments were published in the Mexican Official Gazette on 11 December 2013 and came into effect on 1 January 2014.

The main amendments to the VAT and excise laws are as follows:

- VAT withholding will no longer apply to sales by domestic suppliers to maquila companies.
- VAT withholding will apply to sales of temporarily imported goods by foreign residents to maquila companies.
- Temporary imports, transfers to automotive bonded warehouses, and imports to strategic bonded warehouses are no longer VAT and excise tax exempt.
- The requirement to pay VAT and excise tax on importation may be eliminated if the importer:
  - Has been certified by the tax authorities, or
  - Has provided a guarantee by way of bond from an authorized institution.

If the importer does not have certification or a bond, VAT and excise tax must be paid when the goods are imported, and those taxes will be creditable.

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## **Uruguay**

### **Specific Consumption Tax reduction for fuel sold in certain filling stations**

The Specific Consumption Tax (IMESI) is levied at various rates on the first sale made by importers or manufacturers of a certain range of products, including certain alcoholic and non-alcoholic beverages, cosmetics, tobacco, fuel and automobiles.

A law issued in 2007 authorized the Executive Power to reduce the IMESI burden on the sale of fuel, provided the sales are made in filling stations located within 20 km of a land crossing border and are made to individuals who pay with debit or credit cards.

The Executive Power made use of this authority later in 2007 to reduce the IMESI burden on the sale of fuel in filling stations within 20 km of certain border crossings with Argentina when these sales comply with the other requirements stated in the law. This measure was intended to promote commercial activity in the border zones of the country, given the significant differences in the price of fuel between Uruguay and Argentina.

In line with this, and given that there are also substantial differences in the relative prices of fuel compared with Brazil, a recent Decree published on 2 January 2014 has determined that the same IMESI reduction will apply to filling stations within 20 km of the following border crossings with Brazil: Chuy, Río Branco, Aceguá, Rivera, Artigas and Bella Unión. This reduction only applies where the sale is to an individual paying with credit or debit card.

In all cases, the IMESI reduction is 24% of the selling price, and is limited to 50 liters of fuel per single sale (included in this regime), and the reduction in tax is limited to approximately USD 50 if paying by credit card or USD 75 by debit card per month.

The tax benefit (discount) is directly credited to individuals in their credit/debit card statements of account.

Card administrators must inform the tax authorities of the transactions included in this regime, reporting, amongst other information, the tax ID number of the filling station that made the sale, the amount of the transaction, and the corresponding tax benefit.

The present decree applied from the tenth working day after its publication.

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## **Asia Pacific**



### **India**

#### **Sale treated as going concern even though assets priced separately**

The sale of a business as a whole (as a going concern) is not subject to sales tax/VAT.

A taxpayer sold two out of three units (factories) that it owned as a going concern and therefore no sales tax was paid on the consideration received.

The tax authorities rejected the taxpayer's claim on the basis that various clauses in the Business Transfer Agreement clearly provided that immovable and movable assets were separately valued, and that consequently the sale could not be treated as the sale of a going concern.

The Madras High Court has held that the bifurcation of the price did not contradict the intention of the parties to sell the two units in their entirety, hence the transaction was upheld as the sale of a business as a going concern and not chargeable to tax.

### **Service tax: long-term leases and renting of vacant land**

#### ***Long-term leases***

A lessor entered into long term leases (of 99 years duration) of vacant land with third parties. The lessor contended that the leases were substantially in the nature of transfers of ownership and that the consideration received was therefore not consideration for taxable services (and accordingly was not subject to service tax).

The Delhi Tribunal observed that the relevant provisions of the service tax law did not distinguish between long-term and short-term leases. As there is no distinction, and therefore no indication of any legislative intent to exclude long-term leases of immovable property from the ambit of 'taxable services', it was held that long-term leases were covered in the taxable service category 'renting of immovable property', and were thus subject to service tax.

#### ***Renting of vacant land***

Vacant land leased for the furtherance of business or commerce was included in the meaning of 'immovable property' by way of an entry in the explanation to the law in July 2010, and was made subject to service tax under the category 'renting of immovable property'.

The tax authorities considered that this inclusion by way of explanation was clarificatory and therefore was to apply with retroactive effect.

In a recent case, the Delhi Tribunal noted that vacant land per se was not included in the meaning of 'immovable property' and was therefore outside the scope of the service tax prior to July 2010.

### **Amendment to the Central Excise Rules, 2002 and CENVAT Credit Rules, 2004**

The Central Board of Excise and Customs has amended the Central Excise Rules, 2002 and the CENVAT Credit Rules, 2004 in relation to procedures to be followed for obtaining CENVAT credit on invoices issued by an importer.

The salient amendments are as follows:

- Registration is made compulsory for importers issuing invoices on which CENVAT Credit can be taken; and
- An importer who sells goods imported by him under the cover of an invoice on which CENVAT credit may be taken is made a 'First Stage Dealer'.

The changes shall come into force on 1 March 2014.

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## Croatia

### Amendments to VAT Act

In December 2013, amendments to the VAT Act were published in the Croatian Official Gazette 148/13. The amendments entered into force eight days from the date of publication Gazette (i.e., 19 December), except for the increase in the reduced VAT rate to 13%, which entered into force on 1 January 2014.

The amendments are as follows:

- The reduced VAT rate increased from 10% to 13%.
- The 13% VAT rate will apply to the supply of magazines periodically issued on paper by a publisher holding media status (i.e., any natural or legal person that publishes its program contents through the media and participates in the distribution of public information, and whose business activity is defined by the Croatian Media Act), with the exception of magazines that wholly or in the main contain advertisements or are for advertising purposes and newspapers to which the 5% rate applies. The 13% VAT rate may also apply to publishers to which media status does not apply on the basis of special regulations.
- All daily newspapers published on paper will be taxed at the reduced VAT rate of 5%; previously only newspapers with 25,000 words or less qualified for the reduced rate.
- The VAT exemption for the domestic supply of goods and services under diplomatic or consular arrangements and deliveries to certain international organizations and their members is applied by submitting a refund claim. New regulations have set out the claim procedure, including deadlines for VAT refunds and minimum invoice amounts.
- The list of goods that can be placed into tax warehouses and supplied VAT exempt within those warehouses has been extended.
- The requirements for claiming VAT on acquisitions of goods from other EU Member States have been simplified.
- The scope of the domestic reverse charge mechanism in respect of persons to whom the VAT liability may be transferred has been reduced (only supplies to another taxable person listed in the Register of taxable persons can fall under the domestic reverse charge mechanism; if the buyer is not listed in the respective Register but was only assigned with a VAT identification number, the domestic reverse charge mechanism is not applicable).

The VAT Regulations were also amended with effect from 1 January 2014 in relation to invoicing requirements.

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## Cyprus

### Increase in the standard and reduced VAT rates

On 13 January 2014, the standard VAT rate increased from 18% to 19% and the reduced rate of 8% increased to 9%. Therefore, all supplies of goods and services that were taxable at the standard VAT rate of 18% and the reduced rate of 8% became taxable at the rates of 19% and 9% respectively from 13 January.

Examples of services that are subject to the reduced rate of 9% as from 14 January 2014 are as follows:

- Transport of passengers and their accompanying luggage by urban, suburban and rural taxi;
- Restaurant and catering services;
- Hotel and tourist accommodation; and
- Domestic carriage by sea of passengers and their accompanying luggage.

The reduced rate of 5% VAT has not changed, nor has the application of the VAT exemption and the zero VAT rate.

### EU Invoicing Directive (2001/115) fully incorporated into Cypriot VAT Law

With effect from 20 December 2013, the EU Invoicing Directive (2001/115) has been fully incorporated into the Cypriot VAT Law. Amendments include changing the wording requirements for VAT invoices, such as including the term 'reverse charge' for invoices subject to the reverse charge provisions, and enhancing the existing provisions with respect to electronic invoices. Under the Cypriot VAT Law, electronically issued invoices are acceptable only when the authenticity of the origin and integrity of the contents are guaranteed by means of an advanced electronic signature or electronic data interchange (EDI).

### Introduction of Cash Accounting Scheme

With effect from 20 December 2013, the Cash Accounting Scheme was introduced into the Cypriot VAT Law. The Scheme can be applied where the taxable activities of a taxable person have not exceeded the threshold of €25,000 in the previous 12 months. The Cash Accounting Scheme is optional and certain exceptions apply.

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## **Egypt**

### **Introduction of VAT**

The Egyptian Sales Tax Authority has been contemplating the introduction of a VAT system for some time. The drafting and implementation of the law have been delayed due to the recent instability in government. However, the draft VAT law is approaching completion and may be put into effect in the near future.

The current General Sales Tax (GST) regime has been in place for many years and has been subject to a series of adjustments over time. The current GST rates can range anywhere from 10 to 100%, though the standard rate is 10% on most goods and services.

While certain transactions/items are currently eligible for a VAT styled offset of input and output tax, this treatment is not universal, especially with regards to transactions where the input tax is paid for goods and the output is charged on a service. Accordingly, some GST may become a cost to businesses.

The expected VAT law would eliminate this problem, as input and output tax would be offset in the traditional VAT style. It is expected that the law will also include changes in the current rate system, including a possible increase from the 10% standard GST rate.

VAT, as it is practiced in other jurisdictions, is a consumption tax. It is generally borne by end users (i.e., consumers) of goods and services, as it is offset throughout the supply chain. Accordingly there should be no cost to businesses.

There is currently no clear timeline for when the law will be issued in Egypt. However sources indicate that it will be within the year. This will likely depend on the stabilization of the political situation. In addition, no draft copies of the law have been made public thus far – accordingly the details of the law's application and its similarities to VAT regimes in other countries is still to be seen.

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## **France**

### **New VAT rates**

New VAT rates apply from 1 January 2014. The standard rate is 20% and the intermediate is 10%.

The reduced rate of 5.5% remains the same. However, this rate is extended to cinema tickets, importations and intra-community acquisitions of works of art, improvement works relating to the energy quality of accommodation, and to the construction/renovation of social housing. Details of the implementation of the new VAT rates have been published by the tax authorities in an official guideline.

### **Reverse charge in the building sector**

As a measure against tax fraud, the 2014 Finance Act, which entered in force on 31 December 2013, extended the VAT reverse charge mechanism in the building sector to construction works performed by a subcontractor established in France. The purpose of this

mechanism is to avoid situations where a subcontractor invoices VAT to its payer without collecting the tax to the French Treasury, while the payer deducts the VAT.

The following services are included in the measure: construction works, including repair, associated cleaning and maintenance services, and transformation and demolition works performed in connection with a real estate by a subcontractor on behalf of a taxable recipient.

This provision applies to subcontracting agreements concluded from 1 January 2014.

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## **Greece**

### **Deadline extended for option to tax application**

On 1 January 2013, the option to tax as a VAT taxable supply of services was introduced for leases of property to be used for professional activities.

The deadline for filing an application to opt to tax (that initially expired on 30 June 2013) was extended until 31 December 2013, with retroactive effect from 1 January 2013, provided the respective VAT due for the period from 1 January 2013 to 31 December 2013 will be paid and reported in the periodical VAT return for December 2013 or the last quarter of 2013, as applicable.

### ***Circular POL 1180/2013 clarified the application of the option to tax***

- The option to tax is provided for all professional leases (i.e., leases of real estate exclusively for the exercise of economic activity) provided the lessee is a taxable person.
- The option can relate to an entire real estate or building complex or part thereof, and the option also applies to leases concluded prior to 1 January 2013.
- The option to tax is exercised by the lessor filing the relevant application with the competent Tax Office, provided the lessor is a taxable person not falling under a special VAT regime and the lessee agrees with the exercise of the option. A detailed description of the building and the parts thereof that are to be subject to VAT should be included in the application.
- The application can be filed at any time prior to the first use of the building or within 30 days from the beginning of the accounting period. If the option is exercised after the first use of the building, it applies from the beginning of the accounting period;
- Following the filing of the application, entrepreneurs can deduct input VAT incurred during the construction of the real estate, including expenses incurred prior to the option date, provided certain conditions are met. Upon taxing the lease, any input VAT incurred for this activity (including but not limited to construction costs) is treated as VAT deductible.

- If stamp duty has been charged to a lessee after 1 January 2013 in respect of a lease which is now subject to VAT, there is no obligation to remit the stamp duty to the Greek State and any amount already collected by the lessor should be refunded to the lessee.
- The right to opt for tax is available for entrepreneurs who have the right to exploit real estate (e.g., through subleasing, usufruct etc.) and sublease it to other entrepreneurs, even if they are not the owner.
- In the case of co-ownership of real estate, there is no obligation for the option to tax to be exercised by all the owners, if not all the owners wish to subject the lease to VAT. Stamp duty will continue to be due for the real estate part(s) belonging to the owners who do not opt for VAT.
- Where the option to tax has been exercised, the VAT input deduction must be reviewed annually for 10 years from the date the real estate was first used. In order to calculate the annual adjustment, the actual use of the real estate is to be taken into account. If the option to tax is exercised after the first use of the real estate, then the deduction right is only provided for the remaining years of the 5 year adjustment period, calculated from its first use, whereas the tax amount deducted is monitored for the years remaining until the 10 year period from the first use is completed. The real estate is considered to have been used for the first time at the time the lease actually began. The application for the option to tax must be filed with supporting documentation, referring to construction expenses already incurred and for which the right to deduct is granted.

#### **Retroactive payment of VAT without surcharges for EU-established entrepreneurs**

EU-established taxable persons without permanent establishment in Greece, that have not yet appointed a fiscal representative in Greece, and that performed transactions that were subject to Greek VAT before 31 December 2013, may register for VAT and pay the tax amount due without penalties in the first applicable VAT return, which must be filed at the latest for December 2013 or for the fourth quarter of 2013.

This right is granted in the framework of the recent introduction of the direct (without the appointment of a fiscal representative) VAT registration mechanism by the tax authorities. Although the obligation was abolished for EU-based entrepreneurs in 2006, the ability to register directly has only just been made available.

#### **Special license scheme for the suspension of payment of import VAT**

A special license was introduced on 7 March 2013 for non-established entrepreneurs (either individually or on a group basis) suspending the payment of import VAT and providing that VAT does not apply to a subsequent supply, provided certain conditions are met. In these cases, the person liable to account for VAT is the taxable recipient of the goods, with a Greek VAT number.

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## **Italy**

### **Clarification of VAT treatment of amounts paid by public authorities**

On 21 November 2013, the tax authorities issued a resolution clarifying when amounts paid by public authorities are consideration for VAT purposes and when they are contributions falling outside the scope of VAT.

By way of background, amounts paid by public authorities are subject to VAT when those amounts are consideration for a supply of goods or services and are outside the scope of VAT when the recipient does not undertake any obligation in return.

The resolution clarifies that amounts paid by public authorities are in principle outside the scope of VAT when the payment is made by the public authority in execution of rules that provide the distribution of contributions when given requirements occur (e.g., in case of State aid). Conversely, the amounts are generally considered as consideration subject to VAT purposes when the amounts are paid under an agreement made in accordance with the public contracts code, when the contract activity's output is retained by the public authority, or when breach of the contract would incur penalties or some other contractual liability.

### **Expo 2015 tax desk for foreign participants**

On 28 November 2013 the tax authorities issued publications advising that a special Desk Expo 2015 has been created to respond to questions asked by foreign Expo participants (including individuals) on tax and procedural matters relating to their participation in Expo 2015. The email address is: [Expo2015@agenziaentrate.it](mailto:Expo2015@agenziaentrate.it).

### **'Cassetto fiscale' proxy online**

The tax authorities published a Public Notice dated 29 November 2013 advising that it is now possible to designate online two intermediaries (for a duration, in principle, of four years, safe revocation), which will be allowed to consult the taxpayer's 'cassetto fiscale'.

### **Electronic invoicing for public authorities**

On 6 December 2013, the tax authorities published a Public Notice advising that public authorities that decide (voluntarily and based on specific agreements with their suppliers) to join the 'Sdl' (Interchange System) managed by the tax authorities could receive electronic tax invoices from 6 December 2013. The Notice includes a reminder that as from 6 June 2014, electronic invoicing will be mandatory for invoices issued to ministries, tax agencies and social contribution institutions included in the annual list published by ISTAT (the National Institute for Statistics), and that from 6 June 2015, electronic invoicing will be mandatory for invoices issued to all remaining public authorities (with some exceptions for local authorities).

### **Clarification regarding export supplies**

On 13 December 2013, the tax authorities issued a resolution to clarify the VAT exemption for export supplies, which applies also where goods are initially dispatched without transfer of the property (i.e., there is an export only for customs purposes, but not for Italian VAT purposes) by the seller in a warehouse located outside the EU and then (only when they are located outside the EU) supplied to the purchaser under a binding agreement that the goods to be exported outside the EU will be sold exclusively to the purchaser (even if the goods are not

consignment stock).

In this case, there will be an export supply for Italian VAT purposes (with consequent relative increase of the habitual exporter plafond (the amount within which the habitual exporter can carry out purchases of certain goods and services without VAT)) when the purchaser withdraws the goods from the warehouse (as opposed to being considered outside the scope of Italian VAT with no ability to accrue the plafond, as the transfer of property of the goods takes place when the goods are located outside the EU).

#### **Recharge of VAT following tax assessment**

A taxpayer can recharge to its customer VAT paid following a tax assessment. The customer can deduct the recharged VAT as input VAT.

On 17 December 2013 the tax authorities published a circular clarifying the scope of this rule and the procedure for the recharge (and corresponding deduction) of the assessed VAT.

#### **Photovoltaic plants – cadastral and tax issues**

On 19 December 2013 the tax authorities issued a circular providing a comprehensive overview of the treatment of photovoltaic plants, for cadastral and tax purposes.

In particular, the circular has provided the technical criteria that must apply for plants to qualify for cadastral purposes (also for the relative inclusion on the land register). If plants qualify for cadastral purposes, they will be immovable goods for VAT purposes, otherwise they will be movable goods.

#### **Stability law for 2014**

The 2014 budget law (Stability Law for 2014) includes the following VAT issues.

##### **'Web tax'**

A controversial web tax will apply as from 1 July 2014, under which Italian taxpayers will be required to purchase online advertising services and sponsored web links only from entities that are VAT-registered in Italy, even if the purchase is made through media companies and/or third-party operators. The purpose of the web tax is to force online multinational entities that often sell advertising through intermediary companies (with lower tax rates) to register for tax purposes in Italy.

The purchase price for online advertising services and ancillary services will have to be paid exclusively by bank or postal wire transfer (which must show identification information for the beneficiary), or other traceable payment method.

Italian entities involved in sales of online advertising services and related auxiliary services will not be able to determine their income on a cost-plus remuneration basis unless a specific tax ruling is obtained from the tax authorities.

As there are some doubts as to whether the web tax is compatible with EU law, the effective date was deferred to 1 July 2014 to allow the Italian government to verify compatibility with the European Commission.

### ***Supply of leasing agreements***

From 1 January 2014 the supply of certain leasing agreements related to immovable property will be subject to a 4% register tax, even if the immovable property is yet to be built, and even if the supply is subject to VAT.

The tax authorities have also clarified the way to determine the taxable base of the register tax in this case.

### ***Social cooperatives***

From 1 January 2014, for certain (in principle social-charitable) services, social cooperatives and their consortia can apply the VAT rate of 4% or opt for VAT exemption as was previously the case.

### ***Automatic vending machines***

From 1 January 2014 the prices of foods and drinks sold through automatic vending machines where agreements were signed before 4 August 2013 can be increased only to the extent of the increase in the VAT rate from 4% to 10%, which applies to the machines from 1 January 2014.

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## Lithuania

### **Amendments to Excise Duty Law**

On 2 July 2013 the amendments to the Excise Duty Law came into force. Accordingly, the excise duty rates for tobacco products as well as for alcohol products have changed as follows:

Before 1 March 2014	From 1 March 2014
<ul style="list-style-type: none"><li>• Combined excise duty rate on cigarettes: not less than LTL 244 for 1,000 cigarettes</li><li>• Specific component of excise duty rate on cigarettes: LTL 148</li><li>• Excise duty rate on cigars and cigarillos: LTL 88 per kilogram</li></ul>	<ul style="list-style-type: none"><li>• Combined excise duty rate on cigarettes: not less than LTL 256 for 1,000 cigarettes</li><li>• Specific component of excise duty rate on cigarettes: LTL 157</li><li>• Excise duty rate on cigars and cigarillos: LTL 93 per kilogram</li></ul>
Before 1 April 2014	From 1 April 2014
<ul style="list-style-type: none"><li>• Excise duty rate on beer: LTL 8.5 for 1% of actual alcoholic strength by volume (per hectolitre)</li></ul>	<ul style="list-style-type: none"><li>• Excise duty rate on beer: LTL 9.35 for 1% of actual alcoholic strength by volume (per hectolitre)</li></ul>

- Excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume not exceeding 8.5%: LTL 58 (per hectolitre)
  - Excise duty rate on wine and other fermented beverages not referred to above: LTL 198 (per hectolitre)
  - Excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15%: LTL 216 (per hectolitre)
  - Excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15%: LTL 304 (per hectolitre)
  - Excise duty on ethyl alcohol: LTL 4,416 (per hectolitre of absolute ethyl alcohol)
- Excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume not exceeding 8.5%: LTL 85 (per hectolitre)
  - Excise duty rate on wine and other fermented beverages not referred to above: LTL 225 (per hectolitre)
  - Excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15%: LTL 281 (per hectolitre)
  - Excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15%: LTL 400 (per hectolitre)
  - Excise duty on ethyl alcohol: LTL 4,460 (per hectolitre of absolute ethyl alcohol)

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## Netherlands

### New rules for security to be provided for fiscal representative

The VAT legislation allows a foreign entrepreneur to appoint a fiscal representative in the Netherlands. In a new Decree on VAT fiscal representation, the State Secretary for Finance has set out new standards for the amount of security to be provided as of 25 December 2013.

Under the new standards, the security for a limited fiscal representative is 5% of the average amount of VAT that would be payable monthly if no exemption or zero rate were to apply to the taxable supplies made by the foreign entrepreneur. For a general fiscal representative, the security is based on the average amount of VAT paid per quarter.

The new rules provide for minimum and maximum amounts of security, depending on the type of goods. See below the full list:

Category of goods	Percentage of security	Minimum amount of security	Maximum amount of security
1. Commodities, semi-manufactures and production resources	5%	EUR 5,000	EUR 100,000
2. Consumables	5%	EUR 5,000	EUR 500,000

In some cases the new rules will be advantageous compared with the previous rules.

### Potential abolition of the cost sharing exemption for pension providers

On 18 December 2013, the coalition and the opposition of the Dutch Parliament reached a pension agreement. One of the outcomes is that pension providers may not be able to apply the cost sharing exemption (Article 132(1)(f) of the VAT Directive) in the future because the Dutch government considers it to be anti-competitive. Accordingly, it is possible that the Dutch

VAT legislation will be amended shortly.

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## **Poland**

### **VAT recovery rules for correcting invoices**

From 1 January 2014 taxpayers will be able to decrease their output tax when they issue a correcting invoice, even if they do not hold confirmation that the purchaser has received the correcting invoice. However, the purchaser must have knowledge that the transaction took place on the specified terms, including the correcting invoice. Output VAT may be decreased not earlier than in the reporting period in which two conditions are met:

1. The seller has tried to deliver the correction invoice to the purchaser but did not succeed in gathering the respective confirmation; and
2. The purchaser has the knowledge that the transaction took place on the specified terms, including the correcting invoice.

As yet there are no clear rules as to how these conditions should be documented, and the tax authorities' practice has not yet been developed. Nevertheless, it may be possible for taxpayers to recover previously unclaimed VAT where the conditions are met (subject to limitation periods).

From the purchaser's perspective, input VAT must be decreased in the reporting period in which the purchaser acknowledges the terms of the transaction (including the correction).

### **VAT exemption no longer applies to sale of used goods**

As of 1 January 2014, the VAT exemption for the sale of used goods has been abolished. Previously, taxpayers were able to apply the exemption to movable property provided:

1. The property was used by the taxpayer for a period not less than six months from when economic ownership was acquired; and
2. The taxpayer was not able to recover input VAT on their acquisition.

The type of business activity for which the goods were used (taxable or exempt) was irrelevant.

Under the new rules, only goods acquired for the purpose of a VAT exempt activity are exempt when sold, provided no VAT input was claimed on their acquisition. In all other cases, VAT will need to be accounted for (except for the supply of cars, for which there is only partial input VAT recovery).

### **New VAT provisions affect tour operators**

Until the end of 2013 the tax point for tourist services (under the margin scheme) was when the margin was determined, and not later than on the 15<sup>th</sup> day following the completion of the service.

From 1 January 2014, the tax point for such services (under the margin scheme) is determined in accordance with the general rules, that is, the completion of the service. The

calculation of the taxable basis is still based on the margin scheme (being the difference between the amount settled by the purchaser of the service and the actual costs borne by the tour operator for providing the service).

Consequently, it may be difficult to accurately determine the taxable basis at the time of the tax point (as the actual costs are based on the invoices which are often received after the service is completed), resulting in subsequent corrections to VAT returns filed.

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## **Portugal**

The 2014 State Budget was published on 31 December 2013. The main VAT changes, which apply from 1 January 2014, are as follows.

### **Azores VAT rates**

The VAT rates applicable in the Autonomous Region of Azores are:

- 5% (reduced), increased from 4%;
- 10% (reduced), increased from 9%;
- 18% (standard), increased from 16%.

### **VAT regime for sales to national exporters**

The concept of 'national exporter' applicable to sales to national exporters has been clarified. The concept of 'national exporter' now includes exporters with a head office, a permanent establishment, domicile or a VAT registration in Portugal. This special regime for sales of goods to national exporters provides for a VAT exemption provided a number of specific requirements are met (such as timing, documentation and warehousing requirements).

### **Cash basis regime**

The Budgetary Law for 2014 clarifies that the right to deduct input VAT by customers of entities covered by the cash basis regime (but themselves not in the regime) is not dependent on payment of the invoice.

### **Waiver of the exemption for supplies of immovable property and regularization**

One of the situations where it is possible to waive the VAT exemption on the supply of immovable property (sale or letting) is when, after construction works on the property, its value increases. Before 2014 the value had to increase by at least 50%. Under the Budgetary Law, this percentage has been reduced to 30%.

In addition, the period in which that part of the initially deducted VAT must be repaid if the immovable property is unoccupied for a certain period of time has been changed from three to five years.

### **Changes to VAT recovery on bad debts**

When the deduction of VAT on bad debts does not require the tax authorities' authorization, there is a limit of two years in which the taxpayer can recover the VAT.

### ***Transportation documents***

There were some changes to the requirements for the documentation issued to support the transportation of goods, namely:

- New exceptions have been introduced regarding the obligation to issue transportation documents.
- There were changes and clarifications regarding the issuance of global transportation documents (global transportation document can be issued when the goods to be delivered are unidentified).
- Limitations were imposed on the situations in which goods and vehicle may be apprehended, namely, goods and vehicles may only be apprehended by the tax authorities if there is evidence of the practice of a criminal offense.

### ***Reduced rate***

The reduced VAT rate has been extended to dehydrated fruits and also to agricultural activities that are not related to the exploitation of land.

### **VAT return annexes**

In addition to the above Budget changes, a decree dated 27 December 2013 revoked the obligation for taxpayers to fill in and submit the annexes concerning VAT regularizations on VAT refund requests.

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## **United Kingdom**

### **CJEU judgment on golf club VAT exemption case**

The CJEU has issued its judgment in the UK case *Bridport and West Dorset Golf Club Limited* about whether the green fees charged to non-members qualify for VAT exemption under European law. The CJEU decided that where a non-profit body manages a golf course and offers a membership scheme, the VAT exemption extends to green fees paid by visiting non-members.

### **Intrastat changes from 1 January 2014**

HMRC have confirmed that the UK has altered the thresholds for reporting arrivals and delivery terms information on Intrastat returns. From 1 January 2014 the exemption threshold for arrivals increased from £600,000 to £1,200,000 and the Delivery Terms threshold increased from £16 million to £24 million (businesses are required to supply additional information relating to Delivery Terms on Intrastat declarations if their annual EU trade exceeds this threshold). The exemption threshold for dispatches (EU exports) remains unchanged at £250,000.

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