GLOBAL INDIRECT TAX SERVICES

Global Indirect Tax Brief

A roundup of developments in VAT, GST, trade and customs, and other indirect taxes

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TAX

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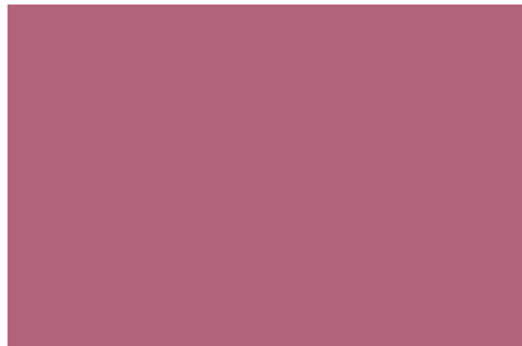
cutting through complexity



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Introduction

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Welcome to the latest edition of KPMG's **Global Indirect Tax Brief (GITB)**.

With changes in indirect tax rates, rules and regulations happening around the world, the number of countries with news to share in GITB is growing. Twenty-seven KPMG member firms from around the world contributed to updates and insights in this edition of GITB.

As you read through the articles, you will see common themes of regulatory and legislative activity such as:

- a focus on indirect tax compliance audits
- implementation of anti-fraud measures
- changes in tax law to broaden the tax base
- the introduction of revision of customs policies.

All of this new activity – on top of the massive expansion of indirect taxes around the globe during the last 20 years – creates global complexity and can result in leaving potential value on the table. KPMG's Global Indirect Tax Services (GITS) seeks to cut through the complexity using our deep understanding and approaches to indirect tax. Simply put, KPMG's network of indirect tax professionals around the world believes that:

1. the quality and structure of transaction-level data is critical to performance of the indirect tax function
2. automation of data interface transactions is readily available now and will become ubiquitous
3. through process orientation and greater use of technology, businesses can transform data into value
4. data analytics should be central to and a core activity of every businesses' indirect tax function.

Businesses will have their work cut out for them in order to ensure their functions are prepared to face the global indirect challenges of today and tomorrow. Please read through the articles in this edition of GITB to find out the latest information you need to know.

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Australia

In the current environment where tax revenues are under pressure, revenue authorities around the world are struggling to maintain their levels of tax collections, and Australia is no exception.

ATO 2013–14 Compliance Focus – "Integrity of Business Systems"

In the current environment where tax revenues are under pressure, revenue authorities around the world are struggling to maintain their levels of tax collections, and Australia is no exception. It is against this background that the compliance focus of the Australian Taxation Office (ATO) is becoming increasingly relevant to taxpayers seeking to manage their tax risk and governance.

The ATO has recently released its 2013–14 Compliance Program specifically noting that a key GST focus area will be the integrity of business systems (IBS) and processes – particularly for taxpayers in the mining; wholesale trade; manufacturing; financial and insurance services; government; and the retail sector.

This focus area should not be a surprise given that according to the ATO, in 2011/12, the large business sector reported an alarmingly high rate of errors in GST reporting, and their compliance activity in this area yielded over 254 million Australian dollar (AUD) of additional revenue. They have categorized the errors across four main areas: 39 percent of errors arose from Business Activity Statement (BAS) preparation errors; 22 percent from system issues; 16 percent from related entities miscommunication and 12 percent from technical understanding and interpretation.

Common errors were incorrect classification of items at the master data level, manual adjustments outside of the ERP (Enterprise Resource Planning) system, and problems with systems upgrades. In the ATO's internal risk assessment, deficiencies in the management of business systems and inadequate processes that result in understatement of GST liabilities continue to be rated high risk.

The ATO's focus on this area has been underway for the last few years and with additional collections of close to AUD1 billion over the last three years, their continued focus in this area is hardly surprising and should encourage "at-risk" taxpayers to closely review how their business system interacts with GST and seek to proactively address any issues prior to the commencement of ATO compliance activity. Going forward, this focus should also include seeking specialist GST input when designing and implementing new business systems, which is frequently where the problems originate.

The approach taken by the ATO is consistent with the approach already adopted by revenue authorities in other jurisdictions when enforcing indirect tax compliance. The ATO appears to be increasing its focus in the IBS space, and one wonders for how long their current "light touch" approach can continue, especially against the background of increased pressure on overall revenue yields.

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Belgium

The Belgian Ministry of Finance included a number of VAT measures in its long term customs policy aimed at reinforcing Belgium's competitiveness as a major logistics platform within the European Union.

Recent evolutions with respect to customs and import VAT

In May 2013, the Belgian Ministry of Finance announced a new, long-term customs policy, in order to reinforce Belgium's competitiveness as a major logistics platform within the European Union.

The released policy contained a number of strategic and operational priorities in order to modernize Belgium's customs legislation, as well as to implement 100 percent electronic customs procedures by the end of 2014.

A number of VAT-measures were also listed, in particular with respect to the import-VAT deferral license (i.e. the so-called ET 14.000 import license). This license allows the VAT-taxpayer to settle import-VAT through its periodic VAT return (a VAT-neutral operation), instead of pre-financing these amounts to the customs authorities at the point of import.

We have outlined below a chronological overview of the latest VAT-developments in this area.

Cash deposit

Until 2012, such a license was subject to the payment of a cash deposit equal to 1/24th of the VAT due on the actual imports made during the four quarters preceding the application, (the import amount is subject to annual review and adjustment).

To eliminate this competitive disadvantage (which was not required in neighboring countries), the federal government abolished **the obligation to place a cash deposit** as from 1 January 2013. This means that all holders of such licenses can now reclaim cash deposits previously paid over through their Belgian VAT-returns, as from this date until December 2016 (new applications were already exempted of deposit as from 1 October 2012).

Simplified application conditions

In addition to the abolition of this deposit payment, the application conditions for an import license were also simplified and legalized through a new article 5 of Royal Decree Nr. 7 entering into force 4 July 2013 (previously the application conditions and application procedure were both left to the discretion of the Belgian VAT-authorities).

Regular imports of goods are also no longer required and a VAT-taxpayer can now apply for an import license if he or she proves that imports have taken place in the past, or are expected in the near future. Provided all VAT compliance is properly filed over the last four quarters, and no outstanding VAT-debts exist, such an import-license should be granted within a month of the filing of the application. The period for which the license is valid is not limited in time but it can however be revoked or cancelled under certain conditions.

Extension of this regime to global representatives

An important addition to the revised article 5 of Royal Decree Nr. 7 is that the import license regime is now extended to global representatives, and to 796.5 VAT-numbers.

Such VAT-numbers allow their holders (often shipping agents or logistics partners) to represent foreign VAT-taxpayers under their VAT-number, yet only for import transactions followed by supplies of the imported goods.

Holders of a 796.5 VAT-number can now also apply for an import license as from 4 July 2013 under similar conditions as those applying to regular VAT-taxpayers. Hence, both a VAT-registration, and the pre-financing of import-VAT can be avoided by foreign VAT-taxpayers who are represented locally in Belgium (e.g. by shipping agents, logistics providers).

Future measures

It is expected that additional clarification will be provided to global representatives with regard to the evidence required to support the application of VAT-exemption to Intra Community transactions. Furthermore the VAT-authorities are currently investigating how global trade can be stimulated through the use of global representation. Concrete measures in this respect remain unclear.

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Being a non-resident business has its benefits under Canada's GST/HST system, such as certain zero-rated exports and special relief mechanisms available only to non-residents. However, did you know that certain non residents need to register for GST/HST?

Does your business have Canadian GST/HST obligations?

Being a non-resident business has its benefits under Canada's GST/HST system, such as certain zero-rated exports and special relief mechanisms available only to non-residents. However, did you know that some non-residents are required to register for GST/HST based on their business activities or degree of business presence in Canada? Other non-resident businesses are deemed to be residents for GST/HST purposes while some others may be considered to be carrying on business in Canada for GST/HST purposes. In both situations, these businesses may have to register and collect taxes on their sales in Canada and may also be entitled to claim input tax credits.

An analysis with huge impact

If your business is determined to be resident in Canada or carrying on business in Canada for GST/HST purposes, you will have to establish your GST/HST obligations and your eligibility to claim credits, which may include:

- registration for GST/HST purposes
- collection of GST or HST on your sales in Canada
- posting security with the tax authorities
- paying GST/HST on goods and services previously zero-rated as a non-resident purchaser
- claiming credits for GST paid on imports into Canada and determining the appropriate documentation rules
- claiming credits for GST/HST paid on your purchases in Canada.

If you make an error in determining your business' resident status or in determining whether your business is carrying on business in Canada, you could be left vulnerable to GST/HST assessments for tax not collected and could miss out on opportunities to claim credits for GST/HST paid. A late determination could also be costly if you are unable to claim missed credits retroactively.

While your business may see an increase in compliance requirements as a resident in Canada, these requirements can be managed effectively. Indeed, some qualifying non-resident businesses choose to voluntarily register for GST/HST purposes. For some of these businesses, registration provides an opportunity to claim GST paid on their imports into Canada and other expenses, and also reduce their costs and risks.

Is your corporation resident in Canada?

For GST/HST purposes, a person may be determined to be resident in Canada based on various rules. Different residency rules may apply for different types of taxpayers (e.g., corporations, individuals, trusts, partnerships). For example, a corporation is deemed to be a resident if it is incorporated or legally continued in Canada and not continued elsewhere. However, a corporation not incorporated in Canada may still be considered by the tax authorities to be a resident in Canada under general legal principles if the central management and control of the corporation are determined to be in Canada. Various factors apply to make this determination.

Is your corporation carrying on business in Canada?

A non-resident that carries on business in Canada is generally required to register for GST/HST purposes and follow most of the same rules as other businesses in Canada. The tax authorities have published interpretive guidance that outlines various factors that are considered to make this determination. However, ultimately this determination is based on the specific facts and circumstances of each non-resident business.

The two concepts for non-residents summarized in this article are important but many other rules will play a role in determining the impact of the GST/HST on a non-resident's operations. A non-resident corporation that plans to expand its operations to Canada should determine its GST/HST obligations early, as well as other indirect tax and income tax obligations, to help limit missed tax opportunities and to manage tax liabilities.

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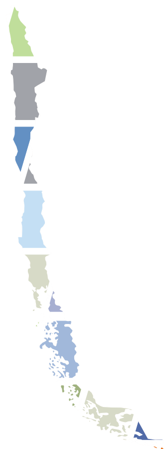
Chile



To avoid non recoverable Chilean VAT costs arising, non resident businesses should continue to be aware of changes introduced to limit the application of VAT exemption in respect of services supplied from Chile.

In Chile, the idea of tax reform has been considered for a long period of time. In September 2012, significant tax changes were announced with the publication of Law 20.036. Although principally concerned with direct tax reform, a number of important VAT changes were included in these measures.

By way of background, VAT is levied at a flat rate of 19 percent on the recurrent sale of tangible goods located in Chilean territory and on the supply of certain services rendered or used in Chile. A service is deemed to be rendered in Chile when the activity that generates the service is provided in Chile (regardless of where the service is actually used). VAT is applied to such services irrespective of whether the remuneration for these services is paid or received in Chile or abroad.

Prior to the introduction of the recent reforms, Chilean VAT law provided that VAT exemption should apply to services rendered in Chile where payments made in respect of these services to non-residents were already subject to withholding tax (under Article 59 of the Income Tax law). The aim of the provision was to avoid overseas payments being subject to both VAT and withholding tax. However, in practice, the exemption from VAT was frequently applied regardless of whether withholding tax was effectively paid. The reforms recently introduced incorporated a limitation on the application of the VAT exemption which seeks to ensure that it is applicable only to cases where withholding tax has actually been applied to the remittance.

The original wording of the VAT provision stated that the VAT exemption was applicable to "profits that are not considered income according to Article 17 of the Income Tax law and those subject to withholding tax provided in Article 59 of the same law". The revised law, in force since 1 January 2013, furthermore requires that in order for VAT exemption to apply, payments made in respect of such services must not be exempt from withholding tax by virtue of a double tax treaty or other legal exemption.

The foregoing amendment reflects the spirit of the exemption as the original aim of the provision was that such transactions are subject to either VAT or withholding tax but not exempted from both.

The Chilean tax authorities are actively enforcing the provisions introduced by the tax reform. Non resident businesses should therefore be aware of these changes and in particular, they should be aware of the risk that the limitation of the VAT exemption could result in a non recoverable Chilean VAT cost arising on services acquired in Chile in addition to the possibility of double taxation (e.g. if the service is used and taxed again in an overseas jurisdiction).

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China

China's Ministry of Finance (MOF) and State Administration of Taxation (SAT) have jointly issued Circular Caishui [2012] 84 (Circular 84), which sets out the substantive framework under which head offices and branches may be eligible to group for VAT purposes.

New VAT grouping rules to benefit multinationals in China

China's Ministry of Finance (MOF) and State Administration of Taxation (SAT) have jointly issued Circular Caishui [2012] 84 (Circular 84), which sets out the substantive framework under which head offices and branches may be eligible to group for VAT purposes.

The general position in China is that separate VAT filing and payment obligations exist for each branch and head office of a legal entity in China. This can mean that a single legal entity in China may have multiple VAT filing and payment obligations across a range of different cities and provinces. Each city or province may also impose different administrative requirements, and adopt their own interpretation of the VAT rules, often resulting in significant additional compliance costs for businesses, particularly for large multinational companies (MNCs).

Circular 84 currently only allows taxpayers subject to the VAT pilot program to group for VAT purposes. This means that it applies to the transportation and modern services industries where the VAT reform process is currently in operation. However, it is expected that the VAT pilot program will shortly be expanded to other industries, so as time progresses, the application of Circular 84 will increase.

The specific implementation rules under which this framework will be operational at an administrative level are yet to be introduced (except in respect of the airline industry). However, with the release of the framework rules, businesses subject to the VAT pilot program can begin to consider whether they will group for VAT purposes. Approval will then need to be sought from the MOF and the SAT.

Circular 84 will be a welcome relief to companies with multiple branches across China for the following reasons.

1. It will allow businesses with branches that have excess input VAT credits to apply those credits against the VAT payable of other branches. Excess input VAT credit balances are not generally refundable in China. This provides a powerful means by which to overcome problems of 'wasted' VAT credit balances in underperforming or new branches.

2. It overcomes the need to prepare VAT returns for each branch. While payment obligations still continue for each branch, the calculation method for those branches is very simple.

3. It overcomes many of the difficulties in having to deal with tax officials in different locations adopting a different interpretation of substantive provisions.

4. Businesses wishing to exercise greater oversight of the VAT compliance of their branches, may wish to group as a means of achieving more transparency and stronger tax controls.

Circular 84 does have several limitations, which we envisage will be addressed in the future, specifically the following.

- Grouping only applies to the branches and head office of a single legal entity. Separate legal entities, including wholly owned subsidiaries, are not permitted to group with the head company for VAT purposes.

- Circular 84 currently only allows for grouping of those services subject to the VAT pilot program. It is hoped that once the VAT pilot program has been extended to all industries that more broadly based implementation rules will be enacted.

KPMG in China

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Colombia

The claiming and application of VAT credit balances in Colombia.

VAT credit balances accrued due to different output and input VAT rates

In Colombia, a taxpayer is only entitled to claim an input VAT credit on purchases up to the amount of the output VAT charged on the corresponding supply of these goods and services. For example, if purchases attract a VAT rate of 16 percent and these purchases are incorporated in a supply which attracts a VAT rate of 10 percent, the purchaser is only entitled to recover input VAT up to the 10 percent rate. To date, the remaining 6 percent of VAT incurred could be carried forward to future VAT returns to reduce the amount of VAT payable or to increase the available VAT credit.

Prior to the enactment of law 1607 on 26 December 2012, although excess VAT accrued due to differing tax rates could be carried forward to future VAT returns; it was generally treated as an additional cost of the goods or an expense for income tax purposes. However, since this enactment, credit balances can now be applied by the taxpayer in the following ways:

- They may be carried forward and allocated against output VAT in the following VAT return.
- They can be offset against other taxes. This option may only be requested by suppliers of goods and services that are taxed at the VAT rate of 5 percent. The offset request must be made by filing the income tax return for the taxable period in which the balances accrued in the following month.
- A refund of the credit balance can be requested by suppliers of goods and services that are taxed at the VAT rate of 5 percent. They must file their income tax return for the taxable period in which such balances accrued, no later than 2 years after the due/filing date for the return.

When VAT credit balances are accrued due to the application of different VAT rates and a taxpayer opts to offset or claim a refund of this VAT, the balances can be carried forward on a bimonthly, biannual or annual basis (depending on the origin of the credit balance).

Companies will now be required to establish new internal controls in an attempt to promptly recover and manage VAT credit balances. Such controls should ensure, in particular, that taxes are managed and returns are filed in a timely way to allow taxpayers to apply for the offsetting or refund options noted above.

KPMG would advise clients to review controls and the management of their taxes to ensure that they are in a position to reclaim/offset excess VAT credits.

KPMG in Colombia

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Croatia

As Croatia joined the EU on 1 July 2013 its VAT legislation has been significantly changed in order that it is harmonized with the EU legal *acquis*.

Full harmonization of the Croatian VAT system due to EU accession

As Croatia joined the EU on 1 July 2013 its VAT legislation has been significantly changed in order that it is harmonized with the EU legal *acquis*.

In addition to implementing obligatory changes, Croatia has introduced a number of VAT simplification rules which are designed to reduce the VAT compliance burden of taxpayers.

These simplifications are as follows:

- Exemption from payment of import VAT,
- Consignment/Call off stock simplification, and
- Domestic reverse charge for construction services

Exemption from payment of import VAT

The new Procedure 42 provides that import VAT does not need to be paid if imported goods are intended to be supplied to another EU member state, (i.e., if the goods are intended for intra-community supply from Croatia). The following conditions, amongst others, should be met.

- Prior approval should be obtained from the Croatian tax authorities (by Croatian and EU importers).
- For each import, the following details need to be provided to the Croatian customs authorities.
  - The Croatian VAT number of the taxpayer or the taxpayer's VAT representative importing the goods.
  - The VAT number of the recipient of the goods in the other EU member state.
  - Documentation showing that the goods will be transported immediately to the other EU member state (invoice, transportation documentation, written statement from the supplier).

Consignment/call-off stock simplification

If a foreign taxpayer, registered in another EU member state, moves and holds its own goods in a consignment stock or call-off stock warehouse of a Croatian customer, who is registered for VAT in Croatia, there is no obligation for such a foreign taxpayer to register for VAT in Croatia subject to meeting the following conditions.

- The customer needs to self account for VAT on the acquisition of the goods when they are withdrawn from the warehouse
- The customer needs to retain certain details relating to the warehoused goods.

There is no time limit specified on when the title to the goods needs to be transferred to the customer. It is not clear whether this simplification can be applied when the foreign entrepreneur has multiple customers in Croatia but we hope that clarification will soon be provided on this point.

Domestic reverse charge on constructions services

According to Croatian VAT legislation, construction services are considered to be all services covered by Croatian construction laws. These include services in relation to construction, maintenance, reconstruction or disposal of buildings, including services related to building repairs and cleaning and any other services. Also included is the provision of personnel performing construction services.

A construction service is not provided if the supplier provides only construction materials and not the service itself.

If a construction service is provided in Croatia and occurs between two Croatian VAT registered taxpayers, the supplier of the construction service does not need to charge Croatian VAT on the construction service provided, but rather the recipient of the construction service needs to reverse charge or self account for Croatian VAT. The Croatian VAT authorities have also confirmed that the reverse charge mechanism can be applied by a Croatian taxpayer where the construction service is received from a foreign entrepreneur in Croatia. This means that the foreign entrepreneur can avoid the need to register for VAT in Croatia.

The reverse charge mechanism can result in a cash neutral position for the recipient of the construction services where a certificate of works completion is received by the taxpayer in the same month that the VAT has been self accounted for.

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Cyprus

Under a special Cypriot regime, the owners and lessees of pleasure boats and yachts can benefit significantly from a reduction in the VAT element payable on the cost of leasing such boats.

Can mixing up business with pleasure result in reduced VAT costs?

Under a special Cypriot regime, the owners and lessees of pleasure boats and yachts can benefit significantly from a reduction in the VAT element payable on the cost of leasing such boats. Although the regime was introduced back in March 2012, we believe that not all interested parties are aware of its existence and resulting benefits. Furthermore, a number of minor changes have been affected to the regime since its introduction to address the effects of increases in tax as well VAT rates.

Conditions of the regime

A number of conditions must be satisfied in order to avail of the relief introduced by this regime.

a) a lease agreement must be concluded between a Cyprus established company and any physical person and/or legal person irrespective of their origin.

b) an initial lump sum payment of at least 40 percent of the value of the vessel must be paid to the lessor.

c) the pleasure boat/yacht must sail to the Republic of Cyprus within one month from the date of signing the lease agreement. A request for extension can be made to the VAT Commissioner.

Furthermore, the lease agreement referred to at (a) above needs to take account of the following points in order to qualify for relief:

- it should include monthly rental payments which cannot cover a period of more than 48 months.
- the lessor should expect a profit margin of more than 8 percent of the total value of the pleasure boat/yacht (prior to 27 May 2013 the required percentage was 10 percent).
- the final payment at the end of the finance lease, which essentially triggers the transfer of the legal ownership of the vessel to the lessee, should not be less than 4 percent of the value of the vessel which represents the lessor's total profit from the leasing operation.

VAT relief available under the regime

The amount of VAT ultimately payable to the tax authorities by an owner/lessor will depend on the extent to which the vessel is to be used outside the EU. Essentially, non EU usage will reduce the VAT amount payable. However, instead of having to compute the amount of actual non EU usage, Cypriot VAT legislation includes a number of tables/charts which designate a particular percentage of non EU usage depending on the type of vessel (e.g. sail boat, motor boat etc) and its length.

For example, a sailing boat, with length greater than 24 meters, is considered as being used 20 percent of the time within and 80 percent outside EU waters. The lessor is therefore liable to charge and account for Cypriot VAT on only 20 percent of the lease payments, while no VAT is accountable on the remaining 80 percent, which relates to the time the boat is used outside EU waters.

In order for relief to apply, a boat owner must apply for the advanced written approval of the Cypriot VAT Commissioner. An application form/certificate is required outlining the value of the pleasure boat/yacht and the designated percentage use in EU/Non EU waters.

The new regime of pleasure boats/yachts has already received positive feedback from existing and potential owners and has stimulated registrations under the scheme.

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France

Two recent French court decisions have shed some light on the rules applicable to the recovery of input VAT incurred by mixed holding companies that, aside from their VATable activities relating to the management of subsidiaries, perform VAT exempt and/or out of scope financial activities.

VAT recovery rights of mixed holding companies: New French case law developments

Two recent French court decisions have shed some light on the rules applicable to the recovery of input VAT incurred by mixed holding companies that, aside from their VATable activities relating to the management of subsidiaries, perform VAT exempt and/or out of scope financial activities.

The first decision, issued by the French Administrative Supreme Court on 24 June 2013 (*Air Liquide*, no. 350588) relates to the recovery of VAT on acquisition costs.

In principle, acquisition costs borne by a mixed holding company form part of its general costs, the corresponding input VAT being partially deductible (proportionate to the company's general VAT recovery ratio).

In the *Air Liquide* case, the legal issue was that the acquisition costs were borne by the head holding company of the group whereas the shares were actually acquired by one of its subsidiaries. The tax authorities considered that the input VAT was fully non-deductible at the head holding company's level because the acquisition costs had not been incurred for the purposes of its own activities, but in the interest of its subsidiary (reasoning validated by the French Administrative Supreme Court in its AXA decision of 2008).

The French Administrative Supreme Court, dismissing the tax authorities' argumentation, recognized here the right to partially deduct the input VAT on the said acquisition costs, since the company was able to provide supporting documentation showing that the acquisition was part of a strategy to increase the revenues deriving from the provision of management services to its new subsidiaries (including a sub-subsidiary). It was further noted that considering the group's organization, only the head holding company would render management services to the newly acquired sub-subsidiary.

This new case law should be borne in mind by groups intending to purchase French entities in advance of structuring the acquisition and routing acquisition costs.

The second decision, rendered by the Administrative Court of Appeal of Paris on 4 July 2013 (*Ginger*, no. 12PA02858), concerns the impact of the receipt of dividends on the VAT recovery rights of a mixed holding company. It held that, the receipt of dividends constituting an activity outside the scope of VAT not granting VAT recovery rights, the company should have neutralized the recovery of a portion of its input VAT based on an allocation key (now referred to as a VAT liability ratio – in French: *'coefficient d'assujettissement'*) properly documented.

This risk that practitioners had pointed out (based on CJEU case c-437/06 *Securenta* of 13 March 2008 and on the reform of French VAT recovery rights in 2008 which required taxpayers to determine, for each expense bearing VAT, a VAT liability ratio reflecting the proportion of its use for activities within the scope of VAT) has now clearly started to materialize, urging partially VAT liable entities to closely review their situation and take necessary steps to secure their position.

Beyond the technical arguments, these cases are also good examples of the ever increasing importance of prior documentation in VAT audits and litigation, especially in the field of VAT recovery.

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Fidal

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Germany

EU Member States have recently reached an agreement at union level on a common set of interpretations regarding the place of supply of services relating to immovable property.

Place of supply for property-related services

EU Member States have recently reached an agreement at union level on a common set of interpretations regarding the place of supply of services relating to immovable property. These rules will come into effect on 1 January 2017. The German tax authorities have, however, to a large extent already anticipated these changes and have already issued guidance on the treatment to be applied to property related services supplied since 31 December 2012. This guidance is based on the non-binding guidelines previously published by the EU VAT Committee.

As well as clarifying the definition of property for VAT purposes the guidance of the German tax authorities provides a number of examples of property-related and non-property related services. Classification of a service as property related will ultimately assist in determining the place of supply of that service.

Property-related services

Property-related services are, for example, property management services consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property. Also included are the grant of rights of use and enjoyment over property or a part thereof, the maintenance, renovation and repair work to buildings or parts of the buildings, the installation, assembly, maintenance and monitoring of machines or items of equipment making up an integral part of the building, as well as security services relating to the property and the erection of scaffolding.

The storage of goods is property-related, where the storage relates solely to a specific property or specific part of a property as agreed between the contracting parties. This is in line with the binding interpretation of the VAT Directive effective from 2017, which also has regard to whether a customer is assigned a specific part of immovable property for his exclusive use. Recently in the RR Donnelley case (C-155/12) the Court of Justice of the European Community indicated that the extent to which the customer has access rights is another important factor in determining whether the service is deemed to relate to immovable property. Furthermore, in cases of complex storage services, the Court noted that individual elements of the services can be independent supplies if they are not absolutely necessary to ensure improved storage.

Non-property related services

Non-property related services could include the management of a portfolio of investments in real estate, the preparation of construction plans for buildings or parts of the buildings that cannot be attributed to a specific property or part of a property, advertising services, even if these include the use of a property. Services including advising on the terms of a property agreement, the enforcement of any such agreement, or evidence that such an agreement exists, are also regarded as non-property related, unless such services are related to the transfer of a title to property (e.g. legal and tax advice on property matters). The supply of items or equipment, which are used by the recipient of the supply to carry out work relating to a property (e.g. the rental of scaffolding) is non-property related, provided that the trader in supplying the items or equipment does not assume any responsibility for carrying out the work in question.

Businesses operating throughout the EU should note that all Member States did not unanimously agree on the guidelines of the VAT Committee. Accordingly, there is potential for very different interpretations of property-related services to apply within the EU before 2017.

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India

Supplies made by restaurants have historically been liable to VAT (i.e. a state level levy on sale of goods).

Impact of recent legislative amendments to Service Tax on supplies made by restaurants and eateries

Supplies made by restaurants have historically been liable to VAT (i.e. a state level levy on sale of goods). However, in 2011 the Central Government also imposed service tax (i.e. a Federal levy on rendering of services) on services provided by restaurants, thereby treating a portion of the supply as a 'service'. The levy was initially charged on services provided by air-conditioned restaurants and eateries with a license to serve alcoholic beverages on the premises. High-end restaurants often provide ambience and air-conditioning in the course of supplying food & beverages (F&B).

Since April 2013, the scope of the service tax levy has been widened to include all air-conditioned restaurants and eateries (irrespective of whether they have a license to serve alcoholic beverages). As a result, a number of small and medium restaurants and eateries now fall within the ambit of the service tax net. Due to the overriding principle that service tax is essentially charged on services, this amendment has also resulted in a number of interpretational ambiguities.

To illustrate this point, there is an ambiguity in relation to malls and food courts where air-conditioning is not provided by the vendor supplying the F&B but is made available by the developer for the entire mall or food court. In this case, while there is an element of service, it is debatable whether the vendors have any role in provision of such services. Similarly, where eateries offer the facility to take-away as well dine-in at their premises, the point of debate is whether there is any element of service in the case of the take-away scenario. If not, perhaps there should be different pricing for take-away and dine-in options? There are a number of other permutations possible that are now being debated. For example, the applicability of service tax on eateries which are predominantly engaged in the take-away business, but also offer a place to sit and eat; ice creameries and coffee houses; cinemas, bowling alleys and amusement parks which provide F&B within the premises; and canteens meant for employees. The application of service tax has a direct impact on compliance as well as the availability of input tax credits.

Currently there is no uniformity in the tax positions adopted by different operators in the F&B industry, not every operator is levying service tax on the supply of F&B. In a recent judicial development, a Court in India struck down the Service Tax citing constitutional provisions on the premise that levying any tax in relation to supply of F&B is a state matter, which is already liable to VAT. It is likely that the Federal Government will file an appeal with the Supreme Court against this ruling and therefore the issue may not be resolved until it is finally adjudicated by the Apex Court.

The long-term solution to these issues is the introduction of a GST regime (which will subsume most of the existing indirect taxes currently in force). However, as a short-term measure, the industry is hoping that the government will introduce a comprehensive circular or clarification. Developments on this issue need to be monitored closely given its wide-ranging impact.

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Italy

The Italian legislator has recently amended regulations that provided that contractors would be ordinarily jointly liable for the payment of VAT on work performed by subcontractors.

Removal of joint responsibility for contractors in respect of the payment of VAT by subcontractors

With article no. 50 of Law Decree no. 69/2013 the Italian legislator has recently amended regulations that provided that contractors would be ordinarily jointly liable for the payment of VAT on work performed by subcontractors. Prior to this change, Italian law provided that contractors could be jointly liable for a subcontractor's obligation to pay VAT on subcontracted work as well as their obligations to pay withholding taxes on employees' compensations. The liability cap was equal to the consideration payable for service provided.

Previously, the law also allowed principals and contractors to refrain from making payment to their counterparts where the latter failed to produce special letters and certifications attesting that VAT and withholding taxes had correctly been accounted for and paid. A penalty of 5,000 to 200,000 euros (EUR) could be imposed on principals where payments were made without such documentation being provided in advance.

This regime greatly impacted the contract work industry; it especially resulted in a generalized block of payments from principals and contractors to contractors and subcontractors respectively, thus worsening the already difficult financial positions of small construction businesses.

To force the legislator to remove such burdens and obstacles for smoother execution of payments, the National Associations of Italian Manufacturing Corporations (Confindustria) filed a complaint with the EU Commission. The Confindustria claimed that it is against EU principles for a law to give taxpayers control over whether other taxpayers comply with their tax obligations, when responsibility should be on the tax administration only.

With this in mind, and to avoid an infraction procedure against Italy, the government removed the joint liability with respect to VAT, still leaving the responsibility in place for withholding tax obligations.

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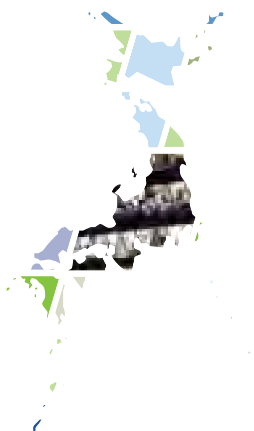
Japan



The Japanese government's proposal for the 2013 Tax Reform, contains no proposed changes to consumption tax beyond those in previously passed legislation in 2012.

On 24 January 2013, the Japanese government unveiled its proposal for the 2013 Tax Reform. There are no proposed changes to Japanese consumption tax, which under legislation passed on 10 August 2012 is scheduled to increase from 5 percent to 8 percent on 1 April 2014, and then to 10 percent on 1 October 2015. The rate increase proposed for April 2014 has been formally confirmed by the Government on 1 October 2013 while the increase to 10 percent scheduled for 2015 will be reviewed again in advance of this date.

Transitional measures

Some transitional measures have been introduced as part of the reform program to address the treatment of the consumption tax rate increases in relation to certain types of transactions, both for the increase from 5 to 8 percent and from 8 to 10 percent.

Transitional measures are applicable for the rate increase from 5 to 8 percent for the following types of supplies:

- supply of services to multiple and unspecified persons (e.g. passenger fares, admission fees for movies/theatres)
- supply of electricity, gas, water and telecommunications services, etc.
- construction works
- supply of certain services (for certain contracts)
- leasing of assets
- long-term installment sales (where taxable sales are recognized based on a deferred payment basis)
- long-term large scale construction works (where taxable sales are recognized on a percentage of completion basis)
- subscription sales, e.g. books/magazines/mail order sales etc.

Transitional measures for the increase in the consumption tax rate from 8 percent to 10 percent will be applied to the same transactions as above, except for the measure on subscription sales, e.g. books/magazines/mail order sales which has not been introduced.

KPMG in Japan comment

KPMG welcomes the guidance from the Authorities on these supplies which may span the change in rate. The rules regarding the transitional measures can be complex to apply, therefore we recommend businesses analyze whether these rules are likely to impact their transactions. Similarly businesses may wish to consider if there are any opportunities for consumption tax planning regarding the rate change, or in relation to the increased burden of the higher consumption tax rate in general.

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Malta

The Court of Justice of the European Union has found that charges levied by Malta on telephony usage do not violate the Authorization Directive.

Charges on the consumption of mobile telephony services

On 27 June 2013, the Court of Justice of the European Union (CJEU) decreed in case C 71/12 (Vodafone Malta Ltd and Mobisle Communications Ltd vs. Attorney General et al.) that charges, in the nature of the contentious 3 percent excise duty levied in Malta on mobile telephony usage are not in violation of the Authorization Directive.

Background

Act No. II of 2005 amending the Maltese Excise Duty Act introduced an excise duty at a rate of 3 percent on a number of charges levied by mobile operators for their services including subscriptions and top-up vouchers. The duty is calculated as a percentage of the charges paid by mobile telephony users to the operators and paid by the mobile telephony operators to the respective authorities. The two largest operators in Malta, Vodafone Malta and Mobisle Communications brought proceedings in the Maltese Civil Court to annul the relevant provisions of law, stating them to be in breach the Authorization Directive. This Directive aims to establish a harmonized market for electronic communication networks and simplified authorization rules and conditions.

The Maltese Courts dismissed this action stating that as the trigger of such charges was linked to the use of the service rather than its authorization, the charges were not precluded by the Directive. Vodafone Malta and Mobisle Communications appealed before the Maltese Constitutional Courts. With doubts on the scope of the Authorization Directive, the Constitutional Court referred the issue to the CJEU for a preliminary ruling on of the compatibility point.

The CJEU's view

The Court found that given the charges are not levied on all operators with an authorization but are linked directly with service usage and are ultimately borne by the user, they are akin to a charge on consumption. As such they are not in conflict with the provisions of the Authorization Directive. This judgment is in line with a number of other CJEU decisions in this area, including case C-485/11 (Commission vs. France) that was handed down on the same day. In this case it was concluded that a special charge levied in France based on the operator's activities and turnover was not at odds with the Authorization Directive.

With the benefit of the CJEU's guidance the Maltese Courts must now verify that the characteristics of the 3 percent excise duty are similar to a tax on consumption in order to conclude on its compatibility with the Authorization Directive.

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Mexico

The Mexican Tax Authority has announced that effective from 1 January 2014 the requirement to issue electronic invoices will be extended to entities with annual gross receipts of 250,000 Mexican pesos (MXN) per annum.

New developments regarding e-invoicing requirements in Mexico

Since 2005, the Mexican Tax Authority (MTA) has been gradually pushing taxpayers to adopt electronic processing protocols in the generation and storage of their incoming and outgoing invoices. In previous years, the MTA was progressively amplifying the application of electronic invoicing standards to more taxpayers. This gradual implementation has eliminated procedures like the printing of paper invoices through an authorized printer, which was in force until 31 December 2012, or electronic invoicing formats like the initial Digital Tax Invoice scheme (CFD) currently in force, until 31 December 2013.

On 15 July 2013, the MTA announced that effective from 1 January 2014 the requirement to issue electronic invoices will be extended to entities with annual gross receipts of 250,000 Mexican pesos (MXN) per annum (approximately 19,700 US dollars (USD)) in place of the current threshold of MXN4 million per annum (approximately USD315,500). According to the announcement, taxpayers will be able to voluntarily opt to issue electronic invoices regardless of their revenue level.

The implementation of this development will imply a sort of 'Universal Obligation' for the use of electronic invoicing by Mexican Taxpayers.

- From 1 January 2014, all taxpayers who use the current CFD scheme will be required to use the Internet Digital Tax Invoice scheme (CFDI) to issue electronic invoices, (the latter was launched in 2011).
- From 1 January 2014, all taxpayers with yearly turnover over MXN250,000 must use the CFDI electronic-invoicing scheme to issue their invoices. Only taxpayers with turnover below that threshold will be able to generate paper invoices.

It is important to highlight that, as in other countries in the LATAM region, the primary reasons for implementing electronic invoicing are not to promote efficiency and cost savings for enterprises but to combat tax fraud and give the Tax Authority more tools with which to monitor taxpayer activities. The strong tax regulation of electronic invoices is being reflected through the following characteristics.

Firstly, taxpayers must apply to the MTA for a digital stamp and apply their electronic signature on all electronic invoices issued. In addition, only a XML format promoted by the MTA is valid for generating electronic invoices. The process also implies that a pre-validation must be carried out by one of the authorized service providers listed on the MTA's website. This website offers free invoicing services through the Internet and lists the authorized service providers that may be used for electronic invoicing.

Secondly, the validation of incoming electronic invoices is critical as any validation problem automatically implies that the invoice is not valid for tax deduction purposes. Taxpayers receiving digital invoices (even when they appear on printed representation with 'watermarks') may verify their authenticity by checking the following on the MTA website.

- That the number used on the electronic invoice was assigned by the MTA to the issuer.
- The validity of the certificate for the digital stamp at the time of issuance of the electronic invoice.

Thirdly, taxpayers who issue and receive electronic invoices through the CFDI scheme should store them on magnetic, optical or other technology, in the electronic XML format.

Following the introduction of electronic invoicing in Mexico, taxpayers have seen many benefits in terms of safety and speed in the issuing of invoices, as well as a considerable reduction in costs, increased efficiencies, documentation of internal controls and technological processes, and a reduction in errors made during the invoicing process. However, the implementation of electronic invoicing has also required Mexican taxpayers to adhere to the strict tax regulations governing these procedures. These strict regulations have resulted in Mexico being on the list of 'best practices' for e-invoicing implementation around the world.

Many taxpayers will have to implement these new developments in the second half of 2013. Taxpayers need to avoid pitfalls when they select the in-house and external means necessary for successful implementation of the new electronic invoicing scheme (including selection of an authorized service provider) and in the management of their invoicing practices.

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New Zealand

The New Zealand Government has recently passed legislation, which will enable non-resident businesses to register for GST and claim input tax deductions, even if they do not make taxable supplies in New Zealand.

Cross border business-to-business neutrality

The New Zealand Government has recently passed legislation, which will enable non-resident businesses to register for GST and claim input tax deductions, even if they do not make taxable supplies in New Zealand. The changes will come into force on 1 April 2014.

Registration criteria

The changes were introduced in the *Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act 2013*, which has inserted two new sections, 54B and 54C, into the Goods and Services Tax Act 1985 (the GST Act). Section 54B allows non-residents to register for GST in New Zealand if they satisfy the following criteria.

- They are registered for consumption tax (i.e. GST or VAT) in the jurisdiction in which they are resident. If their jurisdiction does not have a consumption tax, or it does not apply to the entities activities, the entity must carry on a taxable activity overseas with turnover exceeding 60,000 New Zealand dollars (NZD) per annum.
- The GST input tax for the first GST return period after the entity registers for GST in New Zealand is likely to be more than NZD500.
- The non-residents' taxable activity does not involve a performance of services if it is foreseeable that those services will be received in New Zealand by a party that is not registered for GST in New Zealand (e.g. tourism products such as coach tours and accommodation which are ultimately enjoyed in New Zealand).

Cancellation of registration

Under new section 54C of the GST Act, the tax authority in New Zealand may cancel the non-residents' GST registration if it believes that the non-resident no longer meets the registration requirements or for three consecutive GST periods, the non-resident has either not filed a GST return or has filed the returns late. If the non-resident's New Zealand GST registration is cancelled, they may not re-register for GST in New Zealand for a period of 5 years since cancellation.

Group registration

A non-resident registering under section 54B may not apply to be part of a GST group that includes New Zealand residents.

Key considerations for non-residents

The changes introduced will improve cross-border neutrality and are welcomed by non-residents, who have been incurring irrecoverable GST in New Zealand.

Non-residents should consider the compliance costs of registering and filing GST returns in New Zealand versus the expected input tax deductions. They will also need to closely monitor the due dates of their New Zealand GST returns to ensure that their registration is not cancelled due to non-compliance.

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Peru

Multinationals with establishments in Peru involved in the export of services should be aware of the strict conditions for Peruvian VAT not to apply to these services.

Exportation of services in Peru

As part of the 2012 tax reform, the Peruvian VAT rules relating to the exportation of goods and services were amended. The changes brought about by these new rules continue to be important especially for multinational enterprises which have branches, subsidiaries, permanent establishments or any other related entities involved in the supply of services from Peru.

Under provisions that have been in force since 8 January 2012 (Article 33° of VAT law), only cross-border transactions which meet *all of* the following requirements may be considered to be an "exportation of services" and therefore not subject to Peruvian VAT.

- The service must be listed in Appendix V of VAT law. Such services include advisory services, data processing, IT services, leasing of movable goods, supply of personnel, certain financial services, telecommunications services.
- The service should be rendered for valuable consideration (capable of being evidenced by an appropriate payment receipt).
- The exporter shall be an entity domiciled in Peru.
- The user of the service shall be an entity non-domiciled in Peru.
- The services shall be used, exploited or utilized by the non-domiciled party abroad.

The domiciled provider of such services is entitled to deduct a corresponding tax credit in respect of VAT on it costs incurred in providing the services.

The law does not require that the service be rendered from Peru. However, it is important that the services is used, utilized or exploited overseas in order for it to qualify as an exportation. As there is no definition in the law for the concept of use overseas, the Tax Court, has established, at jurisprudence level, that the *use, exploitation or utilization of the services* by the non-domiciled entity refers to the economic use or "patrimonial advantage" that the receiver of such services must have overseas.

It should be noted that before the recent amendments, VAT law required that the service should be used, exploited or rendered "completely" overseas. As this requirement has not been retained in the new regulation, it could be interpreted that a service could qualify as an exportation if it is partly but not completely used overseas.

Finally, the amendments also removed a number of service categories from the scope of Appendix V. These included services acquired by foreign companies which are consumed within Peru and services provided by overseas establishments of Peruvian entities. Accordingly, services such as the repair and maintenance services of movable property located in Peru and portfolio investment administration services provided to overseas companies are now subject to Peruvian VAT.

When acquiring services from Peru, it is important for overseas business to bear in mind that any Peruvian VAT paid to the provider of the services may not be recoverable from the Peruvian Tax Administration thus increasing the cost of the service.

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Portugal

As a result of the financial crisis, the Portuguese Government has put measures in place to help stimulate the housing and construction industry.

Rehabilitation of immovable property in urban areas – applicable benefits

As a result of the financial crisis, the Portuguese Government has put measures in place to help stimulate the housing and construction industry. The urban rehabilitation regime and the related tax benefits outlined below, have allowed several buildings in Portugal to get a face-lift and stimulate growth in a market that has been strongly affected by the economic downturn.

Portugal has over the years approved several measures concerning urban protection. These measures were outlined in the "Soils law", which took effect in 1976 which created the concept of "urban critical areas of reconversion and recovery". In 2009, the Soils law was revoked and a new legal urban rehabilitation regime was approved. Particular types of buildings requiring an integrated intervention which are specified in an urban rehabilitation plan are within the scope of the regime.

There has been positive support from municipalities for this regime, as it revives urban centers and consequently attracts people and tourism to these areas.

Notwithstanding the creation of this legal urban rehabilitation regime, for many years there was no connection between this regime and any type of tax benefits. In fact, tax benefits were only introduced with the evolution of the urban rehabilitation market and the redefinition of the urban rehabilitation areas took place.

One of the indirect tax benefits that currently is in force for urban rehabilitation is the application of a VAT reduced rate for construction contracting services provided in respect of properties located in urban rehabilitation areas. It is relevant to note that the VAT reduced rate can be applied to all construction contracting services that are used in developing properties located in urban rehabilitation areas.

This VAT benefit is significant as it can reduce the regeneration costs by 17 percent, since the applicable VAT rate on construction works is, in general, 23 percent and VAT is not recovered on these expenses when the property is designed for housing purposes.

Another tax benefit is the exemption from Municipal Property Tax (MPT) for a 2 year period. The exemption starts the year in which a usage license is issued by the municipality for properties marked for urban rehabilitation or for a 5 year period, starting from the year in which the rehabilitation process is concluded, which can be renewed for an additional 5-year period.

Finally, there is also an exemption from Real Estate Transfer Tax (RETT). This tax is applicable if the acquirer starts the respective construction 2 years after the acquisition of the property or for the acquisition of a property destined exclusively for permanent housing, provided that the property is being sold for the first time.

It is important to note that some of the benefits are not automatic as they depend on the authorization of the local municipality where the property is located and must comply with specific requirements regarding urban rehabilitation.

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Romania

What happens when a legislative measure aimed at supporting a certain category of company that faces cash-flow difficulties turns out to be a hindrance?

Why has the mandatory VAT cash accounting system failed?

What happens when a legislative measure aimed at supporting a certain category of company that faces cash-flow difficulties turns out to be a hindrance, because it creates new difficulties, not only for the companies concerned, but also for a significant part of the business environment? Solutions can always be identified. However, the flexibility and willingness of the local tax authorities to take the necessary actions to remedy the situation is a decisive factor.

Mandatory VAT cash accounting scheme

Starting from 1 January 2013, Romania introduced the VAT cash accounting scheme to help small and medium sized enterprises that have difficulties in paying their output VAT to the authorities before they have received payment from their customers. Although, in theory, this appears to be simple, the implementation and the application of the system have turned out to be far from easy and have triggered a critical response from the business environment.

The VAT cash accounting system became ***mandatory*** for all taxable persons with a turnover below 500,000 euros (EUR). Taxpayers falling under this scheme are only allowed to deduct input VAT incurred when they pay it to their suppliers. They are also required to collect output VAT when paid, but no later than 90 days from the issue of the invoice. This system not only affects companies that are required to apply the VAT cash accounting scheme but also their clients, which may be large companies which do not fall within this system.

What went wrong?

The problem started with the initial objective of the measure: *to help small and medium sized enterprises that experience cash flow problems due to the payment of VAT before they actually receive payment from their clients*. Such a mandatory VAT cash accounting system fails to take into consideration that not all taxpayers benefit from the implementation of such a scheme. What happens to those businesses that are usually in a VAT recoverable position or those businesses that are paid on time but usually buy on credit? Their VAT deduction right is postponed until payment without any other advantage to balance this drawback.

Currently, due to the requirement to collect output VAT within 90 days of the issuing of the invoice, the VAT cash accounting system is helpful only for those businesses that receive payment within 3 months. All other taxpayers that are required to apply the scheme find themselves stuck with input VAT that is not allowed for deduction unless paid, but are required to collect VAT on their supplies after 3 months, even when they do not receive payment.

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Another important practical concern is that large companies, not covered by this system, see their activity affected by trading with firms that do apply the VAT cash accounting scheme. Recovery of input VAT incurred on acquisitions from these suppliers is postponed until payment. In practice, this leads to administrative burdens due to regular checks to identify and distinguish between suppliers, separate recordings and ultimately, cash-flow deficiencies. As a logical consequence, some of these large companies choose to cease their operations with taxpayers that apply the system.

The first 10 months of the mandatory VAT cash accounting system in Romania have revealed all these problems and led to one conclusion, the need for a more flexible approach – an optional scheme.

How would an optional VAT scheme balance things?

The Romanian tax authorities have been receptive to complaints and suggestions made by the business community on this issue. As a consequence, plans are currently under way to replace the mandatory system with an optional, more flexible one that would allow companies to analyze whether this structure would benefit them and make their choice accordingly. Although a draft proposal in this respect was brought up with the business community for discussions, the date when this optional scheme will be introduced is still uncertain.

One thing is sure; the road to fiscal simplification and efficiency is paved with good intentions. However, if these intentions and measures are not linked with the current economic reality and their immediate impact on the business environment, these objectives may not be achieved.

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Russia

New rules regarding the VAT treatment of bonuses came into force in Russia on 1 July 2013.

VAT treatment of bonuses

The bonus is a marketing instrument often used for promotion of distributors' sales in Russia. Before 1 July 2013 it was not clear how to treat bonus payments for VAT purposes in Russia as the Russian Tax Code did not provide any specific rules in this respect.

Depending on the type of bonus, historically the Russian tax authorities treated them either as:

- a payment for the rendering of VAT taxable services by the purchaser of goods to the seller (if the place of supply of such services is Russia); or
- a discount to the price of goods sold that decreases the value of goods sold for VAT purposes.

In the latter case, the Russian authorities argued that the sellers should decrease the VAT base for the goods sold and the purchasers should adjust the corresponding amount of the Russian VAT previously reclaimed upon the acquisition of goods (and repay the respective amount of VAT). There have been two landmark court cases concerning this issue, and in both cases the Russian Higher Arbitration Court supported (directly or indirectly) the legitimacy of such an interpretation for volume bonuses. The conclusion of the Russian Higher Arbitration Court created tax risks associated with the adjustment of input VAT credits for Russian taxpayers in certain industries (in particular, retail stores) who tend to receive various incentive payments from suppliers.

The new rules regarding the treatment of bonuses for VAT purposes came into force on 1 July 2013. Now the payment of a bonus by the supplier to the purchaser for the fulfillment of certain conditions of a supply contract (including a volume bonus) does not change the cost of goods sold for the purposes of the VAT base determination in the seller's VAT accounts, or the input VAT credit in the buyer's VAT account. This treatment will not apply if the contracts for the supply of the goods explicitly state that the cost of goods sold will be reduced by the amount of a bonus.

Therefore if the parties have stipulated in the supply contract that the volume bonus payment decreases the value of goods shipped, then the seller should decrease the VAT base. The buyer then has a corresponding obligation to reverse the respective portion of Russian VAT that was previously reclaimed.

It is not clear, however, whether the new rules should apply to:

- bonuses paid after 1 July 2013 under contracts concluded before 1 July 2013
- bonuses paid after 1 July 2013 as a result of sales occurring before 1 July 2013.

Also, it is not clear whether the new rules completely mitigate the risk that the Russian tax authorities may still try to classify the provision of certain types of bonuses as a consideration for services rendered by the buyer to the seller. The residual VAT risk should be addressed separately for each individual case.

Although some uncertainties still remain the new rules introduce a greater clarity in the VAT treatment of bonuses.

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Singapore

The Inland Revenue Authority of Singapore recently published an e-Tax Guide entitled GST: Guide on Reimbursement and Disbursement of Expenses.

New GST e-Tax Guide issued in Singapore – Reimbursement and Disbursement

The Inland Revenue Authority of Singapore (IRAS) recently published an e-Tax Guide entitled "GST: Guide on Reimbursement and Disbursement of Expenses", which provides guidance on the GST treatment applicable to the recovery of expenses.

The guide focuses largely on three areas: indicators of a disbursement (as compared with a reimbursement), the GST treatment applicable to some common types of expense reimbursement, and lastly a concession allowing the claiming of input tax on disallowed expenses when they are recovered from another GST-registered business.

A disbursement is not regarded as a supply and therefore does not attract GST. In its new e-Tax Guide, the IRAS essentially notes that the key determining factor in classifying expense recovery as a disbursement or as a reimbursement is whether the payer has acted as principal or agent with regard to the payment. Only the recovery of amounts paid on behalf of another party, as agent, are regarded as "disbursements".

For example, if a business acts as the principal in procuring goods and services for another party, generally entering into a contract in its own name with the supplier, any recovery of expenses would be treated as a reimbursement. A number of indicators are offered to businesses to assist them in determining its role as the principle or an agent.

We encourage businesses to read this e-Tax Guide given the prevalence of recovery of expenses. However, for those who have not had an opportunity to go through it in detail, we have outlined below the GST treatment applicable to a number of reimbursement situations discussed in the guide.

- To the extent that the recovery of an expense is ancillary to or forms part of a primary supply of goods or services, the GST treatment of the recovery of expenses follows that of the primary supply. For instance, if the business incurs overseas freight when supplying goods to a Singapore customer in Singapore, the GST treatment of the overseas freight charges follows that of the supply of goods, which is standard-rated, despite the zero-rating treatment adopted by the service provider for such freight services.
- On the other hand, if the recovery of expenses is a separate arrangement of procurement and is not ancillary to or forms part of a primary supply of goods or services, the GST treatment would depend on the nature of each item to be recovered. Some exceptions would be the recovery of expenses procured from non-GST registered businesses and financial services, which are exempt. For the former, since the business that recovers the cost is GST-registered, recovery of expenses would be standard-rated if this is the GST treatment when provided by a GST-registered business. For the latter, the recovery of expenses would be standard-rated, unless zero-rating applies, as the business recovering the expenses is not a financial institution.
- Certain expense recoveries may not be treated as a supply if regarded as compensation and punitive in nature.

Finally, the IRAS has also granted concessions allowing deduction of input tax on expenses which would otherwise not be allowed, provided certain conditions are met.

Against the backdrop of increased audit activities by the IRAS following the introduction of two self-help programs, namely the Assisted Compliance Assurance Programme (ACAP) and the Assisted Self-Help Kit (ASK), this guidance is welcomed by all as it facilitates compliance with Singapore's GST legislation.

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South Africa

Recent changes will require the VAT registration of foreign e-commerce services suppliers where consumption is or is deemed to be in South Africa.

Foreign e-commerce suppliers required to register for VAT in South Africa

South Africa published a Tax Bill in October 2013, following the budget speech in February, proposing changes that will require the VAT registration of foreign e-commerce services suppliers where consumption is or is deemed to be in South Africa.

The proposed legislation makes VAT registration of foreign e-commerce service providers compulsory where their taxable turnover exceeds R50 000 per annum. This applies where a South African resident customer consumes the electronic services for use in South Africa. A proxy is also proposed which pulls the foreign supplier into the South African VAT net where payment is made through a South African bank. These electronic service providers will be entitled to account for VAT on the cash basis of taxation.

Foreign suppliers may face a number of changes to their systems including allowance for prices adjustments resulting from the imposition of 14 percent VAT; VAT at 14 percent calculations by applying 14/114 to the VAT inclusive price or the value plus 14 percent; posting of the VAT calculated to a VAT output account; identification of South African resident customers and payments made through South African bank accounts; and effecting of changes to source documentation issued to customers.

Electronic services are defined with reference to a Regulation to be published by the Minister of Finance. It is expected that the services to be listed will be limited to B2C.

Foreign suppliers may face compliance costs resulting from system changes, source documentation changes, marketing or advertising changes, VAT registration, VAT filing costs, and the appointment of a VAT representative.

This proposal is welcomed as it broadens the VAT base and addresses inefficiencies in the reverse charge mechanism. Foreign suppliers and their local counterparts will be placed on equal footing.

The challenge for foreign suppliers of e-commerce services is that they will have to ensure their readiness to comply on 1 April 2014.

In South Africa, electronic records should be retained in accordance with the newly promulgated Tax Administration Act

The Tax Administration Act (TAA) introduced specific rules relating to electronic record keeping.

The TAA allows records to be kept electronically where the information remains complete and unaltered except for changes arising in the normal course of communication, storage and display (record integrity must comply with the Electronic Communications & Transactions Act (ECT Act)).

Records should generally be kept in South Africa. However, the South African Revenue Service (SARS) may authorize retention outside South Africa where, for example, the records can be accessed electronically at the person's address in South Africa and where an international tax agreement with the foreign country exists for reciprocal tax administration assistance.

When computer software or electronic platforms are altered or adapted for the person's specific requirements, additional documents need to be retained.

Finally, adequate storage and back up of electronic records should be ensured, including storage of the media where the records are stored, the storage of electronic signatures, etc. Electronic records, login codes, keys, passwords and certificates to allow access, should be available if SARS wishes to conduct a tax audit and/or to inspect the system.

The obligations and prescribed retention periods specified in the TAA and other South African Tax Acts relating to a person's duty to keep records also applies to electronic records. SARS may have to be approached to ensure that the requirements of the TAA, the ECT Act and the relevant Tax Acts are met when records are kept in electronic format.

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Spain

Spain is intending to introduce a new VAT cash accounting scheme as of on 1 January 2014.

New cash accounting scheme in Spain

Spain has confirmed that it will introduce a new VAT cash accounting scheme on 1 January 2014. Such a scheme would delay the output tax point on sales to coincide with the point when payment is received. Both the Law and the Regulations approving this scheme have been published.

This new scheme is provided for in the Council Directive 2006/112/EC which states that in cases where a taxpayer has postponed the tax point of its sales to the effective date of payment, the point at which they are entitled to recover VAT on purchases may also be postponed until this VAT has been effectively paid to the supplier.

Although this special cash accounting system is already in force in a number of other EU countries it has not to date been applicable in Spain. It is seen as an important VAT change aimed at helping small and medium sized businesses to improve cash efficiency.

The scheme will allow taxpayers with a turnover of less than 2 million euros (EUR), and who also do not receive cash payments from individual clients over EUR 100,000, to postpone the tax point for the output VAT which they charge until the moment the client pays (whether the payment received is partial or full). In operating this scheme, taxpayers must be able to provide evidence of payment dates.

This is a double accounting scheme, which means that the business applying it must use it for postponing the tax point of its supplies as well as for postponing the point at which deductibility is claimed on its purchases. Accordingly, both output and input VAT will have to be accounted for when the effective payment is made (by the client and by the business to its suppliers).

The new accounting regime is optional, but once a business has decided to apply it, there is a minimum duration of one year for participation. Furthermore, it will apply to all of its transactions except for those that are legally excluded from this regime such as intra EU acquisitions, transactions where the reverse taxpayer mechanism applies, exempt exports, etc. The business can decide to waive its application but this will mean it cannot apply the scheme again until three years have elapsed.

An anti-avoidance rule will also be introduced to prevent artificial delays. Under this rule, the tax point will be deemed to take place, at the latest, on 31 December in the year after the transaction took place in cases where no payment is made before.

Clients of businesses that decide to apply this regime will also need to postpone the recovery of their input VAT to the time when they effectively pay their supplier invoices. Accordingly, from 2014, companies will have to be particularly aware of this new situation to be able to cope with two sets of invoices, the traditional invoices that they can immediately receive credit for without having to wait for payment, and invoices that need to wait until effective payment is made. In this respect, a supplier will have to expressly indicate on its invoice that this cash scheme is being applied.

This new regime will entail additional record keeping obligations for both the supplier and the client as they will need to record effective payment dates, as well as the means of payment. This will require a quite burdensome VAT registry as it will be necessary to record details of the invoices when issued and when paid in additional fields. This is an important change in the IT systems of companies.

Likewise these new invoices will have to be reported in new boxes in VAT returns and other informative returns.

Overall we can conclude that this new system will improve the tax situation of the small entrepreneurs who decide to apply it but will create additional obligations for their customers who regardless of whether they have opted for it themselves will need to take account of the new rules. This will not only impact on the financial situation of these companies who will now have to wait longer to claim VAT credits but they will also have to invest in updating their IT systems to capture and appropriately deal with these new invoices.

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Turkey

A recent tax court decision in Turkey will be of particular interest to entities operating in its free trade zones.

The role of indirect taxes, which corresponds to more than 65 percent of government tax revenues, is becoming more crucial in today's economy. To successfully manage indirect tax, rapid changes in tax legislation should be closely monitored by the business community.

A recent tax court decision will be of particular interest to entities operating in free trade zones.

Background

There has been ongoing discussion and controversy between the Tax Authority and taxpayers operating in free trade zones as to whether services received by these entities are subject to VAT.

Turkish VAT law provides that services performed or used in Turkey should be subject to VAT. The Tax Authority is generally of the view that, as free trade zones are within the geographic boundaries of Turkey, services received into these zones either from the resident or non-resident companies should be subject to local VAT, since the services are deemed to be utilized in Turkey.

The only exceptions to this are services that are actually performed within free trade zones i.e maintenance work and contract manufacturing services performed by Turkey companies for their customers in free trade zones. Other than these two exceptions, all other services received by entities in free trade zones are subject to VAT.

Entities operating in free trade zones are currently required to calculate VAT on a reverse charge basis on services received from non-resident companies. Such entities should be declaring and paying VAT via a VAT-II tax return. This will result in an actual output VAT liability as the VAT incurred on these services will not be regarded as deductible on the basis that these entities are not considered VAT taxpayers. The VAT incurred is therefore regarded as an additional cost. Such an interpretation clearly creates a competitive disadvantage for these companies compared with the VAT registered companies located outside the free trade zones. This situation also clearly contradicts the main purpose of establishing free trade zones.

Recent court decisions

The recent court decisions acknowledge that, even though free trade zones are within the political and geographic boundaries of Turkey, they have been formed to increase exportation and are therefore outside the customs area. As such, the Courts accepted that free trade zones should be regarded as being outside of Turkey "economically" and that the services received in these zones from resident or non-resident suppliers should not be subject to Turkish VAT.

Possible actions to be taken by taxpayers

As of yet there has been no change in VAT legislation to reflect the outcome of the court decisions. Tax payers in free trade zones are still required by law to self account for VAT on the receipt of services from non-resident companies. However, when paying VAT, such taxpayers can declare their VAT –II returns based on a "reservation clause" that preserves their right to file a law suit against the Tax Authorities for the recovery of this VAT in the future if it is found not to have been payable. Certain conditions and deadlines must be fulfilled in filing this reservation clause.

Taking into consideration the recent court decision, filing VAT returns on this basis and commencing legal proceedings should be considered by taxpayers in free trade zones as this may result in significant VAT savings assuming the court rules in their favor.

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UK

Can manufacturers adjust the amount of VAT accounted for on refunds provided directly to consumers?

The ongoing quest for VAT neutrality

When a retailer supplies a product to an end consumer, who is dissatisfied with the product in some way, but is not sufficiently unhappy to return the item and cancel the supply completely, the retailer might give the consumer a goodwill refund. Clearly this will represent a reduction in the value of the supply, after the event, allowing the retailer to adjust the VAT it has originally declared.

In cases where the manufacturer, rather than the retailer, makes such a refund to the end consumer, HM Revenue & Customs (HMRC) had always refused to allow the manufacturer to adjust its VAT. We had always thought that the Elida Gibbs decision (Case C-317/94) should apply here, as the customer has ultimately paid less for the goods and as such the total VAT declared should reflect this reduction. HMRC had released a consultation document asking how such refunds work in practice, with a view to changing the UK law on post supply adjustments. However, the Commission, who appear to agree with our analysis, seems to have lost patience with HMRC and have commenced infringement proceedings.

In the consultation it is clear that HMRC want to limit the scope of refunds that will result in a VAT adjustment. In particular HMRC have listed two types of manufacturer refunds which they do not accept as giving rise to an adjustment.

- Payments to third parties to repair the goods and free supplies of parts to effect a repair. Essentially, if the customer has not received a refund against the consideration he or she paid for the goods then no adjustment should be made.
- Payments to customers covering the cost of repairs by third parties. This is "out of pocket" compensation to the consumer and not a reduction in the original cost of the goods.

We think there are alternative analyses that have equal or greater merit. Put in its simplest commercial terms, the manufacturer payment recognizes the fact that the goods were not "fit for purpose" and the way it is made and what it is used for should have no bearing on this.

There are also other circumstances, omitted from the consultation, where we believe that the manufacturer should be able to adjust its VAT. These include situations where a third party meets the manufacturer's liability – e.g. an insurer or a credit card company. In the same way that consideration from a third party is still a consideration, a refund by a third party on the manufacturer's behalf is still a refund. The manufacturer will still ultimately have met a cost here, through its insurance premiums or by way of loss indemnity payments to the credit card provider.

One interesting point is that HMRC seem to accept that where the refund is greater than the amount originally received by the manufacturer but still less than the amount paid by the end consumer, the entire refund should be viewed as an adjustment to the consideration paid by the end consumer. Clearly this could lead to the manufacturer adjusting its VAT by more than it has declared on its supply, leading to a negative VAT accounting position – this seems counter intuitive to all VAT advisers!

Finally, there are also issues around cross border supplies and cash backs funded by intermediaries, where case law is still developing (see the Advocate General's Opinion in Ibero Tours C-300/12). This is a complicated area where new principles continue to emerge as the search for VAT neutrality continues.

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US

Unclaimed property compliance is an often overlooked aspect of doing business in the United States.

Unclaimed property poses significant compliance burdens and often overlooked liabilities

Unclaimed property compliance is an often overlooked aspect of doing business in the United States. Most firms have unclaimed property reporting obligations, yet non-compliance with unclaimed property regulations is very common among firms operating in the US. In recent years, States have become more aggressive in enforcing compliance to raise revenues in a lackluster economy, which has been especially true with unclaimed property.

What is unclaimed property?

Unclaimed property is an unsatisfied obligation, either tangible or intangible, that has become dormant or gone unclaimed for a period of time – such as bank accounts, vendor checks, stocks and bonds, insurance proceeds, dividends, payroll checks, customer deposits, and unused gift certificates and gift cards. When the property owner does not claim it within a prescribed period of time, or "dormancy period," State law requires the holder to remit the property to the State agency that administers unclaimed property laws. Priority rules provide that property should be remitted to the State of the owner's last known address based on the holder's books and records, or, if that information is unavailable or incomplete, to the holder's State of incorporation. The State then holds the property in trust until it is claimed by its rightful owner.

For example, a business may have a payroll check that a former employee never cashed, possibly because the employee moved. The business owes the funds to the employee, but because the employee never cashed the check, the money is still in the business's custody. The business cannot simply reclaim the money that it owes to its former employee. It must, after the dormancy period has lapsed, remit the unclaimed funds to the State.

Risks of exposure

While unclaimed property is not a tax, unclaimed property compliance often falls within the responsibility of tax departments. Unlike most taxes in the US, some States, regardless of a taxpayer's compliance with reporting requirements, do not limit the number of years for which a business may be audited for unclaimed property compliance. Many other States will audit a 20-year period. Delaware, which is especially notorious for unclaimed property audits, looks back to 1981 in conducting unclaimed property audits. Businesses that failed to maintain adequate records could be required to estimate potential liabilities for those periods. Because Delaware is a common incorporation location for corporations in the US, and priority rules generally provide that a holder must report unclaimed property to its state of incorporation if the property owner's name or address is unknown, it is known for pursuing unclaimed property audits.

Occasionally, States offer voluntary disclosure or amnesty programs. Such programs, which require participating firms to remit all liabilities and agree to comply going forward, typically reduce or abate penalties and interest and sometimes limit the look-back period. Recently, Delaware instituted a voluntary disclosure program permitting an entity to report previously unreported liabilities for a limited look-back period depending on when the entity participates in the program. Entities participating in the program must report liabilities back to 1993 – more than a decade shorter than the statutory audit period.

As States increasingly employ unclaimed property audits as revenue collection tools, businesses operating in the US must be aware of the pitfalls of non-compliance. Because unclaimed property laws can be vastly different between States, firms doing business in the US must be vigilant regarding compliance responsibilities.

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Vietnam

Vietnam's government have introduced changes to its VAT laws intended to simplify compliance procedures and help taxpayers reduce their compliance costs.

Amendments to VAT law to take effect on 1 January 2014

On 19 June 2013, Vietnam's lawmakers passed amendments to the VAT law under the Amendment VAT Law No. 13/2008/QH12 dated 3 June 2008. The Amendment law introduces several positive changes that reflect the effort of the country in modernizing its indirect tax system and it will take effect on 1 January 2014.

The Amendment law legislates for several regulations, guidance notes and interpretations previously released by the tax authorities in the form of guiding decrees, circulars and rulings governing the application of VAT exemption to supplies such as financial services including loans provided by non-credit institutions, security and currency trading, factoring services, and so on.

The 6-month time limit to claim creditable input VAT has been removed. Taxpayers may now claim their input VAT credits at any time as long as the claims are made prior to a tax audit. In addition, claims for VAT refunds are allowed where taxpayers have accumulated input VAT credits for at least 1 year.

The Amendment law also allows businesses with annual revenue below 1 billion Vietnamese dong (VND) to report VAT under the "direct method", unless they elect to continue reporting VAT under the conventional "deduction method".

The Amendment law explicitly defines export services as "services consumed outside of Vietnam". This potentially means that even if the service buyers pass the VAT registration and permanent establishment (PE) tests their acquisitions may still be taxable, rather than qualifying as a zero-rate exports, if the tax authorities regard the goods or services acquired as being consumed in Vietnam.

Another VAT related development occurred on 28 June 2013 when Vietnam's Ministry of Finance issued Official Letter 8355/BTC-TCT to tax authorities. This letter provides temporary guidance for VAT reporting by VAT registered businesses with an annual turnover up to VND20 billion. Effective 1 July 2013, these businesses may elect to report VAT on a quarterly basis (commencing in the 3rd quarter of 2013). Businesses that wish to continue reporting VAT on a monthly basis were required to notify their local tax office in writing by 20 August 2013, (i.e. the filing due date for the monthly VAT return of July 2013).

Vietnam tax regulators believe that these changes will bring Vietnam's VAT system into alignment with the expected changes in other domestic tax laws and international indirect tax practices. The changes are intended to simplify compliance procedures and help taxpayers reducing their compliance costs.

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Global highlights at a glance

Canada

On October 18, 2013 **Canada and the European Union** signed an agreement in principle on the **Comprehensive Economic Trade Agreement (CETA)**. The deal will make Canada the only G8 country to have preferential access to the world's largest markets the EU and USA, home to 800 million people. The agreement is expected to go into force sometime in late 2015 and approximately 98% of goods will trade duty free.

With the significant shift in income levels from developing countries, Canada has proposed the **withdrawal of GTP/GSP benefits** for 72 countries.

US

On November 15, the **EU and US** concluded the delayed second round of negotiations for the **Transatlantic Trade and Investment Partnership (TTIP)**. TTIP should cut tariffs on goods moved between the EU and the US and remove non-tariff barriers such as differences in technical regulations, standards and approval procedures. A third round of negotiations will be held in Washington DC the week of the 16th December 2013 following which the US and EU negotiators will identify areas of disagreement and convergence and seek political guidance as necessary.

Chile

On **17 July 2013**, the Chilean government passed a Bill which introduces **electronic invoicing**.

Source: KPMG International 2013

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European Commission

On 15 August, 2 EU Directives aimed at combating VAT fraud entered into force. The Directives allows Member States to take immediate measures in the case of massive and sudden VAT fraud and to apply VAT on a reverse charge basis to supplies in certain sectors susceptible to fraud.

A **new standard VAT return**, which can cut costs for EU businesses by up to **€15 billion** a year, was proposed by the European Commission on **14 October 2013**.

On 23 October, the EU Commission published guidance on the application of the mini one stop shop which is an optional scheme which will come into effect in January 2015. The scheme allows EU suppliers of telecommunications, broadcasting or electronic services to non taxable persons to account for VAT on such supplier via a web portal in the Member State in which they are identified rather than registering in the State of consumption.

Japan

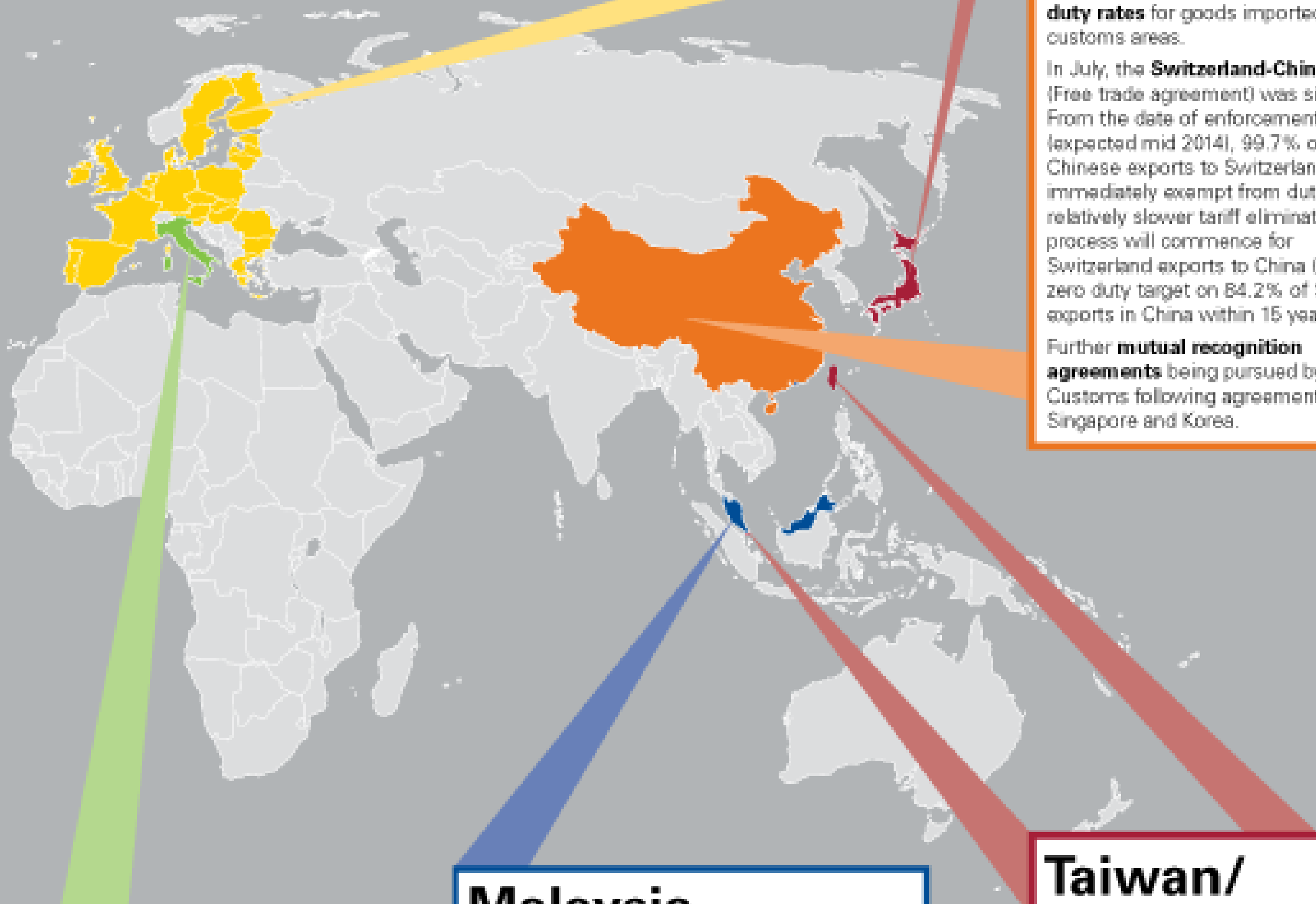
The Japanese government announced a decision to **increase** the rate of the **consumption tax**, from **5% to 8%** with an effective date of **1 April 2014**.

China

In June, the General Administration of Customs (GAC) issued guidance on the procedural and documentary requirements for use of **preferential duty rates** for goods imported via customs areas.

In July, the **Switzerland-China FTA** (Free trade agreement) was signed. From the date of enforcement (expected mid 2014), 99.7% of Chinese exports to Switzerland will be immediately exempt from duties. A relatively slower tariff elimination process will commence for Switzerland exports to China (with a zero duty target on 84.2% of Swiss exports in China within 15 years).

Further **mutual recognition agreements** being pursued by China Customs following agreements with Singapore and Korea.



Italy

The **rate of value added tax (VAT)** in Italy **increased to 22%**, effective **1 October 2013**. Contrary to expectations, the Italian government did not postpone the VAT rate increase to 1 January 2014.

Malaysia

The 2014 Budget was presented in Malaysia on 25 October 2013. It announced that **Goods and Services Tax (GST)** will be introduced on **1 April 2015** at **6%**, and will replace the existing Sales and Service taxes. However, so as to not burden the lower income groups, supplies of some goods and services will be designated zero-rated or exempt (i.e. GST will not be charged).

Taiwan/ Singapore

An FTA between Taiwan and Singapore signed on 7 November 2013 covers market access conditions for trade in goods, cross-border trade in services, government procurement and e-commerce.

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