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NORWAY

VAT REPRESENTATIVES – LEGISLATIVE AMENDMENTS FROM 1 JULY 2013

On 1 July 2013, Norway changed its rules relating to VAT representatives of foreign businesses that do business in Norway but that do not have a permanent place of business in Norway. As a result of the changes, under certain conditions VAT representatives are no longer jointly responsible for the payment of VAT. Also, foreign businesses with a VAT representative are no longer required to send invoices through their representative.

The changes eliminating VAT representatives' joint liability for VAT only apply to representatives working on behalf of businesses established in countries Norway has concluded agreements concerning exchange of information and mutual assistance in the collection of VAT, namely: Belgium, Denmark, Finland, France, Iceland, Italy, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, Great Britain, Czech Republic and Malta (signed, but not ratified). The elimination of the requirement that invoices be sent through a VAT representative, however, is abolished for companies from all countries.

These changes were made to modernize and simplify the VAT legislation and as a result of the EFTA Surveillance Authority's (ESA's) opinion of 19 September 2012, which concluded that Norway has failed to fulfill its obligations under the Agreement on the European Economic Area (EEA) with regard to certain situations where Norway has tax treaties that provide for the exchange of information and the recovery of VAT.

It should be noted that the Ministry is assessing the VAT representative scheme as a whole, so other changes could be made.

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EDITOR'S LETTER

Dear Readers,

Welcome to the latest edition of Indirect Tax News which is now being coordinated through our UK VAT colleagues in London.

We have just hosted this year's annual BDO International Conference here in Dublin and were delighted to have the pleasure of hosting over 60 of our International tax colleagues here in Dublin for the 2 day event which provided us with the opportunity to engage with each other on technical VAT related issues and to enable us to better serve our clients.

Whereas the BDO VAT Centre of Excellence has mainly focused on European related VAT issues thus far, I am pleased to advise that during this year's conference we established an Indirect Tax subgroup for the Asia Pacific region to be led by Andre Spnovic, the lead Indirect Tax Partner of BDO Australia based in Sydney.

We are also in the process of establishing an International Customs Practice within the European Union initially with participation from our UK, German, and Belgian colleagues.

We hope these new developments will enable us to enhance our overall service offering to our current and prospective international clients.

Finally, as always, I welcome your feedback on these and any other issues that you feel may enhance our service offering to. You can reach me at ifeerick@bdo.ie.

Kind regards from Dublin.

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BELGIUM

BELGIUM – VAT EXEMPTION FOR LAWYERS ABOLISHED

As part of the recent budget control measures, the Belgian government has decided to subject lawyer's services to VAT at a 21% rate beginning 1 January 2014.

Background

Belgium is the last EU Member State to exempt services rendered by lawyers from VAT. Historically, this derogation from the 6th EU VAT Directive was granted to Belgium as a temporary measure that came with a cost: Belgium has been required to pay compensation to the European Institutions for the financial loss caused by this VAT exemption.

Consequences

As a consequence of abolition of the VAT exemption, lawyers/law firms will have to register for VAT. As a result, they will have to adapt their accounting and invoicing methodology, apply VAT on their invoices where required, apply the reverse charge mechanism on services received from other European law firms instead of applying the exemption, etc. On the other hand, they will be entitled to deduct input VAT incurred on their purchases.

Furthermore, the "unfair" competition between comparable service providers in the framework of services rendered to taxable persons with no right of input VAT deduction, such as governments, financial institutions, public bodies, etc., will finally come to an end. Indeed, as of 1 January 2014 lawyers will no longer benefit from a VAT exemption that was unavailable to other consultants.

This change may also have a positive impact on investment in assets in Belgium by law firms, since they will be entitled to deduct VAT on their business assets.

Open questions

A number of questions remain unanswered. For instance, it is not clear whether there will be any adjustment in respect of the "historic" VAT Belgian law firms incurred on business assets, or how work in progress that was begun before 1 January 2014 and for which the firm requested an advance payment from its client, will be treated. We expect the tax authorities to comment soon on the various topics where clarification is needed.

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EAST AFRICA

VAT REFUND CLAIMS IN EAST AFRICA

Introduction

As East Africa moves ever closer to attaining a customs union involving Kenya, Uganda, Tanzania, and Rwanda, urgent action needs to be taken by the countries to harmonize the administrative practices of their tax regimes. Uganda in particular needs to qualitatively improve its Value Added Tax (VAT) refund process.

This article highlights the law and practice relating to VAT refunds in Uganda, with some comparison to the legal provisions governing VAT refunds in Tanzania and Rwanda.

Though refunds are an inevitable product of the VAT invoice-credit system, the process of refunding excess VAT in Uganda is a source of constant friction between the Uganda Revenue Authority (URA) and Uganda's VAT registered businesses. Uganda's Value Added Tax Act Cap 349 (Cap 349) appears to undermine the parliament's attempts to streamline the VAT refund process by failing to clarify ambiguities in Cap 349 and by granting overriding powers to the URA at the taxpayers' expense. This status quo perpetuates an imbalance of rights that often results in lengthy pre-refund investigative audits that are administratively inefficient and that can have crippling financial consequences for affected taxpayers.

VAT refunds in Uganda

Cap 349 makes provision for VAT refunds in the following situations:

- Where a taxpayer's input VAT exceeds his or her liability for a tax period (refunds of excess input tax);
- Where goods in stock are lost due to theft or fire and input VAT was paid on those goods (refunds resulting from lost stock);
- Where output tax has been paid in excess of the amount of VAT due (refunds for excess output tax);
- In respect of the VAT paid relating to a bad debt (refunds relating to bad debts);
- In respect of all VAT incurred by diplomats, diplomatic and consular missions, and international organisations.

A refund may also be made to a taxpayer as a result of a decision of the Tax Appeals Tribunal or an appellate court.

The URA is required to refund excess input VAT within one month of the tax period to which the excess relates, or within one month of the date when the return was filed, if it was not filed by the due date.

Where a taxpayer's input VAT exceeds his or her liability by UGX 5 million or more for a tax period, the URA's duty to refund the VAT is mandatory, subject only to verification. But, the URA has discretion regarding refunds resulting from lost stock on which the taxpayer had already paid input VAT. And, with regard to situations involving bad debts, the refund is subject to some conditions including proof that the taxpayer has taken all reasonable steps (to the satisfaction of the Commissioner General) to pursue payment and the taxpayer reasonably believes that he or she will not be paid.

While refunds for excess output tax must be claimed in a return within three years of the end of the tax period in which the tax was overpaid, refunds relating to bad debts must be sought by the taxpayer. Cap 349 fails to clarify the manner in which a refund may be "sought" as opposed to being "claimed", and it is silent on whether a taxpayer needs to claim or seek the refund relating to excess input VAT or whether there are any time limitations applicable to such refunds.

Taxpayers must prove the genuineness of refunds relating to excess output tax, and bad debts, to the satisfaction of the URA Commissioner General. Taxpayers must provide the URA with all the necessary documentation within seven days of making the claim, otherwise the time period stipulated under Cap 349 for making the refund is not binding on the URA Commissioner General.

Cap 349 does not explicitly define the nature of the supporting documentation that is needed to satisfy the URA's information needs, nor does it give examples of excluded information. This vagueness has led to some unintended consequences and has allowed for inconsistent treatment by the URA.

Though Cap 349 only permits the URA to seek accounts or records to substantiate the refund claim and to conduct investigations of amounts shown as excess input VAT, in practice, when refunds are claimed, the URA does not appear to adopt a risk based approach to refund verification. Instead, it tends to undertake wide-ranging audits of a taxpayer's affairs covering taxes other than VAT, including income and payroll taxes.

As a result, the refund process tends to be very time consuming and highly contentious, with every refund contested by the URA. The URA rarely issues refunds without an audit. It is not uncommon for the URA to deny refunds on the basis that the URA considered the taxpayer non-compliant.

Rwanda and Tanzania's approaches to VAT pre-refund verification

Unlike Cap 349, which leaves the door open for the URA to conduct routine pre-refund verifications, under Rwanda's VAT law, in order to justify conducting pre-refund verification, the Rwanda Revenue Authority (RRA) must raise reasonable doubt regarding the authenticity of the claim. Under Tanzania's VAT law, to justify conducting pre-refund verification proceedings, the Tanzania Revenue Authority (TRA) must have a belief that there is a risk to the revenue.

Furthermore, recognizing the need for expeditious pre-refund verification, Rwanda's VAT Code (Law N° 06/2001, Article 49) requires the RRA to communicate its decision to the taxpayer within three months of the date a claim is made.

Tanzania's Value Added Tax Act Cap 148 (Cap 148) grants the TRA the discretion to require the taxpayer to produce documents substantiating the refund or to require the taxpayer to provide security (in such amount and kind as the TRA may determine) before it makes any repayment of the input VAT. Cap 148 also requires the TRA to remit the amount claimed within thirty days of the date the documents were submitted or the security was furnished.

Cap 148 attempts to minimize the administrative burdens, and the bureaucracy that typically surrounds refund application processes, by allowing taxpayers to apply to the TRA for refunds to be made on a monthly basis, if their returns submitted for prescribed accounting periods regularly result in excess credits. Perhaps to ensure administrative efficiency by shifting part of the claim verification burden from the TRA, Tanzania's Chapter 148 prohibits the approval of refunds that are not supported by a certificate of genuineness issued by an auditor who has been registered by the National Board of Accountants and Auditors and who is also a tax consultant registered with the TRA.

The URA's mandatory duty to offset excess VAT credits

Uganda's Cap 349 prescribes mandatory offsets of excess input VAT against the future VAT liabilities of the taxpayer by the URA, where the taxpayer's excess input VAT for the relevant period is less than UGX 5 million, except in cases of an investment trader or a person providing mainly zero rated supplies (Section 42(2)(a) of Cap 349). This exception shields persons dealing mainly in zero rated supplies from mandatory offsets of excess VAT credits as the future VAT liabilities of such taxpayers may be limited, which means that such taxpayers can apply for a cash refund related to their excess input VAT.

However, there is an inherent presumption that taxpayers falling within the ambit of Section 42(2)(a) of Cap 349 will always have a future VAT liability so as to facilitate the offset. It is unclear what happens where a taxpayer may not reasonably have a future liability against which the excess would be offset.

Although offsetting of excess VAT credits against future VAT liabilities offers administrative efficiency for the tax authorities, it fails to address the negative impact on taxpayers' cash flow.

The URA's right to apply excess VAT credits against a taxpayer's other tax liabilities

Under Section 42(2)(b) of Cap 349, where a taxpayer's VAT input tax credit exceeds his or her liability for that tax period by UGX 5 million or more, the URA has discretion (subject to the taxpayer's consent) to offset that amount against the future VAT liability or to apply the excess to reduce any of the taxpayer's other taxes owing.

According to the URA practice, section 42(2)(b) of Cap 349 prohibits direct offsets for taxpayers whose excess input VAT credits are UGX 5 million or more. In such cases, offsets must first be confirmed by the URA Commissioner General, who generally requires a verification of the refund.

Typically, in accordance with Section 42(2)(a) of Cap 349, a taxpayer whose excess VAT input tax credits are less than UGX 5 million selects "offset" when filing his or her VAT return on the URA web portal. In fact, the e-VAT return contains a disclaimer informing the taxpayer that a cash refund is only available if the amount claimable is more than UGX 5 million.

Despite the provisions of Section 42(2)(b) of Cap 349, to minimise the amount claimable through the lengthy refund process, taxpayers whose VAT input tax credit exceeds their VAT liability for that tax period by UGX 5 million or more also usually select the automatic offset when filing their VAT return. However, a taxpayer who consistently selects offset may receive a notice from the URA asking them to apply for the refund.

Where, as a result of an investigative audit of a taxpayer seeking a refund, any taxes are found to be outstanding, the URA may use the refund due to offset the amount of taxes assessed without seeking the taxpayer's consent as required by Section 42(2)(b) of Cap 349.

Tanzania's approach to applying excess VAT credits against a taxpayer's other tax liabilities

Unlike under Cap 349, which requires the URA to seek the taxpayer's consent before applying the claimed refund to reduce any other tax not in dispute where the claim is UGX 5 million or more, before making a refund, the Tanzanian Commissioner General is required to reduce the amount of refund by any sum owing to the TRA by the taxpayer and when doing so, Tanzania's Commissioner is only required to inform the taxpayer in writing (per Chapter 148).

Treatment of interest on unpaid VAT refunds in Uganda and Tanzania

In accordance with Article 26 of the Constitution of the Republic of Uganda 1995, which provides that a person shall not be deprived of their property unless prompt, adequate compensation is provided, Sections 44(1) and (2) of Cap 349 also requires the URA to pay interest at a rate of 2% per month compounded on VAT refunds. This requirement applies where the URA is required to refund an amount as a result of a decision of the tax appeals tribunal or the appellate court and where the URA fails to make a refund required under Section 42(1) of Cap 349 within the time required.

It should be noted, however, that under Section 44(3) of Cap 349 if, after the URA's investigation, it is discovered that the taxpayer overstated his or her refund claim by UGX 50,000, the taxpayer automatically loses the right to receive interest with respect to delayed refunds. This provision, in addition to being grossly unfair because it allows the URA to penalize taxpayers for even immaterial errors in refund claims, could well be unconstitutional because it makes the right to adequate compensation for deprivation of property conditional.

Further, under Section 44(4) of Cap 349, a taxpayer who "causes delay" in determining a correct refund payable to him or her, and leading to a belated refund process, is only entitled to interest with effect from 60 days from the date on which he or she filed his or her delayed return, lodged an application with the Tax Appeals Tribunal or the High Court, or submitted to the Commissioner General all necessary and satisfactory information required in relation to the refund in question, whichever is the later.

Tanzania's Cap 148 similarly requires the TRA to pay interest to the taxpayer at the commercial bank lending rate where refunds are not issued within the time required.

Conclusion

The jurisprudence relating to refund claims in East Africa is fairly limited, likely because of the fact that business people throughout the region are less litigious by nature. As a result, tax authorities in the region have been known to stretch the parameters within which refunds are processed and to unfairly deny genuine refund claims or indulge in costly and wide ranging audits.

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EUROPEAN UNION

CJEU RULES THAT 'NON-TAXABLE' COMPANIES MAY PARTICIPATE IN A VAT GROUP (Commission v Ireland and others)

In April 2013, the Court of Justice of the European Union (CJEU) delivered its judgments in a number of infringement proceedings that the European Commission had started against various Member States, namely: Ireland, the Netherlands, Finland, the UK, Denmark, and the Czech Republic. The Commission's action threatened to exclude non-trading companies from VAT group registrations. Although VAT exempt companies were not covered by this action, the proceedings would have affected dormant companies, holding companies, special purpose vehicles (SPVs) created for acquisitions, and asset holding companies, effectively removing their right to VAT recovery and imposing a VAT charge on transactions with connected companies they would previously have been entitled to group with.

Happily, the court has agreed with the Advocate General's opinion (from Nov 2012) and dismissed the action. It has held that 'non taxable' companies ARE eligible for inclusion in a VAT group registration.

Based on a literal interpretation of Article 11 of the EU VAT Directive, the CJEU ruled that non-taxable companies may, in principle, also form part of a VAT group, because that article does not make a distinction between 'persons' and 'taxable persons'.

The CJEU, therefore, concluded that non-VAT entrepreneurs may form part of a VAT group if the customary requirements of financial, organisational and economic links are met.

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IRELAND

ACQUISITION COSTS – WHEN INTENTION IS NOT ENOUGH

The Irish High Court recently ruled against Ryanair (Case IEHC 195(2013)) in its attempt to recover VAT incurred on professional fees relating to its failed bid to acquire the share capital of rival airline Aer Lingus.

The case itself was notable for the fact that the Ryanair claim was based on an interesting fusion of the principles establish in the Romplemans (Case C-268/83) and Cibo (Case C-16/00) cases. In the High Court Ryanair was appealing the rejection of its claim by the lower court. Ryanair's counsel argued it was entitled to a deduction of VAT on the basis that following its successful acquisition of the shares of Aer Lingus, Ryanair intended to provide management services to Aer Lingus.

Ultimately, for a number of reasons including the onerous conditions proposed by the EU Competition Committee, Ryanair's bid to acquire Aer Lingus was unsuccessful.

The High Court (the Court) began by reiterating the well-established principle that the mere holding of shares does not constitute an economic activity and also that the core activity of Ryanair was the VAT exempt provision of passenger transport. In rejecting Ryanair's arguments regarding its intention, the Court acknowledged that it was adopting a simplistic approach based on its conclusion that there was not a direct and immediate link between the VAT on costs associated with the attempted acquisition of the assets and a taxable activity. The High Court implied that the professional fees incurred were related to the core activity of Ryanair and not, as Ryanair argued, directly related to an intention to provide management services.

In reading the case one gets the sense that the decision was somewhat influenced by the fact that Ryanair's bid to acquire Aer Lingus was unsuccessful. This case raises the issue of when the right of deduction arises, which is usually considered determinative of when the VAT is incurred. It also raises the question of whether Ryanair would have been entitled to a deduction on the basis the management services were actually provided if Ryanair's bid had been successful.

The decision raises more questions than it answers and Ryanair may take the matter to the European Court of Justice.

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LATVIA

LATVIA CONTINUES THE IMPROVEMENT OF NEW VAT LAW

The Latvian government is currently working on various amendments to its new VAT Law, which came into force 1 January 2013. The most significant changes are described below.

Head office and branch supplies will no longer be considered a supply of services for VAT purposes

Latvia will enact changes to ensure that no VAT will apply to transactions between a head office and its branches. Only transactions between Latvian entities and foreign branches registered in another EU Member State will qualify for such treatment.

When the amendments come into force, Latvian branches of head offices located in other EU Member States will no longer be required to calculate reverse charge VAT on services received from the head office.

Introduction of a cost sharing exemption

A cost sharing exemption as defined in Article 132 (1) f of the VAT Directive is to be introduced in Latvia as of 1 January 2014. Under the new provision, services supplied by a member of an independent group of persons (which we will refer to here as "the group") to other members of the group will be VAT exempt if:

1. Members of the group are persons who independently carry out transactions that are exempt from VAT or transactions that are out of scope for VAT and the services are supplied for the purpose of rendering their members the services directly necessary for the exercise of that activity;
2. The value of the services supplied is their cost base;
3. The group merely claims from their members reimbursement of their specific share of the joint expenses;
4. No distortion of competition is created as a result of exemption of these services.

To apply the VAT exemption, the following conditions will have to be met:

1. There must be a written agreement between members of the group;
2. All members of the group must be local or foreign taxable persons;
3. The member of the group who supplies services to the group must be a local taxable person or a taxable person in another EU Member State.
4. If the member of the group also performs VAT taxable transactions, the member must separately account for services to the group.

By adopting these new provisions, Latvia will fulfill its obligation with respect to implementation of the VAT Directive.

Deduction of input VAT if goods and services are used to ensure VAT taxable transactions

The VAT law is being amended to introduce input VAT deduction rights. Under the present VAT law a taxable person is entitled to deduct input VAT where goods and services supplied have been used by another taxable person as an input for a taxable transaction. This treatment is contrary to the provisions of the VAT Directive and to cases decided by the ECJ and has created disputes between taxpayers and the tax authorities regarding the right to deduct input VAT. The amendments will be in line with the wording of the VAT Directive, which should put an end to future disputes regarding the right to deduct input VAT.

Rounding of percentage for input VAT deduction

Under Latvian VAT, in certain situations, when a taxpayer makes both VAT taxable and VAT exempt supplies, the taxpayer is entitled to deduct input VAT based on the proportion of taxable supplies to total transactions. However, the Latvian legislation does not provide specific rules regarding the rounding of the percentage. According to the Latvian tax authorities' unofficial explanations, for input VAT deduction purposes the percentage should be rounded to two decimal places. This, however, is contrary to the provisions of the VAT Directive, which specifies that the percentage should be rounded up to the next whole number. Latvia will amend its VAT Law to incorporate the VAT Directive's treatment. As a result, Latvian taxpayers will be entitled to recover the input VAT for the past three years that were lost due to incorrect rounding.

Full deduction of input VAT related to passenger cars used exclusively for business purposes

Currently, under Latvian VAT only 80% of the input VAT paid on the purchase and use (including repair, maintenance and fuel) of passenger cars can be claimed, regardless of whether the taxpayer used the car exclusively for business purposes. Starting 1 January 2014 Latvia input VAT can be claimed on the full amount of VAT paid for the purchase and use (including repair, maintenance and fuel) of passenger cars, so long as certain conditions are met and the taxpayer can prove the passenger car was used exclusively for business purposes. As well, the VAT Law will be amended to allow taxpayers to recover input VAT previously not allowed to be claimed. Such recoveries will only be allowed through 30 June 2014 and only where the taxpayer has been in compliance with the VAT Law.

No deduction of input VAT for luxury passenger cars purposes

Beginning 1 January 2014 Latvia will not allow the deduction of input VAT on the purchase and use (including repair, maintenance and fuel) of luxury passenger cars costing more than LVL 25,424 (EUR 36,175) (before VAT). This change will not apply to special light-duty vehicles (emergency medical assistance cars, living vans, and hearses), light-duty vehicles equipped to transport invalids in wheelchairs, and new light-duty vehicles used as demo cars by authorized car dealers.

Other changes possible

Because all the amendments mentioned here are not expected to be enacted until the end of 2013 (and are expected to come into force 1 January 2014), it is possible that additional, minor changes will also be introduced.

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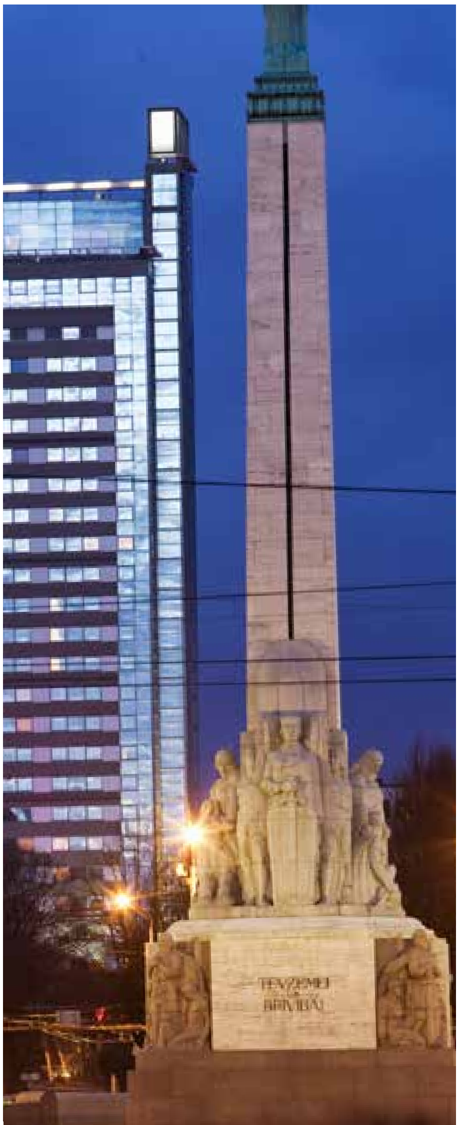

MALTA

VAT TREATMENT OF YACHT LEASING AND CHARTERING IN MALTA

Malta's strategic position and natural harbours place the island at the forefront in the maritime world. Furthermore, over the years Malta has invested in its maritime infrastructure and other ancillary services and, with its indirect and direct tax regime, it has become a very attractive EU state for setting up yacht leasing and chartering businesses.

In 2005 Malta's VAT department issued guidelines explaining the VAT treatment of yacht leasing arrangements entered into by Maltese companies. In 2013 the VAT department issued guidelines related to the VAT treatment of short-term yacht charters. In this note we present a summary of the 2005 guidelines related to leasing yachts in Malta and the newly issued guidelines related to short-term charters.

VAT treatment of yacht leasing

The guidelines refer to arrangements made between a company registered and managed in Malta that owns the yacht (the lessor) and a lessee. The lessee can be a company or individual and does not have to be a resident of Malta.

The lessor has a right to deduct input tax (VAT) on the purchase of the yacht, since the yacht is used for its economic activity.

Lease instalments that are payable every month for a maximum of 36 months are subject to the standard 18% VAT. The supply of yacht leasing services is taxable in Malta based on the use of the boat within the territorial waters of the European Union (EU).

Because of the technical difficulties involved in tracking the movements of such yachts, which is necessary to determine the period spent within the territorial waters of the EU and outside the EU, Malta's VAT department has established percentages it deems leased yachts to be used in EU territorial waters. The percentages depend on the type and length of the boat. Malta's percentage of deemed use of various types of yachts in EU territorial waters is set out in the table below:

For example, a yacht that is over 24 metres long is only considered to be in EU territorial waters 30% of the time, so 70% of the time it is assumed to be operated outside EU territorial waters. As a result, Maltese VAT is applicable only on 30% of the lease payments.

To qualify for this VAT treatment, the following conditions must be met:

- The lease must be between a Maltese company and a Maltese or foreign person or company. In other words, the lessor must be a Maltese company.
- The lease payments must be made monthly and cannot be for more than 36 months.
- Prior approval from the Director General (DG VAT) is required, and each application is considered on its own merits, so conditions may be applied. Moreover, the DG VAT may require the lessor to submit details regarding the use of the boat.

Type of Boat	% lease considered to take place within EU	Computation of VAT
Sailing boats or motor boats over 24 metres long	30%	30% of consideration x 18%
Sailing boats between 20.01 and 24 metres long	40%	40% of consideration x 18%
Motor boats between 16.01 and 24 metres long	40%	40% of consideration x 18%
Sailing boats between 10.01 and 20 metres long	50%	50% of consideration x 18%
Motor boats between 12.01 and 16 metres long	50%	50% of consideration x 18%
Sailing boats up to 10 metres long	60%	60% of consideration x 18%
Motor boats between 7.51 and 12 metres long (if registered in the commercial register)	60%	60% of consideration x 18%
Motor boats up to 7.5 metres long (if registered in the commercial register)	90%	90% of consideration x 18%
Boat permitted to sail in protected waters only	100%	100% of consideration x 18%

VAT paid certificate

If the terms of the lease agreement give the lessee the option of purchasing the yacht at the end of the lease and the lessee exercises this right, the Maltese authorities will issue to the lessee a VAT paid certificate, as long as all VAT due has been and the purchase price is at least 1% of the vessel's original value.

VAT treatment of short-term yacht chartering

In July 2013 the VAT department also provided a set of guidelines for short-term yacht chartering. The following is a summary of these guidelines:

Definition of a short-term yacht charter

A short-term charter of a yacht is defined as an agreement under which the yacht owner/ operator contracts the use of the yacht for consideration, whether with a crew or on a bare boat basis, for a maximum of 90 days.

Treatment of charter agreement for VAT purposes

For VAT purposes, the short-term charter of a yacht for leisure purposes is a supply of a service that is taxable at the standard 18% VAT. The place of taxation is where the yacht is placed at the disposal of the customer, in this case in Malta. Subject to certain conditions, the taxation of this supply is limited to that portion of the use of the yacht within the territorial waters of the EU.

Input tax

The supplier of the charter has the right to claim input tax incurred on the fuelling and provision of the boat, provided these goods will be sold to the client of the charter under a separate contract, or provided they will be invoiced separately from the charter service. The supply of these goods to the charter client is made at the full standard 18% of VAT.

Furthermore, the supplier of the charter is also entitled to claim input VAT incurred on fuel purchased for the outward journey of the yacht to its next port of destination after completion of the charter. Terms and conditions apply in terms of the applicable locale and the EU VAT law. As with the guidelines related to the percentage of a lease deemed to take place within the EU, the VAT department has established percentages it deems short-term chartered yachts to be used in EU territorial waters. As shown in the table below, the percentages depend on the type and length of the boat.

To qualify for the VAT treatment of short-term yacht chartering based on the percentages shown above, the following conditions must be met:

- The supplier of the yacht charter must be a person registered for VAT in Malta.
- The yacht charter contract must indicate all of the following: that the charter commences in Malta; the charter price; and a statement that the yacht will sail outside EU waters.
- Prior approval form the DG VAT is required and each application is considered on its own merits. The supplier of the charter must produce sufficient documentation to identify the yacht with regard to hull number, port of registry, registration number, and any further documentation confirming the size and type of yacht.

Following submission of these documents, and provided that the DG VAT is satisfied, the applicant will be informed in writing regarding the applicable portion of the charter fee that will be subject to VAT.

The VAT Department reserves the right to request proof of any payment in connection with the charter. Furthermore, the DG VAT can perform checks to confirm the actual use of the yacht outside of EU waters and may also ask the owner/operator of the yacht to submit details about the voyage and the hire, even after the completion of the charter.

The Director General (VAT) reserves the right to impose any other conditions he may deem necessary on a case-by-case basis, and he may also refuse any application.

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Type of Boat	% charter considered to take place within EU	Computation of VAT
Sailing boats or motor boats over 24 metres long	30%	30% of consideration x 18%
Sailing boats between 20.01 and 24 metres long	40%	40% of consideration x 18%
Motor boats between 16.01 and 24 metres long	40%	40% of consideration x 18%
Sailing boats between 10.01 and 20 metres long	50%	50% of consideration x 18%
Motor boats between 12.01 and 16 metres long	50%	50% of consideration x 18%
All other boats	100%	100% of consideration x 18%

PERU

PERU'S VAT PERCEPTION SYSTEM PLAYING LARGER ROLE IN COLLECTION OF TAXES

Peru's VAT Perception System is a mechanism under which a purchaser is required to pay an additional amount of VAT, quite apart from the normal VAT, with regard to certain acquisitions and imports of goods. The so-called "VAT perceptions" amount is basically a payment meant to anticipate the VAT that the purchaser would levy in the future on transactions in which he or she will act as a seller.

Under this system, the perception agent (the seller in case of the acquisitions of goods and the tax authorities in case of imports of goods) issues a document called a "Perception Receipt", in addition to the normal invoice, and the perception agent collects this VAT paid in advance and remits it to the tax authorities. The amount charged (the perception amount) may be applied by the perception agent's customer as a VAT tax credit.

In case of local sales of goods, the VAT perception rate (which ranges from 0.5% to 2%) is calculated on the selling price (sales value + excise taxes). In the case of imports of goods, the VAT perception percentage (which ranges from 2% to 5%) is calculated on the customs value plus all taxes levied on the import.

Customers paying a perception amount can request a refund of the amount if they do not have any VAT tax against which to credit it after three months from the time they paid it.

Peru introduced the VAT Perception System in 2004. Initially the system was applied to just a few types of goods, such as liquefied petroleum gas, glass, and goods sold through catalogues. Over the years, however, the VAT Perception System has grown in scope and since 1 July 2013 even more goods have become subject to it, such as paper, pharmaceuticals, bakery products, leather, and plastic manufacturing.

Though this system was originally devised as a mechanism to encourage better tax compliance in sectors of the Peruvian economy that were known to have a high level of avoidance of VAT, the system has been quite successful. The broadening of the base to include more goods, as well as the recent appointment of a significant number of perception agents, is a sign that the Government now sees it mainly as an effective tax collection mechanism.

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PORTUGAL

PORTUGUESE VAT NEWS

New annexes that must be submitted with the periodic VAT return

Ruling 255/2013, dated 12 August, introduces additional reporting obligations related to values entered in boxes 40 and 41 of the periodic VAT return. Boxes 40 and 41 are reserved for VAT adjustments of the period. Taxpayers fulfil the new reporting obligations by submitting a new annex with their VAT return that includes details about the VAT adjustments, specifying various things for each settlement, such as: the amount, the legal justification for the tax treatment, the identification of the purchaser, and so on.

Because of the amendments to the Portuguese Tax Code introduced by the 2013 State Budget that made changes to Art. 78 with regard to the treatment of doubtful debts and bad debts, it became necessary to amend the VAT return so that taxpayers could list every adjustment of tax in their favour (box 40) and in favour of the state (box 41). Taxpayers must list the adjustments in the new annex. The new annex must be used for tax periods starting 1 October 2013.

Standard Audit File for Tax Purposes (SAF-T (PT))

With publication of Ruling 274/2013 on 21 August, changes have been introduced to the standard audit file for tax purposes (SAF-T (PT)) to reflect the requirement that taxpayers must report receipts issued under the cash accounting scheme. This change is effective from 1 October 2013. SAF-T (PT) is a format that enables taxpayers to electronically file receipts to fulfil their tax filing requirements.

Invoicing rules

On 26 July the Portuguese Tax Authorities issued Ruling No. 30149/2013, which sets out the following changes to the VAT Code that were announced in the 2013 State Budget:

- Article 29º is amended to introduce subsection 20, which allows non-profit organizations and public entities to issue documents other than invoices with respect to exempt operations under article 9º.
- Article 40º is amended to introduce subsection 2(e), which allows the issue of simplified invoices by exempt operations. It should be noted that the reason VAT is not due must be stated on the invoice.
- Article 57º is amended to make it clear that invoices issued by exempt persons under article 53º must include reference to the "VAT-exemption regime" or "VAT-exemption regime – article 53º".
- Article 58º is amended with respect to the general invoicing obligation of exempt persons under article 53º of the VAT Code. Under the amendment, persons subject to VAT who exclusively perform exempt operations under article 9º remain excused from invoicing obligations.

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ROMANIA

AMENDMENTS TO ROMANIAN VAT

A number of amendments were made to Romania's VAT that take effect 1 September 2013. Here are some of the key changes:

Reduced rate of VAT

As of 1 September 2013 the supply of various types of flours, bread, and bakery specialties are subject to the reduced VAT rate of 9%.

Rules related to registration

If a taxable person's VAT registration was cancelled by the authorities because the person failed to submit VAT declarations for six months, it used to be that the taxable person had to wait three months to re-register. Furthermore, if the taxable person did not submit an application to re-register within 180 days, the tax authorities could refuse the registration. The three month waiting period has been eliminated and the tax authorities can no longer refuse a VAT registration simply because the application was not made within 180 days of cancellation of a previous registration.

The reverse charge mechanism

The application of the reverse charge mechanism is extended to the local supply of energy to taxable persons and to the transfer of green certificates, if certain conditions are met.

Application of the reverse charge mechanism to the local supply of cereals will continue until 31 December 2018.

Rules related to electronic invoices

Where a taxpayer issues electronic invoices, the taxpayer is no longer required to electronically store data that proves the origin, authenticity, and integrity of the content of the electronic invoices.

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SLOVENIA

PASSENGER TRANSPORT PERFORMED BY NON-SLOVENIAN CARRIERS ON SLOVENIAN TERRITORY

In 2012 the Slovenian customs authority started conducting inspections of foreign passenger carriers that cross Slovenian territory. One of the purposes of the inspections is to ensure foreign carriers fulfil their Slovenian VAT obligations. The inspections have been performed not only at the border, but with special mobile units that patrol Slovenia's highways. As a result of these activities, many violations of Slovenian VAT by such passenger carriers have been discovered.

Under the Slovenian VAT Act, which is harmonised with Council Directive 2006/112/EC, the place of supply of passenger transport is the place where transport takes place and the VAT due is proportionate to the distance covered in Slovenia. Foreign passenger carriers must account for Slovenian VAT on the part of their fee that is proportionate to the distance covered on Slovenian territory. The majority of the carriers inspected by Slovenian customs authorities did not account for any Slovenian VAT.

Foreign passenger carriers must apply for a Slovenian VAT identification number regardless the value of the transport services they intend to perform. Indeed, there is no monetary threshold below which foreign carriers can avoid needing a Slovenian VAT identification number. Consequently, every passenger carrier that intends to perform passenger transport to Slovenia or via Slovenia must have a Slovenian VAT identification number.

Unfortunately, Slovenia does not make it easy for foreign passenger carriers to fulfil their Slovenian VAT obligations. Before applying for a Slovenian VAT identification number, the carrier must first apply for a Slovenian tax number. Getting a tax number requires the filing of a paper application, together with certain documents, such as an extract (which must be officially translated into the Slovene language) from an official business or corporate registry maintained by the competent authority in the country where the carrier is established, a copy of the passport of the carrier's legal representative, and so on. Once the carrier has a tax number, the carrier can apply for a VAT identification number. The application for a VAT identification number must be filed electronically via eTax (eDavki), Slovenia's tax portal. But, eTax can only be accessed by users that have a qualified digital certificate issued by one of the four Slovenian certification agencies.

To make the registration procedure easier, on its website the Slovenian tax authority recently published in English and in German instructions on how to acquire a qualified digital certificate and tax and VAT identification number in Slovenia. The necessary forms are also available in English and in German on the same website.

Also, the monthly VAT returns that foreign carriers must submit once they have their Slovenian VAT identification must be filed via eTax, which is only available in the Slovene language. To avoid the need for a digital certificate, foreign companies usually appoint a Slovenian company/person to apply for tax and VAT identification numbers in Slovenia and also to file monthly VAT returns on their behalf.

In Slovenia passenger transport is subject to VAT at the reduced rate, which, since 1 July 2013, is 9,5%. (On 1 July 2013 the standard rate increased from 20% to 22%.)

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SPAIN

INTRA COMMUNITY SUPPLIES: RULING ON CALL-OFF STOCKS HELD IN SPAIN

The Directorate General for Taxation issued a ruling with regard to whether a German company with no permanent establishment in Spain must register for VAT in Spain as a result of making an intra-Community supply of goods to a Spanish company.

The facts were as follows: To ensure the Spanish company has a minimum stock of the goods at all times, the German company ships the goods to the Spanish company's warehouse in Spain. From the moment the goods arrive at the warehouse, the Spanish client has possession of the goods and assumes all related risks, but it does not have title to the goods. Moreover, under the terms of the agreement between the German entity and its Spanish client, from the time the goods are stored in the Spanish client's warehouse, the Spanish client is obligated to insure the products against damage and loss. The Spanish client has sole access to the warehouse and it is the German company's only client that receives products through this warehouse.

When the Spanish client physically removes the goods from the warehouse the purchase agreement is executed and the invoice is issued. According to the parties, that is the moment the purchase is effectively made.

The 27 May ruling by the Directorate General for Taxation is in line with its previous rulings of 20 February 2013 (No. V0611-13) and 20 December 2007 (No. V2730-07), which dealt with similar fact situations. The Directorate General concluded the transaction constitutes an intra-Community supply of goods in Germany for which the German company is regarded as the taxpayer and an intra-Community purchase of goods in Spain for which the Spanish company is regarded as the taxpayer, regardless of the fact that the transfer of title can be postponed until the moment of invoicing.

As a result, the Spanish company is required to declare the intra-Community purchase and the German company is not considered to be carrying out a transaction in Spain for VAT purposes. Thus, the German company has no obligation to register for VAT purposes in Spain with regard to the intra-Community supply of goods.

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SRI LANKA

CHANGES TO VAT AND NATION BUILDING TAX LAWS

The 2013 Budget proposals, which became law in April, included changes to a number of Sri Lanka's tax laws, including VAT and the Nation Building Tax (NBT), as well as certain other tax-related provisions discussed below.

Value Added Tax (VAT)

Large scale wholesale or retail sale of goods liable to VAT

Before 2013 businesses engaged in wholesale or retail sale of goods (other than import traders) were not subject to VAT. As of 1 January 2013 such businesses are liable for VAT for any quarter their sales exceed LKR 500 million.

Amnesty for defaulters

For any business that was liable to VAT but that was not registered for VAT for any period ending before 1 April 2011, amnesty will be granted as long as the business meets the following conditions:

a) Its annual turnover before 1 April 2011 did not exceed LKR 300 million;

b) It invests its past earnings from the business in any business no later than 31 March 2014; and

c) It agrees to comply with the law for any subsequent period.

Small scale businesses are not liable to VAT

The threshold for registering for VAT has increased. As of 1 January 2013 businesses whose VAT-liable turnover for a period of three months is below LKR 3 million, or whose VAT-liable turnover for a period of twelve months is below LKR 12 million, are not subject to VAT. Previously the threshold for liability for VAT was LKR 650 000 for a period of three months or LKR 2 500 000 for a period of twelve months.

Businesses that are no longer subject to VAT as a result of the threshold change are being deregistered by the Department of Inland Revenue. Any deregistered businesses with unused allowable input tax credits may apply the input tax credit against any other taxes administrated by the Department of Inland Revenue.

New exemptions from VAT

A number of new exemptions from VAT have been instituted, including:

All articles imported into Sri Lanka are liable to VAT when imported, unless a specific exemption applies. A list of such exempted articles already exists. The following articles have been added to the list: heavy vehicles used to carry large quantities of water or other liquids (bowsers), bulldozers, graders, levelers, excavators, fire fighting vehicles, road tractors, raw materials for manufacture of energy saving bulbs, and packing materials for packing pharmaceutical.

Similarly, the following activities have been added to the exemption list: local supply of the leasing of bowsers, bulldozers, graders, levelers, excavators, fire fighting vehicles, and road tractors used to carry semi-trailers; and provision of hotel accommodation to any sportsman, organizer of any sporting event, or sponsor of such an event who arrives in Sri Lanka.

As of 1 January 2013 the supply of services by the following are exempt from VAT and from the Nation Building Tax:

- The Central Bank of Sri Lanka;
- Any public corporation providing services on behalf of the government;
- Any Sri Lankan citizen who returns to Sri Lanka after 1 January 2013 and who commences any manufacturing business in Sri Lanka (other than the business of the manufacturing of liquor or tobacco). Note that for such taxpayers the exemption from VAT and NBT is for five years.

Due date for payment of VAT changed

For businesses other than manufacturers, the date for payment of the first instalment of VAT is now the 15th of the month after the taxable supply was made with the balance due on the last day of the month after the supply. Previously VAT was due only once a month (on the 20th of the month after the taxable supply was made). This change will have a cash flow impact for businesses whose sales are on credit because they will have to pay the tax out of cash.

Artificial or fictitious transactions

Under a new provision, the Assessor has discretion to disregard any transaction that, in the Assessor's opinion, is artificial or fictitious. This provision is similar to a provision that exists under the income tax law.

Changes to the Nation Building Tax (NBT)

Threshold expanded

Starting 1 January 2013 the threshold for liability for the NBT has increased to LKR 3 million. Previously the NBT was imposed when turnover from an NBT-liable business activity exceeded LKR 500,000 per quarter, which meant that virtually all small businesses were subject to the NBT. As a result of the increased threshold, smaller businesses are not liable to NBT. Businesses that were subject to the NBT previously but that are no longer subject to it are being deregistered by the Department of Inland Revenue.

New exemptions from the NBT

Businesses engaged in the importation of the following are exempt from NBT: solar panel modules and so on, for generation of power energy (including manufacturers); coal; sporting goods; garbage disposal machinery used by local authorities; equipment for power generation; and gems.

Taxes and levies related to the provision of Hub Services

Hub Service businesses are businesses established in Sri Lanka that perform certain services on behalf of businesses located in other countries. Various taxes and levies imposed under the VAT Act, the NBT Act, the Sri Lanka Export Development Act, the Special Commodity Act, the Port and Airport Levy (PAL) Act, and the Excise (SP) Act no longer apply to the following Hub Service businesses:

i. Warehouses where goods are imported temporarily for processing and re-export trade involving import, minor processing, and re-export;

ii. Offshore businesses where goods are procured or manufactured in one country and shipped to another country without bringing them into Sri Lanka;

iii. Provision of so-called front end services to foreign clients;

iv. Headquarter operations, such as provision of management of financial matters, supply chain, and billing operations; and

v. Provision of logistics services in Sri Lanka, such as bonded warehouse facilities and multi-country consolidation.

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SWITZERLAND

AN ANNUAL VAT RECONCILIATION NOW REQUIRED

Under an ordinance in place under the old Swiss VAT law, it was recommended that taxpayers perform a written annual VAT reconciliation. Now, to avoid possibly being charged with tax fraud under Art. 95 of the Swiss VAT law, taxpayers must perform an annual VAT reconciliation, which is a comparison between the figures set out in the financial statements and the quarterly VAT returns. Any differences between the two must be declared through the annual VAT declaration, which is referred to as the "finalisation". The Federal Tax Administration requires the preparation of both a turnover reconciliation and an input VAT reconciliation, but the turnover reconciliation is generally considered the more important of the two. Upon request, taxpayers must provide these VAT reconciliations to the Federal Tax Administration.

If a taxpayer does not submit a finalisation within 240 days after the end of the assessment period, the Federal Tax Administration assumes the submitted VAT returns were correct and complete as filed and the VAT return is considered definitive. If a subsequent VAT audit reveals a discrepancy between the amounts in a "definitive" return and the amount the taxpayer should have remitted, the taxpayer faces a charge of fraud and potential penalties up to CHF 800 000. Taxpayers who discover a discrepancy can avoid the possibility of facing fraud charges by endeavouring to correct their mistake by filing a timely finalisation.

The requirement to submit an annual VAT reconciliation applies to Swiss companies as well as foreign companies that are VAT-registered in Switzerland.

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CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 23 September 2013.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Latvian Lats (LVL)	1.42171	1.92345
Sri Lanka Rupee (LKR)	0.00559	0.00756
Swiss Franc (CHF)	0.81187	1.09816
Uganda Shilling (UGX)	0.00029	0.00039

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