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Germany - Annual Tax Act 2013 results in changes in Reverse Charge Rules for transportation of passengers and further changes in place of service for ticket sales

Previously, the reverse charge rule was not able to be applied to transportation by a cab (taxi) in Germany. This rule has now changed with the German Annual Tax Act 2013. Starting October 2013, all transportation of passengers by vehicles on land is subject to German VAT and the suppliers of this transportation service are liable for VAT. Therefore, usually, only the supplier of the passenger transportation service has to be registered for VAT purposes in Germany.

Starting July 2013 in Germany, ticket sales by a company other than the organizer will not be differentiated from ticket sales directly by the host. Therefore, the sale of tickets to individuals for cultural, artistic, scientific, teaching, entertaining or other events from a ticket agency is also taxable at the place where the host is arranging the event. Events, seminars, conferences etc. in Germany are subject to German VAT. The same rule is applicable for the sale of tickets by a ticket agency to companies and businesses. The place of service (= place of taxation) is where the event takes place. Due to this fact, the ticket sale from a company other than the organizer is also subject to VAT in Germany.

France - French authorities introduce VAT on yacht charters

According to French tax guidelines dated 25 June 2013, contracts relating to yacht charters commencing in French waters for the purposes of leisure travel and signed from 15 July 2013 are subject to VAT as per the rules defined for pleasure vessels. In compliance with the ECJ Bacino ruling, the exemption no longer applies to hiring and charter operations for leisure use, either with or without a professional crew, including operating on the high seas.

The applicable VAT rate is 19,60%, however the taxable base can be reduced by 50% where the yacht is also used outside EU or French waters.

Consequently, yacht owning companies established outside Europe need to appoint a tax representative who will perform the formalities related to VAT registration in France, the submission of tax returns and making of VAT payments. Other yacht owning companies may also appoint a tax agent who will perform the same VAT formalities.

La Représentation Fiscale, the first ever tax representation company in France, has created Yacht Tax Services, a dedicated French tax representation company providing services to yacht owning companies incorporated outside France."



Malta - Deadlines, Invoicing and Location Rules

Three new Legal Notices were issued in 2013 which amend the 4th, 12th and the 14th Schedule of the VAT Act. These new regulations came into force on 1 January 2013 and bring into force the provisions of Council Directive 2010/45/EU amending Council Directive 2006/112/EC. Also new rules about location of yacht leasing came into force, and there are interesting changes to come on location rules for 2015. We summarise them below:

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Legal Notice 140 of 2013 establishes that a tax invoice must be issued by the 15th day of the month following the date when tax on supplies becomes chargeable. Before the amendment, the law used to refer to a thirty day period.

Legal Notice 141 of 2013 establishes that a tax invoice must be issued no later than the 15th day of the month following that in which the chargeable event occurs or the date on which a payment is received, whichever is the earliest.

Legal Notice 142 of 2013 establishes that the VAT cash accounting scheme which was previously available to all retailers, civil, mechanical and electrical engineering contractors and certain professional service providers, irrespective of their annual turnover, has with effect from 1 January 2013 been limited to such business with an annual turnover under two million Euros. This means that businesses that exceed an annual turnover of two million Euros will be forced out of the scheme and will have to start accounting for VAT on an accruals basis. Furthermore, the right of deduction shall be postponed until the tax on the goods or services supplied to it has been paid to its suppliers. Invoices issued by suppliers with under two million Euros in turnover should mention the words 'cash accounting', otherwise the option shall not apply.

The new place of supply rule on yacht leasing arrangements - With effect from 1 January 2013, the leasing of a pleasure yacht on a long term basis to a non taxable person is considered to be a supply taking place where the yacht is actually put under disposal of the leasee as long as the leaser has a place of business or a fixed establishment situated in that place. The term 'long term lease' refers to the continuous use and possession of the yacht for ninety days or more.

Telecommunications, Broadcasting and Electronic Services - With effect from 1 January 2015, telecommunications, broadcasting and electronic services supplied to non-taxable persons (B2C) which are established, have their permanent address, or usually reside in the EU will be taxable in the Member State of the customer. The rule which currently applies to non-EU suppliers of e-services will be extended to all suppliers (EU and non-EU) of telecommunications, broadcasting and e-services to private consumers.

As a result, all suppliers will have to charge VAT to their customers at the rate applicable in their customer's EU Member State. This means that operators will either have to register for VAT in the Member State of their customer, or can opt to register in only one Member State and to report the VAT due in other Member States in one single electronic declaration (under the so-called 'mini one-stop-shop' scheme).

Greece - Change of deadline

Since 1 June 2013, the deadline for the submission of quarterly VAT returns (and payment of VAT), monthly Intrastat returns, and monthly ESL and EPL returns is on the 20th of the month following the end of the period to which the return relates, instead of the 26th.



France - Mutual Assistance

On 4 July 2013, an Order dated 15 May 2013 was published with the list of the countries which have concluded a mutual assistance agreement with France. The consequence is that taxable persons established in one of these countries will no longer have to appoint a tax representative for VAT purposes in France. The concerned countries are Argentina, Australia, Azerbaijan, Georgia, India, Iceland, Mexico, Moldova, Norway, Republic of Korea and Saint Barthelemy. Nevertheless, taxable persons established in one of these countries can appoint a fiscal agent in France to handle on their behalf their VAT registration and their VAT returns, Intrastat returns, claims for VAT refund, etc. Indeed, VAT and customs rules can be complicated and the assistance of a VAT specialist can be very useful.

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Portugal - New Cash Accounting Regime for VAT Purposes

From 1 October 2013, a new cash accounting regime for VAT will be effective, known as the "Regime de IVA de Caixa". This optional regime will help the cashflow of businesses, particularly where there is a long period of time between invoices being raised and payments by clients, by allowing the VAT on sales to only be paid over when the money is received from clients. However, on the reverse side, VAT on purchases can only be offset when the purchase invoice is actually paid. The requirements to be able to benefit from this new regime are:

- Turnover must not have exceeded €500,000 in the previous civil year.
- The business activities exercised are not exclusively exempt from VAT under Articles 9º (e.g. doctors, financial services), 53º (turnover is less than €10,000 per annum) or 60º (small retailers) of the VAT code.
- The business has been registered for VAT for at least a period of 12 months and all tax submissions and tax payments are up to date.
- This regime is not applicable to transactions to and from outside of Portugal.
- Enrolment in this regime is for a minimum period of 2 years, unless the business no longer meets the requirements set out above.
- A receipt must be issued when the payment of an invoice or an advancement is received. The receipts issued have to be communicated to the tax office on a monthly basis.
- If the invoice remains unpaid by the client, then the VAT still has to be paid over to the government in the 12th month after the date of the invoice.



Spain - VAT rates under control

The European Commission has denounced that the Reign of Spain was not complying with art. 98 of the European Council Directive 2006/112/CE, which allows for reduced VAT rates for some medicines, health products and medical devices for humans and animals. The problem remained in the extension of the interpretation of the expression: "Pharmaceutical product", which from the Spanish perspective would not only include "medicine products".

The European Court has determined the Reign of Spain shall be able to recognize reduced VAT rates only for finished products. Those products which would be used to make other products would not be allowed to use reduced VAT rates.

Regarding medicines, devices and instruments for diagnosis, medical treatment, disease alleviation or cure, the European Court has determined reduced VAT rates would only be applicable to humans, never to animals.

In addition, the European Court, according to the Commission's allegations, considers that the Reign of Spain is giving such a wide interpretation to the expression "disability" used by the directive, that would go beyond the limits of what the Commission and the Court consider reasonable. Therefore, these products, tools and devices shall apply a reduced VAT rate only when the final use exclusively by a disabled person can be proved, either because the product or device is exclusively for the use of disabled people or, in the case where the product has a common use and at the same time a specific use by disabled people, when the final client evidences the disability with the proper documentation.

The Reign of Spain shall have to change the domestic regulation in this regard. Also, it shall have to remove from the law the exemption that the Commercial Registrars and Notaries were taking advantage of when issuing deeds relating to financial transactions (credits, loans, share purchase etc.) as accessory services. The European Commission considers these exemptions must be understood under strict interpretation and these services in particular cannot be considered part of.

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Germany - New Formal Requirements

Self-billed invoice (German "Gutschrift") - new mandatory detail

From 30 June 2013 onwards, a self billed invoice has to be explicitly labeled as such. According to § 14 UStG (German Value Added Tax Act), the word "Gutschrift" has to be written on the invoice. However, the expression "self-billed invoice" is expected to be acceptable as an alternative.

Reverse-Charge invoice - new mandatory detail

As with the self-billed invoice, reverse-charge invoices have to be explicitly labeled. German law stipulates that the expression "Steuer-schuldnerschaft des Leistungsempfängers" has to be used. Here the expression "reverse charge" is expected to be acceptable as an alternative.

Intra-community deliveries - new invoicing deadline

Invoices for intra-community deliveries now have to be issued by the 15th of the month following the transaction (§ 14a Abs. 3 Satz 1 UStG).

Reminder entry-certificate

As announced in the previous TRA newsletter, the new regulations concerning the entry certificate for intra-community deliveries came into effect on 1 October 2013.

Incorrect or incomplete invoices - subsequent corrections

If an invoice turns out to be incorrect or incomplete and by consequence VAT would not be refunded, this invoice can be altered afterwards, but only if the Tax Office has not declined the VAT deduction at that point (European Court of Justice, ruling from 08 May 2013 - C-271/12, BB 2013, 1365). It is strongly recommended not to cancel an incorrect or incomplete invoice since the invoice then loses its ability to deduct VAT and a new invoice issued subsequently cannot regain this ability.

Europe - New study confirms billions lost in VAT Gap

An estimated €193 billion in VAT revenues (1.5% of GDP) was lost due to non-compliance or non-collection in 2011, according to a new study on the VAT Gap in Member States. The study was funded by the European Commission as part of its work to reform the VAT system in Europe, as well as its wider campaign to clamp down on tax evasion. The study sets out detailed data on the gap between the amount of VAT due and the amount actually collected in 26 Member States between 2000-2011.

The Netherlands - VAT on Self-Supplies

On Budget Day (17 September 2013), the Dutch government presented the 2014 Tax Plan to the Dutch parliament.

This year's proposed tax measures are dominated by the combating of fraud and sustainable income measures. Many of these measures will take effect on 1 January 2014.

In the field of VAT, the long-awaited abolishment of VAT on self-supply as of 1 January 2014 has been announced.

VAT on self-supply applies where a VAT taxable person constructs movable/immovable property or provides the materials, such as land, for the purposes of construction, and uses it to provide VAT exempt goods or services.

As of 1 January 2014, the VAT on self-supply will be abolished in the Netherlands. The reason given for its abolition has to do with the problems being experienced on the Dutch housing market.



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Poland - Storage services location rules

According to the CJEU judgment on 27 June 2013 in the case of C-155/12 (Applicant: Minister Finansów, Defendant: RR Donnelley Global Turnkey Solutions Poland), the place of taxation of complex storage services depends on the fact whether the service recipients are allowed to enter the warehouse where their goods are stored. If they do not have right of access to the part of the property where their goods are stored, the services should be taxed according to the general rule laid down in Art. 28b of the Polish VAT Act and cannot be deemed as supply of services connected with immovable property within the meaning of 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services.

The judgment was given by the CJEU on the request of the Polish Administrative Court in respect of the place of supply of services, as according to Polish tax authorities complex storage services shall be taxed in the country where the warehouse is located i.e. in Poland. The judgment of the CJEU is of great importance for companies that store their products in Poland, because recently, due its geographical location, the country has been regularly used as a convenient place in which the storage centres, for goods that are distributed both to other EU countries as well as to the East (including Russia), are located.



The main factors contributing to the VAT Gap are also presented, along with an overview of the effect of the economic crisis on VAT revenues.

Algirdas Šemeta, Commissioner for Taxation, said: *"The amount of VAT that is slipping through the net is unacceptable, particularly given the impact such sums could have in bolstering public finances. However, there is also a positive message to be drawn from today's findings. Our ambitious reform of the VAT system, the EU measures to combat tax evasion and our recommendations for national tax reforms are all targeted in the right direction. We know the problem, we have identified solutions to it, and now it's time for Member States to act. Today's figures will serve as a baseline to assess their progress in improving VAT compliance in the years ahead."*

The VAT Gap is the difference between the expected VAT revenue and VAT actually collected by national authorities. While non-compliance is certainly an important contributor to this revenue shortfall, the VAT Gap is not only due to fraud. Unpaid VAT also results from bankruptcies and insolvencies, statistical errors, delayed payments and legal avoidance, amongst other things. Therefore, effectively tackling the VAT Gap requires a multi-pronged approach.

First, a tougher stance against evasion, and stronger enforcement at national level, are essential. The VAT reform launched in December 2011 has already delivered important tools to ensure better protection against VAT fraud. For example, the Quick Reaction Mechanism, adopted in July 2013, will allow Member States to react much more swiftly and effectively to sudden, large-scale cases of VAT fraud. Eurofisc, which was launched in 2010, also facilitates stronger cooperation and coordination between Member States in combating organised VAT fraud, especially carousel fraud.

Secondly, the simpler the system, the easier it is for taxpayers to comply with the rules. Therefore, the Commission has focused intently on making the VAT system easier for businesses across Europe. For example, new measures to facilitate electronic invoicing and special provisions for small businesses came into force at the start of the year, and a standard VAT declaration form for the entire EU will be proposed in the coming weeks. From 1 January 2015, a One Stop Shop will enter into force for e-services and telecoms businesses, which will promote more compliance by greatly simplifying VAT procedures for these businesses and enabling them to file a single VAT return for their activities across the EU.

Finally, Member States need to reform their national tax systems in a way that facilitates compliance, deters evasion and avoidance, and improves the efficiency of tax collection. The Commission has given clear guidance in this respect through the country specific recommendations. Therefore, the Commission's repeated call to Member States to broaden national tax bases and to limit tax exemptions and reductions, should be given particular attention. Not only would this help simplify tax systems, but it may enable Member States to avoid hikes in the standard VAT rates.