Global Indirect Tax

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Global Indirect Tax News

Your reference for indirect tax and global trade matters

April 2014

Welcome to the April edition of GITN,

containing updates from the Americas, Asia Pacific, and EMEA regions. GITN combines the Global Indirect Tax News (covering VAT, GST, and sales tax issues around the globe) and the Customs and Global Trade Newsletter (covering customs and global trade news).

Features of this edition include an item on the increase in the Japanese Consumption Tax (the first increase in 17 years), the issue by the European Commission of Explanatory Notes for the 2015 place of supply changes, and news of an upcoming increase in the Luxembourg VAT rate (from 1 January 2015).

In global news, the OECD has announced that the governments of 86 countries have endorsed the first internationally agreed framework for applying national VAT/GST rules to cross-border transactions. We welcome the greater clarity and consistency in VAT/GST rules that is emerging – more than 250 high-level representatives from around 100 countries, jurisdictions and international organisations attending the **OECD Global Forum on VAT** meeting in Tokyo on 17-18 April **endorsed a new set of OECD Guidelines for the application of VAT or GST (Goods and Services Tax)** to international trade. These **International Guidelines** seek to address the problems that arise from national VAT/GST systems being applied in an uncoordinated way in the context of international trade. They set standards aimed at ensuring neutrality in cross-border trade and a more coherent taxation of business-to-business trade in services.

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

David Raistrick
Global Indirect Tax Leader

Country summaries

Americas

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Russia: There have been a number of amendments to the VAT law. New customs authorities have been established in Crimea and Sevastopol. **More**

Slovenia: Several VAT law changes have been approved, mainly to implement certain EU Directives into Slovene legislation. **More**

United Kingdom: There were a number of indirect tax announcements in the 2014 Budget. There have been judgments dealing with the calculation of interest on repayments of overpaid VAT, bad debt relief, Air Passenger Duty on connected flights and the adjustment of customs value for third party rebates. Finally, Deloitte UK has released the results of its Indirect Tax Client Survey. **More**

Americas

Colombia

VAT treatment of bakery products

According to article 424 of the Colombian tax code, bakery products classified under subheading 19.05 were VAT exempt. However, as from 12 December 2013, these goods are subject to consumption tax.

VAT return filing by consortiums and temporal unions

According to the Colombian tax authorities, under the December 2012 tax reform, consortiums and temporal unions must file their VAT declarations on a yearly basis, as established by the law, even if they are in a liquidation process.

Health requirements for import and export of food

With effect from 12 March 2014, decree 539 of 2014 determined the technical regulations for the health requirements for importing and exporting various goods for human consumption.

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Mexico

VAT and excise tax certification

From 1 January 2015, companies that undertake temporary import operations will be required to pay VAT and excise tax (ET) under the Fiscal Reform.

This change will have a financial impact on companies. In order to mitigate this impact, companies can obtain a credit or an exemption, by obtaining certification from the Tax Administration Service (SAT, its Spanish acronym), or by means of a bond obtained from an authorized institution.

The SAT has published the requirements and procedure for obtaining certification, with three categories (A, AA and AAA); the benefits applicable to each; and the dates on which certification should be requested, which depends upon where the companies requesting certification are located. VAT and ET certification began in April for companies located in the north of the country, companies with authorization for the New Scheme of Certified Companies, and companies operating an automotive bonded warehouse.

Trans-Pacific Partnership Agreement

On 17 March 2014, a new round of negotiations for the Trans-Pacific Partnership Agreement (TPA) took place in Singapore. The TPA seeks greater economic integration within the Asia and Pacific Regions. The TPA has a wide range of products and disciplines and is of significant economic importance. There are now 12 negotiating members: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

In this context, the Ministry of Economy announced important advances in the negotiations between Mexico and Japan regarding agricultural matters.

Rules and criteria for import quotas

On 25 March 2014, the Ministry of Economy published in the Mexican Official Gazette an amendment to the rules and criteria for foreign trade regarding quotas for the importation of footwear, fur and leather, and rolled products of iron or steel, among others.

It was announced that the assignment of some quotas may take place before the validation period, for the purpose of facilitating and expediting the access of importers to tariff preferences negotiated under commercial treaties signed by Mexico.

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United States

CBP allows transaction value for early payment discounts on first sale

US Customs and Border Protection (CBP) recently made publically available a ruling, HQH065028 (8 January 2014), in which it found that the transaction value based on discounts given by a third party supplier to an importer's centralized global procurement company was acceptable, provided:

- The discount or price adjustment was agreed before the importation of the goods;
- The importer could furnish sufficient evidence to CBP to support the existence of the discount;
- The discount or price adjustment was established before the time of entry; and
- The discount or price adjustment was unconditional, or if conditional, all conditions were satisfied before importation.

This case involved three-tiered transactions under a proposed first sale for export structure involving sales from third party suppliers to a centralized global purchasing company to the U.S. importer. Certain third party suppliers offered the centralized global purchasing company a discount if it paid for merchandise within 20 days from the date of shipment. Although there was no written agreement between the foreign suppliers and the centralized global procurement company on the early payment discount percentages, because the discount amount was part of the parties' negotiating process, CPB held that, "as long as the condition upon which the discount is based—payment within 20 days from the date of shipment—is met prior to importation, we find that the certain percentage early payment discount meets CBP's established criteria for price adjustments and may be used to determine the price actually paid or payable for the imported merchandise."

Census requires EEI filings for used self-propelled vehicles and temporary exports

On 14 March 2014, the U.S. Bureau of the Census (Census Bureau) amended its regulations to require the mandatory filing of electronic export information (EEI) for used self-propelled vehicles and temporary exports through the Automated Export System (AES) and AES Direct. The publication of this rule amends the 2008 regulation that governed how exporters must file EEIs with the Census Bureau.

There are several key changes to the filing requirements:

- The post-departure export filing timeframe is reduced to five calendar days from the original 10 calendar day requirement;
- The scope of the definitions of household goods, split shipments, and international waters is expanded;
- Filing through AES is mandatory regardless of the country or destination and the filing must be made 72 hours prior to export; and
- There are now four types of ultimate consignees: direct consumer, government entity, reseller, and other/unknown.

Apart from the specific changes in filing the EEI, operationally, this may have an impact on businesses working with automated trade software, which will require attributes to be reconfigured.

U.S. restricts exports to Russia

Due to heightened concerns with Russia, the U.S. Bureau of Industry and Security (BIS) announced on 26 March 2014 that it has "placed a hold on the issuance of licenses that would authorize the export or re-export of items to Russia until further notice." This development applies only to the issuance of new licenses, and does not affect existing licenses. The other main export licensing agency, the Directorate of Defense Trade Controls (DDTC), has not released a public confirmation regarding the status of its licensing policy with Russia. However, certain exporters reportedly have begun to notice that DDTC has been denying export licenses to Russia that had previously received approval. While it is unclear whether this change in policy will be short term or long term, the impact of this policy change on exporters is expected to be significant: in fiscal year 2013, BIS alone issued 1,832 licenses related to Russia, covering 83 ECCNS on the Commerce Control List, with a total value of nearly USD 1.5 billion.

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Uruguay

VAT reductions aiming at reducing inflation rates

Uruguay has been experiencing an increase in inflation rates in recent months. The Government has therefore been seeking to initiate actions to reduce the increase in prices of certain goods and services. Law 19,197, promulgated in March 2014, allowed the Executive Branch to make VAT reductions for these purposes.

Within this framework, the Executive Branch has used this power in Decree 70/014 to regulate the adoption of a series of measures to address this issue:

- VAT exemption applicable to electricity supply in terms of *fixed residential charge* and *basic consumption charge* for residential areas – from 1 March 2014, a credit is available for VAT included in the purchase or import of goods and services related to electricity supply.
- VAT exemption applicable to the *basic land line phone service* destined for final consumption – from 1 March 2014, a credit is available for VAT included in the purchase or import of goods and services related to the provision of this service.
- For the period from 1 April 2014 to 31 December 2014, Collective Healthcare Providers (IAMCs) will be provided with a tax credit of 22% of certain income, which they can use to pay taxes to the tax authorities or to request credit certificates that can be used with the Social Security Authority.
- For the period from 1 April 2014 and 30 June 2014, a 0% VAT rate will apply to the sale of potatoes, peppers, carrots and onions. A credit is available for VAT included in the purchase or import of goods and services related to these transactions. VAT on imports of such goods will also be exempt for the same period.

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Free Trade Agreements

Free Trade Agreement between Mexico and Panama

On 3 April 2014, the presidents of Mexico and Panama signed a Free Trade Agreement. This Agreement seeks to strengthen an increased trade exchange in goods and services, promote reciprocal investments and consolidate the position of both countries as logistic platforms of global reach, laying the groundwork for a commercial corridor in the Americas.

Panama requested that the following be excluded from the Agreement: milk products, meat, personal care products and fresh cheeses. Whilst Mexico excluded some agricultural products, including pineapples and bananas, as well as sea products, including tuna and shrimp, to protect national producers.

The FTA includes issues such as market access, customs rules and procedures relating to origin, sanitary and phytosanitary measures, technical barriers to trade, trade protection, investment, electronic commerce, intellectual property and dispute resolution, among others.

Furthermore, the Mexican President announced two additional agreements between the two countries, one regarding health issues, under which the Inter-institutional Medicine Cooperation Agreement will seek mutual recognition of medical certification; and the other regarding tourism, which would be focused on increasing tourism between both countries.

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Asia Pacific

China

Administrative measures for VAT invoices

On 24 March 2014, China's State Administration of Taxation (SAT) released Bulletin 19, which will simplify the application and usage of VAT invoices. The key points are as follows:

- The application procedure for VAT invoices (special VAT invoice, special VAT invoice for goods transportation, general VAT invoice, and invoice for sales of automobiles) has been simplified. The in-charge tax bureau will verify VAT invoices electronically, rather than manually, before approving the use of new VAT invoices.
- It is no longer necessary for the in-charge tax bureau to conduct an onsite review in advance when an application for an additional special VAT invoice is made if the amount of the special VAT invoice does not exceed RMB 100,000 per invoice.
- The process for dealing with lost special VAT invoices is simplified. When the purchaser has lost a special VAT invoice, it is no longer necessary to obtain approval from the in-charge tax bureau and the input VAT can be deducted.

- The procedure for special credit invoices is simplified. A general taxpayer is not required to submit a copy of the corresponding bookkeeping certificate to the in-charge tax bureau after issuing the special credit invoice due to sales returns or allowances.

The measures introduced by Bulletin 19 are a welcomed change and will simply administration. However, even with the relaxed measures, taxpayers must remain vigilant to ensure compliance.

Extension for exporting tax refund

On 4 April 2014, SAT issued "Bulletin on issues regarding an Extension of Exporting Tax Refund (Exemption) Treatment Beyond Due Date" (Bulletin of the State Administration of Taxation 2014 No. 20). The Bulletin specified that if an export company exported goods before 31 December 2013 but did not apply for the export VAT refund in due time (before 30 April 2014), it can apply to the in-charge tax bureau before 30 June 2014 for an export VAT refund.

The extension is limited to special situations, such as: force majeure, when the export refund documents have been stolen or mailed to wrong address, when the documents have been detained by judicial/administrative authorities for investigation, and others.

The issuance of this regulation aims to facilitate the export VAT refund. There is a trend for the China tax authorities to provide greater assistance to taxpayers.

New supervision methods regarding imported/exported goods under processing trade relief regime

In March 2014, the General Administration of Customs (GAC) issued the "Supervision Methods regarding the Imported/Exported Goods under Processing Trade Relief (PTR) Regime" (GAC Order No. 219), which amended the existing GAC Order No. 113 and its modifications of GAC Order 168 and Order 195. The key changes of Order 219 are to enforce Customs' management of PTR more stringently:

- The supervision of PTR handbook:
    - The term 'Registration for PTR goods' is changed to 'Establishment of PTR handbook', and thus the application procedure for PTR is simplified. Registration is an administrative approval granted by the local authorities after the submission of a number of documents by the PTR company, while the establishment is a mere Customs operational procedure. This change of supervision method demonstrates that the administrative approval for PTR has been simplified.
    - If the PTR company is undergoing an investigation by Customs or is required to improve its internal management, Customs shall require the company to pay a deposit or provide a letter of guarantee.
    - When a company is establishing the PTR handbook and the information declared is inconsistent with the actual imports and the goods have been already imported, Customs can require the importer-of-record to return the goods overseas.

- Factory transfer:
    - The transfer-in and transfer-out PTR is simplified as companies can now apply for factory transfer with the local Customs office rather than from the local authorities before the commencement of factory transfer.
- Outsourced processing:
    - PTR companies must register with Customs within three days of the outsourcing of processing.
    - The situations where PTR companies must pay a deposit have been reduced.
- The export of unprocessed bonded materials for after-sales services is simplified. Companies can declare with Customs the export of unprocessed bonded materials for after-sales services, for which the export procedure is simplified.
- The requirement for PTR companies to submit their business report for the previous year to Customs is removed.

Roll out of paperless reform for Customs clearance

GAC issued the "Bulletin on further development of the paperless reform for Customs Clearance (Bulletin of the General Administration of Customs [2014] No. 25)".

Highlights include the following:

- The paperless reform will be expanded nationwide, as well as to express items and mail transport.
- The supporting documents for import/export are simplified, so it is not necessary to provide the contract, packing list or bill of lading, unless specifically required by Customs.
- Companies importing and exporting can apply paperless customs clearance after obtaining Customs' approval and after having signed an agreement with Customs and a Chinese E-port Data Center.

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Japan

Consumption tax raised for first time in 17 years

On 1 April 2014, the Japanese government increased the Japanese Consumption Tax (JCT) rate from 5% to 8%. This is the first JCT rise in 17 years and is scheduled to be followed by a further increase to 10% in October 2015.

Since taking office in December 2012, Prime Minister Shinzo Abe has promoted rather aggressive economic policies called "Abenomics", which have brought Japan steady GDP growth. The JCT increase is expected to negatively affect consumer spending which accounts for 60% of Japan's GDP, slowing down the economy. It is estimated that the extra financial burden placed on households due to the increase will amount to approximately JPY 8 trillion a year. Most economists are almost certain that GDP growth for the April to June period will turn negative.

To mitigate the impact of the tax rise, the government plans to introduce reduced rates for daily necessities when the standard JCT rate is further raised to 10%. The Tax Commission announced that it would develop plans by May, and compile a specific regime by December 2014 to incorporate into tax reform for 2015. Issues on the table include the determination of daily necessity items eligible for reduced rates, and the implementation of new JCT accounting requirements to separately record items taxable at different rates. Future changes may affect the entire JCT regime, including the requirements for claiming input JCT credits.

This newsletter will include updates from time to time on the progress of this situation.

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Malaysia

The Goods and Services Tax Bill 2014 was in the Malaysian Parliament on 31 March 2014. The Bill supersedes the old GST Bill 2009 and previous proposed amendments in 2012. Some of the new provisions/changes in the GST Bill 2014 vis-à-vis the 2009/2012 draft legislation, are as follows.

Change: Definition of 'person' not proposed

The proposed amendment in 2012 to insert a wide definition of 'person' to include, inter alia, a trust, is absent from this Bill. This could alter the GST compliance position for any trust making taxable supplies, i.e., a trustee could be the person to register/file returns for GST purposes for a trust, as well as have its own GST registration/filing for the trustee's own supplies.

New: Requirement for GST-inclusive prices in all price displays

This requirement could have been enacted in regulations, but Malaysia has chosen to legislate this in the Act. A taxable person may, however, apply to Customs for approval not to state GST-inclusive prices in price displays.

Change: No mandatory requirement to issue tax invoice within 21 days of time of supply

Not issuing a tax invoice within 21 days of the time of supply will no longer be an offence.

However, the complicated 21 day rule still applies to determine the time of supply (instead of simplified rules in, for example, New Zealand and Singapore, where the time of supply is the earlier of two events, i.e., the issuance of a tax invoice or receipt of payment).

New: Self-billing provisions

The requirements for self-billing have been set out in detail.

Taxable persons would have to seek prior approval from Customs to treat as a tax invoice the self-billed invoice for receiving supplies of goods and services from suppliers, if:

- The value of the supplies received is not known by the supplier at the time of the supply;
- The taxable person and his supplier are GST registered;
- The taxable person and his supplier agree in writing to the self-billing arrangement; and
- The supplier agrees not to issue a tax invoice for the same supply to the taxable person.

Change: Penalty for late payment of tax abolished

The late payment of tax was to trigger penalties of up to 25% of the tax outstanding. However, this has been removed from this Bill.

Change: Mandatory requirement for foreign entities making taxable supplies in Malaysia to be registered for GST via appointment of local agent if they exceed registration threshold

With the low registration threshold of MYR 0.5 million per annum, this could potentially be a significant compliance issue for foreign entities making taxable supplies in Malaysia. The previous provision made such registration optional, and not compulsory.

The change would broaden the tax net to cover foreign entities whilst providing consistency in GST treatment for both foreign and local suppliers of goods in particular – watch this space as these rules develop and implementing rules are announced.

New: Free Commercial Zone deemed outside Malaysia for import and supply of goods

Free Commercial Zone (FCZ) is to be treated differently from Free Industrial Zones (FIZ) for the purpose of importation and supply of goods. Whilst FIZ are treated as within Malaysia and hence normal GST rules apply, for FCZ:

- Goods imported into FCZ for approved activities are not subject to GST.
- Goods supplied from FCZ to Malaysia (i.e., principal customs area or PCA) are treated as if imported into Malaysia and GST would be due on the importation.
- Goods supplied or removed from FCZ to a licensed warehouse or vice versa would be suspended from GST.
- Goods supplied within FCZ for approved retail trade activities are not subject to GST, unless prescribed otherwise.

This would, amongst other things, improve the cash flow of companies operating in FCZ, since they would not be required to pay and claim credit of GST on such supplies, which is welcomed news.

Change: Additional restriction for zero-rating non-reviewable contracts

The additional restriction is that the non-reviewable contract must have been entered into not less than two years before the GST effective date of 1 April 2015, i.e., on or before 1 April 2013.

The GST effective date of 1 April 2015 was only announced by the Government on 25 October 2013. Thus, taxpayers who had entered into such contracts between 2 April 2013 and 25 October 2013 would have been caught off-guard.

Comment

The developments change from week to week; there are other amendments, in addition to the above. Also, the GST Bill 2014 may be subject to change in its course through Parliament. Please contact one of the Deloitte Malaysia or Southeast Asia Indirect Tax Team if you have any questions or queries.

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EMEA

Belgium

VAT rate on electricity for residential consumers reduced to 6%

From 1 April 2014, the supply of electricity to residential consumers is subject to the reduced VAT rate of 6%. The impact of the reduced VAT rate from an economic, social and environmental point of view will be evaluated by 1 September 2015 at the latest. On the basis of this evaluation’s outcome, the reduced rate may be continued beyond 1 January 2016.

Only the supply of electricity to residential customers is subject to the reduced VAT rate. This covers physical persons purchasing electricity for their own household use, excluding commercial or professional activities. Physical persons having signed a ’professional’ contract, as well as companies, other legal entities and associations are outside the VAT rate reduction’s scope. The reduced VAT rate is applicable on all elements of the electricity invoice, except for the federal and regional taxes and levies that are not subject to VAT, as they are not considered part of the taxable base for VAT.

In practice, the (yearly) consumption invoice relating to any period that starts before and ends after 1 April 2014 will be split between electricity consumed before and after 1 April 2014, based on standard consumption profiles used in the electricity sector (SLP). Advances invoiced before 1 April 2014 were subjected to the standard VAT rate (21%), whereas advances invoiced from 1 April 2014 are subject to the reduced VAT rate (6%).

Turnover threshold for VAT exemption regime for small businesses increased to EUR 15,000

The Ministry of Finance announced an extension of the VAT exemption regime for small businesses to entities and individuals whose turnover is below EUR 15,000 (VAT exclusive) on a calendar year basis, as compared to the current threshold of EUR 5,580 The change will apply from 1 July 2014.

The VAT exemption regime is an optional regime, meaning that businesses that meet the conditions can still opt for the normal VAT regime.

The turnover calculation takes into account both taxed and exempt turnover, although some types of exempt turnover can be excluded. This exclusion concerns exempt (without credit) turnover based on article 44 § 1 and 2 of the VAT code (medical, social, cultural exemptions, etc.), as well as exempt financial or real estate turnover to the extent it is an ancillary activity of the taxpayer. Certain taxpayers are excluded from the VAT exemption regime, namely foreign taxable persons, VAT groups, businesses active as real estate contractors, hotels, restaurants, and suppliers of recycling and waste materials.

Under the VAT exemption regime, taxpayers keep their VAT number but lose their right to deduct input VAT, and may be forced to revise previously deducted input VAT on investment goods used within their business.

All businesses whose turnover in 2013 did not exceed EUR 15,000 (VAT exclusive) and who wish to remain under the normal VAT regime should inform their VAT office of this option before 1 June 2014. If not, they will be automatically switched to the VAT exemption regime as of 1 July 2014.

New Circular letter on e-invoicing published

The tax authorities have published a Circular letter concerning e-invoicing (Circular AAFisc Nr. 14/2014 dated 4 April 2014).

The Circular comments on the legal framework that applies in Belgium following the implementation of the EU Directive 2010/45/EU into national legislation in 2013. The tax authorities align their guidance to the principles set out in the legislation, namely that the same invoice requirements apply to paper invoices and electronic invoices, and that it is irrelevant in which electronic format an invoice is exchanged (EDIFACT, XML, PDF, Word, Excel, on a web portal, etc.).

For e-invoicing to apply, the recipient of the invoice has to agree to receive the invoice in an electronic format. Although this agreement can be implicit (e.g., by payment of the invoice), the tax authorities recommend an explicit, written agreement.

Apart from elaborating on the conditions that are to be considered when applying e-invoicing, the tax authorities provide extensive recommendations on the ‘business controls’ and ‘reliable audit trail’ that businesses should put in place. Strict technological means, such as EDI and digital signature, are no longer sufficient in this context. The tax authorities place the responsibility of meeting these requirements with the business and will not issue rulings to validate a certain set-up of business controls and/or the certification of accounting or invoicing software. Instead, they recommend that businesses ensure that documentation is maintained regarding any available business controls, which may become an expectation during tax audits.

The Circular applies retrospectively from 1 January 2013, and replaces all previous guidance on this subject.

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Customs Union between Russia, Belarus and Kazakhstan

Modified import customs duty rates applicable to electric cars

The Eurasian Economic Commission Board Resolution No. 98 of 23 December 2013 amends the Unified Nomenclature of Goods of Foreign Economic Activity of the Customs Union and the Unified Customs Tariff of the Customs Union applicable to certain electric-powered motor vehicles (classification codes 8703 90 109 1, 8703 90 109 9). In particular, for the period from 1 February 2014 to 31 December 2015 the import customs duty rate applicable to electric cars is reduced to 0% of the customs value of goods (after 31 December 2015 the import customs duty rate will be 19 %).

This Resolution came into effect on 5 January 2014.

Amended import customs duty rates applicable to certain types of motorized rail cars

The Eurasian Economic Commission Collegium Resolution No. 14 of 5 February 2014 introduces a 0% import customs duty rate in relation to certain types of motorized rail cars (classification code 8603 90 000 1). This rate will remain in effect until 31 July 2014. After this date the import customs duty rate will be 5% of the customs value of the goods.

This Resolution came into effect on 16 February 2014.

Amended import customs duty rates for certain motor vehicles

The Eurasian Economic Commission Board Resolution No. 13 of 4 March 2014 amends the import customs duty rates of the Unified Customs Tariff of the Customs Union in relation to certain types of motor vehicles capable of carrying 10 or more people including the driver; classification codes:

- 8702 10 119 2 – 0% of the customs value of the goods;
- 8702 10 119 3 – 18% of the customs value of the goods.

This Resolution came into effect on 27 April 2014.

Changes to classifiers used to complete customs declarations

EEC Council Resolution No. 27 dated 25 February 2014 made changes to classifiers used to complete customs declarations and approved by Customs Commission Resolution No. 378 dated 20 September 2010.

Changes were made to the following classifiers:

- Classifier on the customs payment concessions (Appendix 7);
- Classifier on the types of documents and data used in customs clearance (Appendix 8);

- Classifier on the type of taxes, charges and other payments collected by the customs authorities (Appendix 9);
- Classifier on the specifics making customs and other payments collected by the customs authorities (Appendix 10);
- Classifier on the methods for securing the payment of customs duties and taxes (Appendix 19);
- Classifier on countries of the world (Appendix 22).

The currency classifier (Appendix 23) has also been reworded.

The Resolution entered into force on 28 March 2014.

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Denmark

CJEU decides that management of defined contribution pension funds should be VAT exempt

The CJEU has delivered its judgment in the Danish case of *ATP PensionService A/S*, which concerned the VAT treatment of the management of defined contribution pension schemes (DC schemes). The Court has followed the Opinion of Advocate-General Cruz Villalón in the case, and concluded that DC schemes have the essential characteristics of other investment vehicles that allow investors who bear the risk of the investment performance and cost of the fund to pool resources and so to spread the exposure across a wider range of investments. It followed that, like other such funds, DC schemes should be treated as ‘special investment funds’ for VAT purposes, meaning that the ‘management’ of them can qualify for exemption under EU law. The decision contains guidance on the types of services that could be exempted.

Businesses that make (or receive) supplies connected with DC schemes will need to consider the impact of this decision on those supplies.

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European Union

European Commission issue Explanatory Notes for 2015 place of supply changes

From 1 January 2015, supplies of telecommunications, broadcasting and electronically supplied services (e-services) made by EU suppliers to private individuals and non-business customers will be taxable in the Member State of the customer. The European Commission have issued **Explanatory Notes** to help businesses prepare for the new VAT rules.

The Notes are not legally binding and only provide practical and informal guidance about how EU law should be understood and applied. The Notes should be read together with the Commission's **guide to the VAT One Stop Shop**. **Deloitte's webpage on the 2015 changes** includes more information, including EU references and further commentary.

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Italy

San Marino excluded from 'black list'

The Official Journal of 24 February 2014 contained a decree dated 12 February 2014 that excludes San Marino from the list of 'black list' countries. (Transactions with economic entities in 'black list' countries must be reported on a monthly or quarterly basis.)

Accordingly, transactions with San Marino economic entities must no longer be reported in the 'black list communication'.

Penalties for not filing the cessation of activity declaration for VAT purposes

The tax authorities issued a Resolution (no. 35/E dated 3 April 2014) indicating the code to be used on the F24 form (used by Italian established companies for payments to the tax authorities) for payment of the penalty for not filing the declaration form for the cessation of activity for VAT purposes.

Electronic invoicing issued to the public administration

The tax authorities issued a Circular (no. 1/DF dated 13 March 2014) providing various clarifications in relation to the (mandatory) obligation to issue electronic invoices to the public administration.

The Circular has clarified that the electronic invoice must quote the public administration code (as listed on the website **www.indicepa.gov.it**) and has provided details regarding the situation where the interchange system is not able to address the e-invoice to the proper public authority.

Moreover the Circular has confirmed that the public administration will still receive and pay paper invoices that are raised before the application of the mandatory e-invoicing provision but received in the following three months.

From 6 June 2014, e-invoicing will be mandatory for invoices issued to Ministries, tax agencies and social security institutions.

Guidelines for preliminary checks on VAT refunds

The tax authorities issued a Circular (no. 5/E dated 10 March 2014) providing guidance to tax offices in order to rationalize preliminary checks on VAT refunds, given the current economic situation and the importance of a timely settlement of credits by public authorities.

It is anticipated that there will be a general standardization and reduction of the documents to be requested from taxpayers, and attention will be focused on taxpayers with higher risk scores.

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Kazakhstan

Temporary ban on export of ferrous waste and scrap

Government Resolution No. 107 dated 19 February 2014 introduced a two-month ban on the export of ferrous waste and scrap (CN FEA CU code 7204), except for steel alloy waste and scrap, including stainless steel (CN FEA CU codes 7204 21 100 0, 7204 21 900 0) and others (CN FEA CU code 7204 29 000 0).

The Resolution entered into force on 20 February 2014.

Amendments and additions to Kazakhstan customs duty rates

Government Resolution No. 1598 dated 31 December 2013 introduced amendments and additions to Government Resolution No. 520 dated 7 June 2010 On Customs Duties in the Republic of Kazakhstan, and also recognized Government Resolutions establishing export customs duty rates on crude oil and goods produced from oil as having lost their force.

The above resolution has reworded the export customs duties and divided them into:

- Goods exported to outside of Kazakhstan;
- Goods exported to countries participating in Free Trade Zone Agreements; and
- Seasonal customs duties.

Government Resolution No. 1036 dated 15 October 2005 On Export Customs Duties for Crude Oil and Goods produced from Oil, and all resolutions that amend and supplement it have been recognized as having lost their force.

The new export customs duties include rates for crude oil and goods processed from oil. It has also been established that an export customs duty rate of USD 400 per tonne will apply to exports of light distillates and products (CN FEA CU code 2710 10) exported from Kazakhstan until 31 December 2014.

The Resolution entered into force on 2 March 2014.

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Luxembourg

Increase in VAT rates

On 14 January 2014, the Minister of Finance announced an increase in the standard and reduced VAT rates, as follows:

- Standard VAT rate of 15% – to increase to 17%;
- Intermediate VAT rate of 12% – to increase to 14%; and
- Reduced VAT rate of 6% – to increase to 8%.

The super-reduced VAT rate of 3% applicable to such products/services as foodstuffs, books, pharmaceuticals, hotels and restaurants is to remain the same.

Furthermore:

- The super-reduced VAT rate of 3% on housing will apply only to the principal residence;
- The standard VAT rate of 17% will apply to rental housing;
- The VAT rate on alcoholic beverages will be harmonized at 17%.

The changes will be effective from 1 January 2015.

The increase in the VAT rates is expected to augment the state budget by EUR 350 million. The increase is also an attempt to mitigate the loss of VAT revenue related to e-commerce, resulting from the change in the B2C place of supply of services principal rule as of 1 January 2015.

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Malta

Changes to Commissioner's powers to allow for reduction of interest charged on non-payment of tax

Following the publication of Legal Notice 107 of 2014 on 28 March 2014, the Minister for Finance has introduced new rules which allow the VAT Department, at its discretion and on the basis of a reasonable excuse, to reduce in part or in full, any interest which has been incurred on tax not paid by the date on which it becomes due.

The VAT Department may impose additional conditions to allow the reduction of such interest. Conditions may include:

- The requirement for no further defaults within a specified period; and
- The requirement to pay the outstanding tax amount within a specified period.

It may be possible to agree a payment plan with the VAT Department in respect of any outstanding tax amounts. Where a payment plan does not exceed two years, interest may be suspended from the date a person enters into such a plan.

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Poland

New regulations concerning VAT deduction for company cars

As covered in previous editions of this newsletter, since 1 April 2014, new regulations apply to VAT deduction on the purchase and expenses related to company cars. In particular, to claim 100% VAT on these expenses it is essential to prove full business use of such vehicles.

The Ministry of Finance recently published a brochure containing clarifications and guidelines for taxpayers in respect of the new law. In light of this document, full business use of company cars should be treated as an exception and taxpayers should be aware that the tax authorities will challenge the 'full business use' approach if any doubts concerning the reliability of business use only declarations arise.

As an example, according to the brochure, if private use is identified at any time, the statutory statement that should be filed to the tax authorities in order to claim full business use will be treated as non-reliable and, therefore, the car will be considered as used for business and private purposes from the time the statement was filed (even if the car was used in fact only for business purposes for a significant period of time). In such case only 50% VAT is recoverable.

It is anticipated that this rigid interpretation may lead to disagreements with the tax authorities and ultimately be considered at administrative court level.

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Portugal

Deadline extended for software certification

Under an Order of the Secretary of State of the Ministry of Finance for tax (dated 28 March 2014), the requirement for a taxpayer to have internally produced invoicing software duly certified by the Portuguese Tax Authorities (PTA) will only apply from 1 July 2014, and not 1 April.

The extension of the deadline is related to the high volume of requests filed by companies to date, but also to the complexity of the analysis that has to be carried out by the PTA.

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Russia

Amendments to VAT Chapter of Russian Tax Code

The Federal Law N 420-FZ "On Amendments to Article 27.5-3 of the Federal Law "On the Securities Market" and the second part of the Tax Code of the Russian Federation" (the Federal Law) amends the VAT Chapter of the Russian Tax Code.

In particular, the Federal Law abolishes the obligation for taxpayers to issue VAT invoices for transactions exempt from VAT. Before the entry into force of the amendments, only certain categories of taxpayers (including banks, insurance companies, private pension funds, etc.) had a right not to issue VAT invoices for transactions exempt from VAT.

The Federal Law also introduces significant amendments to the rules for maintaining separate accounting for VAT purposes for certain categories of taxpayers and in respect of certain transactions. In accordance with the amendments, the proportion used as a basis for the allocation of input VAT on purchased goods (work, services), property rights should be calculated with the following features:

- Upon REPO the sum of interest income accrued by the taxpayer during a current tax period (month) will be calculated;

- When the sale of securities is to be considered, only income from such sales (defined as the difference between the total value of sold securities and the cost of their acquisition and (or) sale, if this difference is positive) is taken into account; and

- Operations on repayment of depositary receipts submitted upon receipt of securities and transfer operations on represented securities upon issuing of depositary receipts certifying the rights represented by securities should not be taken into account.

The Federal Law introduces the definition of 'net income' for the purposes of calculating the proportions in relation to financial instruments of term transactions. In accordance with the amendments, the net income will be recognized as all the positive difference between the income received and not related to the sale of the underlying asset, for all financial instruments of term transactions and all expenses incurred, not related to the implementation of the underlying asset, while the negative difference will not be considered when calculating proportions.

The Federal Law expands the list of taxpayers who are entitled to increase costs for profits tax purposes by the amount of VAT paid to suppliers for purchased goods (work, services). Trade organizers (including exchanges), clearing organizations, professional participants of the securities market, the management companies of investment funds, mutual funds and pension funds will be entitled to this right.

The above amendments entered into force from 1 January 2014, except for the amendments relating to separate accounting for VAT purposes, which will be effective from 1 April 2014.

Establishment of new customs authorities by Federal Customs Service of Russia in Crimea and Sevastopol

Due to the formation of the new constituent territories of Russia, two new customs authorities were established in Crimea and in Sevastopol. The Crimea and Sevastopol customs authorities are directly subordinated to the Federal Customs Service of Russia. The Federal Customs Service of Russia has adopted temporary procedures for carrying out customs operations in relation to goods moved through the customs border of the Customs Union in the region of Crimea and Sevastopol. Further, the Russian Government is considering establishing a special economic zone in the region of Crimea.

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Slovenia

Proposed changes to VAT legislation

On 17 March 2014, a proposal to amend the Value Added Tax Act was published by the Ministry of Finance and submitted for consideration to the Slovene Parliament.

The main objectives of the proposed changes are the implementation of EU Directives 2008/8/EC, 2008/9/EC, 2013/43/EC and 2013/61/EC, and to amend certain provisions regarding the tax base, corrections of calculated VAT and related corrections of input VAT. Other proposed changes include broadening the application of joint and several liability, increases to the VAT rates which were previously implemented by the Republic of Slovenia Budget Implementation Act in 2013, changes related to the special scheme for farmers and penalty provisions. Finally, the proposed changes envisage implementation of a special scheme for foreign taxable persons that engage in the occasional provision of services of the international road transport of passengers.

The main proposed changes are as follows:

Implementation of changes related to the place of supply rules for services of telecommunication, broadcasting and electronic services

As of 1 January 2015, the place of supply of telecommunications, broadcasting and electronic services performed by suppliers established in countries outside EU or in an EU Member State which is not the country of consumption, to end customers, i.e., non-taxable persons (natural persons), will be where the recipient of the service is located.

For supplies of the abovementioned services by suppliers established in countries outside the EU, the main change is the extension of the special scheme for taxable persons not established in Slovenia supplying non-taxable persons – the scheme currently only applies to electronic services and will be extended to also cover telecommunication and broadcasting services.

For supplies of the abovementioned services by suppliers established in EU countries other than Slovenia, this special scheme is being implemented as of 1 January 2015. The special scheme may only be used by taxable persons who do not have a place of business or permanent establishment in Slovenia as the Member State of Consumption.

Furthermore, the optional electronic system ‘Mini One-Stop Shop’ (MOSS) for VAT reporting submissions in this respect will also be introduced.

Adjustment of the tax base, calculated VAT and deductible VAT resulting from compulsory settlement and bankruptcy proceedings

Changes to the current provisions concerning the adjustment of the tax base, calculated VAT and deductible VAT resulting from compulsory settlement and bankruptcy proceedings were proposed to increase transparency and clarity.

The most important change relates to the adjustment of the tax base and the amount of VAT on the basis of a concluded enforcement procedure, as well as adjustments to the tax base and the amount of VAT with respect to receivables, declared in compulsory settlement and bankruptcy proceedings, or in other cases of the termination of the debtor.

The amended provisions will stipulate when a taxable person is able to reduce the amount of VAT and in which cases a reduction of the tax base may also apply.

The implementation of the amendments is intended to ensure that suppliers do not bear the VAT on receivables that remain unpaid.

Also, the amendments will stipulate in more detail the procedure for the adjustment of deductible VAT by debtors. For example, a debtor will be required to submit a special VAT return relating to the adjustment of deductible VAT in the case of bankruptcy proceedings (relating to unpaid receivables of creditors resulting from periods prior to the commencement of the bankruptcy proceedings).

VAT rates

Due to legislation changes in the year 2013, the VAT rates from 1 July 2013 are as follows:

- Standard VAT rate of 22%; and
- Reduced VAT rate of 9.5%.

Currently, discussions are taking place in Slovenia as to whether to increase the VAT rates to 24% and 10%, respectively; however these changes are not yet officially proposed.

Joint and several liability for payment of VAT

Following the EU-wide initiative to combat tax fraud, one of the proposed changes relates to the extension of the joint and several liability of taxable persons. Accordingly, in certain cases, any other person in a supply chain (besides the supplier and the buyer) involved in transactions aimed at avoiding payment of VAT is also liable for payment of VAT related to supplies of goods or services, provided that person is identified for VAT purposes in Slovenia.

Special scheme for farmers

It is proposed that the conditions for the application of the special scheme for farmers will be harmonized with the provisions of the Personal Income Tax Act.

Special scheme for foreign taxable persons occasionally performing services of international road transport of passengers

Due to the long administrative process of the VAT identification procedure and the mandatory monthly submission of VAT returns, a special scheme for foreign taxable persons occasionally performing international transport of passengers by road is proposed.

The proposed special scheme envisages a simplification of the procedures for the calculation and payment of VAT related to the services of international transport of passengers by road carried out in Slovenia by taxable persons established outside of the EU or in another EU Member State, which do not exercise the right to deduct VAT or request the reimbursement of a VAT surplus.

Penalty provisions

The proposed changes amend the penalty provisions for tax offences and the classification of tax offenders. The changes will introduce increased penalties and penalties will be graduated in accordance with the size of the entity (as well as in accordance with the nature of the tax offence, as is currently the case).

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United Kingdom

UK Budget

The UK Budget was announced on 19 March 2014. The main indirect tax announcements were as follows:

- VAT and prompt payment discounts: With effect from 1 May 2014, businesses in the telecommunications and broadcasting sector, where there is no obligation to issue a VAT invoice for supplies will be required to account for VAT on the amounts that they actually receive, rather than always accounting for VAT on the discounted sum when a prompt payment discount is offered. Other businesses that offer prompt payment discounts will also have to pay VAT on the amounts they receive, from 1 April 2015 (unless the tax authorities (HMRC) bring forward the implementation date for revenue protection reasons). The change will bring UK law into line with its EU counterpart and is intended to prevent what HMRC views as a tax loss when prompt payment discounts are not taken up.

- Domestic reverse charge on wholesale supplies of gas and electricity: The UK's 'domestic reverse charge' regime is to be extended to cover wholesale supplies of gas and electricity. The measure is being introduced to counter 'missing trader' frauds and will mean that buyers, rather than suppliers, will be required to account for VAT on wholesale sales of gas and electricity. This will remove the opportunity for fraudsters to charge VAT on supplies and fail to pay it over to the Exchequer. HMRC will be consulting on the effective date for the change, to take account of the time businesses will need to make the necessary IT changes and other preparations for the orderly introduction of the reverse charge.

- Increase in the VAT registration and deregistration thresholds from 1 April 2014: The VAT registration and deregistration thresholds have been increased. With effect from 1 April 2014, the taxable turnover threshold which determines whether a person must be registered for VAT, will be increased from GBP 79,000 to GBP 81,000; the taxable turnover threshold which determines whether a person may apply for deregistration will be increased from GBP 77,000 to GBP 79,000 and the registration and deregistration threshold for relevant acquisitions from other EU Member States will also be increased from GBP 79,000 to GBP 81,000.

- Gambling taxes: A number of changes to various gambling taxes and duties were announced in the Budget. They included a reduction from 20% to 10% in the rate of Bingo Duty, for accounting periods starting on or after 30 June 2014. The Government also announced its intention to create a higher rate of machine games duty at 25% for gaming machines where the charge payable for playing can exceed GBP5. This change will take effect from 1 March 2015. As announced at Budget 2012, the taxation of remote gambling will move to a place of consumption basis. This will take effect from 1 December 2014. In addition, the government will consult shortly on extending the horserace betting levy to offshore bookmakers and on wider levy reforms covering a range of options which are likely to include developing commercial arrangements, and modernizing or replacing the existing levy.
- Air Passenger Duty: As announced in the 2102 Budget, the rate of Air Passenger Duty (APD) will go up in line with RPI from 1 April 2014. However, in what will be seen as a minor victory for campaigners, from 1 April 2015, the current 4 band system for APD will be simplified and the "Band B" rate (currently £67 for travel in the lowest available class on the aircraft and GBP 135 for travel in any other class) will apply to all journeys of more than 2000 miles. The change will bring the APD on other long haul flights into line with that for flights to the USA.

High Court rules that compound interest payable on repayments of overpaid VAT

The High Court has delivered its judgment in the case of *Littlewoods Retail Limited and Ors,* over whether compound interest is the appropriate measure of restitution for taxpayers who have been repaid overpaid VAT. Henderson J decided that "… [t]he end result of my long and twisting journey through the interesting and difficult issues … is that the claims succeed in full."

In his lengthy and careful judgment Henderson J concluded, among other things, that HMRC could not reopen the underlying tax issues, because it would be an abuse of process to permit them to do so, that as a matter of EU law, an adequate indemnity for the loss occasioned to them by the overpayments of VAT requires the payment to the claimants of an amount of interest which is broadly commensurate with the loss of use value of the overpaid tax and, as a matter of English law, the correct approach to quantification of the claims is to ascertain the objective use value of the overpaid tax, which is properly reflected in an award of compound interest.

Both Henderson J and Vos J (who heard part of the case at an earlier stage) seem to recognize the probability of further litigation in it (including the possibility that certain points might require another reference to the CJEU). However, the findings in favor of the taxpayers are undoubtedly good news for the many claimants who are seeking the payment of compound interest on VAT repayments, but the litigation on this topic probably has some way to go.

Court of Appeal judgment in bad debt relief case

The Court of Appeal has rejected British Telecommunication's GBP 62 million claim for VAT bad debt relief (BDR) relating to periods before 1990. It agreed that the 'Old BDR Scheme' which existed before that date was defective, as taxpayers could not claim BDR without proving their debt in an insolvency. However, the Court determined that the eventual withdrawal of the Old BDR Scheme in 1997 should have been foreseen by BT as a ‘prudent and circumspect operator’, even though a claim would have been incompatible with the UK legislation as it stood at the time. Consequently, the withdrawal of the Old BDR Scheme did not infringe BT’s legitimate expectations, and BT’s claim that was made in 2009 should be rejected.

Air Passenger Duty: Ryanair loses ‘connected flights exemption’ case in Court of Appeal

The Court of Appeal has upheld the decision of the Upper Tribunal in an appeal brought by Ryanair Limited over its claim that it was entitled to a refund of over GBP 10 million of Air Passenger Duty on what it argued were ‘connected flights’ that should have benefitted from exemption. Ryanair argued that certain provisions in the APD law that determined whether flights were ‘connected’, and hence exempted from APD should be ignored, since they related to paper tickets that were no longer issued. The Court of Appeal rejected that contention and agreed with HMRC that the provisions should be construed to take account of technological changes since they were drafted, and that this construction of the law meant that Ryanair’s claim failed.

Importers: No adjustment to customs value for third party rebates

The Court of Appeal has dismissed an appeal by Asda Stores Limited in its case about whether rebates received from the manufacturers of hangers sold to clothing manufacturers who supplied them on to Asda with the clothing they produced should be taken into account in the determination of the value of the clothing for Customs Duty purposes.

The First-tier Tribunal decided that the rebates should be taken into account but the Upper Tribunal disagreed. It concluded that “[i]mport duty was … payable on the full amounts Asda paid to the clothing suppliers, without any deduction for the rebates it received from the hanger suppliers.” The Court of Appeal has now (unanimously) endorsed that view.

Indirect Tax Client Survey Results

The results of **Deloitte UK’s second survey of indirect tax professionals** are now available. The findings reflect both the practicalities and the challenges faced by practitioners across a wide range of industries. The majority of respondents had met with HMRC to discuss VAT over the past year, with 80% describing their relationship with HMRC as excellent or good. 65% of respondents reported that VAT had been discussed by the board or senior management in the last year. Compliance and improving systems were respondents’ top priorities.

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