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Global Indirect Tax News

Indirect tax updates from around the world

February 2014

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

Features of this edition include a further update from China on the VAT reform program, guidance from the Singapore tax authorities on the GST treatment of virtual currencies, and a case from France on the CPSE (the French public service contribution on electricity).

From 1 January 2015, supplies of telecommunications, broadcasting and electronically supplied services made by EU suppliers to private individuals and non-business customers will be taxable in the EU Member State of the customer. Deloitte's webpage on the changes, **EU: 2015 Place of Supply Changes**, includes more information, including EU references and further commentary.

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

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Americas

Canada

R&D payments included in dutiable value of imported goods

On 8 January 2014, the Canadian International Trade Tribunal (CITT) made public their decision with respect to *Skechers USA Canada Inc. v. Canada Border Services Agency*.

The case considered whether research and development (R&D) payments made by Skechers USA Canada Inc. to Skechers USA Inc. were made 'in respect of' footwear imported by Skechers Canada and therefore should be included in determining the import price (and customs value) for these imports.

The CITT ruled against Skechers Canada and found that the R&D payments made to its parent, Skechers USA, were indeed in respect of the imported footwear and should be included in determining the value for duty.

Nova Scotia HST rate reduction not expected to take place

The planned reduction in the Nova Scotia Harmonized Sales Tax rate from 15% to 14% on 1 July 2014 is now not expected to take place.

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Asia Pacific

China

New VAT reform rules cover railway transportation, postal services and other sectors

China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued Caishui [2013] No. 106 (Circular 106) on 13 December 2013, replacing the previous VAT reform rule (i.e. Circular 37), effective from 1 January 2014. Although many provisions in Circular 37 remain intact with Circular 106, several important concepts were introduced or adjusted as follows:

1. **New industry sectors and subcategory of services are covered under the VAT reform**

    - Railway transportation and postal services are now within the scope of the VAT reform, subject to the 11% VAT; and

    - A new sub-category of 'pick-up and delivery services' is introduced under the tax category of 'certain modern services – logistics ancillary services', which is subject to the 6% VAT.

2. **Rules affecting some sectors are clarified/adjusted in Circular 106**

    - ***Finance leasing:***

      Under Circular 37, for finance leasing of tangible and movable property provided by qualified taxpayers, the taxable basis is the total proceeds net of certain specified items. With Circular 106, adjustments were made so that certain items can be **excluded** from total proceeds, thus reducing the taxable basis for the calculation of VAT.

- ***International freight forwarding/shipping agency:***

  General VAT payers engaged in international freight forwarding or a shipping agency business are allowed to deduct international transport fees paid to transport service suppliers from the total proceeds in the calculation of their output VAT. This is a reversal of Circular 37 and it is a favorable result and considered preferential.

  The net basis treatment applied to international freight forwarders and shipping agencies before 1 August 2013, but it was removed by Circular 37. This removal resulted in a much higher output VAT for affected enterprises and led to many service charge increases. With Circular 106, the welcome re-introduction of the net basis rule should help to eliminate the adverse impact on the industry and market.

  Circular 106 also allows all international freight forwarding or shipping agency companies to enjoy a VAT-exempt treatment.

- ***Offshore service outsourcing:***

  The VAT exemption applicable to offshore service outsourcing was rolled out to the entire country from 1 January 2014 and the valid period extended from 31 December 2013 to 31 December 2018.

Circular 106 is an important and significant circular due to the range of issues covered and welcomed clarifications. It is suggested that affected businesses review operations and supply chains and assess the impact of the new rules, understand the new rules and proactively apply for beneficial treatment to obtain the benefits of the reform, and seek clarification from the tax authorities regarding the unclear points in the new rules.

VAT administrative rules for postal and railway transportation companies

On 20 January 2014, after the implementation of Caishui [2013] No.106, which included railway transportation and postal services in the VAT reform, the SAT released further guidance regarding the VAT filing method for postal companies (Provisional Administrative Measures of VAT for Postal Companies, Bulletin No. 5) and railway transportation companies (Provisional Administrative Measures of VAT for Railway Transportation Companies, Bulletin No. 6).

Bulletins No. 5 and No. 6 allow designated postal and railway transportation companies to compute and pay VAT on a ‘consolidated basis’ with respect to postal services, and railway transportation and associated logistics ancillary services. Both rules take effect retroactively as from 1 January 2014. In both cases, the designated postal and railway providers are Chinese State Owned Enterprises.

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India

Permission to use trademark treated as license and not as transfer of right to use trademark

The tax authorities took the view that a transaction involving a trademark was the transfer of a right to use that trademark and was accordingly subject to VAT.

The Allahabad High Court observed that the right to use the trademark was granted to a number of different companies at the same time, and nothing could establish that the taxpayer had excluded itself from use of the trademark.

Accordingly, it was held that the permission granted for the use of trademark would only be treated as a license and not as a transfer of the right to use the trademark. Accordingly, the transaction was not subject to VAT.

Clarification of implementation of Supreme Court's decision in *Fiat India Ltd*

To implement the Supreme Court's decision in the case of *Fiat India* that selling cars at a lower price to penetrate the market constitutes extra-commercial consideration for excise duty valuation purposes (and rejecting the transaction value of the cars), the Central Board of Excise and Customs has issued the following clarifications:

- The mere selling of goods below the manufacturing cost and profit cannot be the sole basis for rejecting the transaction value;
- Aspects such as the percentage of loss at which sales take place, the period for which such a loss-making price prevails, the reasons for sales at such a loss-making price, whether the sales are contrary to standard and accepted business practices, and whether such sales lead to erosion of the capital of the company may be considered by the tax authorities to identify cases where the judgment would apply;
- All calculations must be in accordance with the Cost and Accounting Standard – 4 and must be certified by a Chartered or Cost Accountant; and
- For the period prior to the date of the judgment, 29 August 2012, the *Fiat India* decision will not apply if the demand for excise duty has been issued solely on the basis of the *Fiat India* judgment.

Amendment to Maharashtra VAT rules

The Government of Maharashtra has amended the Maharashtra Value Added Tax Rules, 2005 to provide clarity in respect of construction contracts and the construction of flats, dwellings, buildings or premises to tax the transfer of property in goods involved in the execution of works.

The main amendments are as follows:

- To calculate the value of the goods involved in the construction contract, the following amounts are deducted from the total contract value, in the following order:

    - The cost of the land;
    - The amount on which tax is paid by the subcontractor;
    - The amount of tax separately charged by the contractor;
    - The cost of services.
- Where a registered dealer undertakes construction of flats, dwellings, buildings or premises and transfers them under an agreement along with land or an interest underlying the land, then, after making the above deductions, the value of the goods involved in the execution of the construction contract is determined by applying a specified percentage, depending upon the stage at which the purchaser entered into the contract.

The amendment has been made effective from 20 June 2006.

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New Zealand

GST refunds for nonresidents

A special GST registration regime for nonresidents is coming into effect on 1 April 2014. The regime will enable nonresident businesses that do not make taxable supplies in New Zealand to claim GST incurred on goods and services acquired in New Zealand (something that has not been possible previously). Below are the practical points to consider surrounding the registration and refund process.

Summary

In summary, a nonresident business will be able to register with the tax authorities (the Inland Revenue Department) under the special GST registration if:

- The nonresident is not carrying on or intending to carry on taxable activity in New Zealand; and
- The nonresident is registered for consumption tax in its own jurisdiction, or, if their jurisdiction does not have a consumption tax, is carrying on a taxable activity that would render them liable to register for GST in New Zealand if the taxable activity was carried out in New Zealand; and
- The amount of the nonresident's input tax in the first period is likely to be more than NZD 500; and
- The nonresident's taxable activity does not involve the performance of services which are likely to be received in New Zealand by a person who is not registered for GST.

Practical issues

Below are some of the practical points to consider regarding the special GST registration:

- Registration needs to be completed via a paper form which will be available on Inland Revenue's website from 1 April 2014. Additional documents such as passport photos, business numbers and bank account statements will also need to be submitted as part of the registration process.
- The first GST return (which also needs to be completed via a paper form) must be submitted along with the paper registration form available on Inland Revenue's website from 1 April 2014.
- Businesses will have a special code added to their Inland Revenue records so that no correspondence will be sent regarding other tax types.
- Physical copies of tax invoices need to be included when the first GST return is submitted and we understand that Inland Revenue will be performing strict review processes before authorizing a refund.
- When Inland Revenue receives the GST return, it will have 90 working days to issue a refund or request further information.
- When Inland Revenue has accepted the first GST return, businesses will be able to register for myIR (Inland Revenue's online system) and file the GST returns online.
- Businesses are required to file GST returns for each taxable period (i.e. 1, 2 or 6 months), including 'nil' GST returns, otherwise they will risk being deregistered.
- If the business is deregistered it will not be able to re-register for GST for another 5 years.

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Singapore

Guidance on GST and income tax treatment of virtual currencies

On 28 January 2014, the Inland Revenue of Singapore (IRAS) announced its position on the GST and income tax treatment of virtual currencies such as Bitcoins.

For GST, the IRAS consider the sale of virtual currencies to be a supply of services which does not fall within the current exemption from GST for certain financial services. Therefore, the sale or exchange of virtual currencies in Singapore is taxable and subject to the standard-rate of GST (currently 7%). However, the sale or exchange of virtual currencies may qualify for zero-rating if it is considered an international service, i.e., the supply is made under a contract with a person belonging outside of Singapore and there are no direct beneficiaries of the supply belonging in Singapore.

For income tax purposes, the IRAS stated that individuals or businesses who accept virtual currencies such as Bitcoin for payment or as part of their revenue in Singapore are subject to normal income tax rules and should record the sale or purchases based on the open market value of the goods and services. Tax deductions will still be allowed where conditions are met. Where virtual currencies are invested in for the long-term, these may be considered capital in nature and not subject to tax (there are currently no capital gains taxes in Singapore).

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EMEA

European Union

VAT rates around the EU

The European Commission has published the latest version of its **VAT Rates Applied in the Member States of the European Union** publication. It lists the current VAT rates at 13 January 2014, outlines the application of the reduced rates, and provides an overview of historical VAT rates in each Member State.

EU 'cross-border VAT rulings' trial extended

The European Commission has announced that its cross-border VAT rulings trial, which aims to facilitate cross-border VAT rulings for taxpayers on contentious or inconsistent issues is being extended for another year. The 13 Member States that participated from the outset (Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal, Slovenia and the UK) are to be joined by Finland (and it is open to the remaining Member States to join in as well). A 'mid-term' review is to be carried out in June 2014, and if the experiment proves to have been successful, the process may be developed.

EU consultation on 'public interest' VAT exemptions and VAT for public bodies

The period allowed for responses to **the European Commission's consultation document reviewing the existing VAT legislation on public bodies and tax exemptions in the public interest** has been extended to 25 April 2014.

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France

French energy levy

A recent decision from the Court of Justice of the European Union (CJEU) has highlighted a potential opportunity for businesses with operations in France (especially those that consume large amounts of electricity) to claim refunds of CPSE – the French public service contribution on electricity.

CPSE, which represents on average c. 9% of electricity bills, is used to finance, inter alia, part of the cost of wind-powered electricity generation, where distributors have to buy the power produced at a price greater than its market value.

The CJEU decided that the French mechanism for offsetting the additional costs arising from the obligation to purchase the electricity generated by wind turbines falls within the concept of an intervention by the State through State resources, and refused to limit the temporal effect of its judgment.

The case has now returned to the French Conseil d'État, which should apply the CJEU's decision.

Businesses that incur CPSE may wish to protect their position by claiming refunds of the levy.

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Germany

Holiday discounts funded by travel agents do not reduce VAT

The CJEU has decided against the taxpayer in the German case of *Ibero Tours GmbH (agent),* about the treatment of 'discounts' granted by the agent on the price of holidays paid by travellers, when those price reductions were funded by the agent forgoing part of their commission on holiday sales.

Rather unusually, the CJEU did not follow the Advocate-General's opinion in the case. The Advocate-General suggested that the Court should find that, overall, the VAT accounted for should reflect the price actually paid by the traveller. The CJEU decided that the arrangements between the travellers, Ibero as the selling agent, and the tour operator did not involve a reduction in the consideration for either the sale of the holidays by the tour operator to the traveller or the commission to be paid by the tour operator to Ibero as the agent.

The CJEU ruled that the consideration obtained by the tour operator for its travel services is the total price of the travel without reductions. That would not be called into question by the fact that Ibero paid the tour operator a reduced amount only, consisting of the travel price minus the commission owed to Ibero, that reduction being determined simply by offsetting sums due under various headings.

As a consequence, the financing by a travel agent, in the situation of Ibero, of a part of the travel price which, with regard to the final consumer of the travel, takes the form of a price reduction for that travel, affects neither the consideration received by the tour operator for the sale of that travel nor the consideration received by Ibero for its intermediation service.

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Italy

Expo 2015

The supply of goods and services for the official activities of Expo 2015 will be zero-rated (under an agreement between the Italian Republic and the Bureau International des Expositions). Resolution no. 10 of 15 January has provided the form to be used by the Section General Commissioner for the purchase of such zero-rated goods and services.

Use of VAT credit from annual return for non operative companies

During an official press conference, the tax authorities confirmed the restrictions on the use of the VAT credit that results from the annual VAT return of *Società di Comodo* **(**non operative companies).

Companies qualify as non operative companies if their revenues in the previous year are lower than the revenues calculated by applying a specified calculation or if they are 'in systemic loss' (that is, they have reported a fiscal loss for the previous three years), unless a specific exclusion from the regime applies.

The tax authorities have confirmed that if an adjustment is required to the minimum income of non operative companies, the restriction on using the VAT credit still applies; the VAT credit cannot be refunded, set-off against non-VAT debts or sold to third parties.

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Malta

Reduction of late payment interest

From 1 January 2014, the rate of interest on VAT that remains unpaid by the date on which it becomes payable by a VAT-registered person or refundable by the tax authorities has been reduced to 0.54% per month or part thereof. Previously the interest rate was set at 0.75% per month or part thereof.

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Poland

VAT deduction on company cars

As advised in previous versions of this newsletter, Poland has been authorized to derogate from the European provisions concerning input VAT recovery on cars and fuel purchases for the period from 1 January 2014 to 31 December 2018. The draft law to bring this into effect is currently being processed by the parliament, and will most probably come into force as of 1 April 2014.

The new regulations will allow taxpayers to deduct either the full amount or 50% (without any cap) of input VAT on the purchase or importation of passenger cars (with a total weight below 3.5 t), as well as fuel and other related expenses (repairs, the purchase of spare parts, etc.),

depending upon whether the cars are used for business purposes only (full deduction) or for mixed purposes – business and private (50% deduction). Cars considered to be for business use only are cars that have specific features or where the business usage can be confirmed with policies and evidence. The ability to use the car for private purposes is to be considered as mixed usage under the law.

However, until 30 June 2015, input VAT recovery on fuel expenses for cars used for mixed purposes will be restricted. The business usage of cars will allow for full fuel input VAT recovery.

Cars used for mixed purposes as of April 2014 may benefit from the 50% input VAT recovery, even if the PLN 6,000 cap applicable previously was reached.

For company cars leased before 2014 (with respect to which taxpayers were allowed to deduct 60% of the VAT on lease payments (but no more than PLN 6,000 in total)), since 1 January 2014 it is possible to make a full VAT deduction for instalments, provided the car has 'N1 truck certification'. This does not apply to passenger cars without such certification where the 60% VAT deduction (capped at PLN 6,000) has been maintained.

However, according to the draft law's interim provisions, after the abovementioned changes come in force, VAT on lease payments in respect of cars with N1 truck certification will be fully deductible regardless of the usage of the car (mixed or business only). Certain conditions have to be met to ensure a full VAT deduction on such instalments (e.g., registration of the lease contract in the tax office).

Collective correction invoices

The new VAT provisions continue to allow the issuance of collective correction invoices (correction invoices which document the granting of discounts/rebates with respect to all supplies made within a given period to a given contractor).

Such invoices may not include the VAT number of the purchaser, the date of supply, and the name of the goods/services supplied. However, the invoices must include information regarding the period to which the discount refers and, contrary to the 2013 provisions, must include all the invoice numbers and the issue dates of the invoices being corrected.

Consequently, the change makes the issuance of collective invoices more difficult than previously.

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Portugal

Revocation of VAT exemption regime for farmers

Further to the revocation of the VAT exemption regime for farmers, farmers are now required to file a declaration of the commencement of their activities or an amendment declaration mentioning the change to the general VAT regime.

The deadline for filing these declarations without penalty has been extended to 30 April 2014.

Environmental tax reform

The Portuguese Government intends to extend the tax base of environmental taxes, and has appointed a Commission to study and propose tax reform in this area.

This Commission is composed of 10 specialists in the fields of environmental law, environmental economics and green taxes. Afonso Arnaldo, Deloitte Portugal Partner is one of the specialists appointed.

The final conclusions of the Commission are to be delivered to the Government by 15 September 2014.

Portuguese tax authorities announce raffle program

Decree-Law nr. 26-A/2014 dated 17 February has regulated the raffle program that is to be introduced by the Portuguese Government to reward individuals who request invoices including their fiscal number when acquiring goods or services. Any type of goods and services will be eligible for the raffle.

The first raffle will take place in April and will include invoices issued in January. No more than 60 raffles are to be made per year.

This program is intended to target the underground economy and tax evasion by encouraging individuals to request invoices. It will include prizes that amount to EUR 10 million per year (with cars and other prizes).

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United Kingdom

HMRC guidance for tour operators following CJEU cases

The UK tax authorities (HMRC) have published guidance setting out HMRC's position in the wake of the CJEU's decisions in the infringement cases against a number of Member States concerning their implementation of the Tour Operators Margin Scheme. Despite the fact that the outcome of those cases suggested that UK law was inconsistent with its EU counterpart (as the latter has been interpreted by the CJEU), HMRC have decided to take no action to amend UK law for the time being. This decision recognises the fact that the European Commission proposes to review the operation of the Tour Operators Margin Scheme and that it would be extremely disruptive for businesses to be required to make changes now and then potentially to make further changes when the outcome of the Commission's review is known. HMRC proposes to look again at the position in 12 months. The guidance recognises that businesses can take advantage of the ‘direct effect’ of EU law (as it has been interpreted by the CJEU), rather than continuing with the UK's ‘no change in current practice’ approach.

HMRC to claw back gaming machines VAT repayments

HMRC have announced that they will shortly begin sending letters to businesses that received refunds of VAT (and interest) in relation to takings from gaming machines. The claims arose from litigation in the case of the Rank Group PLC. Following the Court of

Appeal's decision in the case (which may be appealed), it had been expected that HMRC would seek repayment of sums paid out earlier. HMRC say that it may take 'several months' before all businesses are contacted.

HMRC consultation on reducing the burden of Intrastat declarations

HMRC have issued a Consultation paper that invites comments on EU proposals to reduce the burden on businesses required to submit Intrastat declarations, and seeks evidence on their impact on businesses and the statistical data made available to users. The Paper also introduces what HMRC consider to be a workable alternative to the EU proposals, and sets out to assess and compare the relative impacts, costs and benefits. HMRC are seeking views from anyone who has an interest in this area, in particular businesses required to submit Intrastat declarations and users of trade data. Responses to the Consultation are sought by 8 April 2014.

HMRC guidance on the 1 January 2015 place of supply changes and MOSS

HMRC have published some further guidance about the 1 January 2015 change to the place of supply of B2C broadcasting, telecommunications and e-services, and the associated 'Mini One-Stop Shop' that is intended to minimise the administration associated with accounting for VAT on such services under the new rules.

VAT recovery on pension fund costs – revised HMRC policy

In the wake of the decision of the CJEU's judgment in the Dutch case *of fiscale eenheid PPG Holdings BV c.s.*, HMRC has now issued Revenue & Customs Brief 06/14, which announces changes to HMRC's policies on the recovery of VAT on pension fund costs. HMRC now accept "…that there are circumstances where employers may be able to claim input tax in relation to pension funds where they could not previously." However, HMRC believe that investment management services are directly linked to the management of the fund's investments and hence cannot be a 'general cost' of the employer (unlike pension administration).

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