In this issue:
Country summaries
Americas
Asia Pacific
EMEA

Related links:
Global Indirect Tax
GITN archive
Indirect tax rates around the world

Contact us:
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Global Indirect Tax News

Indirect tax updates from around the world

July 2013

Message from David Raistrick, Global Indirect Tax Leader

Welcome to the July 2013 edition of GITN.

As usual, this GITN includes updates from the Americas, Asia Pacific and EMEA regions, but we thought it would be useful to provide some wider context to the current news updates.

Much of the attention and focus in the tax world has been on modernization of the international tax system; in particular, there has been a political focus on this issue, including at the G8 and the G20.

In response to the need for co-ordinated reform at the international level, on 19 July, the OECD published its Action Plan on addressing Base Erosion and Profit Sharing (BEPS). The Action Plan sets out 15 areas for further action. What is interesting is that despite all the publicity around corporate tax, indirect tax has managed to feature and this may well have significant implications for the future of VAT as well as corporate tax.

One of the actions is to address the tax challenges of the digital economy. The focus of this action is to identify the main difficulties posed by the digital economy in relation to existing international rules, develop detailed options to address them, and consider indirect tax alongside direct tax issues. One of the issues to be considered under this action is “how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services”. The expected output is a report identifying the issues, together with possible actions to address them. Therefore the report on action 1 may well contain recommendations to countries to amend their domestic VAT/GST rules in the area of cross-border digital sales.

It is worth noting that the review of the VAT/GST treatment of cross-border supplies of digital goods and services reflects actions a number of countries are taking on this issue. For example, as reported in a previous edition of GITN, the U.S. proposals for legislation to make it easier for a state to collect sales and use taxes from sales made by remote sellers and, as reported in this edition, the release of draft legislation in South Africa that would require nonresident suppliers of e-commerce services to South African customers to register for VAT from 1 January 2014. There is also evidence of some support for much more fundamental change to the tax treatment of online versus traditional channels in the business sector – with a number of major retailers in the UK supporting the introduction of special taxes on online retail, for example. We will keep you updated as this debate develops.

Other highlights of this edition include the reintroduction in Greece of the reduced VAT rate of 13% on restaurant services, the supply of takeaway foods and the delivery of prepared packaged meals; the cancellation by the Icelandic parliament of the VAT rate increase for accommodation and hotel services that was to apply from 1 September 2013 (the VAT rate for these services will remain at 7% and not increase to 14%); and the introduction of draft amendments to the Slovak VAT Act aimed at making tax collection more efficient and preventing tax fraud. The Slovakian amendments reflect another recent trend, namely the desire to improve efficiency in tax collection and to deal with the ongoing issue of fraud. Also, the European Commission has published an updated edition of its list of **VAT rates applied in the Member States of the European Union** which is particularly useful at this time, given the number of recent VAT rate changes.

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

Colombia: The VAT exemption extends to raw materials used in the production of certain goods. **More**

United States: Texas has introduced new sales and use tax exemptions and expanded the scope of other exemptions. Connecticut and Louisiana have introduced amnesty programs. **More**

Uruguay: There has been a court ruling on the calculation of the tax base for the Specific Consumption Tax (IMESI). **More**

Asia Pacific

China: Stricter controls have been introduced on the provision of foreign exchange documentation for certain exporters. **More**

India: There have been a number of court rulings and a notification regarding the service tax exemption for services rendered to units or developers in Special Economic Zones. **More**

Taiwan: The VAT treatment of export services can be an issue. **More**

EMEA

Belgium: There have been further simplifications to the import VAT deferral. **More**

Bulgaria: The CJEU has issued a judgment on the application of penalties. **More**

European Union: The European Commission has published an updated edition of its list of VAT rates applied around the EU. **More**

Germany**:** From 1 October 2013, the exemption from the reverse charge mechanism for passenger transport will be extended. **More**

Greece: A new law reintroduces the reduced VAT rate of 13% on restaurant services, the supply of takeaway foods and the delivery of prepared packaged meals. **More**

Iceland: The VAT rate increase for accommodation and hotel services has been cancelled. **More**

Lithuania: There are a number of updates on VAT issues, including official commentary on bad debt relief. **More**

Poland: The CJEU has issued a judgment on the place of supply of storage services. The tax authorities have issued a ruling regarding the insurance of leased goods. **More**

Portugal: There is an update on the communication of transport documents and an amendment to the 2013 Budget Law. **More**

Slovakia: A draft amendment to the VAT law has been issued. **More**

South Africa: From 1 January 2014, nonresident suppliers of e-commerce services to South African customers will be required to register for VAT in South Africa. **More**

Switzerland: The new format Swiss VAT numbers must be used from 1 January 2014. The Supreme Court has ruled on the VAT treatment of online dating services. **More**

United Kingdom: The tax authorities have issued a Brief regarding the VAT treatment of discretionary investment management. The CJEU has delivered its judgment in an “off-shoring” case. **More**

Americas

Colombia

VAT exemption extends to all raw materials used in the production of certain goods

Under Colombian legislation, the raw materials used in the production of drugs, pesticides, insecticides, and fertilizers are exempt from VAT. A recent court judgment has held that the exemption applies to all raw materials used in the production of these items, even if they are not listed in the specific regulation that established the exemption.

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United States

Texas enacts sales and use tax exemptions for technology purchases and expands others

On 14 June 2013, Texas Governor Rick Perry signed a number of House Bills into law. This **Tax Alert** summarizes the sales and use tax exemptions for new technology purchases, as well as a new sales and use tax exemption for offshore oil spill response containment property.

The Tax Alert also provides a brief overview of additional recent revisions to the sales and use tax signed into law this session. These bills collectively contain several new provisions that impact a variety of industries and taxpayers, as well as changes with potential application to a wider range of taxpayers, such as:

- New sales and use tax exemption for research and development activities;
- New sales and use tax exemption for purchases to provide cable television, internet, and telecommunication services;
- New sales and use tax exemption for data centers; and
- New sales and use tax exemption for purchases of offshore oil spill containment property.

Barbara Britt, bbritt@deloitte.com, Partner, Deloitte United States

Connecticut introduces an amnesty program

From 1 July 2013, new law requires the Connecticut Department of Revenue Services to establish a tax amnesty program for persons owing any tax for any taxable period ending on or before 30 November 2012. This tax amnesty program will be conducted in the period from 16 September 2013 to 15 November 2013, inclusive.

If qualifying participants pay their tax and interest due in full on or before 15 November 2013, 75% of the interest due shall be forgiven and any related civil penalties will be waived. Qualifying persons that fail to participate in this amnesty program (i.e., persons owing any tax for a qualifying taxable period for which a tax return was required by law to be filed with the department and for which no return has been previously filed by such persons, and such persons fail to file a timely amnesty application under this program with respect to such taxable period) are subject to a non-waivable penalty equal to 25% of the tax owed for the qualifying taxable period(s).

Taxpayers not eligible to participate in this program include a person:

- Who is a party to any criminal investigation or to any criminal litigation that is pending on 1 July 2013, in any court of the United States or Connecticut,
- Who is a party to a closing agreement with the department,
- Who has made an offer of compromise that has been accepted by the department, or
- Who is a party to a managed audit agreement.

No penalty waiver or reduction of interest granted pursuant to this program shall entitle the person to a refund or credit of any amount previously paid.

Jack Lutz, jacklutz@deloitte.com, Director, Deloitte United States

Louisiana enacts amnesty program

Under the Louisiana Tax Delinquency Amnesty Act of 2013, the Louisiana Department of Revenue (LADOR) must establish a tax amnesty program for a period of at least two months duration occurring prior to 31 December 2013; for a period of at least one month between 1 July 2014 and 31 December 2014; for a period of at least one month between 1 July 2015 and 31 December 2015.

To participate in the amnesty program, eligible taxpayers must apply on forms prescribed by the Secretary of the LADOR and pay all the tax, fees, and costs, if applicable, and any interest due upon filing the amnesty application. Taxpayers that are approved for amnesty during the 2013 amnesty period will receive full penalty abatement and reduced interest (one-half of the interest associated with the tax will be waived). Taxpayers that are approved for amnesty during the 2014 amnesty period will receive a waiver of 15% of all penalties associated with the tax, but no interest abatement. Taxpayers that are approved for amnesty during the 2015 amnesty period will receive a waiver of 10% of all penalties associated with the tax, but no interest abatement.

Following the termination of the tax amnesty period, if the LADOR issues a deficiency assessment for a period for which amnesty was taken, the LADOR has the authority to impose penalties and institute civil proceedings or criminal proceedings, but only with respect to the difference between the amount shown on the amnesty application and the correct amount of tax due. The LADOR may by regulation impose a cost of collection penalty not to exceed 20% of any additional deficiency assessed for any taxable period for which amnesty was taken. This penalty shall be in addition to all other applicable penalties, fees, or costs. The collection penalty may be waived when it is demonstrated that any of the deficiency was not due to negligence, intentional disregard of administrative rules and regulations, or fraud.

No penalty shall be imposed if the deficiency results from an adjustment made by the Internal Revenue Service to the taxpayer's federal income tax and the taxpayer provides written notice of the adjustment to the LADOR within 60 days of receipt of the adjustment from the Internal Revenue Service, or if the taxpayer's application for amnesty was based on a proposed assessment or notice of assessment.

Taxpayers who participate in the amnesty program and later fail to comply with any payment or filing provision administered by the LADOR will be subject to a negligence penalty or a penalty of USD 100, whichever is greater.

The tax amnesty program applies to all taxes administered by the LADOR except motor fuel taxes and penalties for failure to submit information reports that are not based on an underpayment of tax.

The tax amnesty program covers the following taxes:

- Taxes due prior to 1 January 2013, for which the LADOR has issued a proposed assessment, notice of assessment, bill, notice, or demand for payment not later than 31 May 2013;
- Taxes due for taxable periods that began before 1 January 2013; and
- Taxes for which the taxpayer and the LADOR have entered into an agreement to interrupt the running of prescription pursuant to La R.S. 47:1580 and said agreement suspends the running of prescription until 31 December 2013.

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Uruguay

Court ruling on tax base for Specific Consumption Tax

The Specific Consumption Tax (IMESI) is levied at various rates on the first sale made by importers or manufacturers of a certain range of products, including certain alcoholic and non-alcoholic beverages, cosmetics, tobacco, fuel and automobiles. For beverages, IMESI is calculated by applying a specific rate over a tax base, being the higher of the average selling price and a notional amount (a fixed amount per unit sold).

A recent court judgment deals with two aspects of this tax, namely financial discounts and goods supplied without consideration.

The tax authorities have taken the position that only commercial discounts (such as volume discounts) can be taken into account in determining the tax base of IMESI; financial discounts (such as discounts for early payment) could not be taken into account in determining the tax base, as it understands these are not part of the selling price.

A court has now ruled that both commercial and financial discounts should be taken into account in determining the tax base.

The tax authorities' position with respect to goods supplied without consideration was that the tax base is the notional amount, as the selling price is zero. The court ruled in favour of the tax authorities on this issue.

Although the ruling is not being binding on the tax authorities with respect to other taxpayers, it will be relevant for taxpayers seeking to make similar arguments.

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Asia Pacific

China

Stricter controls on provision of foreign exchange documentation for exporters

In June 2012, China's State Administration of Foreign Exchange (SAFE), General Administration of Customs, and State Administration of Taxation (SAT) issued Bulletin 1, and SAT issued Bulletin 24, which had been understood to relax some of the compliance administration by allowing exporters to claim an export VAT refund first, and provide the supporting documents at a later stage (but no later than 30 April of the following year), including foreign exchange collection documents, e.g., bank foreign exchange settlement slips.

However, on 30 June 2013, SAT issued Bulletin 30, which implements a stricter control on the submission of the foreign exchange collection documents for export VAT refund purposes, although the requirements only apply to certain specific exporters.

Bulletin 30 stated that, with effect from 1 August 2013, exporters will not be allowed to claim the export VAT refund until they first submit the foreign exchange collection documents to the tax bureaus if any of the following conditions are met. (The choice of exporters was clearly driven by the compliance ratings provided by various Chinese government departments.)

Affected exporters are:

- Companies with a compliance rating of B or C as classified by SAFE;
- Companies in the list of companies that are closely monitored by SAFE;
- Companies in the list of companies that are closely monitored by the People's Bank of China regarding their cross-border trade in RMB;

- Companies with a compliance rating of C or D as classified by Customs;
- Companies with a compliance rating of D as classified by tax bureaus;
- Companies on which administrative penalties have been imposed by tax bureaus due to specific tax evasion activities;
- Companies on which administrative penalties have been imposed by Customs, SAFE, the People's Bank of China, or the Ministry of Commerce due to their non-compliant activities;
- Companies that provided false reasons for their failure to collect the foreign exchange (on time) to their in-charge tax bureaus; or
- Companies that provided false foreign exchange collection documents to their in-charge tax bureaus.

In addition, with effect from 1 May 2014, if a company's foreign exchange collection ratio for the previous year is lower than 70%, it will not be allowed to claim the export VAT refund until it provides the foreign exchange collection documents.

Bulletin 30 reflects a developing trend whereby the authorities (such as SAFE, tax bureaus, Customs) are focusing more on the compliance qualities of companies from various perspectives. Ultimately, and perhaps correctly, the aim is a closer enforcement of companies that are understood to have weak accounting or have been downgraded due to past errors. Nevertheless, companies can revisit their ratings and explore opportunities to seek an upgrade. Upgrades can be achieved by, e.g.:

- Health checks on import/ export businesses, with a review to identify the potential non-compliant risks and provide workable ways for improvement;
- Preparation/ review of application packages for a higher compliance rating;
- Where possible, optimizing the supply chain to help raise the efficiency of foreign exchange collection processes.

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India

Royalty for license fee for use of trademark not subject to VAT

The Division Bench of Kerala High Court has reversed the Single Judge decision and held that franchise services are liable to service tax and not VAT.

The taxpayer had entered into a franchise agreement granting the use of a trademark to the franchisees and had paid service tax on the same. The tax authorities sought to levy VAT on the royalty received by the taxpayer, on the basis that it was consideration for the transfer of the right to use the trademark.

The Division Bench of the High Court reviewed the terms of agreement and observed that the arrangement was only a license to use the trademark. Further, the right to transfer the trademark to other persons remained with the transferor. The Court also observed that effective control of the use of the trademark remained with the taxpayer throughout the term of the agreement.

Based on these findings, the High Court held that the franchise agreement was not subject to VAT.

Service tax cannot be levied on restaurants and hotels

The Kerala High Court has ruled that the levy of service tax on restaurants and hotels is beyond the legislative competence of the parliament.

The High Court observed the following:

- The levy of tax on the supply of food or other articles for human consumption is within the legislative powers of state governments and hence the parliament cannot impose (service) tax on the same.

- The levy of taxes on “luxuries” is within the legislative powers of state governments, and the state of Kerala has enacted the Kerala Tax on Luxuries Act by exercising its power. Given this, the amendment by parliament to impose service tax on services provided by hotels, inns, guest houses, etc. encroaches upon the legislative function of the states.

The Court further held that any payment of service tax by the petitioners before the High Court in respect of these services can be claimed as a refund.

Order for provisional attachment of property not appealable

The properties of a taxpayer, on whom a notice for recovery of service tax is served, can be provisionally attached. Such powers can be exercised by a Central Excise officer in order to safeguard the interest of the revenue.

The Customs, Excise and Service Tax Appellate Tribunal recently dismissed an appeal against an order for the provisional attachment of property, holding that the order for the provisional attachment is not appealable.

Service tax exemption for services rendered to units or developers in SEZs

The central Government has issued a notification to exempt from service tax services rendered to a unit or a developer in a Special Economic Zone (SEZ).

The exemption can be claimed as follows:

- *Ab initio* exemption: the service tax exemption applies where the services are used exclusively for authorized operations. This exemption is subject to compliance with prescribed conditions and procedures.

- A refund of service tax paid is available with respect to services that are not exclusively used for authorized operations or services on which *ab initio* exemption is available but not claimed.

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Taiwan

VAT treatment of export services

In the course of compliance reviews, the tax authorities in Taiwan have recently been focusing on the VAT treatment of exported services and the application of the zero rate.

The zero rate of VAT applies to:

- Services relating to exports;
- Services provided in Taiwan but used outside Taiwan.

In practice, most multinational companies in Taiwan provide research and development or marketing and sales services to companies outside Taiwan, and charge a service fee based on costs plus a certain percentage mark up.

There are instances of Taiwanese companies supplying services to foreign companies and applying the standard 5% VAT rate, when zero-rating could apply for services used outside Taiwan. In these scenarios, the service provider could apply for a refund of the overpaid VAT within five years of the date of payment.

Conversely, there are instances of Taiwanese companies supplying services to foreign companies and incorrectly zero-rating the supply of services for the services used in Taiwan, risking the imposition of a penalty of up to five times the unpaid VAT.

Companies should therefore consider reviewing the VAT treatment of export services to clarify the nature of the services and which VAT rate should apply.

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EMEA

Belgium

Further simplifications for license to defer payment of import VAT

In Belgium, businesses are allowed to request a license to defer the payment of import VAT to the VAT return, in which case, the import VAT is declared as payable VAT and as deductible VAT at the same time, avoiding any requirement to pre-finance the import VAT.

Last year, the Belgian VAT authorities abolished for taxpayers the requirement to pay a deposit of 1/24th of the import VAT to obtain the license.

Since early July 2013, the license also can be requested on behalf of nonresident businesses that are registered for VAT in Belgium under a special "globalized" VAT number (BE796.5). This number is mostly used by customs agents for businesses that only import goods into Belgium to supply the goods onwards. The license can also be requested for "occasional" imports.

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Bulgaria

100% penalty for belated VAT adjustment permitted by EU law?

The Court of Justice of the European Union (CJEU) has gone straight to judgment in the Bulgarian case of *RODOPI-M 91 OOD.* The case concerned a 100% penalty imposed because the taxpayer made a VAT adjustment in December 2010, rather than on its October 2010 VAT return, as required by Bulgarian law.

The CJEU decided that EU law does not preclude the possibility of such a penalty but that "[i]t is for the national court to determine … whether in the light of the circumstances … – in particular the period within which the irregularity was rectified, the seriousness of that irregularity, and the presence of any evasion or any circumvention of the applicable legislation … – the amount of the penalty imposed goes beyond what is necessary to attain the objectives of ensuring the correct collection of tax and preventing evasion".

Georgi Sarakostov, gsarakostov@deloittece.com, Associate Partner, Deloitte Bulgaria

European Union

VAT rates around the EU

The European Commission has published an updated edition of **its list of VAT rates applied around the EU**. The list provides a snapshot of rates (including reduced, super-reduced and zero-rates) in force in each Member State at 1 July 2013. It also provides details of the geographical rates (e.g., the special VAT rates that Portugal applies in the Azores and Madeira) and the history of rates applied in each Member State.

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Germany

Exemption from reverse charge for passenger transport by nonresident companies

From 1 October 2013, the exemption from the reverse charge mechanism for passenger transport will cover not only transport by taxi but also passenger transport services carried out by any motorized land vehicle with a capacity exceeding 48 cu. cm. or a power exceeding 7.2 kilowatts (e.g., passenger cars, trucks, buses).

This amendment will affect nonresident companies providing other companies with passenger transport services in Germany using such vehicles. The nonresident suppliers will become liable for German VAT with regard to these services, i.e., a registration for VAT purposes in Germany will be required.

However, the amendment will also affect companies receiving these services and currently accounting for VAT under the reverse charge scheme. They will no longer be required to do so, but will be charged with German VAT instead. These companies may have to deregister for German VAT if they are registered solely with regard to these transport services, in which case, the German input VAT incurred will have to be claimed back by filing VAT refund claims with the German Federal Tax Office.

The exemption from the reverse charge mechanism remains unchanged for passenger transport services on buses that are not licensed in Germany and that undertake (non-frequent) cross-border traffic to non-EU countries (Beförderungseinzelbesteuerung).

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Greece

Reduced VAT rate reintroduced on restaurant services, takeaway foods and packaged meals

A new law issued on 27 July 2013 reintroduces the reduced VAT rate of 13% on restaurant services, the supply of takeaway foods and the delivery of prepared packaged meals.

The new rate applies on a temporary basis from 1 August 2013 through 31 December 2013.

A Ministerial Circular (POL 1189) issued on 29 July 2013 sets out the application of the various VAT rates as follows:

- The 13% rate applies to cafeterias, pastry shops, restaurants, taverns and similar establishments that supply restaurant services. The supply of goods and non-alcoholic beverages (such as water and soft drinks), along with the relevant supporting services necessary for the onsite consumption of food on the premises of the said enterprises (e.g., the supply of utensils or equipment, the serving of clients or the provision of cleaning services) are considered restaurant services that fall within the scope of the reduced VAT rate.

- All services provided by night clubs and the sale of alcoholic beverages by any type of business are subject to the standard VAT rate of 23%.
- The supply of food and non-alcoholic beverages by catering enterprises (along with the corresponding utensils, equipment or personnel) is subject to the reduced rate because a service element is involved, even though the food is actually consumed at the place the customer indicates.
- The supply of ready-made meals as a "package" from restaurants, taverns, pizzerias, fast food establishments, cafeterias and similar enterprises for consumption off premises is subject to the reduced rate of 13%, regardless of whether the customer picks up the package (take away) or it is delivered to him.
- The supply of non-alcoholic beverages (e.g., fruit juices, drinks, etc. other than natural or mineral, but not sparkling, water) for consumption off the premises of the relevant business remains subject to the standard VAT rate of 23% as a sale of goods.
- Packaged food products remain subject to the reduced rate and alcoholic beverages subject to the standard rate.
- Catering services provided by hotels and similar types of establishments either within a restaurant or as room service are subject to the reduced rate of 13%. The supply of food items from minibars located in hotel rooms remain subject to the relevant rate (i.e., the standard rate for alcoholic and non-alcoholic beverages other than natural or mineral, but not sparkling, water).
- Where a hotel provides several services that fall within the scope of different VAT rates (e.g., accommodation 6.5%, food 13%) for a fixed single fee, a specific percentage of the total price paid by the customer will be treated as catering subject to a reduced rate, as follows: bed and breakfast, 5%; half board, 15%; full board, 25%; all inclusive, 25%, unless it is possible to make a precise allocation of the price of the relevant services offered to the customer.

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Iceland

VAT rate increase for accommodation and hotel services cancelled

On 25 June 2013, the parliament approved amendments to the VAT Act to cancel formerly approved changes to the VAT Act that would have increased the VAT rate for the leasing of accommodation, hotel rooms, and other accommodation services from 7% to 14% from 1 September 2013.

Following the amendment, the VAT rate for the leasing of accommodation, hotel rooms, and other accommodation services remains at 7%.

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Lithuania

VAT deduction related to the construction of solar power plants

Construction of a number of solar power plants has been terminated due to recent changes in legislation (changes to the Energy from Renewable Sources Law and other legislation) and the economic environment (such as the reduction of the purchase price of energy).

Accordingly, a number of VAT taxpayers have asked the Lithuanian tax authorities whether the VAT deduction in respect of goods and services related to the construction of solar power plants must be adjusted.

On 5 June 2013 the Lithuanian tax authorities issued a Note stating that the abovementioned changes constitute objective reasons not depending upon the taxpayer (i.e., a constructor of the solar power plant). Therefore, where the construction of a solar power plant has been terminated due to these objective reasons, there is no requirement to adjust the VAT deduction for the goods and services intended for the design and/or construction of the solar power plant.

Registration and deregistration of natural persons from the taxpayers' register

An Order has amended the rules on the registration and deregistration of natural persons to/from the taxpayers' register and approved a new application form REG812.

The new rules apply from 27 June 2013 and replace the previous ones, which separately regulated the procedure for the registration and deregistration of Lithuanian tax residents and of non-Lithuanian tax residents to/from the taxpayers' register. The new application form replaces the formerly valid forms FR0792 (for Lithuanian tax residents) and REG807 (for non-Lithuanian tax residents).

The new rules and the new application form REG812 apply in respect of all natural persons (both Lithuanian and non-Lithuanian residents) engaged in individual or other activities in Lithuania.

More favorable VAT refund rules for the Embassy of the People's Republic of China in Lithuania

New rules apply from 1 July 2013 in respect of the refund of VAT and excise duties to diplomatic missions and/or consular posts of specified foreign countries.

This amendment has established more favorable rules for VAT refunds for the embassy of the People's Republic of China in Lithuania and its diplomatic, administrative and technical staff and their family members residing together (provided these persons are not citizens of the Republic of Lithuania and their permanent place of residence is not in the Republic of Lithuania) in respect of the purchase of all goods and services (excluding food, processed tobacco, ethyl alcohol and alcohol) purchased in Lithuania. VAT is refunded in respect of goods and services where the price has been paid based on VAT invoices, where the price of the goods or services indicated (including VAT) is not less than LTL 400 (generally this threshold is LTL 800).

Bad debt relief

On 25 April 2013 the Lithuanian tax authorities issued an official commentary on Article 89 (1) of the Lithuanian VAT Law, which establishes bad debt relief. The newly prepared commentary explains, inter alia, that:

- VAT relief can apply where a supplier/customer is a foreign person; and
- The supplier of goods/services is not required to obtain (and keep) confirmation of receipt by the customer of a free-form document regarding the treatment of the debt as bad debt for VAT purposes.

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Poland

CJEU judgment on place of supply of storage services

In the Polish case of *RR Donnelley Global Turnkey Solutions Poland*, the CJEU has followed A-G Kokott's opinion in the case and confirmed that supplies of storage are not "real estate related" services unless the recipient of the supply is hiring a designated space in the warehouse. In its judgment, the CJEU concluded that the supply of logistics type services made by the company (a complex supply consisting of "... admission of the goods to a warehouse, placing them on the appropriate storage shelves, storing those goods, packaging the goods for customers and issuing, unloading and loading the goods ...") comprised a single supply for VAT purposes and that its predominant component was the storage of the goods. It recognised, however, that in some cases, where the company provided a repackaging service, that would constitute an end in itself for the relevant customer, it would constitute a separate supply. As a result unless the customer is provided with some kind of right to occupy part of the premises, the place of supply of such "storage" activities still be where the business customer is established, and not the location of the warehouse.

In practice, the CJEU judgment raises doubts regarding the VAT treatment of storage services, given the treatment depends on the specific storage contract and the rights granted to the recipient. Accordingly, businesses supplying/purchasing storage services in Poland should examine their approach regarding the VAT treatment of these services and identify any risks in their approach with a view to mitigating these risks.

Insurance of leased goods

As forecast in the previous edition of GITN, the Polish Ministry of Finance has issued a general tax ruling in relation to the Polish case of *BGŻ Leasing sp. z o.o.*, which is binding for all taxpayers.

According to this ruling, the lease and the insurance of goods should be regarded as distinct and independent supplies, and the recharge of the exact cost of the insurance provided with a supply of leased goods should be exempt from VAT.

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Portugal

Obligation to communicate transport documents

Since 1 July 2013 it has been mandatory to communicate transport documents to the tax authorities before the transport commences. The Portuguese Tax Authorities (PTA) have now advised that until 15 October 2013 penalties will not be imposed if these documents are not communicated, provided they are communicated by 15 October.

PTA have published on their website FAQs concerning this issue, confirming that entities that are only registered for VAT purposes in Portugal (with no permanent establishment in Portugal) do not have to comply with this communication obligation, see **http://info.portaldasfinancas.gov.pt/pt/faturas/m_doctransp.html**.

Amendment to the 2013 Budget Law

An amending State Budget Law for 2013 was published on 24 July. The most relevant changes are as follows:

- The Portuguese VAT code obligation regarding invoicing can now be complied with by way of any kind of document by legal persons governed by public law, non-profit organisations, or private charity institutions regarding VAT exempted without credit transactions; and
- Simplified invoices for operations with no VAT must now disclose the grounds for the non-application of VAT.

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Slovakia

Draft amendment to VAT Act

A new draft amendment introduces measures aimed at assisting the legislator to make the process of tax collection more efficient and preventing tax fraud. The measures will apply from 1 January 2014.

The draft amendment focuses mainly on measures to systematically combat tax evasion and introduces numerous measures regarding registration/deregistration, VAT reporting, tax base correction, etc.

One of the changes that will have the most impact on taxpayers is the introduction of an obligation to submit a “control statement” with a VAT return. The control statement is to include data on the taxpayer’s VAT liabilities and the deductions claimed by the taxpayer for the relevant VAT period (especially the VAT ID, invoice number, VAT amount, tax base). The control statement should include all transactions, except transactions the taxpayer is required to include in the EC Sales List and transactions related to the export of goods to third countries. The control statement is to be submitted electronically.

The amendment will also harmonize reporting time limits, by extending the time limit for electronic submission of the ESL to the same due date as the VAT return, i.e., within 25 days of the end of the reporting period.

The draft VAT Act amendment also postpones the application of import VAT self-assessment to 1 January 2016.

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South Africa

VAT registration of e-commerce suppliers

Under legislation released in draft for comment, from 1 January 2014, nonresident suppliers of e-commerce services to South African customers will be required to register for VAT in South Africa (there will be no monetary thresholds for VAT registration). Currently, nonresident suppliers of e-commerce are not required to register. Examples of where this will apply are:

- Music
- Movies
- E-books, e-magazines and e-comics
- Applications
- Games
- Betting sites
- Programmes
- Any downloadable content.

As the location of the e-commerce customers is often unknown, a customer will be deemed to be located in South Africa where:

- Payment is made from a South African Bank; or
- The customer is resident in South Africa.

Non-compliance with these new rules can result in exposure to the VAT, interest, and penalties on the non-declaration of VAT. Understatement penalties in South Africa have recently been revised and can be extremely costly.

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Switzerland

"New" format Swiss VAT number to be used from 1 January 2014

The preliminary period for the introduction of the Business Identification Number in Switzerland allowed for use of both the "old" format VAT number (the six digit, Swiss VAT number: 123 456) and the "new" format Swiss VAT number (CHE-123.456.789 MWST). The preliminary period finishes on 31 December 2013 and with effect from 1 January 2014, all VAT registered entities in Switzerland must use the "new" format VAT number – CHE-123.456.789 MWST. This applies not only to correspondence with the Swiss Federal Tax Administration, but also to all commercial transactions, invoices, agreements, etc.

The Swiss VAT numbers can be checked through the following website of Swiss Statistics: **https://www.uid.admin.ch/Search.aspx?lang=en**.

As the deadline approaches, systems changes and secure processes should be implemented to ensure that the new Swiss VAT number is not mistaken for the VAT number of an EU Member State.

Decision of the Swiss Federal Supreme Court regarding the VAT classification of online dating services

A recent decision of the Swiss Federal Supreme Court (SFSC) of 20 May 2013 has confirmed that online dating services provided by a foreign domiciled entity (in the case at hand, by an entity domiciled in the USA) have a place of supply in Switzerland if such services are provided to Swiss domiciled persons.

The SFSC had to consider arguments as to whether online dating services are rendered directly in the physical presence of individuals, in which case the place of supply would be deemed to be the place at which the person rendering the service has its place of business. This interpretation was rejected by the SFSC, as the services in question are rendered exclusively via the internet and therefore do not require any meeting between the supplier and the customer.

The SFSC concluded that the online dating services are "telecommunication and electronic" services for VAT purposes. As the complainant (i.e., the US domiciled entity) is rendering the telecommunication/electronic services to Swiss domiciled non-taxable recipients (B2C) the exemption from Swiss VAT registration does not apply. (All non-Swiss providers of "telecommunication and electronic" services to non-taxable recipients must register for Swiss VAT if annual turnover exceeds CHF 100,000.)

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United Kingdom

Change in VAT treatment of discretionary investment management from 1 December 2013?

The UK tax authorities (HMRC) have issued **a Brief** announcing that, following the CJEU's decision in the case of *Deutsche Bank AG*, the VAT treatment of some "execution/transaction" charges (for effecting the purchase and sale of securities) within a portfolio management arrangement will change with effect from 1 December 2013. HMRC agree that some separate "execution/transaction" charges within a portfolio management service can still be treated as VAT exempt – provided that they are charged strictly on a transaction-by-transaction basis (as opposed to a flat fee basis, or as a percent of assets under management), they are contracted for on that basis and they are separately identified in any VAT invoice.

CJEU rules that contract terms may not define nature and recipient of supplies

The CJEU has delivered its judgment in the "off-shoring" case of *Paul Newey T/A Ocean Finance*. The First-tier Tribunal allowed Ocean Finance's appeal against an assessment for almost GBP11 million, which stemmed from a VAT driven structure involving a Jersey company. HMRC's technical case was that the appellant (and not the Jersey company) made supplies of loan broking, as happened before the Jersey structure was implemented, and received (in the UK) supplies of advertising, which were subject to reverse charge VAT. Having rejected that contention, the First-tier Tribunal went on to reject HMRC's "abuse" challenge as well.

On appeal, the Upper Tribunal referred questions to the CJEU and the Court has now confirmed that the terms of a contract do not necessarily determine the commercial and economic reality of a supply, and that contracts put into place with the sole purpose of obtaining a VAT advantage can be disregarded. It is likely that the Upper Tribunal will now hear argument on whether the First-tier Tribunal's conclusions should be overturned, in the light of the CJEU judgment.

It is essential that taxpayers consider carefully the VAT implications of any new and existing business arrangements involving an offshore structure. It is also important for those trading with businesses located offshore to review their own VAT arrangements.

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