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## Global Indirect Tax News

### Your reference for indirect tax and global trade matters

June 2014



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

Features of this edition include an announcement on the introduction of VAT in the Bahamas, formal implementation of mutual recognition of Authorized Economic Operator status by Mainland China Customs and Hong Kong Customs at land ports, reports from the European Commission on the taxation of the digital economy and VAT on small B2C imports, a CJEU decision that Portugal's Tribunal Arbitral Tributário – CAAD can refer questions to the Court, and the introduction of a reverse charge on wholesale gas and power supplies in the UK.

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



### The Bahamas

#### Introduction of VAT

As reported in previous editions of this newsletter, the Bahamas is to introduce a VAT system as part of a broader tax reform.

The Government budget in May clarified that VAT will come into effect on 1 January 2015, at the rate of 7.5%.

**Mark Munnings, [mmunnings@deloitte.com](mailto:mmunnings@deloitte.com), Partner, Deloitte The Bahamas**

### Mexico

#### Publication of list of companies granted VAT and excise tax certification

On 19 June 2014, the Ministry of Finance published on its official webpage a list of 86 companies that have been granted VAT and excise tax certification and that will consequently be granted VAT and excise tax credit for their temporary imports from 1 January 2015.

The breakdown of companies by rating is as follows:

- 38 companies with an AAA rating;
- 4 companies with an AA rating; and
- 44 companies with an A rating.

#### Eleventh modification to the Foreign Trade Rules

On 30 May 2014, the Ministry of Finance published in the Mexican Official Gazette, the eleventh modification to the Foreign Trade Rules, which includes the following modifications:

- Elimination of the requirement to present duly apostilled documents when requesting a monetary refund for the loss of merchandise by the customs authorities.
- Elimination of specific fees for the temporary importation of boats, motor homes and vehicles.

- The rule granting customs processing fee exemption for certain foreign trade agreements was changed to eliminate the reference to the Mexico-North Triangle Agreement (Honduras, El Salvador and Guatemala), as the Agreement has been substituted by the Mexican-Central America Agreement.

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## **United States**

### **Revisions to Category XV of ITAR (Spacecraft and Related Articles) expected to ease controls for satellite industry**

On 13 May 2014, the U.S. Department of State (Department) published an interim final rule, amending the International Traffic in Arms Regulations (ITAR) to revise Category XV (Spacecraft and Related Articles) of the U.S. Munitions List (the Rule). The changes are pursuant to the President's Export Control Reform effort and are aimed at "increase[ing] the competitiveness of cutting-edge, well-paying U.S. manufacturing and technology sectors by better aligning [U.S.] export controls with national security priorities."

The Rule will be effective from 10 November 2014, except for changes to ITAR § 121.1, Categories XV (d) and (e), which will be effective 27 June 2014.

The Department only found it appropriate to move three types of items to the Commerce Control List under the Export Administration Regulations. These three items include (i) communication satellites that do not contain classified components or capability; (ii) remote sensing satellites with performance parameters below certain thresholds; and (iii) systems, subsystems, parts and components associated with these satellites and with performance parameters below certain thresholds. Other spacecraft that have commercial end-use continue to be controlled under the ITAR.

According to the Commercial Spaceflight Federation (CSF) and the Satellite Industry Association (SIA), while U.S. industry seems to welcome these changes as an opportunity to compete in the international market, concerns remain regarding the commercial spacecraft that continue to be subject to ITAR control. For example, commercial suborbital, orbital and planetary spacecraft are entering the market as civilian platforms for human exploration, science, education, and tourism, according to the CSF. CSF and SIA have stated that they will use the momentum provided by this Rule to drive more aggressive reform and other industry groups will likely follow suit.

### **U.S. wins WTO case against China over duties on U.S. automobiles**

On 23 May 2014, the World Trade Organization (WTO) issued its report regarding Chinese anti-dumping and countervailing duties on certain automobiles from the United States (Report).

The Report concluded that China's imposition of anti-dumping and countervailing duties on American-made cars and sport-utility vehicles breached numerous international trade rules. China subsequently announced the termination of the anti-dumping and countervailing duties on American-made cars and SUVs.

The WTO found that China breached its WTO obligations based on what it characterized as China's Ministry of Commerce's substantive, as well as procedural, failings. This is the third time the U.S. has prevailed against Chinese tariffs at the WTO.

**Helen Cousineau, [hcousineau@deloitte.com](mailto:hcousineau@deloitte.com), Director, Deloitte United States**

## Asia Pacific



### **Association of Southeast Asian Nations (ASEAN)**

#### **Abolishment of FOB value in ATIGA Form D and AKFTA Form AK**

With effect from 1 June 2014, ASEAN Member States (except Cambodia and Myanmar – there is a two year grace period for Cambodia and Myanmar to adopt the changes) will remove the requirement to state the FOB value in Box 9 of the ASEAN Trade in Goods Agreement (ATIGA) Form D and the ASEAN-Korea FTA (AKFTA) Form AK when the origin status is determined under the following criteria:

- Wholly Obtained
- Change in Tariff Classification
- Process Rule or
- Specific Processes.

Consequently, there is only a requirement to indicate the FOB value of the imported goods in Box 9, where the Regional Value Content (RVC) criterion was applied in the origin determination.

All other requirements for the ATIGA Form D and AKFTA Form AK remain unchanged. The FOB value of the product is still required to be declared in the export declaration regardless of the origin criterion used.

**Bob Fletcher, [bobfletcher@deloitte.com](mailto:bobfletcher@deloitte.com), Director, Deloitte Singapore**

## China

### **VAT rate on importation of airplanes by leasing enterprises**

According to Caiguanshui 2014 No. 16 released on 13 May 2014, certain airplanes (weighing over 25 tons when unloaded) imported under normal trade by leasing enterprises for the use of domestic airline companies from 1 January 2014 will enjoy a reduced import VAT rate of 5%, on application.

For those aforementioned airplanes imported after 1 January 2014 which were subject to 17% import VAT rate, the amount of VAT paid exceeding the VAT payable under the 5% VAT rate can be refunded, provided the corresponding input VAT has not been deducted. Supporting documents are required when a leasing company applies for the refund.

In addition, the aforementioned airplanes imported by leasing enterprises located in Customs special supervision areas are subject to import VAT at the reduced rate of 5%, instead of bonded treatment, if they are purchased and imported for the use of domestic airline companies, and will not physically enter into Customs special supervision areas.

### **Provisional measures to collect and administer VAT for telecommunications enterprises**

Further to Circular 43 (discussed in the May 2014 edition of this newsletter), which stipulated that telecommunications services are included within the scope of the VAT reform, the State Administration of Taxation (SAT) issued Bulletin 26 on 14 May 2014, providing guidance for telecommunication enterprises to compute and pay VAT on a 'consolidated basis' with respect to their VATable services included in the VAT reform.

Bulletin 26 takes effect from 1 June 2014. The highlights are:

- 'Telecommunication enterprises' refer to the subordinate companies of China Telecom, China Mobile, and China Unicom, which provide telecommunication services; and
- Computation of VAT payable on a 'consolidated basis':
  - Branch offices should compute and file VAT to their in-charge tax authorities monthly. The input VAT is not deductible for the branch offices. The calculation formula is:

$$\text{VAT payable} = (\text{Sales revenue} + \text{Advance Received}) \times \text{Provisional VAT rate}$$

'Advance received' refers to the advance received amount by selling prepaid phone cards and telephone advance payments, etc.

The provisional VAT rate is expected to be further clarified.

- The head office should compute and file VAT to its in-charge tax authority quarterly after deducting the deductible input VAT of the branch offices. The remaining input VAT (if any) can be carried forward to the following period for deduction. The calculation formulas are:

$$\text{VAT payable} = \text{Consolidated output VAT} - \text{Consolidated deductible input VAT}$$

$$\text{VAT liability/refundable} = \text{VAT payable} - \text{VAT paid by branch offices}$$

### **Formal implementation of mutual recognition of AEO at land ports**

According to the Bulletin of the General Administration of Customs 2014 No. 38 released on 14 May 2014, Mainland China Customs and Hong Kong Customs will mutually recognize Authorized Economic Operators (AEOs) from 18 May 2014 on a phase by phase basis.

AEOs are 'Recognized Business Operators in Hong Kong' by Hong Kong Customs and 'Customs compliance rating AA company' approved by PRC Customs.

A number of customs clearance preferential treatments will be provided, such as a lowered inspection rate, simplified document review, faster clearance, and designated customs officials to facilitate import/export, etc.

The land ports that are involved in this mutual-recognition include Huanggang Port, Wenjindu Port, Shatoujiao Port and Shenzhen Bay Port.

**Sarah Chin, sachin@deloitte.com.hk, Principal, Deloitte Hong Kong**

## **Japan**

### **Japanese Consumption Tax for non-residents**

From October 2014, the scope of items that can be purchased free of Japanese Consumption Tax (JCT) by non-residents of Japan will be expanded to cover all items, including consumable goods.

Currently non-residents are only allowed JCT-free treatment for the purchase of non-consumable goods of more than JPY 10,000 in a single day. As part of the ongoing initiatives to lure more foreign visitors to Japan, the Ministry of Economy, Trade and Industry and the Japan Tourism Agency jointly proposed to enhance the JCT-free shopping scheme to make it more beneficial and convenient for foreign tourists.

This measure was included in the 2014 tax reform, and is set to be implemented from October 2014. Under the new scheme, authorized shops will be able to sell all types of goods including consumables (e.g., food, alcohol, tobacco, cosmetics, drugs and batteries) to non-residents on a JCT-free basis, subject to the following conditions:

- For non-consumable goods, the total amount of goods purchased by a non-resident at the same shop in a single day exceeds JPY 10,000;
- For consumable goods, the total amount of goods purchased by a non-resident at the same shop in a single day is more than JPY 5,000 and is JPY 500,000 or less;
- The retailer fills out the 'Purchase Record Form' based on information contained in the non-resident's passport, and has the non-resident sign the Buyer's Acknowledgement Form, which certifies that he or she has agreed to export the goods out of Japan (they must be exported within 30 days from the date of purchase in the case of consumable goods);
- The retailer attaches the Purchase Record Form to the non-resident's passport and affixes a seal; and
- The non-resident submits to Japan customs the Purchase Record Form when leaving Japan. The retailer retains the Buyer's Acknowledgement Form for a period of seven years.

A 'non-resident' for this purpose generally means any non-Japanese person who is not working in Japan and whose stay in Japan is less than six months. In order to be authorized as a JCT-free shop, a retailer must file the 'Application for Permission to Register as Tax-free Shop' with the tax office having jurisdiction over its head office. Permission is only granted when the retailer satisfies certain requirements, such as being located in an area frequented by foreign tourists and having personnel and facilities necessary for sale to non-residents.

The new regime also provides the following changes:

- Retailers must ensure that any consumable goods purchased JCT-free are placed in a sealed plastic bag through which the goods are visible, or in a cardboard box to which a list of the goods and a note stating not to open the box before leaving Japan are attached; and
- The requirements for the forms to be filled out by retailers will be streamlined:
  - The current statutory format for the Buyer's Acknowledgment Form and the Purchase Record Form will be discontinued, and retailers will be allowed to use their own format provided it contains the necessary information.
  - Retailers will no longer need to enter information of the purchased goods on a Purchase Record Form, and instead will be allowed to just affix the receipts for the goods to the form.

In addition to the above changes, the Japan Tourism Agency released a JCT-free shop logo that can be used by authorized JCT-free shops to raise awareness of the scheme and attract more foreign tourists.

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## **Singapore**

### **Singapore commits to WTO's Agreement on Trade Facilitation**

Singapore has notified the WTO that it will implement all operational provisions under the Agreement on Trade Facilitation (ATF).

The ATF seeks reduced bureaucracy in trade by simplifying customs procedures across WTO countries. Notable provisions of the ATF include:

- Ensuring the publication and availability of customs information
- Issuing traders with advance rulings on their goods
- Providing traders with appeal and review procedures
- Regulating fees and charges for importation and exportation
- Ensuring procedures for the release and clearance of goods
- Regulating formalities on importation, exportation and transit.

The ATF is expected to be ratified by 31 July 2015.

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## EMEA



### Bahrain

#### Adoption of the ATA Carnet

The head of the Bahrain Customs authority has commented that the role of Bahrain Customs is not just to enforce collection of duties and control of goods, but also to attract investment and support the national economy. In that context, he went on to announce the adoption of the ATA Carnet by Bahrain with effect from 1 June 2014.

Bahrain is the second Gulf country (after the United Arab Emirates) to adopt the ATA Carnet. Issuance of ATA Carnets in Bahrain will be by the Chamber of Commerce; the Chamber has also published a number of guides in relation to their use and the application process.

The ATA Carnet speeds up the customs clearance of temporary consignments transferred between countries that accept it. Essentially, a security deposit is placed with the Chamber that issues the ATA Carnet which, through an international network, guarantees payment of the customs duties and relevant import taxes in the event of non-compliance in one of the countries to which the goods were sent using the ATA Carnet.

It is therefore important to comply with the requirements, including presenting the forms to customs and obtaining the correct endorsements, since failures to do so, or loss of the ATA Carnet, could result in forfeiture of the security deposit later on. It is also important to understand the rules, the process, and corresponding practical aspects, such as ensuring that there are enough blue transit forms included in the Carnet to cover all the transits that may be required.

In Bahrain, the issuing authority to which the security deposit must be given is the Bahrain Chamber of Commerce and Industry. The Bahrain Chamber requires that the security deposit is valid for at least 31 months, in order to minimize its risk, but it will also permit 'conditional discharge' and earlier return of the security deposit if all is in order.

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### Belgium

#### Increase of threshold for VAT exemption for small enterprises

The Belgian Government has recently adopted new legislation increasing the threshold for the application of the VAT exemption regime for small Belgian enterprises from EUR 5,580 annual turnover to EUR 15,000.

The new legislation entered into force retroactively on 1 April 2014. The Belgian VAT administration has published a brochure with practical guidelines.

The VAT exemption for small enterprises is an optional VAT exemption regime, which is only open for Belgian-established enterprises. When applying this VAT exemption, the small enterprise does not have to charge VAT on its outgoing transactions and it will have fewer VAT compliance obligations. On the other hand, these small enterprises cannot deduct their input VAT.

In addition to the increase in the threshold, the new legislation also refined the additional conditions to be met for applying the VAT exemption. For example, the VAT exemption for small enterprises can no longer be applied by VAT taxable persons required to use a registered cash register (black box).

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### **Place of supply of storage services**

The Belgian VAT authorities recently published a decision on the VAT treatment of storage services. The decision modifies the place of supply rules for foreign business customers (B2B). It also provides guidance on the potential VAT exemptions that can be applied.

The new rules apply from 1 June 2014. From 2010 to that date, the Belgian VAT authorities considered that storage services in Belgium were subject to the B2B main rule, irrespective of the agreement's nature. Hence, no VAT was to be applied when these services were carried out for a foreign business customer.

The new decision changes this approach and distinguishes three different scenarios:

- Exclusive right of use of a storage facility: This is considered to be an immovable letting, hence the service is deemed to take place where the facility is located (changed rule).
- Non-exclusive right of use: Although the operator provides 'surface' (m<sup>2</sup> or m<sup>3</sup>) to the 'tenant', the latter has no free access to the storage facility and the storage is organized by the operator. In this case, the B2B main rule remains applicable as before.

The decision sets out a number of specific criteria to distinguish between the first and second case.

- Storage combined with other services (loading, weighing, quality assurance, expertise, etc.): The B2B main rule remains applicable in this case as well.

The criteria set out by the Belgian VAT authorities allow that most typical cases of storage services will continue to be free of Belgian VAT if they are provided to foreign business customers, except for certain specific cases where the customer has clear exclusivity rights and the storage operator does not have an active logistics and handling role. In the latter cases, the new rules will shift the place of supply for the services carried out. Accordingly, current agreements and invoice processes should be reviewed.

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## **Customs Union between Russia, Belarus and Kazakhstan**

### **Certain goods no longer covered by special simplifications available to AEOs**

Eurasian Economic Community (EEC) Board Resolution No. 60 dated 13 May 2014 has amended the list of goods that are not covered by special simplifications available to Authorized Economic Operators.

According to the amendments, various goods determined in accordance with the legislation of Customs Union (CU) member countries have been removed from the above list.

The Resolution was officially published on 14 May 2014 and entered into force at the end of 30 calendar days from that date.

### **Simplification of requirements for exporters of natural diamonds**

EEC Board Resolution No. 67 dated 13 May 2014 has amended the Statute on the Procedure for Importing and Exporting Precious Metals, Precious Stones and Raw Materials containing Precious Metals into and from the Customs Territory of the Customs Union .

In addition to other amendments, the requirement for diamond producers to offer natural diamonds for sale in the CU before exporting them has been abolished.

The Resolution entered into force on 13 June 2014.

### **Anti-dumping duties for wrought steel rolls**

According to EEC Board Resolution No. 68 dated 13 May 2014, anti-dumping duties of 26% of customs value have been extended until 27 February 2015 for wrought steel rolls imported into the CU customs territory for rolling mills and originating from Ukraine under CN FEA CU 8455 30 310 1, 8455 30 310 9, 8455 30 390 1 and 8455 30 390 9. The anti-dumping duties had previously been set by CUC Resolution № 904 dated 9 December 2011.

For the purposes of the above anti-dumping duties, goods are determined according to CN FEA CU.

The Resolution entered into force on 27 June 2014.

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## **European Union**

### **'Taxation of the digital economy' and VAT on 'small' B2C imports**

The Expert Group set up by the European Commission to examine taxation of the digital economy has presented **its final report**. Among other things, the Group welcomed the forthcoming (1 January 2015) changes that will move the place of supply (and consequent VAT accounting obligations) for B2C supplies of broadcasting, telecoms and e-services to the consumer's location and introduce a mini one-stop shop to try and simplify the resultant compliance obligations.

It also recommends the expansion of the destination principle for VAT taxation to all supplies of goods (and the expansion of the mini one-stop shop to cover them) and the abolition of the current VAT exemption for small consignments of B2C goods, which allows them to enter the EU VAT-free.

Coincidentally, **the EU's VAT Committee has published guidance from its 100th meeting, about the VAT treatment of some B2C consignments of goods brought into the EU**. That guidance, which is not unanimous, suggests that 'bulk' consignments, where goods intended for EU consumers are first sent in bulk to an intermediary, who initiates the 'final leg' of the transport of the goods to the consumer, comprise two transactions – the import of the goods by the intermediary and, separately, an intra-EU supply by the intermediary to the consumer. This suggests that the 'small consignments' exemption would not be applied to such movements by most Member States.

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## **Finland**

### **Reverse charge in the construction sector – movable PVC halls**

A company built, sold and rented PVC halls, which could be taken apart within approximately two weeks and moved to another location. If required, the company also provided ground-clearing services and other services related to ground-clearing, such as asphalt paving.

According to article 8c of the Finnish VAT Act, the reverse charge applies to supplies of construction services on real estate under certain conditions. According to article 28, immovable property means an area of land, a building and a permanent structure, or some part thereof.

In its decision 2014:71, the Korkein hallinto-oikeus (Supreme Administrative Court) considered the movability and structure of the PVC halls, and upheld the decision of the Helsingin hallinto-oikeus (Administrative Court of Helsinki) that the PVC halls were not considered immovable property. Therefore, the construction services performed on the PVC halls were not considered to be construction services on immovable property on which reverse charge would need to be applied.

Further, contrary to the view of the Helsingin hallinto-oikeus, the Korkein hallinto-oikeus ruled that the supply of ground-clearing services, which the company also provided, if needed, was deemed to be work on immovable property, but it did not constitute a separate and independent service supply. As the supply of the PVC hall was considered the principal supply, the VAT treatment of the ancillary ground-clearing services followed the VAT treatment of the principal service, and the supply of the ancillary services was not subject to the reverse charge.

### **Marketing and representation costs**

The Korkein hallinto-oikeus (Supreme Administrative Court) published three decisions in 2013 regarding the deduction of marketing and representation costs for VAT and corporate income taxation purposes, on the basis of which Verohallinto (the Finnish Tax Administration) has updated its guidelines on the VAT treatment of representation costs.

According to the updated guidelines, and contrary to established tax practice, costs relating to a marketing event directed at a limited target group are no longer automatically considered non-deductible representation costs for VAT, but costs relating to marketing events for a limited target group may be fully or partly deductible.

The key elements to be considered when classifying costs as deductible marketing costs or non-deductible representation costs are:

- The nature of the event;
- The nature of the costs; and
- The participants.

Although a case-by-case analysis is still required, the updated guidelines clarify the division of costs into deductible marketing costs and non-deductible representation costs. Further, and significantly, the fact that a marketing event is held in the evening no longer automatically renders the event as a non-deductible representation event.

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## **Italy**

### **Electronic invoicing issued to public administration**

As covered in previous editions of this newsletter, from 6 June 2014, e-invoicing has become mandatory for invoices issued to ministries, tax agencies and social security institutions.

### **Indication of terms of payment in sale deeds for the supply of immovable property**

As a general rule, parties involved in a sale of immovable property must detail in the sale deed the terms of payment. The tax authorities have issued a Resolution (no. 53/E dated 20 May 2014) clarifying that where payments are to be made after a deed has been drafted, the requirement to detail the payment method is considered to be satisfied when all the necessary elements to identify the balance of the amount to be paid are included in the deed (including timing, the amount and methods of payment).

### **Non operative companies**

A VAT credit resulting from the annual VAT return of a non-operative entity (non-operating companies and companies reporting systematic losses) cannot be claimed as a refund, used to offset other taxes or sold. In addition, the VAT credit is definitively lost (and thus cannot be carried forward to following VAT periods) when, for a three year period, the company has carried out transactions relevant for VAT purposes that are below the turnover threshold for non-operative entities, as set by regulation.

The tax authorities have issued a Circular (no. 10/E dated 14 May 2014) confirming that any subsequent adjustment to income for corporate income tax purposes that would mean that the taxpayer is no longer a non-operative entity is not relevant to the loss of the VAT credit, in other words, the VAT credit is still lost.

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### **Excise duty on animal and vegetable oils and fats used in the co-generation and production of electricity**

In a Note dated 19 May 2014 No. 42337, the Customs and Monopoly Agency clarified the fiscal treatment for excise purposes of animal and vegetable oils and fats used in the co-generation and production of electricity by means of internal combustion engines.

In particular, the Note stated that, for equivalence between animal and vegetable oils and fats and low sulphur fuel oil it is necessary to verify that the production plant is suitable for using this kind of liquid bio-fuel instead of fuel oil. If this is the case, the excise duties rate for fuel oil used to produce electricity (according to point 11, chart A of the Italian Excise Duties Law) will apply to animal and vegetable oils and fats.

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### **Kazakhstan**

#### **Treaty on integrated export controls for Eurasian Economic Community members**

Law No. 204-V 3PK dated 16 May 2014 repealed the Treaty on integrated export controls for Eurasian Economic Community (EEC) members, concluded in Moscow on 28 October 2003.

According to Zakon.kz and Inform.kz news alerts, the Treaty had to be repealed due to the lack of trans-border controls when transferring dual-use goods through EEC member territory.

The Law was officially published on 20 May 2014.

#### **Procedure for submitting documents for inclusion in customs registers**

Law No. 203-V dated 16 May 2014 has introduced amendments to certain Kazakhstan legislative acts regarding the regulatory system, and also to Code On Customs Affairs in Republic of Kazakhstan No. 296-IV dated 30 June 2010.

When submitting documents for inclusion in the register of temporary storage warehouse owners, the register of customs warehouse owners, and the register of duty free shop owners, with the introduction of the Law, originals of state registration certificates will not have to be provided, while foundation documents will no longer have to be notarized (copies will suffice). All remaining requirements remain in force.

The Law was published officially on 20 May 2014 and enters into force in relation to the Code at the end of 6 months from the day it is officially published for the first time.

#### **Standards for state services provided by the Kazakhstan authorities**

Government Resolution No. 149 dated 25 February 2014 (which entered into force on 22 May 2014), in accordance with the Law On State Services dated 15 April 2013, has approved standards for state services provided by the Trade Committee of the Ministry of Economics and Budget Planning, such as:

- To issue a license to import and/or export goods using foreign trade customs tariff and non-tariff regulation measures, and also special protective measures based on Government and/or EEC resolutions;
- To issue or re-issue a license, and issue duplicate licenses to import goods that are the objects of trials, into Kazakhstan without quotas;

- To issue a permit to import specific goods into Kazakhstan.

Government Resolution No. 202 dated 6 March 2014 (which entered into force on 19 May 2014) in accordance with the Law On State Services dated 15 April 2013, has approved standards for manufacturing-related state services provided by the Ministry of Industry and New Technology, including:

- To issue a document referring to the conditions for processing goods in or outside of the customs territory and processing goods for domestic consumption in the light, mining, metallurgical, chemical, pharmaceutical and timber industries, and also in machine building and construction;
- To issue an opinion on the classification of goods imported into Kazakhstan from Customs Union member countries as goods intended for industrial processing in light, mining, metallurgical, chemical, pharmaceutical and timber industries, and also in machine building and construction.

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## **Poland**

### **Fuel card schemes face input VAT recovery restrictions**

The Polish administrative courts issued recently two rulings in which they have challenged input VAT recovery under fuel card and similar schemes.

In particular, in one of the rulings concerning the lease of cars where fuel was included in the lease fees, they have concluded that the lessor of cars (who acts as a middleman and fuel card operator between the lessee refueling the car and the petrol station) is not allowed to recover input VAT on invoices issued by petrol stations documenting the purchase of fuel by the lessee, even if the cost of the fuel is subsequently recharged under the lease service. This is due to the fact there is no supply between the lessor and the petrol station. As a result (although this was not subject to the court ruling itself), the right of the lessee to recover input VAT on recharges from the card operator (related to fuel) might be restricted as well (if the service is subject to VAT in Poland).

These court rulings follow the reasoning in the Court of Justice of the European Union case *Auto Lease*. Similar rulings have been issued regarding other fuel card schemes operating in Poland.

However, there are other court rulings that present a more favorable outcome for the taxpayer. In particular, it was ruled recently that a Danish entity acting as a fuel card operator between the petrol stations and Polish transport companies, participated in a chain supply of fuel. As a result, the Danish entity acquired the economic ownership of the fuel and thus was able to recover the input VAT.

Given the above, the decisions of the Polish tax authorities and administrative courts to the fuel card schemes are not consistent and may depend on a number of factors. From this perspective, participants in the supply chain should undertake a thorough analysis of the specific facts in order to determine the right to deduct input VAT on the purchase of fuel – this also applies to evaluating the right of the client to deduct VAT on the card issuer invoices received from the card issuer for fuel.

### **First insights on regulations regarding input VAT recovery on business cars**

As discussed in previous editions of this newsletter, since 1 April 2014, new regulations concerning VAT deduction apply to the purchase of and expenses related to company cars. In particular, to claim 100% VAT on the abovementioned expenses, it is necessary to prove full business use of such vehicle. Mixed (business and private) use of cars used in business activity allows for 50% input VAT recovery only.

As indicated, a very strict approach regarding the new rules was presented by the Minister of Finance in a brochure containing clarification and guidelines for taxpayers in respect of the new law. Further to the document, full business use of company cars should be treated as an exception, and taxpayers should be aware that tax authorities will challenge the 'full business use' approach if there are any doubts concerning the reliability of business use-only declarations. In addition, penalties based on the Penal Fiscal Code for input VAT overstatements will apply.

The first binding rulings of the Minister of Finance following the approach presented in the brochure have been published. According to the rulings, 100% input VAT recovery on cars used for business purposes is not allowed unless the private use (even theoretical) of such vehicles is totally excluded (this conclusion was drawn despite the statements of the taxpayers that they were not using the cars for private purposes). As a result, in many cases potential conflicts with the tax authorities may see an outcome at administrative court level.

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### **Portugal**

#### **Jurisdiction of CJEU regarding questions referred by Tribunal Arbitral Tributário – CAAD**

The Court of Justice of the European Union (CJEU) has decided, in the case *Ascendi Beiras Litoral e Alta, Auto Estradas das Beiras Litoral e Alta SA* (a case about stamp taxes on share transactions), that it is clear that the Tribunal Arbitral Tributário – CAAD (arbitration tribunal dealing with taxation cases) possesses all the characteristics necessary to be regarded as a court or tribunal of a Member State for the purposes of Article 267 of the Treaty on the Functioning of the European Union, and, accordingly, recognized that the tribunal can refer questions to the CJEU.

This is an important decision for indirect tax issues in Portugal, as taxpayers are increasingly using CAAD as a way to obtain quicker decisions compared to the alternative of appealing to the common tribunals.

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## **Russia**

### **Draft amendments to the Russian VAT Law**

Amendments to the Russian VAT are being discussed. According to the information available, it is planned to release taxpayers from the obligation to issue VAT invoices upon the sale of goods/work/services carried out at the address of an entity that is either not a VAT payer or is exempt from VAT.

It has also been suggested that a procedure will be introduced for VAT recovery based on VAT invoices received after the end of the tax period in which goods/work/services were booked in the accounts, but before the deadline for submitting the tax return for that period.

Additionally, there are plans to change the deadline for submitting VAT returns.

### **VAT on rewards paid to customers**

On 28 April 2014, the Ministry of Finance issued a letter (No. 03-07-RZ/19784) reporting that rewards (bonuses) received by customers for purchasing a predetermined volume of services do not increase their VAT base.

### **Amendment to list of technological equipment whose import into Russian Federation is not subject to VAT**

Russian Federation Government Resolution No. 350 of 17 April 2014 (which came into effect on 29 April 2014) has amended the list of technological equipment (including components and spare parts) without an equivalent manufactured in the Russian Federation; the import of which into the territory of the Russian Federation is not subject to VAT.

In particular, gas turbines for use in complex gas compressor units are excluded from the list (classification codes 8411 82 200 1, 8411 82 600 1), and the equipment classified under the following classification codes are included in the list: 8419 40 000 9, 8515 21 000 0.

### **VAT exemption for import of consumable materials for R&D**

Federal Law No. 151-FZ of 4 June 2014 On Amending Chapter 21 of Part II of the Russian Federation Tax Code amends the list of goods the import of which into the territory of the Russian Federation is not subject to VAT – VAT exempt.

According to the amendments, the import into the Russian Federation of consumable materials for use in research and development activities and experimental developments is VAT exempt where equivalents are not produced in the Russian Federation. The list of such consumable materials and the procedure for applying the respective VAT exemption is to be established by the Government of the Russian Federation.

This provision of the Federal Law will come into effect on 1 October 2014.

### **List of documents to be submitted during customs declaration of goods reduced**

The Federal Customs Service of Russia Orders No. 404, 405 of 6 March 2014 and No. 447 of 12 March 2014 On Reducing the List of Documents to be Submitted during Customs Declaration of Goods reduce the list of documents required to be submitted during the electronic customs declaration of goods.

The following documents are not required to be submitted to the customs authorities:

- Certificate of conformity with the technical regulations of the Russian Federation;
- Declaration of conformity with the technical regulations of the Russian Federation;
- Certificate of conformity of goods included in the consolidated list of goods subject to compliance assessment of the Customs Union with the issuance of a single document;
- Identification report confirming that the goods do not belong to goods controlled in accordance with the export control legislation of the Russian Federation issued by the Federal Service for Technical and Export Control and authorized expert organizations.

The Orders No. 404, 405 of 6 March 2014 came into effect on 17 May 2014.

The Order No. 447 of 12 March 2014 came into effect on 30 May 2014.

#### **Temporary reduction in import customs duty rates for certain types of goods**

The Eurasian Economic Commission (EEC) Board Resolution No. 15 of 28 March 2014 On the Introduction of Import Customs Duty Rates of the Unified Customs Tariff of the Customs Union in relation to Rare Metals, Scandium and Yttrium in Pure Form, Alloys and Blends introduces a 0% import customs duty rate in relation to these goods (classification codes 2805 30 100 0, 2805 30 900 0).

This rate remains in effect from 1 May 2014 till 30 April 2015.

This Resolution came into effect on 3 May 2014.

#### **Amendment to customs duty rates in respect of certain categories of goods in accordance with the undertakings of the Russian Federation within the WTO**

The EEC Collegium Resolution No. 77 of 26 May 2014 amends the Unified Nomenclature of Goods of Foreign Economic Activity of the Customs Union and the Unified Customs Tariff of the Customs Union in respect of certain categories of goods in accordance with the undertakings of the Russian Federation within the WTO.

In particular, the term of validity of the 0% import customs duty rate in respect of certain types of goods is extended (classification code 0302 51 100 0 – fish (*Gadus morhua* species), classification code 2008 50 610 0 – prepared or preserved apricots containing added sugar), and customs duty rates are reduced in respect of certain categories of goods (classification codes 0204 50 130 0, 0204 50 510 0 – meat of goats – 15%, but not less than 0.15 euro per kg, classification code 0206 49 000 2 – edible offal of swine – 12.5%, but not less than 0.13 euro per kg, classification code 0306 17 910 0 – shrimps and prawns – 3%, classification code 7112 92 000 0 – waste and scrap of platinum, including metal clad with platinum but excluding sweepings containing other precious metals – 18%).

The Resolution came into effect on 26 June 2014.

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## **United Kingdom**

### **Tax authorities' guidance on VAT and pension fund management**

Due to the continuing uncertainty about how to implement the changes outlined in HMRC Brief 06/14, the tax authorities (HMRC) have announced that they are carrying out a further review of the VAT treatment of pension scheme administration and fund management services to take account of the Court of Justice of the European Union's decisions in the cases of *Fiscale eenheid PPG Holdings BV cs te Hoogezand* and *ATP Pension Service A/S*, and to consider whether to make any changes to the guidance outlined in Brief 06/14.

According to **the latest announcement**, HMRC plan to issue further guidance in the autumn about how and when the two judgments are to be implemented in the UK. HMRC have confirmed that businesses can continue to use the transitional arrangements outlined in **HMRC Brief 06/14**.

### **Domestic reverse charge on wholesale gas and power supplies from 1 July 2014**

HMRC have published a **Brief about the introduction of the domestic reverse charge for wholesale supplies of gas and power, along with the proposed legislation**. The domestic reverse charge is intended to counter 'missing trader' frauds and came into effect on 1 July 2014.

HMRC have confirmed that where no tax loss has been identified, it will operate a 'light touch' when dealing with errors that occur in the first six months after introduction. It is important that businesses remain vigilant to fraud in these markets in the run up to implementation of the reverse charge, and afterwards.

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