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Global Indirect Tax News

Indirect tax updates from around the world



November 2013

Welcome to the November 2013 edition of GITN, containing updates from the Americas, Asia Pacific, and EMEA regions.

Features of this edition include further updates from China with the Shanghai State Tax Bureau issuing local-level rules for the implementation of the exemption for cross-border services, a proposal for a standard EU VAT return, confirmation of a VAT rate increase in France, and a summary of the upcoming VAT changes in Poland.

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

David Raistrick

Global Indirect Tax Leader

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Americas

Argentina

Domestic funding options limited for large exporting companies



As expected, the Central Bank (BCRA) has announced a limit to the amount of funding large exporting companies can obtain domestically, by way of Communiqué A 5493, with effect from 5 November 2013. These companies will have to obtain funding from abroad in USD. This measure is designed to improve the liquidity of the Sole and Free Exchange Market (the MULC), compensating for the fall in reserves of about USD 10 billion that has taken place over the past year.

This limit is aimed in particular at a number of cereal companies that began to increase their credit position in the local financial system in Argentine pesos, as there was no access to bank loans.

The amount of funding a financial institution can make available to these companies in pesos will be limited to 0.3% of the total amount of pesos held on deposit by the financial institution, net of the minimum cash amount, and the liquid resources held by the financial institution. If the 0.3% amount is exceeded, the BCRA has to give prior authorization to the financial institution to issue new loans in pesos to such companies.

The companies affected are those whose export sales of goods and services are at least 75% of total sales and which maintain a total amount of financial loans in pesos exceeding the amount of ARS 200 million.

New exemptions from statutory deposit requirements

Under Resolutions No 657 and No 661, with effect from October 2013, the Argentinean Ministry of Economy and Public Finance has amended Decree No 616/2005 to add to the list of operations that are exempted from the requirement to hold a certain level of “statutory deposit” (the so-called legal reserve or “encaje”).

Under the Decree, it is necessary to register with the Argentine Central Bank all inflows into and outflows from the domestic exchange market relating to deals by Argentinian residents that may require a future payment of foreign currency to non-resident individuals or legal entities. However, foreign exchange regulations allow certain exemptions from the registration requirement, including, capital contributions and loans taken out for a period of more than two years that are used for acquiring fixed assets or inventory.

Under the new resolutions, the following exemptions have been added: the repatriation of personal funds to cancel fiscal obligations (pay a tax debt), funds used to acquire national machinery and technology that is to be leased to specified industry sectors, and funding to purchase certain types of vehicles.

For the exemptions to apply, certain requirements must be met. Failure to comply with these requirements means that the relevant exemption will not apply. Failure to comply with the rules risks enforcement proceedings under the Criminal Foreign Exchange System.

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Colombia

Services related to the licensing of software subject to VAT

The tax authorities have stated that transactions involving the supply of services related to software should be analyzed to verify the nature of the supply received by the recipient, as the use of intangibles is subject to VAT.

Oil sales for refining made to National Hydrocarbons Agency excluded from VAT

As a general rule oil commercialization is subject to VAT.

However, under recent tax reform, sales and imports of oil intended to be used in refining operations are excluded from VAT. Sales of oil to the National Hydrocarbons Agency (which is the authorized public entity responsible for the administration of oil national resources and reserves) are therefore excluded from VAT.

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Mexico

Tax reform for 2014

Following the announcement of tax reform proposals on 8 September 2013 (reported in the September edition of this newsletter), on 31 October 2013, the Mexican Congress concluded the process of approving amendments to a number of tax laws. The tax reform package has been returned to the President of Mexico and will now be published in the Federal Official Gazette.

The VAT and excise duty aspects of the tax reform package are as follows:

- Temporary imports made by Manufacturing, Maquiladora and Export Services Industry (IMMEX) companies (as well as companies under other customs regimes) are no longer exempt from VAT and excise duty. IMMEX companies will now be subject to VAT at the rate of 16% and excise tax, if applicable.
- VAT and excise tax refunds will be paid when the goods are exported.
- The requirement to pay VAT and excise tax may be eliminated by way of a certification mechanism to be established by the tax authorities (SAT) or by providing a guarantee for the payment of such taxes.
- The certification requirements will be published by SAT.
- Companies will have a one year period from the date the rules are published in the Official Gazette in which to obtain this certification.

The main VAT changes are as follows:

- VAT rate for border region – the VAT rate applying to permanent imports will now be 16% (an increase from 11%).
- Elimination of VAT withholding – IMMEX companies will no longer be required to withhold the VAT on supplies made by domestic suppliers to them.
- Sales by foreign residents – Sales by a foreign resident to another foreign resident of goods that were temporarily imported by an IMMEX company or of goods subject to the automotive fiscal deposit regime remain VAT exempt. However, sales by a foreign resident to an IMMEX company of goods

temporarily imported by an IMMEX company or to automotive companies of goods subject to the fiscal deposit regime will be subject to VAT at the 16% rate.

Tax on “junk food” and soft drinks

The Mexican Congress has recently passed a tax on “junk food” and soft drinks with the stated purpose of stimulating growth and government revenue and tackling Mexico’s growing obesity problem.

An 8% levy will be imposed on “junk food”, such as chocolate, crisps, peanut butter and sweetened cereals. The tax will not apply to burgers and tacos.

A “soda tax” will also be imposed at the rate of 1 peso per liter of soft drink.

The bill is still to be signed by the President of Mexico.

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Asia Pacific



China

Shanghai issues local-level implementation rules on VAT exemption for cross-border services

Further to the national implementation rules on VAT exemption for cross-border services under the VAT reform (Bulletin 52), on 29 October 2013, the Shanghai State Tax Bureau issued the local-level implementation rules (Bulletin 3) which apply retroactively as from 1 August 2013.

Bulletin 3 is consistent with Bulletin 52, but it requires additional conditions to be met. Bulletin 3 confirms and clarifies the following requirements for taxpayers in Shanghai to benefit from the VAT exemption on cross-border services:

- The service provider must enter into a written contract with the service recipient.
- The service income must be derived on or after 1 January 2012.
- The taxpayer must apply for the exemption by submitting the contract and relevant documents to the tax authorities (i.e., “VAT exemption filing”).
- The services must be provided to overseas entities for certain specific VAT exempted services, such as technology transfers, technology consulting, software services, etc.
- The service income must be collected from overseas for certain specific VAT exempted services.

According to Bulletin 3, taxpayers who provided VAT exempted services during the period from 1 January 2013 to 31 October 2013 should file the application by 31 December 2013, with the calculation of the final VAT refund or VAT due for the retroactive period.

The issuance of Bulletin 3 is welcome as it will enable Shanghai taxpayers to benefit from the VAT exemption with more certainty. Given the short time available to prepare, companies that have not been able to benefit from the VAT exempt treatment of cross-border services should proactively communicate with the tax authorities, and submit the application and the required supporting documents as soon as possible.

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India

Tribunal considers whether an arrangement constitutes “manpower supply or recruitment agent services”

Personnel from a parent company located in Germany were employed by its Indian subsidiary for a specific period (global employees). The Indian subsidiary entered into an employment agreement with each employee. Part of the salary was paid in India by the Indian company and the balance was paid by the parent company in the home country; and thereafter debit notes were raised by the parent company to its Indian subsidiary for the reimbursement of this amount.

The tax authorities contended that such a transaction comes within the definition of “manpower supply or recruitment agency services” and that service tax should be levied on the amount remitted to the parent company.

The Mumbai tribunal observed that the global employees working under the Indian subsidiary were working as its employees and had an employee-employer relationship. It was held that there was no supply of manpower services made to the Indian subsidiary by the parent company, and the method of disbursement of the salary cannot be determinative of the nature of transaction.

Accordingly, the amounts were not subject to service tax.

Court considers whether sales tax applies to amount received under a franchisee agreement

The Madras High Court recently heard a case where the appellant was receiving a fee or franchise commission under a franchisee agreement and arguing that the amount was a payment for services.

On reviewing the agreement, the High Court observed that the appellant has retained the liberty to use the trade mark at the same time, transferred the right to use the incorporeal right exclusively in favor of the transferee in respect of a specified outlet for a definite period of time. Therefore, the transfer was not of a mere license or right to enjoy, but of a right to use intangible goods.

The High Court held that the appellant had allowed the third party/transferee to use the trade mark by transferring the right to such use in the same manner and that it was undoubtedly an economic exploitation of intangible or incorporeal goods. Accordingly, the amount was subject to sales tax.

Large Taxpayer Unit launched in Kolkata

The Union Government has launched the Large Taxpayer Unit (LTU) in Kolkata, being the fifth in the country. The LTU acts as a single window clearance point for all matters relating to central excise, income tax and service tax.

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EMEA



European Union

Dutch Supreme Court raises preliminary questions regarding the management of property funds

The Dutch Supreme Court has referred a case to the Court of Justice of the European Union (CJEU) regarding the exemption for the management of investment funds. The taxable person concerned manages immovable property for a property fund. The Supreme Court has asked whether the exemption can be applied to a fund that invests in immovable property and whether the exemption applies to the effective exploitation of the immovable property owned by the property fund.

EU “standard” VAT return

The European Commission has published its **proposal for changes to the VAT Directive to provide for a “standard” VAT return** across the EU, together with its **implementation plan** and **impact assessment**. The proposal envisages a return comprising only five mandatory boxes of information (output VAT, input VAT, net VAT payable or repayable, value of outputs and value of inputs), with two additional boxes, covering value of dispatches and value of acquisitions, needed until 31 December 2019. However, it permits Member States to require up to 26 more boxes of data, so it seems likely that there will continue to be considerable variance in the information that businesses are required to provide on their returns around the EU.

European Commission guidance on the 1 January 2015 “place of supply” changes

The European Commission has published **guidance about the 1 January 2015 changes to the “place of supply” rules for electronic services, telecoms and broadcasting**. As well as setting out information about the current and future treatment of transactions affected by the changes, the guidance includes **some “... practical and informal guidance ...” on how the Commission believes that the “one stop shop” for compliance should operate from 1 January 2015**. The Commission hopes that

this will help businesses and the Member States to ready themselves for the changes and the “one stop shop” that is due to be introduced by 1 January 2015 to facilitate compliance with the new rules.

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France

VAT rate increase from 1 January 2014

The Corrective Finance Law for 2012 provided for some changes in the French VAT rates which were to come into force on 1 January 2014:

- The 19.6% VAT rate to increase to 20%;
- The 7% VAT rate to increase to 10%;
- The 5.5% VAT rate to be reduced to 5%.

However, there may be amendments before 2014. The French National Assembly has modified the structure of the VAT rates in the Finance Bill 2014. The Bill will be examined shortly by the Senate (which may also make further changes).

At this stage, the above-mentioned VAT **increases** are still to enter into force in 2014; however, the 5.5% VAT rate is to remain unchanged (that is, it would not be reduced to 5%).

Also, some transactions currently subject to the old 7% VAT rate would be taxed at 5.5% (e.g., imports of works of art, cinema tickets, and specific energy efficiency improvement works in private homes).

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Italy

“Extension” of e-filing period for various communications

On 5, 7 and 8 November 2013, the tax authorities published the following notifications on their website:

- The provision dated 5 November 2013 provides that the state, regions, provinces and municipalities, and other public entities are to be exempt from filing the “spesometro” communication (the client and suppliers list) for the years 2012 and 2013, and clarifies that as from 2014 these entities will be required to file the spesometro communication for VAT transactions that are not documented by electronic invoicing.
- The provision dated 7 November 2013 provides that the date for financial operators to file notification of VAT-taxable transactions paid for by way of credit, debit or prepaid card for an amount equal to or more than EUR 3,600 has been deferred to 31 January 2014.

- Press releases dated 7 and 8 November advise that the submission of a “spesometro” communication through the telematic services of Entratel or Fisconline will be considered as having been received in time by the tax authorities even if it is submitted after the original due date (12 or 21 November, as applicable), provided it is filed before 31 January 2014.

Clarification regarding the recent VAT rate increase

The tax authorities have issued a circular (no. 32/E dated 5 November 2013) clarifying how the VAT rate increase is to be applied in the first months. The circular confirms the communication issued on 30 September (see the previous edition of this newsletter).

The circular also clarifies the percentage to be applied by taxpayers which are exempt from issuing invoices to calculate the consideration for determining the taxable base. Also, it clarifies the rules for issuing credit and debit notes, in particular for sectors making continuous supplies, such as water, light, gas, etc.

Work within the meaning of “urbanization works” for the purposes of applying the reduced VAT rate of 10%

The tax authorities have issued a Resolution (no. 69/E dated 16 October 2013) clarifying that the reduced VAT rate of 10% for urbanization works also applies to the infrastructure work of installing networks and optical fiber electronic communication systems, as this work is considered to be part of the primary urbanization work.

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Netherlands

Temporary reduced rate for renovation and repair of houses

The Netherlands has introduced a temporary reduced rate for the renovation and repair of houses. The reduced VAT rate will apply until 1 March 2014.

It is likely that this period will be extended, and the reduced rate apply until 1 January 2015.

Abolition of rule that levies VAT on the purchaser of immovable property

Following the *Pactor Vastgoed* case, the Dutch Government announced that, as of 10 October 2013, it abolished the rule that allows the Dutch tax authorities to levy VAT deducted by a seller of immovable property from the purchaser of this immovable property.

It is important for sellers of immovable property to include a paragraph in the sales contract stating that if the conditions for a taxable supply of immovable property are not met, the VAT burden will be borne by the purchaser.

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Poland

VAT changes from 1 January 2014

As discussed in previous editions of this newsletter, from 1 January 2014, significant changes in Polish VAT Act will come into force. Below is an overview of the most significant amendments.

- VAT tax point

As a general rule, the tax point will be when goods are supplied or services provided, which is a change from the current approach, which is based in general on the issue of an invoice. Therefore, factors such as business arrangements and Incoterms which determine when economic ownership of goods passes will become more important for the purposes of determining the tax point.

Specific rules are being abolished and replaced with general rules for a number of supplies, such as construction services; the supply of electricity, water and sewage; telecommunication services; leasing services; etc.

- Input VAT recovery

Input VAT can be deducted when the tax point occurs, provided the relevant invoice or customs document has been received. Accordingly, establishing the tax point will be crucial for determining when the input VAT can be recovered.

- Input VAT recovery on intra Community acquisitions (ICA)

Input VAT can be deducted when the tax point for the ICA occurs, provided the output VAT on the ICA is reported on a timely basis and the invoice documenting the transaction is received within three months following the month in which the tax point occurs. If the taxpayer does not receive the invoice within this deadline, it must repay the input VAT in the third month following that in which the tax point occurred. The input VAT may subsequently be deducted when the invoice is received.

This means that delays in receiving ICA invoices may mean that a transaction is, at least temporarily, not VAT neutral.

- VAT tax base

There will be a new definition of "tax base", which aligns more directly with the principal VAT Directive. In general, the taxable basis will be calculated as the amount due to the supplier, plus customs duties, taxes and additional costs (such as commissions, packaging, transport and insurance costs) charged by the supplier. The taxable basis will continue to exclude discounts.

- Invoicing

The provisions covering the issuing and storage of invoices are to be included in the VAT Act, with the introduction of new definitions of "invoice" and "electronic invoice". There are significant changes to the deadlines for the issue of invoices; suppliers or service providers will be able to issue invoices by the 15th day after the

month in which goods were supplied or services provided and no sooner than 30 days before the tax point (or even earlier in some cases). At present invoices must be issued in general within seven days of the tax point. Subject to certain conditions, it will be also possible to issue invoices for advance payments before the advance payment is made.

As these changes are fundamental and impact most aspects of VAT in Poland, it is advisable for taxpayers to review their current VAT systems and processes for compliance with the changes, including ERP systems set-up and respective coding of transactions and flows.

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Portugal

Amnesty for settlement of tax and social security debts

An amnesty has been introduced for the settlement of tax and social security debts incurred before 31 August 2013. Under the amnesty, interest and administrative costs will be waived, and penalties will be reduced to 10% of the minimum amount set by law.

To benefit from the amnesty, payment of the tax debt and the penalty must be made before 20 December 2013.

VAT exemption regime for farmers

Following the abolition of the VAT exemption regime for farmers, farmers must now file a declaration with the tax authorities notifying their transfer to the general VAT regime. The deadline for filing these declarations has been extended until 31 January 2014.

VAT regime for salvage

In line with previous decisions of the Portuguese courts, the tax authorities (PTA) have clarified by way of ruling that the sale/supply of salvage by an insurer does not fall within the exemption applicable to insurance services. Furthermore, the PTA has also clarified the accounting procedure, the VAT liquidation and deduction scheme, and the method of the sale of salvage that shall apply.

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Romania

CJEU rules that payments under contracts that do not mention VAT include VAT

The CJEU has gone straight to judgment in the joined Romanian cases of *Corina-Hrisi Tulică* and *Călin Ion Plavoşin* about whether sums paid under contracts that did not mention VAT were inclusive or exclusive of the tax.

Both taxpayers made supplies under contracts that were silent on VAT and the Romanian tax authority later concluded that they were “taxable persons” at the relevant time and sought to collect VAT on the supplies, treating the sums payable under the contracts as exclusive of VAT. Following unsuccessful appeals, the cases reached the

Înalta Curte de Casație și Justiție (the Romanian Supreme Court) which referred questions to the CJEU in both cases, seeking to establish whether EU law treated the sums received under contracts that did not refer to VAT as the “taxable amount” (meaning that VAT was due in addition to that sum, as contended by the Romanian tax authority).

The CJEU decided that where it was not possible for the taxpayers to collect the VAT from their customers (as seems likely to be the position in these cases) “... the price agreed must be regarded as already including the value added tax”.

This decision may enable individuals who were treated by the tax authorities as taxable persons and who were charged a higher amount of VAT based on the same reasoning to request repayment of the additional VAT imposed by the tax authorities.

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Switzerland

All forms of investment gold to be zero-rated

As of 1 January 2014, all forms of gold intended for trading will be subject to the same VAT treatment and exempted (with input VAT credit) from Swiss VAT.

Transactions involving bank precious metals in the form of bars, tags or granules intended to be invested are zero-rated. At present, the VAT Ordinance refers to the Precious Metal Control Ordinance, which refers to casted gold bars only and not to stamped tags.

To exclude any risk of misinterpretation and ensure that all forms of investment gold will be subject to the same VAT treatment in the future, the Ordinance has been amended to clearly state that both types of transactions, on gold bars as well as on stamped gold tags, are zero-rated.

Jewellery, such as chains and rings in gold are not considered to be investment gold; the trade of such articles in precious metals is subject to VAT.

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United Kingdom

“Fiscal neutrality” slot machine case

The Court of Appeal has delivered its decision in the case of *The Rank Group PLC* and has overturned the decisions of the High Court and the original (2008) VAT and Duties Tribunal (which both based their decisions in favour of Rank on the basis that the tax authorities (HMRC) treated the income from the so-called “section 16/21” machines and fixed odds betting terminals as exempt from VAT, both as a matter of law and practice, and this was also consistent with the regulatory approach).

Despite the fact that the income from such gaming machines was actually treated as exempt from VAT at the time, the Court of Appeal agreed with HMRC’s revised view that

this was wrong and that this meant that there was no “exempt comparator” on which to base a “fiscal neutrality” claim for a refund of VAT on the income from machines where HMRC imposed VAT. It upheld HMRC’s appeal against the High Court decision in favor of Rank. Rank is seeking leave to appeal against the decision to the Supreme Court.

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