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Global Indirect Tax News

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April 2015

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Welcome to the April 2015 edition of GITN, covering updates from the Americas, Asia Pacific and the EMEA regions.

Highlights of this edition include news from Australia, Israel and Japan about amendments to the VAT/ GST treatment of electronic services supplied by foreign providers, an update from Malaysia following the introduction of GST on 1 April, an update from Singapore on the tax authorities' position on the GST treatment of fund management services, the issue by the Belgian tax authorities of guidance following the CJEU VAT case of *Skandia*, and a number of indirect tax announcements from the UK following the recent Budget.

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Deloitte's "The Link between Transfer Pricing and Customs Valuation – 2015 Country Guide" compiles essential information regarding customs-related requirements and implications of related party pricing adjustments in key jurisdictions around the world. The Guide has been updated to address country-specific regulatory changes in the area of related party customs valuation and also to include three new countries: Costa Rica, Guatemala and the United Arab Emirates. The Guide is available for download **here**.

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

David Raistrick
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Americas

Colombia

Assets not correctly described in import declaration may not be cleared for import

The National Tax and Customs Authority has reiterated that imported goods will be treated as non-presented (i.e., they cannot be cleared for import) when the description of the goods on the import declaration does not correspond with the imported goods or the description does not individually describe the goods.

Also, the Authority clarified that in these cases it will be necessary to review the import declaration and the supporting documents, to determine whether the goods may be seized.

Tariff benefits for renewable energy promotion not applicable until regulated

The National Tax and Customs Authority has clarified that tariff benefits for the importation of machinery, materials and raw materials that are destined for projects that generate unconventional energy sources cannot apply until article 13, Law 1715 is regulated by the Ministry of Energy, which will set the conditions for the application of this benefit.

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Asia Pacific

Australia

Government announces intention to charge GST on intangibles supplied from offshore

The Government has announced its intention to amend the GST law to tax 'intangible' services supplied by foreign entities to Australian customers. Few details have been provided at this stage. A more formal announcement is likely in the 2015-16 Budget on 12 May 2015.

It is anticipated that the amendments will be targeted at business-to-consumer dealings in the context of electronic commerce and the supply of digitized services, including content downloads, gambling services and rights to use intellectual property in Australia. It is unclear whether the proposed change will impact the current GST treatment of business-to-business dealings.

In a similar manner to the rules introduced in South Africa in mid-2014 and to the approach proposed by the OECD in a discussion draft of the International VAT/ GST Guidelines published in December 2014, any amendments are likely to require foreign entities to register for GST in Australia and account for 10% GST on supplies made to Australian consumers. Unlike the VAT rules in Europe, foreign entities do not have the option of a 'one stop shop' within the Asia Pacific region to simplify compliance for VAT/ GST equivalent systems that seek to account for tax in the jurisdiction where the consumer is based.

The Government's proposal has been prompted in part by the recent entry of several entertainment streaming services into the Australian market, and the competitive advantage being gained by offshore suppliers as a result of having no liability to pay GST under the current legislation.

Details about the precise nature of the amendments, including any transitional rules (for existing subscriptions/ contracts) and any compliance simplification options to be offered to foreign suppliers, will be communicated as they become available.

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China

Regional Customs Integrative Clearance Reform

Last year, selected Regional Customs implemented the integrative clearance reform in Beijing-Tianjin-Hebei region, Yangtze River Economic Belt and Pan-Pearl River Delta. On 30 March 2015, the General Administration of Customs (GAC) expanded the geographical coverage of the integrative clearance reform, under the “Bulletin on the Launch of Regional Customs Integrative Clearance Reform in the Silk Road Economic Belt” (GAC [2015] Bulletin No. 9) and “Bulletin on the Launch of Regional Customs Integrative Clearance Reform in Northeast China” (GAC [2015] Bulletin No. 10). Bulletins 9 and 10 will take effect from 1 May 2015.

Highlights

Bulletins 9 and 10 aim to enhance Customs clearance efficiency for companies within the Silk Road Economic Belt and Northeast China (the Region). Specifically:

- Companies within the Region may choose to conduct Customs formalities, including declaration, tax payment and goods inspection, with their local in-charge Customs houses, or port Customs of which goods are imported/ exported;
- Customs brokers registered within the Region are allowed to provide brokerage services across different Customs districts;
- Decisions of pre-classification, pre-valuation, pre-determination of country and approval of temporary import/ export will be recognized by all the Customs houses within the same Region.

Comment

With the Silk Road Economic Belt and Northeast China regions joining the Regional Customs Integrative Clearance Reform, the planned nationwide coverage of the Reform is realized. Further interconnection will be required among the five regions (covering 31 provinces/ autonomous regions/ municipalities) before the Reform is expected to reach its full plan by July 2015.

Companies, especially within a group and located in the same Region, are expected to benefit from the Regional Customs Integrative Clearance Reform. Therefore, these companies are recommended to review the structure of their Chinese entities, so as to achieve more Customs efficiency, lower costs associated with clearance, and more flexibility in logistics arrangement.

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India

Increase in Madhya Pradesh VAT rate

Effective 1 April 2015, the rate of VAT leviable under the Madhya Pradesh Value Added Tax Act, 2002 on all goods covered by Part-IV of Schedule II (i.e., all other goods not covered by Schedule I and any other part of Schedule II) has been increased from 13% to 14%.

Highlights of Foreign Trade Policy 2015-2020

The Foreign Trade Policy 2015-2020 has been introduced, with effect from 1 April 2015.

The important changes are as follows:

- For the export of notified goods to notified markets, the Merchandise Export from India Scheme (MEIS) has been introduced, which subsumes five different existing schemes (FPS, MLFPS, FMS, AIIS and VKGUY). The duty scrips issued under the scheme will be fully transferrable, without any conditionality.
- For service exports, the Served from India Scheme (SFIS) has been replaced with the Service Exports from India Scheme (SEIS), which applies to all service providers 'located in India' and not just merely 'Indian service providers'.
- The export obligation in the case of indigenous sourcing of capital goods is to be 25% less than the export obligation stipulated.
- Export Oriented Units (EOU), Electronic Hardware Technology Parks (EHTP) and Software Technology Parks (STP) are allowed to share infrastructural facilities among themselves, enabling them to utilize their infrastructural facilities in an optimum way.

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Japan

2015 tax reform bills enacted

The 2015 tax reform bills were enacted on 31 March 2015 without significant modification. The outline of the reform was published on 30 December 2014, and the bills were submitted to the Diet for deliberations on 17 February 2015 following the approval from the Cabinet.

The highlights of the reform in relation to Japanese Consumption Tax (JCT) are as follows:

- The JCT rate will be increased from 8% to 10% on 1 April 2017 without further delay. The ‘economic conditions’ clause granting the Government the discretion to further postpone or cancel a JCT rate increase based on prevailing economic conditions will be removed.

- The ‘designated date’ for the application of transitional measures for construction works, etc. will be 1 October 2016.

- From 1 October 2015, the place of supply for cross-border digital services (e.g., the provision of e-books and online advertising services) will change from the office of the supplier to the main office or residence/ domicile of the recipient. The supply of cross-border digital services will be classified into business-to-business (B2B) supplies and business-to-consumer (B2C) supplies according to their nature and service terms. For B2B supplies, the reverse charge mechanism will apply, and Japanese recipients will need to account for both input JCT and output JCT on the supplies. For B2C supplies, foreign suppliers will be liable to file JCT returns and pay JCT liability.

- From 1 April 2016, services related to entertainment and sports provided in Japan by foreign enterprises will be subject to a reverse charge.

Among the above items, the new taxation rules for cross-border digital services may most significantly affect foreign companies, although there still are many uncertainties that need to be addressed before the rules come into effect in October this year.

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Malaysia

GST from 1 April 2015

From midnight on 31 March 2015, a new indirect tax regime applied – GST came into force on 1 April 2015.

Despite numerous incidents reported in the press, such as incorrect amounts of GST on tax invoices, the charging of GST on zero-rated items, incorrect formatting of tax invoices, system failures, the suspension of business activity, etc., consumers are slowly adapting to GST.

Businesses too are dealing with issues such as GST classification and the need to ensure their systems and records are ready for the preparation and filing of the first GST return by the end of May 2015 (for those submitting monthly returns).

The Price Control and Anti-Profiteering (Mechanism To Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 were issued on 26 December 2014 (available on **http://www.federalgazette.agc.gov.my/**). The Ministry of Domestic Trade, Co-operatives and Consumerism has been undertaking price checks at businesses including eating establishments, hypermarkets and retail chains to ensure that businesses do not make excessive profits and do pass on the tax savings to end customers, arising from the replacement of service tax and sales tax with GST.

Amendments to GST Orders

The Royal Malaysian Customs Department (RMCD) has amended the previously issued GST Orders for zero-rated supplies, exempt supplies and supplies granted relief from GST, with effect from 30 March 2015. The latest amendments to the legislation are available from: **http://www.federalgazette.agc.gov.my/**.

The list of goods (based on HSN classification) which qualify as zero-rated has been modified. Exclusion from zero rating for services supplied under a contract with an overseas person and which directly benefit such a person, has been restricted to capital market products 'issued and traded' in Malaysia as compared to 'traded' in Malaysia.

Exemption from GST has been extended to the supply of services of the management and maintenance by a joint management body and management corporation to the owners of a building for residential purposes held under a strata title, as opposed to the supply of such services to owners of low and low-medium housing units.

Relief from GST is also provided for goods imported solely for the purpose of propaganda, research or demonstration, subject to conditions.

The RMCD has also issued decisions based on the Director General's interpretation and feedback from taxpayers and industry groups. See: **http://gst.customs.gov.my/en/Pages/default.aspx** for these decisions.

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Singapore

GST treatment of fund management services

The Inland Revenue Authority of Singapore (IRAS) have now issued their revised GST e-tax guide for the fund management industry. The guide clarifies IRAS's final position on fund management services provided to funds (other than trust funds).

IRAS's position was that if a fund had no other permanent establishment (PE) and relied wholly on a Singapore Fund Manager (i.e., a prescribed fund manager in Singapore that holds a capital markets services licence under the Securities and Futures Act (Cap. 289) or someone who is exempted under the Act from holding such a licence) to administer the fund, the fund would be deemed to have a PE in Singapore through the Singapore Fund Manager and so GST would need to be charged on the fund management fees. The implication of this was that the fund would not be able to recover any of the GST as it would not be registered or registerable for GST.

IRAS has consulted further to clarify their position, which is now set out in the final version of the e-tax Guide. Their position is that:

- Prior to 1 April 2015, funds that belong in Singapore by virtue of their Singapore Fund Manager can take advantage of a concession so that GST need not be charged.

- On and after 1 April 2015, IRAS has confirmed that GST is not chargeable on services supplied by Singapore Fund Managers as follows:

  (a) Services supplied to qualifying funds (i.e., funds that satisfy conditions of the Income Tax Concession under Sections 13CA or 13X of the Income Tax Act as at the last day of its preceding financial year) that are incorporated or registered outside Singapore and belong in Singapore only due to their whole reliance on a Singapore Fund Manager; and

(b) Services supplied to overseas fund managers that are incorporated or registered outside Singapore and belong in Singapore only due to their whole reliance on a Singapore Fund Manager, subject to the conditions that the services supplied to the overseas fund managers must be in relation to the services supplied or to be supplied by the overseas fund managers to a qualifying fund incorporated or registered outside Singapore and the qualifying fund belongs outside Singapore or belongs in Singapore only due to its whole reliance on a Singapore Fund Manager.

For clarity, whole reliance can be determined by reviewing the extent to which the Singapore Fund Manager carries on the business of the Fund, i.e., where the Singapore Fund Manager is the sole contracting fund manager for the fund and has the overall responsibility to oversee or carry out the activities of the fund. Where such activities do not amount to whole reliance, the services provided by the GST-registered Singapore Fund Managers as described above should be reported as zero-rated supplies in the GST returns of the Fund Manager.

Practical implications

The remission now granted by IRAS means that Singapore Fund Managers have certainty on their activities. In addition, there may be grounds to recover the GST charged on past fund management services provided to funds which were treated as having a fixed establishment in Singapore through the activities of the Singapore Fund Manager.

Further, Singapore Fund Managers may now have an option to apply for exemption from GST registration if they make wholly or substantially zero-rated supplies.

The clarification also confirms that qualifying funds can seek a remission of the GST they incur via a periodical Statement Of Claim, although it should be noted that not all of the GST incurred is recoverable under this process.

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Thailand

Progress towards establishment of export controls on dual-use items

The recent announcement by Thailand's Ministry of Commerce, that an integrated export control system will be in place by February 2016 to monitor export (including transit and transshipment) of dual-use items, is the strongest message to date that controls will finally be introduced. Subject to ratification by the Thailand Government, the export controls could come into effect in the second half of 2016.

Since 2010, the Thailand Government has indicated its intention to introduce export controls on dual-use items, but no firm commitment was made as to when such controls would be introduced. With increased concerns about global safety and security across governments worldwide, Thailand will be the third country in Southeast Asia (after Singapore and Malaysia) to establish a system to control the export of dual-use items.

Dual-use items are items that are commonly used for civilian applications but can potentially be used for military purposes (e.g., towards development of Weapons of Mass Destruction).

With the introduction of export control on dual-use items, the following sectors will be principally affected:

- Aerospace, marine and defence;
- Special materials and related equipment;
- Materials processing;
- Biotechnology and specialty chemicals;
- Telecommunications, information security and encryption;
- Sensors and lasers;
- Semiconductors/ electronics;
- Super-computers and engineering sectors.

The export control list that Thailand intends to adopt for the control of export, brokering, transfer, transit and transshipment shall be based on the EU Control List (2012).

The Ministry of Commerce has yet to publish regulations governing the framework of Thailand's export control regime, but Thai exporters (including persons/ corporate bodies that are involved in the brokering, transfer, transit and transshipment) of controlled dual-use items will potentially need to obtain export approvals (licences) from the Ministry of Commerce prior to the physical export of dual-use items that are caught under the Control List.

Penalties for breaching export control requirements are also not yet defined, but referencing to other export control regimes that are already established in Southeast Asia, Thai exporters (including persons/ corporate bodies that are involved in the brokering, transfer, transit and transshipment) of controlled dual-use items could be exposed to potential risks of fines and imprisonment.

Companies exporting dual-use items, currently listed under the EU Control List, from Thailand should consider:

- Raising their awareness on export control of dual-use items and how it impacts the company's business;
- Assessing whether their goods for exports would likely be caught under the EU Control List (2012);
- Reviewing current processes to ensure that they have the appropriate processes and procedures in place to monitor outward movement of their items from Thailand;
- Assessing whether systems enhancements need to be introduced to ensure that dual-use items subject to export control could be flagged.

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EMEA

Belgium

Guidance on Skandia judgment: tax authorities impose VAT on head office – branch supplies as of 1 July 21015

On 9 April 2015, the Belgian VAT authorities released their guidance on how the outcome of the *Skandia* judgment of last year (*Skandia America Corp. (USA)*, C-7/13) will affect the Belgian VAT rules (Decision ET. 127.577 dated 3 April 2015).

In the court case, the Court of Justice of the European Union ruled that supplies of services from an overseas head office to a branch, which is part of a VAT group in a Member State, should be subject to VAT.

Going forward, the VAT authorities will thus require the application of VAT on such transactions. This requirement must be implemented by 1 July 2015 at the latest.

Analysis of the Skandia judgment by the tax authorities

Based on the former CJEU *FCE Bank* case, transactions between the head office and an establishment of the same company fall outside the scope of VAT. However, in the *Skandia* case, the CJEU ruled that this principle does not apply if the establishment is part of a VAT group with other legal entities established in an EU Member State. Any supplies of services made by the overseas head office to this branch are considered to be made to the VAT group as a whole and are hence subject to VAT. As a result, the VAT group is required to account for VAT on these supplies under the reverse charge rule.

The VAT authorities have now aligned their position with these principles. Cross-border transactions for consideration between establishments of the same legal entity will be subject to VAT if one or both establishments are, in their country of residence, part of a VAT group including other legal entities. The VAT authorities expect businesses to apply these rules by 1 July 2015 at the latest.

The current provision in the Belgian VAT Code taxing services rendered from a foreign establishment to a Belgian establishment that is part of a VAT group is no longer relevant and will be abolished. Until now, this provision had only been applied in cases of abusive ‘channelling’ of services. Further changes to the VAT legislation do not seem to be planned. No changes are required to the VAT treatment of cross-border transfers of goods within one legal entity, as these are already assimilated to taxable supplies in all cases.

Practical consequences for businesses having multiple establishments

Businesses established in Belgium with establishments abroad and having implemented VAT grouping arrangements will have to carefully review all service flows within their legal entity, both from an inbound and an outbound perspective.

For example, if a Belgian establishment, member of a Belgian VAT group, receives services from an overseas establishment (EU or non-EU), these services are subject to VAT payable by the VAT group through the reverse charge rule. The VAT authorities specify that this applies even if the services are not recharged to other members of the VAT group.

The taxpayer will need to determine whether these services are taxed or exempt as well as define the taxable basis. Moreover, an invoice will have to be issued or drafted internally and all the transactions will have to be reported in the VAT return of the VAT group. The same obligations apply if the foreign establishment rendering the services is part of a VAT group in another Member State, even if no Belgian VAT group has been set up.

Where a Belgian establishment, part of a Belgian VAT group, is itself rendering services to an establishment abroad, the Belgian VAT authorities also consider that this is a taxable service which, under the general B2B rule, should be taxed in the country of the receiving establishment. Also here, the Belgian establishment may be obliged to issue an invoice mentioning ‘reverse charge’ and report the transaction in its VAT return and European Sales Listing, even if the receiving country may not (yet) consider this as a taxable transaction.

The taxable nature of transactions within one legal entity means that these transactions also influence the VAT deductibility (prorata calculation) for mixed taxpayers. In this respect, the VAT authorities already highlight that, given the separation between the establishments in view of the VAT group, VAT related to costs made by a head office for the benefit of establishments abroad will be non-deductible unless these costs are recharged to those establishments.

With these guidelines, the VAT authorities have adopted a position which will have a significant impact on the administrative burden of companies operating through a branch structure (e.g., VAT reporting obligations, adapting invoice references, etc.). In addition, the VAT charged to a VAT group by a foreign establishment will be a cost in so far as the VAT group does not have the (full) right to deduct this VAT. This additional VAT cost will be especially relevant for the financial sector.

Given the deadline of 1 July 2015, institutions working through branches will have to urgently assess the financial and organisational impact of these rules within their business. As the settlement of transactions within a single legal entity is often effected at year end closing, the financial impact may cover transactions during the full year, unless action is taken in this respect. The VAT burden that arises as a consequence of this may lead to companies having to review the efficiency of their structure.

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European Union

EU cross-border rulings trial extended to 30 September 2018

The European Commission has announced that its cross-border VAT rulings trial, which aims to facilitate cross-border VAT rulings for taxpayers on contentious or inconsistent issues, is being extended to 30 September 2018.

The trial allows businesses planning cross-border transactions between two or more of the participating Member States (Belgium, Cyprus, Estonia, Finland, France, Hungary, Latvia, Lithuania, Malta, Netherlands, Spain, Portugal, Slovenia, Sweden and the UK) to seek a ruling on the VAT treatment of them in each country involved.

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Finland

Supreme Administrative Court decision regarding liability to self account for VAT on cleaning of real estate

According to the Supreme Administrative Court's ruling (KHO:2015:50) of 8 April 2015, a non-profit organization that provided VAT exempt social welfare services had to self account for VAT on cleaning work that its personnel performed on real estate also to the extent the work related to movable property on that real estate, as the real estate was used for the VAT exempt social service purposes. However, the mere purchase and delivery of detergents and hygiene products to departments that were not cleaned by the organization did not lead to a liability to self account for VAT.

Amendment of the VAT Act as of 1 January 2016 regarding small businesses

The turnover threshold that applies to small businesses not liable for VAT will be EUR 10,000 as of 1 January 2016. The threshold is currently EUR 8,500. The threshold does not apply to entrepreneurs that do not have a fixed establishment in Finland.

Further, the turnover threshold related to the tax relief scheme will be increased from EUR 22,500 to EUR 30,000 as of 1 January 2016.

The Finnish Parliament approved the legislative amendments on 13 March 2015.

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Germany

CJEU decides that supplies of staff to care homes not exempt

The Court of Justice of the European Union has gone straight to judgment in the German case of *'go fair' Zeitarbeit OHG*, about the VAT treatment of supplies of staff to care homes and the like.

The Bundesfinanzhof took the view that 'go fair' provided services 'closely linked to welfare and social security work' but that the partnership did not fulfil the national law conditions for exemption to apply. It referred questions to the CJEU to determine whether the EU law exemption for supplies of services closely linked to welfare and social security work applied to supplies of temporary staff to care homes, etc., whose supplies of care qualified for exemption under national and EU law. It asked whether State-examined care workers who provide their services directly to persons in need of care or a temporary-work agency which supplies such workers to establishments recognized as being devoted to social well-being could themselves be ‘bodies recognised as being devoted to social well-being’.

The CJEU decided that agencies like ‘go fair’ did not qualify and hence that their supplies were subject to standard-rate VAT.

Holding company input VAT deductible – Advocate-General’s opinion

Advocate-General Paolo Mengozzi has delivered his opinion in the joined cases of *Beteiligungsgesellschaft Larentia + Minerva mbH& Co. KG* and *Marenave Schiffahrt AG*. The cases concern the recovery of input tax incurred by holding companies, and the possibility that ‘non-corporates’ might be included in VAT groups.

The opinion suggests that the CJEU should find that “expenditure connected with capital transactions incurred by a holding company which involves itself directly or indirectly in the management of its subsidiaries has a direct and immediate link with that holding company’s economic activity as a whole. Input VAT on that expenditure should not therefore be apportioned between economic and non-economic activities.”

If the CJEU follows the opinion, VAT incurred by holding companies that make charges for managing their subsidiaries should be recoverable, subject to any restriction resulting from any exempt supplies that they make (e.g., the interest on loans to subsidiaries).

Advocate-General Mengozzi went on to suggest that the CJEU should find that VAT grouping should not be confined to corporate bodies, unless such a restriction “is justified by the prevention of abusive practices or of tax evasion or avoidance” and that “national legislation under which close financial, economic and organisational links ... can exist only where there is a relationship of control and subordination between the members of the VAT group is liable to be compatible with [EU law], on condition that it is necessary and proportionate to the pursuit of the objectives of preventing abusive practices and tax evasion or avoidance in compliance with EU law, in particular the principle of fiscal neutrality ... .”

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Israel

Under draft guidelines released by tax authorities foreign businesses ‘with substantial business activities’ in Israel may be required to register for VAT

The Israel Tax Authority (ITA) has made public a draft of a new guideline which states that foreign businesses ‘with substantial business activities’ in Israel over the Internet will be required to register for VAT. The draft refers to the provision of services (and not to the sale of goods).

According to the draft, when a direct linkage between the services provided (in substantial extents) by the foreign company to Israel residents and Israel exists in a way that the circumstances involved are linked to Israel, it may be argued that a business activity takes place in Israel (e.g., a foreign company that operates a search engine will have to register for VAT purposes in Israel with regards to its income from advertising directed to Israeli customers).

The ITA requested responses by 23 April 2015 via e-mail.

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Italy

Approval of implementing decree regarding e-commerce place of supply rules

The Government has approved a decree implementing art. 58 of the Principal VAT Directive regarding the place of supply of telecommunications services, broadcasting services and e-services to non-taxable customers (the Mini One Stop Shop, MOSS, regime).

(The place of supply for these services from 1 January 2015 is where the non-taxable customer is established, has a permanent establishment or normally resides, instead of the place where the supplier is established.)

The main issues covered include the following:

- There is an exemption from the obligation to issue invoices (unless expressly requested by the customer) for supplies of these services by Italian established suppliers to Italian consumers.

- The MOSS regime: the terms of the procedure (already available on the official website of the tax authorities), automatic checks, the refund procedure, penalties, and deadlines (the deadline for the first 2015 quarter was 20 April 2015).

MOSS web portal details issued

From 1 April 2015, the tax authorities provided both national and other EU Member State operators registered with the MOSS web portal the operating functionalities for the submission of MOSS VAT returns. In particular:

- With respect to e-filing: operators shall: (a) access their reserved area of the MOSS web portal; (b) follow the instructions; (c) write the information required on the online form (the returns must include the VAT number, the period of reference, the currency used and the supplies provided, split for each consumer’s Member State); (d) confirm the transmission.

- With respect to timing: MOSS returns must be submitted on a quarterly basis, based on the following deadlines: 20 April 2015 for the first quarter (January to March); 20 July 2015 for the second quarter (April to June); 20 October 2015 for the third quarter (July to September) and 20 January 2016 for the fourth quarter (October to December).

- With respect to payment: (a) for operators under the EU regime, through the reserved area of the MOSS web portal, by using their own bank account; (b) for operators under the non-EU regime and without a bank account in Italy, through a bank transfer from an account opened at the Bank of Italy, the IBAN code is available on the MOSS web portal. In both cases, the transfer reason must be the reference number of the filed return. Payment through F24 forms and tax offsetting are not permitted.

Application of the extended reverse charge rules

The tax authorities have issued guidelines regarding the extended scope of the reverse charge, as modified by the Stability Law 2015 (circular letter n°14/E dated 27 March). The main clarifications include the following:

- ATECO codes: the tax authorities provided a list of business activities (classified under specific ATECO codes) that are subject to the new reverse charge. According to the authorities, due to the uncertainty about the qualification of some services now included in the reverse charge (such as cleaning services related to buildings, and demolition, plant installation and completion related to buildings), suppliers must now refer to the ATECO codes for their business, and check if their own codes are expressly listed in the circular as subject to the new reverse charge.

- The extended scope of the reverse charge in relation to services related to buildings will apply regardless of the terms of the contract that was already in place.

- Due to the uncertainty about the scope of the recently modified reverse charge, no penalties were to be applied to violations of the new reverse charge rules before 27 March 2015 (the date of issuance of the circular).

New TR form issued to implement new VAT refund procedure

To implement the new VAT refund procedure provided for in the 'Simplifications Decree' (n° 175 dated 21 November 2014), the Director of the tax authorities has approved a new TR form with the following amendments:

- A new box related to the endorsement of conformity by a tax professional or by a statutory auditor;

- A new box related to the statutory declaration/ affidavit attesting the existence of certain conditions regarding net equity, shares transferred and the regular payment of the social security contributions.

Moreover, the new TR form may be used for VAT refund claims by suppliers to public bodies that will accrue VAT credits due to the implementation of the split payment regime (under which VAT on goods and services supplied to certain public bodies is paid to the State by those public bodies, and not the supplier). In particular, new boxes are now included:

- For output transactions carried out by the claimant (under art. 17-ter of the Italian VAT Code);

- To request a VAT refund as a matter of priority, limited to the VAT charged on invoices issued under art. 17-ter of the Italian VAT Code.

Application of new VIES rules

Assonime (the Italian Association of Joint Stock Companies) has provided an analysis of the VIES (the European Commission's VAT number validation) system; comparing the rules that have applied since 21 November 2014, which provide for immediate VIES registration, with the previous rules, under which VIES registration was deferred for 30 days.

The most important point of the analysis relates to the new rule that provides for exclusion from the VIES system when Intrastat forms have not been submitted for four consecutive quarters, after 60 days from the date of the issue of the prior notice by the tax authorities. In particular, Assonime note that it is possible to carry out Intra-EU transactions even after the receipt of the prior notice – the tax authorities have stated that it is possible to avoid exclusion from VIES by providing documentary evidence of the Intra-EU transactions undertaken in the past or by declaring the intention to undertake such transactions in the future (circular letter n°31/E).

VAT warehouse regime

The tax authorities have issued circular letter n°12 dated 24 March 2015 regarding the main aspects of the VAT warehouse regime. In particular, the authorities clarified that:

- The taxable basis (at the time of removal from the VAT warehouse) shall be equal to the consideration/ value of the last transaction, increased by the consideration for any services carried out in relation to the goods while stored in the VAT warehouse.
- The 'limited' VAT representative (where only transactions for which VAT is not due are performed) can be used for carrying out all the invoicing, registering, reporting and Intrastat obligations required by the Italian VAT law.
- The goods must be physically moved into the VAT warehouse – a 'virtual' VAT warehouse is not permitted. On the other hand, the VAT warehouse suspension regime applies to supplies of services on goods kept in a VAT warehouse, even if they are not performed inside the VAT warehouse but in neighboring places, without any time limit for the storage and without the necessity for the goods to be unloaded from the means of transport;
- Incorrect application of the VAT warehouse regime is subject to penalties equal to 30% of the VAT suspended at the time of import. These penalties are levied by the customs authorities. (VAT on import is a customs duty, and thus the customs authorities have the relevant powers of assessment, levying penalties, etc.). The tax authorities' approach on this issue is in contrast with the opinion of the Court of Justice of the European Union, as recently expressed in the *Equoland* case (Case C 272/13). According to the CJEU, the principle of neutrality of VAT should preclude national legislation that "requires the payment of VAT on importation even though that VAT has been settled already under the reverse charge mechanism through self-invoicing and entry in the sales and purchases register of the taxable person".

Italy takes part in joined EU action for application of VAT reduced rate to e-books

Further to the decision of the Court of Justice of the European Union against France and Luxembourg regarding the VAT treatment of e-books, the Italian Minister of Culture Mr. Franceschini, with the Ministers of France, Germany and Poland, addressed a joint letter to the European Commission, requesting an evolution in the EU legislation, in particular, aimed at aligning the VAT treatment of physical books and e-books, to apply the VAT reduced rate to all books, irrespective of whether they are printed or digital.

'Black list' updated

As previously announced, under the Stability Law 2015, the Ministry of Economy and Finance has been empowered to amend the 'black list', thus including only those countries without an adequate level of exchange of information with the tax authorities. (The black list identifies 'high risk countries', from a tax point of view. Basically, it is considered that these countries do not provide adequate fiscal or financial information on companies that are resident and working in these countries compared with other companies located anywhere in the world.)

In this respect, a new ministerial decree was approved on 30 March 2015, deleting from the black list: the Bermuda Islands, the Cayman Islands, the Isle of Man, Malaysia, Philippines, Singapore and the United Arab Emirates. For completeness, it is noted that in line with the black list already in force for VAT purposes, Switzerland has now been included in the black list for corporate income tax purposes (previously, only Swiss companies with an exemption from municipal and local taxes were included in the black list for corporate income tax purposes).

It remains unclear whether the effective date of the new decree will be fiscal year 2015 (the effective date of the new law) or even fiscal year 2014 (for which the deadline for tax return filing is still pending).

Tax agreement between Italy and the Holy See

On 1 April 2015, the Holy See and Italy signed an agreement on fiscal matters. Italy is the first country with which the Holy See has signed an agreement governing the exchange of information.

In the framework of the current process of establishing transparency in the field of financial relations at a global level, the agreement reflects the international standards in terms of the exchange of information (article 26 of the OSCE Model) in order to regulate cooperation between the competent authorities of Italy and the Holy See. The exchange of information applies to the fiscal year starting from 1 January 2009.

The agreement will also implement the provisions of the Lateran Treaty regarding tax exemption for real estate located in Italy, under the ownership of the Holy See.

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Kazakhstan

Customs duties rates on crude oil and oil products

Government Resolution of the Republic of Kazakhstan №145 dated 17 March 2015 has introduced amendments to export customs duties rates on crude oil and oil products.

Based on this Resolution, export customs duties on crude oil and oil products are set at the amount of USD 60 per 1 ton.

The Resolution came into force from the date of its official publication and has been published in 'Kazakhstanskaya pravda' magazine № 52 (27928) dated 19 March 2015.

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Netherlands

Reduced VAT rate for renovation and maintenance of houses to no longer apply from 1 July 2015

Pursuant to an announcement by the tax authorities, the temporary reduced VAT rate for the renovation and maintenance of houses will definitively no longer apply as of 1 July 2015. The reduced VAT rate will continue to apply to painter, plastering and insulation services regarding houses older than two years.

Customers' name and address no longer required on invoices for purchase of electricity, etc. intended for land vehicles

Pursuant to a regulation, fuel suppliers are not obliged to mention the customer's name and address on invoices with regard to fuel intended for land vehicles, provided that the customer can be identified based on payment details. For customers, the VAT charged is deductible based on the receipt. As from April 2015, this measure was extended to the purchase of other types of energy intended for land vehicles, such as electricity.

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Poland

Suspension of 50% VAT deduction for fuel used in passenger cars

As discussed in previous editions of this newsletter, since 1 April 2014, the right to deduct 50% input VAT from the purchase of fuel used in regular passenger cars (both business and private use) is suspended until June 2015.

The question of whether this restriction complies with the derogation issued for Poland by the European Commission regarding input VAT recovery on cars and fuel has been considered by the administrative courts in a number of cases; to date the courts have held that the suspension complies with the law and is to be applied. At this stage, the courts have refused to apply for a preliminary ruling to the Court of Justice of the European Union in this respect (such requests were filed during the proceedings).

The cases are to be considered by the Supreme Administrative Court, and it is possible that the Court may apply for such a preliminary ruling before issuing judgment.

Expansion of catalogue of goods subject to reverse charge mechanism and joint responsibility

On 9 April 2015, the draft bill amending the VAT Act in relation to the planned changes to the reverse charge mechanism and other issues discussed in previous editions of this newsletter was passed. The new law is scheduled to come into force, potentially with some exceptions, on 1 July 2015.

During the parliamentary hearings, a number of amendments were made to the bill, including:

- The catalogue of goods subject to the domestic reverse charge mechanism was broadened to include raw nickel, tin, zinc, lead and aluminum.
- The catalogue of goods in respect of which joint responsibility by contractors for the tax liabilities of suppliers was amended to include printer toners and digital cameras.

The regulations on the reverse charge will apply only to single economic transactions exceeding PLN 20,000 (approximately EUR 4,800). Based on the new legal definition, a single economic transaction would mean, in general, a transaction based on one contract, which may result in one or more supplies of goods, even if they are made on the basis of individual orders, or there are one or more invoices issued documenting particular supplies.

The draft bill will be now passed to the President for signature.

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Portugal

Supreme Administrative Court considers CJEU decision in *Banco Mais*

Following the Court of Justice of the European Union decision in the *Banco Mais* case, the Superior Administrative Court has agreed with the criteria provided by the CJEU, and decided that it should be for the court of first instance to determine, considering the facts, whether the use of common costs is mainly related to the financing and management of leasing and long-term motor vehicle rental agreements (and not the provision of the vehicles themselves), in which case the prorata calculation should not include the capital amortization (which is part of the rent) related to the leasing and rental agreements, the rents from the securitized contracts and the compensation for total loss of goods.

Reduction of reduced and intermediate VAT rates applicable in the Autonomous Region of Azores

According to the draft of the law presented by the Regional Government to the Azores Parliament, the reduced and intermediate VAT rates will decrease from 5% and 10% to 4% and to 9%, respectively. This has been approved by the Azores Parliament. It is now pending for final approval from the Portuguese Republic representative in Azores and then it must be published in order to come into force.

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Russia

Changes in VAT rates for internal air carriage and suburban railway carriage

Federal Law No. 83-FZ of 6 April 2015 changes the VAT rates for the supply of certain categories of services. For suburban railway carriage of passengers the 0% VAT rate is established (instead of exemption from VAT). The rate for the internal air carriage of passengers and luggage is decreased from 18% to 10%.

Although the Federal Law came into force on 7 April 2015, special terms are applied to the VAT rates.

The 0% VAT rate for suburban railway carriage will apply to supplies of services rendered from 1 January 2015 to 31 December 2016.

The 10% rate on internal air carriage will apply from 1 July 2015 to 31 December 2017.

Amendments to list of technological equipment the import of which is not subject to VAT

Russian Federation Government Resolution No. 126 of 14 February 2015 amends the list of technological equipment (including components and spare parts) without an analogue manufactured in the Russian Federation, the import of which onto the territory of the Russian Federation is not subject to VAT. In particular, a new type of chipboards (classification code 8479 30 100 9) is introduced into the list. Also, the Resolution specifies the requirements for machines for the brewing industry (classification code 8438 40 000 0).

The Resolution came into effect on 25 February 2015.

Exemption from administrative liability where voluntary correction of invalid data in customs declaration after release of goods

The Federal Law No. 17-FZ of 12 February 2015 introduces exemption from administrative liability for the provision of invalid data in the customs declaration if the declarant or customs representative voluntarily corrects invalid data in the customs declaration after the release of the goods under certain conditions. The Federal Law does not provide exemption from administrative liability for the non-declaration of goods.

For the exemption from administrative liability for the provision of invalid data in the customs declaration, the following conditions must be met by filing an application with the customs authority on amending the customs declaration:

- The customs authority has not identified an administrative offense;
- The customs authority has not notified the declarant or customs representative of a customs audit performed after the release of goods or has not initiated a customs audit without notification where such notification is not required;
- The declarant or customs representative has no outstanding customs duties and taxes or penalties that were not paid by the deadline in a customs authority’s request for payment.

The Federal Law entered into force on 24 February 2015.

Decision of Constitutional Court on legality of conditions for exemption from customs duties for goods imported as in-charter capital contributions

A case on the retroactive force of the application of the conditions for the exemption from customs duties with respect to goods imported as in-charter capital contributions was considered by the Russian Constitutional Court in Decision No. 417-O of 3 March 2015.

From 1996 till 2011, goods imported into Russia as in-charter capital contributions of a foreign shareholder were exempt from customs duties under several conditions (e.g., prohibition of sale of these goods). In 2011, the Commission of the Customs Union introduced several new conditions for the application of this customs benefit, in particular a prohibition on withdrawal of foreign shareholders from the entity's shareholders. The customs authorities and the courts applied these new conditions retroactively to situations arising before the new conditions were established.

The Court ruled that the state authorities must not apply the newly-established conditions with respect to goods imported as in-charter capital contributions before these new provisions were introduced.

Introduction of a temporary export customs duty on wheat

Russian Federation Government Resolution No. 1495 of 25 December 2014 introduced export customs duty on wheat. The rate of export customs duty amounts to 15% (of the customs value) + EUR 7.5, but not less than EUR 35 for 1 ton.

The Resolution came into force on 1 February 2015 and is effective until 30 June 2015.

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Ukraine

Imports of some categories of waste and scrap exempt from VAT

Effective from 31 March 2015, the Cabinet of Ministers of Ukraine renewed the VAT exemption for imports of waste and scrap of ferrous and non-ferrous metals. This exemption is a temporary measure and will apply until 1 January 2017.

The VAT exemption upon importation will apply solely to the goods included in the list approved by the Cabinet of Ministers of Ukraine.

Extension of casing and tubing import quota

On 27 March 2015, the Interdepartmental Commission on International Trade extended the quota on the importation of steel seamless casing and tubing classified under commodity codes 7304 29 10 00 and 7304 29 30 00 in the Ukrainian Harmonized System (UHS).

Over a period of years, the Government has imposed this restriction to support Ukrainian producers of pipes for the oil and gas industry facing competition from foreign imports.

The above quota will apply from 1 April 2015 to 30 September 2016. This period comprises two stages, during which different quota limits will apply, with a gradual increase. In particular, the total quota for the period from 1 April 2015 to 30 September 2015 is set at 9,608 tons, and starting from 1 October 2015 to 30 September 2016, it will be 19,504 tons.

To import steel seamless casing and tubing into the Ukrainian market within the established quota limits, an importer must obtain a special import license and submit it, together with the certificate of origin for the imported goods, to the customs authorities.

WTO consultations on temporary import surcharge

Currently, companies importing goods into Ukraine must pay an additional import surcharge. Introduced on 26 February 2015, the import surcharge will apply for a 12-month period. The objective of this measure is to address quickly the negative balance of payments of Ukraine, a significant reduction of the monetary reserves of the National Bank, and to restore the equilibrium of the balance of payments.

With a few exceptions, import surcharge at the rate of 5%-10% is levied on the majority of goods placed under the import procedure, irrespective of the country of their origin and free trade agreements signed by Ukraine.

This measure was taken by Ukraine pursuant to Article XII of the General Agreement on Tariffs and Trade, under which Ukraine is under an obligation to hold consultations with the WTO member states.

Ukraine has already notified the WTO Committee on Balance-of-Payments Restrictions of its readiness to commence relevant consultations. The meeting was scheduled for 28-29 April 2015.

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United Kingdom

Budget 2015

The following indirect tax announcements were included in the UK Budget on 18 March 2015 and, where applicable, the Finance Act 2015, which was enacted on 26 March 2015.

Partly exempt businesses: input VAT and foreign branches

Changes were announced to the VAT regulations that will prevent partly exempt businesses from taking account of supplies made by foreign branches when working out how much of the UK VAT on their overheads can be reclaimed. The new measure is intended to implement in UK law the terms of the Court of Justice of the European Union's decision in the French case of *Société Le Crédit Lyonnais*, in which the CJEU concluded that the turnover of the bank's foreign branches could not be taken into account in its French partial exemption calculation and will take effect from the beginning of the partial exemption year starting on or after 1 August 2015. The new provisions will over rule any terms to the contrary in existing partial exemption methods.

VAT refunds for medical courier, search and rescue, and palliative care charities

Legislation to implement the VAT refund scheme for hospice charities (palliative care charities), and the similar scheme for search and rescue and air ambulance charities, which were first announced in the Autumn Statement, were included in the Finance Act 2015. The Act also included provisions to allow VAT refunds to medical courier charities ('blood bikes'), as announced in the Budget speech. The new provisions will permit search and rescue charities, those operating air ambulances, around 200 palliative care charities, and about 40 medical courier charities to reclaim an amount equal to the VAT incurred on their 'non-business' activities.

The new rules apply from 1 April 2015.

Alcohol wholesaler registration scheme

Legislation to implement the alcohol wholesaler registration scheme, announced in the Autumn Statement, was included in the Finance Act 2015. The scheme is intended to reduce excise duty fraud by requiring UK based alcoholic drinks wholesalers to be approved by and registered with the tax authorities (HMRC) and to introduce new criminal offences for trading without approval and buying from an unapproved supplier. The requirement to be registered is to come into force on 1 January 2016 and the scheme will be in full force from 1 April 2017.

VAT registration and deregistration thresholds increased from 1 April 2015

As usual, the Budget included an announcement that the VAT registration and deregistration thresholds will increase. From 1 April 2015, the VAT registration threshold was increased from £81,000 to £82,000 and the deregistration threshold went up from £79,000 to £80,000.

Other indirect tax measures in the Budget

- Alcohol duties:
    - Duty rate on general beer reduced by 2% – approximately 1 penny a pint.
    - Duty rate on spirits and most ciders reduced by 2% – approximately 19 pence on a liter of spirits and 1 penny on a liter of cider.
    - Wine duty will be frozen.
- Tobacco: duty rate increased by 2% above inflation and consultation on measures to tackle the illicit tobacco trade.
- Fuel Duty frozen.
- Environmental taxes: either frozen or to increase by inflation only.

Recovery of input VAT on pension fund management costs

HMRC have published another Brief about the scope for employers to recover VAT on pension fund management costs. It confirms that, in some circumstances, tripartite contracts between fund managers, employers and the fund trustee(s), coupled with invoices to and payment for fund management by the employer will be sufficient for the employer to treat the VAT on fund management fees as its input tax. The Brief also puts beyond doubt that, until 31 December 2015, businesses can continue to use the VAT treatment outlined in VAT Notice 700/17 should they choose.

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