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**Global Indirect Tax News**  
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Welcome to the December 2015 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Highlights of this edition include amendments to the recently introduced GST system in Malaysia, the introduction of a new reporting requirement for VAT payers in the Czech Republic, and changes to the VAT treatment of tourism services in Iceland.

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

**David Raistrick**

Deloitte Global

Indirect Tax Global Leader

[Back to top](#)

## Country summaries

### Americas

#### Canada

The proposed HST rate increase in Newfoundland and Labrador has been cancelled.

### Asia Pacific

#### India

There has been an increase in the rate of interest under the Maharashtra VAT Act.

December 2015

### Country summaries

[Americas](#)

[Asia Pacific](#)

[EMEA](#)

[Eurasian Economic Union](#)

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The Delhi VAT Act has been amended; major amendments relate to the payment of advance tax, the use of digital signatures, and the installation of devices/ software by dealers.

Clarifications have been issued regarding the Swachh Bharat Cess of 0.5%, which was effective from 15 November 2015.

A salary paid to a seconded employee has been found not to be liable to service tax.

## **Malaysia**

Budget 2015 was presented on 23 October, including a number of announcements concerning GST.

The Director General of the Royal Malaysian Customs Department has issued a decision regarding input tax credit claims.

## *Trade Preferences*

### **Kazakhstan**

There are certain issues following Kazakhstan's accession to the World Trade Organization.

[Back to top](#)

## EMEA

### **Czech Republic**

From 1 January 2016, all Czech VAT payers will be required to prepare and submit a VAT control statement.

### **Denmark**

The Danish Tax Authority has issued guidance on the application of the *ATP PensionService*, case.

### **Finland**

Services related to vouchers were deemed VAT exempt payment transfer services.

Incorrectly recovered input VAT does not have an effect on a company's income taxation after the three year statutes of limitation.

There has been a CBT ruling on VAT exempt health and medical care services.

The CBT has published two rulings on the VAT treatment of special investment funds.

MBA education sold by a foreign university has been deemed subject to VAT.

### **Gulf Co-operation Council**

The answer to the question of whether the Gulf States will ever implement VAT has long been unclear, and given the complexities of moving from a virtual 'no tax' regime to a new world of tax, it is difficult to be certain. However, most commentators seem to think there is a gradual move from 'if' to 'when'.

### **Iceland**

Changes to VAT on tourism take effect on 1 January 2016.

### **Italy**

Customs has issued new guidelines on customs duties payments and deposits.

### **Poland**

Changes to the Polish Tax Ordinance come into force on 1 January 2016, including changes to penalties.

There has been a judgment regarding the shortened, 25 day VAT refund period.

### **Portugal**

The Tax Arbitrage Court has ruled that private companies rendering VAT exempt medical services may waive such VAT exemption (and apply the 5% VAT reduced rate), irrespective of whether or not they render such services in a hospital environment.

The Tax Arbitrage Court has ruled that the intermediation fee charged by independent sellers of tourist use rights over immovable property or part thereof for more than 20 years is VAT exempt.

There is an update on the presentation of the 2016 Budget.

## Russia

There has been an amendment to the list of technological equipment the import of which into the territory of the Russian Federation is not subject to VAT.

A Letter of the Ministry of Finance has been issued regarding the determination of the VAT base on receipt of advance payments in foreign currency.

A Letter of the Ministry of Finance has been issued regarding the application of VAT to premiums (bonuses) received by buyers of non-food goods.

A Letter of the Ministry of Finance has been issued clarifying the three year period to claim VAT credit.

A Letter of the Ministry of Finance has been issued clarifying the procedure for applying the 0% VAT rate upon export of goods from Russia to the states – members of the Eurasian Economic Union upon transportation of which a loss is identified that is higher than norms of natural loss.

The Federal Tax Service is developing an extension to the functionality of the IT system ASK-VAT-2 to review information on the transfer of funds between bank accounts of companies and counterparties.

There may be an amendment to the VAT treatment of supplies of electronic services via the Internet.

There may be an amendment to the procedure for determining the VAT base when receiving advance payments.

There may be an amendment to the documentary support for applying the 0% VAT rate when exporting goods by international mail.

There may be an amendment to the legal regulation of state support for exports.

The import of certain goods originating from Turkey has been prohibited.

An exemption has been introduced for customs clearance fees for goods exempt from export customs duties exported in international postal items.

There have been a number of amendments to the Tax Code with respect to excise tax.

### **Sweden**

The tax authorities have published formal guidance on their interpretation of the CJEU's decision in the *Skandia* case.

### **Ukraine**

Electric car import duty has been abolished.

There have been changes in the application of certain special duties.

Fodder grain veterinary certificates are no longer required.

Limits have been introduced on the importation of seeds and planting material.

### **United Kingdom**

There has been a decision in the 'dental plan' VAT exemption case.

The UK Autumn Statement contained some indirect tax issues, although little of note.

## *Trade Preferences*

### **Ukraine**

The Ukrainian Parliament ratified the Trade Facilitation Agreement.

[Back to top](#)

## Eurasian Economic Union

### **Eurasian Economic Union**

Certain information will be required on goods imported via aircraft.

There are amendments to import customs duties rates on drilling machines and beryllium oxide and hydroxide.

Antidumping duty on certain steel pipes originating from Ukraine has been extended.

Antidumping duty has been introduced on truck tires and crawler bulldozers originating from China.

[Back to top](#)

## Americas

### Canada

#### **HST rate increase in Newfoundland and Labrador cancelled**

On 2 December 2015, the new provincial Liberal government announced that it will honour its campaign promise to scrap the planned two percentage point increase in the harmonized sales tax (HST). A letter of instruction cancelling the planned increase in the provincial component of the HST from 8% to 10% has been forwarded to the provincial finance officials.

Although this political commitment may be welcome news for consumers, many public and private sector organizations who have invested time and money in preparation for the planned sales tax increase – and made system changes to be compliant with the corresponding transitional rules – may feel differently. Basically, any changes to operational procedures and planning for the HST rate increase must be undone.

**Janice Roper, [jroper@deloitte.ca](mailto:jroper@deloitte.ca), Deloitte Canada**

**Robert Demers, [rdemers@deloitte.ca](mailto:rdemers@deloitte.ca), Deloitte Canada**

[Back to top](#)

# Asia Pacific

## India

### **Increase in rate of interest under the Maharashtra VAT Act**

The Government of Maharashtra has notified revised rates of interest to be effective from 1 December 2015. As a result of this amendment, the rate of interest for delay in payment or short payment of tax as per return or as assessed etc. has been increased considering the period of delay. The revised interest rates are as follows:

- 1.25% per month or for part thereof for delay up to 1 month;
- 1.25% for the first month and 1.50% per month or for part thereof for the balance period for delay between 1 month to 3 months; and
- 1.25% for the first month, 1.50% for next 2 months, and 2.00% per month or for part thereof for period of delay beyond 3 months.

### **Payment of advance tax, use of digital signatures and installation of devices/ software by dealers under Delhi VAT Act**

The Government of Delhi made amendments to the Delhi Value Added Tax Act, 2004 by passing The Delhi Value Added Tax Third Amendment Act, 2015. The provisions will come into effect from a date which is yet to be notified.

The major amendments made are as follows:

- Provisions have been incorporated to impose advance tax on specified goods imported into the National Capital Territory of Delhi from a place outside India. Such advance tax will be imposed under the presumption that goods imported are meant for sale or for use in manufacture or processing of goods meant for sale. Further, if goods are imported for purposes other than sale, then the dealer must make an application to the commissioner for exemption from payment of advance tax.

- The payment of advance tax shall be counted towards the discharge of final tax liability. A list of goods/ dealers and other conditions in connection with the payment of advance tax will be notified separately by the Government.
- Provisions have been incorporated vide which the Commissioner may notify the dealer/ class of dealers who would be required to file returns only through electronic mode using digital signatures or any other electronic identification process.
- A new section 50A has been introduced wherein notified dealers must install such physical compliance devices or software as may be considered necessary for communication of the information of sale invoices to the Commissioner on a real time basis. It has also been clarified that the cost of equipment and installation of the device and software shall be borne by the dealer.

#### **Clarifications regarding Swachh Bharat Cess of 0.5%, which was effective from 15 November 2015**

The Central Government notified the levy of Swachh Bharat Cess of 0.5% with effect from 15 November 2015, whereby the effective rate of service tax would be 14.5%. In this connection, several notifications have been issued by the Central Government in addition to a clarification by way of Frequently Asked Questions (FAQs).

Some of the important clarifications are as follows:

- The accounting codes for Swachh Bharat Cess and the sub-heads under it are:
  - Swachh Bharat Cess (Minor Head): 0044-00-506
  - Tax Collection: 00441493
  - Other Receipts (Interest): 00441494
  - Penalties: 00441496
  - Deduct Refunds: 00441495

- Swachh Bharat Cess will also be levied on service tax paid under the reverse charge mechanism. Thus, in the case of specified taxable services mentioned in Notification No. 30/2012 – ST dated 20 June 2012, the liability for the discharge of Swachh Bharat Cess will be on the recipient of services.
- CENVAT credit of Swachh Bharat Cess cannot be availed, as the Cess is not integrated in the CENVAT credit chain. Consequently, Swachh Bharat Cess cannot be paid by utilizing credit of any other duty or tax.
- Taxable services, on which service tax is levied on a certain percentage of the value of the taxable service, will attract Swachh Bharat Cess on the same percentage of value on which service tax is paid under Notification No. 26/2012 – ST dated 20 June 2012. For example, in the case of the Goods Transport Agency Service, Swachh Bharat Cess would be applicable on 30% of the value of taxable services since, as per the provisions of the aforementioned notification, service tax is payable on the abated value of 30%, i.e., [Service Tax + SBC]% would be  $(14\% \text{ Service Tax} + 0.5\% \text{ SBC}) \times 30\% = 4.35\%$ .
- The provisions of Service Tax (Determination of Value) Rules, 2006 would apply while arriving at the value on which Swachh Bharat Cess is to be levied.

#### **Salary paid to a seconded employee not liable to service tax**

The applicant, a subsidiary of a U.S. company, filed an application before the Authority of Advance Rulings (AAR) regarding the applicability of service tax on the salary paid to a seconded employee of the U.S. parent. As per the tripartite agreement entered into between the three parties, Indian Company was to pay the salary to the employee, while the employee's social security interests in the U.S. were to be taken care of by U.S. Company. Further, Indian Company was not required to reimburse U.S. Company for the payment of social security.

The applicant claimed exemption from payment of service tax on the salary paid to the employee on the ground that the definition of 'service' excludes from its ambit 'the provision of service by an employee to the employer in the course of or in relation to his employment'.

The AAR authority upheld the contention of the applicant that since the definition of 'service' excludes the service offered by an employee to an employer, the clause cannot be interpreted on the basis of provisions that related to the period prior to the Negative List regime.

**Prashant Deshpande, [pradeshpande@deloitte.com](mailto:pradeshpande@deloitte.com), Deloitte India**

## Malaysia

### **Budget 2015 announcements concerning GST**

On 23 October 2015, Budget 2015 was presented to the Malaysian Parliament. The Budget included a number of amendments relevant to GST which are set out below. Until further details are available, it is assumed that the amendments identified below will have effect from 1 January 2016.

#### **Change in time of supply provisions for imported services – amendment to section 41(4)**

The time of supply for imported services is proposed to be the earlier of the following dates:

- a) The date when any payment is made by the recipient; or
- b) The date when any invoice is issued by the supplier who belongs in a country other than Malaysia or who carries on a business outside Malaysia.

This means, if an invoice comes before payment, then the recipient would need to account for GST on the invoice date and not on the date of the payment of the invoice. However the input tax credit for GST paid under the reverse charge can only be claimed when payment is actually made to the overseas supplier.

### **Penalty on late payment of GST**

Proposed new subsections will allow authorities to impose penalties on any late payment of GST. The minimum penalty is intended to be from 5% up to maximum penalty of 25% of the amount of tax due and payable based on the number of days delay.

### **Suspension of import GST for goods imported under the Warehousing Scheme**

An amendment has been proposed to section 70(1) of the GST Act 2014 to confirm that import GST is suspended when goods are deposited in the warehouse, and also, GST would not apply on the movement of goods between warehouses.

### **Exemption for rural air services – Domestic Air Transport**

Exemption of economy class domestic air travel within and between Sabah, Sarawak and Labuan for passengers of the Rural Air Service routes.

### **Extension of Approved Trader Scheme**

Companies undertaking aerospace maintenance, repair and overhaul (MRO) activities will be eligible to apply for the Approved Trader Scheme (ATS). This will be subject to certain conditions, which have not, as yet, been publicized.

### **GST relief on procurement of education-related equipment**

Presently GST relief is offered on the procurement of teaching materials and equipment by private educational institutions for childcare, schools, higher education institutions, universities etc. This relief has been extended to cover skills and vocational training centers that conduct approved and accredited programs under the National Skills Development Act 2006.

### **Expansion of zero rating list to include more food items and medicines/ drugs**

It has been proposed that additional food items will be GST zero-rated, such as chickpeas, green and white beans, and mustard seeds.

4,415 new types of products are to be added to the existing list of zero-rated medicines.

## **Decision of Director General regarding input tax credit claims**

The Director-General of the Royal Malaysian Customs Department from time to time issues clarifications on general open issues. On 2 November 2015, the DG issued a new decision, No 8/2015, on the claiming of input tax credit, with an effective date of 2 November 2015.

Three issues have been addressed in the DG decision, which are as follows:

- Employee Benefit: whether the supply of accommodation with furniture to an employee without consideration is considered an employee benefit.
  - Supplies made as employee benefits are considered to be used for the purpose of business, and input tax is claimable unless the supply relates to an exempt supply or is blocked input tax.
  - Accommodation provided as employee benefits relates to an exempt supply. It is considered to be used for the purpose of business, however input tax incurred (if any) on the acquisition of accommodation is not claimable.
  - Where the accommodation includes furniture, deemed output tax of 6% would apply on the supply of the furniture and the employer is entitled to input tax credit. However, if accommodation (furnished or unfurnished) is for an employee's family, the input tax is blocked.
- Whether equipment provided by an employer in relation to safety and security requirements under the Occupational Health and Safety Act 1994 is considered an employee benefit.
  - Safety and security equipment provided under an employment contract as an employee benefit free of cost is not subject to GST. If the employment contract does not cover such equipment, then the supply would be subject to GST. If such equipment is provided on returnable basis (i.e., the employee must return the equipment), no GST should be accounted for.

- To what extent a person is considered as holding a tax invoice as mentioned in paragraph 38(4)(a) of GST Regulations (GSTR) 2014.
- Although the law allows input tax credits to be claimed for a period of up to six years, where it is claimed in a month subsequent to when the business 'holds' the tax invoice, this would require approval of Malaysian Customs.
- Customs have allowed businesses to make a claim without prior approval, provided the claim is made in the GST return for the taxable period that corresponds to the earlier of:
  - a) The date on which the invoice is posted into the accounts payable system; or
  - b) A year from when the company first held the tax invoice.

**Senthuran Elalingam, [selalingam@deloitte.com](mailto:selalingam@deloitte.com), Deloitte Malaysia**

**[Back to top](#)**

## *Trade Preferences*

### Kazakhstan

#### **Kazakhstan's accession to World Trade Organization**

Resolution of the Higher Eurasian Economic Council № 22 dated 16 October 2015 *On Certain Issues related to the Republic of Kazakhstan's Accession to the World Trade Organisation* has requested the Eurasian Economic Commission to:

- 1) Approve a list of goods in relation to which Kazakhstan, in accordance with the conditions stipulated by paragraph 307 of the Working Group for Kazakhstan's Accession to the World Trade Organisation, applies import customs duties that are lower than Eurasian Economic Union Common Customs Tariff (EEU CCT) rates, and the rates;

- 2) Together with EEU country member representatives, by 31 March 2016 work on the viability of amending the EEU CCT to set, for specific categories of goods, import customs duties that take into account Kazakhstan's obligations accepted as a condition for joining the World Trade Organization.

Furthermore, Kazakhstan should guarantee the use of goods imported into Kazakhstan from other countries and released for domestic use together with the payment of import customs duties at the lower World Trade Organization Kazakhstan rates according to the list, only in their country and take measures not to export the goods to other EEU country members.

The issues regarding the import and handling of goods using the reduced World Trade Organization Kazakhstan rates are discussed in more detail in the draft protocol that is currently being ratified. An overview of the contents of the protocol will be provided in a subsequent edition of this newsletter.

**Vladimir Kononenko, [vkononenko@deloitte.kz](mailto:vkononenko@deloitte.kz), Deloitte  
Kazakhstan**

[Back to top](#)

## EMEA

### Czech Republic

#### **VAT control statement – a new VAT reporting obligation**

From 1 January 2016, all Czech VAT payers will have to prepare and submit a VAT control statement (kontrolní hlášení) in respect of transactions with the local place of supply as part of their compliance obligations.

This report will contain details of individual tax documents (e.g., a customer's VAT number, reference numbers of the tax documents, date of taxable supply, tax base, VAT) and should be filed electronically on a monthly basis to the respective tax administrator.

At first sight, this reporting requirement does not appear to be of major concern because VAT payers maintain such records as part of their normal operations for VAT purposes; nevertheless, the VAT control statement has a fixed structure with precise information requirements to be adhered to. The electronic data collection will additionally enable the tax administrator to undertake more efficient automated reviews, which may lead to an increase in the identification of errors and, consequently, additional VAT assessments. In the case of any inconsistency, Czech VAT payers will be required to make corrections within five calendar days, and, in addition, quite strict sanctions will be newly introduced in relation to the VAT control statement.

Compilation of the VAT control statement could be problematic since, for many VAT payers, the current reporting system does not contain all the data required for preparing the VAT control statement.

**Radka Maskova, [rmaskova@deloitteCE.com](mailto:rmaskova@deloitteCE.com), Deloitte Czech Republic**

**Monika Vatrtova, [mvatrtova@deloitteCE.com](mailto:mvatrtova@deloitteCE.com), Deloitte Czech Republic**

## Denmark

### **Updated guidance on *ATP PensionService* case**

On 25 November 2015, the Danish Tax Authority released two of the expected three sets of guidelines in relation to the *ATP PensionService* case (C-464/12).

In *ATP PensionService*, the Court of Justice of the European Union found that a pension fund that pooled investments from a number of defined contribution occupational pension schemes qualified as a Special Investment Fund (SIF) for the purposes of the VAT exemption for fund management.

From a Danish perspective four main questions arise from the CJEU's decision:

- 1) Do all Danish pension funds qualify as SIFs?
- 2) Which party is entitled to reclaim previously charged VAT if the exemption should have been applied, i.e., the supplier or the recipient?
- 3) Has the definition of 'management services' broadened so that other types of vehicles, traditionally seen as SIFs, can reclaim VAT?
- 4) What is the definition of 'management services'?

From the guidelines it is clear that most Danish life insurance and pension institutions will qualify as SIFs. However, the third set of guidelines, which has not yet been published, is expected to provide further information on the broader Danish definition of SIFs, which will impact all types of special purpose vehicles that make collective investments, e.g., venture funds, real estate funds, alternative investment funds, etc.

The new guidelines give guidance in relation to the first question. However, in relation to the last three questions, the guidelines are relatively vague.

The scope of 'management services' is not commented on, except in reference to Appendix II of the UCITS directive and to the specific package of services supplied by ATP PensionService. Further discussions with the Danish Tax Authorities around the definition of management services, especially in the area of IT services, are therefore expected. Moreover, discussions around whether 'management services' consist of several individual supplies or a single supply are also expected going forward. Most likely further case law and potentially further referrals to the CJEU will follow.

The main concern for the industry is, however, which party can reclaim the VAT charged on management services that should have been exempted. According to the guidelines this will be determined on a case by case basis, based on which party bears the final burden of the VAT.

**Henrik Pedersen, [henpedersen@deloitte.dk](mailto:henpedersen@deloitte.dk), Deloitte Denmark**

## Finland

### **Services related to vouchers deemed VAT exempt payment transfer services**

The Finnish Central Board of Taxes (CBT) has ruled in the case KVL:015/2015 on the VAT treatment of services related to vouchers.

In this case, a company, X Oy, provided services related to luncheon vouchers and vouchers for cultural and exercise activities to employers and an electronic system for providing luncheon, sports and culture benefits to employees. X Oy also offered services related to vouchers for social and welfare services to municipalities.

X Oy charged the nominal value of the voucher or the value which was uploaded to the electronic system from the employer companies. The CBT considered that the charging of nominal value was not an advance payment of goods or services as the VAT rate of the goods or services, which were purchased later using the voucher or the electronic system, was not known at the time the nominal value was charged.

X Oy also provided services related to using the vouchers and electronic system as means of payment (e.g., administrative and mailing services).

X Oy charged fees to the employer companies, municipalities and the companies which received the payments made using the voucher or electronic system.

The services of X Oy were regarded as VAT exempt payment transfer services.

### **Incorrectly recovered input VAT does not have effect on company's income taxation after three year statutes of limitation**

In ruling KHO:2015:157, the Supreme Administrative Court (SAC) considered the effect of incorrectly recovered input VAT on the company's income taxation after the three year statutes of limitation for VAT.

In this case, a company had recovered input VAT on a VAT exempt purchase. According to the Tax Recipients' Legal Services Unit, the incorrectly recovered input VAT should be added to the taxable income of the company although the time limit for VAT reassessment had already expired.

The SAC stated that the input VAT could not be added to the taxable income of the company as the fact that the statutes of limitations for VAT and corporate income taxation are different is a decision made by the legislator.

### **CBT ruling on VAT exempt health and medical care services**

The CBT ruled in a case KVL:031/2015 on the VAT treatment of supplies of devices and equipment for operations. The applicant provided public hospital personnel as well as devices and equipment for operations.

The CBT considered that the activities of the applicant were part of VAT exempt health and medical care services regardless of the fact that the applicant did not have a license to provide health and medical care services, as the purchaser of the services had the license. Therefore, the supplies of the devices and equipment were deemed VAT exempt.

### **CBT rulings on VAT treatment of special investment funds**

In ruling KVL:034/2015, the CBT considered the VAT treatment of investment fund X Oy, which was a joint-stock company.

The investment fund had five shareholders who had invested into the share capital and non-tied equity of the investment fund. X Oy had three different share types of which only one entitled the shareholder to a dividend. X Oy was not regarded as a collective investment fund within the meaning of the UCITS directive nor an alternative investment fund within the meaning of the Alternative Investment Fund Managers

directive. Further, X Oy did not have the similar characteristics as a collective investment fund within the meaning of the UCITS directive.

Therefore, the management services that X Oy purchased were not deemed as VAT exempt management services of a special investment fund.

In ruling KVL:035/2015, the CBT deliberated also the VAT treatment of a private equity fund, X Ky, which had the form of a limited partnership. The only active partner of X Ky was the management company of the fund, GP Oy. As GP Oy had no employees, it had outsourced the management of the fund to A Oy, which was registered as manager of alternative investment funds. Further, A Oy had outsourced part of the management services to a German B GmbH which sold part of the services to A Oy and part of the services directly to X Ky. The management services B GmbH sold included, among others, calculation of management fees, quarterly reports, supervision of investment commitments of limited partners, management of the payments related to profit distribution and analysis on the investments of the fund.

X Ky was regarded as an alternative investment fund within the meaning of the Alternative Investment Fund Managers directive. X Ky had substantially similar characteristics as a collective investment fund within the meaning of UCITS directive. Therefore, X Ky was regarded as a special investment fund within the meaning of the Article 135(1)(g) of the Principal VAT Directive. Further, the CBT stated that the services that were purchased from A Oy and B GmbH formed a distinct whole fulfilling the specific and essential functions of a special investment fund's VAT exempt activities. Thus, the services B GmbH rendered were regarded as VAT exempt management services of a special investment fund.

#### **MBA education sold by foreign university deemed subject to VAT**

The CBT ruled in case KVL:037/2015 on the VAT treatment of Master of Business Administration (MBA) education which was sold by a foreign university.

The education included self-study, lectures and workshops. The lectures and workshops took mainly place in Finland although the teachers were physically in other EU countries. According to a statement of the Finnish Ministry of Education and Culture, MBA education is not a part of the Finnish system of degrees and curricula. Thus, MBA education was not regarded as a VAT exempt educational and training service. Additionally, the CBT stated that MBA education forms one entirety of services which cannot be divided into parts. As the main part of the education was carried out in Finland, the whole MBA education was considered to be sold in Finland.

**Harri Huikuri, [harri.huikuri@deloitte.fi](mailto:harri.huikuri@deloitte.fi), Deloitte Finland**

## Gulf Co-operation Council

### **VAT and the Gulf States**

The answer to the question of whether the Gulf States will ever implement VAT has long been unclear, and given the complexities of moving from a virtual 'no tax' regime to a new world of tax, it is difficult to be certain. However, most commentators seem to think there is a gradual move from 'if' to 'when'.

There are six countries in the Gulf Co-operation Council: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and UAE. For different reasons, they may not implement a VAT system at the same time, but some of them have better reasons for implementing VAT earlier than later.

It is well known from the press that the UAE are more advanced in their thinking on this topic than other GCC countries, and they need to be as they lack some of the tax machinery the others have. It is easy to forget that the Middle East is not really a 'tax free zone'. Nearly all the GCC countries have wide-ranging corporate tax systems. The UAE (along with Bahrain) has no significant central tax authority. Its road from making a decision to implementing a tax might therefore seem to be a bit longer than the other members of the GCC.

That being said, the UAE has said publicly it will give at least 18 to 24 months' notice of the introduction of VAT, which is helpful in terms of planning for implementation, so realistically the earliest one could expect an implementation is 2018 – and that would require an

announcement very soon, based on the Government's promises. However, that announcement seems increasingly imminent.

See [GCC is one step closer to VAT implementation](#) for an update on the latest press comment from the UAE government.

**Justin Whitehouse, [juwhitehouse@deloitte.co.uk](mailto:juwhitehouse@deloitte.co.uk), Deloitte UK**

## Iceland

### **Changes to VAT on tourism take effect**

In 2014, the Icelandic Parliament approved a number of changes to the VAT legislation that are to take effect on 1 January 2016.

First, the current VAT exemption for passenger transport will be limited as of 2016. The exemption will only apply to public transport on scheduled routes, by land, air, and sea; to the organized transportation of individuals with disabilities and school children; and transportation by taxi. All other passenger transportation, such as of tourists, shall be taxable at the reduced VAT rate.

Secondly, the services of foreign and domestic travel agents will be taxable for VAT at the reduced rate, insofar as these parties supply goods or services that tourists utilize in Iceland. Previously, these services were VAT exempt.

In connection with this amendment, the services of travel agents involving the international transport of passengers and services that tourists utilize outside Iceland will, from 1 January 2016, be classified as zero-rated services. These services were exempt from VAT with no right to input tax.

In accordance with these amendments, foreign travel agencies have to register for VAT purposes in Iceland for the supplies of goods and/ or services that tourists utilize in Iceland.

**Vala Valtysdottir, [vvaltysdottir@deloitte.is](mailto:vvaltysdottir@deloitte.is), Deloitte Iceland**

## Italy

### **Customs duties payments and deposits**

On 23 October 2015, Customs issued new operative guidelines, allowing operators to pay and deposit customs duties via bank or postal transfer, pending the issuance of further details by the authorities

**Alessandra Di Salvo, [adisalvo@sts.deloitte.it](mailto:adisalvo@sts.deloitte.it), Deloitte Italy**

## Poland

### **Changes to Tax Ordinance from 1 January 2016, including changes to penalties**

As discussed in previous editions of this newsletter, there are a number of changes to the Polish Tax Ordinance (providing for general tax rules in Poland) coming into force on 1 January 2016 which may impact the position of taxpayers in Poland.

The most important ones concern changes in the penalty interest rates, in particular:

- The introduction of a reduced penalty interest rate on tax arrears equal to 50% of the standard interest rate, in the case of a self-disclosure by the taxpayer (including the correction of the return and payment of the arrears within a maximum of seven days as of submission of the corrective return), provided correction is performed within six months of the deadline for filing the VAT return for the reporting period corrected;
- The introduction of an increased penalty interest rate on tax arrears in VAT and excise duties equal to 150% of the standard interest rate, imposed by the tax authorities:
  - If the amount of the underpayment is more than 25% of the tax due, but not if the amount of the underpayment is less than five times the minimum salary (PLN 8,750 for 2015 liabilities) – where identified by the tax authorities in the course of the VAT audit/ explanatory proceedings/ tax proceedings or self-disclosure by the taxpayer where the audit was notified by the authorities;

- For non-filing and non-payment – where identified by the tax authorities in the course of the VAT audit/ explanatory proceedings/ tax proceedings.

The new law gives an opportunity to benefit from the reduced penalty interest rate (of 50%) with respect to tax arrears which arose before 1 January 2016, provided respective requirements are met (i.e., the corrections are filed within the first half of 2016).

Moreover, the obligation to accompany the correction with a letter of explanation is to be abolished. Nevertheless, attaching such a letter can limit the number of potential queries from the authorities' side.

Further changes concerning Power of Attorney and Single Audit File (SAF) for audit purposes are to come in force in July 2016.

#### **SAC judgment regarding shortened, 25-day VAT refund period**

On 30 November 2015, the Supreme Administrative Court issued a judgment that will affect the ability to claim VAT refunds in a shortened, 25 day period.

In particular, according to Polish VAT law, taxpayers are able to claim VAT refunds within 25 days of filing the VAT return (normally 60 days) provided that “all purchase invoices from which VAT is to be deducted are fully settled”.

According to the SAC, this shortened VAT refund period may apply only if the liabilities were settled in cash or via bank transfer. In particular, it will not be possible to apply for such refund if any of the liabilities were settled in any other form (such as the netting of liabilities).

The judgment confirms the practice of the authorities in this respect, which do not agree refunds within 25 days for taxpayers who settle their liabilities via netting.

**Michel Klosinski, [mklosinski@deloittece.com](mailto:mklosinski@deloittece.com), Deloitte Poland**

## Portugal

### **Waiving VAT exemption on medical services rendered by private companies**

The Tax Arbitrage Court has ruled that private companies rendering VAT exempt medical services, as per article 132(1)(b) of the Principal VAT Directive, are allowed to waive such VAT exemption (and apply the 5% VAT reduced rate), irrespective of whether or not they render such services in a hospital environment. The exemption for hospital and medical care services applies to taxpayers that supply their medical services in hospitals or in establishments of a similar nature, such as centers for medical treatment or diagnosis and other establishments of a similar nature.

The decision is in line with the concepts analyzed in the Court of Justice of the European Union cases *Kügler* (C-141/00) and *De Fruytier* (C-334/14), and may have an impact on other medical service providers aiming to waive the VAT exemption (in order to recover the input VAT incurred, for example, in capex investments).

### **VAT exemption on negotiation of tourist use rights over immovable property**

The Tax Arbitrage Court has ruled that the intermediation fee charged by independent sellers of tourist use rights over immovable property or part thereof for more than 20 years is VAT exempt under article 135(1)(f) of the Principal VAT Directive.

The decision is in line with CJEU cases *CSC Financial Services* (C-235/00) and *Ludwig* (C-453/05), and may have an impact on intermediary service providers promoting the sale of tourist use rights over immovable property for more than 20 years located in Portuguese territory.

## **2016 Budget**

A new government was appointed by the President of the Portuguese Republic. It is expected that the 2016 Budget draft Law containing the usual tax measures will be presented to the Parliament during December 2015, but it is not expected to be approved and in effect before February/ March 2016.

**Afonso Arnaldo, [afarnaldo@deloitte.pt](mailto:afarnaldo@deloitte.pt), Deloitte Portugal**

## Russia

### **Amendment to list of technological equipment the import of which onto the territory of the Russian Federation is not subject to VAT**

Russian Federation Government Resolution No. 1282 of 28 November 2015 amended 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, automated control systems for forging for the two-column hydraulic press (classification code 8537 10 100 0) is introduced into the List.

The Resolution came into effect on 10 December 2015.

### **Determining VAT base on receipt of advance payment in foreign currency under services agreement with foreign entity**

Letter of the Ministry of Finance No. 03-07-11/51456 of 7 September 2015 reported that upon the receipt of advance payment in a foreign currency, VAT is calculated according to the Central Bank of Russia exchange rate established on the date upon which the payment is received. Upon rendering the services in consideration of the received prepayment, VAT is calculated at the exchange rate established by the Central Bank of Russia on the date that the services are rendered.

### **Application of VAT to premiums (bonuses) received by buyers of non-food goods**

Letter of the Ministry of Finance No. 03-07-11/60829 of 22 October 2015 reported that premiums (bonuses) including for achieving a certain volume of purchases of non-food goods received by the buyer of the goods are not included in the buyer's VAT tax base. If the supply agreement includes elements of other agreements that provide for the rendering of services by the buyer to the seller with respect to which the seller pays premiums (bonuses), the VAT with respect to these services is applied in a general order.

### **Clarification on three year period to claim VAT credit**

Letter of the Ministry of Finance No. 03-07-11/57833 of 9 October 2015 was a reminder that the right to claim a VAT credit within three years after including the goods/ work/ services in the accounting records applies only to the input VAT stipulated by item 2 Art. 171 of the Russian Tax Code (VAT claimed for goods/ works/ service purchased in Russia and paid at customs). The three year term does not apply to other types of input VAT.

The provision is directly stipulated by item 1.1 Art. 172 of the Russian Tax Code, and this position has consistently been taken by the tax authorities (e.g., letters by the Ministry of Finance No 03-07-11/41908 of 21 July 2015 and No 03-07-11/20290 of 9 April 2015).

### **Procedure for application of VAT upon export of goods to states – members of Eurasian Economic Union upon transportation of which loss is identified higher than norms of natural loss**

Letter of the Ministry of Finance No. 03-07-13/1/64449 of 9 November 2015 clarified the procedure for applying the 0% VAT rate upon export of goods from Russia to the states – members of the Eurasian Economic Union upon transportation of which a loss is identified that is higher than norms of natural loss.

In particular:

- The 0% VAT rate is applied with respect to the value of goods for which the VAT is paid by the importer;
- With respect to goods dispatched by the Russian organization (exporter) but not taken into accounting records by the importer due to identified loss, if this loss is higher than the norms of natural loss, VAT is applied at the rate of 18% (10% depending on the goods concerned).

### **Extension of capabilities of Federal Tax Service to review information on transfer of funds between bank accounts of companies and counterparties**

The Federal Tax Service is developing an extension to the functionality of the IT system ASK-VAT-2 that allows it to review chains of creation of added value and VAT payment. In particular, this extension is related to the collection and collation of data on the movement of funds between the bank accounts of companies and counteragents, for the purpose of identifying VAT avoidance.

### **Possible amendment to VAT treatment of supplies of electronic services via Internet**

It is reported that a draft Federal Law is being developed “On making amendments to the Russian Tax Code” that envisages the application of VAT to the supply of electronic services via the Internet. The draft Law envisages, in particular, payment of VAT by companies that sell software, e-books, music, movies, and games in online shops, as well as selling advertising and rendering hosting services. Currently, such sales are not subject to Russian VAT.

The wording of the draft Law has not been officially published yet.

### **Possible amendment to procedure for determining VAT base when receiving advance payments**

It is reported that the Ministry of Finance is preparing a draft Federal Law “On the Introduction of Amendments to Chapter 21, Part 2 of the RF Tax Code (On the Procedure for Determining the Tax Base upon the Receipt of an Advanced Payment)”.

In particular, the draft Federal Law establishes that, upon the shipment of goods, completion of work or rendering of services against a partial payment previously received and included in the tax base, the tax base shall be determined as part of the value of the shipped goods, completed work or rendered services not paid by the purchaser before the date of shipment, completion or rendering.

If adopted, the Federal Law will enter into force on 1 July 2016, but no earlier than one month from the day of its official publication and no earlier than the first day of the next VAT tax period.

#### **Possible amendment to documentary support for applying 0% VAT rate when exporting goods by international mail**

The Ministry of Finance is reported to have started working on a draft Federal Law “On amending Article 165 of the Russian Tax Code in terms of documentary support for applying 0% VAT on exporting goods by international mail”.

The amendment would presumably enter into effect in January 2017.

#### **Possible amendment to legal regulation of state support for exports**

The Ministry of Economic Development is developing a draft Federal Law “On Support for Export in the Russian Federation”. In particular, this draft law describes functions of the state authorities and organizations providing state support for exports and establishes measures of financial and non-financial support for exports.

In particular, the draft Law provides for the right of the exporter to use the mechanism of ‘one window’ by which the exporter may obtain the required assistance in applying for the complex support that includes financial, informational, guarantee, insurance and other export support. This approach would be realized through the Russian Export Center established by Vnesheconombank.

Further, the draft Law provides for the right of exporters to take part in the formation and implementation of the state policy of export support and to consult with the state authority with respect to export issues, including in the area of foreign legislation.

If adopted, the Federal Law will enter into force 90 days from its official publication.

### **Prohibition of import of certain goods originating from Turkey**

Decree of the Russian President No. 583 of 28 November 2015 and Resolution of the Russian Government No. 1296 of 30 November 2015 prohibit from 1 January 2016 the import into Russia of several agricultural and other goods (i.e., several types of meat, fruits and vegetables, etc.) the country of origin of which is Turkey.

The Decree is effective from 28 November 2015 and the Resolution is effective from 1 December 2015.

### **Exemption from customs clearance fees for goods exempt from export customs duties exported in international postal items**

Resolution of the Russian Government No. 1205 of 7 November 2015 introduced exemption from customs clearance fees with regard to goods exempt from export customs duties exported in international postal items. The exemption from customs clearance fees applies only when goods exempt from export customs duties are declared in the customs declaration.

The Resolution is effective from 12 December 2015.

### **Amendments to Tax Code with respect to excise tax**

Federal Law No. 323-FZ of 23 November 2015 amended the Tax Code with respect to excise tax, in particular:

- A new type of excisable goods is introduced – medium distillate;
- A list of operations with medium distillate subject to excise tax is established as well as the particulars of determination of the tax base with respect to these operations;
- The procedure for issue of the certificate on registration of the organization performing operations with medium distillate is established;
- The definition of straight-run petrol is specified;
- The excise tax rates for 2016 and 2017 are specified;

- Certain changes to the procedure of application of the tax recovery upon calculation of excise tax are made.

The Federal Law will enter into effect on 23 December 2015, except the provisions with respect to which another order of entering into effect is established.

**Andrey Silantiev, [asilantiev@deloitte.ru](mailto:asilantiev@deloitte.ru), Deloitte Russia**

## Sweden

### **Guidance published on interpretation of CJEU decision in *Skandia***

The tax authorities have published formal guidance on their interpretation of the Court of Justice of the European Union's decision in the *Skandia* case.

In summary, the guidance sets out that:

- Only Swedish establishments can be part of a Swedish VAT group;
- If a Swedish establishment (headquarters or branch) is included in a Swedish VAT group, it will be treated as a separate taxable person from all overseas establishments from a VAT perspective, regardless of whether the overseas establishments are located in another EU Member State or in a non-EU country;
- Transactions between a Swedish establishment included in a Swedish VAT group and overseas establishments (EU and non-EU) will therefore be treated as supplies for VAT purposes;
- This analysis will apply to recharges of both bought-in services and internally-generated services;
- A transaction will, however, only be taxable if a 'genuine' service is supplied and if there is a direct link between the service and the consideration received;
- Cost allocation and transfer pricing adjustments can be deemed as consideration for these supplies; and

- Cost allocation and transfer pricing adjustments, where treated as consideration for VAT purposes, can be subject to revaluation if not at an arm's length valuation.

Importantly, the guidance does not refer to circumstances involving VAT groups in other EU Member States. One interpretation is therefore that the tax authorities will disregard the existence of overseas VAT groups and only apply *Skandia* if there is a Swedish establishment included in a Swedish VAT group. However, without explicit guidance to this effect, care should be taken in taking such an approach and it is possible that further guidance or case law may be issued to provide greater clarity on this point.

The guidance leaves certain questions unanswered, particularly in relation to what constitutes a 'genuine' supply of services and whether or not there is a direct link between cost allocation/ transfer pricing adjustments and a genuine supply. It is likely therefore that further consultation will be required in respect of these aspects and require further guidance to be issued."

**Emil Frennberg, [efrennberg@deloitte.se](mailto:efrennberg@deloitte.se), Deloitte Sweden**

## Ukraine

### **Electric car import duty abolished**

On 25 November 2015, the Ukrainian Parliament adopted Draft Law No.1674 that abolishes import duty on electric motor cars. According to this Draft Law, a zero import duty will be applied to passenger vehicles powered solely by electric engines (CN code 8703 90 10 10), effective from the first day of the month that follows the month of publication of the Draft Law. The Draft Law has not yet been published. Passenger vehicles powered by electric engines remain subject to excise duty and VAT.

## **Changes in application of special duties**

The Interdepartmental Commission for International Trade of Ukraine has adopted the following resolutions:

- A special duty of 39.2% has been imposed on the following goods originating from the Republic of Belarus: food products (milk, butter, cheese, chocolate), alcoholic beverages, beauty products (shampoos, detergents), tires, textiles, carpets, garments, etc. The resolution comes into effect on 20 January 2016.
- A special duty of 12.12% has been imposed on motor vehicles originating from the Republic of Uzbekistan. The resolution came into effect on 6 December 2015.
- 10.41% – 17.6% countervailing duties are imposed for five years on passenger vehicles imported into Ukraine from the Russian Federation (classified in the commodity heading 8730 in the UHS). If no certificate of origin is available or it is impossible to determine the country of origin, the importation of these goods into the customs territory of Ukraine will be subject to countervailing duty of 17.66%. The resolution comes into effect on 3 January 2016.
- Antidumping duties of 5.11% – 16.33% on float plate glass (heat polished glass) imported into Ukraine and originating from the Republic of Belarus are abolished. The resolution came into effect on 30 November 2015.

## **Fodder grain veterinary certificate no longer required**

Effective from 15 December 2015, fodder grain may be transported via the seaport territories for its subsequent exportation from Ukraine without veterinary certificates. Originals of these certificates may be issued at the request of the freight owner or a duly authorized person once the fodder grain has arrived at the grain storage facility located at the seaport.

## Limits on importation of seeds and planting material

Effective from 4 December 2015, the maximum quantity of imported seeds and planting material during one calendar year should not exceed thirtyfold the quantity of planting material of the variety which is provided for one-year field studies for the purpose of qualification expert examination of the varieties for their fitness for use in Ukraine. In the absence of such expert examination, their importation is limited to the quantity of seeds or planting material being provided together with the application for variety.

Yevgen Zanoza, [yzanoza@deloitte.ua](mailto:yzanoza@deloitte.ua), Deloitte Ukraine

## United Kingdom

### Upper Tribunal decision in 'dental plan' exemption case

The appeal of the tax authorities (HMRC) to the Upper Tribunal against the First-tier Tribunal's decision in the case of *DPAS Limited* has been allowed in part, and the Upper Tribunal has decided to await the outcome of the references to the Court of Justice of the European Union in the cases of *Bookit Limited* and *National Exhibition Centre Limited* before reaching a final conclusion.

The First-tier Tribunal agreed with DPAS that a reorganization of its affairs in January 2012 resulted in it making exempt supplies to the patients, rather than standard-rated supplies to the dentists, when it arranged the payment of charges for treatment, and insurance premiums (and its own fees).

However, the Upper Tribunal decided that inaction on the part of the patients when they were invited to confirm their acceptance of the revised contractual structure was insufficient to effect the change, leaving the 70% or so of patients who did not respond on the 'old' structure where standard-rated supplies were made to the dentists. The Upper Tribunal also decided that fees charged when patients joined the scheme were payment for standard-rated supplies. It refused HMRC's suggestion that it should refer the case to the CJEU, but postponed a decision on the treatment

of supplies made to the 30% or so of patients who positively agreed to the change in contractual terms and those who signed up to the new structure after 1 January 2012 to await the outcome of the existing *Bookit* and *National Exhibition Centre* references.

### **Indirect Tax in the Autumn Statement**

The UK Autumn Statement contained little of note from an indirect tax standpoint. The Chancellor confirmed that the UK is seeking an amendment to EU law to permit the zero-rating of sanitary products and that, until this is secured, a new fund will support women's charities with the £15 million a year that the reduced rate of VAT on such products generates. The Government will be consulting on legislation to be included in the Finance Bill 2016 to maintain the reduced rate of VAT on energy saving materials in line with EU law. Sixth Form Colleges will be permitted to become Academies, enabling them to access the VAT refund scheme for Academies. It has been confirmed that the transitional period for electricity suppliers to apply the exemption from Climate Change Levy for renewably sourced electricity generated before 1 August 2015 will end on 31 March 2018.

**Donna Huggard, [dohuggard@deloitte.co.uk](mailto:dohuggard@deloitte.co.uk), Deloitte United Kingdom**

[Back to top](#)

## *Trade preferences*

### Ukraine

#### **Ukrainian parliament ratified Trade Facilitation Agreement**

On 4 November 2015, the Ukrainian Parliament ratified the Protocol of Amendment to the Marrakesh Agreement establishing the World Trade Organization that introduced the Trade Facilitation Agreement (TFA). However, the TFA will enter into force for Ukraine after the completion of the domestic ratification process by two-thirds of WTO members (i.e., 108 member states). As of today, the TFA has been ratified by 53 member states.

According to the Ministry of Economic Development and Trade of Ukraine, the implementation of the TFA would potentially reduce trading costs by 11.8% to 17.4%, depending on the specific state. Moreover, the application of the TFA would reduce the time and cost of customs control; enhance the transparency and efficiency of operation of the state authorities; increase trade flows, national revenue and direct foreign investments; abate corruption; boost the cooperation between private and public sectors; stimulate the development of small and medium business, etc. Furthermore, it may contribute to more effective integration with the EU.

Yevgen Zanoza, [yzanoza@deloitte.ua](mailto:yzanoza@deloitte.ua), Deloitte Ukraine

[Back to top](#)

## Eurasian Economic Union

### **Provision of preliminary information on goods imported via aircraft**

Decision of the Board of the Eurasian Economic Commission No. 158 of 1 December 2015 established the obligatory provision of preliminary information on goods imported via aircraft from 1 April 2017. Such preliminary information shall include information on the air vessel, the route of the vessel, the imported goods, etc.

The preliminary information shall be provided to the customs authority of the member state of the Eurasian Economic Union, on the territory of which the place of destination of the goods is situated. The preliminary information shall be provided by the carrier importing the goods via aircraft or another entity acting in the name and on behalf of this carrier.

The Decision will come into effect on 31 December 2015 and the provisions on the obligatory provision of preliminary information on goods imported via aircraft from 1 April 2017.

### **Amendments to import customs duty rate for drilling machines with drilling depth not less than 200 meters and beryllium oxide and hydroxide**

Decision of the Board of the Eurasian Economic Commission No. 145 of 10 November 2015 established the import customs duty rate of 2% instead of 0% at import of drilling machines with drilling depth not less than 200 meters (classification codes: 8430 41 000 1 and 8430 49 000 1 of the Unified Commodity Nomenclature of the Eurasian Economic Union). The 2% import customs duty rate will be applied from 1 January 2017 to 31 December 2017.

Decision of the Council of the Eurasian Economic Commission No. 72 of 23 November 2015 established the import customs duty rate of 0% instead of 5% with regard to beryllium oxide and hydroxide (classification code: 2825 90 200 0 of the Unified Commodity Nomenclature of the Eurasian Economic Union). The 0% import customs duty rate will be applied from 2 January 2016 to 31 December 2017.

Decision No. 145 came into effect on 12 December 2015 and Decision No. 72 will come into effect on 2 January 2016.

### **Extension of application of antidumping duty on certain steel pipes originating from Ukraine**

Decision of the Board of the Eurasian Economic Commission No. 133 of 6 October 2015 extended the term of application of antidumping duty until 5 July 2016 with regard to several steel pipes classified under the heading 7304, 7305 and 7306 the country of origin of which is Ukraine

The Decision was effective from 19 November 2015.

## **Introduction of antidumping duty on truck tires and crawler bulldozers originating from China**

Decision of the Board of the Eurasian Economic Commission No. 154 of 17 November 2015 introduced antidumping duty with regard to truck tires classified under the classification codes 4011 20 100 0 and 4011 20 900 0 of the Unified Commodity Nomenclature of the Eurasian Economic Union and originating from China. The antidumping duty will be applied from 18 December 2015 to 18 December 2020.

The rates of the antidumping duty vary depending on the manufacturer of the truck tires from 14.79% to 35.35% of the customs value. With respect to several truck tires indicated in the Regulation of the United Nations Economic Commission for Europe No. 54, antidumping duty is not collected.

Decision of the Board of the Eurasian Economic Commission No. 148 of 10 November 2015 introduced antidumping duty with regard to crawler bulldozers classified under the classification code 8429 11 009 0 of the Unified Commodity Nomenclature of the Eurasian Economic Union and originating from China. The antidumping duty will be applied from 12 December 2015 to 12 December 2020.

The rates of the antidumping duty vary depending on the manufacturer of the truck tires from 9.65% to 44.65% of the customs value.

Decision No. 154 will come into effect on 18 December 2015 and Decision No. 148 came into effect on 12 December 2015.

**Andrey Silantiev, [asilantiev@deloitte.ru](mailto:asilantiev@deloitte.ru), Deloitte Russia**

**[Back to top](#)**

# Contacts

## Deloitte Global & Regional Indirect Tax Contacts

David Raistrick, Global Indirect Tax Global leader

[\*\*draistrick@deloitte.co.uk\*\*](mailto:draistrick@deloitte.co.uk)

Fernand Rutten, Global Customs & Global Trade leader

[\*\*frutten@deloitte.com\*\*](mailto:frutten@deloitte.com)

Jon Graham, Asia Pacific Indirect Tax leader

[\*\*JonGraham@deloitte.com.au\*\*](mailto:JonGraham@deloitte.com.au)

Rogier Vanhorick, EMEA Indirect Tax Leader

[\*\*rvanhorick@deloitte.nl\*\*](mailto:rvanhorick@deloitte.nl)

Carlos Iannucci, Latin America Indirect Tax leader

[\*\*ciannucci@deloitte.com\*\*](mailto:ciannucci@deloitte.com)

Dwayne Van Wieren, North America Indirect Tax leader

[\*\*dvanwieren@deloitte.com\*\*](mailto:dvanwieren@deloitte.com)

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[Deloitte Touche Tohmatsu Limited](#)

30 Rockefeller Plaza  
New York, NY 10112-0015  
United States

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