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Global Indirect Tax News

Your reference for indirect tax and global trade matters

Welcome to the February 2016 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Highlights of this edition include the lifting of foreign exchange restrictions in Argentina, an update on VAT Reform in China, a new Retail Sales Tax in Poland, postponement of the Immediate Supply of Information System in Spain, and the implementation of a reverse charge on wholesale telecommunications services in the United Kingdom.

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

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OECD

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The trial for cross-border e-Commerce has been expanded to include 13 cities in total.

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Kazakhstan

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Excise tax rates on gasoline have been amended.

Rules on the import and export of pharmaceuticals, medical products and medical equipment have been approved.

Rules for issuing permits for the transit of goods have been approved.

Legislative amendments have been made to improve the administration of special economic zones.

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Budget 2016, as delivered to the Malaysian Parliament in October 2015, included a number of issues relevant to the oil and gas industry.

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Trans-Pacific Partnership

Implementation of the customs provisions of the World Trade Organization's Trade Facilitation Agreement and Trans-Pacific Partnership (TPP).

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Finland

The Supreme Administrative Court has ruled on the VAT deductibility of costs in relation to the acquisition and financing of subsidiaries.

The Central Board of Taxes has ruled on the VAT treatment of private equity funds.

The CBT has ruled on the VAT treatment of services in relation to the settlement and processing of payment transactions.

The CBT has ruled on the VAT treatment of services in relation to business restructurings.

The CBT has ruled on the VAT treatment of a work welfare promoting project.

France

A recent case considered the EU VAT refund procedure and VAT grouping. The Conseil d'Etat held, *inter alia*, that this type of repayment claim can only be made by the company heading a VAT group (in the absence of proof of an agency agreement with the company's legal representative).

Germany

There have been a number of court judgments on the issue of VAT grouping.

There has been an opinion from the Advocate General of the Court of Justice of the European Union that import VAT should be due on goods exported without compliance with Customs formalities.

Italy

The new forms for the FY2015 VAT return and VAT communication have been approved.

Assonime has clarified the VAT treatment of intra-Community movements of goods subject to processing operations/ usual forms of handling.

The Supreme Court has ruled on VAT grouping.

There is a CJEU Advocate General opinion that VAT may not be a priority in a liquidation case.

Customs has issued an overview of import fulfilments.

Customs has issue a note on the excise rates for the combined production of electricity and heat.

Customs has issued a note summarizing sea taxes and duties amounts.

Customs has issue a decision on the operative guidelines for ruling requests.

Netherlands

The Netherlands lowered the Intrastat thresholds.

Poland

A Retail Sales Tax is to be implemented.

The CJEU is to rule on VAT tax free schemes in Poland.

Portugal

The state budget law proposal includes changes to VAT and excise duties, including changes to the application of the intermediate and reduced rates.

Russia

There has been further discussion on subjecting e-services to taxation.

Work is being undertaken on allowing companies that apply the simplified tax regime an option to account for VAT.

Supreme Court has declined to consider Oriflame Cosmetics, LLC's appeal to the lower court decision on the deduction of licensing payments

The Russian Federal Tax Service has published a review of the tax disputes considered by the Constitutional Court and the Supreme Court.

The eligibility criteria for the accelerated VAT refund procedure has changed.

The Russian Ministry of Finance has issued a Letter regarding the application of VAT to bonuses received by customers for the execution of certain conditions of a supply agreement.

Software is now available allowing completion of registers in electronic form to confirm application of 0% VAT.

There may be an increase to the excise tax rates with respect to petrol and diesel oil.

There is a prohibition on the importation of certain agricultural goods originating from Ukraine.

There is a suspension of the exemption from import customs duty for goods originating from Ukraine.

The Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor) has been dissolved.

Spain

The Immediate Supply of Information System (SII) project is currently on 'stand-by'.

The Customs authorities have recently published resolutions regarding the 'Single (one-stop shop) Customs Window' project.

Ukraine

With effect from 1 January 2016, the importation of plants and plant products subject to phytosanitary control no longer requires an import or transit permit.

The introduction of a special duty of 39.2%, which was to apply from 20 January 2016 to certain goods originating from the Republic of Belarus, has been suspended to 1 May 2016.

Agricultural machinery has been removed from the list of products subject to compulsory certification.

United Kingdom

A domestic reverse charge VAT on wholesale telecoms came into force on 1 February 2016.

There will be a consultation in the spring on amending the UK VAT grouping rules.

There has been a technical consultation on the 'use and enjoyment' of insured repair work.

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Trade Preferences

Ukraine-Uzbekistan

On 27 January 2016, the Ukrainian Parliament ratified the Protocol on application of the CIS Free Trade Area Agreement dated 18 October 2011 between the parties thereto and Uzbekistan.

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Eurasian Economic Union

Eurasian Economic Union

There is an update on issues related to Kazakhstan's Accession to the World Trade Organization.

There have been amendments regarding the control of the customs value of imported goods.

The Order for filing and registration of the transit declaration and the completion of the customs transit procedure has been amended.

A draft Protocol has been approved on the exchange of electronic information between the tax authorities of EEU states for the implementation of tax administration.

Mandatory preliminary information will be required about goods imported by air.

There has been an extension to the application of the 0% import customs duty on certain phosphates.

Antidumping duties have been imposed on certain goods imported into the EEU customs territory.

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OECD

OECD survey on cost of irrecoverable VAT/GST incurred in foreign jurisdictions

The OECD has launched a **survey to assess the scope and magnitude of costs of irrecoverable VAT/GST incurred by businesses in jurisdictions where they are not established**. This is part of an ongoing OECD project, *Measuring Total Business Taxes*, to estimate total business taxes across countries by accounting for business taxes paid in addition to corporate income taxes, including VAT/GST. This survey is intended to update the 2010 business survey on foreign VAT/GST relief for foreign businesses, summarized in the report ***VAT/GST Relief for Foreign Businesses: The State of Play***.

The work is closely linked to the recently released ***International VAT/GST Guidelines***, a set of internationally agreed standards for governments on the application of VAT/GST to cross-border trade that confirm the core principle of VAT neutrality. The survey seeks to gather quantitative data in the area of VAT/GST relief as well as some important qualitative information.

Responses are sought by 15 March 2016.

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Americas

Argentina

End of foreign exchange restrictions

On 16 December 2015, the new Ministry of Economy announced the long-awaited lifting of most of the foreign exchange restrictions that had impacted inbound and outbound investments, as well as Argentine foreign trade.

Whilst certain measures are still pending clarification regarding implementation, outlined below are the main aspects to be considered.

Acquisition of foreign currency for local and foreign investment and tourism: Previously, it was not possible for companies to acquire foreign currency for treasury or investment purposes, and individuals had a limit of USD 2,000 per month (and lower for small salaries). Also, residents that were allowed to acquire foreign currency, and any application of foreign currency to tourism and travel, were subject to income tax withholdings of 20% and 35% respectively. As of 16 December 2015, acquisitions are still limited, but to USD 2,000,000 per month, and income tax withholdings are eliminated.

Payments for imports of goods to foreign suppliers: There was an unwritten (and unofficial) limit of USD 50,000 per day. For imports with shipments made as from 16 December 2015, importers can freely access the foreign exchange market to pay foreign suppliers. Furthermore, the previously mentioned limit has generated an accumulation of outstanding debt that should be paid in the near future. In December, importers with debt were allowed to pay up to USD 2,000,000. Between January and May 2016 they will have access to USD 4,500,000 per month, and will be able to pay any remaining balance as from June 2016. It is speculated that the Government will introduce an alternative scheme by the offer of some bonds to be sold in Argentine Pesos.

Payments for imports of services to non-residents (this could also include royalties and potentially dividends, but this is not yet certain): The previously mentioned limit of USD 50,000 per day applied jointly to goods and services. Now, for services rendered or accrued as from 16 December 2015, local residents can freely access the foreign exchange market to pay foreign service providers. Furthermore, the previously mentioned limit has generated an accumulation of outstanding debt that should be paid in the near future. In February 2016 residents with debt with non-residents for services, were allowed to pay up to USD 2,000,000. Between March and May 2016 they will have access to USD 4,000,000 per month, and will be able to pay any remaining balance as from June 2016. It is speculated that the Government will introduce an alternative scheme by the offer of some bonds to be sold in Argentine Pesos.

Foreign debt: Any foreign debt payable in USD had a mandatory sale of foreign currency, a minimum medium term of a year, and in many cases was subject to a non-remunerated deposit (block) of 30% of its amount for a year term. As from 16 December 2015, it is not necessary for any new debt to have a connected sale of the foreign currency, the minimum term is reduced to 120 days, and the non-remunerated deposit is eliminated. However, the access to foreign currency for cancelling debt and related interest still has the requirement that the original indebtedness should have generated a sale of foreign currency, so if there was no original sale of foreign currency, there will be no access to acquire foreign currency at maturity of capital and/ or interest.

Portfolio investment: Portfolio investments of non-residents that generated a sale of foreign currency will have access to the foreign exchange market when repatriated, without authorization of the Central Bank, provided the minimum investment term is complied with.

New exports: Regulations connected with exports did not change, and therefore the obligation for the sale of foreign currency at the applicable due dates was maintained.

New imports of goods: Following a decision of the WTO, Argentina removed the Previous Authorization for Imports (DJAIs) from 1 January 2016. However, it is expected that for some industrialized products (approximately 1,000 tariff headings) the Government will reinstate the application of non-automatic licenses. Based on this, appropriate filing and presentations will be crucial in order to maintain normal trade.

New imports of services: The Government removed the requirement for prior Central Bank authorization to proceed with payment. However, commercial banks handling foreign remittances must still check that the service was actually rendered, that it was connected with the company's business and that the amount to be paid is fair. Based on this, proper documentation of the transaction and its pricing will still remain as a very important element, where transfer pricing studies play an important role.

New foreign exchange rate: The Government has stated that it will allow a controlled flotation of the foreign exchange rate, estimated at the levels that had the blue-chip-swap (alternative methodology to acquire foreign currency in a legal way by the arbitration of investments in financial instruments), which were around Argentine Pesos 15 per USD. This will reduce the use of this methodology, which was increasingly applied in recent times and was very used in connection with inbound investments/ capital contributions (as it provided for approximately a 50% increase in the amount of Argentine Pesos obtained) and payments to foreign suppliers of goods and services, as well as shareholders in connection with dividends.

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Canada

HST rate change in New Brunswick

The Government of New Brunswick announced an increase to the provincial component of the Harmonized Sales Tax (HST) of 2 percentage points commencing 1 July 2016, raising the combined GST/HST rate from 13% to 15%. This will affect any GST/HST registrant making supplies into the province of New Brunswick.

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Costa Rica

New regulation for dairy products (cream and cream prepared)

The new Costa Rican technical regulation “Central American Technical Regulation RTCA 67.04.71: 14 Dairy products. Cream and cream prepared. Specifications” entered into force through Executive Decree No. 39431-COMEX-MEIC-MAG-S, published in Section no. 9 of the Official Gazette on 29 January 2016.

The technical regulation applies to: cream; whipping cream and whipped cream; high-fat whipping cream and high-fat whipped cream; and double cream.

The regulation establishes the requirements to be met for the production of cream and prepared cream intended for direct human consumption or further processing in the territory of the Central American countries. It includes provisions on the classification; composition; pollutants; hygiene; labeling; packaging, storage and distribution; sampling and analysis; as well as monitoring and verification.

This new technical regulation is in force from its publication in the Official Gazette and repeals Executive Decree No. 35406-MEIC-MAG-S that refers to “RTCR 412: 2008 Cream and Sour Cream”, with effect from 21 April 2009.

Central American companies that produce, for the local market and/ or Central American markets, cream and cream prepared intended for direct human consumption or further processing, must adapt their products or methods of production, to comply with the provisions of this new technical regulation.

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Panama

Additional VAT withholding agents designated

The Government has enacted regulations, based on paragraph 4 of Article 1057-V of the Tax Code, extending VAT withholding mechanisms to enterprises explicitly appointed by the Revenue Office as withholding agents that meet the criteria of making annual purchases of USD 10,000,000 or greater. This mechanism also applies to entities that administer processing and payments through credit and debit card platforms.

VAT withholding obligations for entities listed above were intended to come into effect on 1 November 2015. However, in response to proposals submitted by the Panama Chamber of Commerce and taxpayers who experienced difficulties in adjusting their ERP systems to comply with these obligations, the Revenue Office postponed its implementation until 1 February 2016. Under exceptional circumstances, and if related to sustained technology difficulties, withholding agents can request a deferment of two months to comply with this process.

Under the VAT withholding mechanisms, VAT withholding agents must withhold a portion of the VAT charged to them in respect of supplies of goods and services, and remit it to the Revenue Office instead of paying the total VAT applicable to the supplier or service provider. The amount to be withheld will be equivalent to 50% of the tax rate applicable to the transaction.

Administrators or issuers of credit and debit cards that manage the processing of payments are also required to act as withholding agents of the VAT triggered by the sale of taxable goods and services paid by way of a credit or debit card. During a transitional period, which will run from 1 February to 31 December 2016, the amount to be withheld will correspond to 2% of the total sales transaction (or 1% for food and pharmacy retail activity). Starting 1 January 2017, VAT withholding will be equivalent to 50% of the tax rate applicable to the transaction.

Suppliers and service providers will be entitled to deduct from their output VAT the percentage of tax withheld by their customers under the withholding mechanism. A withholding voucher must be delivered by the withholding agent in order to claim tax credits/ VAT withholdings through the VAT monthly return.

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United States

Alabama: Guidance on new 'economic presence' rule for out-of-state sellers making threshold 'significant sales' into Alabama

The Alabama Department of Revenue recently issued a notice reminding out-of-state sellers with 'a substantial economic presence in Alabama' to collect and remit Alabama tax on their sales into the State for all transactions occurring on or after 1 January 2016, regardless of whether they have an Alabama physical presence, pursuant to the Department's new administrative rule (Amended Rule 810-6-.90.03), which establishes dollar threshold conditions under which certain out-of-state sellers must collect and remit Alabama sellers use tax.

The Department explains that this administrative rule imposes a collection obligation on out-of-state sellers who engage in one or more activities subjecting out-of-state sellers to Alabama's seller use tax levy, and who had USD 250,000 or more in retail sales sold into Alabama in the previous year. The Department additionally explains that such out-of-state sellers may satisfy the rule's requirements by collecting, reporting and remitting tax on sales made into Alabama pursuant to the provisions of Article 2, Chapter 23 of Title 40, Code of Alabama 1975, or by participating in Alabama's 'Simplified Seller Use Tax Remittance Program'.

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Michigan: New cloud computing policy and related refund procedures

The Michigan Department of Treasury has issued a notice discussing a recent Michigan Court of Appeals decision on whether certain products were subject to the imposition of state use tax on prewritten computer software delivered in any manner. The Department explains

that those portions of its previously issued revenue administrative bulletin on this related issue [RAB 1999-5] that are inconsistent with this recent Michigan Court of Appeal ruling "no longer represent the Department's policy". Accordingly, under this case law and new Department policy, if only a portion of a software program is electronically delivered to a customer, Michigan's 'incidental to service' test will be applied to determine whether the transaction constitutes the rendition of a nontaxable service rather than the sale of tangible personal property. However, if a software program is electronically downloaded in its entirety, it will be taxable.

The Department additionally explains that Michigan taxpayers seeking a refund of taxes paid for a product falling within this new policy must file a written refund request with the Department within the applicable statute of limitations. The request should include any necessary documentation to support the refund. If the refund is for a prior year, the taxpayer must include amended annual returns for the years involved with the refund request. The Department notes that if the underlying tax was paid to a vendor, the taxpayer must request a refund from the vendor.

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Asia Pacific

Australia

GST relief for B2B cross-border transactions

Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 (the Bill) was introduced to the House of Representatives on 10 February 2016. Proposed amendments to the GST legislation relating to B2B cross-border transactions will reduce the number of non-residents in the GST system by:

- Expanding the GST-free treatment for non-residents acquiring services and other intangibles from Australian businesses;

- Reducing the number of non-residents that need to register for GST to recover GST paid on business expenses; and
- Reducing the circumstances that require a non-resident to register for GST in Australia when supplying certain services to Australian businesses.

The changes will affect Australian businesses transacting with non-residents (requiring a review of the current GST treatment and required systems and administrative changes to comply). Non-residents currently within the Australian GST system should review their future GST obligations.

Importantly, the commencement date of this change will occur at the start of the second quarter following Royal assent, which may mean the change becomes effective as early as 1 July 2016.

For a detailed summary prepared at the release of exposure draft legislation, please refer to **GST and B2B cross-border transactions: Reducing non-residents in GST system**.

Extending GST to digital products and other services imported by consumers

Amendments in the Bill also impact non-resident businesses supplying digital products and services to Australian consumers.

Non-resident suppliers and intermediaries transacting with Australian consumers should review their Australian GST obligations as a result of the proposed amendments.

It is anticipated by Treasury that approximately 100 non-resident entities will register for and remit GST, through either a simplified or full GST registration as a result of this amendment. According to Government documents, the Australian Tax Office will be provided with AUD 1.7 million over the forward estimates to administer these changes, and plan to encourage compliance through international collaboration with other revenue authorities and activating international treaties that cover exchange of information and debt collection with foreign jurisdictions in the area of GST.

The commencement date of this change is 1 July 2017.

For a detailed summary of the changes, please refer to **GST and B2C digital imports: Revised exposure draft bill released**.

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China

VAT Reform timeline update

China's commitment to complete the VAT Reform by the end of 2015 did not happen, due to the complexity of the Reform coupled with the Chinese economic situation in 2015.

On 22 January 2016, Premier Li Keqiang held a discussion forum. At the conference, it was indicated that the Reform shall be expanded to all industries in 2016. However, there is no official timeline to confirm the timetable for the Reform for each of the remaining sectors. This news is of no surprise. However, in recent days, there has been mounting speculation that the date of the VAT Reform implementation could be as soon as 1 May 2016. This speculation is partly supported by a Circular issued by the Ministry of Residential Property, City and Rural Construction on 19 February 2016, requesting construction companies to adjust their pricing formula by adding VAT before the end of April 2016.

Implementation rule for Circular 118 released

On 14 December 2015, China's State Administration of Taxation (SAT) issued Bulletin 88, setting out the implementation guidance for Circular 118 on the application of VAT zero-rated treatment, applicable to an expanded group of services provided offshore, including:

- Software services, circuit design and testing services, information system services, business process management services and offshore outsourcing services;
- Production and distribution of radio, film and television programs (works); and
- Technology transfer services.

A more flexible procedure is introduced under Bulletin 88 which allows a taxpayer to apply for VAT-exempt treatment for the relevant supplies if the refund request was not made in a timely manner. Input tax can

be refunded if it is used for zero-rated supplies, whilst with a VAT exemption filing, no VAT will be charged, but the taxpayer will not be able to recover the relevant input VAT.

Bulletin 88 has a retrospective effect from 1 December 2015.

Impacted taxpayers are recommended to take immediate action to explore possibilities to enjoy the preferential tax treatment to reduce supply chain costs. Bulletin 88 is a clear signal that China is aiming to expand the scope of zero-rated services which, in the past, were limited to the services of R&D and international transportation.

Update on general VAT electronic invoices

With effect from December 2015, the general VAT electronic invoice pilot trial was rolled out nationwide. Taxpayers wishing to issue VAT general invoices (which are often issued to individuals and cannot be used to support an input VAT credit claim) in electronic format must apply to their in-charge tax bureau to set up the system and controls for electronic invoice issuance purposes.

2016 tariff policy announcement

China's tariff policy for 2016, which sets out revisions to the tariff codes, as well as export, interim and conventional duty rate policies, was released in December 2015 with additions and adjustments to the annotations on certain tariff codes dated February 2016, which would be effective from March 2016. The 2016 tariff policy reflects the Government's intention to balance the economy, which brings both opportunities and challenges for affected industries.

Expansion of products eligible for processing trade relief

China's Ministry of Commerce (MOFCOM) and the General Administration of Customs (GAC) jointly issued two sets of guidance (Bulletins 59 and 63) that revise the catalogues of goods that are prohibited/ restricted from processing trade relief (PTR) (the Catalogues). The issuance of both bulletins is welcome, as they remove certain goods from the original Catalogues, thus expanding the product groups eligible for PTR.

Similar to inward processing relief, PTR allows goods to enter into China under a bonded status (which means that no duty/ import taxes are due) provided the finished goods are exported after processing. Although China encourages the development and use of PTR, certain goods (most of which are high energy consumption and pollution causing) are prohibited or restricted from import or export for PTR purposes.

Expansion of cross-border e-Commerce zones

Since October 2013, the Chinese Government authority has authorized a large trial in seven pilot cities for cross-border e-Commerce (CBEC) that establishes specialized CBEC zones in the cities of Hangzhou, Shanghai, Guangzhou, Shenzhen, Chongqing, Ningbo and Zhengzhou. On 16 January 2016, the State Council expanded the list to include Tianjin, Hefei, Chengdu, Dalian, Qingdao and Suzhou – expanding it to 13 cities in all.

Cross-border e-Commerce has been a grey area in the past. More rules are expected to be released in future to promote this new business model and, at the same time, strengthen regulatory controls from the supervision perspective.

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India

Increase in VAT rates in States of Bihar and Rajasthan

With effect from 28 January 2016, the residuary VAT rate under the Bihar VAT Act, 2005 has been increased from 13.5% to 14.5%.

With effect from 2 February 2016, the rate of VAT under the Rajasthan VAT Act, 2003 has been increased from 5% to 5.5% on the goods specified in Schedule IV of the Act.

Amnesty scheme for waiver of interest and penalties under Rajasthan VAT and sales tax law

Amnesty Scheme, 2016 has been introduced by the Rajasthan State Government for taxpayers with total outstanding sales tax, VAT or central sales tax demands up to 30 June 2015 of less than INR 150 million.

The scheme provides for the waiver of interest and penalties to the applicant on the basis of the category of the tax demand and on fulfilling the conditions set out in the scheme.

The scheme was effective from 21 January 2016 and will remain in force up to 15 March 2016.

Procedure for renewal of Special Valuation Branch of Customs (SVB) orders and ongoing SVB inquiries

The Central Board of Excise and Customs (CBEC), vide Circulars No. 4/2016-Customs and No. 5/2016-Customs dated 9 February 2016, has issued instructions for the examination of transactions involving related parties and those involving payment of royalties, license fees, etc.

Some of the highlights of the Circulars are as follows:

- A system of one-time declaration is being provided in order to facilitate quick disposal of cases currently pending with SVBs for renewal.
- The SVBs shall promptly scrutinize the declarations and shall immediately inform the Customs stations where provisional assessments have restarted due to the process of renewal to immediately discontinue obtaining Extra Duty Deposit (EDD) and finalize the related provisional assessments.
- All pending SVB investigations (other than renewal cases) where EDD is being collected, are required to be reviewed in terms of para 3.2 of the Circular No. 5/2016-Customs, dated 9 February 2016. If the importer has provided information and documents as required by the SVB, EDD shall be discontinued forthwith.
- For new cases, no security in the form of EDD shall be obtained from importers. However, if an importer fails to provide documents and information required for SVB inquiries within 60 days of requisition by the SVB, a security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months.

- The present practice of issuing an appealable SVB order is being dispensed with. SVB shall convey its investigative findings by way of an investigation report to the referring Customs formation for finalizing the provisional assessment.
- Circular No. 5/2016-Customs also prescribes the detailed procedure to be followed by the Customs Commissioner for referring the matter to SVB, the procedure to be followed by SVB for investigation, and the procedure to be followed for final assessment.

The said Circulars have been overdue on account of the difficulties faced by related party importers and the matters pending at the SVB. The revised procedures prescribed are expected to facilitate the ease of doing business in India.

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Kazakhstan

Amendments to customs administration law

Republic of Kazakhstan Law № 432-V of 3 December 2015 amended:

- Code of the Republic of Kazakhstan dated 10 December 2008 “On taxes and other obligatory payments to the budget” (the Tax Code);
- Code of the Republic of Kazakhstan dated 30 June 2010 “On Customs Affairs in the Republic of Kazakhstan” (the Customs Code).

The Law was officially published on 5 December 2015.

Below are the most significant changes to the customs regulations.

- Article 142 of the Customs Code has been amended to allow taxpayers to obtain information on their customs payments and debts via a web portal. The information must be provided by the Customs authority as specified in Article 598 of the Tax Code.
- Article 157 of the Customs Code has been amended with regards to the ability of the Customs authorities to carry out inspections where the taxpayer is absent from the location. If postage or other

communication is returned due to the absence of the taxpayer at an address, the Customs authority can inspect the taxpayer's location within ten days.

- Article 159 of the Customs Code has been amended to provide that notice of the recovery of customs payments, taxes and penalties can be sent by electronic means with the written consent of the taxpayer.
- There are also amendments regarding the complaint process.
- There are amendments to Article 220 and 220-1 of the Customs Code regarding in-house control in connection with the unification of the order of cameral customs inspections, in accordance with the provisions of the tax law.

Excise taxes on petrol and diesel fuel

Government Resolution № 887 of 6 November 2015 amended the excise tax rates on gasoline, except for aviation (2710 12 411 – 0 2710 12590 CN FEA code). The Resolution came into effect on 25 November 2015.

Rules for import and export of pharmaceuticals, medical products and medical equipment

Order of the Minister of Health and Social Development of the Republic of Kazakhstan № 668 of 17 August 2015 approved the rules of entry into the territory of the Republic of Kazakhstan of medicines, medical products and medical equipment and the export from the territory of the Republic of Kazakhstan of medicines, medical products and medical equipment. The Order entered into force on 14 October 2015.

Thus, the import of medicines from countries that are not Eurasian Economic Union Member States shall be in accordance with the regulation on the importation into the customs territory of the Customs Union of medicines and pharmaceutical substances approved by Eurasian Economic Commission Board Resolution № 134 of 16 August 2012.

A decision on the importation of drugs into the territory of the Republic of Kazakhstan is made by the authorized body or its territorial divisions.

The movement of drugs under customs procedures (including release for domestic consumption, processing for domestic consumption, re-importation, and refusal in favor of the state) is carried out under the proviso that the drugs are included in the state register of medicines, medical products and medical equipment of the Republic of Kazakhstan.

Rules for issuing permits for transit

Order of the Minister for Investment and Development of the Republic of Kazakhstan № 384 dated 31 March 2015 in accordance with the Law of the Republic of Kazakhstan of 21 July 2007 “On export control” approved the rules for issuing permits for the transit of goods. The Order came into force on 4 December 2015.

The issuance of permits for the transit of goods subject to export control shall be made by the authorized bodies responsible for state regulation in the field of export control in the prescribed form. These rules apply to individuals and legal entities.

Also, the Order defines the list of documents required to obtain a permit.

Improvement of special economic zones

Republic of Kazakhstan Law № 362-V of 27 October 2015 made amendments and additions to some legislative acts of the Republic of Kazakhstan on the improvement of special economic zones (SEZ), including:

- Code of the Republic of Kazakhstan dated 10 December 2008 “On taxes and other obligatory payments to the budget”;
- The Law of the Republic of Kazakhstan dated 21 July 2011 “On special economic zones in the Republic of Kazakhstan”.

The Law entered into force ten calendar days after its first official publication, except for certain paragraphs that came into effect on 1 January 2015 and 1 January 2016. The Law was officially published on 29 October 2015.

In addition, the new Law amends Articles 151-1 to 151-10 of the Tax Code, which set out the priority activities and the list of facilities, construction of which is intended for the implementation of these

activities, as well as the procedure for the inclusion of priority activities and facilities.

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Malaysia

GST impact of Budget 2016 on oil and gas industry

Budget 2016, as delivered to the Malaysian Parliament in October 2015, included a number of issues relevant to the oil and gas industry, although a number of issues remain unresolved. The below sets out some of the issues for the industry.

2015 saw the well-anticipated introduction of GST on 1 April 2015, but also a plummeting oil price, which took some by surprise, and impacted on many operations.

The Government had a number of challenges to address in the Budget, one of which was to replace the revenue lost as a result of the oil price. GST has assisted the Government in raising that revenue. However, the oil price has also limited the Government's options for addressing some of the concerns around the treatment of GST in practice when applied to industries such as oil and gas.

While the Budget was able to give a concession around the treatment on the reimportation into Malaysia of equipment that had been exported temporarily for the purpose of rental or lease outside Malaysia, it also provided for new penalties for late GST returns, as well as late, or non-payment of outstanding GST.

Since the Budget, oil prices have reduced from an average of approximately USD 50 per barrel to close to USD 30 per barrel currently. This could see a significant reduction in revenue for the budget unless additional revenue is found elsewhere. In a recent mini-Budget, it appears that this has been found almost exclusively from the collection of GST as, since the implementation of GST, over MYR 51 billion (approx. USD 1.2 billion) in revenue has been collected, compared to MYR 32.7 billion (approx. USD 775 million) in 2014, without GST.

Many of the actions and decisions by Royal Malaysian Customs (the tax authority responsible for GST) on the application of GST impact on VAT refund claims, with particular consequences for the oil and gas industry, as set out below.

GST refunds requested in the first GST returns filed often resulted in a review by Customs and lengthy delays before being paid out, in some cases, highlighting issues where the treatment applied was not necessarily what taxpayers had anticipated, including the following.

Businesses requesting a GST refund because, for example, they were making zero-rated export supplies, ultimately received the refunds claimed. For others, however, the issue became more complex. Those most affected included those in the exploration and production sector and the services sector involving construction, refurbishment or repair of significant plant and equipment required by the oil and gas industry. Most had registered for GST in the expectation that they were entitled to do so, as they were engaged in a business with the intention of making taxable supplies. However, Customs has taken a different view. Businesses are required to GST register if they make in excess of MYR 500,000 (approx. USD 118,000) in any 12 month period. If they do not, then they may apply to register voluntarily. If registering voluntarily, the acceptance of the registration request is at the discretion of the Director General of Customs, and may be subject to certain requirements. The current position of Customs is that if a business (however legitimate) is not able to evidence that it will make taxable supplies within 12 months of applying for voluntary registration, it will not be allowed to register. This impacts on the business's ability to claim refunds of GST incurred prior to when it is first able to register, adding GST to the costs of any such projects. Where the exploration and production process through to when an entity is able to register for GST purposes can easily last more than five years, this could result in significant additional cost.

Similar issues arise for oil and gas service providers tendering internationally for work to be undertaken in Malaysia. To register an SPV to undertake significant oil and gas infrastructure work over a number of years, providers are faced with a choice:

- If they are not able to progress bill, they may not be able to register voluntarily and claim input tax credits.

- If, contractually, they can progress bill, they may be required to charge GST at 6% to overseas clients, as they may not fulfil the requirements for zero-rating (because the time of supply for GST purposes will occur when the goods that are the subject of the services are in Malaysia), and the overseas recipients of the services may not be entitled to GST register, meaning that either GST is an additional cost to the customer or affects the service provider's profitability.

There is a further issue in relation to the import of goods subject to GST paid by the importer of record. Under the previous sales tax regime, there was no import duty and no sales tax where the Master Exemption List (MEL) applied. However, with very limited exceptions, the MEL does not generally apply to GST. Also, the general commercial practice is that, although goods are brought into Malaysia by the importer of record, supplies of imports are made via a local 'agent' with ownership transferred to the actual importer after the goods are in Malaysia. As a consequence, GST is in effect levied twice, i.e., upon importation (as the importers would still want to enjoy the MEL import duty exemption) and on local supply made by the local 'agent'.

Where the local importing entity is able to GST register, this will be a cashflow issue. However, where the importer of record is not able to voluntarily register for GST, the goods being imported will be subject to GST twice, without any relief by way of input tax credit.

The above issues have a potentially significant effect on the oil and gas industry and may have a negative impact on investments and cost competitiveness, in some cases making the difference between whether or not a project is considered to be viable.

This is a particular concern where the treatment appears to be contrary to the principle of neutrality (that VAT/GST should not be a burden on businesses making taxable supplies), which is widely accepted as a foundation of VAT/GST regimes around the world, and included in the OECD VAT/GST guidelines. These issues will need to be resolved for the medium- and long-term, and options for resolution have been raised with the Government.

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Trade Preferences

Trans-Pacific Partnership

Implementing the customs provisions of WTO's Trade Facilitation Agreement and Trans-Pacific Partnership

Assuming that both the World Trade Organization's (WTO) Trade Facilitation Agreement (TFA) and Trans-Pacific Partnership (TPP) are ratified, customs administrations in the 12 TPP member states, all of which are also members of the WTO, will be faced with implementing similar but slightly different provisions. The TPP member states are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

As detailed in the table below, it is clear that many of the provisions in Chapter 5 of the TPP (Customs Administration and Trade Facilitation) mirror the provisions of the WTO Trade Facilitation Agreement (TFA). (In December 2013, WTO members concluded negotiations on a Trade Facilitation Agreement at the Bali Ministerial Conference, as part of a wider 'Bali Package'. Since then, WTO members have undertaken a legal review of the text. In line with the decision adopted in Bali, WTO members adopted on 27 November 2014 a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement. The Trade Facilitation Agreement will enter into force once two-thirds of members have completed their domestic ratification process.)

WTO TFA	TPP, Chapter 5
Art.1 Publication and availability of information	Article 5.1: Customs Procedures and Facilitation of Trade
Art.2 Consultation	Article 5.2: Customs Cooperation
Art.3 Advance ruling	Article 5.3: Advance Rulings
Art.4 Appeal/Review procedures	Article 5.4: Response to Requests for Advice or Information
Art.5 Other measures for transparency, etc.	Article 5.5: Review and Appeal
Art.6 Fee and Charges	Article 5.6: Automation
Art.7 Release and Clearance of goods	Article 5.7: Express Shipments
Art.8 Border Agency Cooperation	Article 5.8: Penalties
Art.9 Movement of goods intended for import	Article 5.9: Risk Management
Art.10 Formalities	Article 5.10: Release of Goods
Art.11 Transit	Article 5.11: Publication
Art.12 Customs cooperation	Article 5.12: Confidentiality

Both the WTO TFA and TPP contain provisions for expediting the movement, release and clearance of goods. Both agreements set out measures for effective cooperation between Customs on trade facilitation and customs compliance issues. Both agreements also make provision for *inter alia* Advance Rulings.

Comparison between the WTO TFA and TPP: Advance Rulings

The articles covering Advance Rulings from the respective agreements are set out side-by-side in the table below.

WTO TFA **Article 3: Advance Rulings**	TPP **Article 5.3: Advance Rulings**
1. Each Party shall issue, prior to the importation of a good of a Party into its territory, a written advance ruling at the written request of an importer in its territory, or an exporter or producer in the territory of another Party,[1] with regard to:[2] (a) **tariff classification**; (b) the application of **customs valuation** criteria for a particular case in accordance with the Customs Valuation Agreement; (c) whether a good is **originating** in accordance with Chapter 3 (Rules of Origin and Origin Procedures); and (d) such **other matters** as the Parties may decide. 2. Each Party shall issue an advance ruling as expeditiously as possible and in no case later than **150 days** after it receives a request, provided that the requester has submitted all the information that the receiving Party requires to make the advance ruling. This includes a sample of the good for which the requester is seeking an advance ruling if requested by the receiving Party. In issuing an advance ruling, the Party shall take into account the facts and circumstances that the requester has provided. For greater certainty, a Party **may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the subject of administrative or judicial review**. A Party that declines to issue an advance ruling shall promptly notify the requester in writing, setting out the relevant facts and circumstances and the basis for its decision to decline to issue the advance ruling. 3. Each Party shall provide that its advance rulings shall take effect on the date that they are issued or on another date specified in the ruling, and remain in effect **for at least three years**, provided that the law, facts and circumstances on which the ruling is based remain unchanged. If a Party's law provides that an advance ruling becomes ineffective after a fixed period of time, that Party shall endeavour to provide procedures that allow the requester to renew the ruling expeditiously before it becomes ineffective, in situations in which the law, facts and circumstances on which the ruling was based remain unchanged. 4. After issuing an advance ruling, the Party may **modify or revoke** the advance ruling if there is a	1. Each Member shall issue an advance ruling in a **reasonable, time-bound manner** to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision. 2. A Member may **decline to issue an advance ruling** to the applicant where the question raised in the application: a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or (b) has already been decided by any appellate tribunal or court. 3. The advance ruling shall be **valid for a reasonable period of time** after its issuance unless the law, facts, or circumstances supporting that ruling have changed. 4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on **incomplete, incorrect, false, or misleading information**. 5. An advance ruling issued by a Member shall be **binding on that Member** in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant. 6. Each Member **shall publish, at a minimum**: (a) the requirements for the application for an advance ruling, including the information to be provided and the format; (b) the time period by which it will issue an advance ruling; and (c) the length of time for which the advance ruling is valid. 7. Each Member shall provide, upon written request of an applicant, a **review of the advance ruling** or the decision to revoke, modify, or invalidate the advance ruling.[3]

change in the law, facts or circumstances on which the ruling was based, if the ruling was based on **inaccurate or false information, or if the ruling was in error**. 5. A Party may apply a modification or revocation in accordance with paragraph 4 after it provides **notice of the modification or revocation** and the reasons for it. 6. No Party shall apply a **revocation or modification retroactively to the detriment of the requester** unless the ruling was based on inaccurate or false information provided by the requester. 7. Each Party shall ensure that requesters have access to administrative **review of advance rulings.** 8. Subject to any confidentiality requirements in its law, each Party shall endeavour to make its **advance rulings publicly available** including online.	8. Each Member shall endeavour to make **publicly available any information on advance rulings** which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information. **9. Definitions and scope:** (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to: (i) **the good's tariff classification; and (ii) the origin of the good**.[4] (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on: (i) the appropriate method or criteria, and the application thereof, to be used for **determining the customs value** under a particular set of facts; (ii) the applicability of the Member's requirements for relief or **exemption from customs duties**; (iii) the application of the Member's requirements for **quotas, including tariff quotas**; and (iv) **any additional matters** for which a Member considers it appropriate to issue an advance ruling. (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof. (d) A Member **may require that the applicant have legal representation or registration in its territory**. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

1. For greater certainty, an importer, exporter or producer may submit a request for an advance ruling through a duly authorized representative.
2. For greater certainty, a Party is not required to provide an advance ruling when it does not maintain measures of the type subject to the ruling request.
3. Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

4. It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

This commentary does not propose to make a comprehensive comparison between both agreements. Clearly, there are some similarities but also some differences between the requirements of the two agreements in respect of advance rulings. In general, the WTO TFA appears to be more prescriptive whilst the TPP tends to be a little vaguer, for instance:

- The WTO TFA specifically mentions that rulings should cover the application of **customs valuation** criteria, whilst TPP encourages members to provide advance rulings on the appropriate method or criteria, and the application thereof, to be used for **determining the customs value.**
- The WTO TFA states that each party shall issue an advance ruling as expeditiously as possible and in no case later than **150 days** after it receives a request, whilst TPP states that each Member shall issue an advance ruling in a **reasonable, time-bound manner.**
- The WTO TFA states that each advance rulings shall remain in effect **for at least three years, whilst the TPP states that** the advance ruling shall be **valid for a reasonable period of time** after its issuance.

Conclusion

The impact of the TPP on the WTO multilateral approach is not yet fully known. However, from the perspective of businesses trading in the Asia Pacific region, both the WTO TFA and the TPP agreements further enhance trade facilitation and customs modernization. Governments, trade associations and businesses should encourage

the customs authorities to implement the most progressive aspects of each agreement in order to ensure uniformity of best practice across the region.

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EMEA

Finland

VAT deductibility of costs in relation to acquisition and financing of subsidiaries

On 30 December 2015, the Supreme Administrative Court (SAC) gave a ruling KHO:2015:188 concerning Company A which was a parent company of a group of companies. The subsidiaries of Company A were mostly rendering VAT exempt health and medical care services. Company A supplied taxable management and other similar services to its subsidiaries. Company A also derived dividends and interests from its subsidiaries.

Company A had requested a refund of the input VAT on costs which related to the acquisition and financing of its subsidiary, Company B. According to the SAC, it should be decided separately for each purchase whether the purchase was deemed to be made for the purposes of taxable business activities. The SAC considered that part of the costs related directly to the financing of Company B or other group companies and, therefore, Company A did not have a right to recover the input VAT on the costs. The costs in relation to the acquisition of Company B were deemed to be overhead costs of Company A. Thus, Company A was entitled to recover the input VAT on these costs. The fact that company A had derived significant interest income from its subsidiaries did not have an effect on Company A's right to recover the input VAT on the costs. Further, the SAC concluded that the fact that only a minor part of the group companies' business activities were taxable did not affect the VAT recovery right of Company A.

Central Board of Taxes ruling on VAT treatment of private equity funds

The Central Board of Taxes (CBT) considered the VAT treatment of a private equity fund's Management Company A in ruling KVL:036/2015. Management Company A supplied management services to another Management Company B. The private equity fund managed by Management Company B was regarded as a special investment fund in accordance with the Principal VAT Directive.

The CBT considered that the outsourced services formed a distinct whole fulfilling the specific and essential functions of a special investment fund's VAT exempt activities and, further, the outsourced services are VAT exempt if they fulfill the requirements for VAT exemption which apply to the own management company of the fund.

Thus, the services supplied by Management Company A were deemed to be VAT exempt management services of a special investment fund.

VAT treatment of services in relation to the settlement and processing of payment transactions

On 30 October 2015, the CBT gave a ruling KVL:038/2015 concerning the VAT treatment of the settlement and processing services of payment transactions. The VAT group purchased a service entity in relation to the settlement and processing of payment transactions from a company established in France. The service entity included, e.g., approval of the payment transaction file, calculating the net position of a bank, sending the payment transaction file included in the funds' transfer request to the Central Bank and delivering the payment transaction file concerning the transfer of funds to banks. The transfers of funds took place in the system of the Central Bank.

The CBT considered that the settlement of receivables did not concern payment transfer services. Further, the supplier was not deemed to participate in the transfer of funds in order to manage the payment transaction but to only deliver the payment transaction file concerning the transfer of funds. According to the CBT, the service could not be regarded as a bank transfer and, therefore, the service did not include VAT exempt financial services within the meaning the Principal VAT Directive. Thus, the services were not considered to fulfill the specific

and essential functions of a financial service, but were regarded as mere technical services outside the scope of the VAT exemption for financial services. The VAT group was required to account for VAT on the services under the reverse charge mechanism.

CBT ruling on the VAT treatment of services in relation to business restructurings

In ruling KVL:043/2015 the CBT considered the VAT treatment of services in relation to business restructurings. The company had both engagements related to the sale of shares or assets and engagements related to the purchase of shares or assets. In the engagements related to the sale of shares or assets the company acted as an financial advisor and its services included, among others, searching and contacting potential buyers, evaluation of offers, planning and coordinating of the due diligence process, assisting in the negotiations, and preparing presentations and materials. In the engagements related to the purchase of shares or assets the company acted as a financial advisor with respect to the planning and executing of the restructuring.

The company represented the purchaser in an engagement concerning the acquisition of the shares or assets of a certain target company. The company was also responsible for the effective execution of the possible restructuring together with the client. The engagement included, among others, the coordination of specialists' work, evaluation and analysis of the target company, preparing offers, commenting and amending documents, planning of the process, coordinating of the due diligence process, and assisting in the preparation of the materials.

The company received a success fee if the restructuring succeeded. Further, a monthly fee or a retainer fee was usually charged, regardless of whether the restructuring succeeded or not. The monthly fee or the retainer fee was usually rather minor compared to the success fee. According to the CBT, the services in relation to business restructurings the company supplied fulfilled the specific and essential functions of negotiation in securities. Both the service entity related to the sale of shares and the service entity related to the purchase of shares were regarded as VAT exempt transactions in shares within the meaning of the Principal VAT Directive if the restructuring was

executed in the form of a share deal. The company was required to correct the retainer fee if the fee had been charged inclusive of VAT in case the restructuring was executed as a share deal as the business transaction in question was deemed to be VAT exempt negotiation in shares. Further, if the purpose of the agreement was solely a share deal which was not executed, the retainer fee of the company was still considered negotiating in shares and, therefore, it was regarded as a supply of a VAT exempt financial service within the meaning of the Finnish VAT Act.

VAT treatment of work welfare promoting project

On 11 December 2015 the CBT gave a ruling KVL:049/2015 concerning the VAT treatment of a work welfare promoting project. The project purchased by a federation of municipalities consisted of a service entity which aimed to develop the profitability of the management of health and capacity to work. The main purpose of the service entity was reducing the sick leave of employees. The service entity included, among others, mapping the starting point, a training program for managers, assessing the mental and physical capacity for work of the employees, and measures of support for improving the employees' health and capacity for work. The federation of municipalities was charged with a fixed fee based on the number of employees and a bonus payment based on the attainment of set goals.

According to the CBT, the fixed fee and the bonus payment could be deemed as remuneration for a supply of services for the purposes of the federation of municipalities' activities and, therefore, the federation of municipalities had the right to deduct the input VAT on the purchases of services. The CBT stated also that the benefit employees gained from the service was secondary compared to the needs of the federation of municipalities.

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France

EU VAT refund procedure and VAT grouping

In a recent case, two UK companies, both members of a UK VAT group, the representative member of which was Last Minute Network Ltd, operated a website allowing their customers to compare car rental rates, to make reservations for these vehicles from French car hire companies, and to benefit from a permanent telephone service. (*Last Minute Network Ltd and Holiday Autos UK and Ireland*, Conseil d'Etat, 7 December 2015, decisions n° 371406 and 371403.)

The company Holiday Autos UK and Ireland requested reimbursement of the VAT invoiced by French car hire companies under the EU VAT refund procedure.

The Conseil d'Etat held that this type of repayment claim can only be made by the company heading the VAT group (in the absence of proof of an agency agreement with the company's legal representative). Moreover, rental services, when accompanied by advice and information services, constitute a travel agency business subject to the VAT margin scheme. Finally, in accordance with settled case law, the Conseil d'Etat held that the refusal of a VAT repayment claim from the French tax authorities does not constitute a 'tax assessment' within the meaning of Article L80 A of the Tax Procedure Code.

The recognition by the Conseil d'Etat of the effects of a foreign VAT group on French domestic rules is unprecedented, even though those rules concern the EU VAT refund procedure.

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Germany

VAT grouping judgments

As proposed by the XI. Senate of the Federal Fiscal Court, the Court of Justice of the European Union responded in its decision *Larentia + Minerva* to certain questions regarding VAT groups. The V. Senate of the Federal Fiscal Court has now attempted to incorporate into national law the requirements of the CJEU by means of four decisions of 2

December 2015. In this newsletter, we set out the three most important decisions.

VAT groups with partnerships (V R 25/13)

The case in dispute addressed the issue of whether forming a VAT group is also possible with a partnership as a controlled entity. According to Art. 2 para. 2 no. 2 the German VAT Act only recognizes legal entities as potential controlled entities within a VAT group. However, according to Art. 11 of the Principal VAT Directive, persons who are closely bound to one another by financial, economic and organizational links may form a VAT group.

Contrary to previous case law, the Federal Fiscal Court now accepts VAT groups with partnerships as controlled entities. The Federal Fiscal Court reached this conclusion by extending the phrase ‘legal entity’. The prerequisite is that the shareholders of the partnerships must be the controlling companies or other financially controlled companies dominated by the controlling company. By means of this ruling, the Federal Fiscal Court has expanded the scope of VAT groups. Provided a partnership is financially integrated, i.e., the controlling entity holds all the shares in the partnership, the partnership may be involved in the VAT group as a controlled entity.

No VAT group with sister company (V R 15/14)

The second case addressed the question of whether VAT groups are possible with affiliated ‘sister’ companies. The Federal Fiscal Court has rejected a change to the case law, although European Union law only requires a close connection.

The Federal Fiscal Court maintains that VAT groups require a majority stake by the controlling company in the sister company and this requires personal ties between the two companies via the management of the companies. Integration exists only when there is a right to intervene. The Federal Fiscal Court explained that an “institutionally ensured possibility of intervention to the core area of the management” usually exists in the case of personal ties via the management of the legal entity as the controlled company. The right to issue directives, reporting obligations or compulsory subjects for approval in the general meeting are not sufficient.

No VAT group with non-taxable persons (V R 67/14)

The third case in dispute addressed the question of whether VAT groups may be formed with non-taxable persons. In this case, the non-taxable person was an exclusively statutory public law legal entity.

The Federal Fiscal Court rejected this case, with reference to tax evasion. The national legislator made a deliberate decision that the controlling company needs to be a taxable person. VAT groups serve as administrative simplification.

Import VAT due on goods exported without compliance with Customs formalities

Advocate General Manuel Campos Sánchez Bordona has delivered his opinion in the joined cases of *Eurogate Distribution GmbH* and *DHL Hub Leipzig GmbH*, about whether import VAT was due on goods placed in a Customs warehouse and then re-exported without the necessary Customs formalities being completed. In both cases, it appears that there was no doubt that the goods had left the EU, albeit without the appropriate Customs formalities being complied with. Unsurprisingly, perhaps, the opinion suggests that the CJEU should follow previous case law in this area and confirm that the liability for import VAT follows the liability for duty, crystallized by the failure to follow the appropriate Customs procedures when the goods were removed from the warehouse. It also suggests that the CJEU should confirm that the warehouse keeper or carrier can be held liable for the import VAT, despite the fact that he had no right to dispose of the goods.

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Italy

Approval of new forms for annual VAT return and VAT communication

With Act n. 7772/2016 dated 15 January 2016, the Director of the Italian Tax Authorities has approved the new forms for the FY2015 VAT return and VAT communication.

With respect to deadlines, as usual, the annual VAT communication must be submitted by 29 February 2016, and the annual VAT return by 30 September 2016.

This will be the last year with an **option** for the taxpayer to submit the annual VAT return within the deadline for the annual VAT communication, by 29 February 2016 (thus avoiding the submission of the annual VAT communication). From 2017 onwards, taxpayers will be **required** to submit the annual VAT return within the new mandatory deadline that will fall at the end of February. On the other hand, the annual VAT communication will be abolished.

With respect to the content of the new forms:

- The annual VAT return form mirrors the changes recently introduced into the VAT law provisions. In particular, some further boxes have been included in line with the new rules about: (a) the new reverse charge mechanism in the building and energy sector; (b) split payment; (c) the new procedure of submission of letter of intent;
- The annual VAT Communication form is similar to the previous one; no significant changes have been introduced.

Assonime clarifies VAT treatment of intra-Community movements of goods subject to processing operations/ usual forms of handling

In circular letter n° 2/2016, Assonime (the Italian Association of Joint Stock Companies) clarified recent changes in the Italian VAT rules on intra-Community movements of goods subject to processing operations/ usual forms of handling, introduced by art. 13 of the Law n° 115 dated 29 July 2015 (the so-called 'European Law for 2014').

Assonime explained that the above changes have been necessary in order to close the infringement procedure started by the European Commission against Italy, because of the contrast between the domestic rules and the Principal VAT Directive (refer to Court of Justice of the European Union cases *Dresser Rand* and *Dresser Rand SA*).

Now, in line with Article 17(2)(f) of the Principal VAT Directive, the Italian VAT law provisions also state that transfers of goods in another Member State for the purpose of processing operations or usual forms

of handling are not considered as intra-Community transactions, provided that the goods, after being worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported.

Regarding the effective date of these new rules, Assonime stated that they are applicable to transactions carried out from 1 January 2016, based on Article 3 of Law n° 212/2000 dated 27 July 2000 on the rights of taxpayers, which states that law changes shall apply starting from the fiscal year following the one in which the changes take place.

Supreme Court rules on VAT grouping

In decision n° 1915 (dated 2 February 2016), the Supreme Court focused on Italian VAT grouping regime and, in contrast with the restricted position taken by the tax authorities so far, proposed a broad interpretation of Article 73(3) of the Italian VAT Code (DPR n°633/1972).

Based on the conclusions of the Supreme Court, in order to avoid discrimination on the grounds of the legal form of companies taking part in a VAT group, partnerships may also act as controlling companies. This decision is, in particular, supported by the fact that Article 73(3) of the VAT Code does not expressly provide any subjective restriction on controlling companies, with reference to which, incorporation in the form of joint stock companies, partnerships limited by shares or limited liability companies is not mandatory (as, on the contrary, is expressly required for controlled companies).

For the sake of clarity, based on the current VAT rules, a VAT group is not a new and autonomous (VAT) taxpayer; each company remains autonomous from a VAT perspective, and the transactions carried out with third parties and each other are relevant for VAT purposes.

Advocate General opinion that VAT may not be a priority in liquidation case

Court of Justice of the European Union Advocate General Sharpston has delivered her opinion in the Italian case of *Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidazione*. The case concerns a liquidation process where the national court had doubts about whether

an Italian liquidation process that, if adopted, would result in only a partial recovery of the taxpayer's VAT debt, complied with EU law.

Advocate General Sharpston roundly rejected the Commission's contention that the VAT debt should take precedence over all others. She suggested that the CJEU should find that EU law permits national rules that allow an undertaking in financial difficulties to enter into an arrangement with creditors involving liquidation of its assets without offering full payment of the State's claim in respect of VAT.

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Overview by Customs of import fulfilments

On 11 January 2016, the Customs and Monopoly Agency issued Note No 144636/RU, which summarized the new procedures to be met, based on current EU legislation, for importing goods transported by air or sea and included in an arrival manifest, where the import is not carried out under a local clearance procedure.

The importer will have to transmit electronically to Customs not only the import declaration, but also the relevant import documents (previously paper versions were to be submitted).

Combined production of electricity and heat

In Note No 1896/RU of 12 January 2016, the Customs and Monopoly Agency advised that, under the Italian legislation, the coefficients stated in 1998 by the Italian authority for gas and electricity shall continue to apply until 31 December 2016 in order to quantify, in the case of the combined production of electricity and heat, the fuels subject to the excise rates provided for electricity production.

Sea taxes and duties

The Customs and Monopoly Agency issued note No 5910/RU on 21 January 2016 to summarize the sea taxes and duties amounts to be applied in Italy till 31 January 2017.

Ruling requests

In January 2016, the Director of the Customs and Monopoly Agency issued a decision on the operative guidelines for ruling requests (i.e., competent offices, filing procedure, ruling management and

subsequent issuance). This decision has now been integrated into further guidance issued by the Agency.

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Netherlands

Netherlands decrease Intrastat threshold

The Netherlands lowered the Intrastat declaration threshold for intra-Community acquisitions from EUR 1,500,000 to EUR 1,000,000, and the Intrastat threshold for intra-Community supplies from EUR 1,500,000 to EUR 1,200,000 as from 1 January 2016.

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Poland

Retail Sales Tax to be implemented

A new tax, Retail Sales Tax, is to be implemented in Poland. The respective bill has recently been published on the Polish Government Legislation Centre website and is currently subject to consultations with other Ministries. The bill has not yet entered the legislative procedure but it shall be expected that the process will be launched shortly.

Further to the draft, the sale of goods to consumers on the premises, beyond the premises, and by way of distant sales (including sales over the Internet) are to be subject to the new tax. The provision of services will not be considered a retail sale, even if connected with selling goods. Taxpayers would be chain stores (franchise) and retail stores (which are not part of chain stores). The draft also imposes additional obligations on carriers of goods shipped from a retailer outside the territory of Poland to a consumer in Poland.

The tax base would be retail sales revenue determined by records of the taxpayer's turnover from cash registers after deducting the value of returned goods and VAT applied. The tax rate would depend on the day of a week on which revenue is generated and the amount of such revenue:

- If revenue is received from Monday to Friday and does not exceed PLN 300,000,000, the tax rate will be 0.7%. Additional revenue that exceeds PLN 300,000,000 will be taxed at 1.3 %;
- If revenue is received on a Saturday, Sunday or public holiday, the tax rate would be 1.3% up to PLN 300,000,000 PLN and 1.9% over PLN 300,000,000.
- There is an exemption if revenue generated on a monthly basis does not exceed PLN 1,500,000. This exemption does not apply to tax remitted by carriers.

Retail Sales Tax is to be calculated and collected by the taxpayer and settled by the 25th of the month following the reporting period. For chain stores, the obligations are placed on the franchisor. In general, chain stores will bear joint liability for tax obligations, but the liability borne by every retail vendor that is not simultaneously a franchisor will be limited to the part of output tax arising sales by the vendor. For distant sales, the carrier is obliged to receive from the foreign supplier a statement on the tax settlements; otherwise the carrier is obliged to collect tax from the foreign supplier. The new tax will also trigger new filing obligations. The new tax will not be considered as a tax deductible cost.

The new tax shall be differentiated from VAT, and although there are a number of question marks as regards its technical details, it seems that it will affect a number of entities operating in Poland, including foreign-based taxpayers operating under a distant sales scheme in Poland. It is estimated that the new provisions will come into force in April 2016, with some exceptions concerning freight forwarders.

CJEU to rule on VAT tax free schemes in Poland

The Polish Supreme Administrative Court has referred a question for preliminary ruling to the Court of Justice of the European Union regarding VAT tax free schemes in Poland.

Under Polish VAT law, local taxpayers supplying goods to travelers must refund travelers the VAT incurred under certain procedures, i.e., either a direct refund to the traveler (if their annual turnover exceeds PLN 400,000) or via specialized entities (if the threshold condition is not met). Otherwise, suppliers are not allowed to apply the 0% VAT rate and need to report local sales at standard VAT rates.

The EU Principal VAT Directive does not provide for such conditions, leaving this to the discretion of Member States. As the requirements laid down in the Polish VAT Act are far more stringent than the regulations laid down in the Principal VAT Directive, the SAC decided to refer the case for a CJEU preliminary ruling to conclude whether these are in line with the Principal VAT Directive.

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Portugal

State budget law proposal includes VAT changes

The State budget law proposal was presented to Parliament for approval on 5 February 2016, and includes the following proposed changes to the VAT legislation.

Option to tax medical services (private entities)

According to the proposal, private entities may opt to tax (waive the VAT exemption) on healthcare services as well as closely related transactions, provided they do not result from agreements entered into with the Portuguese State (within the national health system). This amendment is intended to clarify the option that already exists in this area.

Changes in the tax rates

It is proposed that, from 1 July 2016, the intermediate VAT rate (13% in Portugal Mainland, 12% in Madeira and 9% in Azores) will apply to the following goods (that are currently taxed at the standard rate, currently 23%, 22% and 18% respectively):

- Meals, ready to eat, take away with or without home delivery; and
- The supply of services of meals and beverages, except for alcoholic drinks, soft drinks, juices, nectars and sparkling waters or added with carbon dioxide or other substances.

The following VAT rate changes are also proposed, which will enter into force after the publication of the State Budget law in the Official Journal, which is expected to happen on 1 April 2016:

- Bread substitutes and similar products will be excluded from the reduced rate and will be subject to the standard VAT rate (only bread will remain subject to the VAT reduced rate – 6% in Portugal Mainland, 5% in Madeira and 4% in Azores);
- Live, dried or fresh 'algae' (seaweed) (food products) will be subject to the reduced VAT rate (currently subject to the standard VAT rate);
- Juices and nectars of fruits, 'algae' and vegetables, as well as oatmeal rice or almond drinks (without alcohol) will also be taxed at the reduced rate (currently only juices and nectars of fruits and vegetables are subject to the reduced VAT rate);
- It is also proposed that 'algae' will be added to the list of live plants to which the reduced VAT rate applies;
- Canned meat will be taxed at the standard VAT rate (currently subject to the intermediate VAT rate).

Authorization for Government to amend rules regarding VAT deductions

The proposal Budget Law also provides that the Government may amend the rules so that VAT can only be deducted in the period in which the supplier's invoice is received or in the next period.

State budget law proposal includes excise duty changes

The State budget law proposal presented to Parliament for approval on 5 February 2016 also includes the following proposed changes to excise duties.

For tax changes on petroleum and energy products, Administrative Order (Portaria) no. 24-A/2016 from the Government, that increases the excise rate applicable to gasoline and diesel, was published on 11 February 2016, and these changes entered into force on 12 February 2016.

The other measures will enter into force after the publication of the State Budget law in the Official Journal, which is expected to happen on 1 April 2016.

Tax on petroleum and energy products

The application of the exemption to products with combined Nomenclature code 2711 (petroleum gas and other hydrocarbons gaseous) will cease to apply to all public transport, and will be limited to passenger transportation.

With respect to fuel oil, the maximum tax limit will increase by about 30%. For the Autonomous Regions of Madeira and the Azores, the minimum and maximum excise duty limits for fuel oil will be aligned with the limits that apply to the Continent.

Tax on alcohol and alcoholic drinks

The Budget proposes an increase of generally around 3% in the tax on alcohol and alcoholic drinks, applicable to beer, intermediate products and white spirits drinks.

Tobacco tax

The tax rate applicable to cigarettes will increase from EUR 88.20/ thousand units to EUR 98.85/ thousand units, which represents an increase of 3%.

The tax rate applicable to smoking tobacco, snuff, chewing tobacco and heated tobacco increases 4%, from EUR 0.075/ gram to EUR 0.078/ gram.

The minimum amount of tax on fine-cut tobacco, will increase from EUR 0.135/ gram to EUR 0.169/ gram, which corresponds to an increase of approximately 25%.

Circulation tax

The circulation tax shall increase approximately 1%.

Entities which undertake leasing transactions will no longer be required to provide the tax authorities with the identification of the users of the vehicles.

Vehicle tax

Changes to the tax class which defines the vehicle tax applicable are proposed. The applicable tax rates will also increase by between 3% and 20%.

Incentive for vehicle renovation

The incentive for vehicle renovation will be maintained until 31 December 2017; specific conditions apply.

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Russia

Further discussion on subjecting e-services to taxation

The President of Russia has asked the Federal Antimonopoly Service, the Ministry of Economic Development, the Ministry of Finance, the Federal Tax Service, the Ministry of Industry and Trade, related federal executive authorities, and the nonprofit Institute of Internet Development to offer suggestions on changes to the law that stipulates equal conditions for businesses delivering e-services in Russia. The introduction of VAT on e-services provided by foreign companies in Russia is one of the possible changes.

The Russian State Duma has already received for its review Draft Law No. 962487-6, which envisions VAT on services delivered by foreign companies through the Internet.

Possible option for companies applying simplified tax regime to pay VAT on voluntary basis

It is reported that the Russian Government requested the Russian Ministry of Economic Development, the Russian Ministry of Finance, and the Federal Tax Service to work on the possibility to provide companies applying the simplified tax regime (i.e. non-payers of VAT) with the option to account for VAT.

The provision of such an option will allow small business to conclude contracts with large customers that prefer to do business with VAT taxpayers (as in this case, the customers have the right to claim input VAT for recovery).

Supreme Court declines to consider Oriflame Cosmetics, LLC's appeal of lower court decision on deduction of licensing payments

The Russian Supreme Court ruling in the case of *Oriflame Cosmetics, LLC* has been published. The ruling, No. 305-KG15-11546 of 14 January 2016 on case No. A40-138879/2014, resolved a dispute between Oriflame Cosmetics, LLC and the tax authorities concerning the legality of the deduction of license payments and the corresponding recovery of VAT for the use of trademarks and other intellectual property items according to a franchise agreement with a foreign affiliate.

The tax authorities disputed the deduction of license payments on the basis that the taxpayer's activities on Russian territory cannot be considered independent and are in fact the activities of the foreign affiliate's permanent establishment for which the obligation to make license payments does not arise.

The Supreme Court declined to pass the appeal to the Court's Chamber for Commercial Disputes for consideration. However, the wording of the Court's Ruling adopts a less strict approach than those of the lower courts. According to the Russian Supreme Court, the court rulings were consistent with the approaches set out in the Plenum of the Russian Supreme Commercial Court Resolution No. 53 "On the Evaluation of the Grounds for Taxpayers' Receipt of Preferential Tax Terms by Commercial Courts" of 12 December 2006, which gave the taxpayer the burden of demonstrating sound economic reasons for concluding a franchise agreement, as well as explaining the reasons the license payments were established at the particular amount. In this case, the Court ruled, the taxpayer did not submit the necessary and sufficient explanations and proof. The Court's Ruling does not contain any direct indication that the activities of the Russian daughter company of the foreign organization constitute the formation of a permanent establishment of the foreign organization in Russia.

The Supreme Court also effectively recognized the right of a tax agent to recover overpaid VAT, declining to satisfy the claim regarding additional VAT charges paid by the company as a tax agent because

a mechanism exists in the legislation on taxes and levies that allows a tax agent to recover tax overpaid to the tax authorities.

The total amount of additional charges exceeded RUB 580 million.

Review of tax disputes revised by the Constitutional Court and the Supreme Court in 2H2015

On 19 January 2016, the Russian Federal Tax Service published a review of tax disputes considered by the Constitutional Court and the Supreme Court in the second half of 2015.

The review covers a number of tax cases related to VAT, profit tax, transport tax and land tax.

Below are the most interesting cases relating to VAT:

- Calculation of VAT on an insurance indemnity received under a business risk insurance agreement.

  The Russian Constitutional Court (CC) acknowledged subclause 4 item 1 art. 162 of the Russian Tax Code as failing to conform to the Russian Constitution. The CC ruled that the receipt of an insurance indemnity under a business risk insurance agreement should not be subject to VAT, provided the taxpayer has paid VAT on the sale of goods and/ or services.

  The relevant amendments are expected to be introduced to the Tax Code in the near future that will regulate calculation of VAT on an insurance indemnity obtained under a business risk insurance agreement. Draft Law No. 968427-6, which suggests amending art. 162 of the Tax Code, has already been submitted to the Russian State Duma. In particular, the Draft Law suggests that the amount of the received insurance indemnities under a business risk insurance agreement in case of the buyer's failure to perform its contractual obligations will only be included in the VAT base if the taxpayer has not calculated VAT on the sale of these goods/ services at the date of their shipment/ rendering.

- Application of 0% VAT to the provision of passenger seats under codeshare agreements with foreign airline companies.

  The Supreme Court has put an end to multiple disputes between airline carriers regarding the application of VAT to the transfer of

seats to partner airline companies under codeshare agreements. By acknowledging that chartering an airline with the crew was the formal subject of such agreements, the Court recognized that it is the airline passenger who is the end recipient of the service, and regardless of which airline processes his tickets, the passenger is entitled to equal rights, including the right to present claims against the actual carrier. Based on the substance of the transaction, the Court concluded that the carriage of both one's own and partner passengers by an international airline should have equal tax consequences, which in this case is the application of 0% VAT.

- Application of 0% VAT to the sale of goods placed under the export customs procedure after crossing the border of the Russian Federation.

  The Supreme Court stressed that the determination of the place of sale related to the beginning of the movement of the goods out of Russia is not violated when goods are placed under the export customs procedure after their transportation from Russia and consequently, the sale transaction should be taxed at 0% VAT.

- Claiming VAT for recovery for the purchase of energy by network companies to compensate for losses.

  Since energy transfer services are VATable transactions, and the purchase of energy to compensate for excess losses in the network is directly related to the business of electric distribution companies and is carried out under the direct provision of the law, the Supreme Court ruled that electric distribution companies should be entitled to claim for recovery VAT charged by the power supplier.

- Restoring VAT previously claimed for recovery when receiving subsidies from regional budgets.

  The Supreme Court ruled that the receipt of a subsidy from the regional budget does not lead to tax consequences stipulated by the obligation for VAT restoration to the tax authority stipulated by subitem 6 item 3 art. 170 of the Tax Code, since such subsidy

cannot be acknowledged as a subsidy from the federal government.

- Claiming VAT for refund beyond the three-year period.

  The Constitutional Court ruled that VAT may still be refunded beyond the three-year period envisioned by item 2 art. 173 of the Tax Code if the taxpayer could not have executed this right due to objective and sufficient reasons, including the failure of the tax authority to perform its obligations or the inability to receive the refund despite timely measures taken by the taxpayer.

Eligibility criteria for accelerated VAT refund procedure changed

The Russian President has signed a Federal Law amending Article 176.1 of part two of the Russian Tax Code. The new law reduces the aggregate amount of taxes paid to make an entity eligible for the accelerated VAT refund procedure from RUB 10 billion over three years to RUB 7 billion.

Application of VAT to bonuses received by customers for execution of certain conditions of supply agreement

Letter of the Russian Ministry of Finance No. 03-07-11/74049 of 17 December 2015 reports that premiums (bonuses) should be included in the customer's tax base for VAT in the situation when, the supply agreement contains the features of other agreements envisaging rendering services by the customer to the seller for which the seller pays premiums (bonuses).

Software allowing completion of registers to confirm application of 0% VAT in electronic form

It is reported that the upgraded version of the free-of-charge software 'Taxpayer legal entity' has been made available on the official website of the Russian Federal Tax Service. The software allows the completion of the electronic registers to confirm application of 0% VAT and to prepare the file to transfer the information to the tax authority.

Possible increase to rates of excise tax with respect to petrol and diesel oil

It is reported that the Ministry of Finance of the Russian Federation has suggested increasing the rates of excise tax with respect to petrol and diesel oil. The draft Law has not been officially published yet.

Prohibition on import of certain agricultural goods originating from Ukraine

Resolution of the Russian Government No. 1397 of 21 December 2015 introduced a prohibition on the importation of several agricultural goods (certain types of meat, fish, milk, fruits and vegetables, etc.) originating from Ukraine from 1 January 2016 until 5 August 2016 inclusive.

The import of prohibited goods is subject to destruction as introduced by Russian President Decree No. 391 of 29 July 2015 and Russian Federation Government Resolution No. 774 of 31 July 2015.

Resolution No. 1397 is effective from 30 December 2015. Russian President Decree No. 391 came into effect on 29 July 2015. Resolution No. 774 came into effect on 6 August 2015.

Suspension of exemption of import customs duty for goods originating from Ukraine

Decree of the Russian President No. 628 of 16 December 2015 suspended the application of the Agreement on the Free Trade Zone between the CIS countries with regard to Ukraine from 1 January 2016. This means that the exemption from customs duties on import to Russia of goods originating from Ukraine on the provision of a ST-1 certificate of origin no longer applies. The general import customs duty rates of the Unified Customs Tariff of the Eurasian Economic Union are now applied to goods originating from Ukraine.

Decree of the Russian President No. 681 of 30 December 2015 partially resumes application of the Agreement with regards to Ukraine with respect to customs duty applied by Russia on the export of natural gas in a gaseous state.

Russian President Decree No. 628 came into effect on 16 December 2015 and Russian President Decree No. 681 came into effect on 30 December 2015.

Dissolution of Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor) and transfer of functions to Federal Treasury, Russian Federal Customs Service and Russian Federal Tax Service

The Decree of the President of Russia No. 41 of 2 February 2016 dissolved the Federal Service for Fiscal and Budgetary Supervision (Rosfinnadzor). In particular, authority on the control and supervision in the financial and budgetary area and the external quality control of organizations rendering audit services is transferred to the Federal Treasury. The functions of Rosfinnadzor as the currency control authority are transferred to the Federal Customs Service and the Federal Tax Service.

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Spain

Immediate Supply of Information System project currently on 'stand-by'

Due to the current politician situation in Spain, it is not expected that the Immediate Supply of Information System (SII) (discussed in the September 2015 edition of this newsletter) will be approved by the interim Government. It will be necessary to await the formation of a new Government before further details are available regarding approval of the SII. Given this, it is now unlikely that the SII will be finally approved for effect from January 2017. Updates will be included in future editions of this newsletter as they become available.

'Single (one-stop shop) Customs Window' project

The Customs authorities recently published the Resolution of 14 January 2016 regarding the guidelines to fulfill the single administrative document (SAD) and the Resolution of 18 January 2016 in connection with the rules regarding requests for pre-clearance proceedings.

The entry into force of these both Resolutions intends to allow the practical application of some measures to be implemented by the so-called 'Single (one-stop shop) Customs Window" (SCW), with regards to the fulfillment of the SAD, its admission, and the clearance and

release proceedings and, also, in connection with the system regarding requests for pre-clearance proceedings.

With respect to the resolution regarding the SAD, in addition to making some technical improvements and code updates, it also provides for:

i) The ability to file the SAD before the arrival of goods, in the so-called new 'pre-SAD';

ii) Filing and admission of the SAD before receiving certificates from the Border Inspection Services (BIF);

iii) The establishment of a new 'yellow circuit' for the verification of certificates from BIF; and

iv) The ability to add the reference to such certificates in the SAD after its admission.

By way of background, the Commission for the Reform of Public Administration (created for improving the efficiency and effectiveness of public activity) agreed, in order to achieve greater administrative simplification, to implement a Single Window Customs to centralize the information and documentation to be submitted by economic operators to the different authorities involved in foreign trade (with non-EU countries), such as pharmaceutical, veterinary authorities, etc, also known as 'border (non-customs) authorities'.

Thus, the SCW project intends to become an important administrative and operational simplification for operators, which will be able to group all the paperwork, allowing shortened processing times; to reduce paper documentation related to the goods that are subject to foreign trade; and to speed up the clearance of the goods, by coordinating physical checks which allow them to be carried out at one time by all the regulatory authorities involved.

Therefore, in summary, the implementation of these two resolutions should involve substantial changes in the international trade in goods subject to border (non-customs) controls.

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Ukraine

Import/ transit quarantine permit no longer required

With effect from 1 January 2016, the importation of plants and plant products subject to phytosanitary control no longer requires an import or transit permit. Accordingly, importers are no longer required to submit their import contracts to the State Veterinary and Phytosanitary Service of Ukraine and to obtain quarantine permits prior to arrival of goods in Ukraine. This measure is aimed at reducing administrative costs borne by business and simplifying customs clearance procedures.

However, each consignment of plants and plant products arriving in Ukraine is still subject to phytosanitary examination and should be accompanied with a phytosanitary certificate issued in the exporting country. The importer of such goods should be registered with the Veterinary and Phytosanitary Service of Ukraine.

Special duties on Belarussian goods suspended

The introduction of a special duty of 39.2%, which was to apply from 20 January 2016 to certain goods originating from the Republic of Belarus, has been suspended to 1 May 2016.

This decision was taken after consultations between the Ministry of Economic Development and Trade of Ukraine and relevant authorities of the Republic of Belarus, with due consideration given to the standpoint of companies operating in the confectionary and brewing industries.

The decision entered into force on 15 January 2016.

Cancellation of compulsory certification of agricultural machinery

The Ministry of Economic Development and Trade of Ukraine removed agricultural machinery from the list of products subject to compulsory certification. The relevant changes came into effect on 21 January 2016.

Currently, agricultural machinery must meet the requirements set by two technical regulations (i) on approval of the type of agricultural and forestry tractors, their trailers and replacement trailed machines, and (ii) on component parts and characteristics of wheeled agricultural and forestry tractors. Starting from 2016, the application of the above regulations is compulsory.

Compulsory certification has been cancelled as a part of the technical regulation system reform in Ukraine. The reform is aimed at shifting from the post-Soviet standardization system (which was based on GOST) to the European system, which is based on technical regulations.

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United Kingdom

Domestic reverse charge VAT on wholesale telecoms from 1 February 2016

'Reverse charge' VAT accounting for wholesale supplies of certain electronic communications services has been introduced from 1 February 2016. The reverse charge will apply to wholesale telecommunications services and associated data (text, images, etc.) over landlines, mobile networks or the internet. It does not apply to non-wholesale supplies or to businesses not registered or not liable to be registered for UK VAT.

The introduction of the reverse charge on wholesale telecoms has been under discussion for some time, and it is understood that the tax authorities (HMRC) have expedited the introduction of it in response to a perceived heightened risk of revenue losses through Missing Trader Intra-Community (MTIC) fraud based on supplies of this kind. The reverse charge regime removes the opportunity for fraudsters to collect VAT and fail to pay it over to HMRC.

The HMRC Brief about the reverse charge regime indicates that HMRC will operate a 'light touch' in connection with penalties relating to the new rules for six months, recognizing that businesses faced difficulties over implementing them by 1 February.

Consultation on amending UK VAT grouping rules

HMRC have announced that they will be meeting with business representative bodies to explore and develop new ideas on VAT grouping in the light of the CJEU judgments in the case of *Skandia America Corporation* and in the joined cases of *Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG* and *Marenave Schiffahrts AG*. The intention is to develop policy options during February and March, which will form the basis for a 12-week consultation to be launched in the spring.

HMRC expect that changes to UK VAT grouping provisions are likely to include extending VAT grouping to non-corporate bodies and identifying new rules to determine 'close economic, financial and organisational' links for corporate and non-corporate bodies, replacing the current 'control' test based on the company law definition of a subsidiary. The proposed timetable suggests that any law changes will not be made before 2017.

Technical consultation on 'use and enjoyment' of insured repair work

Following the announcement in the Summer Budget, HMRC announced a short technical consultation on legislation to introduce a 'use and enjoyment' provision relating to insurance repair services. The measure is intended to counter avoidance where insurance repair services relating to insurance for UK customers are supplied to an offshore insurer, and are treated as outside the scope of VAT, whereas identical work for a UK insurer would be standard-rated (and would result in irrecoverable input tax). The consultation was based on a draft Statutory Instrument and the related Explanatory memorandum. Comments on both were invited by 29 February 2016.

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Trade Preferences

Ukraine-Uzbekistan

Ratification of Protocol on application of CIS FTA to Uzbekistan

On 27 January 2016, the Ukrainian Parliament ratified the Protocol on application of the CIS Free Trade Area Agreement dated 18 October 2011 between the parties thereto and Uzbekistan. Ukraine signed the Protocol on 31 May 2013 in Minsk.

The free trade area between Uzbekistan and Ukraine will commence after 30 days from the date the depository of the CIS FTA Agreement receives Ukraine's notification of completion of all domestic procedures required for the Protocol to become effective.

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Eurasian Economic Union

Kazakhstan's accession to World Trade Organization

For the settlement of certain issues related to the accession of Kazakhstan to the World Trade Organization, Eurasian Economic Commission Board Resolution № 57 dated October 2015 approved the draft Protocol on certain issues of import and circulation of goods in the customs territory of the Eurasian Economic Union (EEU) and the draft Resolution of the Supreme Eurasian Economic Council "On certain issues related to the accession of Kazakhstan to the World Trade Organization". The resolution entered into force on 14 October 2015.

The Protocol entered into force on 11 January 2016.

Resolution of the Eurasian Economic Commission (EEC) Council № 166 dated 15 December 2015 amended the Instruction on filing the declaration on goods (DG). Thus, inter alia, in Kazakhstan where one consignment includes goods in respect of which the CCT (Common Customs Tariff) EEU duty rates apply and goods in respect of which

reduced rates of import customs duties apply, such goods must be declared in different DGs. The Resolution entered into force on 14 January 2016.

Control of customs value of imported goods

EEC Council Resolution № 139 of 3 November 2015 amended the following:

- Instructions on how to fill in the declaration on goods, approved by the Resolution of the Commission of the Customs Union (CCU) № 257 dated 20 May 2010;
- The Order of the control of customs value of goods approved by CCU Resolution № 376 of 20 September 2010;
- The classifier of documents approved by the CCU Resolution № 378 of 20 September 2010.

The Resolution entered into force on 3 December 2015.

Amendments are associated with the ability to compare the customs value of the declared goods to the value of identical goods imported earlier under the same foreign trade agreement.

The amendments will contribute to a reduction in the completion time for customs operations upon the declaration of goods within the risk management system.

Order for filing and registration of transit declaration and completion of customs transit procedure

EEC Council Resolution № 147 of 10 November 2015 amended the Order for the performance of customs operations by the customs authorities connected with the filing and registration of the transit declaration and completion of the customs procedure for customs transit. The Resolution enters into force on 10 May 2016.

Among other things, the Order provides for the list of documents that remain in the customs authority of destination, when transporting consignments of goods by a group of rail cars (containers), directed by a single transport document, in the case of uncoupling on the route of one or more rail cars (containers). It was determined that the document

confirming that the rail cars were uncoupled must be submitted to the customs authorities with a set of documents for the goods transferred.

The full text of the document can be found on the official EEC website and EEU legal portal.

Protocol on exchange of electronic information between tax authorities of EEU states for implementation of tax administration

EEC Council Resolution № 142 dated 3 November 2015 approved the draft Protocol on the exchange of electronic information between the tax authorities of EEU states – members for tax administration. The Resolution entered into force on 9 December 2015.

In order to ensure the proper execution of the tax legislation, the Protocol provided for the exchange of information:

- On certain types of income of legal entities of EEU Member States in accordance with the requirements for the composition and structure of the information (application № 1 of the Protocol);
- On certain types of income of individuals of EEU Member States in accordance with the requirements for the composition and structure of the information (application № 2 of the Protocol);
- On certain types of property registered (located) in the territory of a Member State, and the owner(s) in accordance with the requirements for the composition and structure of the information (application № 3 of the Protocol);
- On the receipt of information in accordance with the format of the notification (application № 4 of the Protocol).

The full text of the document can be found on the official EEC website and EEU legal portal.

Mandatory preliminary information about goods imported by air

EEC Council Resolution № 158 dated 1 December 2015 established that, starting from 1 April 2017, mandatory preliminary information about goods imported into the EEU customs territory by air will be introduced. The Resolution entered into force on 31 December 2015

In particular, the preliminary information shall be submitted to the customs authority of destination by the carrier or other entity acting in the name and on behalf of the carrier.

The information includes information about the aircraft and the route of flight, and about imported goods specified in the transport documents (information shall be provided for each document).

The EEU state authorities authorized in the field of customs affairs must finalize the information systems of the customs authorities of their countries prior to 1 October 2016.

The full text of the document can be found on the official EEC website and EEU legal portal.

Extension of 0% import customs duty on grinded natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk

Decision of the Board of the EEC № 7 of 26 January 2016 extends the import customs duty rate of 0%, instead of 5%, at import on grinded natural calcium phosphates, natural aluminum calcium phosphates and phosphatic chalk classified under the classification code 2510 20 000 0 of the Unified Commodity Nomenclature of the EEU. The 0% import customs duty rate will be applied from 5 January 2016 to 4 January 2019 inclusively. Decision № 7 came into effect on 26 February 2016.

Introduction of antidumping duty on certain bulldozers and tires

EEC Council Resolutions № 148 dated 10 November 2015 and № 154 of 17 November 2015 imposed antidumping duties on the following goods imported into the EEU customs territory:

- Non-rotatable tracked bulldozers with angel and straight dozer up to 250 horse power originating in China and classified under 8429 11 009 0 CN FEA EEU code, for a period of five years;
- Tires designed for use on various axes of trucks, cars, buses, trolley buses, tip-trucks, trailers and semi-pneumatic tires and pneumatic tires with new bore diameter of 17.5 to 24.5 inches, inclusive, originating in China and classified under 4011 20 100 0 and 4011 20 900 0 CN FEA EEU codes, for a period of five years.

The full text of the document can be found on the official EEC website and EEU legal portal.

Resolution № 148 entered into force on 12 December 2015. Resolution № 154 entered into force on 18 December 2015.

Introduction of antidumping duty on rolled-steel wheels and weldless corrosion-resistant stainless steel tubes originating from Ukraine

Decision of the Board of the EEC № 170 of 22 December 2015 introduces antidumping duty on rolled-steel wheels with a diameter of 710 mm or more, for the manufacture and repair of wheel pairs for freight carts and passenger cars of locomotive traction; passenger, freight and shunting locomotives; motorized and non-motorized car wheel pairs of electric and diesel trains; and special rolling stock, originating from Ukraine and classified under the classification code 8607 19 100 9 of the Unified Commodity Nomenclature of the EEU. The antidumping duty is established for five years and applied from 22 January 2016. The rate of the antidumping duty will be 4.75% of the customs value of imported rolled-steel wheels non-dependent from the manufacturer.

Decision of the Board of the EEC № 6 of 26 January 2016 introduces antidumping duty on weldless corrosion-resistant stainless steel tubes with a diameter up to 426 mm inclusively, originating from Ukraine and classified under the classification codes 7304 41 000 1, 7304 41 000 5, 7304 41 000 8, 7304 49 100 0, 7304 49 930 1, 7304 49 930 9, 7304 49 950 1, 7304 49 950 9, 7304 49 990 0, 7304 90 000 1, 7304 90 000 9 of the Unified Commodity Nomenclature of the EEU. The antidumping duty is established for five years and applied from 26 February 2016. The rates of the antidumping duty vary depending on the manufacturer of the steel tubes from 4.32% to 18.96% of the customs value. Decision № 170 came into effect on 22 January 2016 and Decision № 6 came into effect on 26 February 2016.

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