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Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Highlights of this edition include the publication of a new Guide to Customs Valuation and Transfer Pricing by the World Customs Organization, further progress on the implementation of a GST in India (from 1 April 2016), the signing of a FTA between the governments of China and Australia, and significant changes to VAT and insurance premium taxation in Greece.

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

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There is a draft decree under discussion regarding credit notes for ‘small value’ invoices.

Clarification has been provided regarding the priority VAT refund for film screening operators.

Parliament Commissions are currently discussing five draft decrees, including a potential reduction to penalties.

Guidelines have been issued regarding controls, for excise purposes, at road fuel pumps and gasoil commercial warehouses.

Customs assessments will be illegal if signed by Customs before the 30th day from when the operator has received the relevant customs report.

Guidelines have been issued for the ‘New Computerized Customs System’.

Kazakhstan

There is new legislation regarding special protective, anti-dumping and compensation measures in relation to third countries.

A Resolution deals with the licensing of goods for export and/ or import.

There are new rules for customs payment and tax exemptions in respect of certain imports into the Customs Union.

An order has approved rules for the development of special economic zone activities.

Rules have been approved for providing export (import) guarantees on processed products and forms for the same (within the EEU).

There is an order regulating the customs transit of foreign goods through Kazakhstan.

An order has approved rules for the transfer and record of the receipt of customs duties, taxes, customs charges and late payment interest.

Rules have been approved for processing importer (end user) warranties and verifying execution.

Rules have been approved for carrying out sanitary and quarantine controls at Customs Union vehicle border points.

An order has approved rules regarding tariff concessions.

There is a new tax reporting form and method for import VAT.

Malta

The Government has published legislation allowing authorized VAT refund operators to act on behalf of nonresident travellers in a claim for repayment of VAT.

Netherlands

There is to be no VAT rate increase in the Netherlands, with respect to the removal of products from the reduced VAT rate.

Poland

The Supreme Administrative Court is to rule on whether the supply of food of a similar type should be taxed according to one unified VAT rate.

The customs administration has launched The Electronic Services Portal of the Customs Service (PUESC), the aim of which is to improve communication with the customs administration and to unify the use of IT customs systems.

Portugal

The Superior Administrative Court has issued decisions regarding the calculation of the prorata.

Russia

There has been amendments to the List of technological equipment analogues of which are not produced in Russia and import of which are not subject to VAT

There have been amendments to the list of medical goods subject to the 10% VAT upon import.

Interest received for providing deferral of payment on credit terms is not subject to VAT.

Organizations may not restore previously deducted VAT when disposing of property as a result of fire.

There has been a court decision regarding the calculation of VAT on sales of additional functions in online games.

A potential VAT exemption for suppliers and partners of FIFA for the FIFA World Cup 2018.

There has been a Constitutional Court Resolution on the calculation of VAT when receiving insurance payments according to insurance agreements on entrepreneurial risk.

There has been a court Resolution regarding VAT recovery where there has been an absence of due discretion when choosing a counterparty.

Information regarding the procedure for exemption from advance excise payments.

Extension of the food embargo.

Trade duty has been introduced in Moscow.

Spain

The tax authorities have issued a binding ruling regarding the VAT treatment of services in connection with immoveable property.

Ukraine

There has been a change in procedure for the importation of medical products.

Beer is classified as an alcoholic beverage.

Anti-dumping duties have been imposed on lamps imported from the Kyrgyz Republic.

United Kingdom

The tax authorities have issued a Brief on compound interest claims.

The Supreme Court has dismissed an appeal by the The Rank Group Plc in relation to its claim for a refund of VAT paid on takings from certain gaming machines.

The UK Chancellor of the Exchequer delivered the UK Summer Budget 2015 on 8 July 2015, including a number of indirect tax announcements.

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Eurasian Economic Union

Eurasian Economic Union

Anti-dumping duty has been introduced on certain kitchen appliances and flatware imported into the territory of the Eurasian Economic Union.

There have been customs duty rate amendments for sea ferries.

There has been an addition to the list of goods that can be imported temporarily with a full exemption from customs duties and taxes.

A draft agreement has been approved to place control (identification) tags on goods classified as 'Items of clothing, clothing accessories and other items made of natural fur'.

There have been changes to the list of countries making use of the Customs Union tariff preference system.

There have been changes to the list of goods requiring permission to be imported into the EEU and/ or exported from it.

There have been a number of amendments to the EEU Common Customs Tariff.

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World Customs Organization

WCO provides guide regarding customs valuation and transfer pricing

The World Customs Organization (WCO) has issued a new **Guide to Customs Valuation and Transfer Pricing**.

The basis for levying import duties is the customs value of imported goods – a transaction based approach; whereas transfer pricing (TP) is used to determine the value of transactions between related enterprises over a certain period, normally a year. In some countries customs authorities accept a TP study as a basis to determine if two related enterprises use a sales price that is not influenced by their relationship (at arm's length).

There is often a tension between customs valuations (import duties are calculated as a percentage of the customs value) and TP methodology (used to ultimately determine profit where the seller and buyer are related). In this guide, the WCO has provided a technical background, offered possible solutions and shared its ideas.

When the price of goods is determined based on a TP study, it is common that TP adjustments are made. For customs purposes this can be an issue, as the value is determined on a transaction by transaction basis. Some customs administrations accept retroactive adjustments, others do not, or only do so if it means that additional duties have to be paid.

The International Chamber of Commerce calls for acceptance by customs administrations of these adjustments and the consequences both ways, see the ICC Policy Statement at Annex VI of the Guide.

In Annex III of the Guide, Commentary 23.1 of the WCO's Technical Committee on Customs Valuation is published, regarding the use of TP studies for customs value purposes. A TP study is seen as a possible basis to determine if a price is influenced by the relationship between two enterprises.

The Guide can be a useful instrument when facing difficulties in determining customs values. It is primarily developed for customs officials, but is also interesting for parties conducting audits and controls on multi-national enterprises.

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Americas

Canada

Ontario Harmonized Sales Tax – RITC phase out in Ontario begins 1 July 2015

As of 1 July 2015, the requirement for certain large businesses to recapture specified provincial input tax credits, referred to as Recaptured Input Tax Credits (RITCs), in Ontario will be gradually phased out.

Since 1 July 2010, the Harmonized Sales Tax (HST) in Ontario has been 13%, consisting of the 5% federal part and the 8% provincial part. When the HST came into effect in Ontario on 1 July 2010, large businesses were required to report any RITCs in determining their net tax for a reporting period when filing their GST/ HST NETFILE returns.

For the purposes of the RITC requirement, a person is considered a 'large business' during a particular recapture period if the person is a GST/ HST registrant and:

- The person's RITC threshold amount (i.e., total revenues from taxable supplies) for that recapture period is greater than CAD 10 million, or

- The person is one of the following financial institutions or a person that is related (for purposes of the GST/ HST) to one of the following financial institutions: a bank; a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee; a credit union; an insurer or any other person whose principal business is providing insurance under insurance policies; a segregated fund of an insurer; an investment plan; or the Canada Deposit Insurance Corporation.

Between 1 July 2010 and 30 June 2015, large businesses were required to recapture or repay 100% of the input tax credits (ITCs) for the provincial component of the HST in respect of the acquisition, importation or bringing into Ontario of a 'specified property or service'.

A 'specified property or service' includes the following property or service if acquired or brought into Ontario by a large business for consumption or use (in whole or in part) in Ontario by that business:

- Electricity, gas, steam, and fuel (other than fuel for use in a propulsion engine) together with incidental delivery charges or regulatory fees;

- Certain telecommunication services, other than certain supplies including access to the Internet and toll-free telephone services such as 1-800 telephone services;

- Food, beverages and entertainment, to the extent that they are already subject to the existing ITC repayment requirements (generally 50%);

- Qualifying motor vehicles (whether purchased or acquired by way of lease, licence or similar arrangement), along with parts and services acquired within 12 months of the vehicle's acquisition or bringing into Ontario (e.g., acquisition and installation of a vehicle anti-theft system), other than parts and service for routine repair and maintenance; and

- Fuel (other than diesel fuel) that is for the engine of a qualifying motor vehicle described above even if the vehicle was acquired or brought into Ontario prior to 1 July 2010.

(Generally, a 'qualifying motor vehicle' is a road vehicle weighing less than 3,000 kilograms that is required to be licensed for use on a public highway under the laws of Ontario, but does not include: a power-assisted bicycle; a snow vehicle; an all-terrain vehicle; an electrically propelled wheelchair; a street car; a vehicle that runs only on rails; or a farm tractor, or other farm machinery, acquired, or brought into a province, exclusively for use in farming activities.)

The RITC requirement in Ontario is gradually phased out over three years as follows:

Day on which the provincial part of the HST becomes payable without having been paid or is paid without having become payable	Ontario RITC recapture rate
1 July 2010 to 30 June 2015	100%
1 July 2015 to 30 June 2016	75%
1 July 2016 to 30 June 2017	50%
1 July 2017 to 30 June 2018	25%
1 July 2018 and beyond	0%

Large businesses must continue to report RITCs at the applicable rate in a return for a reporting period during the phase out in Ontario.

To the extent that a large business' reporting period straddles the periods shown in the above table, RITCs at multiple recapture rates may be required to be reported in the large business' return.

Interest and penalties are generally assessed against large businesses that fail to account for RITCs as required.

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Asia Pacific

India

Committees to facilitate implementation of GST from 1 April 2016

The Union Finance Ministry approved the formation of the following new committees to facilitate the implementation of GST from 1 April 2016.

Steering Committee

The Committee is formed with the objectives to:

- Finalize reports prepared by sub-committees on aspects relating to the drafting of the Central Goods and Service Tax (CGST)/ the Integrated Goods and Service Tax (IGST), State Goods and Service Tax (SGST) laws/ rules and other mechanics of GST;
- Monitor the progress of IT preparedness of the Goods and Service Tax Network (GSTN), the Central Board of Excise and Customs (CBEC) and other tax administrators;
- Monitor the training of officers;
- Monitor progress on consultations with various stakeholders, such as trade and industry.

Committee for recommending rates

The Committee is formed with the objective to:

- Recommend possible tax rates of GST, after ensuring consistency with the current level of revenue collection from the Centre and the States;
- Take into account the expected level of growth of the economy, different levels of compliance and the broadening of the tax base under GST for recommending the possible tax rates of GST;
- Analyze the sector- and State-wise impact of GST on the economy.

This Committee is expected to give its report within two months.

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Indonesia

Update on luxury goods sales tax

The Minister of Finance (MoF) has issued regulation number 106/PMK.010/2015 (PMK-106) to update the types of taxable goods categorized as luxurious other than motor vehicles that are subject to sales tax on luxury goods (LGST). PMK-106 replaces MoF Regulation number 121/PMK.011/2013 as amended by MoF Regulation number 130/PMK.011/2013 (PMK-130).

The key changes stipulated under PMK-106 are:

- PMK-106 eliminates the imposition of LGST on certain categories of goods (such as household equipment, electronic goods including televisions and air conditioners, and sport equipment) that were previously subject to LGST rates of 10% and 30% under PMK-130.
- PMK-106 also removes several items from the imposition of LGST (such as leather goods, luxurious household items, perfume and precious metals).

PMK-106 is effective from 9 July 2015. This new rule is intended to promote the consumption of locally produced products so as to support and contribute to domestic economic growth, and to discourage the importation of luxurious goods.

Indonesia to implement stricter rules on imports

The Ministry of Trade has introduced a new import regulation requiring all imported goods to have the pre-approved permits, before the goods are shipped to Indonesia. The regulation will take effect in January 2016 and will replace regulation No. 54/2009, which currently only requires importers to have an importer's identification number (API) prior to importing goods into Indonesia.

This new regulation is the latest measure taken by the government to address lengthy dwelling times at ports. Indonesian President, Joko Widodo, is determined to accelerate dwelling time from the current 5.5 to 4.7 days. Currently, many importers delivered their goods into the country without pre-approved permits and would file for the necessary documentation after the items arrived at seaports, which resulted in long dwelling time. Importers also tend to take advantage of the cheaper and more secure storage at the port compared to expensive private storage facilities.

With the new regulation, goods cannot be unloaded from containers unless there is a proper permit. Importers who fail to comply with the new requirements will face sanctions including suspension of their APIs and the requirement to re-export the goods to their country of origin.

Importers should ensure that permits from related authorities/ ministries are secured prior to shipment into Indonesia. This is also in line with the implementation of the ASEAN Single Window, where submission of Advance Electronic submission allows for faster clearance at the border.

Change in collection of Article 22 Income Tax on import activities or business activities in other sectors

The MoF has issued regulation number 107/PMK.010/2015 (PMK-107), as the fourth amendment of MoF Regulation number 154/PMK.03/2010 (PMK-154) concerning the collection of Article 22 Income Tax in connection with payments for deliveries of goods and activities in the import sector or business activities in other sectors.

PMK-107 introduces a new category of goods which are subject to Article 22 Income Tax rate of 10%, regardless of whether the importer has an Import Identification Number (API) or not. The following table summarizes the Article 22 Income Tax rates imposed on imports of goods:

Rate	Type of goods
10%	Certain Goods, including: a. Perfume and liquid fragrances b. Carpets and other textile floor coverings, woven, whether finished or not c. Footwear with outer soles of rubber, plastic, leather or composition leather and uppers of leather d. Other goods from precious metals or from metal coated with precious metal
7.5%	Certain Other Goods, including: a. Cutlery, kitchen equipment, other household equipment and toilet equipment, of plastic b. Monitor and projectors, not combined with television receivers; television receivers, whether or not combined with radio broadcast receivers or sound or video recording or reproduction apparatus c. Motorcycles (including mopeds) and bicycles equipped with auxiliary motors, with or without sidecars; sidecars
2.5%	Other than Certain Goods and Certain Other Goods using API, except for imports of soybeans, wheat, and wheat flour at 0.5% of the import value
7.5%	Other than Certain Goods and Certain Other Goods not using API

PMK-107 also introduces an Article 22 Income Tax rate of 1.5% for export activities, namely, coal, metal mineral and non-metal mineral mining commodities.

Through this policy, the government aims to collect more tax revenue in advance upon imports and exports.

Safeguard duty imposed on imported yarn products

Due to the high consumption of imported yarn, Indonesia's local yarn producers have urged the government to protect the locally made products by imposing safeguard duty.

In recent years, demand for textile and garments products has been rising as the middle-class population has grown. However, the higher production cost of local yarn makes local producers unable to compete with abundant overseas yarn producers. It is alleged that foreign producers have been dumping their products in Indonesia and selling them at lower prices compared to the local products. The amount of imported polyester yarn has increased by nearly 50% compared to 2010.

In 2014, local yarn producers asked the government to impose anti-dumping duties. However, this approach was insufficient to reduce imports of these products and was not considered very effective.

As local yarn producers expect to be protected by the imposition of safeguard duty, yarn importers should ensure that their imports are priced at fair market value and are not subject to the anti-dumping regulation.

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Trade Preferences

China – Australia

China-Australia Free Trade Agreement

The governments of China and Australia officially signed a Free Trade Agreement (CN-AU FTA) on 17 June 2015.

As the 12th largest economy, Australia is the biggest developed economy to have signed an FTA with China. Covering more than ten categories of free trade, the CN-AU FTA is the FTA offering the highest level of overall trade and investment liberalization that China has ever entered into.

The below summary focusses on the trade of goods features of the CN-AU FTA.

Tariff concessions

Although the CN-AU FTA has not yet entered into force, both countries have committed to a schedule of tariff concessions to reduce the tariff rates to zero immediately, or gradually over a period of time. Specifically:

- China will eliminate tariffs on 96.8% of imported Australian products, representing 97% of its total imports from Australia over the next 15 years. Such tariff reduction and exemption benefits mainly cover products such as energy sources, iron or steel, and metal products, as well as agricultural products, including beef, wool, and dairy products.

- Australia will eliminate tariffs on all imported Chinese products over the next five years. Such tariff reduction and exemption benefits mainly cover products such as clothing, leather, electrical appliances, mechanical products, iron and metal, and chemical products.

Rules of origin

To enjoy FTA benefits, two requirements would have to be met: the goods would have to be ‘originating goods’, and they would need to be directly transported. The rules of origin have also been specified in the CN-AU FTA. Similar to some of China’s other FTAs, if the goods fall under the schedule of tariff concessions, mere shipments of goods from Australia to China, or vice versa, would not be sufficient to qualify for a preferential duty rate under the CN-AU FTA.

Some highlights are:

- Annex 2 of the CN-AU FTA (i.e., product-specific rules of origin) especially added the rule of origin of chemicals chapter.
- Although the CN-AU FTA does not specify the acceptance of a Non-Party Invoice, it is anticipated that a Non-Party Invoice could be acceptable, but further proof might be required by the customs authorities of the destination country.

Comments

The signing of the CN-AU FTA is an important milestone for the cooperative relationship between the two countries. Although the CN-AU FTA is not yet in effect, potentially affected companies are recommended to take the following steps:

- Monitor developments relating to the CN-AU FTA;
- Identify whether their goods/ purchases fall under the schedule of tariff concessions (to do that, a company will need to have the correct HS codes);
- Familiarize themselves with the relevant origin implementation procedures (such as application of the country of origin and origin claim requirement);
- Train staff to understand the basic logic for determining HS codes of goods and rules of origin for each HS code;
- Evaluate the need to re-structure their supply chains (production, sales and purchase) to take full advantage of the preferential duty treatment under the CN-AU FTA;
- Review supply/ purchase contracts, in particular with respect to duty clauses relating to the liabilities for origin information and application;
- Assemble the appropriate resources to deal with new requirements associated with implementing the FTA (manually and automatically); and
- Establish a regular review mechanism to ensure compliance with relevant FTA requirements.

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EMEA

Belgium

New VAT tax point rules from 2016: invoice restored as tax point

On 1 January 2013, a major change was made to the Belgian VAT tax point rules, as the issuance of an (advance) invoice was no longer considered as a tax point. This caused many practical concerns for businesses, and hence a transitional regime was put in place, allowing businesses to postpone changes to their invoicing systems until the legal framework was modified. This change has now been approved by the Belgian government.

In essence, the invoice is now fully restored as a tax point, regardless of whether the invoice is issued before or even after the taxable supply. At the same time, a cash based regime will be introduced for supplies to public bodies (B2G supplies).

The new rules will enter into force on 1 January 2016.

The following is a brief outline of the key changes submitted to Parliament.

Transitional regimes and 'final' guidance on tax point rules

The tax point rules for local transactions were fundamentally changed in 2013. An advance invoice (i.e., an invoice issued before a supply or payment) was no longer considered to be a tax point. Moreover, the VAT authorities initially did not allow an invoice to be issued to claim an advance payment.

Due to the extensive impact of this new regulation on the processes of businesses, transitional regimes applied for 2013 and 2014. Discussions between the tax authorities and the business community led to a 'final' guidance containing detailed practical rules implementing the tax point legislation, which were due to enter into force on 1 January 2015, but later postponed to 1 July 2015.

Invoice as tax point for local supplies

The new Belgian government announced that the tax point rules would be evaluated, as the regulation seemed to entail practical difficulties for businesses, since the payment of an advance could not be requested on the basis of an invoice. In order to remedy this and to reduce the burden for businesses, the government has decided to readjust the provisions of the VAT Code and essentially fully restore the invoice, being a crucial commercial document, as a tax point.

The new rules will apply as of 1 January 2016, and will include the following:

- The prime tax point occurs and the VAT becomes due at the time of the supply or completion of the service (currently the case);
- However, by derogation, the VAT will become due when the invoice is issued, regardless of whether the invoice is issued before or after the time of supply;
- The VAT will in any case become due on the 15th of the month following the month of the supply if no invoice is issued on that date.
- The VAT will also become due when a payment is received before the supply.

The fact that an invoice can also serve as a tax point when issued after the supply is a new concept, and confirms the quintessential role of the invoice in the new tax point rules. With this legislative proposal, the government makes extensive use of the optional tax point provisions in the European VAT Directive, which are designed to facilitate the collection of VAT by businesses.

There are no modifications for intra-Community supplies and services. Likewise, the cash based regime for most supplies to private persons, which was broadened in 2013, remains unchanged.

B2G

The new regulation will also provide a specific tax point for transactions with public bodies. The tax point will be deemed to be the time when payment is received from the public body. This rule will apply even if the public body is registered as a VAT taxable person. This new rule goes beyond the existing (administrative) regime allowing the VAT to become due when an invoice is approved by the public body. The new rule will however not apply to cases where a reverse charge applies (as in that case the public body has to account for the VAT due) or for supplies of immovable goods to public bodies.

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Finland

VAT on costs related to employee recreational events considered deductible by SAC

On 18 June 2015, the Finnish Supreme Administrative Court (SAC) gave a ruling KHO:2015:98 concerning the right to deduct the VAT on costs related to employee recreational events.

Company A, a VAT taxable business, arranged recreational events for its employees once or twice per year. The events were arranged individually for all departments and all employees of the department were invited. Each department decided independently on the arrangements, time and content of their event.

The SAC considered that the events were more closely related to the business of the taxpayer than to the leisure time of the employees. Therefore, the business had a right to deduct the VAT on the cost related to these events.

It was not relevant that the content and costs per person varied between the events, and it was not necessary to include any 'business' component in the event.

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Greece

VAT and Insurance Premium Tax changes

On 16 July 2015, the Hellenic Parliament voted for Law 4334/2015 (FEK 80/16.07.20115) which introduces, among others, significant changes in the field of VAT and insurance premium taxation, as described below.

Annulment of reduced VAT rates on Islands

The reduced rates (by 30%) that apply to transactions on/ to the Islands are gradually waived as from:

- 1 October 2015 for developed, in terms of tourism, islands with higher income per capita, but with the exemption of isolated islands;
- 1 June 2016 for less developed islands, but with the exemption of isolated islands,
- 1 January 2017 for all isolated islands.

(By way of clarification, reduced VAT rates (16%, 9% and 4% – after reduction of the regular super reduced rate of 6.5% to 6%) will apply until 30 September 2015, 31 May 2016 and 31 December 2016 respectively).

VAT rates – Reclassifications

Certain categories of goods and services are reclassified to higher VAT rates (from 13% to 23% or from 6.5 to 13%). Reclassifications will apply as from 20 July 2015 (unless otherwise provided by law) according to an announcement from the Ministry of Finance that is expected to become official.

Significant reclassifications include the following:

- The super reduced VAT rate is reduced to 6% (currently 6.5%). This applies to books, newspapers, journals/ magazines, certain types of medicine/ vaccines, theater tickets.
- Hospitality/ hotel accommodation services are reclassified to 13% as from 1 October 2015, while catering and restaurant services are reclassified to 23% immediately.
- For the first time, VAT is imposed at 23% on private educational coaching centers of all levels (excluding private schools), as well as on language and computer centers. Currently, such services are treated as VAT exempt services.
- Medical and diagnostic services provided by private clinics and centers during hospital stay, aesthetic services by doctors etc. are reclassified to the higher VAT rate (from 13% to 23%). Medical and diagnostic services provided by State Hospitals as well as medical care by professionals (doctors – free lancers) remain exempt from VAT.

For more information please refer to this **Table of Goods and Services**, which includes a non-exhaustive description of goods and services that are reclassified to a different VAT rate.

NOTE: It is highly recommended that suppliers of goods/ services, that were until now subject to the 13% or 6.5% rates, double-check reclassifications (with reference to the respective Tariff class codes in case of goods).

Instant VAT remittance for bank payments

Pursuant to the new law, banks will be required to withhold the VAT amount in respect of payments/ transactions that are mandatorily settled though the bank system (i.e., wholesale transactions of more than EUR 3,000 and retail transactions of more than EUR 1,500) and, principally, through credit or debit cards, e-banking, bank deposit payments of invoices or bank cheques. Certificates will be provided by the bank to VAT subjects for reporting purposes.

There are several practical issues that are expected to be arranged through an interpretative circular of the Ministry of Finance. Among them, clarification is required as to how double remittance of VAT (one with the VAT return and one with the bank's repayment) can be avoided when an invoice is paid in the month following the month of its issuance.

Increase in insurance premium taxation

The new law increases Insurance Premium Tax (from 16 July 2015 according to Ministerial Circular POL. 1158/17.07.2015) on claimable premiums and insurance rights recognized under an insurance policy agreement (apart from life and fire insurance).

Applicable tax rates:

- 20% tax on fire insurance (no change);
- 15% tax (from 10%) on car insurance;
- 4% tax on life insurance (no change);
- 15% tax (from 10%) on all other types of insurance.

The new legislation waives any exemption from insurance tax (such as the exemption applying to vessels/ aircraft) except for life insurance exceeding a 10 year duration, for which the exemption remains effective.

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Italy

European Commission approval for split payment

On 12 June 2015, the European Commission gave its approval to Italy for the new split payment mechanism, recently introduced with the 2015 Stability Law. Under the split payment mechanism, which will last for three years and cannot be extended, suppliers will receive from public administration organizations the amount shown on the invoice **net** of the VAT, which must be directly paid by the public administration to the tax authorities.

Also, in light of the EU infringement procedure against Italy regarding the length of time taken to pay VAT refunds, the European Commission has requested a detailed report from Italy regarding the timeframes for making VAT refunds under the split payment mechanism. In this respect, as previously announced, VAT refunds under the split payment mechanism will be made as a matter of priority (i.e., within three months from the VAT refund claim).

Final approval of the split payment mechanism is now awaiting only the final unanimous approval of the European Council.

Expo 2015 FAQs

The tax authorities have set out their response to a number of frequently asked questions from Expo 2015 participants (circular letter n° 25/E (dated 7 July 2015)). The main clarifications are as follows:

- **A special VAT exemption regime** applies to the Section General Commissariats (SGCs), under the agreement between the Italian Government and the Bureau International des Expositions (BIE). This special VAT exemption regime applies only to institutional exhibition activities. In particular, the following transactions are deemed VAT exempt: domestic and intra-Community purchases of goods and services or imports of goods related to the construction of exhibition spaces; domestic and intra-Community purchases of goods and services or imports of equipment for exhibition spaces for commercial activities (such as restaurants, bar or shops). The SGCs do not benefit from this special VAT exemption when they undertake commercial activities at their exhibition spaces;

- **Tickets** are subject to the 10% VAT rate. Also, the organizing entity of Expo 2015 can issue tickets and provide them to third party retailers for subsequent sale. In the latter case, the tickets must report the identification fiscal codes of the retailers;

- **'Black list' fulfilments** must be met by Italian suppliers providing services related to the construction of exhibition spaces for nonresident Expo participants established in a 'black list' country.

Court decision regarding the 10% VAT rate for shows and concerts

In a recent decision (n° 12283 (dated 12 June 2015)), the Supreme Court has held that the application of the 10% VAT to supplies of services rendered by the producer of a concert to the organizer was incorrect.

In particular, in this specific dispute: the producer provided a complex supply of services to the organizer (i.e., a 'full package' including the artist's exhibition as well as several ancillary services/ goods linked to the organization of the artistic performance); the organizer sold tickets to the public for the concert.

According to the Supreme Court, the reduced VAT rate – the application of which is subject to a restrictive interpretation (being an exception to the ordinary 22% VAT rate) – shall apply to supplies of artistic performance provided **directly** to the public (this is the case with tickets). Other supplies undertaken under different contracts, which rule the relationships (as in this dispute) between the producer and the organizer, are subject to the ordinary VAT rate, due to the lack of a direct involvement of the artist or of the final spectator.

New guarantee form for VAT refunds

Via Act n° 87349 (dated 26 June 2015) the Director of the Italian Tax Authorities officially approved the new standard form of the guarantee that must be submitted for annual and quarterly VAT refunds. This new form replaces the previous one, approved by the Director of the Italian Tax Authorities on 10 June 2004.

As explained in the Act, in line with the recent changes in the VAT refund rules (as introduced by Legislative Decree n° 175 dated 21 November 2014), which are basically aimed at simplifying VAT refund procedures to save time and connected costs, the new form of guarantee now reduces the value of interest to be guaranteed by the VAT refund claimant. In particular:

- **For VAT refunds managed by the Tax Collector**, interest for delays in the execution of annual VAT refunds will no longer be calculated. Therefore, the guarantee shall cover only:

  A. The annual VAT credit requested for refund;

  B. Interest **calculated on the value of the VAT credit (A)**, for the period of validity of the guarantee/ term deposit;

- **For VAT refunds managed by the Tax Office**, interest for delays in the execution of annual/ quarterly VAT refunds will be calculated on an estimated range of time, now reduced from 120 to 60 days. In particular, the guarantee shall cover:

  A. The annual/ quarterly VAT credit requested for refund;

  B. Interest for delays in the execution of VAT refunds, accrued from the 90th day following the date of submission of the annual VAT refund claim (or from the day following the expiration date of the payment of the quarterly VAT refund) **until the 60th day following the date of submission of the guarantee/ term deposit** (under the 'old' forms, this interest was calculated until the 120th day following the date of submission of the guarantee/ term deposit);

C. Interest **calculated on the value of the VAT credit only (A)**, for the period of validity of the guarantee/ term deposit (under the 'old' forms, this interest was calculated on the sum of A + B).

The new guarantee form, which is already available on the official website of the tax authorities, can be used from 27 June 2015. The old guarantee form can be used until 31 December 2015.

New draft decree under discussion regarding credit notes for 'small value' invoices

The Italian Government is considering a new decree regarding the ability to issue credit notes for unpaid small value invoices after six months from the payment deadline. 'Small value' is intended to mean a total amount invoiced of not more than EUR 5,000 for large businesses or EUR 2,500 for other businesses.

No further conditions would be required to issue credit notes for small value invoices.

Under the current VAT law, taxpayers are entitled to issue credit notes for unpaid invoices only if the purchaser is subject to insolvency proceedings or unsuccessful enforcement proceedings.

Priority VAT refund for film screening operators

In Resolution n° 61/E (dated 24 June 2015), the tax authorities have provided some clarifications to Decree 27/04/2015 regarding priority VAT refunds for film screening operators (under ATECO CODE 59.14.00) regarding the practical requirements that must be met at the time of submission of the quarterly VAT refund claim via submission of the so called TR form.

From the second quarter of 2015 (April-May-June), film screening operators will be entitled to submit 'priority' quarterly VAT refund claims by entering a specific new code '7' (i.e., priority refund) in the TD8 box of the VAT refund claim (i.e., TR form).

Parliament Commission discusses potential penalty reductions

Under Law n° 23/2014 (*Legge delega*), Parliament Commissions are currently discussing five draft decrees that, according to the Minister of Finance, have the goal of "improving the relationship between the Italian tax authorities and taxpayers and simplifying their tax compliance". The new draft decrees concern: tax evasion, ruling petitions, penalties, collecting procedures, and the Italian tax authorities' internal reorganization.

Among the most significant changes to the current VAT rules is a potential reduction to penalties proposed by one of the decrees, which, if approved, would apply for FYs 2016 and 2017 only. The proposals are as follows:

- For not submitting the annual VAT return, penalties will range from 60% to 120% of the VAT due (penalties currently in force range from 120% to 240% of the VAT due);
- For the inaccurate submission of the annual VAT return (meaning a return with incorrect values), penalties will range from 90% to 180% of the VAT due, increased by 50% for fraudulent behavior (penalties currently in force range from 100% to 200%);
- For violations by the supplier with respect to the new letter of intent regime, penalties will range from EUR 250 to EUR 2,000, whilst administrative penalties ranging from 100% to 200% of the VAT not charged on the invoice would apply for FY 2015 and from FY 2018 onwards.

Guidelines regarding controls for excise purposes

On 3 June 2015, Italian Customs issued Circular Letter No 5/D, providing operative guidelines regarding controls, for excise purposes, at road fuel pumps and gasoil commercial warehouses. In particular, such guidelines refer to the requirements for reporting changes in volume that occur during the transport, as well as the keeping of loading/ discharge ledgers, in relation to accounting for product shortages.

Invalid customs assessments

In the light of a recent Supreme Court decision, Italian Customs issued Note No 65329 of 8 June 2015, stating that customs assessments are illegal if signed by Customs before the 30th day from when the operator has received the relevant customs report (i.e., the report summarizing the inspections carried out at the operator's premises or the results of the Customs assessment review). The 30 day time period allows the operator to submit to Customs objections or requests regarding the Customs report.

Guidelines regarding N.C.T.S.

In Note No 61559 of 18 June 2015, Italian Customs provided the guidelines to be followed by offices and operators within the so called 'New Computerized Customs System' (N.C.T.S.).

In particular, they ceased controls and reduced the clearance timing for consignees of goods under transit procedure who are holders of AEO certificates.

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Kazakhstan

Legislation regarding special protective, anti-dumping and compensation measures in relation to third countries

On 8 June 2015 Law №316-V ЗРК *On Special Protective, Anti-Dumping and Compensation Measures in Relation to Third Countries* was signed.

The Law covers relations arising from the use of special protective, anti-dumping and compensation measures in relation to third countries, to protect national economic interests.

It does not cover relations arising from services and work performed, the transfer of exclusive rights to intellectual property or the provision of rights for the use of intellectual property, investments made, and currency and export controls, which are governed by other laws.

Law №317-V dated 8 June 2015 amends and supplements specific legislative acts concerning the use of special protective, anti-dumping and compensatory measures in relation to third countries.

Laws №316-V and №317-V entered into force at the end of 30 calendar days from their official publication, which was 10 June 2015.

Licensing of goods

Government Resolution №287 dated 24 April 2015 approves:

- A list of goods the export and/ or import of which are licensed;
- Licensors;
- The state authorities responsible for issuing licenses.

The list of goods the export and/ or import of which requires a license was established based on the common list of goods whose import or export by Customs Union member states in trading with third countries is either banned or restricted.

Licenses are issued for each item subject to export control and classified in accordance with the Common FEA CN and requiring a license.

The full text of the document can be found from official Kazakhstan sources.

The Resolution entered into force at the end of 10 calendar days from the date of its official publication, which was 23 May 2015.

Rules for customs payment and tax exemptions in respect of certain imports into the Customs Union

Joint Orders of the Minister of Finance №220 dated 27 March 2015 and the Acting Minister for the National Economy №256 dated 27 March 2015 have approved Rules for the Ministries of Finance and National Economy to work together to provide customs payment and tax exemptions in respect of imports of specific categories of goods into the Customs Union.

The Rules apply to goods imported free of charge as technical aid (assistance), and against grants (financial aid).

The full document text can be obtained from official Kazakhstan sources.

The joint Order entered into force at the end of 10 calendar days from its official publication, which was 1 June 2015.

Special economic zone activities

Order of the Minister of Finance №210 dated 26 March 2015 has approved rules for:

- The development of special economic zone territories and for providing access to them;
- Notifying an import of goods into a special economic zone, and for issuing permits to import goods into special economic zones and exporting them from the same;
- Recording goods and for reporting to the state revenue authorities on goods released according to the free customs zone procedure;
- Recognising goods released according to the free customs zone procedure as Customs Union goods.

The various rules have been established to ensure effective customs controls and compliance with Customs Union and Kazakhstan customs legislation.

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 11 June 2015.

Rules for providing export (import) guarantees on processed products and forms (within EEU)

Order of the Minister of Finance №240 dated 31 March 2015 has approved:

- Rules for providing export (import) guarantees on processed products;
- The form for providing a commitment to export processed products;
- The form for providing a commitment to import processed products

The rules apply to customer-owned excisable raw materials imported from Kazakhstan into an Eurasian Economic Union (EEU) member country and also those imported into Kazakhstan from EEU member countries.

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 1 June 2015.

Customs transit of foreign goods through Kazakhstan

Order of the Minister of Finance №206 dated 26 March 2015 has approved a document regulating the customs transit of foreign goods through Kazakhstan.

The document regulates the activities of the authorized economic operator.

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days after its first official publication, which was 8 June 2015.

Transfer and record of receipt of customs duties, taxes, customs charges and late payment interest

Order of the Minister of Finance №257 dated 3 April 2015 has approved:

- Rules for transferring and refunding (crediting) excess (incorrectly paid) customs duties, taxes, customs charges and late payment interest and advance payments from the budget;

- Rules for recording the receipt of customs duties, taxes, customs charges and late payment interest, and for maintaining payer personal accounts;
- Personal account forms for each type of customs duties, taxes, customs fees and late payment interest;
- Reconciliation reports for customs duties, taxes, customs fees and late payment interest.

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 1 June 2015.

Rules for processing importer (end user) warranties and verifying execution

Minister for Investment and Development Order №418 dated 31 March 2015 has approved rules for processing importer (end user) warranties and verifying execution, developed in accordance with the export control law.

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 8 June 2015.

Sanitary and quarantine controls at Customs Union vehicle border points

Joint Order of the Ministry of Finance №213 dated 26 March 2015 and Acting Minister for the National Economy №247 dated 26 March 2015 has approved rules for carrying out sanitary and quarantine controls at Customs Union vehicle border points.

The rules define the procedure for carrying out sanitary and quarantine controls at Customs Union vehicle border points on various entities, vehicles and controlled goods (freight).

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 16 June 2015.

Tariff concessions

Order of the Acting Minister for the National Economy №279 dated 30 March 2015 has approved:

- Rules for the provision of tariff concessions;
- A list of goods subject to tariff concessions.

The rules define procedures and conditions to be followed to receive tariff concessions on the import of the following into Kazakhstan:

1. Goods imported from third countries as founder contribution to charter capital within the deadline established by foundation documents for its creation;
2. Raw sugar cane without flavour or colouring additives, classified as EEU Common FEA CN code 1701 13, 1701 14;
3. Goods, except for excisable goods (except for passenger vehicles specially equipped for medical purposes) imported as free aid (assistance), and also for charity purposes through third countries, international organizations, governments, including to provide technical aid (assistance) and at the expense of grants (financial aid).

The full text of the document can be obtained from official Kazakhstan sources.

The Order entered into force at the end of 10 calendar days from its first official publication, which was 12 June 2015.

Tax reporting

Minister of Finance Order №197 dated 20 March 2015 has approved the form to apply for a change to the import VAT payment deadline. Order №197 entered into force at the end of 10 calendar days from the date of its state registration, which was 29 April 2015.

Minister of Finance Order №196 dated 20 March 2015 has approved the method for recording import VAT due according to the offset method in a VAT return, and also for recording the intended use of the goods. Order №196 entered into force at the end of 10 calendar days from the date of its first official publication, which was 2 June 2015.

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Malta

Authorized VAT refund operators

The Government has published legislation allowing authorized VAT refund operators to act on behalf of nonresident travellers in a claim for repayment of VAT.

Travellers whose domicile or habitual residence is not situated within the European Community and who on the day of departure had been in Malta for not more than six months may claim back any VAT paid on goods purchased in Malta but taken out of Malta to a final destination outside the Community in their accompanied luggage. However, this does not apply to consumable items that are wholly or partly consumed in Malta and to goods exported for business purposes. Furthermore, repayment of the VAT will only be made when the value of the goods purchased from a single registered establishment as shown on a single fiscal receipt is not below EUR 100.

Previously such claims could only be made directly by the travellers. The new legislation now thus allows for operators to act on their behalf. VAT refund payments will be made either directly to the traveller in a currency of the traveller's choice or, subject to written consent of the nonresident traveller, in euro to the refund operator.

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Netherlands

No VAT rate increase in the Netherlands

The Dutch government had previously announced that it wanted to remove most products from the reduced VAT rate; currently 6%. That would mean that the standard rate of 21% would apply to these products.

However, this proposal did not find sufficient political support. A VAT rate increase will therefore not take place in the Netherlands in the short term.

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Poland

SAC to decide whether unified VAT rates should apply to similar goods

The Supreme Administrative Court will soon rule, in its extended panel, on whether the supply of food of a similar type should be taxed according to one unified VAT rate. In particular, Polish courts have faced significant issues applying the judgment of the Court of Justice of the European Union in the *K Oy* case (C-219/13), in which the CJEU stated that it is for national courts to determine whether in the perception of buyers two different products shall be considered of a similar type.

The SAC is to decide whether reduced VAT rates can only apply to the list of food products set out in the VAT Act, or whether the list is not a closed one, so that the tax authorities are able to determine if a reduced rate can also apply to similar food products not specifically included in the list.

In a second case, the SAC will consider whether the application of reduced VAT rates can be extended to similar products (specifically, different types of coffee).

Customs IT systems changes

On 29 June 2015, the customs administration launched The Electronic Services Portal of the Customs Service (PUESC). The main aim of PUESC is to improve communication with the customs administration and to unify the use of IT customs systems.

Currently only e-services related to the registration of economic operators for customs purposes are available. However, new e-services will be developed, and PUESC will ultimately become the only access point to all e-services provided by the Polish Customs Service (several channels of communications will be available). An English-language interface of PUESC is available, however some information is still available only in Polish. PUESC is available at: **https://puesc.gov.pl/**.

Launching PUESC is one step towards modernization of Polish customs IT systems for processing customs declarations electronically. In upcoming months, old customs IT systems will be replaced in stages by new ones. In the near future, the new NCTS system will be launched. Initially the go-live date of the new NCTS was to be the middle of August 2015. However, due to some problems in the test phase, this date was postponed. A new go-live date has been officially announced by customs on 25 November 2015 and the test environment should be available for businesses as of 28 September 2015 (subject to meeting some formalities).

The planned changes in customs IT systems are important, especially for economic operators submitting individually customs declarations electronically in Poland. Customs IT software used by economic operators will require necessary amendments to comply with the new IT systems of the customs administration.

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Portugal

SAC decisions on the calculation of the prorata

Following the Court of Justice of the European Union decision in the *Banco Mais* case, the Superior Administrative Court has released in June two new decisions, with the same conclusion as a previous case, reported in the April edition of this newsletter.

The Court decided that it should be for the court of first instance to determine, considering the facts, whether the use of common costs is mainly related to the financing and management of leasing and long-term motor rental agreements (and not the provision of the goods themselves), in which case the prorata calculation shall not include the capital amortization (which is part of the rent) related to the leasing and rental agreements, the rents from the securitized contracts and the compensation for total loss of goods.

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Russia

Amendment to List of technological equipment analogues of which are not produced in Russia and import of which are not subject to VAT

Russian Federation Government Resolution No.617 of 24 June 2015 amends the List of technological equipment analogues of which are not produced in Russia and import of which are not subject to VAT. The following items have been to the List of equipment: classification code 7309 00 590 0 – steel tanks for storage of liquid, corrosive fluids used in the chemical and pharmaceutical industries; classification code 7310 10 000 0 – steel tanks with a capacity of 250 liters used in the chemical and pharmaceutical industries for the storage of liquid, corrosive fluids, etc.).

The Resolution came into effect on 4 July 2015.

Amendment to list of medical goods subject to 10% VAT upon import

Russian Federation Government Resolution No. 655 of 30 June 2015 has amended a list of codes for medical goods that are subject to VAT at the 10% rate upon import into the Russian Federation territory. In particular, perfumes, cosmetics and toiletry products, seawater and brine, have been included in the list of medical goods.

The Resolution came into effect on 11 July 2015.

No VAT on interest received for granting credit deferment

Russian Federation Ministry of Finance No. 03-07-05/29303 of 21 May 2015 Letter states that amounts of interest received by selling organizations from buyer organizations for providing deferral of payment on credit terms are not subject to VAT.

VAT restoration

Federal Tax Service Letter No. GD-4-3/8627@ of 21 May 2015 reports that organizations may not restore previously deducted VAT when disposing of property as a result of fire.

Calculating VAT on sales of additional functions in online games

Moscow Arbitrage Court Resolution on case # A40-91072/14 of 18 June 2015 acknowledged that Mail.ru Games LLC (the company creator of online games) had to pay VAT on virtual purchases in full and was not entitled to apply the VAT exemption with respect to additional functions in online games. The Court has concluded that the representation of the possibility of using additional gaming functionality in order to facilitate the game process and more rapid development of the game character is essentially a contract for the provision of services, and is subject to separate regulation in the analyzed license agreement, as the users in this case do not acquire any software license.

Further to the decision, the Federal Tax Service issued Letter No. GD-4-3/9734@ of 5 June 2015 clarifying that issues related to the allocation of funds received through the sale of additional functions in online games on payments charged for the provision of additional services or for the provision of the rights to use software according to a licensing agreement should be resolved with regard to the specific business situation during tax control measures. The letter additionally recommends that existing court practice be taken into account, including the case of Mail.ru Games LLC (Mail.ru Games LLC has lost cases on the given issue on three occasions).

Potential VAT exemption for suppliers and partners of FIFA for the FIFA World Cup 2018

It is reported that the Russian Federation Ministry of Finance is preparing a draft Government Resolution in accordance with which the suppliers and partners of FIFA participating in the preparation for and staging of the FIFA World Cup 2018 will be exempt from payment of VAT.

Constitutional Court Resolution on calculation of VAT when receiving insurance payments according to insurance agreements on entrepreneurial risk

Russian Federation Constitutional Court Resolution No. 19-P of 1 June 2015 “On the case on reviewing the constitutionality of the regulations of sub-item 4, item 1, Article 162 of the RF Tax Code in connection with the petition of Sony Communications Rus LLC” has been published. In accordance with the Resolution, sub-item 4, item 1, Article 162 of the Tax Code has been recognized as non-constitutional.

The Court has established that the receipt of insurance payments on insurance agreements on entrepreneurial risk should not be included in the VAT base on the condition that the taxpayer calculates VAT from the sale of goods/ work/ services.

Refusal of VAT recovery due to absence of due discretion when choosing counterparty

According to the Resolution of the Arbitrational Court of the Ural District # F09-3216/15 of 3 June 2015, conclusion of important and material deals without due diligence on the counterparty but only conducting negotiations or commercial correspondence cannot be considered as a discretional behavior. The absence of due discretion and caution when choosing a counterparty serves as a ground for the refusal of VAT recovery to a purchaser.

Procedure for exemption from advance excise payments

Amendments to Part One and Chapter 22 of Part Two of the Russian Federation Tax Code are being introduced by draft Federal Law No. 804893-6. It is reported that the document will introduce the procedure for exemption for advance excise payments and will relate to excise for which taxpayers receive bank guarantees after 1 July 2015.

Extending the food embargo

Russian Federation Government Resolution No. 625 of 25 June 2015 extends the period of the food embargo introduced in August 2014 to 5 August 2016.

The embargo applies to goods included in the list approved by the Russian Federation Government and originated from the USA, the European Union countries, Canada, Australia or Norway (classification code 0201 – meat of bovine animals, fresh or chilled; classification code 0301 – live fish; classification code 0701 – potatoes, fresh or chilled, etc.).

The Resolution came into effect on 25 June 2015.

Introduction of trade duty in Moscow

In accordance with Chapter 33 of the Russian Tax Code and Article 1 of the Law of Moscow city No. 62 of 17 December 2014 “On trade duty in Moscow”, a trade duty has been introduced in Moscow from 1 July 2015. The object of the trade duty is the use of immovable and movable property for trade activities involving the sale of goods.

Legal entities and individual entrepreneurs falling under the established criteria of a trade duty payer should submit the notification on registration as a trade duty payer to the respective tax authorities. Payment of the trade duty should be made no later than the 25th day of the month, following the period of taxation that is the quarter. The rates of the trade duty are fixed in a certain amount in Rubles and depend, in particular, on the type of activity and/ or the area of the trade facility.

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Spain

Binding tax ruling issued by tax authorities regarding VAT treatment of services in connection with immoveable property

A recent tax binding rule (e.g. V1195-15), issued by the tax authorities, makes express reference to the provisions in European Council Implementing Regulation Number 1042/2013 in order to determine the appropriate VAT treatment for services in connection with immoveable property.

For instance, the tax authorities seemed to refer to this EU Regulation in order to identify whether there was a sufficient degree of linkage between the transaction and the immovable property at hand to establish whether or not certain services were subject to Spanish VAT, when the immoveable property is in Spain.

In principle, this EU Regulation will not be in force until January 2017. Nevertheless, in light of the Court of Justice of the European Union case *Welmory sp. z o.o. vs Dyrektor Izby Skarbowej w Gdansku*, in which the CJEU referred to this EU Regulation, the tax authorities seem to be anticipating the application of its provisions to determine which services should (or should not) be considered to be connected with immovable property.

Please see **here** for the tax authorities' tax ruling.

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Ukraine

Changes in procedure for importation of medical products

From 1 July 2015, the application of technical regulations on: medical products; medical products intended for in vitro laboratory diagnostics; and medical products intended for implantation, as approved by the Decrees of the Cabinet of Ministers of Ukraine dated 2 October 2013 No.753, No.754 and No.755 respectively, is mandatory.

In its letter No. 23741/7/99-99-24-03-01-17 dated 2 July 2015, the State Fiscal Service detailed the customs clearance procedure for imported medical products covered by these technical regulations. Medical products may be imported into Ukraine on the grounds of a Declaration of Conformity. The document must be issued by the manufacturer of the medical products (or, in the case of medical procedure kits and treatment sets, by an entity responsible for kitting). The Declaration of Conformity may be issued only after the compliance verification procedures have been completed and the medical products have been marked with a national conformity mark.

For the import of medical products made to order or intended for clinical trials, a manufacturer's letter can be provided for customs purposes, instead of Declaration of Conformity.

Until 1 July 2016, no compliance verification procedures were required for those medical products that have been previously registered in Ukraine and included in the State Register. Therefore, if the Certificate of State Registration of medical products has no expiry date or expires before or after 1 July 2016, such goods are allowed to be imported into Ukraine, provided they are included in the State Register of Medical Equipment and Medical Products.

Beer classified as alcoholic beverage

According to the amendments to the Tax Code of Ukraine as approved in December 2014 (Law of Ukraine “On amending the Tax Code of Ukraine and certain legislative acts of Ukraine regarding tax reform”, No. 71-VIII dated 28 December 2014), beer is classified as an alcoholic drink, and its importation and exportation are subject to additional regulations.

According to amended legislation effective from 1 July 2015, in order to import, export, produce and sell beer in Ukraine, companies are required to obtain appropriate licenses for alcoholic products.

АВ ВП and АІ ВП excise marks are required for beer with ethanol content exceeding 8.5% of volume units. Any remaining stock of beer classified under commodity code 2203 in the Ukrainian Harmonized System (UHS) and produced before 1 July 2015 is not subject to marking and may circulate in the market until fully sold, with an allowance for best before date.

New requirements are set with respect to beer marking. In particular, the beer container’s label should contain the geographical name of the place of production and the name of producer.

Anti-dumping duties on imported Kyrgyz lamps

Effective from 31 July 2015, a 25.73% anti-dumping duty will be applied to the importation of general purpose incandescent electric lamps originating from the Kyrgyz Republic. Imposed for the period of five years, this additional customs duty applies to <200 kW and >100 V lamps, classified in the UHS under commodity code 8539 22 90 10.

If imported electric lamps correspond with the above description but have no certificate of origin, and the country of their origin cannot be determined, such electric lamps will be subject to the anti-dumping duty. The anti-dumping duty is collected irrespective of other duties and fees.

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United Kingdom

HMRC Brief on compound interest claims

The tax authorities (HMRC) have issued a Brief outlining their stance following the Court of Appeal's decision in favor of the taxpayers in the case of *Littlewoods Retail Limited and Ors*. The Brief confirms that, as expected, HMRC are seeking leave to appeal against the Court of Appeal's ruling that the payment of simple interest to the taxpayers did not provide them with adequate recompense for the overpayments of VAT that they made, and that they were entitled to compound interest.

HMRC maintain that the Court of Appeal's decision does not mean that they should pay compound interest to other taxpayers and the Brief states that HMRC will continue to seek stays of High Court and County Court actions over the payment of compound interest, and to stand over appeals to the Tribunals, to await the final conclusion of the *Littlewoods* litigation (whether that be a refusal of its application for leave to appeal to the Supreme Court or a decision from the Supreme Court).

It is likely to be several months before the outcome of HMRC's application for leave to appeal is known. In the meantime, businesses should maintain existing Tribunal appeals and High Court/ County Court claims, and should lodge new ones as necessary.

Supreme Court dismisses Rank's appeal in 'gaming machine' VAT claim case

The Supreme Court has dismissed an appeal by The Rank Group Plc in relation to its claim for a refund of VAT paid on takings from certain gaming machines.

Between 2002 and 2005, some, but not all, takings from gaming machines were treated as subject to VAT. Rank contended that this disparity of VAT treatment contravened the EU law principle of 'fiscal neutrality' and claimed a refund of the VAT that it considered had been wrongly paid. HMRC changed their position on the treatment of machines where the takings had actually been treated as exempt from VAT (the so-called 'exempt comparator'), and argued that the takings from those machines were properly subject to VAT.

The VAT and Duties Tribunal and High Court agreed with Rank, but the Court of Appeal agreed with HMRC. The Supreme Court has now concurred with the Court of Appeal's decision "albeit for somewhat different reasons".

This brings one strand of the dispute with HMRC over the treatment of gaming machine takings to a conclusion. However, a separate appeal by Rank over comparisons with another type of machine, fixed odds betting terminals, is awaiting hearing in the First-tier Tribunal, following a remittal by the Upper Tribunal, and whilst some of the claims already filed now seem to stand little prospect of success, the ongoing litigation in relation to both 'pre 2005' takings and 'post 2005' claims means that at least some claims could still succeed. Specific advice should be sought before any 'gaming machine' claims are withdrawn.

UK Summer Budget 2015

The UK Chancellor of the Exchequer delivered the UK Summer Budget 2015 on 8 July 2015. The indirect tax announcements included the following.

'Tax lock'

Legislation is to be introduced to prevent increases in the UK's rates of VAT, and to prevent items covered by the reduced and zero rates of VAT from being removed from the relevant schedules to the VAT Act for the duration of this Parliament. The measure will have effect from Royal Assent to the Summer Finance Bill. It will cap the standard rate of VAT at the current 20% rate and the reduced rate at 5% and confirms that the current zero rates will not change.

Finance businesses to see greater application of 'use and enjoyment'?

There was a proposal to apply the 'use and enjoyment' principle more widely. The announcement referred expressly to applying the principle to "… UK repairs under UK insurance contracts …" from 2016 and to the prospect of "…a wider review of off-shore based avoidance in VAT exempt sectors, with a view to introducing additional use and enjoyment measures for services such as advertising in the following year …". It is unclear which services in addition to advertising may be affected, as the underlying EU law is drawn widely. It seems probable that further details of HMRC's intentions will emerge over the summer/ autumn and that any primary law changes will be made in the 2016 Finance Bill/ Act. Affected businesses would do well to start considering the extent to which they may be affected by these VAT changes on the horizon.

Increase in Insurance Premium Tax from 1 November 2015

The standard rate of Insurance Premium Tax will be increased from 6% to 9.5% with effect from 1 November 2015. The change will add about £37 to the cost of insurance for an average (two car) family and will raise over GBP1.5 billion per year.

Climate Change Levy – exemption for renewable source electricity withdrawn

The exemption from Climate Change Levy that currently applies to electricity from 'renewable' sources is to be withdrawn with effect from 1 August 2015 (excluding electricity that was generated before that date).

Reinstatement of exemptions from Aggregates Levy

Following confirmation from the European Commission that certain exemptions from Aggregates Levy that were suspended in 2014 while the Commission undertook a 'State Aid' enquiry were permitted, the Summer Finance Bill will reinstate the exemptions involved. From 1 August 2015, affected businesses will be able to stop paying Aggregates Levy on most relevant materials (including slate, shale, clay and spoil from ball and china clay extraction) and will be able to reclaim the Levy paid since 2014 (together with interest on the sums paid) subject to the normal rules on 'unjust enrichment'.

Consultation on devolving Air Passenger Duty in England

The Government is consulting on the possibility of devolving Air Passenger Duty to local authorities in England, and permitting them to set rates of APD for airports in their regions. The additional revenue from the collection of APD could be retained by the authorities concerned but would be offset by a reduction in central Government funding. If the ideas considered in the consultation are implemented, differential rates of APD could be applied in relation to flights from regional airports, possibly protecting them from the impacts of the devolution of responsibility for APD to Scotland, Northern Ireland and, perhaps, Wales.

Vehicle Excise Duty

Vehicle Excise Duty is to be reformed so that after the first year (when a rate that varies according to CO_2 emissions will apply), cars first registered on or after 1 April 2017 will be subject to a flat rate of VED (to be GBP 140 a year) – apart from zero CO_2 emission cars, which will bear a 'nil' rate of VED. Cars with a list price when new of more than GBP 40,000 will be subject to a supplement of GBP 310 per year, in addition to the standard rate of GBP 140 (in other words, a total of GBP 450 a year) for the first five years in which the standard rate is due (i.e., until they are six years old) after which the supplement will cease to apply. The rates of VED on cars registered before 1 April 2017 will remain as they are.

Other indirect tax announcements

There is to be no change in excise duties on fuel, tobacco, etc. The 'Tobacco Levy', about which there has been a consultation, will not proceed but various measures are planned to counter illicit trading in tobacco and alcoholic beverages. The support for small cider makers is to continue.

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Eurasian Economic Union

Eurasian Economic Union

Anti-dumping duty on certain kitchen appliances and flatware imported into EEU territory

Decision of the Board of the Eurasian Economic Commission (ECC) No.56 of 19 May 2015 introduces anti-dumping duty with respect to imported kitchen appliances and flatware made from corrosion-resistant steel and originated from the People's Republic of China. The anti-dumping duty will apply to goods classified under the following classification codes: 8211 91 000 1, 8215 99 100 0, 8215 20 100 0. The anti-dumping duty rate varies depending on the manufacturer of the imported kitchen appliances and flatware (15.41% of the customs value – manufacturer Heshan Biaoda Stainless Steel & Plastic Products Co., Ltd.; 27.16% – manufacturer Goodlead Metal Manufacture Co., Ltd, etc.). The anti-dumping duty measure applies from 19 June 2015 to 19 June 2020.

The Decision came into effect on 19 June 2015.

Customs duty on sea ferries

Introduction of zero customs duty rate

Decision of the Board of the EEC No.57 of 19 May 2015 establishes a zero customs duty rate for sea ferries classified under classification code 8901 10 100 1 (customs duty rate before decrease – 5%). The zero customs duty rate applies from 19 June 2015 to 31 December 2018, inclusive.

The Decision came into effect on 19 June 2015.

Goods imported temporarily with a full exemption from customs duties and taxes

EEC Board Resolution №24 dated 28 May 2015 has added to the list of goods imported temporarily with a full exemption from customs duties and includes a point 36 as follows:

> 36. Sea ferries classified under EEU FEA CN code 8901 10 100 9, under foreign ownership, chartered by EEU Member State entities under a time-charter agreement or bareboat-charter to transport freight and passengers between the following ports: Kavkaz and Kerch, Novorossisk and Fedosiya, Gelendzhik and Kerch, Temryuk and Kerch, Novorossisk and Kerch, and Novorossisk and Sevastopol, under temporary import (release) conditions until 31 December 2017, inclusive, for the period of their temporary import.

Furthermore, EEC Council Resolution №61 dated 5 May 2015 has included the above goods in the list of categories of goods for which longer temporary import periods have been set than those in the Customs Code. The maximum temporary import period is three years.

EEC Board Resolution №24 entered into force at the end of 30 calendar days from the date of its official publication, which was 2 June 2015.

EEC Council Resolution №61 entered into force from the date EEC Council Resolution №24 entered into force.

Control (identification) tags for specific types of goods

EEC Board Resolution №28 dated 28 May 2015 has approved a draft agreement to realise a 2015-2016 pilot project to place control (identification) tags on goods classified as ‘Items of clothing, clothing accessories and other items made of natural fur’.

The agreement covers legal relations associated with the handling of goods classified as ‘Items of clothing, clothing accessories and other items made of natural fur’, which are to be tagged, and also companies and individuals registered as individual entrepreneurs handing and/ or using these goods in their business activities.

The EEC Board will approve the list of goods to be tagged. Goods imported into the EEU and/ or manufactured in EEU member countries and included in the approved list will be tagged.

EEU member countries should undertake internal state procedures to sign the agreement by 30 June 2015.

The Resolution entered into force on 13 June 2015.

Customs Union tariff preference system

EEC Board Resolution №35 dated 23 April 2015 has amended Customs Union Commission (CUC) Resolution №130 dated 27 November 2009. The list of developing countries making use of the Customs Union tariff preference system has been supplemented with the Maldives and Samoa.

The same countries have been removed from the list of less developed countries making use of Customs Union tariff preferences, and replaced by South Sudan.

The Resolution enters into force at the end of 30 calendar days from the date of its official publication, which was 16 June 2015.

Procedure for licensing imports into the EEU and/ or exports from the EEU

EEC Council Resolution №67 dated 16 June 2015 has amended the list of goods requiring permission to be imported into the EEU and/ or exported from it.

As a result, section 2.8 ‘Rare wild animals and plants included in the Red Book of the EEU member states and those under threat’ has been reworded.

The Resolution enters into force from the date an Agreement dated 23 December 2014 on the Accession of the Kyrgyz Republic to the EEU Treaty dated 29 May 2015 enters into force, but no earlier than 30 calendar days from the official publication date of the resolution, which was 17 June 2015.

Amendments to EEU Common Customs Tariff

The table below shows a number of EEU resolutions amending the EEU Common Customs Tariff:

EEU Council Resolution №, publication date	EEU FEA CN code	Brief description of goods	Import customs duty rate[1]
21[2] 3 June 2015	3920 20 210 1	Specific propylene polymer slabs, sheets, films and strips	0%
	3920 20 210 9		7.7%
64[3] 10 June 2015	8526 92 000 2	Specific goods intended for unmanned flying aircraft	6.7%[4]
	8526 92 000 8		6.7%
	9306 90 100 1		18%[4]
	9306 90 100 9		18%
64[5] 10 June 2015	8526 92 000 2	Specific goods intended for unmanned flying aircraft	5%[6]
	8526 92 000 8		5%
	9306 90 100 1		17%[6]
	9306 90 100 9		17%

1. Import customs duties charged as a % of customs value, or in EUR or in USD.

2. The Resolution has removed position 3920 20 210 0 from the EEU Common Customs Tariff. The Resolution entered into force 30 calendar days from its official publication date, which was 3 June 2015.

3. The Resolution removes positions 8526 92 000 9 and 9306 90 100 0 from the EEU Common Customs Tariff. The Resolution entered into force 21 June 2015.

4. Import customs duty rate of 0% of customs value applies from the date the Resolution enters into force until 31 December 2016, inclusive. Note 50C to the EEU Common Customs Tariff.

5. The import customs duties will be in place from 1 September 2015.

6. Import customs duty rate of 0% of customs value applies from the date the Resolution enters into force from 1 September 2015 until 31 December 2016, inclusive. Note 35C to the EEU Common Customs Tariff.

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

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