Global Indirect Tax News
Your reference for indirect tax and global trade matters

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

Features of this edition include an article on the UK vote to leave the EU, an update from New Zealand on the GST rules for electronically-supplied services, new European VAT rules for vouchers, and the potential introduction of a tax on sugar-sweetened beverages in South Africa.

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

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There are amendments to the conditions for VAT exemption for the import of raw materials and components for medical goods.

The import and sale in Russia of livestock breeding goods will be exempt from VAT.

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United Kingdom

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Brexit

Customs and global trade impact will be significant

Introduction

On 23 June 2016, the UK voted to leave the European Union. It is far from clear what the terms of the UK's exit will be and what post-exit relationship the UK will have with the EU. However, it is already clear that a Brexit will heavily impact the customs and global trade activities of companies active in the UK and the EU.

Timing

The UK must formally notify the European Council of its intention to leave the EU (invoking Article 50 of the Lisbon Treaty). As from that date, an exit agreement needs to be agreed upon within two years. If an exit agreement cannot be obtained during this two year period, the UK will automatically lose its EU membership, unless the time period is extended by consent of all Member States.

An exit agreement must be approved by the European Council, acting by a qualified majority of 72% of Member States (i.e. 20 of 27) representing 65% of the total EU population and by the European Parliament, acting by a simple majority. These prerequisites could mean that the negotiations for an exit agreement will be difficult and time consuming.

At present, the decision to leave has no immediate impact, as the UK will remain an EU Member State and will consequently continue to be subject to EU law until it formally leaves the EU.

The single market

The European Union is characterized by the single market. This refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services.

The single market for goods is obtained via the EU customs union. A customs union is characterized by the application of the same tariffs and common policy measures in connection with the trade in goods between the EU and countries or territories outside the EU's customs union. This is called the external aspect of a customs union. At the same time, there is also an internal aspect to a customs union, which means that the movement of goods within the EU is free, so no tariffs or other commercial policy measures apply for intra-EU trade.

Leaving the European Union will mean leaving the single market (albeit access to the single market may be maintained). From a customs and global trade perspective, goods may no longer be freely traded between the EU and the UK.

Options for a continued relationship

European Economic Area (EEA)

The UK could apply to join the European Economic Area. The UK could still enjoy the benefits of a single market. It would also continue to be subject to EU law in the areas that are covered by the EEA Agreement. However, the UK would no longer have any impact on the drafting of this EU law. The UK would also still be required to allow the free movement of people and to make (reduced) contributions to the EU budget, which are still considerable under this Agreement. This option comes closest to the relationship that now exists.

European Free Trade Association (EFTA)

Another option is membership of the EFTA. This would give the UK limited access to the single market in areas in which it is able to negotiate bilateral agreements with the EU. Such bilateral agreements could assure the free movement of goods and would almost certainly still involve the free movement of people.

Customs union

The European Union and Turkey are linked by a customs union agreement. This customs union provides for the free movement of all industrial goods, but does not address agriculture (except for processed agricultural products), services or public procurement. In addition to providing for a common external tariff for the products covered and no internal tariffs, the customs union also provides that Turkey must align with specific standards on traded goods.

The UK could also establish a customs union to safeguard the movement of goods and the application of common external tariffs.

Free Trade Agreement

A Free Trade Agreement can allow tariff free trade in goods which is subject to specific rules of origin. It can also provide the removal of certain non-tariff barriers.

The result of a Free Trade Agreement depends upon the level of free trade parties agree upon.

WTO rules

Application of WTO rules would imply that the UK is considered a third country in the strict sense. Trade between the UK and the EU would be subject to the same framework as for other WTO members without a Free Trade Agreement.

Core implications on the supply chain

Obviously, the impact of Brexit will depend on how the future relationship will be shaped, keeping in mind the aforementioned options.

Assuming that from a customs and global trade perspective, no agreement is reached, what will happen to the trade of goods between the EU and the UK?

Customs duties

First of all, imports from the UK into the EU will be subject to import duties agreed for WTO members that do not have a preferential scheme or trade agreement in place with the UK. The Most Favored Nation principle prohibits the EU from waiving customs duties for trade with the UK, as this would trigger a waiver for all third countries (e.g. China). Conversely, the UK will also be able to levy import duties on goods that are imported from the EU.

Customs procedures

The customs union is a uniform system for handling goods upon importation, exportation and transiting. This is implemented by a common set of rules (the Union Customs Code). This harmonization reduces red tape for businesses active in EU Member States. In this respect, simplifications such as centralized clearance make it easy for companies to set up centralized customs procedures in the EU.

The UK will no longer be able to benefit from these harmonized customs procedures. Companies will need to adapt their operating procedures to the new standards that will need to be implemented in the UK. This will not only increase the administrative burden, companies will need to adapt their IT systems as well.

Free Trade Agreements

Over the years, the EU has concluded numerous Free Trade Agreements, which enable companies to streamline and optimize their supply chain. The EU concludes these Agreements on behalf of all the Member States, as it is part of EU trade policy, which is an exclusive competence of the EU. Brexit will lead to renegotiations for the UK if it wishes to benefit from the existing Free Trade Agreements with third countries. As the conclusion of Free Trade Agreements is a long and complex path, it is clear that the UK will need to work hard to obtain Free Trade Agreements with other countries.

Companies who benefit from Free Trade Agreements will need to analyze their sourcing schemes and prepare for adaptations of their supply chains, especially when part of their production is situated in the UK.

Non-fiscal impact

In addition to the impact from a fiscal and financial point of view, a customs union also triggers non-fiscal measures. These measures relate to market access and are considered non-fiscal barriers to trade. In a wide range of industries, companies who want to import into the EU need to have authorizations, registrations, and so on. UK companies will need to prepare to map all these requirements and initiate at the appropriate time the process to obtain such authorizations.

The inbound flow into the UK could also become subject to new market access restrictions and trade barriers with which European businesses would need to comply.

Anti-dumping and anti-subsidy measures

The UK will reclaim full ownership of its trade defense legislation. Accordingly, anti-dumping and anti-subsidy measures could be taken against the importation of EU-originating products. This could also apply *vice versa*.

Conclusion

As the single market of the EU is, amongst others, formed by customs law, Brexit would have a major impact on a company's supply chain and trade activities. Many different areas are affected, and the rules that govern customs and global trade are complex. As a good start is half the battle, companies must identify and map areas of concern to tackle the Brexit impact on their trade activities and supply chain.

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Americas

Canada

This year has seen a number of indirect tax measures, both national and provincial, that propose to increase tax rates, (re)introduce taxes and make changes to relief rules. The upcoming HST rate changes are covered below.

HST rate changes

All Goods and Services Tax/Harmonized Sales Tax (GST/HST) registrants that make taxable supplies in New Brunswick, Newfoundland and Labrador and Prince Edward Island should prepare for the upcoming wave of HST rate increases in these provinces as systems changes will be required.

New Brunswick

Effective 1 July 2016, the provincial portion of the New Brunswick HST rate will increase from 8% to 10%, resulting in an HST rate of 15%. The New Brunswick government released **transitional rules**.

Newfoundland and Labrador

Also effective 1 July 2016, the provincial portion of the Newfoundland and Labrador HST rate will increase from 8% to 10%, resulting in an HST rate of 15%.This is a reintroduction of a previous rate increase proposal that had been cancelled. **Transitional rules** were released.

Prince Edward Island

Effective 1 October 2016, the provincial portion of the Prince Edward Island HST rate will increase from 9% to 10%, resulting in an HST rate of 15%. **Transitional rules** were recently released.

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Asia Pacific

India

VAT rate increases in States of Jammu & Kashmir and Assam

With effect from 1 July 2016, the VAT rate for goods mentioned in Schedule D1 (which, *inter alia*, provides the rate of VAT on the residuary category of goods) has been increased from 13.5% to 14.5% in the State of Jammu & Kashmir.

With effect from 2 July 2016, the VAT rate for goods mentioned in the Second Schedule has been increased from 5% to 6% in the State of Assam. The Schedule contains goods such as Information Technology products, industrial inputs, packing materials, etc.

Common registration and return for importer and first stage dealer

A first stage dealer is defined as a person who purchases goods directly from the manufacturer or importer under cover of an invoice. The said dealer is required to register under Central Excise law and is required to file quarterly returns. With effect from 1 April 2014, the requirement to obtain registration and file returns was also made applicable to importers that issue invoices on which CENVAT Credit can be taken.

Concerns were raised by the industry, stating that, in the case of an assessee who is both importer and first stage dealer, the need for separate registration and filing separate returns had increased the procedural compliance and transaction costs.

In this connection, the Government has clarified that an assessee that conducts business both as an importer and as a first stage dealer is allowed to take only one registration, and is exempted from the requirement to take a second registration. The facility is optional, and any assessee needing separate registration for his own business purposes, may so register.

An assessee that conducts business both as an importer and as a first stage dealer will also have the option of filing a single quarterly return giving details of transactions as an importer and transactions as a first stage dealer during the same return period.

Back-to-back contracts involving import and leasing of goods not considered as an integrated transaction in the course of import

In a matter before the Karnataka High Court, the question to be decided was whether back-to-back contracts involving the import and leasing of goods can be considered as the sale of goods in the course of import.

The assessee had entered into a Master Lease Agreement with its customer for the leasing of goods. Under the arrangement, the purchase order on the foreign vendor was placed directly by the customers and the goods were shipped to customers, but the invoice was raised to the assessee. After the goods were verified and accepted by the customers, the acceptance certificate was issued by them. Following that, a novation notice was issued by the customer and the lease schedule was signed by the parties specifying the goods under lease.

The sale of goods in the course of import is not subject to VAT. The tax authorities contended that the equipment was leased after it was imported, and therefore the lease transaction cannot be said to be in the course of import.

However, the assessee claimed that the import of goods and providing the goods by lease was an integrated transaction and not two independent transactions to fasten the tax liability. As the integrated transaction was in the course of import, VAT was not applicable.

The High Court observed that the right to the goods lay with the customers on the import into India. Such rights were transferred to the assessee by virtue of the acceptance certificate and novation notice. 'In the course of import' commences from the journey of the goods from the foreign destination and ends with the physical delivery taken by the customer. The High Court held that even though the parties had entered into back-to-back contracts, the same cannot be considered as an integrated transaction in the course of import, and was chargeable to VAT, as the leasing transaction commences only after acceptance of the goods by the customer.

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New Zealand

Important update for businesses supplying remote services to New Zealand

From 1 October 2016, New Zealand's GST rules for all non-resident remote service suppliers are changing, with the default position being that they should register for New Zealand GST and charge GST at 15% on services to New Zealand consumers where supplies exceed NZD 60,000 in a 12 month period.

Business-to-business transactions will normally be excluded from the new rules, however suppliers need to be able to prove that their supplies are made to a New Zealand business. This can be proven in one of two ways:

- Obtain confirmation from the tax authorities (Inland Revenue) that the services are of a type that generally only a business would acquire (which also removes the need to register for NZ GST);
- Hold the detailed information set out below for each business customer.

If the New Zealand business is a GST registered business, it will be unable to recover the GST charged by the non-resident supplier from Inland Revenue, and will need to seek recourse from the non-resident supplier, which will be considered to have incorrectly charged the GST, other than for certain low value transactions.

While GST registrations do not open until 1 August 2016, Inland Revenue are currently processing applications for the discretion for an alternative method of determining whether customers are GST registered businesses, which can remove the obligation of the business to register. Inland Revenue can also grant a concession for determining if the customer is resident in New Zealand. This should be undertaken prior to 1 October 2016.

Information requirements

Confirmation that the business is New Zealand resident can be by way of any two of the following:

- The person's billing address;
- The internet protocol (IP) address of the device used by the person or another geolocation method;
- The person's bank details, including the account the person uses for payment or the billing address held by the bank;
- The mobile country code (MCC) of the international mobile subscriber identity (IMSI) stored on the subscriber identity module (SIM) card used by the person;
- The location of the person's fixed landline through which the service is supplied to them; and
- Other commercially relevant information.

Confirmation that the business is GST registered can be by way of:

- A statement from the New Zealand business that it is GST registered; or
- The New Zealand business's New Zealand GST registration number; or
- The New Zealand business's New Zealand business number.

Risk management

Ensuring that all this information is held should be considered to be best practice as part of managing tax risk.

Even in the absence of an ultimate New Zealand GST liability, the legislation must still be adhered to and could become an issue as the scale of business grows.

Contractual pricing

Regardless of who services are supplied to, non-resident businesses need to consider how the change in GST will impact on the pricing in current contracts. This includes businesses that supply electronic marketplaces, such as app stores. In these situations, the app store will register and charge GST on behalf of the underlying supplier.

GST and language schools

There has been an ongoing focus by Inland Revenue with regard to GST on services consumed in New Zealand which are supplied through offshore intermediaries, such as travel agents and booking portals. The latest to come under scrutiny are language schools.

In recent weeks, Inland Revenue issued letters to 75 language schools providing tuition to overseas students through non-resident agents, resellers or retailers. In its letter, Inland Revenue expresses a strict view that local schools should apply New Zealand GST on the gross fee (not the net fee) paid by overseas students to overseas agents, resellers or retailers for education services in New Zealand. This principle is based on the *Auckland Institute of Studies v CIR* (2002) case. Inland Revenue considers GST should be returned from the gross fee before deducting any commission paid to the overseas agent, or from a fee including any margin added by the overseas reseller or retailer. In Inland Revenue's view, any pre-arrival services are not zero-rated, as they form a component of the total fee and must share the GST treatment of the tuition service, i.e. be subject to GST at 15%.

Inland Revenue is providing taxpayers with the option of correcting their GST position by making a voluntary disclosure which would cover the past two years and requiring taxpayers to correct their treatment going forward, provided this disclosure is made promptly.

While Deloitte New Zealand agree with many aspects of the Inland Revenue letter, they consider arrangements where a right to receive education services is in fact legally sold by the overseas reseller or retailer as a principal, and not as an agent, could be viewed differently. Depending on the model the particular school applies it is possible that a voluntary disclosure is not necessary."

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Singapore

Heightened enforcement of Advance Export Declaration compliance

Exporters in Singapore are required to file an Advance Export Declaration (AED) before the physical export of goods. Any exporters found to be in breach of the AED requirements will be subject to financial penalties and other sanctions.

In recent weeks, Deloitte Singapore has observed an increasing number of export companies notified by Singapore Customs that they have failed to meet AED requirements and will need to take corrective actions to ensure full compliance going forward.

Exporters have the prime responsibility to ensure that AED requirements are fulfilled. In instances where exporters engage third party service providers (e.g., customs brokers/freight forwarders/declaring agents) to complete the export formalities, robust processes need to be in place to ensure that accurate and timely information is declared to Singapore Customs in advance of the physical export of goods. These processes should include the establishment of clear protocols and communication channels between the exporters and the service providers; including a mechanism for addressing potential non-compliance.

Exporters that continue to breach the AED requirements can be exposed to:

- Financial penalties;
- Greater scrutiny from Customs on clearance of their goods resulting in delays in border clearance which impacts delivery time of goods to customers;
- Downgrading of compliance status, which could result in applications for renewals of Customs schemes and licenses being denied; and
- Suspension of trade facilitation benefits, for currently approved or recognised companies with Singapore Customs (e.g., Strategic Trade Scheme Bulk Permit License).

Exporters in Singapore are encouraged to perform an internal review of their processes and procedures to ensure compliance with AED requirements. This includes management of any third party customs brokers or declaring agents that are submitting export declarations on their behalf.

Exporters who have been found to be in breach of AED requirements will also need to develop an improvement plan to satisfy Singapore Customs that corrective actions have been or will be undertaken to ensure full AED compliance in the future.

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EMEA

European Union

New European VAT rules on vouchers from (or before) 1 January 2019

The European Council has announced that it has approved a Directive aimed at increasing legal certainty for transactions involving vouchers. The Directive that has been adopted is narrower in scope than the Commission's 2012 proposal. It defines single-purpose vouchers and multi-purpose vouchers and sets rules to determine the taxable value of transactions in both cases.

Member States of the EU will have until 31 December 2018 to transpose the Directive into national laws and regulations and the new provisions will only apply to vouchers issued after that date.

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Customs debt due to non-compliance of customs procedure does not necessarily result in VAT liability

The Court of Justice of the European Union published a ruling on 2 June 2016 regarding the joined cases *Eurogate Distribution GmbH* and *DHL Hub Leipzig GmbH* (*Eurogate/DHL*) with respect to import VAT in relation to the incurrence of a customs debt due to the non-fulfillment of the obligations regarding a customs procedure. The case was mentioned in the **June** edition of this newsletter; the below provides a more detailed analysis of the case and its consequences.

Background

Certain customs procedures allow for the suspension of customs duties when the final destination or use of the imported products is not yet determined. There are criteria which must be fulfilled in order to use such a customs procedure. If these criteria are not fulfilled, a customs debt on import is incurred. An example of non-fulfillment of these criteria is when the removal of goods from a customs warehouse is recorded late. In a previous Court ruling (*X BV* (Case C-480/12)), additional guidance was provided on when a customs debt shall be incurred through non-compliance with or non-fulfillment of the conditions arising from the customs procedure (non-compliance). It was also determined that non-compliance qualifies as a VAT-taxable event (importation).

While the previous Court ruling in practice was understood in such a way that non-compliance leads to a customs debt and also a VAT liability, the most recent Court rulings altered this perspective. It was determined that while non-compliance resulted in a customs debt, this does not necessarily result in import VAT being due. For VAT purposes, it is relevant to determine whether the products have entered the economic network of the EU when determining if import VAT is due.

Facts

Both cases of *Eurogate/DHL* concerned goods that were re-exported outside the EU. Before this re-export, the goods were placed under a customs procedure. The respective parties did not fulfill their obligations arising from the customs procedure under which the goods were placed before re-export (i.e. a belated or incorrect declaration). Consequently, a customs debt on import was incurred. In these cases, the non-compliance was discovered after the goods were moved outside the EU. Therefore, the customs procedure was not cleared properly. The main question is whether import VAT was due, since a customs debt was incurred but the goods were physically not in the EU.

Judgment

The CJEU ruled in *Eurogate/DHL* that, since non-compliance was noticed after the goods had been re-exported, the goods were covered by the customs procedure until they were re-exported. However, the non-compliance did result in a customs debt. The CJEU ruled that the goods were not 'imported'. As the goods never entered the economic network of the EU, no import VAT is due. Thus, irrespective of the incurrence of the customs debt, the conditions for levying import VAT were not satisfied, since the goods did not enter the economic network of the EU.

Consequence in practice

For customs purposes, a customs debt is incurred when non-compliance is detected. Previously, a customs debt due to non-compliance also resulted in a VAT liability. The import VAT aspect changes after the most recent Court rulings. The time when the non-compliance is discovered and the location of the goods is decisive. If the goods are physically not within the EU and have not entered into the economic network of the EU, there is no VAT liability. Thus, the question whether import VAT is due depends on the facts and circumstances of each case.

If a company or the customs authorities detect non-compliance with respect to a customs procedure, attention should be paid to where the goods are located at the time of this discovery. A customs debt will occur regardless of where the goods are located since this is the result of non-compliance. The location of the goods and whether the goods have entered the economic network of the EU do, however, determine whether or not import VAT is due.

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European Union and SADC

New Trade Agreement for EU and six SADC member states

Southern African Development Community (SADC) member states Botswana, Lesotho, Namibia, South Africa, Swaziland and Mozambique signed the Economic Partnership Agreement with the European Union on 10 June 2016.

The agreement will also see the elimination of agricultural export subsidies by EU countries as well as five bilateral safeguards which EPA countries can activate to effect an increase in duty in case EU imports increase to a point where domestic production is disrupted.

The countries will now be called SADC EPA States for the purposes of this agreement.

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Belgium

VAT: Tax authorities allow simplified proof of transport for intra-Community supplies

One of the conditions to exempt for VAT purposes a supply of goods to another EU Member State as an intra-Community supply is for the supplier to prove that the goods have been transported from Belgium to another Member State.

Previously, such transport had to be certified by a set of corresponding documents (order forms, payment documents, transport documents, etc.). While every piece of evidence is acceptable, no single piece of evidence is in itself sufficient.

In practice, VAT inspectors mostly require actual transport documents (e.g. a CMR for road transport) signed by the recipient as a key piece of evidence. In scenarios where transport is arranged by or on behalf of the customer, it is often hard to gather transport documentation. Such supplies have therefore been a source of VAT exposure for many companies, and the need to relieve the burden of proof is a longstanding demand from business associations.

In its decision nr. E.T. 129.460 dated 1 July 2016, the Belgian VAT authorities introduced an alternative proof of transport in scenarios where the transport document (e.g. CMR) is not available. The so-called 'destination document' is accepted as rebuttable proof of transport to another Member State, if certain conditions are fulfilled.

Conditions

A destination document must contain the following:

- Identification data of the supplier and seller
- Confirmation of arrival
- Month and year of arrival

- City of arrival
- Period covered by the document (max. three consecutive months)
- A description of the goods supplied (usual name and quantity)
- Reference to the invoices issued (invoice number and date) or to order forms or delivery notes if no invoice was already issued
- Price of the goods in Euros.

This document must be drafted by the supplier claiming VAT exemption for intra-Community supply, or by his buyer. The destination document must be signed by a person appointed in advance by the buyer. This will normally be a person within the buyer's organization. With chain supplies, an example in the decision seems to allow for an additional party (party C) in the chain to sign the document on behalf of the customer (party B). Such alternative might be difficult to implement, as a reference to the sales invoice between parties A and B, as well as the sales price of the goods, is mentioned in the destination document.

For the destination document to be accepted as evidence in lieu of a transport document, the supplier must be able to present the sales invoice and proof of payment of the invoice. The transport invoice must also be available only if transport is arranged on behalf of the supplier. If the supplier additionally included the supplies in his European Sales Listing, and is able to demonstrate that all reasonable steps were taken to avoid fraud, the supplier is considered to have provided rebuttable proof that the goods have been transported to another Member State.

The authorities allow a destination document to group sales to the same customer up to a period of three calendar months. Within a period of three months following the period to which the document relates, the document should be confirmed, dated and signed by an authorized person within the customer's organization. It is important to note that the supplier should already be fully aware of the identity of the person signing in advance.

Harmonization on a European level?

The decision is similar to Germany's introduction of the so-called 'Gelangensbestätigung' on 1 January 2014. However, the implementation details differ, and it has the benefit of being an alternative evidence method, which is not mandatory for suppliers preferring the existing approach.

It anticipates possible developments at EU level, where the EU VAT Committee is contemplating changes to the current burden of proof. There are recommendations from, amongst others, the European VAT Expert Group who argue for the use of existing commercial documents rather than the creation of new types of document.

Conclusion

The decision is a welcome relief for suppliers involved in transactions where transport is arranged by or on behalf of the customer (under EXW or FCA delivery conditions). Combined with a sales invoice and proof of payment, the destination document serves as rebuttable proof of transport to another Member State. The tax authorities limit this relief by explicitly stating that they can still request other documents to verify transport, meaning that taxpayers are still required to retain other proof (order forms, transport invoices, contracts, etc.) in relation to their cross-border transactions.

As the decision applies with retroactive effect from 1 July 2016, companies can already start implementing the procedure to establish compliant destination documents.

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Czech Republic

Activities funded by statutory levy outside scope of VAT

The Court of Justice of the European Union has delivered its judgment in the case of *Český Rozhlas*, the Czech public broadcasting body, about the VAT treatment of a statutory levy that largely funded the broadcasting it provided.

The judgment agreed with the Advocate General's opinion in the case, and confirmed that the statutory charges at the heart of the case are not consideration for supplies of broadcast services by Český Rozhlas, and hence are outside the scope of VAT.

Unlike the Advocate General, however, the CJEU did not comment on the impact of this on the input VAT that Český Rozhlas sought to reclaim. It will be for the Nejvyšší správní soud (the Czech Supreme Administrative Court) to work out the effect of the CJEU's confirmation that the levy is not subject to VAT. It seems probable that it will follow the Advocate General's suggestion that the fact that the statutory levy, and hence the broadcasting funded by it, is outside the scope of VAT means that input VAT on relevant costs is not recoverable. The Czech tax authorities have already published their opinion, which is in line with the Advocate General's approach.

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Finland

VAT treatment of 'social welfare services'

On 28 June 2016, the Finnish Supreme Administrative Court (SAC) issued a decision in relation to social welfare services.

Company A participated in competitive biddings and, if successful, was awarded an agreement to operate a nursing home maintained by a municipality. At the time when it received the agreement to the new nursing home, Company A did not have a license granted by the National Supervisory Authority for Welfare and Health to operate this specific operational unit.

During the time the license was pending, the municipality and Company A agreed that the municipality would operate the nursing home until the permission was granted to Company A. Company A provided employees to the municipality based on a contract, which was signed for the duration of the license approval process.

The question was whether Company A was liable to account for VAT for the leasing of personnel to the municipality.

The SAC considered that the provision of employees is not a social welfare service as intended in the Finnish VAT Act and VAT Directive. Thus, Company A was liable to account for VAT on the services concerning the leasing of personnel provided to the municipality.

Official guidance in relation to VAT treatment of investment funds

On 20 June 2016, the Finnish Tax Administration published an official guidance concerning the VAT treatment of investment funds in Finland (guidance no. A109/200/2015). The guidance includes information regarding funds that can be deemed special investment funds for VAT purposes and services that can be deemed management of special investment funds on the basis of both the Finnish VAT practice and Court of Justice of the European Union rulings.

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Germany

VAT treatment of hotel parking facilities

The reduced VAT rate (7 %) applies to the rent of rooms for short-term stays. The reduced VAT rate applies to hotel accommodation and ancillary services, but does not apply to services that are not closely related to the rent of the rooms, even if these services are charged in a total fee together with the rental; such services must be separated out, and are subject to the standard VAT rate.

In a decision of 1 March 2016 (XI R 11/14), the Federal Fiscal Court decided that the provision of parking facilities is not closely connected to hotel accommodation. The Federal Fiscal Court argues that parking facilities are not mandatory for the hotel stay, but just an additional option for hotel guests to park their vehicles.

Consequently, the standard VAT rate (19%) should apply for these services. Even if the use of the parking facilities is not agreed separately, the regular VAT rate would apply.

In the case at hand, a certain portion of the total hotel price needed to be allocated to the parking facilities and the standard VAT rate applied.

'Rounding up' not required in partial exemption special methods

The Court of Justice of the European Union has gone straight to judgment in the German case of *Kreissparkasse Wiedenbrück*, about whether EU law required partial exemption recovery rates to be rounded up to a whole percentage point.

It decided that where EU Member States had allowed or required taxpayers to use a sectorized or similar partial exemption method (as opposed to a simple, turnover-based apportionment of input tax incurred), EU law did not require rounding up. The CJEU took the view that allowing rounding would circumvent (at least in part) the objective of adopting what might be termed more sophisticated partial exemption methods – achieving a more accurate allocation of input tax between taxable and non-taxable activities.

It did confirm, however, that where rounding up was allowed when the initial input tax deduction was determined, it should also be applied for any adjustments (e.g. capital goods scheme adjustments).

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Italy

Free web application for e-invoices

The tax authorities have published on their website the draft version of the technical instructions for the use of the 'Interchange System' (the on-line platform that is already active for e-invoicing to Public Administrations); press release dated 1 July 2016. These instructions (which substantially mirror the previous instructions that already apply to e-invoicing to Public Administrations) will be available for a test period (from June to October 2016, approximately), aimed at improving the use of the Interchange System. As already announced, the 'optional' use of the Interchange System by businesses will be in force from 1 January 2017.

During the test period, a free web application will be also available for the generation, transmission and storage of e-invoices issued by VAT taxpayers to businesses (B2B transactions) and Public Administrations. In order to use this web application (which is already available online), a preliminary registration on the official website of the tax authorities will be necessary (password, log-in, email account etc.).

This web application, which will soon also be available for smartphone and tablets, is aimed at simplifying the relationship between taxpayers and the tax authorities due to the dematerialization of the invoicing cycle and the e-storage of e-invoices issued and received.

Supreme Court decision on primacy of Community law

In decision n° 11440 dated 1 June 2016, the Supreme Court has ruled that the Italian law provision laying down the principle of *res judicata* does not apply automatically in the field of VAT, where this principle is in contrast with the prevention of the abuse of rights.

Res judicata, literally 'a matter judged', is the principle adopted by the Italian Civil Code according to which the final judgment is no longer subject to appeal and the litigant parties are barred from raising the same issue in front of the courts.

These conclusions are fully in line with the Court of Justice of the European Union's principles, as stated in the ECJ case *Fallimento Olimpiclub Srl*, according to which Community law precludes the application of the provision of a national law laying down the principle of *res judicata* to the extent that it would prevent the national court from taking into consideration the rules of Community law concerning abusive practice in the field of VAT.

Advocate General opinion on VAT input tax recovery

After the request for a preliminary ruling from the Regional Tax Court (during the dispute between Mercedes Benz Italia SpA and the tax authorities), the Advocate General of the European Court has released his opinion on the specific question referred (*Mercedes Benz Italia SpA*). The question relates to the calculation of VAT input tax recovery where the taxpayer is making both VAT taxable and exempt supplies.

Briefly, the referring Tax Court has asked the Court of Justice of the European Union whether, for the purposes of exercising the right of deduction, some specific Italian provisions should be considered as incompatible with an interpretation of Articles 168, 173, 174 and 175 of the Principal VAT Directive, which is guided by the principles of proportionality, effectiveness and neutrality, as set out in Community law.

The Advocate General has concluded that these Italian provisions, as well as the connected practice of the Italian tax authorities, are incompatible with the above EU principles of proportionality, effectiveness and neutrality, since they require reference to the composition of a trader's turnover only, without applying a method of calculation based on both the composition and the actual destination of the acquisitions and that objectively reflects the actual share of the expenditure attributable to each of the taxed and untaxed activities engaged in by the taxpayer.

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Guidance on release for free circulation of LPG introduced into tax warehouses

On 17 June 2016, the Customs and Monopoly Agency issued Circular Letter No 16/D, aimed to clarify the assessment procedures applicable to release for free circulation of LPG transported on ship, to be introduced into Italian tax warehouses.

New definition of 'exporter' and supplies of goods ex works to be exported

In Note No 70662 RU of 7 July 2016, the Central Department of Italian Customs provided new clarifications on the definition of 'exporter' introduced by the Union Customs Code (UCC), replacing the previous clarification (Circular Letter n. 8/D dated 19 April 2016).

In particular, taking into account the European Commission guidelines on the matter, Customs has recognized that, during a transitional period, currently anticipated as until 1 March 2019, non-EU suppliers exporting goods from the EU can be shown in box 2 'Consignor/Exporter' of the export declaration, by appointing an EU indirect customs representative. However, they have pointed out that in this case:

- The non-EU supplier is deemed to be the 'consignor' (i.e. to be shown in said box 2);
- The indirect customs representative is deemed to be the 'exporter' (i.e. to be shown in box 14 'Declarant/Representative').

Based on the above, it is advisable to

- Review the proxies which are in place with the Italian customs representative in order to check if the relevant proxy is in compliance with the new circular letter;
- Check the approach applied by local Customs in light of the new clarifications, mainly to check if the new qualification of the non-EU supplier as a consignor (rather than exporter) may have an impact on the procedure applied by the local Customs for the issuance/submission of the EUR 1 certificate and other export document.

Furthermore, in the new clarifications, Italian Customs has included instructions on the export formalities for supplies of goods to be exported which are delivered ex works in Italy.

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Netherlands

Input VAT recoverable when sales are made at less than cost price

The Court of Justice of the European Union has gone straight to judgment in the case of *Gemeente Woerden*, about recovery of input VAT by a local authority which sold a pair of buildings for about 10% of their cost to a foundation that made parts of them available for use free of charge.

The tax authorities treated the transaction as equivalent to a VAT exempt lease and imposed a self-supply charge (in effect, disallowing the local authority's input tax recovery). The CJEU decided that the use made of the building by the (unconnected) purchaser has no effect on the VAT position of the local authority and that, notwithstanding the fact that the buildings were sold for less than the cost of acquiring them, the authority made a taxable supply of them and was entitled to reclaim all the input VAT it incurred on them.

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Norway

New VAT form from 2017

With effect from 1 January 2017, the VAT form *alminnelig omsetningsoppgave* will be replaced by *skattemelding for merverdiavgift – alminnelig næring*.

The new VAT return will consist of 19 boxes instead of the current 11 boxes. Some of the boxes are new, others are breakdowns of, or alterations of, old boxes.

As a main change, import VAT will be reported in the new VAT return, as it will be subject to the reverse charge mechanism. Any deductible import VAT will also be reported in the same VAT return, implying that the import VAT will be reported as payable and deductible at the same time.

For companies to report correct numbers in the new VAT return, accounting systems need to be upgraded and new VAT codes must be implemented. The new VAT codes are a part of the tax authorities inducting standardized format for reporting of accounting documents 'Standard Audit File – Tax' based on recommendations from OECD. It is recommended that the new VAT codes are implemented by 1 January 2017.

Transactions dated from 1 January 2017 are to be reported in the new VAT form. Transactions dated in 2016 are to be reported in the present version.

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Poland

Credit card payment may result in cash register reporting obligation

According to Polish VAT Law, as a rule, supplies and services provided to natural persons not performing business activities are to be registered via a cash register. However, a number of exemptions from this rule are provided, one of which is transactions that are fully settled via bank or postal transfer (provided that it is possible to allocate particular payments to their corresponding transactions).

Currently, for the tax authorities it has become an issue whether payments made by credit card should be treated as bank transfers or cash payment. In particular, despite unofficial information received from the Ministry of Finance confirming that, due to its characteristics, credit card payments shall be treated as equal to bank transfers, there have been a number of recent tax rulings that such transactions should be treated as cash payments, and therefore they trigger the obligation to document them with a cash register.

Bearing in mind the above, for transactions with natural persons not performing business activities, which are settled with credit cards and not documented with a cash register, there is a risk that the tax authorities may challenge such approach.

General Power of Attorney

New provisions concerning general PoAs came into force as of 1 July 2016. General authorization will allow the proxy to act on behalf of the taxpayer in all tax-related matters. The PoA needs to be submitted on a specific format via the tax portal (which would require having an electronic signature or EPUAP access).

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Russia

Development of new forms by Federal Tax Service for electronically supplied services

Following the introduction of the rules for VAT assessment on services provided electronically by foreign companies, the Russian Federal Tax Service developed draft orders that would approve the forms required for the implementation of the rules, including:

- The special form of VAT return on rendering e-services by foreign companies;
- The application form for the tax registration of foreign companies rendering electronic services to individuals on the territory of the Russian Federation (item 4.6, Article 83 of the Russian Tax Code);
- The notification form requiring that foreign companies providing services electronically submit a VAT return (item 31, Article 88 of the Russian Tax Code).

The draft forms have been published for discussion purposes.

Amendment to list of technological equipment not subject to VAT on import

The Russian Federation Government Resolution No. 630 of 5 July 2016 amends the list of technological equipment (including components and spare parts) without an analogue manufactured in the Russian Federation, and the import of which onto the territory of the Russian Federation is not subject to VAT. In particular, certain turning and gear grinding machines (headings 8458, 8459, 8460 and 8461) and a type of balancing stand (heading 9031) are introduced into the list.

This Resolution came into effect on 15 July 2016.

Amendment to conditions for VAT exemption for import of raw materials and components for medical goods

It is reported that the President of Russia signed Federal Law No. 225-FZ of 30 June 2016 'On introduction of changes to Part Two of the Russian Tax Code' according to which the import of raw materials and components for medical goods will be exempt from VAT only provided that their analogues are not produced in Russia. To benefit from the VAT exemption, the importer should provide to the customs authorities (the tax authorities in the case of import from the countries of the Eurasian Economic Union) the document confirming the purpose of import of these raw materials and components as well as the absence of their analogues produced in Russia.

The amendments came into force on 1 August 2016.

VAT exemption for import and sale of livestock breeding goods

It is reported that the President of Russia signed Federal Law No. 187-FZ of 23 June 2016 'On introduction of changes to Part Two of the Russian Tax Code' according to which import and sale in the territory of Russia of breeding cattle, pigs, sheep, goats, horses, poultry, eggs, as well as semen and embryos obtained from them, is exempt from VAT. The exemption is provided until 31 December 2020, provided the taxpayer has the breeding certificate issued in accordance with the Russian Federal Law 'On livestock breeding'.

The amendments will come into force on 1 October 2016.

Supreme Court ruling on reduction of VAT base for rebates for food goods

The Supreme Court of the Russian Federation has resolved the case of *Danone Russia JSC* in favor of the taxpayer. The case concerned the deduction of volume rebates provided in respect of food goods from the VAT tax base.

The tax authorities disputed the deduction of a volume rebate provided for food purchases from the VAT tax base on the basis of Item 6, Article 9 of Federal Law No. 381-FZ of 28 December 2009 'On the Regulatory Framework for Trading Activities in the Russian Federation,' which stipulates that no remuneration based on the purchasing of a certain volume of food products shall be taken into account when determining food prices.

The lower courts affirmed the tax authorities' claims and ruled that in the event a food supplier pays a volume-based bonus, such bonuses shall not affect the value of the previously supplied food products, irrespective of the contractual terms and conditions; therefore, rebates provided in a form that changes the price of previously shipped goods are not acceptable in the case of food products.

The Supreme Court of the Russian Federation reversed the judgment of the lower courts and ruled in favor of the taxpayer.

The ruling on the referral of the case to the Judicial Chamber of the Supreme Court of the Russian Federation stated that Federal Law No. 381-FZ of 28 December 2009 'On the Regulatory Framework for Trading Activities in the Russian Federation' has an independent scope of regulation separate from the law governing taxes and duties and therefore shall not regulate fiscal relations as stipulated by Item 7, Article 1 and Items 1 and 2, Article 6 of the Russian Tax Code.

Extension of prohibition of import of certain types of foods into Russia

Since August 2014, certain foods have been prohibited for import from the European Union, the USA, Canada, Australia, Norway, Ukraine, Albania, Montenegro, Iceland and Liechtenstein. The Russian President Decree of 29 June 2016 No. 305 and the Russian Government Resolution of 30 June 2016 No. 608 extend the said prohibition on the import of certain types of foods into Russia until 31 December 2017.

The Decree came into effect on 29 June 2016 and the Resolution came into effect on 4 July 2016.

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South Africa

Proposed tax on sugar-sweetened beverages

The Minister of Finance of South Africa introduced plans for a tax on sugar-sweetened beverages (SSBs) aimed at reducing consumption of SSBs, which contribute to obesity and a host of non-communicable diseases.

The South African government is planning to implement the tax from 1 April 2017.

The National Treasury has published a policy paper on the proposed tax and invited comments on the document. The three options being considered to levy the tax are:

- Flat levy on all SSBs;
- Levy based on absolute sugar content;
- Threshold approach.

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Spain

Electronic filing for large taxpayers

As from 1 July 2016, the second final clause of Order HAP/841/2016 is effective, by which large taxpayers (i.e. those entities filing monthly VAT returns because their turnover exceeded EUR 6 million last year) are required to submit electronically all documents related to tax matters (e.g. tax returns, tax refund requests, written statements in attention to official notifications, etc.) to the tax authorities. For non-compliance, a fixed penalty amounting to EUR 250 will be imposed.

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United Kingdom

VAT and the transfer of a going concern

The tax authorities (HMRC) have published a **Brief** about transfers of a business as a going concern (TOGCs) to and from a VAT group, and TOGCs to a 'non-established taxable person' (i.e. a person who is not normally resident in the UK, who does not have a UK establishment and, in the case of a company, is not incorporated in the UK.

This Brief sets out HMRC's position following the judgment of the Upper Tribunal in the case of *Intelligent Managed Services Limited*, which concerned the transfer of a business into a VAT group. It also clarifies the situation where a business is transferred to a person without an establishment in the UK.

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