Global Tax & Legal | Global Indirect Tax | March 2017

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

Welcome to the March 2017 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Features of this edition include the entry into force of the World Trade Organization Trade Facilitation Agreement, trade news from Mexico, the postponement of new VAT rules for the asset management industry in China, a further update on GST developments in India, and the delivery of the Spring Budget in the UK.

Also, Deloitte's The Link Between Transfer Pricing and Customs Valuation — 2017 Country Guide has recently been published. The Guide compiles essential information on the customs-related implications of related party pricing and retroactive transfer pricing adjustments in 53 jurisdictions around the world.

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Russia	The Ministry of Finance has clarified foreign e-service providers' VAT liabilities. It has been reported that a Draft Law has been submitted on amending the application of VAT to export operations. The Government is considering zero-rating VAT on the re-export of processed products. There is the prospect of an initiative to reduce social contributions and to increase the standard VAT rate. There are proposals to streamline alcohol excise duties. The export of tanning semi-finished products has been prohibited.	**Read More**

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World Trade Organization

Trade Facilitation Agreement

On 22 February 2017, the WTO Trade Facilitation Agreement (TFA) entered into force, following ratification by 112 national parliaments out of a total 164 WTO members. Promising greater trade efficiency by addressing administrative barriers to trade, the TFA required a 2/3 majority among WTO members to enter into force, a majority achieved after ratifications by Rwanda and Chad during the week of 20 February 2017.

The new Agreement's goal is to simplify and streamline customs formalities for the import and export of goods and to create greater transparency and legal certainty for businesses involved in cross-border trade. The TFA will help companies move goods more quickly and efficiently across borders, supporting large and smaller companies' participation in supply chains. The TFA benefits would increase competitiveness in developing countries, as trade transaction costs are highest in the world's poorest countries. It is estimated that implementing TFA would have a bigger impact on international trade than eliminating all remaining tariffs.

Furthermore, potential gains from the TFA have been well-documented, and include:

- Reduction of trade costs for members by an average of 14.3%, according to studies conducted by the WTO and the OECD;

- According to the 2015 World Trade Report, developing countries' exports are estimated to increase by between USD 170 billion and USD 730 billion per annum, whereas developed economies' exports are estimated to increase by between USD 310 billion and USD 580 billion per annum.

Governments across the globe are now stimulated to further bring down trade barriers that relate to customs and trade facilitation by using the TFA as a reform catalyst.

Through commitments made in a number of areas, the TFA imposes rules on WTO members that will result in faster, simpler and cheaper border clearance. Through implementation of commitments by governments worldwide, the TFA will increase trade efficiency by cutting customs-related red tape, simplifying customs procedures, reducing the clearance time of goods, stimulating cooperation among customs authorities and improving the quality of trade facilitation decision making.

For more details including background and implications, see Deloitte Belgium's Customs Flash.

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Americas

Colombia

Recent tax reform includes indirect tax changes

The Tax Reform Bill came into force on 1 January 2017, although some of the measures will require further regulation. The indirect tax changes include the following:

- VAT taxation will apply to real property, lotteries and intangible goods.

- The imposition of VAT on certain services rendered both on Colombian territory and abroad if the recipients are located in Colombia, for example, the supply of webpages, hosting, cloud computing and remote maintenance of programs and equipment; the supply of software and updates; the electronic supply of images, text, and other types of information, as well as access to digital databases; the supply of audio-visual media services (such as music, videos, movies and games of any kind, as well as the broadcast of any kind of event, among others).

  When the service provider for these types of services is a foreign business, the VAT is to be withheld by the issuers of credit or debit cards, sellers of pre-paid cards, collectors of cash in charge (i.e., cash collectors acting on behalf of third parties, e.g. a cash collector in Colombia acting for a foreign service provider), and others determined by the tax authorities, at the time of the respective payment or deposit to the account of the foreign service provider.

- The imposition of consumption tax on cannabis derivative products and plastic bags.

- A consumption tax increase for cigarettes per each 20 unit pack of cigarettes or proportionally to the content.

- The establishment of a new tax levied on the sale of gasoline by oil refiners and importers.

- The creation of a new tax on carbon that will be levied on the sale and import for sale or own consumption of fossil fuels.

Decree establishes new regulation for Free Trade Zones

On 23 December 2016, the Government issued Decree No. 2147 of 2016, which established the new regulation for Free Trade Zones (FTZ). With the new Decree, the Government aims to simplify the current regulation, make the FTZ authorization process as quick and efficient as possible, and define the role of entities that take part in the FTZ authorization process. The new FTZ regulation will come into force by stages; some of its articles apply from the issue of the Decree and others come into force over the period until 8 March 2018.

The new regulation includes the following major modifications:

- Under the exclusivity principle, industrial users of FTZ could only carry out activities in the FTZ where they were qualified. Under the new regulation, the exclusivity principle remains, but free trade users will now be able to have control/administrative offices outside the FTZ. However, the jobs and investment generated in these offices will not be taken into account for the purposes of the requisite FTZ employment and investment commitments.

- Assets that have been used in Colombia or are imported after being exported will not be counted for investment commitment purposes.

- Industrial users may be authorized to provide logistic services. However, under the new regulation, storage as a unique activity performed by a FTZ user will not be considered as a logistic service.

- The Decree will repeal all the existing regulations regarding FTZ and consolidate all the requirements for obtaining authorization as permanent FTZ, permanent special FTZ, transitional FTZ, and offshore FTZ.

- FTZ users will be considered to be international trade operators in terms of the new customs code, but the applicable obligations and penalties will be determined by the FTZ regulation established in the Decree.

- FTZ users qualified in one FTZ and intending to also seek approval to locate in a second FTZ must fulfill the employment and investment commitments for the second FTZ with respect to the assets used in that FTZ.

  This condition will not apply to industrial FTZ users in offshore FTZs intending to also locate in a different offshore FTZ.

- Customs taxes will only apply to goods bound for the Colombian market, and only when such goods are permanently withdrawn from the FTZ. The import duty for goods produced inside the FTZ must calculated as the FOB values of the foreign raw materials and foreign components incorporated in the finished good, plus all the expenses incurred in moving the foreign materials to Colombian national territory.

New customs tariff

On 26 December 2016, the Ministry of Commerce, Industry and Tourism issued Decree 2153 to implement the new harmonized coding system of merchandise, which came into force as of 1 January 2017, in accordance with Decision 812 of the General Secretary of the Andean Community.

From 1 January, import declarations must be completed applying the customs tariff and using the new harmonized coding system (subheadings) established by the Decree.

Importers must implement this new rule in their foreign trade operations to ensure they can legally import and export merchandise, and avoid the risk of sanctions from the Customs Authority.

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Mexico

Government starts consultation process with private sector prior to negotiation of North American Free Trade Agreement

On 1 February 2017, the Ministry of Economy and the Ministry of Foreign Affairs announced the commencement of a formal consultation process with the private sector, prior to the negotiation of the North American Free Trade Agreement (NAFTA), in order to determine the parameters that will guide such negotiation.

In this context, on 3 February, the Ministry of Economy and the Mexican Business Coordination Council held a meeting to formally start this consultation process.

The consultation process will take 90 days, and will be coordinated by the Ministry of Economy, with active participation from the Mexican Senate. When the negotiation of NAFTA formally starts with the US and Canadian governments, such consultation process will continue.

Modification of import duty rates for electric vehicles

On 2 February 2017, the Ministry of Economy published in the Mexican Official Journal a decree that established an exemption from import duty rates for electric vehicles, as well as other auto parts, with the intention of promoting technologically efficient and eco-friendly vehicles.

The decree entered into force on 3 February, and the mechanism for importing electric vehicles exempt from duty rates can be accessed by the automotive industry under import quotas.

The publication of this decree also derives from the commitments adopted by Mexico in the Paris Agreement under the United Nations Framework Convention on Climate Change, related to the reduction of 22% of the total greenhouse emissions and 18% of the transportation sector for the year 2030.

Mexico-Argentina

Ministers from Mexico and Argentina meet to review work on Economic Complementation Agreement

On 13 February 2017, the Minister of Economy, Ildefonso Guajardo, met with the Minister of Foreign Relations of Argentina, Susana Malcorra. During the meeting, the status of the bilateral relationship between both countries was reviewed, as well as the work that negotiators from both countries have been undertaking to expand and deepen the Economic Complementation Agreement No. 6 between Mexico and Argentina, an agreement that aims to broaden preferential duty rates between both nations.

Both ministers agreed to hold a second round of negotiations during April in Buenos Aires, Argentina, and agreed to continue with the negotiation process.

Mexico-EU

Delegation of European Union parliamentarians meets Mexican Minister of Economy

A delegation of European Union parliamentarians led by Bernd Lange, President of the European Parliament's Committee on International Trade, met on 20 February 2017 with the Mexican Minister of Economy, Ildefonso Guajardo, with the intention of reviewing the negotiations for the modernization of the Free Trade Agreement between Mexico and the European Union.

During the meeting, held in Mexico City, Minister Guajardo pointed out that the intention is to speed up the negotiations to modernize the Agreement, in order to finish the process by the end of 2017.

In this context, it was decided that there would be two additional negotiation rounds; the first one in April in Brussels, Belgium, and the second round of negotiations in June in Mexico City.

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Asia Pacific

Australia

Vendor GST registration model for cross-border sales of low value goods to consumers

With the growth in online shopping, Australia has experienced significant increases in the volume of low value goods being imported by consumers. Under current, border collection, arrangements no GST is collected on imported goods with a customs value of AUD 1,000 or less (low value goods).

From 1 July 2017, Australia is adopting a vendor GST registration and collection model to ensure that low value goods imported by consumers face the same GST treatment as goods sourced domestically.

The new vendor GST registration and collection model will primarily affect foreign retailers, online marketplace operators and redelivery service providers involved in the sale and/or delivery into Australia of low value goods purchased by Australian customers.

For further information, see Tax Insights: Selling low value goods to consumers in Australia – will you be GST ready?

Overview of the new rules

GST registration will be required for foreign retailers, online marketplace operators and redelivery service providers who have an annual turnover of AUD 75,000 or more. Turnover is calculated on a current and a projected basis, based on supplies that would be subject to Australian GST.

Under the new GST rules, a registered retailer making cross-border sales of low value goods to Australian consumers will be required to collect GST at the point of sale. In some circumstances however, the GST liability will fall instead on a registered online marketplace operator or foreign redelivery service provider involved in facilitating the sale and/or delivery of the low value goods into Australia.

Businesses affected by the new GST rules (suppliers) will need to apply complex rules to determine whether each supply to an Australian consumer involves low value goods or not, and to address circumstances of potential and actual double GST taxation of imports. For example, suppliers will need to take account of how low value goods will be consigned. Where the goods are reasonably anticipated to be part of a larger consignment with a total customs value in excess of AUD 1,000, a 'taxable importation' exception will apply and GST should not be charged by the supplier.

Suppliers will also be required to provide detailed information for both GST and customs clearance purposes – to customers at the point of sale, and to other entities involved in getting the low value goods to Australia.

Suppliers have the choice of registering for GST on a full or a limited basis. Limited registrants need to satisfy less onerous proof of identity requirements, and lodge GST returns and remit GST each quarter. They do not, however, receive an Australian Business Number (ABN), and cannot issue tax invoices or claim input tax credits.

The low value goods rules are in addition to rules made in 2016 that will require foreign businesses to collect and remit Australian GST on digital content and services supplied to Australian consumers on or after 1 July 2017 (digital content rules). There is some alignment between the low value goods rules and the digital content rules (and perhaps also the rules that other countries have introduced to require foreign suppliers to charge and remit GST/VAT on cross-border B2C digital supplies). There are, however, many important differences, and in some respects more complexity, when it comes to the low value goods measures.

Preparing for commencement on 1 July 2017

The Bill to implement the low value goods rules awaits debate in Parliament. It is considered uncontroversial and is anticipated to be passed without any significant amendments.

With limited time until the new rules take effect, foreign retailers, online marketplace operators and redelivery service providers should be focused on determining if they will face Australian GST obligations and liabilities, and addressing the practical implications for their operations.

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China

New VAT rules regarding asset management industry postponed to 1 July 2017

On 11 January 2017, China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Caishui [2017] No. 2 (Circular 2), which stipulates that new VAT rules applying to the asset management industry will be postponed to 1 July 2017. Circular 2 was issued in response to concerns voiced by the industry following the issuance of another circular (i.e. Caishui [2016] No. 140 (Circular 140)) on 21 December 2016 that requires an asset manager to be considered the VAT payer for taxable activities relating to asset management products, retroactively from 1 May 2016 (the date the VAT reform became effective). Circular 140 was released to clarify ongoing issues that arose out of the VAT reform.

Background

Product managers generally have not accrued or paid VAT on VATable activities relating to products they manage, and typically contracts with investors for asset management do not contain provisions for the payment of VAT or allocate responsibility for VAT costs. As a result, many asset managers would ultimately bear the VAT costs for certain old and existing products since they are unable to legally or economically pass on the cost to other parties. The clarifications issued under Circular 140, and the retroactive nature of the guidance, likely would have a negative impact on asset managers.

Furthermore, even for new asset management products, asset managers will need to consider the legal and economic impact of the new VAT rules, and develop appropriate action plans. Contracts/prospectuses may need to be amended, processes for VAT accounting will need to be developed or revised, as will processes for invoice management, tax filing, etc. Product managers need time to formulate action steps and bring them to fruition to ensure they are prepared to comply with the rules.

Main change

Recent discussions between the Government and the asset management industry have been beneficial for the industry. In addition to delaying the implementation date of the new rules to 1 July 2017, Circular 2 also provides that, for VATable transactions taking place before that date, if VAT has not been paid, it need not be paid (i.e. the transaction will be exempt); if VAT has been paid, the amount paid may be offset against future VAT payable by the asset manager. This gives the asset management industry six months to ensure it is prepared to comply with the new VAT rules.

Comment

Although the implementation of the new rules has been delayed, VAT issues relating to asset management activities remain, and considering the efforts that will be required for asset managers to achieve VAT compliance, potentially affected managers should begin now and continue to monitor future developments, maintain contact with the relevant tax authorities, and review strategies and approaches on a regular basis to be able to respond to potential changes.

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India

Highlights of GST Council meetings in March

- The GST Council has approved the Central Goods and Services Tax (CGST) and Integrated Goods and Services Tax (IGST) laws in the meeting held on 4 March 2017, and the State Goods and Services Tax (SGST) and Union Territory Goods and Services Tax (UTGST) laws in the subsequent meeting held on 16 March 2017.

- The GST Council also decided to cap the Cess on various ‘demerit’ goods in the legislation as follows:

Goods	Compensation Cess
Sweetened mineral and aerated water	15%
Motor cars and vehicles*	15%
Pan masala	135% ad valorem
Tobacco products/Cigarettes	INR 4,170 per 1,000 sticks or 290% ad valorem or combination of both
Coal	INR 400 per tonne

*Except motor cars for transportation of 10 or more people

Four of the proposed laws, namely the CGST, IGST, UTGST and the previously approved compensation law, will now be tabled together in the Lok Sabha (lower House of Parliament) in the ongoing budget session as money bills, ensuring their smooth passage in Parliament. The SGST law will need approval of each of the State legislatures.

- In the next meeting of the GST Council to be held on 31 March 2017, the Council is expected to formalize rules relating to valuation, input tax credit, composition and transitions.

- A meeting of the GST Council will be held after 31 March 2017 to place various goods and services in different tax slabs.

Service tax on services of transportation of goods by vessel from place outside India to customs station in India where goods intended for transshipment to another country

The Central Board of Excise and Customs has issued Circular No.204/2/2017-Service Tax, dated 16 February 2017, to clarify the levy of service tax on services by way of transportation of goods by a vessel from a place outside India to a customs station in India with respect to goods intended for transshipment to any country outside India.

Goods landing at Indian ports that are destined for any other country are allowed to be transshipped through Indian territory without payment of customs duty in India, subject to the condition that such goods are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India.

As per Rule 10 of the Place of Provision of Services Rules, 2012, the place of provision of the services of transportation of goods by air/sea, other than by mail or courier, is the destination of the goods. However, with respect to goods imported into a customs station in India intended for transshipment to any country outside India, the destination of goods is not a place in the taxable territory in India, but a country other than India, and hence such goods are not taxable in India, provided the same is mentioned in the import manifest or the import report, as the case may be, and the goods are transshipped in accordance with the provisions of the Customs Act, 1962 and rules made thereunder.

Service tax exemption for services provided 'to' educational institution restricted to certain specified institutions

Under a recent amendment made in the 'mega exemption' notification, exemption from service tax for various services mentioned in the exemption notification provided 'to' an educational institution has been restricted to institutions providing pre-school and higher secondary school education or equivalent, with effect from 1 April 2017.

Accordingly, service tax will be payable on services provided to educational institutions other than those providing pre-school education and higher secondary school education from 1 April 2017.

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Indonesia

Import duty tariffs increased for 300 tariff lines

The Government has issued Minister of Finance Regulation Number 6/PMK.10/2017 regarding "Determination of Goods Classification and Imposition of Import Duty on Imported Goods", which become effective from 1 March 2017. The Ministry of Finance states that this regulation arose because of the amendment of the 2012 Harmonized System (HS) to become the 2017 HS and the revision of the 2012 ASEAN Harmonized Tariff Nomenclature (AHTN) to the 2017 AHTN.

As a consequence of the change in AHTN, all tariff lines are changed from 10 digits to 8 digits, applied to all ASEAN countries. According to a Finance Ministry press release "The switch from HS 2012 to HS 2017 results in combination, separation and addition of some tariff lines". The selection of the tariff for tariff lines that have been combined is determined by considering the import value as well as the suitability of the tariff line definition in HS 2017. Out of 996 tariff lines proposed to be increased, only 300 tariff lines have actually had their tariff rates increased, and this increase in the Most Favorable Nation (MFN) tariff will have a positive impact on output and productivity.

New regulation on import of postal goods

The Indonesian Customs Authority (ICA) has issued a new regulation on the importation of postal goods (PER-2/BC/2017), to boost e-commerce growth and increase efficiency, speed, accuracy, ease of tariff calculation, and tracking of postal goods.

The new regulation stipulates exemption from import duty for goods with a value of FOB USD 100 per consignee per shipment. For goods with a value over this exemption threshold, the entire value will be subject to import duty and import tax.

If the postal goods have a value greater than FOB USD 100, the owner is given the freedom to choose whether to use a Consignment Note and be subject to 7.5% rate or to use a PIBK (Special Import Declaration, for a non-business entity) or PIB (Import Declaration, for a business entity) and be subject to the Most Favored Nation Tariff. For a postal goods shipment valued over FOB USD 1,500, the consignee must use PIBK or PIB.

Tax ID Number single identity for customs

In order to simplify the procedure and streamline the acquisition of business licenses, the ICA and the Directorate General of Tax have established a single identity number program.

The regulation abolishes the customs identification number (NIK) and customs broker identity number (PPJK) and stipulates that the tax ID number (NPWP) of the customs service user will be used as a national customs identity in the fulfilment of customs rights and obligations.

Now an importer can simply submit registration through the portal of the Indonesia Single Window or the portal of the Directorate General of Customs & Excise (online).

Procedure for determining import goods classification prior to submission of customs declaration

To provide assistance to service users and to adjust to the practice of international customs, the ICA has stipulated a procedure for determining the classification of import goods as the basis for the calculation of import duty prior to submission of the customs declaration based on an application submitted by the importer to the ICA, with the following conditions:

- The importer has a customs registration number/tax ID number (NPWP);
- The importer is not submitting an import declaration for the goods for which pre-entry classification is proposed;
- The goods for which the pre-entry classification is proposed are not in the process of objection and/or appeal in the tax court in accordance with to the regulations.

This regulation of the Minister of Finance (MoF Regulation No.194/PMK.04/2016) has been effective from 30 days after it was promulgated on 20 December 2016.

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Malaysia

Transfer of business as going concern guide

The Royal Malaysian Customs Department (RMCD) has updated the guide on TOGC, as at 6 January 2017.

A new FAQ No. 3 has been added to the revised guide to clarify that for any goods being transferred as part of a TOGC, and where the transferor was previously entitled to input tax credit on those goods, output tax has to be accounted for by the transferee on any subsequent supply of the goods for free.

Comment

The addition is aligned with the deemed supply provision described in Paragraph 5(4) of the First Schedule of the GST Act 2014.

This clarifies that there is no exception (to the deemed supply) on goods that have been transferred as part of a TOGC even though the transferee does not appear to claim any input tax credit on the goods. This is consistent with the principle of continuity as the transferee is deemed to have incurred and is entitled to input tax credit on the initial acquisition. More crucially, businesses involved in TOGC should ensure that the documentations and records are sufficient for the transferee to identify such liability to account for output tax. However, practically and commercially, identifying this information may pose a challenge. To be prudent, if such goods are given free, it may be safer to make the assumption that GST applies.

Tax invoice and records keeping guide

Tax invoice and credit/debit notes for zero-rated and exempt supplies.

A new paragraph 61 has been added to the guide to emphasise that a tax invoice that includes zero-rated or exempt supplies must have a clear indication that there is no GST payable on the items. Also, the value of each type of supply must be totalled separately. Alternatively, separate invoices can be issued for zero-rated or exempt supplies. Along with the newly added paragraph 80, this requirement also applies to credit or debit notes issued for such mixed supplies.

Comment

The addition is aligned with Regulation 22(g) of the GST Regulations 2014, that each type of supply – standard-rated, zero-rated or exempt – must be distinguished on the tax invoice. The RMCD has further required that the total value be determined separately, and this also applies to credit and debit notes.

Pro-forma invoices and credit notes without GST adjustment

New paragraphs 65 and 66 have been added to clarify that any pro forma invoice that is issued, albeit containing full details as that of a tax invoice, is not regarded as evidence to claim input tax. Additionally, pro-forma invoices that are issued must be clearly marked with the words "THIS IS NOT A TAX INVOICE". Similarly, credit notes issued for non-GST adjustment purposes should also be marked "THIS IS NOT A CREDIT NOTE FOR GST".

Comment

In accordance with Regulation 38 of the GST Regulations 2014, input tax credit is claimable only upon receiving a valid tax invoice. The required wording is a useful and practical reminder for the recipient not to claim input tax credit based on a pro-forma invoice. Businesses may adopt the best practice of inserting additional remarks as provided in the guide, where practical.

Valuation guide

Minor amendments to some wording and formula have been made to the guide, with no significant changes in the content or treatment.

Amendments to GST orders

Goods and Services Tax (Exempt Supply) (Amendment) Order 2016

Exempt supplies made by joint management body and management corporation

Effective from 1 January 2017, the recovery of the following expenses made by a joint management body (JMB) and management corporation (MC) from the owners of a building for residential purposes held under a strata title is treated as part of the management and maintenance services provided, which are exempt from GST:

- Group insurance costs;
- Assessment tax; and
- Quit rent.

Other amendments

There have also been wording changes to the First and Second Schedules of the Goods and Services Tax (Exempt Supply) Order 2014. For more information, see the February 2017 edition of Deloitte Malaysia's GST Chat newsletter.

Comment

In the past, the recovery of insurance costs, assessment tax and quit rent by a JMB would be treated as reimbursement of expenses (i.e. taxable supplies) and the JMB would be required to register for GST if the total value of its annual taxable supplies exceeded the registration threshold of MYR 500,000. The JMB would have also been required to issue a tax invoice and charge GST to the unit owners.

With this change in view, JMBs should review the total value of their respective annual taxable turnover to determine if they fall below the threshold required for registration. If they fall below the limit, the JMB may wish to consider de-registering for GST if the administrative work outweighs the benefits of GST recovery.

Goods and Services Tax (Zero-Rated Supply) (Amendment) (No. 3) Order 2016

Goods for use on voyage or flight

Goods for use as stores, ship spares or as merchandise for retail sale to persons carried on a voyage or flight from a place outside Malaysia in a ship or aircraft previously qualified as zero-rated supplies. However, from 1 January 2017, these items have been removed from the said order and are hence subject to GST at the standard rate.

Other amendments

Item 6(1) in the First Schedule of Goods and Services (Zero-Rated Supply) Order 2014 has been amended to clarify that the supply of treated water to a domestic consumer is treated as a zero-rated supply if provided by:

(a) Any person who is licensed under the Water Services Industry Act 2006;

(b) Any person who is exempted from the licensing requirements under section 5 of the Water Services Industry Act 2006;

(c) Any person who is licensed under the Water Ordinance 1994 [Sarawak Chapter 13]; or

(d) Any person who is licensed under the Sabah Water Supply Enactment 2003.

There have also been updates to the goods prescribed in the Appendix to the Goods and Services (Zero-Rated Supply) Order 2014. Further details are available in the February 2017 edition of Deloitte Malaysia’s GST Chat newsletter.

Branch to offshore HQ – Is there a supply?

There are many foreign branches operating in Malaysia, most notably in the offshore financial services hub of Labuan. Since the introduction of GST, there has been the question of whether, for GST purposes, the branch is a separate entity from the overseas headquarters. This is important for determining if there is a supply between the branch and the HQ and if any services provided between a branch and the overseas headquarters would be within the scope of GST.

There can be a variety of cross charges between a branch and an HQ. In many cases, this can be under a cost plus mark-up services arrangement.

According to the Malaysia Companies Act 2016, a foreign company can set up a branch in Malaysia and must be registered under the name as registered in its place of origin. From a legal standpoint, the branch has no separate legal existence from the parent company. From a GST standpoint, it would be considered to have a fixed establishment for the purposes of GST registration, and, to the extent that services are performed through that fixed establishment, it would fall within the scope of GST. However, anything performed through the establishments elsewhere would fall outside of the scope of the Malaysian GST. It is unclear whether having this establishment inside and outside of Malaysia would make the branch a separate ‘person’ for the purposes of the GST.

The RMCD view on this is also unclear, as there is no published guidance addressing this issue, and where individual opinions have been sought from RMCD, either in writing or during audit, there have been conflicting views given. As a consequence, different positions have been applied by branches, with some choosing to treat such transactions as within scope whilst others treating it as out of scope.

Those operating under a branch structure should continue to monitor developments in this area. If the RMCD decide on a position that a branch to HQ transaction is outside of the scope, it may require those branches that only transact with HQ to deregister from GST as they would no longer be making any taxable supplies in Malaysia.

Customized GST training

In the two years since the introduction of GST into Malaysia, there have been considerable changes to the GST law. There has also been new guidance and information released, amended and updated by the RMCD over that period. As a consequence, what may have been the correct practice or approach at implementation may no longer be correct now.

Deloitte Malaysia’s customized GST training aims to address these issues with a training session that is relevant to businesses and delivered at the business’s offices.

Sessions will be facilitated and run by Deloitte Malaysia's team of experienced GST consultants, who will cover both technical and practical issues. Depending on requirements, the sessions can be run over a few hours, half a day, a day or even longer if required.

For more information, please contact your usual Deloitte Malaysia advisor, or the below.

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EMEA

EU-Mexico

Delegation of European Union parliamentarians meets Mexican Minister of Economy

A delegation of European Union parliamentarians led by Bernd Lange, President of the European Parliament's Committee on International Trade, met on 20 February 2017 with the Mexican Minister of Economy, Ildefonso Guajardo, with the intention of reviewing the negotiations for the modernization of the Free Trade Agreement between Mexico and the European Union.

For more information, see Mexico-EU.

Belgium

Abolition of monthly advances payable by quarterly VAT filers

A Royal Decree regarding the repeal of the prepayment requirement for quarterly VAT taxpayers was published on 23 February 2017 and will be effective as of 1 April 2017. Quarterly VAT filers will no longer need to complete VAT prepayments currently due during the second and third month of each quarter. This is a significant reduction in prefinancing and administration for SMEs.

While the monthly advance payments are abolished, quarterly VAT filers will, under the new regime, be required to make a year-end advance payment, similar to the existing regime for monthly VAT filers. This advance payment is due by 24 December at the latest each year.

Quarterly VAT taxpayers can choose between the following calculations:

- In principle, the advance payment is equal to the net VAT amount due for transactions performed from 1 October until 20 December within the calendar year. In this case, the advance payment amount must be reported in box 91 of the VAT return for the fourth quarter (to be filed by 20 January of the following year).

- Otherwise, the amount of the year-end advance payment will be equal to the amount of tax due during the third quarter of the year, as reported in box 71 of the VAT return for the third quarter. In this case, no amount should be reported in box 91 of the VAT return for the fourth quarter.

Quarterly VAT filings are in principle open to all businesses that have a yearly turnover below EUR 2.5 million. Businesses within this threshold that have opted in the current regime to file monthly VAT returns to avoid the prepayment regime's disadvantages have the possibility to opt for the quarterly regime. Such a transfer must be initiated by the taxpayer through a written and justified request to their competent VAT Office.

When the request is approved, the new quarterly periodicity will enter into force as from the first day of the VAT return period that follows the approval date.

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Finland

VAT treatment of indemnities

Indemnity payments are not subject to VAT, as they are not considered compensation for the supply of goods or services. A recent ruling by the Supreme Administrative Court (SAC) (see KHO:2014:192, in Finnish) has significantly changed earlier tax practice regarding the VAT treatment of indemnities and, in addition, the revised interpretation of the tax authorities concerning booking fees, based on the Court of Justice of the European Union case *Air France – KLM,* will lead to changes as of June 2017.

- A contractual penalty is not considered compensation or an adjustment item of the taxable price. VAT should not be accounted for on a contractual penalty received, and a contractual penalty paid does not diminish the amount of VAT payable.

- The VAT treatment of booking fees will change as of 1 June 2017 in cases where the client does not cancel their reservation, but does not use the service either (i.e. no show situations). Going forward, a booking fee of this kind will be treated as compensation for a taxable supply of services and not as a non-taxable indemnity, as currently is the case. If, however, the client cancels their reservation and the seller keeps the booking fee, this is considered an indemnity not subject to VAT.

Implications

It will be important for businesses to pay attention to contractual or delayed penalties and other similar reimbursements in order to evaluate where the reimbursements can be treated as indemnities not subject to VAT, and where they are considered adjustment items that need to be taken into account for VAT. Following the release of the tax authorities' new guidelines, it is possible that reimbursements will be subject to particular attention in connection with, for example, tax audits. It is important to note the new interpretations now when contracts are drafted, as different contractual penalty clauses are commonly used in contracts, and often the amount of damages – and thus also the VAT effect – is at least theoretically significant.

In addition, businesses that charge booking fees or similar should evaluate the practices they apply prior to the coming into force of the new taxation principles on 1 June 2017.

New tax practice on VAT deduction restrictions

The SAC gave two rulings on 9 March 2017, in effect restricting the right of VAT deduction (see KHO:2017:36 and KHO:2017:38, in Finnish). In accordance with the first ruling, income received even from minor and ancillary financial activities needs to be taken into account as income restricting the right of deduction of overhead costs. The ruling of the SAC changes prior practice and means that even minor VAT exempt sales restrict the VAT deduction right.

The tax practice has during recent years been tightened especially with respect to deduction of overhead costs, and in addition to the ruling mentioned above, SAC has issued several other similar rulings.

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Israel

Extension to requirement to disclose position contradicting tax authorities' published position

In the November 2016 edition of this newsletter, it was reported that where a person takes a position that contradicts a published position of the Israel Tax Authority (ITA), the person will be required to disclose that position within 60 days of the end of the year in which the position was taken (Form 1346).

The ITA has now published an extension for this requirement, until 1 July 2017 or the filing of the annual income tax report for 2016, whichever is earlier, on the grounds that this is the first report of that kind, and to allow dealers/importers to prepare in a suitable manner.

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Italy

VAT warehouse regime

Changes to the VAT warehouse regime came into effect on 1 April 2017 that will significantly impact the application of VAT when goods are withdrawn from a VAT warehouse, requiring the effective payment of VAT in the majority of cases (the VAT reverse charge mechanism will only apply for the withdrawal of goods originally imported through introduction into the VAT warehouse). Special VAT relief will be granted to frequent exporters only, upon electronic submission of letters of intent. See the November 2016 edition of this newsletter for more information.

Operative guidelines regarding letter of intent for withdrawal purposes

With Resolution n° 35/E, dated 20 March 2017, the tax authorities have provided the following operative guidelines regarding the letter of intent to be used for VAT warehouse withdrawal purposes:

- Completion of letter of intent: A frequent exporter must fill in a letter of intent for each singular withdrawal of goods from a VAT warehouse, by naming the VAT warehouse keeper as recipient of the letter of intent;

- E-submission of the letter of intent and subsequent check of regular e-submission: The frequent exporter must e-transmit the letter of intent to the tax authorities and maintain the official receipt of e-submission. The letter of intent and the official receipt of e-submission must be provided to the VAT warehouse keeper, who will check the regular e-submission of the letter of intent.

With regards to the procedure for redemption of the guarantee to be submitted at the time of the import of goods through introduction into the VAT warehouse, the tax authorities have expressly made reference to the still valid instructions released by the Customs Authorities with Note n° 84920/RU dated 7 September 2011 and Note n° 113881/RU dated 5 October 2011.

Ministerial decree regarding withdrawal of goods originally imported through introduction into a VAT warehouse

The Ministry of Economy and Finance has issued a Ministerial Decree setting out specific measures for the withdrawal of goods originally imported into Italy through introduction into a VAT warehouse.

At the time of the withdrawal of goods originally imported into the VAT warehouse, VAT will apply via the reverse charge mechanism, without the submission of a guarantee, where the VAT subject withdrawing the goods satisfies the following ‘reliability’ conditions:

a) Submission of annual VAT returns, if due, during the three years preceding the withdrawal of goods from the VAT warehouse;

b) VAT payments, if due, based on the last three annual VAT returns submitted at the time of the withdrawal of goods from the VAT warehouse;

c) No definitive tax assessments notified during the year of the withdrawal of goods from the VAT warehouse or in the previous three years with outstanding payment of penalties due for the issuance or use of invoices for 'non-existent' transactions;

d) No formal awareness of criminal proceedings in progress, criminal charges or penalties (in certain specific circumstances).

For new VAT subjects (without three years of activity), the reliability conditions must be met from the beginning of their activity, if this is for a period of less than three years.

The VAT subject must prove the above reliability conditions by submitting a self-certification, valid for the whole of the calendar year of submission. At the time of the first withdrawal, this self-certification must be submitted to the VAT warehouse keeper, who will transfer it to the competent Tax Office, for checking purposes. An Act of the Director of the Tax Authorities will be released to determine the procedures of and timing for the transmission of this self-certification, including by electronic means.

Where these conditions are not met, VAT will apply via the reverse charge mechanism, upon submission of a guarantee, valid for six months from the date of withdrawal, in favour of the competent Tax Office, for an amount equal to the VAT due. A copy of the guarantee must be submitted to the VAT warehouse keeper.

The reliability conditions will be deemed as satisfied when the VAT subject withdrawing goods:

- Corresponds to the VAT subject that imported the same goods through the introduction into the VAT warehouse; or

- Is an Authorized Economic Operator (AEO) certified entity; or

- Is known to have financial solvency under article 90 of the customs law.

Milleproroghe **decree approved**

The *Milleproroghe* decree n°244, dated 30 December 2016, (the annual decree extending the life of various government measures) has been definitively approved and converted into Law n° 19 dated 27 February 2017 (published in the Official Gazette n° 49 on 28 February 2017).

The following VAT amendments have been definitively approved:

- Intrastat obligations for EU acquisitions – extension until 31 December 2017 of the obligation to declare intra-Community acquisitions for Intrastat purposes. The removal of the Intrastat reporting obligations for intra-Community acquisitions is effective as of January 2018.

- Quarterly communications of invoices and customs bills – this new periodical reporting obligation will become a quarterly VAT fulfilment starting from FY2018. During FY2017, only two half-yearly communications must be submitted within the following deadlines:

  - 16 September 2017 for the period January-June 2017;

  - In February 2018 for the period July-December 2017.

Quarterly e-communications of invoices and customs bills – identical deadlines, data and e-transmission instructions for mandatory and optional regimes

The deadlines for the optional e-communication of invoices and customs bills (under art. 1, par. 4, of Legislative Decree n° 127/2016) have been aligned to the deadlines for the mandatory e-communication of invoices and customs bills (under art. 21 of the Law Decree n° 78/2010).

This means that for the first year of application (FY2017), the following derogative deadlines (introduced by the *Milleproroghe* Decree n° 244/2016) will apply to the mandatory and optional regime:

- 16 September 2017 for the period January-June 2017;

- In February 2018 for the period July-December 2017.

Starting from FY2018, both the mandatory and optional e-communication of invoices and customs bills is due on a quarterly basis by 31 May, 16 September, 30 November and February. The data to be e-transmitted to the tax authorities and the technical specifications are identical for both regimes.

	Communication of invoice data		
	FY2017		**FY2018 onwards**
Period	**Optional regime**	**Mandatory regime**	**Optional/mandatory**
First quarter	16 September 2017	16 September 2017	31 May same FY
Second quarter			16 September same FY
Third quarter	February 2018	February 2018	30 November same FY
Fourth quarter			February following FY

Form for quarterly communication of VAT calculation data approved

On 21 March 2017, the tax authorities published the draft form (dated 21 March 2017) for the quarterly communication of VAT calculation data. The Instructions for completing the form and the Technical Specifications were also been released. The final form has now been approved, and does not differ from the draft released on 21 March.

The form appears straightforward, with 14 lines of the new VP box (in addition to the general section dedicated to the taxpayer's details) reporting the accounting data related to the periodical VAT calculations.

Through the Instructions, the tax authorities have confirmed that:

- The form must be submitted also in the case of VAT calculations showing a periodical VAT credit position.

- Penalties from EUR 500 to 2,000 for omitted, incomplete or inaccurate quarterly communication will apply. If a taxpayer submits a previously omitted communication (or an amendment to the already-filed communication) within 15 days after the official deadline, penalties will be reduced by half.

- Taxpayers not required to file an annual VAT return or to make periodical VAT calculations are not required to file the new quarterly communication.

With regards to the new VP box:

- For output transactions: The total value of all the supplies of goods and services net of VAT, relevant for VAT purposes (i.e. taxable, zero-rated, exempt, etc.) accounted for in the sales VAT ledgers must be included in VP2 box. Further, the VP2 box must also include the transactions not relevant for VAT purposes in Italy (under articles 7-7 septies of the DPR n. 633/1972) but mandatorily traced by invoices (under art. 21, par. 6-bis of the DPR n. 633/1972).

- For input transactions: The total value of all domestic purchases, intra-Community acquisitions and imports of goods and services, net of VAT, accounted for in the purchases VAT ledger must be included in VP3 box. Further, for input transactions subject to the reverse charge, the relevant VAT must be included both in VP4 box (output VAT) and VP5 (input VAT).

- For the quarterly accounting VAT position, globally considered, the VP14 box must be taken into account in order to show the quarterly VAT debt or VAT credit.

Further boxes are included to report, amongst others, the former periodical VAT credit carried forward net of the value of the requested VAT refund (VP8), the former annual VAT credit carried forward (VP9), interest due for quarterly VAT payments (VP12) and advance payment (VP13).

Specific instructions regarding completion of the form in some specific cases have also been released (i.e. quarterly VAT calculations, separation of activities, VAT grouping mechanism, extraordinary decisions of entities such as mergers, demergers, transfers of going concerns, etc.).

Based on the Technical Specifications, the XML format will apply for the e-submission of the quarterly communication of the VAT calculation data (the XML format is accepted by the 'Intercharge System', which is a platform managed by the tax authorities for the electronic transmission of e-invoices).

Intrastat reporting for FY2017

On 16 March 2017, the tax authorities and the customs authorities jointly issued an official press release on Intrastat reporting obligations, which are undergoing significant amendments in Italy.

As referred to above, the *Milleproroghe* decree n° 244 dated 30 December 2016 extended the obligation to declare intra-Community acquisitions for Intrastat purposes until 31 December 2017 and postponed the removal of this obligation (for intra-Community acquisitions only) to FY2018.

The authorities confirmed that, for all of FY2017, the monthly and quarterly Intrastat forms (Intra-2 forms) must still be submitted in order to declare intra-Community acquisitions of goods and services, for both fiscal and statistical purposes.

No penalties will be levied for late submission of Intrastat forms related to February 2017 intra-Community acquisitions of goods and services, due to the approach of the relevant deadline (27 March 2017).

The press release also announced that the tax authorities, the customs authorities and Istat (the National Institute of Statistics) are jointly working on the draft of an act, aimed at simplifying Intrastat reporting obligations and reducing the category of taxpayers required to comply with this obligation.

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Union Customs Code clarifications

On 6 March 2017, the Customs and Monopoly Agency updated the clarifications issued on 19 April 2016 with reference to conditions and requirements allowing operators to present goods at places other than Customs, based on art. 139 of Reg. (EU) No 952/2013 laying down the Union Customs Code (UCC).

In particular, specific operative guidelines have been provided regarding the application that importers/exporters must submit for this purpose to the relevant customs office.

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Poland

Court of Justice of the European Union rules that e-books do not qualify for lower VAT rate

The Polish Commissioner for Civic Rights could not see why the standard rate of VAT should be applied to e-books, while traditional books qualified for the lower rate of VAT.

However, the Court of Justice of the European Union has now rejected two arguments for eradicating this difference. It rejected an argument that the legislative process had not been followed correctly in 2009, when the Principal VAT Directive was changed to extend the lower rate to 'books on all physical means of support'. It went on to note that e-books and paper books both promoted reading, and should therefore be treated equally for VAT purposes unless any difference was 'duly justified'. In this case, however, the decision to exclude e-books from the lower rate had been considered necessary in order to make electronically supplied services subject to clear, simple and uniform rules. In that context, the difference fell within the broad discretion enjoyed by the legislature, and could not be challenged on the basis that it infringed the principles of fiscal neutrality or equal treatment.

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Portugal

Court of Justice of the European Union has ruled that VIES not critical to intra-Community dispatch accounting

Some EU Member States operate separate VAT registration rules relating to intra-Community supplies of goods. In *Euro Tyre*, the CJEU has considered such rules in relation to sales of tires by the Portuguese branch of a Dutch company, to its Spanish distributor.

The Portuguese tax authorities argued that the sales should not be zero-rated, as the distributor was not specifically registered for intra-Community acquisitions in Spain, and was not registered in VIES (the VAT Information Exchange System). The CJEU noted that the essential conditions for treating the sale as a cross-border VAT exempt supply (i.e. that the goods had been transferred to another business and have physically left the Member State of supply) had been met, and that there was no evidence of any fraudulent intent. In those circumstances, a formal technical requirement such as inclusion of the VAT number of the acquirer in VIES should not prevent Euro Tyre from treating the sales as a zero-rated dispatch.

This is another judgment that emphasizes the importance of the underlying economic reality in determining intra-Community VAT accounting, although it serves also as a reminder that proper observance of the rules may avoid a dispute with the tax authorities in the first place.

VAT exemption applicable to dental prostheses

The Portuguese Tax Authorities (PTA) have published Administrative Ruling no. 30188, dated 31 January 2017, concerning the VAT exemption applicable to supplies of dental prostheses, which was approved under the 2017 Budget Law (as discussed in the December 2016 edition of this newsletter).

The Ruling clarifies that the VAT exemption only applies if the supply of a dental prosthesis is made as part of a medical service rendered to a patient, as such, supplies of dental prostheses to dentists, clinics or hospitals do not benefit from the VAT exemption.

The PTA established that taxpayers were able to file a declaration of amendment of activities by 28 February 2017 to correct their VAT framework on the PTA's database.

VAT exemption applicable to acquisitions by non-EU residents

The Ministry of Finance has published Decree-Law nr. 19/2017, of 14 February 2017, which implements a new system aimed at modernizing the procedures to control and validate the requirements for the VAT exemption for the export of goods by a traveller who is non-resident in the EU, foreseen in article 14 (1) (b) of the Portuguese VAT Code (corresponding to Article 146 (1) (b) of the EU Principal VAT Directive).

According to the Decree-Law, taxpayers making these VAT exempt supplies must communicate to the PTA, through an electronic system and in real time, the data that supports the supplies made, namely disclosing the information concerning the traveller's personal ID, identification of the invoices, and the VAT amount that would be chargeable if the exemption was not applicable.

This VAT exemption does not apply to supplies of goods with a taxable amount of less than EUR 75 (VAT excluded) nor to supplies related to any private means of transport.

This new regime will enter into force on 1 July 2017, with a transitional period for transactions carried out before 31 December 2017, during which taxpayers may opt to continue to use the procedures under the previous regime.

Arbitration Court decision regarding waiver of VAT exemption applicable to private clinics and private practitioners

The Arbitration Court (CAAD) has delivered a judgment regarding the waiver of the VAT exemption under Article 12 (1) (b) of the VAT Code (which follows Article 391 of the EU Principal VAT Directive) for hospitals, clinics, dispensaries and similar establishments, other than legal public bodies, that supply medical and sanitary services and operations closely connected with them, not resulting from agreements signed with the Portuguese State (i.e. as part of the National Health System).

The case resulted from a VAT assessment made by the PTA on a private clinic that had waived the VAT exemption and, subsequently, deducted the VAT incurred under the respective activity. The PTA argued that, given the fact that the majority of the services performed by the private clinic were under the National Health System, this entity should have not been able to waive the VAT exemption.

Despite the PTA's argument, the CAAD decided that the private clinic situation was not comparable to the hospital and clinics that perform their activities under the National Health System and, therefore, dismissed the PTA's arguments.

Tax contribution regarding light plastic bags amended

The Government has published Decree no. 88/2017, of 28 February 2017, amending Decree no. 286-B/2014, 31 December 2014, which regulates the special tax contribution applied to plastic bags released for consumption.

According to the regime as previously approved, the movement of plastic bags between tax warehouses or between warehouses and places of export could not be made under a duty suspension arrangement. In this context, and further to the amendment as per Decree no. 88/2017, it is now possible to apply the duty suspension regime to the said movement of light plastic bags, provided certain conditions and requirements are met.

Decree no. 88/2017 entered into force on 1 March 2017, however, it applies with retroactive effect from January 2015.

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Russia

Ministry of Finance clarifies foreign e-service providers' VAT liabilities

Ministry of Finance Letter No. 03-07-08/4743 clarifies some issues relating to foreign e-service providers' liability to pay Russian VAT.

The Ministry underlines that Russia is recognized as the place of supply of foreign e-services if the consumer of such services carries out activities in Russia.

The Tax Code contains a list of criteria for being recognized as carrying out activities in Russia. If an individual (not being an individual entrepreneur) meets any of these criteria, he or she is accordingly considered to be carrying out activities in Russia:

- The consumer is a resident of Russia;
- The consumer uses a Russian bank account or a Russian e-money operator to pay for the services;
- The consumer's IP address used to purchase the services is registered in Russia;
- The phone number used for purchasing or paying for the services has the Russian international country code.

Therefore, if information regarding the customer's place of residence is unavailable, the phone number used does not contain an international country code, the bank and an IP address of such customer are based in a foreign state, Russia will not be recognized as the place where the customer carries out its activities, and the foreign e-service provider will not be obliged to pay VAT in Russia.

Draft Law on amending application of VAT to export operations

It is reported that Draft Law No. 113663-7 has been submitted to the State Duma of the Russian Federation for consideration, which will allow taxpayers supplying goods for export and rendering services/performing work in connection with the transportation of such goods not to apply the 0% VAT rate, based on an application submitted to the tax authorities. In particular:

- The application should be submitted to the tax authorities not later than the 1st date of the tax period starting from which the taxpayer intends not to apply the 0% VAT rate;

- Suspension of the application of the 0% VAT rate is possible only with respect to all operations performed by the taxpayer;

- It is not allowed to apply different VAT rates depending upon who the buyer of the supplied goods/work/services is;

- The application of the 0% VAT rate cannot be suspended for a period of less than one year.

Zero rating VAT on re-export of processed products

The Government is considering zero-rating VAT on re-exported processed products.

According to existing procedures, goods imported for processing purposes are subject to a full conditional exemption from VAT and import duties. Re-exported processed products returned to the foreign owner, for example under a tolling agreement, are non-VATable. The sale of processed products to an overseas buyer and re-exported is subject to the standard 18% VAT.

Under the changes being considered, the sale of goods transferred outside Russia under the re-export customs procedure will be subject to the 0% VAT rate (in line with the 0% VAT rate that applies to the sale of goods under the export control procedure).

These provisions would reduce the cost of exported processed products, thus boosting their competitiveness in foreign markets.

Prospects of initiative to reduce social contributions and increase standard VAT rate

The Ministry of Economic Development and the Ministry of Finance are discussing a reduction of social contributions, along with an increase in the standard VAT rate.

The proposal is to reduce the regular rate of insurance contributions from 30% to 22% with a simultaneous compensatory increase in the standard VAT rate from 18% to 22%.

Proposals to streamline alcohol excise duties

The Ministry of Finance has proposed streamlining alcohol excise duties as follows:

- To introduce, as of 1 July 2017, a single excise rate for all alcohol-containing products at RUB 523 per liter of ethanol contained in excisable product. This will eliminate the tax benefits for alcohol-containing perfumes, cosmetics and household chemistry in aerosol cans (which are currently excised at a zero rate);

- To cancel exemptions for perfumes and cosmetics in bottles under 100ml containing up to 80% alcohol (90% for spray bottles) and up to 90% alcohol in bottles under 3ml;

- Effective 1 July 2017, to raise the excise rates for:
    - Alcohol products containing up to 9% alcohol by volume (from RUB 418 to RUB 523 per one liter of ethanol);
    - Beer containing over 8.6% alcohol by volume (from RUB 39 to 47 per liter);
    - Ethanol sold by organizations that do not make advance payments of excise (from RUB 107 to RUB 523 per liter of ethanol);
- To introduce a mechanism of guaranteeing the payment of excise with a surety agreement for alcohol and alcohol-containing products to qualify for exemption from advance payment of excise and excise on exports.

Export of tanning semi-finished products prohibited

Resolution of the Russian Government of 18 January 2017 No. 20 establishes from 1 February to 1 August 2017 the prohibition of export from Russia of tanning semi-finished products classified under classification codes 4104 11 and 4104 19.

The Resolution came into effect on 27 January 2017.

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South Africa

Tax relief: First four teaspoons of sugar free

After a revision of the proposed tax on sugary beverages by the National Treasury, it is proposed that the rate on sugary beverages be lowered slightly from 2.29 cents per gram to 2.1 cents per gram, and the threshold will be adjusted so that the first four teaspoons of sugar is exempt.

The National Treasury has said: “That means a sugary tax will be levied from the fifth teaspoon for a 330ml can of soft drink. More precisely, 4g/100ml is not taxed”.

If passed by Parliament, a tax on sugar-sweetened beverages (SSBs), or a ‘sugar tax’, would come into effect on 1 April 2017.

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Sweden

Government decides not to proceed with new financial activity tax

A proposed financial tax was to include all companies that supply, or in some cases acquire, VAT exempt services under Chapter 3, Sections 9 and 10, of the VAT Act (Article 135.1 a-g of the EU Principal VAT Directive), provided the companies were liable to pay social security contributions.

The proposal was presented on 7 November 2016, and the law was proposed to enter into force on 1 January 2018.

On 24 February 2017, the Government announced that they will not proceed with the proposal. During a press conference on 25 February, the Minister of Finance, Magdalena Andersson, and the Minister of Financial Markets and Consumer Affairs, Per Bolund, stated that the proposal would, in its current form, have too far-reaching consequences. According to the Ministers, the scope of the proposed financial tax is too wide and the fact that, for example, mutual life insurance companies and smaller businesses within the fintech sector are in scope, made the proposal unsuitable to proceed with.

The Ministry of Finance announced that it will, however, review the possibility of imposing a taxation more focused on the banking industry, but highlighted that such a proposal must not violate the EU state aid regulations. Therefore, a new proposal will most likely not be presented prior to the 2018 general election.

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Ukraine

Clarification of requirements for movement certificate EUR.1

In its letter No. 5466/7/99-99-19-03-17 dated 3 March 2017, the State Fiscal Service of Ukraine specified the cases when the movement certificate EUR.1 (Certificate) may not be considered as a ground for applying tariff preferences under the Deep and Comprehensive Free Trade Area established by the Association Agreement between Ukraine and the EU.

If a Certificate is not made out in the prescribed manner, the customs authorities may reject it on the following formal grounds:

- The Certificate is made out in a form other than that prescribed by regulations.
- One of the mandatory boxes of the Certificate is not filled in.
- The Certificate is not stamped by the EU customs authorities in box 11.
- The countries specified in the Certificate in boxes 2 and 5 are not parties to the Association Agreement between Ukraine and the EU.
- The time-limit on the Certificate has expired, except when the goods were initially placed under the ‘customs warehouse’ customs procedure under the then valid Certificate.

If the Certificate is not accepted on formal grounds, it will be handed back to the importer so that the latter can obtain a new document issued retrospectively. The customs authorities keep a copy of the rejected Certificate.

In addition, the preferential treatment of the goods may not be granted at the time of importation if the customs authorities have reasonable doubts as to the authenticity of the Certificate and decide to verify the correctness of the information contained therein. The cases when verification is likely to take place are as follows:

- The stamp of the EU customs authorities appearing on the Certificate is not the same as the stamp sample provided to the Ukrainian customs authorities.

- The Certificate does not bear a signature and/or the date of issue in box 11, or contains corrections which are not certified by the stamp of EU customs authorities.

- The country of origin stated in the accompanying documents, on the goods labelling/packaging differs from that indicated in the Certificate.

- The first four digits of the commodity code specified in the Certificate or accompanying documents differ from those specified in the customs declaration.

- The date appearing in box 12 of the Certificate (country of origin of the goods) is later than the date of issue of the Certificate shown in box 11.

However, technical errors, such as printing errors (for example, overlapping) do not constitute a ground for denial of tariff preferences.

Anti-dumping duties on Russian fertilizers suspended

The anti-dumping duties on certain nitrogen fertilizers originating from the Russian Federation, which were to apply from 1 March 2017, have been suspended to 1 July 2017.

This decision was taken by the Intergovernmental Commission on International Trade on 13 February 2017, based on the national interests.

According to the new decision, from 1 July 2017, the anti-dumping duties will apply to imported nitrogen fertilizers classified in the Ukrainian Harmonized System (UHS) under commodity codes 3102 10 and 3102 80 00 00 (the goods) at the following rates:

- 18.78% – for goods produced by OJSC Novomoskovskaya Joint Stock Company Azot, OJSC Nevinnomyssky Azot;

- 4.19% – for goods produced by PJSC KuibyshevAzot;

- 31.84% – for goods of other producers.

However, if the nitrogen fertilizers in question are imported into Ukraine without a certificate of origin or if the country of their origin cannot be determined, such goods will also be subject to anti-dumping duty at the rate of 31.84%.

The anti-dumping duty will be collected irrespective of other duties and fees for period of five years.

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United Kingdom

Court of Justice of the European Union rules that VAT 'cultural exemption' is not directly effective

From January 1990, the Sixth VAT Directive stated that 'certain cultural services' should be exempt from VAT. The UK enacted this exemption, but only with effect from 1996. The Court of Justice of the European Union has now released its judgment in the case of *British Film Institute*, about whether taxpayers are entitled to rely on the wording of the Directive in relation to supplies made in this interim period. It has followed the Advocate-General's Opinion (rather than the decisions of the First-tier Tribunal and Upper Tribunal in the UK), and determined that 'certain cultural services' is not sufficiently clear and specific to have direct effect.

Office of Tax Simplification interim report on VAT simplification

The Office of Tax Simplification has published its interim report on VAT simplification: OTS VAT interim report. Much of this relates to the impact of the UK's relatively high VAT registration threshold, but there are a number of items of potential interest to larger companies. For example, the OTS will consider the treatment of incidental exempt supplies by otherwise fully taxable businesses, potential difficulties with ensuring that VAT overpayments are repaid to the right person (i.e. the customer who bore the economic burden of the VAT, and dispute resolution (in particular, alternative dispute resolution) and HMRC rulings.

Spring Budget 2017

The Chancellor delivered the Spring Budget 2017 on 8 March 2017, which included the below indirect tax measures. For Deloitte UK's commentary on the Spring Budget, see Spring Budget 2017.

UK VAT to be charged on bills for using mobile phones outside the EU

The Government has announced that it intends to remove the VAT 'use and enjoyment' provision for mobile phone services provided to UK consumers. Currently, when consumers use their mobile phones outside the EU, the operators do not have to account for UK VAT on charges incurred. The change will bring those services within the scope of UK VAT. According to the announcement, this will bring the UK's VAT rules in line with the internationally agreed approach. Secondary legislation to effect the change, together with a Tax Information and Impact Note, will be published before Parliament rises for the summer recess.

VAT registration and deregistration thresholds increased from 1 April 2017

As usual, the Budget included an announcement that the VAT registration and deregistration thresholds are to be increased. With effect from 1 April 2017, the VAT registration threshold will increase to GBP 85,000 (from GBP 83,000) and the deregistration threshold will go up to GBP 83,000 (from GBP 81,000).

Insurance Premium Tax – legislation for 1 June 2017 rate increase and anti-forestalling measures

The Government has published the draft clause increasing the standard rate of IPT to 12% with effect from 1 June 2017, together with the related explanatory note. It has also published draft legislation to change the anti-forestalling provisions in the Finance Act 1994, along with the related explanatory note. The new provisions will be contained in the Finance Bill but will be given immediate effect by a resolution under the Provisional Collection of Taxes Act. The anti-forestalling provisions apply from 8 March and mean that the increase cannot be avoided by paying premiums early or extending the period for which cover is provided.

Call for evidence on 'split payment' for on-line sales

As announced at Budget 2016, the Government is considering alternative methods of collecting VAT. This is in addition to the measures it has already introduced to tackle the problem of overseas businesses selling goods to UK consumers via online marketplaces without paying VAT. On 20 March 2017, the Government published a call for evidence on the case for a new VAT collection mechanism for online sales. This would harness technology to allow VAT to be extracted directly from transactions at the point of purchase. This type of model is often referred to as 'split payment', since the VAT element of the payment would be directed to the tax authorities and only the VAT-exclusive amount would be paid to the seller.

Consultation on measures to counter 'missing trader' fraud on construction labor

The Government is consulting on options to combat missing trader VAT fraud in the provision of labor in the construction sector, in particular, over applying the reverse charge mechanism so the recipient of the supplies accounts for VAT on them, rather than the supplier.

Duty rate increases

- The rates of vehicle excise duty for cars, vans and motorcycles registered before 1 April 2017 will be increased by RPI with effect from that date;

- Excise duty rates on beer, cider wine and spirits increased by RPI with effect from 13 March 2017;

- Tobacco duty rates on all tobacco products increased by RPI + 2% with effect from 6pm on 8 March 2017, and from 20 May 2017, a new minimum excise tax on cigarettes, GBP 268.63 per 1,000 cigarettes, will be introduced.

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Eurasian Economic Union

Preliminary information required for goods imported via air transport

Decision of the Board of the Eurasian Economic Commission of 1 December 2015 No.158 introduces a requirement to provide to the customs authorities preliminary information for goods imported via air transport.

Preliminary information must be provided to the customs authorities of a Member State of the Eurasian Economic Union, in the territory of which is situated the place of arrival of goods, at least two hours prior to import of the goods.

Preliminary information includes data on the air vehicle and the route of flight, data on goods the import of which into the customs territory of the Eurasian Economic Union is prohibited or limited, data on imported goods specified in transportation documents, and the sender and the receiver of goods.

If preliminary information is not provided, such imported goods are treated as being an area of risk, which means that customs authorities may initiate control measures with regard to such goods.

The Decision came into effect on 1 April 2017.

Extension of pilot project on marking of fur goods

According to the Protocol to the Agreement on the pilot project on the marking of fur goods with special signs, of 8 September 2015, the term of a pilot project on the marking of fur goods has been extended to 31 December 2018.

According to the Agreement, legal entities undertaking the turnover and/or use of fur goods, in particular, the import of fur goods into the Eurasian Economic Union for commercial purposes, should mark them with special electronic signs. Under the Russian legislation, where there is no marking on imported goods, a legal entity may be subject to an administrative fine.

The Protocol has been temporarily applied since 1 January 2017, and comes into effect after the finalization of interstate ratifying procedures.

Introduction of Technical Regulation on mineral fertilizers

Decision of the Council of the Eurasian Economic Commission of 30 November 2016 No. 150 introduces a Technical Regulation "On requirements for mineral fertilizers" TR EEU 39/2016.

The Regulation establishes, in particular, safety requirements and marking for mineral fertilizers imported into the Eurasian Economic Union.

The Regulation applies to mineral fertilizers specifically listed in the Decision and does not apply to organic and organic-mineral fertilizers.

The Decision came into effect on 30 March 2017.

Amendment of import customs duty rates for certain goods

Decision of the Board of the Eurasian Economic Commission of 31 January 2017 No.12 introduces a 0% import customs duty rate with regard to detergents for shoes classified under classification code 3402 90 100 2. 0% import customs duty rate applies from 1 March 2017 to 28 February 2019.

Decision of the Board of the Eurasian Economic Commission of 31 January 2017 No.13 establishes a 5% import customs duty with regard to certain types of paper and cardboard classified under classification code 4810.

Decision No. 12 came into effect on 4 March 2017 and Decision No.13 came into effect on 5 March 2017.

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