Deloitte.

Global Tax & Legal | Global Indirect Tax | November 2015

Perspective = everything

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

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

A highlight of this edition is the endorsement by the OECD Global Forum on VAT of the complete consolidated set of International VAT/GST Guidelines as a global standard for the indirect tax treatment of international trade. Other highlights include the publication by the European Commission of its 2016 work plan, an expansion of the scope of VAT zero-rating for services in China, and the introduction of a bill in New Zealand including proposals to apply GST on cross-border services and intangibles.

Related links:

Global Indirect Tax

GITN archive

Deloitte tax@hand

Contact us:

Deloitte Global & Regional Indirect Tax Contacts

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

David Raistrick
Deloitte Global
Indirect Tax Global Leader

Back to top

Country summaries

Global

OECD

On Friday 6 November 2015, the third OECD Global Forum on VAT endorsed the complete consolidated set of International VAT/GST Guidelines as a global standard for the indirect tax treatment of international trade.

Iran deal

Following the Iran deal, certain restrictions and prohibitions may be lifted at the end of 2015/ beginning of 2016.

Asia Pacific

China

The scope of VAT zero-rated services has been expanded.

India

Swachh Bharat Cess at the rate of 0.5% is effective from 15 November 2015.

The Joint Committee report on business processes for GST returns has been released.

The CENVAT Credit Rules have been amended to allow service providers to utilize credit of Education Cess and Secondary and Higher Education Cess against service tax liability.

From 1 January 2016, certain groups of persons will be required to file Customs documents under a digital signature.

Indonesia

There have been amendments to the regulation on Importer Identification Number.

New Zealand

A bill has been introduced including proposals to apply GST on cross-border intangibles and services.

Vietnam

Vietnam Customs is to implement an online monitoring unit.

Trade Preferences

Trans-Pacific Partnership

More countries intend to join the Trans-Pacific Partnership.

ASEAN

There are Philippines and Vietnam developments on the establishment of the ASEAN Single Window program.

Singapore-Turkey

The Turkey-Singapore Free Trade Agreement was signed on 14 November 2015.

Singapore-China

Singapore and China have recently agreed to launch negotiations to enhance the China-Singapore Free Trade Agreement.

Back to top

EMEA

European Union

The European Commission has published its 2016 work plan: “No time for business as usual”.

The CJEU has ruled that the ‘free use’ of an asset did not prevent VAT recovery on the cost of it.

Denmark

The tax authorities have issued a draft binding instruction regarding a special VAT scheme for canteens.

The tax authorities have issued a draft binding instruction on VAT reimbursement on the costs of site development.

The tax authorities have made an announcement regarding the VAT treatment of food donations to charities.

There is an update on the launch of the Union Customs Code.

France

There is an update on electronic VAT payments.

The Finance Bill 2016 includes measures on distance sales and VAT anti-fraud measures.

Italy

The last draft version of the Stability Law 2016 includes VAT rate changes.

Changes are expected to the reverse charge rules to combat VAT fraud.

There have been changes in the tax authorities' view regarding the force of attraction for VAT purposes.

Customs have provided guidelines for cases in which a security is provided by a cash deposit and regarding interest for late payment.

The interest rate has been set for the deferment of customs duty.

Customs has clarified the rules regarding voluntary regularization for the reduction of penalties.

The Customs Agency has issued a circular letter providing clarification of and guidelines about the relationship between transfer pricing and customs valuation.

Netherlands

The threshold for filing quarterly Intracommunity Sales Listings has been amended.

Poland

There has been a CJEU judgment on input VAT recovery.

There has been a Polish judgment concerning 'similar goods' for VAT purposes.

There has been a Polish judgment regarding 'fixed establishment' for VAT purposes.

Portugal

The CJEU case regarding the inclusion of municipal land use taxes in the VAT taxable amount has now been considered by the Portuguese Supreme Administrative Court.

Given political uncertainty, it is not possible to anticipate the date on which the 2016 Budget, including the tax measures, will be approved.

Sweden

The CJEU has ruled on the VAT treatment of exchanging Bitcoins.

United Kingdom

The tax authorities have made a further announcement regarding the recovery of VAT on pension fund costs.

The Finance (No. 2) Act 2015 introduced a new corporation tax rate of 45% for compound interest on tax refunds that might be awarded in High Court claims.

On 30 October 2015, the tax authorities issued a Brief on the VAT grouping rules and the *Skandia* judgment.

Back to top

Global

OECD

International VAT/GST Guidelines

We move closer to a brave new world of consistent international VAT and GST rules: on Friday 6 November 2015, the **third OECD Global Forum on VAT** endorsed the complete consolidated set of International VAT/GST Guidelines as a global standard for the indirect tax treatment of international trade. For further details, see the **Statement of Outcomes** from the meeting and the **International Guidelines**.

What does this mean?

The OECD has been developing International Guidelines to create a global standard for VAT/GST principles, particularly on cross-border transactions in services and intangibles. The objective of the Guidelines is to build the widest possible international consensus on the VAT/GST rules in both OECD and non-OECD countries, aiming to reduce double taxation and unintended non-taxation resulting from inconsistencies in the application of VAT/GST to international trade.

At the first OECD Global VAT Forum in November 2012 in Paris, tax authorities discussed draft VAT/GST Guidelines on neutrality and on B2B trade in services, and declared the Guidelines a firm basis for a global standard on the application of VAT/GST to cross-border trade in services and intangibles.

The second Global VAT Forum, which took place in Tokyo on 17-18 April 2014, endorsed the first three chapters of the Guidelines, including those on the neutrality principle and on the place of taxation for cross-border B2B supplies of services and intangibles.

The third Global Forum on VAT in Paris on 5-6 November 2015 was attended by 104 Government delegations; international organizations like the World Bank, IMF and the EU Commission; academia; and around 40 business representatives. The main agenda point for the Forum was the discussion on the complete consolidated set of Guidelines, which included new chapters on the place of taxation of cross-border B2C supplies of services and intangibles, and on mutual cooperation and dispute minimization. The agenda included also an overview of global VAT policy trends and developments, a discussion on emerging VAT policy issues and challenges, and a look into the economic impact of VAT rate structures and changes.

International Guidelines

The Paris Global Forum endorsed the consolidated International VAT/GST Guidelines as standards for the VAT treatment of international trade in services and intangibles, to serve as a reference point for designing and implementing legislation with a view to minimizing the potential for unintended non-taxation and double taxation. The Global Forum welcomed the active involvement of an increasing number of countries, as well as of the global business community, in shaping the outcomes of this work. The inclusion of the Guidelines in the Base Erosion and Profit Shifting (BEPS) package that was endorsed by the OECD Council and delivered to G20 Finance Ministers on 8 October 2015 was also welcomed by the Forum. The Forum called for the development of an OECD Recommendation in 2016 that will embody the complete set of Guidelines, as well as for further OECD work on the development of implementation packages to support the implementation of the Guidelines and to work on a list of other areas not yet covered by the Guidelines.

The Business and Industry Advisory Committee to the OECD (BIAC), represented at the Forum by a delegation of around 40 business representatives (including Deloitte), welcomed the endorsement of the Guidelines and called for their consistent implementation globally to remove VAT/GST obstacles to cross-border trade in services and intangibles. Deloitte is a member of BIAC and has been involved in the development of the Guidelines at the OECD VAT Technical Advisory Group (TAG).

What is the impact on business?

What is next, and what this means for business, is only just emerging. The greater clarity and consistency in VAT/GST rules that is emerging is to be welcomed. Ensuring the neutrality of VAT systems and reducing the double and non-taxation which distort competition are essential for businesses. The commitment to further work on the consistent implementation of the Guidelines and other areas of concern is encouraging and the Deloitte global network will continue providing input to this work, taking insight and views from businesses across the world to take into account their views and concerns.

Aili Nurk, anurk@deloitte.co.uk, Deloitte United Kingdom

Trade preferences

Iran deal

Following Iran deal, several restrictions and prohibitions to be lifted at end of 2015/ beginning of 2016

The Iran deal concerns the agreement that has been reached between Iran and the E3/EU+3 (China, France, the Russian Federation, the United Kingdom and the United States, supplemented with the High Representative of the European Union for Foreign Affairs and Security Policy), see **Customs Flash – Nr. 7 – 2015** for more details. The agreement concerns the gradual lifting of sanctions against Iran, which can be divided into four stages. The below elaborates on the first stage of the planned relief of EU sanctions.

Significant changes include the lifting of EU sanctions with respect to:

- The prohibition and authorization regime on money transfers from and to Iran;
- Sanctions on the import of oil, gas and petrochemical products from Iran;
- Sanctions on the export of key equipment for, and investment in, the oil, gas and petrochemical sectors of Iran.

The aforementioned sanctions provisions will be removed entirely following the legal framework that amends EU sanctions regulation 267/2012. Especially for the oil and gas industry, it will thus be possible to (re-)establish trade relations with Iran. Taking into account the restrictions related to ballistic missiles and arms, which are planned to be lifted in a later stage of EU sanctions relief, certain goods and technology products, including dual-use items, will be subjected to a prior authorization regime, rather than a prohibition regime.

In addition, certain persons and entities will be removed from the EU sanctions list with respect to frozen assets. This means that fewer Iranian persons and entities will be targeted by EU sanctions.

With respect to the prior authorization regime, some changes should be noted. In certain cases, the EU Member State where an authorization has been applied for has to submit the proposed authorization to the UN Security Council for approval on a case-by-case basis. Further, in some occasions, EU Member States shall not grant the authorization until approval of the Joint Commission, which consists of representatives of the E3/EU+3.

The legal framework providing the sanctions relief will enter into force in the second stage of the process of the Iran deal, provided that Iran keeps its nuclear-related commitments, to be verified by the International Atomic Energy Agency. Depending on this verification process, the entry into force of EU sanctions relief provisions, as expected by diplomats, will take place at the end of 2015, early 2016. The lifted EU sanctions could be reintroduced if Iran does not meet its nuclear-related commitments.

Klaas Winters, klwinters@deloitte.nl, Deloitte The Netherlands

Back to top

Asia Pacific

China

Scope of VAT zero-rated services expanded

On 30 October 2015, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Circular 118 (Caishui [2015] No. 118), expanding the scope of zero-rated services. This expansion in scope is intended to stimulate ‘exports’ of the services covered. However, detailed rules concerning the implementation of Circular 118 are yet to be issued.

The following services, if provided to overseas enterprises, will be eligible for 'zero-rating', effective from 1 December 2015:

- Production and distribution of radio, film and television programs (works);
- Technology transfer services, software services, circuit design and testing services, information system services, business process management services, and energy management contract services in relation to which the relevant contract object was located overseas; and
- Offshore outsourcing services including information technology outsourcing (ITO), business process outsourcing (BPO) and knowledge process outsourcing (KPO).

At present, only 'international transportation services' and 'R&D/design services provided to overseas enterprises' are eligible for zero-rating. Accordingly, at present, most of the services listed in Circular 118, are VAT exempt, not zero-rated.

The change from 'VAT exempt' to 'zero rate' benefits companies providing the relevant services because input VAT incurred in relation to such zero-rated services is recoverable, whereas input VAT incurred in relation to VAT exempt services is not.

The affected companies in the applicable service sectors, for example, in equipment, are advised to assess the savings impact on the business when setting up to provide the relevant services.

Sarah Chin, sachin@deloitte.com.hk, Deloitte Hong Kong

India

Swachh Bharat Cess at the rate of 0.5% effective from 15 November 2015

The Finance Act, 2015 had proposed to levy and collect a Cess to be called Swachh Bharat Cess, as service tax, on all or any of the taxable services at the rate of 2% on the value of such services for the purpose of financing and promoting Swachh Bharat (Clean India) initiatives. It was proposed that Swachh Bharat Cess would be in addition to any

Cess or service tax on taxable services. The Swachh Bharat Cess was to come into force from a date to be notified by the central government.

The central government notified 15 November 2015 as the date with effect from which the provisions of Swachh Bharat Cess come into force. The central government has notified the effective rate of Swachh Bharat Cess at 0.5% of the value of services. Further, the notification provides that Swachh Bharat Cess shall not be levied on services which are exempt from service tax by notification or otherwise not liable to service tax.

Thus, with effect from 15 November 2015, the effective rate of service tax is 14.5%.

Joint Committee report on business processes for GST returns

Subsequent to the release of the draft business processes relating to GST refunds, registration and payment processes (discussed in the October edition of this newsletter), the Ministry of Finance has made available the business process in relation to returns, to invite comments from the public. The comments/ feedback can be submitted through the **MyGov.in** portal.

The business processes are issued in the form of a report of a Joint Committee, constituted to make recommendations to the Empowered Committee of State Finance Ministers, for incorporating under proposed GST law.

Some of the major highlights of the report are as follows:

- Common e-return for CGST (Central GST), SGST (State GST), IGST (Integrated GST) and Additional Tax.
- Every registered dealer, including casual dealers, non-resident dealers, compounding dealers, etc., is required to file a return for a prescribed tax period, including registered persons with no business activity, i.e., nil turnover.
- Submission of return would only be through online mode. There will be an option for offline generation and preparation of returns, but the return would have to be uploaded subsequently.

- Details of the periodicity and components of various returns have been provided.
- A separate return for each registration will be required to be submitted.

CENVAT Credit Rules amended to allow service providers to utilize credit of Education Cess and Secondary and Higher Education Cess against service tax liability

Union Budget 2015-16 had proposed to subsume Education Cess (EC) and Secondary and Higher Education Cess (SHEC) in Central Excise Duty and service tax. As per the CENVAT Credit Rules, credit of EC and SHEC can be utilized only for the payment of EC and SHEC respectively.

CENVAT Credit Rules have been amended to allow utilization of EC and SHEC against service tax on any output service in the following instances:

- EC and SHEC paid on inputs or capital goods received in the premises of the provider of output services on or after 1 June 2015;
- The 50% balance of EC and SHEC paid on capital goods received in the premises of the provider of output services in the financial year 2014-15;
- EC and SHEC paid on input services where the invoice, bill etc. is received by the provider of output services on or after 1 June 2015.

Digital signature for filing customs documents

Importers registered under the Accredited Client Programme (ACP) are required to file Bills of Entry with a digital signature under Circular No 10/2015 – Customs, dated 31 March 2015, effective from 1 May 2015.

In order to increase coverage of digitally signed documents and the subsequent phasing out of the physical/ manual submission of documents, the Central Board of Excise and Customs (CBEC) have issued a Circular stating that the following persons are required to file Customs documents under digital signature with effect from 1 January 2016:

- Importers and exporters using the services of custom brokers for the purpose of filing custom documents;
- Shipping lines;
- Air lines.

However, importers or exporters, who wish to file a bill of entry or shipping bill individually are given an option of filing declarations/ documents without using a digital signature.

Prashant Deshpande, pradeshpande@deloitte.com, Deloitte India

Indonesia

Amendments to regulation on Importer Identification Number

The Ministry of Trade has issued a new regulation to amend previous regulation regarding the Importer Identification Number (API) with effect from 1 January 2016.

The key changes are as follows:

- General API (API-U) holders will be able to import any type of goods from multiple classifications, instead of only one group/ type of goods specified.
- Producer API (API-P) holders may trade/ transfer certain industrial goods, which are not used in the production process and are only used for the purpose of market testing and/ or used as complimentary goods, for the development of business and investment to other parties.

- It is no longer required for API-P holder to obtain approval as import producer for importation of certain industrial goods for the purpose of market testing and/ or used as complimentary goods.

- API is held by the Head Office and can be used by all its Branch Offices having similar business activities.

- The Director-General shall convey a Letter of Refusal (inclusive of the reasons for refusal) for improper/ incomplete API-P applications within five business days from receipt of application.

- All API holders must report on their import realization, whether or not realized, once every three months to the Director-General of Foreign Trade, Ministry of Trade or BKPM (depending on the issuing agency).

APIs issued based on the previous regulation are still valid, and shall be updated based upon the latest Regulations by 30 June 2016. In addition, stipulation as an Importer Producer remains valid until the expiry date. All implementing regulations related to the previous regulation shall remain in force as long as they do not conflict with the new regulation or no new implementing regulations have been issued based on the new regulation.

Turmanto, tturmanto@deloitte.com, Deloitte Indonesia

New Zealand

GST on cross-border intangibles and services

The **Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill** was introduced on 16 November 2015, see **here** for accompanying commentary. The bill includes proposals to apply GST on cross-border intangibles and services in order to bring New Zealand into line with other OECD nations. The amendments are intended to maintain New Zealand's broad based

GST system and to create a level playing field between domestic and offshore suppliers of services and intangibles.

The amendments broadly follow OECD guidelines which establish an international set of principles for determining when countries have the right to tax these supplies. New Zealand is the latest to follow other countries in implementing similar rules (for example, Australia, members of the European Union, Japan, Norway, South Africa, South Korea and Switzerland). The proposals largely follow those outlined in the discussion document released in August 2015.

The key points are as follows:

- The new rules will come into force on 1 October 2016. Offshore suppliers will be required to register and return GST if their supplies of services to New Zealand resident consumers exceed NZD 60,000 in a 12-month period;
- Services and intangibles supplied remotely by an offshore supplier to New Zealand-resident consumers will be treated as performed in New Zealand and therefore subject to GST;
- To ensure compliance costs are minimized, the new rules will only apply to B2C transactions and not to B2B transactions (but offshore sellers of services to businesses will be able to zero-rate these supplies so that offshore sellers can then recover any New Zealand GST);
- A broad definition of ‘remote’ services is proposed. This includes both digital services (such as video, music and software downloads) and more traditional services (such as legal and accounting services received remotely);
- The offshore sellers will be required to pay GST on a quarterly basis and the first return will be a transitional return covering the period of 6 months from 1 October 2016 to 31 March 2017; and

- In some situations, an operator of an electronic marketplace (such as an app store) may be required to register instead of the principal offshore supplier.

Jeanne Du Buisson, jedubuisson@deloitte.co.nz, Deloitte New Zealand

Vietnam

Vietnam Customs to implement online monitoring unit

The Anti-Smuggling and Investigation Department under Vietnam's General Department of Customs has announced in October the establishment of the Online Custom Supervision Department (OCSD).

Under this initiative, all monitoring equipment i.e., border camera surveillance systems, cargo scanners, electronic weighing systems, etc. will be integrated by OCSD, which will provide the General Department of Customs information, data and online images.

Heightened security checks and customs compliance for imports and exports into/ out of Vietnam can be expected upon commencement of the online monitoring systems.

Tuan Bui, tbui@deloitte.com, Deloitte Vietnam

Trade Preferences

Trans-Pacific Partnership

More countries intend to join Trans-Pacific Partnership

The Trans-Pacific Partnership (TPP) was concluded on 5 October 2015 with 12 members: Australia, Brunei, Canada, Chile, Japan, New Zealand, Singapore, Malaysia, Mexico, Peru, the United States and Vietnam.

The TPP is intended to be an open platform and a ‘living agreement’ in which other countries that are able to and are willing to meet the TPP commitments, could request to sign and accede to. A number of interested countries in the Asia Pacific region include the Philippines, South Korea, Taiwan, and Thailand. More recently, Indonesia has also indicated its interest in joining the TPP.

To become part of the TPP, the interested countries will require endorsement from the 12 current member countries. However, inclusion into the TPP will most likely take time as the TPP agreement will have to be ratified first by member countries’ state legislations.

Bob Fletcher, **bobfletcher@deloitte.com**, **Deloitte Singapore**

ASEAN

Philippines and Vietnam developments on ASEAN Single Window program

In anticipation of the ASEAN Economic Community 2015, the Philippines and Vietnam have stepped up efforts to operationalize their National Single Windows for the establishment of the ASEAN Single Window (ASW).

The Philippines has begun the pilot testing of the implementation of the electronic application and issuance of preferential and non-preferential Certificate of Origin (e-CO) to support the formulation of policies and procedures for the electronic exchange of data. The three month pilot implementation will allow the Bureau of Customs to review its procedures for the online filing and issuance of ASEAN Trade in Goods Agreement (ATIGA) Form D.

Vietnam officially implemented its National Single Window on 8 September 2015, and became the fifth ASEAN Member State to join the ASEAN Single Window live operation, after the other four exchange-ready Member States, namely, Indonesia, Malaysia, Thailand and Singapore.

The ASW program aims to support the exchange of the ASEAN Trade in Goods Agreement (ATIGA) Form D and ASEAN Customs Declaration Document (ACDD), and will be expanded to exchange other types of data.

Bob Fletcher, **bobfletcher@deloitte.com**, **Deloitte Singapore**

Singapore

Singapore and Turkey sign Free Trade Agreement

The Turkey-Singapore Free Trade Agreement (TRSFTA) was signed on 14 November 2015.

Upon ratification, Turkey will eliminate 95% of its tariff lines within 10 years (including over 80% subject to immediate elimination). Companies in the electronics, pharmaceuticals, chemicals and processed food industries will benefit from the removal of Turkey's tariffs under the FTA's Rules of Origin that take into account Singapore's unique regional supply chain and local production processes.

Both countries can serve as regional gateways to larger markets for each other's companies.

The TRSFTA is expected to be ratified by 2017.

Bob Fletcher, **bobfletcher@deloitte.com**, **Deloitte Singapore**

Singapore-China

Singapore and China launch upgrade negotiations for China-Singapore Free Trade Agreement

Singapore and China have recently agreed to launch negotiations to enhance the China-Singapore Free Trade Agreement (CSFTA).

The upgraded CSFTA will provide Singapore businesses with enhanced trade facilitation and greater investment protection in China, as well as address investment barriers. Both countries will also explore greater cooperation in areas such as legal services and financial services. In addition, to keep abreast of global developments, the CSFTA will also be enhanced with new generation elements such as e-commerce and the environment.

The negotiations on the upgraded CSFTA are planned to be concluded in 2016. Under the present CSFTA, Singapore has already eliminated tariffs on all its imported goods from China, while China removed 97.1% of its duties on Singaporean exports. It is expected that Singapore's services sector will obtain major gains from the new agreement.

China is Singapore's largest trading partner, while Singapore has been China's largest foreign investor since 2013. Singapore also became China's largest overseas direct investment destination in ASEAN in 2014.

Bob Fletcher, **bobfletcher@deloitte.com**, **Deloitte Singapore**

Back to top

EMEA

European Union

European Commission 2016 work plan

The European Commission has published its 2016 work plan, under a "No time for business as usual" strapline. The plan includes an action plan on VAT which "… aims at delivering efficient and fraud-proof VAT regimes and will include initiatives on VAT rates … a proposal on VAT for electronic commerce in the context of the Digital Single Market Strategy, and a Communication setting out the definitive VAT regime …".

The plan also indicates that the Commission's 2007 proposals for reform of the EU law on exemption for financial services and insurance will be withdrawn, along with its proposal to introduce an 'EU standard' VAT return.

‘Free use’ of asset does not prevent VAT recovery on the cost of it

The Court of Justice of the European Union has delivered its judgment in the Lithuanian case of *Sveda UAB* about the recovery of input VAT on the construction of a ‘Baltic mythology recreational (discovery) path’.

The work was heavily subsidized by the Lithuanian Ministry of Agriculture on the basis that it had to be made available for the public to use free of charge for a period of at least five years. Sveda met part of the cost of the path, and planned to sell souvenirs, catering and so forth to visitors attracted by it. The tax authorities took the view that the fact that the path had to be available free of charge meant that it was not used for the purposes of Sveda’s (taxable) business and disallowed the input VAT claim.

However, the CJEU decided that the fact that the path was “... directly intended for use by the public free of charge ...” did not prevent the recovery of input VAT on its construction, “... provided that a direct and immediate link is established between ... the input transactions and an output transaction or transactions giving rise to the right to deduct or with the taxable person’s economic activity as a whole ...”.

Donna Huggard, dohuggard@deloitte.co.uk, Deloitte United Kingdom

Denmark

Special VAT scheme for canteens

The tax authorities have issued a draft binding instruction regarding a special Danish scheme for canteens. Under this scheme, employers have to pay sales VAT on the value not paid by employees for food purchased in company canteens.

According to the tax authorities, the vires for the scheme is article 80 of the Principal VAT Directive. Whilst this is not beyond doubt, the draft binding instruction has now clarified some simplified methods for calculating VAT under the scheme.

VAT reimbursement on costs of site development

The tax authorities have issued a draft binding instruction that the deadline for requesting VAT reimbursement on the costs of site development for costs that were incurred before 1 January 2011, but where the property is not sold by the end of 2015, is the due date for the last VAT return of 2015.

The deadline for the last monthly VAT return of 2015 is 25 January 2016; and 1 March 2016 for the last 2015 quarterly and semi-annual VAT returns.

Food donations to charities by supermarkets and VAT

The tax authorities have announced that payment by a charity of a symbolic amount for food close to or past its expiry date (more or less valueless food) does not impact the company's VAT status. It is important that a symbolic amount is paid for the food and that it is not received for free from the supermarket.

Henrik Pedersen, henpedersen@deloitte.dk, Deloitte Denmark

Union Customs Code

The Danish customs authorities (SKAT) are preparing to launch the Union Customs Code (UCC) on 1 May 2016.

As for all of EU, there remain unresolved issues, for example, it will take time before the electronic systems are developed.

Some of the main changes from 1 May 2016 are:

- There will be a greater use of electronic systems for both economic operators and authorities;
- The use of special procedures and temporary storage will require mandatory guarantees;
- The ability to use earlier sales relating to customs valuation will be removed.

All changes, both the abovementioned and others, may affect both economic operators and the authorities, so it is very important to be well prepared. In some areas, there will be transitional agreements, but in others the changes take effect from 1 May 2016.

For example, it is important for an economic operator to have control over what will happen with their authorizations in the future.

To prepare economic operators for the upcoming changes in 2016, Deloitte Denmark is offering seminars to update clients on news and upcoming changes. The seminars will take place in mid-December; 14 December in Copenhagen and 15 December in Aarhus. For further information see: **Seminar om den nye EU-toldkodeks (UCC)**.

Winni Nielsen, winielsen@deloitte.dk, Deloitte Denmark

Johan Perulf, jperulf@deloitte.dk, Deloitte Denmark

France

Electronic VAT payments

From 28 October 2015, the bank account format authorized for making electronic VAT payments is the European format SEPA B to B. Businesses already registered at **impots.gouv.fr** to make VAT payments do not, in principle, need to take any particular action as the tax authorities have automatically updated the data held. However, it is recommended that businesses check the information held by the tax authorities as at 28 October 2015.

From 1 December 2016, it will be possible to use a foreign bank account provided it complies with the format SEPA B to B. Foreign businesses that have a bank account of this type will be required, as a result, to pay their VAT electronically from 1 December 2015, and to carry out the necessary procedures on the website.

Distance sales and VAT anti-fraud measures

The Finance Bill 2016 includes the below VAT measures. The Bill is currently going through the legislative process, and may still be amended.

Distance sales

A reduction in the distance sales threshold to EUR 35,000 (from EUR 100,000). The reduced threshold will mean that more businesses based outside France will be obliged to register for VAT in France and account for VAT on sales to customers there.

VAT anti-fraud measures

To combat a type of fraud consisting of the use of till software or systems that allow for the concealment of part of takings for VAT purposes, it is proposed that, from 1 January 2018, there will be a legal obligation to use a secure system or software. The obligation would take the form of the presentation of a certificate of approval from a third party authorized to carry out audits of 'certification of a high level of security' or the presentation of an individual certificate provided by the publisher of the software. In the event of a spot-check, non-compliant businesses would face a fine of EUR 5,000, and would be required to become compliant within 60 days.

Michel Guichard, mguichard@taj.fr, Deloitte France

Italy

Expected changes to VAT rates

According to the last draft version of the Stability Law 2016, the following VAT rate increases shall apply:

- The current 22% VAT rate shall increase to:
    - 24% from 1 January 2017; and
    - 25% from 1 January 2018;
- The reduced 10% VAT rate shall increase to 13% from 1 January 2017.

VAT rate	To 31 December 2016	From 1 January 2017 to 31 December 2017	From 1 January 2018
Standard	22%	24%	25%
Reduced	10%	13%	13%
Reduced	4%	4%	4%

Moreover, the draft of the Stability Law 2016 proposes to reduce the VAT rate from 22% to 4% (already applicable to e-books, starting from 1 January 2015, according to the Stability Law 2015) for newspapers, daily news bulletins, dispatches of news agencies and periodicals identified via ISBN or ISSN codes and spread through electronic means, from 1 January 2016.

Expected changes to reverse charge rules to combat VAT fraud

A new draft decree is currently under discussion by the Italian Government. In particular, Italy is intending to amend the current domestic rules on the reverse charge mechanism (article 17 of Presidential Decree n° 633/1972) to introduce specific measures to combat VAT fraud schemes, in particular in relation to situations that require a rapid reaction.

The most significant anti-fraud measures are as follows:

- **Application of the 'optional' reverse charge mechanism to further 'vulnerable' sectors** (in accordance with article 199a of the Principal VAT Directive): The reverse charge shall apply to supplies of tablet PCs, laptops, games consoles and integrated circuit devices;

- **Introduction of the 'quick reaction mechanism'** (in accordance with article 199b of the Principal VAT Directive): This accelerated procedure will enable Italy to apply a reverse charge to specific supplies of goods and services for a short period of time, by derogation from the provisions of the Principal VAT Directive. The European Commission must decide not to object to the application of the reverse charge. Accordingly, when Italy wishes to introduce a specific measure using the quick reaction mechanism, the Commission will have a short period in which to confirm whether it objects, taking into account the views of other Member States.

Recent changes in tax authorities' view regarding the force of attraction for VAT purposes

In an unpublished reply to a ruling petition, the tax authorities have returned to the debated issue of the force of attraction of an Italian fixed establishment of a foreign company in the case of taxable transactions performed in Italy.

In line with the guidelines recently released by the VAT Committee with Working Papers No 791 dated 15 January 2014 and No 857 dated 6 May 2015 (both related to Italian questions), the tax authorities clarified that the presence of a fixed establishment of the foreign supplier in Italy (where the taxable supplies take place) does not automatically lead to the conclusion that the supplier is liable for the payment of VAT. In order to be liable for the payment of VAT, **the fixed establishment must actually take part in an essential part of the services under discussion**. Where the resources of the fixed establishment are merely used for administrative support tasks only, the force of attraction does not apply, and the fixed establishment is not considered to be intervening.

The fixed establishment cannot be considered as intervening in a supply by default, but this intervention must be evaluated, based on a case-by-case analysis (in the light of the conditions set out in article 53 of the EU Council Regulation n° 282/2011 dated 15 March 2011).

This reply does not apply to those scenarios where goods are directly transported by or on behalf of the head office (having a permanent establishment in Italy) to Italian taxable persons, for which in some previous rulings (unpublished) the tax authorities determined the conditions upon which the sale can be treated as a direct intra-Community sale by the head office to the Italian purchaser.

Antonio Piciocchi, apiciocchi@sts.deloitte.it, Deloitte Italy

Customs guidelines for security by cash and interest due

In Circular Letter No 13/D of 14 October 2015, Customs have provided operative guidelines for cases in which a security is provided by a cash deposit and regarding interest due for late payments.

Interest rate set for deferment of customs duty

Customs can authorize operators to defer payment of customs duty for 30 days (90 days for import VAT), which implies that if the payment is carried out after the 31st day, interest is due.

In this respect, the Minister of Economy and Finance has issued a decree, published in the Italian Official Gazette No 239 of 14 October 2015, establishing the annual rate of 0.213% for the said interest for the period between 13 July 2015 and 12 January 2016.

Customs clarification of voluntary regularization for reduction of penalties

Based on Italian law, reductions are available for administrative penalties imposed for tax violations, upon certain conditions, if the taxpayer has voluntarily regularized the violation.

In this respect, Customs issued Note No 89853/RU, published on 20 October 2015, to clarify the scope of some of the reductions.

Transfer pricing and customs valuation

Further to the creation of a working group between the tax and customs administrations, on 6 November 2015 the Italian Customs Agency issued Circular Letter no. 16/D, providing clarification of and guidelines about the relationship between transfer pricing and customs valuation.

In particular, the Customs administration concluded that for the customs valuation purposes:

- The OECD traditional transaction methods for calculating intercompany transfer pricing (i.e., Comparable Uncontrolled Price, Resale Price Method, Cost Plus Method, Transactional Net Margin Method and Profit Split Method) can be accepted by

Customs with a different level of reliability (the reliability of each method depends upon its own characteristics), provided it has been previously demonstrated how much the adjustments and the amendments arising from the transfer pricing agreements actually relate to the imported goods;

- TNMM method requires a case-by-case analysis and the PSM method (adequately shifted in the comparison analysis with the current market prices of identical and similar goods) can be ‘rather well’ acceptable;
- In the case of expected transfer pricing adjustments, the incomplete declaration procedure laid down by article 76 of the Community Customs Code can be applied both for exports and imports, but with reference to the latter, also available is the procedure laid down by article 156a of the Implementing Community Customs Code to determine the customs value on the basis of appropriate and specific criteria, by agreeing in advance with the Customs authorities a forfeit value to be updated on a periodic basis;
- With respect to post-transaction transfer pricing adjustments, in light of case law from the Supreme Court, it is not possible to amend a customs declaration after the release of goods when there is not at the time of the importation a previous agreement in place reflecting the transfer pricing policies; a customs declaration can be amended (according to article 78 of the CCC) after the release of goods only on the basis of circumstances that were already known at the time of importation. There are arguments that could challenge this interpretation in the light of clarification by the Court of Justice of the European Union of the customs assessment review.

Given these developments, and that the Circular letter has been distributed by the Central Department of the Italian Customs to all local Customs offices, it is important not only to have prepared transfer pricing documentation but to also review it in the light of the customs implications arising from the content of the Circular letter.

Alessandra Di Salvo, adisalvo@sts.deloitte.it, Deloitte Italy

Netherlands

Threshold for filing quarterly Intracommunity Sales Listing amended

From 1 January 2016, the threshold for filing the Intracommunity Sales Listing on a quarterly basis will be amended.

The threshold will be reduced from EUR 100,000 to EUR 50,000 for intra-Community supplies of goods.

Where the quarterly turnover from intra-Community supplies of goods by a taxable person in the Netherlands exceeds EUR 50,000 per quarter, the taxable person must file a monthly Intracommunity Sales Listing as of 1 January 2016.

For intra-Community supplies of services, the legislation remains unchanged – intra-Community supplies of services can be reported on a quarterly basis in the Intracommunity Sales Listing regardless of the amount of turnover.

Madeleine Merkx, MMerkx@deloitte.nl, Deloitte Netherlands

Poland

CJEU judgment on input VAT recovery

On 22 October 2015, the Court of Justice of the European Union issued a ruling in the Polish case *PPUH Stehcemp sp.j.* (C-277/14), concerning input VAT recovery.

The authorities had questioned the right of PPUH Stehcemp sp.j. to recover input VAT resulting from invoices issued by an entity that did not exist, on the grounds that PPUH Stehcemp sp.j. did not verify its contractor with sufficient care. The company disagreed with this conclusion, arguing that the supplies took place, and that it received all of the statutory documents from its contractor, including confirmation of tax and VAT registration, an excerpt from the commercial register, etc. Furthermore, invoices issued by the contractor contained all of the requirements laid down by the law, including the VAT number of the supplier, and thus the company could not assume or know that the contractor did not exist. Bearing this in mind, the administrative court applied to the CJEU for a ruling as to whether, given the above facts, it may be assumed that PPUH Stehcemp sp.j. acted in good faith.

In its ruling, the CJEU concluded that should an invoice contain all of the required elements (in particular the VAT number of the supplier), and the purchaser received the documents confirming that the supplier complied with the registration obligations and the goods were indeed delivered, input VAT recovery cannot be restricted, even if on the grounds of local legislation, the supplier shall be considered as non-existent.

The judgment is another supporting argument in disputes by taxpayers acting in good faith whose right to recover input VAT on transactions with dishonest contractors is being questioned.

Polish SAC VAT judgment concerning 'similar goods'

On 26 October 2015, the Polish Supreme Administrative Court, in a seven judge panel, issued a judgment in respect of 'similar goods' (in this particular case in respect of juices and fruit beverages). The SAC, which initially considered asking the CJEU a preliminary question, finally decided, that, in this respect, a seven judge judgment (not even a resolution which would be binding for all administrative courts) would be sufficient.

In its judgment, the SAC decided that juices and fruit beverages are not 'similar goods', and therefore different VAT rates shall be applicable. In particular, the court stated that taxpayers cannot rely on the VAT Directive in this respect, as this gives Member States the right to selectively determine particular VAT rates listed in Annex III. Moreover, the SAC stated that the Directive may be directly invoked by taxpayers only when the national law is to be found inconsistent with European regulations.

Despite the fact that the judgment is unfavorable for taxpayers, due to the fact that the SAC have not issued a resolution in this respect, the judgment is not binding for other administrative court panels. Consequently, it may be that in other cases, the outcome of the court proceedings would be favorable for taxpayers.

Fixed establishment for VAT purposes

The SAC has issued one of the first judgments following the *Welmory* CJEU case, in which it has concluded that the fact that a foreign-based taxpayer does not have its own technical and personal resources does not exclude the existence of a fixed establishment where such resources are provided by a subcontractor. This is another judgment of the Polish administrative court confirming that the concept of fixed establishment is now considered from a broader perspective than was previously the case.

Michel Klosinski, mklosinski@deloittece.com, Deloitte Poland

Portugal

Municipal land use taxes passed on to consumer

In the case of *Lisboagás* (Case C-256/14), the Court of Justice of the European Union ruled that land use taxes should be included in the VAT taxable amount of the supply of services effected by the first company holding a gas distribution concession to the company responsible for selling it to the final consumers. Following this decision, the Portuguese Supreme Administrative Court has decided on the national case that was pending, directly applying the ruling from the CJEU.

The decision is in line with the applicable VAT rules in Portugal and may have an impact on other utilities companies whose business activity framework is similar, for example, paying land use municipal taxes and passing them to their customers, such as telecoms, energy companies and water distribution.

2016 Budget

Due to the political uncertainty regarding the recent elections and the new government, it is not possible to anticipate the date when the 2016 Budget will be approved, meaning that the usual tax measures contained in the annual Budget are at present unknown.

Afonso Arnaldo, **afarnaldo@deloitte.pt**, **Deloitte Portugal**

Sweden

CJEU rules on VAT treatment of exchanging Bitcoins

The Court of Justice of the European Union has followed the Opinion of Advocate General Julianne Kokott in the Swedish case of *David Hedqvist*, about the VAT treatment of exchanging Bitcoins into 'real' currency (Swedish Crowns in the case).

The Court has confirmed that the exchange of a pure form of payment (Bitcoin) for a legal means of payment (a currency which is legal tender) or vice versa is a supply of a service for consideration (the difference between the 'buying' and 'selling' rates) and that the supply is exempt from VAT, in the same way as other currency exchanges.

Emil Frennberg, efrennberg@deloitte.se, Deloitte Sweden

United Kingdom

Recovery of VAT on pension fund costs

As expected, the tax authorities (HMRC) have issued a further **Brief about the deduction of VAT on pension fund management costs**. The Brief follows HMRC Briefs 43(2014) and 8(2015) on the topic, which set out changes to HMRC's policy in response to the Court of Justice of the European Union judgment in the case of *PPG Holdings BV*. It confirms that the current 'transitional period' (during which employers and pension funds can continue to apply the 'old' rules for recovering VAT on pensions-related services, as set out in VAT Notice 700/17) will be extended to 31 December 2016.

It also acknowledges that there are corporation tax issues arising in connection with the use of 'tripartite contracts' as outlined in HMRC Brief 8(2015), and considers some alternative options aimed at enabling employers to recover the VAT incurred on pensions-related services. However, there are still open issues with each of these alternative options. HMRC have stated that further guidance will be published this year.

Increased corporation tax on payments of compound interest on tax refunds

The Finance (No. 2) Act 2015 introduced a new corporation tax rate of 45% for compound interest on tax refunds that might be awarded in High Court claims.

The new rate of tax applies to all payments of such compound interest made from 21 October 2015 and HMRC will withhold the tax element of any payments made. It seems probable that a similar provision will be introduced in relation to payments of compound interest to claimants who have appealed to the First-tier Tribunal, if those claims succeed.

HMRC's release on the topic suggests that one policy reason for the imposition of the higher rate of tax is to recognize the fact that higher rates of tax applied in the past, as well as "…to reduce losses from litigation if HMRC were to be unsuccessful …".

If the High Court compound interest litigation succeeds, this change could cost some taxpayers millions of pounds. This alone makes it likely that there will be litigation in the UK courts challenging the validity of this clause. As the CJEU has never been asked to consider a situation of this kind, it is hard to predict whether such challenges will succeed on EU law principles.

VAT grouping rules and the *Skandia* judgment

On 30 October 2015, HMRC issued a **Brief on the VAT grouping rules and the *Skandia* judgment**.

The Brief sets out the rules applicable to UK VAT-registered businesses who are members of a VAT group in the UK or another EU Member State, and have establishments (branches or head offices) in other Member States. The changes in the rules set out in the Brief are a consequence of the decision delivered by the Court of Justice of the European Union in *Skandia America Corporation* (Case C-7/13) and will be applied from 1 January 2016. As outlined in earlier guidance, the UK VAT treatment of charges between establishments of the same legal entity will depend upon whether the overseas establishment is a member of a VAT group in another Member State, and on how that Member State's VAT grouping provisions work. Broadly speaking:

- Services provided by an overseas VAT-grouped establishment to its UK establishment will normally be treated as supplies made in the UK, and subject to the reverse charge if taxable. This, however, will not apply where the other Member State has similar VAT grouping rules to the UK (likely to include Ireland and the Netherlands);

- Services provided by the UK establishment to the overseas VAT-grouped establishment will normally be treated as supplies made outside the UK. As above, however, this will not apply where the other Member State has similar VAT grouping rules to the UK;

- If the UK entity is in a UK VAT group, the same rules set out above apply to supplies between the overseas establishment and other UK VAT group members in the UK, subject to existing anti-avoidance provisions.

The Brief also states that HMRC's classification of which Member States operate similar VAT grouping rules as the UK is not definitive, and that it remains the taxpayer's responsibility to check with other tax authorities to agree how their VAT grouping regimes apply to their own individual position.

Donna Huggard, **dohuggard@deloitte.co.uk, Deloitte United Kingdom**

Back to top

Contacts

Deloitte Global & Regional Indirect Tax Contacts

David Raistrick, Global Indirect Tax Global leader
draistrick@deloitte.co.uk

Fernand Rutten, Global Customs & Global Trade leader
frutten@deloitte.com

Jon Graham, Asia Pacific Indirect Tax leader
JonGraham@deloitte.com.au

Rogier Vanhorick, EMEA Indirect Tax Leader
rvanhorick@deloitte.nl

Carlos Iannucci, Latin America Indirect Tax leader
ciannucci@deloitte.com

Dwayne Van Wieren, North America Indirect Tax leader
dvanwieren@deloitte.com