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Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Highlights of this edition include the release of the final package of measures outlining consensus Actions under the BEPS project, the conclusion of the negotiations for the Trans-Pacific Partnership Agreement and the release of a report in India on draft business processes for GST.

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

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There are amendments to the VAT penalties regime.

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Kazakhstan accession to the World Trade Organization.

There is a ban on the export of selected goods.

An order of the Ministry of Finance has approved a list of documents used to allow the deferral or instalment payment of customs duties.

Rules have been established for customs operations during customs declaration and issuing goods before customs declaration.

Rules have been approved for issuing permits to process products outside of Kazakhstan.

The list of imported goods on which VAT is paid according to the offset method has been amended and supplemented.

Portugal

Services provided through online banking are included under the scope of 'electronic services' for VAT purposes.

There has been a Supreme Administrative Court decision on the deduction of input VAT incurred on the purchase of goods and services for the construction of immovable property.

The tax authorities have confirmed their understanding of the VAT treatment of single-purpose vouchers.

New templates for invoices, etc have been approved for self-employed workers.

Russia

The tax policy guidelines for 2016-2018 have been published.

There is a new list of medical goods the import of which into Russia and the supply of which on Russian territory is exempt from VAT.

There may be amendments to the calculation of VAT on the receipt of insurance payments on business risk insurance agreements.

The Ministry of Finance has released letters relating to:

- VAT with respect to the transfer of goods based on damage complaint reports;
- VAT on advertising services rendered to a foreign organization with a bank account in the Russian Federation;
- The period for an export VAT claim;
- VAT recovery when selling uncompleted housing;
- VAT on customs clearance services;
- The procedure to reverse VAT claimed for recovery from prepaid amounts if the supplier fails to deliver the goods ordered;
- VAT on the transfer of rights to publish books and magazines from a foreign entity to a Russian organization under a license agreement;
- VAT agents' obligations when acquiring services from a foreign entity where the place of supply is Russia.

The Supreme Court has ruled on the application of VAT with respect to the transfer of immovable property as dividend payments.

The Supreme Court has ruled on the application of VAT with respect to passenger, cargo and baggage services in airports.

The Supreme Court has ruled on the application of VAT on the provision of passenger seats by codeshare agreements with foreign airlines.

The Supreme Court has ruled on the application of VAT on sales of additional functions in online games.

It has been reported that a new service is available on the official website of the Russian Federal Tax Service for checking the accuracy of VAT invoices.

A new VAT return form may come into force in January 2016.

A letter of the Russian Ministry of Finance has notified that the VAT calculated by a taxpayer due to the failure to confirm its right to the 0% rate on export goods may be deducted as other costs for tax purposes.

There has been a decrease in the rates of export customs duties in accordance with Russia's WTO obligations.

The list of countries subject to the food embargo and destruction of prohibited agricultural products has been expanded.

A letter of the Federal Tax Service has set out the procedure to file e-documents.

A letter of the Federal Tax Service has notified that the functionality of its website has been extended to allow the submission of tax and accounting reports certified by a digital signature to the tax authorities, with VAT declaration being the only exception.

The scope of the activities of the Federal Tax Service single contact center has been extended.

There is a new interactive service for information on trade duty payers in Moscow.

Serbia

Substantial changes were made to the Serbian VAT Law, most of which will apply from 15 October 2015. The main changes relate to the VAT registration of foreign entities and the application of the reverse charge to supplies of electricity and natural gas intended for further sale.

Ukraine

The special duties on imported passenger cars have been cancelled

There have been changes to the sanitary and phytosanitary controls for foodstuffs.

The alcohol beverages importation procedure has been simplified.

There have been changes in the procedure for customs value verification.

United Kingdom

The tax authorities have announced that the opening of the on-line registration system for the Alcohol Wholesalers Registration Scheme has been postponed.

The tax authorities have issued further guidance on the recovery of VAT on pension scheme costs.

Trade Preferences

European Union-Singapore

The European Union-Singapore Free Trade Agreement (EUSFTA) negotiations were concluded on 16 December 2012.

Turkey-Singapore

The negotiations for the Turkey-Singapore Free Trade Agreement (TRSFTA) were concluded on 6 October 2015.

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Eurasian Economic Union

Eurasian Economic Union

Kyrgyzstan joined the Eurasian Economic Union.

The classifiers used to complete customs declarations have been amended, due to Kyrgyzstan's accession to the Eurasian Economic Union.

Rules have been approved for the accounting treatment of interest payments when calculating the customs value of goods.

There has been a decrease in rates of import customs duties on several goods in accordance with Russia's WTO obligations.

Anti-dumping measures have been introduced in relation to steel tubes.

Tariff quotas have been established for specified agricultural goods.

The EEU Integrated Customs Tariff has been amended.

The Supreme Eurasian Economic Council has started talks with the Israeli Government to enter into a free trade zone treaty with the Eurasian Economic Union.

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BEPS Actions and indirect tax

On Thursday, 8 October 2015, the G20 finance ministers met in Lima to endorse the **final package of measures** outlining consensus Actions under the Base Erosion and Profit Shifting (BEPS) project, which was published by the OECD Secretariat ahead of the G20 meeting. Sixty-two countries, including a number of developing countries, have collaborated in the G20/ OECD-led BEPS project and they have agreed to continue working together at least until 2020.

The BEPS project is a project on international taxation, i.e., looking at international corporate tax aspects in areas such as the Model Tax Convention and Transfer Pricing Guidelines. Only one of the BEPS

Actions (Action 1: Addressing the Tax Challenges of the Digital Economy) specifically mentions VAT and includes new guidelines for determining the place of taxation for cross-border supplies of services and other intangibles (both B2B and B2C).

Whilst changes to core corporate income tax and transfer pricing principles are well-known and highly publicized, the broader impact of the BEPS changes on indirect taxation is less well defined and should not be over-looked in order to ensure that the effects are understood and compliance is maintained. In particular, changes to transfer pricing and permanent establishment rules may cause some businesses to re-evaluate their business strategy and supply chain models – which could naturally have significant VAT and customs duty implications.

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Asia Pacific

India

Joint committee reports on draft business processes for GST released

The Ministry of Finance has made available draft business processes relating to GST refunds, registration and payment processes, and has invited comments from the public. Comments/ feedback can be submitted through the **MyGov.in** portal.

The business processes are issued in the form of reports 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:

- Details of persons currently registered under indirect tax law being subsumed under the GST regime would migrate to the GST network
- Taxable persons would be required to obtain separate State-wise registration
- Anytime, anywhere payment options, paperless transactions, and electronic reconciliation of transactions are envisaged
- The option to procure duty free inputs for goods exported may not be available
- System-based verification of refunds ensuring minimal human intervention
- A Bank Realization Certificate (BRC) would be required prior to the sanctioning of refund claims for the export of services.

Forms for registration, payment challans (official receipt of payment) and refund claims have also been provided.

VAT exemption for transfer of property in goods involved in execution of works contracts within SEZ

Exemption has been granted under Rajasthan VAT law from tax on the transfer of property in goods involved in the execution of works contracts within the territory of a Special Economic Zone (SEZ) and awarded by units established in a SEZ or co-developers or developers of a SEZ.

Exemption is available until 31 March 2016. However, for SEZs established entirely in 'backward' areas specified by the State Government, exemption will be available until 23 August 2017.

CST exemption for in-transit sale of goods supplied for indivisible works contract disallowed

Exemption from Central Sales Tax (CST) is provided to the subsequent inter-State sale of goods if the sale is effected by the transfer of documents of title to the goods during the movement (in-transit) of the goods from one State to another.

In a recent case, the assessee had executed separate contracts for the supply of goods and the provision of services (installation and erection) in respect of single turnkey contract.

The assessee sold the goods, being used in the project, to the project owner while they were in-transit, and claimed exemption from CST. Subsequently, the said goods were handed over by the project owner to the assessee as free issue material for installation and erection.

The tax authorities alleged that even though the assessee had entered into two separate contracts, the same constituted a 'composite contract', i.e., an indivisible contract.

This conclusion was arrived at by reviewing the contracts, documents and nature of work, in particular, the:

- Cross fall breach clause in the contracts in various manifestations,
- Contractual clauses and description of the documents that showed that the assessee was executing one work,
- Assessee remained the owner of the goods until the termination of its movement,
- Property in goods was transferred to the project owner only at the time of accretion.

According to the tax authorities, as the title of the goods involved in the works contract was transferred after it was incorporated in the property, the transaction should be treated as an intra-State sale and should be subjected to VAT in the State where project was executed.

The High Court held that:

- Although the contracts were divisible as one relating to sale of goods and the other relating to services, in effect, there were interlacing obligations and therefore the contracts were indivisible in nature.
- Perusal of the various clauses of the contract made it clear that the parties to the contract intended that the title to the goods would be transferred only after erection and commissioning. Thus, the title to the goods was not transferred during the movement from one State to another and the benefit of exemption on in-transit sale was not available.
- Since there was an inter-State movement of goods, the transaction would qualify as an inter-State sale liable to CST. As the levy of CST vests with the State from where the movement commences, the State where the movement is terminated (i.e., the State where the project is executed) lacks jurisdiction to levy tax.

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Indonesia

Indonesia officially launches National Single Window

The Indonesia National Single Window (INSW) was officially launched on 30 September 2015 to serve as single, electronic platform that will standardize and integrate information related to the handling of customs documentation, import and export licensing, with new features and services to enhance trade facilitation.

The portal is expected to integrate trade-related data from all ministries and state institutions. Currently, the INSW has integrated export and import licensing authorities from 18 units across 15 ministries, and is in operation at 21 sea, air and land ports across Indonesia.

With greater transparency and accelerated licensing process, the customs clearance process should be faster, easier, and less costly for both government authorities and businesses such as importers, exporters, shipping companies.

The INSW portal will eventually be integrated with the ASEAN Single Window (ASW) which is scheduled for implementation in December 2015.

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Trade Preferences

Trans-Pacific Partnership Agreement

Trans-Pacific free trade agreement finalized

On 5 October 2015, negotiations for the Trans-Pacific Partnership (TPP) Agreement were successfully concluded.

The TPP Agreement is a regional trade agreement between 12 pacific rim countries: Australia, Brunei, Canada, Chile, Japan, Mexico, Malaysia, New Zealand, Peru, Singapore, Vietnam and the United States. TPP is the largest trade-liberalizing pact in a generation, covering almost 40% of the world's economy.

The TPP Agreement is anticipated to increase market access opportunities across the region where there are no regional agreements as TPP in place. It will also offer additional benefits above those already provided for in existing bilateral/ multilateral trade agreements in the region.

The specific text of TPP is yet to be released, but the scope of the provisions are well known; there is a good deal of information available from TPP participating countries.

When will the agreement enter into force?

It is unclear when the TPP Agreement might enter into force.

Broadly, the TPP Agreement will enter into force 60 days after all the signatories have notified completion of their domestic legal procedures. Each TPP country will now begin their domestic treaty-making processes.

Anticipated benefits

In relation to trade in goods under the TPP, the anticipated benefits include the following:

- Significantly improved market access for agricultural producers through the elimination or reduction of customs tariffs on agricultural exports to TPP countries, and improved preferential access through favorable changes to quotas for particular agricultural goods in some TPP countries.

- The elimination of all remaining tariffs on exports on non-agricultural products to TPP countries, including energy and resources products, pharmaceuticals, automotive parts and other manufactured goods.

- The facilitation of the production of goods via regional supply chains within the TPP region. Under the TPP Agreement, producers using inputs from any of the 12 TPP countries would be subject to lower tariff rates on those imports (reducing production costs), while the application of regional ‘rules of origin’ would enable producers to trade the finished goods under the TPP’s preferential trading arrangements. For example, Australian beef sent to Singapore and combined with beef from Canada and seasoning from Chile and processed

into a hamburger in Singapore could be exported from Singapore under preferential rates to TPP countries.

- For consumers and businesses – lower prices resulting from the elimination of remaining customs tariffs on imports from TPP countries.

The TPP also includes commitments which should lower the costs of trade in goods. These include:

- More transparent and efficient customs procedures, such as TPP countries being required to provide advance rulings for goods in relation to tariff classification, valuation, origin, and claiming preferential treatment.

- Regional rules of origin (effectively allowing inputs used in the production of goods from one TPP country to be treated as the same as inputs from any other TPP country when making goods), and a single set of documentary procedures for goods traded under the TPP (instead of having to apply the rules particular to existing bilateral trade agreements).

- Duty-free temporary admission of pallets and containers, resulting in cost and administrative savings for transport logistics services providers.

- Mechanisms to address non-tariff barriers impeding trade.

- Simplified rules and technical requirements for certain products, including wine (e.g., uniform labelling requirements for wine exported to TPP countries).

The TPP is expected to deliver important benefits for other forms of trade, including the supply of a wide range of services by service providers, and for investment activity among the TPP countries.

The TPP will also deal with a range of contemporary trade challenges in ways not previously done in existing free trade agreements, including in relation to intellectual property rules, compliance with internationally-recognized labor rights, environmental protection, non-discriminatory purchasing/ sales decisions by state-owned enterprises and government designated monopolies, etc.

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AANZFTA

Amendments to AANZFTA implemented on 1 October 2015

Member countries have agreed to amend the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) to improve its transparency and administrative efficiency. The amendments do not change the preferential access under the AANZFTA.

Effective from 1 October 2015, New Zealand and 9 of the 12 AANZFTA will implement the agreed changes. The remaining 2 parties, Cambodia and Indonesia, are expected to ratify the changes on 1 January 2016.

Key changes under the amendment of the AANZFTA are:

- Removal of FOB value requirement on Form AANZ where Regional Value Content (RVC) is not used as the origin criteria.
- Simplified presentation of the Product Specific Rules (PSR) to assist businesses in understanding and completing the Certificate of Origin (Form AANZ) correctly.
- Implementation HS 2012 in the Rules of Origin, eliminating the current requirement for businesses to operate in both HS 2007 and 2012.
- New Certificate of Origin form to reflect the changes under the amendment.

There will be a six month transition period for businesses to adapt to the changes. During this period, both the old and revised Operational Certification Procedures (OCP) and Certificate of Origin will be accepted. Upon conclusion of the transition period, countries will only issue and accept the new Form AANZ using the new OCP.

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Singapore-EU

Update on European Union-Singapore Free Trade Agreement

The European Union-Singapore Free Trade Agreement (EUSFTA) negotiations were concluded on 16 December 2012, including the finalization of the legal text, which has since been approved by the European Commission. Currently, the Agreement is awaiting an advisory opinion by the Court of Justice of the European Union (CJEU) on the separation of competences between Member States and the EU.

The initial expectation was for the EUSFTA to enter into force by the end of 2015. This is now expected to be delayed beyond 2016. Other similar cases have shown that it would take the CJEU 12 to 18 months to present its opinion. On that basis, the approval process with Member States and the European Parliament will be finalized.

The EUSFTA is the first FTA concluded between EU and an ASEAN country. It will improve Singaporean and European companies' access to each other's markets through commitments such as improved market access for services and government procurement, enhanced intellectual property protection and reduction of technical barriers to trade. The EUSFTA is expected to boost bilateral trade and investment relations between the EU and Singapore.

The completion of the EUSFTA also signals the EU's commitment to step up its engagement with Southeast Asia. It is also a stepping stone towards a future EU-ASEAN FTA.

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Singapore-Turkey

Singapore and Turkey conclude Free Trade Agreement

The negotiations for the Turkey-Singapore Free Trade Agreement (TRSFTA) were concluded on 6 October 2015. The TRSFTA is a comprehensive trade agreement that covers a wide range of areas, including trade in goods, trade in services, investment, government procurement, and newer areas such as intellectual property rights, e-commerce, competition and transparency.

Turkey will eliminate tariffs for Singapore's exports on more than 95% of all its tariff lines – 80% to be eliminated immediately when the agreement comes into force and the rest over a period of 10 years. Singapore exporters, including exporters of electronics, pharmaceuticals, chemicals and processed food products, will benefit from the removal of Turkey's tariffs. Singapore in turn will grant immediate duty-free access for all imports from Turkey upon the entry into force of the TRSFTA.

The TRSFTA will be Turkey's first comprehensive FTA in a single undertaking and is expected to enter into force as soon as possible after the signing of the Agreement.

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South Korea-India

Korea and India sign MRA for AEO

On 8 October 2015, Korea and India signed a Mutual Recognition Arrangement (MRA) for Authorized Economic Operator (AEO). The MRA formally outlines the circumstances and conditions in which AEO programmes are recognised and accepted between Korea and India.

With the Korea-India MRA signed and effective, an AEO validated and authorized by the Korean Customs Authority will be granted the same benefits as an AEO authorized in India on a reciprocal basis.

The MRA is a key element to strengthen and maintain security of international supply chains and serves as a useful tool to avoid duplication of security and compliance controls. AEOs are expected to save customs clearance cost with faster clearance and fewer cargo inspection.

Currently, Korea has MRAs with 10 countries including China, USA, and Japan.

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EMEA

European Union

VAT Expert Group meeting

The European Commission VAT Expert Group (VEG) met on 7 September and has released the agenda and papers from that meeting. The VEG is formed of business and tax advisor representatives, and assists and advises the European Commission on VAT matters.

The VEG had set up subgroups to consider: the proof of evidence in intra-EU supplies, VAT grouping and the CJEU judgment in the *Skandia America Corp* case, and the CJEU judgment in the *Welmory sp. z o.o*. case. At its meeting on 7 September, the VEG considered the reports from these subgroups.

Of particular interest is the report on the *Skandia* case, concerning the VAT treatment of supplies between a head office and its Swedish branch. The main points of the report are that VAT grouping is widely used across different industries, is important to the EU economy, and should be protected; *Skandia* should be applied in a limited way and only in the context of the case; and *Skandia* was in essence an anti-abuse case which arose because Sweden has no anti-avoidance provisions in place relating to VAT groups. The conclusion, therefore,

was that the case should not be applied widely, but that (ideally harmonized) anti-avoidance rules should be introduced by all Member States that have implemented VAT grouping (and perhaps even made compulsory). Following the discussion, the VEG adopted the report. The VEG sent the analysis to the VAT Committee for consideration, and was invited to present the findings and answer questions.

EU consultation on simplification of cross-border e-commerce

The European Commission has **launched a consultation** about ways to simplify the VAT payment regime for cross-border e-commerce transactions in the EU. **The Commission's survey** seeks views on the current VAT rules for business to consumer cross-border supplies of goods and services, the implementation of the 2015 changes to the VAT place of supply rules and the Mini One Stop Shop and the commitment by the Commission in 'A Digital Single Market Strategy for Europe'.

This consultation is also part of the ongoing assessment of the new rules for VAT payments on cross-border telecommunications, broadcasting and electronic services which came into force last January.

Responses to the consultation are sought by 18 December 2015.

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Denmark

New draft binding instruction on input VAT deductibility for holding companies

As anticipated in last month's edition of this newsletter, on the basis of cases C-108/14 (*Larentia + Minerva*) and C-109/14 (*Marenave Schiffahrt*), the Danish Tax Authorities have announced a new draft binding instruction, which changes the Danish practice.

Holding companies will now have a right to deduct VAT on costs incurred for the acquisition of shares in subsidiaries. It is expected that the new draft binding instruction will allow for increased input VAT deductibility for active holding companies (including on a retrospective basis).

It is expected that the draft will come into force within a month. The retrospectivity will apply from the period 1 April/ June 2005, which depends on whether the company's settlement is per month or quarter.

New binding instruction on VAT treatment of sales of long-term courses to foreign companies

Previous administrative practice indicated that sales of long-term courses to foreign companies, which are to be undertaken in Denmark, are subject to VAT.

The Danish Tax Authorities have now issued a binding instruction that sales of long-term courses to foreign companies, which are to be undertaken in Denmark, will no longer be subject to VAT. From 1 January 2016, the customers' place of residence will determine the VAT treatment, and not the place where the courses are undertaken. It is necessary for the suppliers of courses to evaluate and determine whether or not the course is long term.

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Finland

Right to deduct input VAT on due diligence costs related to acquisition of subsidiary

On 15 September 2015, the Supreme Administrative Court (SAC) gave two rulings (KHO:2015:134 and KHO:2015:135) which concerned the right of holding companies to deduct input VAT on due diligence expenditure related to the acquisition of a subsidiary.

According to the ruling KHO:2015:134, Company A had a right to deduct the input VAT on due diligence costs incurred due to the acquisition of shareholding in a subsidiary regardless of the fact that the Company A was a holding company, the only activity of which before the year 2012 (i.e., the year of acquisition) was the holding of shares. Company A had started providing technical services to its subsidiaries during the year 2012 and it also had IT personnel participating in rendering the services. According to the SAC ruling, due diligence expenditure connected with the acquisition of a subsidiary incurred by a holding company which carries out economic activities in the form of providing technical services to its subsidiaries has a direct and immediate link with that holding company's economic activity as a whole. Thus, Company A had a right to deduct the input VAT on the due diligence expenditure in full as overhead expenses.

In the ruling KHO:2015:135, a holding company was denied the right to deduct the input VAT on due diligence expenditure related to the acquisition of a subsidiary. According to the SAC ruling, Company A had started providing services to its subsidiaries only after the acquisition of the subsidiary, and thus, was not engaged in economic activities at the time the acquisition took place in the year 2011. Company A did not have personnel at the time of the acquisition of the subsidiary. Company A was not entitled to the input VAT deduction on the due diligence expenditure. The SAC also ruled that the fact that Company A started providing taxable services to its subsidiaries slightly after the acquisition of the subsidiary did not have an effect on the VAT treatment.

The rulings are in line with the CJEU's decisions in the joined cases C-108/14 and C-109/14 (*Larentia + Minerva* and *Marenave Schiffahrt*).

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Greece

Amendments to VAT rates for Greek islands

In a press release dated 28 September 2015, the Greek Ministry of Finance announced the commencement of the first phase of the abolition of the 4%, 9% and 16% special VAT rates that apply on Greek islands.

- As from 1 October 2015, the special VAT rates will be abolished on six islands (Mykonos, Naxos, Paros, Rhodes, Santorini and Skiathos) and replaced with the rates of 6%, 13% and 23% that apply on the mainland.

- As already regulated, the reduced VAT rates will be abolished on the remaining islands in two additional phases. The special VAT rates will be abolished for the second group as from 1 June 2016 and as from 1 January 2017 for the third group. Clarifications are to be provided through a Ministerial circular.

With respect to islands in the second and third groups, the existing special VAT rates that apply on certain Greek islands will continue to apply until the date of abolition.

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Italy

Expected changes to credit note rules

Based on the first draft of the so-called 'Legge di Stabilità 2016', the rules regarding the issuance of the credit notes will be amended. Apart from some specific changes that will apply to the case of insolvency proceedings, the amended rules regarding credit notes would state the following:

- For contracts for supplies of goods or services to be performed permanently or recurrently, on the grounds of a breach by one of the parties, the credit note cannot be issued for those supplies duly performed by both the parties;

- The customer, liable for the payment of VAT via the reverse charge in the case of domestic purchases of goods or services listed by the law and in the case of intra-Community acquisitions, can issue credit notes, upon condition that all the requirements for the issuance of credit notes are met.

New guidelines regarding VAT refund procedures and exoneration from submission of guarantees

In Circular Letter n° 35/E (dated 27 October 2015), the tax authorities have focused on the new VAT refund rules and the connected requirements for the bank guarantee exoneration.

The most significant topics are as follows:

- **Bank guarantee exoneration also applies for non-resident subjects**, provided certain requirements are met, including documentation (different procedures for EU and non-EU claimants are specifically clarified);

- **Application of the new rules regarding guarantees to VAT groups**;

- **Bank guarantee exoneration for pending VAT refunds**, in particular:

    - For FY2014 VAT credits requested for refund with the Annual VAT return without the endorsement of conformity, it is possible to submit an integrative VAT return (within the mandatory term), in order to include the endorsement of conformity and achieve exoneration from the submission of the guarantee;

- For pending refunds of VAT credits related to previous years, it is possible to submit a certification of the VAT return (granted by an authorized subject) and upon certain good standing requirements declared by the legal representative. The certification will be provided in a separate letter as the VAT returns have been already submitted and no integrative return is admitted;

- For FY2014 quarterly VAT claims, it is clarified that, when the submitted FY2014 Annual VAT return shows the endorsement of conformity together with the flag on the box attesting that the company meets all the mandatory conditions to achieve the exoneration from the submission of the guarantee, also the 2014 quarterly VAT refunds can be paid without the submission of the bank guarantee.

Omitting to account for purchase invoices does not affect right to deduct VAT

In decision n° 18924 (dated 24 September 2015), the Supreme Court – in accordance with Court of Justice of the European Union principles (reference *EMS-Bulgaria Transport*, Case C-284/11) – stated that omitting to account for purchase invoices does not affect the right to deduct the input VAT charged, as the omission is just a formal violation. This means that there is a right to deduct input VAT when the substantive requirements are satisfied, even if the taxable person has failed to comply with some of the formal requirements.

These conclusions are in line with the principles recently stated by the same Supreme Court (in decision n° 14767 dated 15 July 2015) as well as by the CJEU (refer to *Idexx*, Case C-590/13), where the right to deduct VAT was also recognized when there were formal violations related to intra-Community acquisitions (i.e., omitting to apply the reverse charge to the intra-Community acquisitions).

Customer's EU VAT number a mere formal requirement for intra-Community supplies

In decision n° 19368/2015 (dated 29 September 2015), the Supreme Court stated that the VAT rules regarding intra-Community supplies apply when the substantive requirements (qualifying an intra-Community transaction) are satisfied, even if the EU customer does not have a valid EU VAT number, which is just a formal requirement.

These conclusions are in line with CJEU principles (refer *Vogtländische Straßen- Tief und Rohrleitungsbau* (Case C-587/10) and *Mecsek-Gabona* (Case C-273/11)), according to which the VAT identification number provides a proof of the tax status of the subject and facilitates the tax audit of intra-Community transactions. However, it represents a formal requirement, which cannot preclude the application of the zero-rated VAT regime where the substantive conditions for an intra-Community supply are fully satisfied.

Amendments to VAT penalties regime

Legislative Decree n° 158 dated 24 September 2015 (published in the Official Gazette n° 233 dated 7 October 2015) has amended the VAT penalties regime.

Among the most significant changes related to VAT violations, which will come into force from 1 January 2017, are as follows:

- Late submission of the annual VAT return: If the annual VAT return is submitted late, within the deadline for the submission of the annual VAT return for the following year, administrative penalties will apply, ranging from 60% to 120% of the VAT due, with a minimum penalty of EUR 200 (administrative penalties ranging from 120% to 240% will still apply for failure to submit the annual VAT return). This is a new penalty.

- Inaccurate submission of the annual VAT return (meaning a return with 'untrue' values): Administrative penalties will range from 90% to 180% of the VAT due (in place of the current administrative penalties ranging from 100% to 200%).

- Violations related to VAT refund claims: For VAT refunds that do not meet the legal requirements, administrative penalties will be equal to 30% of the VAT unduly refunded (in place of the current administrative penalties ranging from 100% to 200%).

- Invoicing and accounting violations with respect to taxable transactions: Administrative penalties will range from 90% to 180% of the VAT due (in place of the current administrative penalties ranging from 100% to 200%).

- Invoicing and accounting violations with respect to transactions subject to the reverse charge: Penalties will range from 5% to 10% of the amounts not documented or accounted for. If the violation does not affect the taxable income calculation, penalties ranging from EUR 250 to EUR 2,000 will apply. This is a new penalty.

- Omitted reverse charge mechanism: Administrative penalties ranging from EUR 500 to EUR 20,000 (in place of the current administrative penalties ranging from 100% to 200% of the VAT).

- The customer omits to account for the reverse charge on transactions where the supplier has incorrectly accounted for VAT: The customer will be subject to administrative penalties ranging from EUR 250 to EUR 10,000 and the supplier will be jointly liable for the payment of these penalties. The customer will be able to recover the VAT. This is a new penalty.

- The supplier omits to account for VAT on transactions where the customer has incorrectly accounted for the reverse charge: The supplier will be subject to administrative penalties ranging from EUR 250 to EUR 10,000 and the customer will be jointly liable for the payment of these penalties. The customer will be able to recover the VAT. This is a new penalty.

- Incorrect application of the reverse charge by the customer for transactions that are VAT exempt, zero-rated or out of the scope of VAT: In case of assessment, it will be mandatory to cancel

the VAT credit and the VAT debt wrongly accounted for. The customer will be able to recover the input VAT that was not deducted, via the issuance of credit note. This is a new penalty.

- Violations related to the letter of intent: Where the supplier of a frequent exporter carries out transactions without VAT, before receiving the letter of intent and the relevant confirmation of its e-filing, administrative penalties will apply, ranging from EUR 250 to EUR 2,000 (in place of the current administrative penalties from 100% to 200% of the VAT not applied).

- Late submission of the guarantee under the VAT group procedure: In the case of delays of not more than 90 days from the deadline for the submission of the VAT return, administrative penalties will range from EUR 1,000 to EUR 4,000. For delays of more than 90 days, administrative penalties equal to 30% of the VAT not paid will apply. This is a new penalty.

- Late VAT payment: Administrative penalties will be equal to 2% of the VAT due for delays of not more than 15 days. Administrative penalties will be equal to 15% of the VAT due for delays of not more than 90 days.

- Undue VAT offsetting: Administrative penalties will range from 100% to 200% of the non-existent VAT credit that is unduly offset.

Further amendments with respect to criminal liabilities arising from VAT violations have been also amended by Legislative Decree n° 158. Among the most significant changes, which will come into force immediately, are that criminal liabilities will be recognized for omitted payments of VAT for a value exceeding EUR 250,000 (in place of the previous threshold of EUR 500,000).

AEO news

In line with the relevant EU legislation, Customs and the authority responsible in Italy for civil aviation (ENAC) agreed on 15 September 2015 to cooperate, in order to exchange information regarding holders, respectively, of:

- AEOS/ AEOF certifications (i.e., issued by customs) and
- The regulated agent (i.e. 'RA')/ known consignor (i.e., 'KC') certifications (i.e., issued by ENAC).

The agreement should optimize the activities of said authorities and allow:

- The holders of an AEOS/ AEOF certification to have fewer controls on some of their security requirements when they apply for an RA/ KC certification and, also;
- The holders of an RA/ KC certification to have fewer controls on some of their security requirements when they apply for an AEOS/ AEOF certification.

News regarding 'abuse of right'

On 24 September 2015, Customs issued Note No 96267, to make operators aware of a new Italian provision explaining what an 'abuse of right' is for tax purposes, with particular application to customs issues.

In this respect, the note clarified that the below, also introduced by the said provision, do not apply to customs issues:

- A new ruling procedure available to confirm if a transaction is an 'abuse of right' and
- Some new litigation procedures relating to cases in which an abuse of right is assessed to the operator.

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Kazakhstan

Kazakhstan accession to the WTO

On 12 October 2015, the President signed Law № 356-V ЗРК ratifying a Protocol for Kazakhstan to accede to the 15 April 1994 Marrakesh Agreement establishing the World Trade Organization.

Kazakhstan will become the WTO's 162nd full member by the end of a month from ratification of the protocol.

Ban on the export of selected goods

Orders of the Acting Minister for Investment and Development № 867 and № 868 dated 24 August 2015 have introduced a ban, for four months, on the export from Kazakhstan of:

- Untreated precious metals, precious metal scrap and waste classified as EEU FEA CN codes 7108 11 000 0, 7108 12 000 9 and 7112 91 000 0;
- Ferrous metal waste and scrap classified as EEU FEA CN code 7204, except for steel alloy waste and scrap, including stainless steel (EEU FEA CN code 7204 21 100 0 and 7204 21 900 0) and others (EEU FEA Cn code 7204 29 000 0).

The Orders entered into force from their publication date, which was 29 August 2015.

Deferral or instalment payment of customs duties

Order of the Ministry of Finance № 398 dated 2 July 2015 approved a list of documents used to allow the deferral of customs duty payments or their payment in instalments.

Grounds for a customs duty deferral or payment in instalments	Confirming document
Damage as a result of a natural disaster, man-made catastrophe or other unforeseen circumstances	Written confirmation from regional authorities of emergencies
Delay in budget financing or payment for work performed (services and goods provided) within the framework of registered civil transactions	Written confirmation from the relevant national budget programme administrator of delays in financing from the national budget or payment for work performed (services or goods provided)
Import of perishable goods into the EEU	Normative legal acts covering public health, hygiene standards are approved by the public health authorities and are binding for all individual and legal entities in Kazakhstan[1].
Supplies of goods within the framework of international treaties	Copies of valid international treaties to which Kazakhstan is a party
Import into the EEU of goods included in a list of imported foreign aircraft and parts on which customs duties may be deferred or paid in instalments	Written confirmation of the civil aviation authorities on the use of imported foreign aircraft and parts, provided flights are served by Kazakhstan air companies
Import into the EEU by agricultural companies or supplies for them of planting material or seeds, crop protecting agents, agricultural machinery from EEU FEA CN subpositions 8424 81, 8433 51 and 8433 59, animal food, apart from cat, dog and domestic bird food	A document confirming the execution of agricultural activities by an organisation importing the goods in question or for which the goods in question are being supplied
Import of goods, including materials and supplied, technical machinery, components and spare parts, for their use in industrial processing	Foreign trade agreement (contract) on the supply of imported raw materials and supplied, technical machinery, components and spare parts to it, for their use in industrial processing Technical production flow diagram (production fragment) with imported goods used as raw materials, supplies, technical machinery, components and spare parts

1. Point 6 of article 144 of the Code *On Public Health and the Health System*

The Order entered into force on 10 September 2015.

Rules for customs operations during customs declaration and issuing goods before customs declaration

Ministry of Finance Order № 112 dated 23 February 2015 established the rules for customs operations during customs declaration and issuing goods before customs declaration.

The above rules establish the sequence of actions taken by declarants and officials during customs declaration and releasing goods before filing a customs declaration, and also the form for a commitment to file a customs declaration and provide required documentation.

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

The Order entered into force on 19 April 2015.

Rules for issuing permits to process products outside of Kazakhstan

Minister for Investment and Development Order № 419 dated 31 March 2015 approved rules for issuing permits to process products outside of Kazakhstan in accordance with the Law № 300-III *On Export Controls* dated 21 July 2007.

The rules establish the procedure for issuing permits, and also approve:

- The permit form;
- The application form for a permit;
- The information form.

The Order entered into force on 29 September 2015.

List of imported goods on which VAT is paid according to the offset method

National Economy Minister Order № 616 dated 24 August 2015 has amended and supplemented the list of imported goods on which VAT is paid according to the offset method (established by National Economy Minister Order № 93 dated 13 February 2015).

The amendments were made to ensure the list complies with the EEU FEA CN (established by EEC Council Resolution № 54 dated 16 July 2012).

The Order entered into force on 17 October 2015.

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Portugal

Services provided through online banking under scope of 'electronic services' for VAT purposes

Following the implementation of the rules for telecommunications, broadcasting and electronic services, the Portuguese Tax Authorities have concluded, in the context of a binding information request to a specific taxpayer, that operations performed by a financial entity through its online banking service may qualify as electronic services provided they are carried out without human intervention.

This conclusion of the Portuguese Tax Authorities is in line with the definitions of 'electronic services' included in the applicable VAT rules. On the other hand, it is possible that other services, such as access to online trading platforms, may also qualify as 'electronic services'.

These conclusions of the Portuguese Tax Authorities will impact on financial entities established in Portugal and in other EU Member States, where the customer is in Portugal, as such transactions would be deemed to be located for VAT purposes in Portugal.

Deduction of input VAT incurred regarding purchase of goods and services for construction of immovable property

According to the Supreme Administrative Court, the time limit for the right to deduct input VAT paid on the construction of units of an immovable property shall be counted from the waiving of the VAT exemption, when the sale or lease of the property occurs.

This means that the Portuguese Tax Authorities cannot refuse the deduction of input VAT paid and included on invoices issued more than four years (the regulatory statute of limitation rule) before obtaining the waiver certificate, as counting the time limit for the deduction only starts from when the certificate is obtained by the taxpayer.

This conclusion may impact on real estate entities, as previously it had been understood that the time limit for the deduction of input VAT should be counted from the date the invoice was issued.

VAT: loyalty schemes

The Portuguese Tax Authorities have again confirmed, in the context of a binding information to a specific taxpayer, their understanding that single-purpose vouchers are taxable on the date of the supply, as they should be regarded as advanced payments, and that multi-purpose vouchers are only taxable on redemption.

Invoices for self-employed workers

On 8 October 2015, Ordinance n.º 338/2015 was published, which approved the new templates for invoices, receipts and invoice-receipts, as well as the respective completion instructions for self-employed workers.

The Ordinance will come into force on 1 January 2016.

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Russia

Russian tax policy guidelines for 2016-2018

The official website of the Russian Ministry of Finance published on 28 July 2015 a set of General Guidelines for Russian tax policy for 2016-2018.

These guidelines will allow organizations to align their business strategies to the tax amendments anticipated in the next three years.

The Russian Government's refusal to increase the economy's tax burden will remain among its key priorities for the next three years. The Russian Government will not submit any draft laws to the State Duma stipulating a tax-burden increase, and no such bills will be supported when filed by other subjects with the power to initiate legislation. The moratorium on increasing the tax burden, which applies to the current year and each of the subsequent three years, aims to stabilize the tax system and bolster its attractiveness to investors. Additional tax incentives for investments have also been introduced, along with anti-crisis tax measures and further improvements to tax administration.

General Guidelines do not constitute a legislative act and are meant only to be used for informational purposes; they broadly cover the tax policy and its further development from the perspective of the Russian Ministry of Finance.

The key amendments with respect to indirect taxes stipulated by the General Guidelines are as follows.

VAT

- Extending the general fiscal benefits procedure to transactions taxed at 0% according to the registration order of the purchased goods (services) and obtaining invoices from suppliers;

- Granting the right to apply the application-based tax refund procedure to taxpayers submitting a parental surety in which the total tax amount (VAT, excise duties, corporate tax, MET) over the three years preceding the year in which the application is submitted – excluding tax amounts paid for goods relocated outside Russia and as a tax agent by the mother company – constitutes at least RUB 10 billion;

- Establishing a VAT base calculation procedure for prepayments received under contracts in foreign currency, but actually settled in rubles;

- Establishing the right of tax agents to deduct VAT amounts transferred as prepayments;

- Specifying the Tax Code norms related to the deductions on property rights;

- Exempting from taxation waste paper sale transactions;

- Settling the obligation to restore VAT for property transferred by a legal entity undergoing reorganization to a successor that is not a VAT payer;

- Specifying the VAT amount to be reclaimed by buyers in the event of a transfer of advance payment;

- Specifying the tax base calculation procedure when selling property rights to non-residential apartments, excluding garages and parking spaces;

- Establishing the taxpayer obligation to restore VAT accepted for deduction as advance payment if the shipment has not taken place within a certain period of time.

Excise duties

- Indexing excise rates in 2018 according to the consumer prices index;

- Cutting in half excise rates for wines and sparkling wines with a protected geographical indication and a protected place of origin compared to the rates of similar wines bearing no characteristics indicated;

- Establishing excise duties for medium distillates (light oil obtained from primary and/ or secondary crude oil processing, gas condensate, associated gas, combustible shales and other raw hydrocarbons, excluding SRG, motor gasoline, diesel fuel, jet fuel, benzol, paraxylene, ortoxylene) simultaneously introducing the procedure for medium distillates used as marine fuels to be expensed excise-free by shipowners;

- Clarifying the procedure for the exemption from advance excise payment of alcohol and/ or alcohol-containing products in terms of tax controls applied to the failures of taxpayers to file bank guarantees with tax authorities to settle the excise duties;

- Establishing an excise calculation and payment procedure for bioethanol used in motor biofuel production according to which bioethanol sales are exempt from excise duties.

New list of medical goods import of which into Russia and supply on Russian territory is exempt from VAT

Russian Federation Government Resolution No. 1042 of 30 September 2015 established a new list of medical goods, import of which into Russia and supply on the Russian territory is exempt from VAT.

The list contains an indication of the code of the goods under the Russian classification of products (OKP) and classification code under the Common Commodity Nomenclature of foreign economic activity of the Eurasian Economic Union.

The Resolution will came into force on 13 October 2015.

Possible amendments concerning calculation of VAT on receipt of insurance payments on business risk insurance agreements

Draft federal law “On the Introduction of Amendments to Article 162 of the Second Part of the RF Tax Code” is being developed by the Ministry of Finance, which envisages the exclusion from the VAT base of insurance payments on insurance agreements on the non-fulfilment of contractual obligations by a counteragent of policyholder or creditor.

Russian Federation Constitutional Court Ruling No. 19-P of 1 July 2015 served as the basis for the development of this draft law. The Constitutional Court determined that insurance payments on business risk insurance agreements should not be included in the VAT base if the taxpayer accrued VAT on the sale of goods/ work/ service.

Application of VAT with respect to transfer of goods based on damage complaint reports

Letter of the Russian Ministry of Finance No. 03-07-09/40364 of 14 July 2015 reported that the transfer of goods from a purchaser to a seller for the correction of defects based on a damage complaint report is not considered the sale of the goods and is not subject to VAT. In this situation, a VAT invoice is not issued by the organization.

VAT on advertising services rendered to a foreign organization with a bank account in the Russian Federation

Letter of the Russian Ministry of Finance No. 03-07-08/40529 of 15 July 2015 reported that the Russian Federation is not recognized as the place of supply of advertising services rendered to a foreign organization, regardless of the registration of the foreign organization with the tax authorities in relation to the opening of a current account in a Russian bank. Therefore, the services are not subject to VAT.

Period for export VAT claim

Letter of the Russian Ministry of Finance No. 03-07-08/40745 of 15 July 2015 notified that the VAT related to export transactions and paid without documents confirming application of the 0% VAT rate may be claimed within the three year period stipulated by clause 2 article 173 of the Russian Tax Code.

VAT recovery when selling uncompleted housing

Letter of the Russian Ministry of Finance No. 03-07-11/46755 of 13 August 2015 reported that the sale of uncompleted housing is subject to VAT. Input VAT related to acquired goods/ work/ services used in construction of the housing are subject to recovery in accordance with the general rules stipulated by Articles 171 and 172 of the Russian Federation Tax Code. In relation to this, the taxpayer must submit updated VAT returns, and, if necessary, profit tax returns, to the tax authorities.

VAT applied to customs clearance services

Letter of the Russian Ministry of Finance No. 03-07-08/46977 of 14 August 2015 notified that customs clearance services rendered by customs representatives under an agreement not being a freight forwarding agreement are subject to 18% VAT. The authorities also notified that customs clearance services rendered under a freight forwarding agreement are taxed at the VAT rate of 0%.

Procedure to reverse VAT claimed for recovery from prepaid amount if supplier fails to deliver goods ordered

Letter of the Russian Ministry of Finance No. 03-07-11/47347 of 17 August 2015 notified that VAT claimed by the buyer for recovery on advance payment to a supplier after the failure of the latter to perform its obligations is to be reversed when writing off accounts receivable related to the respective advance payment.

VAT applied to transfer of rights to publish books and magazines from a foreign entity to a Russian organization under license agreement

Letter of the Russian Ministry of Finance No. 03-07-08/49539 of 27 August 2015 notified that a Russian company acquiring the right to publish books and magazines from a foreign entity under a license agreement is acknowledged a tax agent and must account for VAT according to the reverse charge mechanism and remit such VAT to the Russian tax authorities, regardless of the inclusion of the royalty amounts transferred to foreign right holders into the customs value of print media imported to Russia.

VAT agent obligations when acquiring services from a foreign entity where place of supply is Russia

Letter of the Russian Ministry of Finance No. 03-07-08/49471 of 27 August 2015 notified that a Russian organization acquiring services from a foreign company where the place of supply is Russia and there is no VAT exemption, is acknowledged as a tax agent and must account for VAT according to the reverse charge mechanism and remit such VAT to the Russian tax authorities, regardless whether or not the services are subject to VAT in a foreign state.

Application of VAT with respect to transfer of immovable property as dividend payments

Ruling of the Russian Federation Supreme Court No. 302-KG15-6042 of 31 July 2015 on Case No. A58-341/2014 settled a dispute between OJSC Respublikanskaya Investitsionnaya Kompaniya and the tax authorities on the issue of the legal justification for charging VAT on the transfer of immovable property to a shareholder as dividend payments.

The Supreme Court supported the position of the taxpayer and refused to examine the case.

The court additionally stated that the transfer of immovable property as dividend payments does not constitute a taxable object for anything other than taxation of the shareholder's income, and thus is not an operation subject to VAT from the transferring party.

Application of VAT with respect to passenger, cargo and baggage services in airports

Ruling of the Russian Federation Supreme Court No. 308-KG15-7217 for the case No. A32-28290/2013 stated that passenger, cargo and baggage services in airports are not aircraft services and, therefore, do not fall under the VAT concession envisaged by Article 149 of the Russian Federation Tax Code. The Russian Federation Supreme Court supported the position of the tax authorities and refused to examine the case.

Application of VAT on provision of passenger seats by codeshare agreements with foreign airlines

Ruling of the Russian Federation Supreme Court No. 305-KG15-3206 of 30 July 2015 on Case No. A40-140893/2013 has ruled on a dispute between JSC Aeroflot-Rossiyskiye Avialinii and the tax authorities on the issue of VAT on providing passenger seats by codeshare agreements with foreign airlines.

The Supreme Court ruled in favor of the taxpayer and overturned the tax authorities' decision in accordance with which a zero rate of VAT could not be applied to the provision of passenger seats by codeshare agreements, as these services are not considered as transportation services, but as aircraft wet lease. (Courts of three instances ruled in favor of the tax authorities.)

Supreme Court resolution on VAT on sales of additional functions in online games

Resolution of the Russian Federation Supreme Court # 305-KG15-12154 of 30 September 2015 refused to transfer the application for the consideration of Mail.ru Games LLC (the company creator of online games). Thus, the Supreme Court supported the position of the tax authorities and of the courts that the company had to account and pay

VAT on the virtual sale of additional functions in online games in full and was not entitled to apply the VAT exemption with respect to additional functions in online games.

The courts concluded that the representation of the possibility of using additional gaming functionality in order to facilitate game process and more rapid development of the game character is essentially a contract for the provision of services and is subject to separate regulation in the analyzed license agreement as the users in this case do not acquire any software license.

New interactive service for checking accuracy of VAT invoices

It has been reported that a new service is available on the official website of the Russian Federal Tax Service – **Check the Accuracy of VAT-Invoices** – which allows interested parties to use personal tax reference numbers/ taxpayer registration codes and transaction completion dates to check whether a counteragent could have completed the transaction on that date and whether their identification data are correct.

The new service allows for the minimization of mistakes in information being submitted from purchase and sales ledgers and ledgers of invoices received and issued with regard to counteragent identification details filled-in.

This service is currently working in a test mode.

Possible amendments to VAT return form

The draft order “On the Introduction of Amendments to Federal Tax Service Order No. MMV-7-3/558@ of 29 October 2014 ‘On Approving the VAT Return Form, the Method for Filling it in and the Format for the e-Submission of the VAT return’” is being developed by the Russian Federal Tax Service. In particular, amendments to the effective legislation will be accounted for in the new form. It is planned that the new VAT return form will enter into force in January 2016.

Deductibility of export VAT for profit tax purposes

Letter of the Russian Ministry of Finance No. 03-03-06/1/42961 of 27 July 2015 notified that the VAT calculated by a taxpayer due to the failure to confirm its right to the 0% rate on export goods may be deducted as other costs for tax purposes.

Decrease in rates of export customs duties in accordance with Russia's WTO obligations

The Russian Federation Government Resolution No. 786 of 4 August 2015 brings the rates of export customs duties in accordance with Russia's WTO obligations.

There is a double decrease in the rates of export customs duties on the majority of goods to which export customs duties are applied. In particular, export customs duty rates are decreased on several types of fish, several types of fuels and inorganic chemicals. The rates are also decreased with regard to several precious metals, iron and steel, etc.

The Resolution came into effect on 7 September 2015 and applies to 'relations' effective from 1 September 2015.

List of countries subject to food embargo and destruction of prohibited agricultural products expanded

Russian President Decree N 391 of 29 July 2015 and the Russian Federation Government Resolution No. 774 of 31 July 2015 introduced the destruction of prohibited agricultural goods from 6 August 2015.

In addition, the Russian Federation Government Resolution No. 842 of 13 August 2015 extended the list of countries from which import of agricultural goods is prohibited. Previously these were Australia, Canada, the European Union countries, Norway and the US. Albania, Iceland, the Principality of Liechtenstein, Montenegro and Ukraine have now been added to the list. The prohibition of imports from Ukraine is effective no later than 1 January 2016, subject to certain conditions.

Russian President Decree No. 391 came into effect on 29 July 2015. Resolution No. 774 came into effect on 6 August 2015. Resolution No. 842 came into effect on 14 August 2015.

Procedure to file e-documents upon request from tax authorities

Letter of the Russian Federal Tax Service No. ED-4-2/15669 of 7 September 2015 notified that taxpayers may only file e-documents to the tax authorities if the documents are based on the requirements approved by the Decree of the Federal Tax Service of 17 February 2011 No. MMB-7-2/168@. Along with this, if e-documents are not in line with the requirements approved by the Federal Tax Service, they have to be printed as hardcopies authenticated by the inspector and filed to tax authorities.

E-submission of tax and accounting reports

Letter of the Federal Tax Service No. PA-3-17/3169@ of 20 August 2015 notified that the functionality of the Federal Tax Service website has been extended with a special function “e-Submission of tax and accounting e-reports” allowing the submission of tax and accounting reports certified by a digital signature to the tax authorities, with VAT declaration being the only exception. VAT reports are to be submitted by telecommunications channels via an e-document flow operator.

Extension of Federal Tax Service single contact center’s scope of activities

It is reported that from September 2015, the free, federation-wide number of the Russian Federal Tax Service single contact center 8-800-222-22-22 (+7 (800) 222-22-22) became accessible to inhabitants of every region of the Russian Federation. Using this number, taxpayers may receive information on the most topical issues in tax administration and taxation: on deadlines for the payment of property taxes, procedures for state registration, the method for receiving social and property-related deductions, opportunities to use Federal Tax Service electronic services, tax inspectorate work schedules and others.

New interactive service for information on trade duty payers in Moscow

It is reported that detailed information on trade duty payers and a list of trade facilities that have not submitted notifications on registration as trade duty payers was placed on the official website of the Department of Economic Policy and Development of the City of Moscow at the end of September 2015.

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Serbia

VAT law amended from 15 October 2015

The Government of the Republic of Serbia has drafted a Proposal of the Law on Changes and Amendments to the Law on Value Added Tax, which was adopted by the National Assembly of the Republic of Serbia in a special session, held on 28 September 2015. Most of the changes applied as of 15 October 2015.

The main reasons provided for the changes and amendments to the Law on Value Added Tax are: further harmonization with EU regulations, creating a more favorable business environment, preventing possible abuse, and ensuring the improvement of the tax authorities' VAT audits.

The main changes are highlighted below:

Foreign entities to register for VAT via a tax representative

Foreign entities have been granted the right to register for VAT in Serbia for the first time, without first establishing a branch, which would constitute a separate VAT payer. If a foreign entity has a permanent establishment (i.e., a branch) in Serbia, the foreign entity will be a VAT payer for supplies not performed by its permanent establishment. The amendments state that a foreign entity making taxable supplies in Serbia is required to nominate a tax representative. A foreign entity does not have this obligation if it only performs the supply of e-services or the supply of bus passenger transport services that are partially

carried out in Serbia. A foreign entity may nominate only one tax representative, a physical person, including an entrepreneur, or a legal person, with a place of residence or seat in Serbia, which is a registered VAT payer for at least 12 months before the request is submitted.

A foreign entity's tax representative cannot be that foreign entity's permanent establishment in Serbia.

A tax representative performs all tasks related to the foreign entity's rights and obligations as a VAT payer, in the name and on the behalf of the foreign entity (the submission of the recordkeeping tax return, VAT calculation, issuing invoices, submission of tax returns, making VAT payments, etc.). Finally, a foreign entity's tax representative is jointly liable for all of the foreign entity's liabilities as a VAT payer, especially for VAT, fines and interest payments related to VAT liabilities.

However, if a foreign entity does not nominate a tax representative in Serbia, the reverse charge would apply, as was previously the case.

Supplies of electricity and natural gas intended for further sale now subject to reverse charge

The new rules stipulate that a VAT payer, who is the recipient of electricity and natural gas supplied via a transmission, transport and distribution network, should apply the reverse charge, if the goods in question are purchased for further sale, and if the supply of electricity and natural gas has been performed by another VAT payer.

Furthermore, a VAT exemption has also been prescribed for the import of goods delivered via a transmission, transport and distribution network, i.e., for electricity, natural gas and heating/ cooling energy, as a reverse charge would also apply in this case.

This change should lead to more simplified trading, since the transferor (or the Customs authority) will not be required to calculate and pay output VAT, while the recipient will be able to report both input and output VAT in the same tax period.

In that regard, the rules for supplies to end users, both legal and physical persons, remain unchanged, i.e., in the case of a supply of electricity and natural gas meant for final consumption, the obligation to account for VAT falls on the person making the supply.

The place of supply rules have also been changed, i.e., the place of supply will be the place where the recipient of electricity, natural gas and heating/ cooling energy delivered via a transmission, transport and distribution network is located, if these goods were acquired for further sale. Alternatively, the place of supply will remain the place where the water, electricity, natural gas and heating/ cooling energy is received, when the goods in question are purchased for final consumption. Additionally, it is prescribed and specified that taxation in relation to the place of the recipient applies not only to services involving the granting of access to natural gas and electricity transfer networks, but also to: services involving the granting of access to heating/ cooling networks; the transport and distribution via such networks; as well as to other services directly related to such services, including the granting of access to an organized electricity market.

Finally, the amendments specify that the supply of goods occurs on the day of the transfer of rights to electricity, natural gas and heating/ cooling energy, supplied via a transmission, transport and distribution network. On the other hand, when the supply of goods in question is made for the purposes of final consumption, it is considered that the supply occurred on the day the reading of the water, electricity, natural gas and heating/ cooling energy is taken for consumption calculation purposes, as was previously the case.

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Ukraine

Cancellation of special import duty on passenger cars

Ukraine has cancelled the special duties on imported passenger cars introduced in April 2013 for a period of three years. From 30 September 2015, no special import duties will apply to imported passenger cars irrespective of their country of origin and export.

This decision was taken by the Interdepartmental Commission on International Trade on 10 September 2015 in pursuance of the WTO's recommendations and rulings dated 20 July 2015. Previously, a number of countries raised the issue of the imposition of this safeguard measure on imports of certain passenger cars into Ukraine. In particular, Japan lodged a complaint with the WTO against Ukraine and requested that a panel consultation be held according to the rules and procedures governing the settlement of disputes.

Upon review of the case, the WTO's Dispute Settlement Body suggested that Ukraine should revoke this safeguard measure.

Changes to sanitary and phytosanitary controls for foodstuffs

Effective from 20 September 2015, foodstuffs importers or exporters are no longer required to obtain a sanitary-epidemiological certificate issued by the Sanitary-Epidemiologic Service of Ukraine (SESU) for the customs clearance of foodstuffs.

From that date, the State Veterinary and Phytosanitary Service of Ukraine (SVPSU) is the sole state authority responsible for veterinary and sanitary control at the border. In order to complete the state control procedures, an importer should submit the originals of international sanitary or veterinary certificates to the responsible official of the SVPSU. The accompanying documents bearing the authorization (stamp) of the SVPSU will serve as the evidence of the fact that the imported or exported foodstuffs have successfully passed all specific checks and are allowed for importation into or exportation from Ukraine.

Alcohol beverages importation procedure simplified

Effective from 20 September 2015, alcohol beverages (as foodstuffs) are not subject to mandatory certification under the national certification system of Ukraine, UkrSEPRO, due to changes in the Decree of the Cabinet of Ministers of Ukraine “On standardization and certification” (the Law).

Although alcohol beverages were not removed from the list of products subject to mandatory certification according to certain by-laws, on 28 September 2015 the Ministry of Economic Development and Trade of Ukraine (MEDTU) advised that imported alcoholic products are exempt from certification as of 20 September 2015, based on the provisions of the updated Law. It is expected the MEDTU will bring its regulations (by-laws) into conformity with the new rule in the near future.

Changes in procedure for customs value verification

On 16 September 2015, the Cabinet of Ministers of Ukraine (CMU) adopted Resolution No.724 “On application of benchmarks for the customs value of goods in the risk management system”, effective from 23 September 2015.

According to this resolution, the customs authorities may use benchmarks for customs values for customs clearance purposes. The benchmarks may be applied by the customs authorities to all goods imported for free circulation in Ukraine, excluding goods that are sold on commodity exchange, military and dual-use goods.

The European Business Association, the American Chamber of Commerce and the representatives of business criticized the Resolution, and demanded that the CMU suspend it because non-transparent, in their opinion, rules of benchmark application by the customs authorities may increase corruption and violate the WTO’s principle of not using indicative prices for determining customs values.

In view of the negative reaction from the business community, the State Fiscal Service of Ukraine (SFSU) expressed its position as regards this issue on its official website, according to which the introduced benchmarks should be used by the customs authorities only for identifying and assessing the risks of the incorrect determination of customs values based on a detailed analysis of the terms and conditions of a foreign trade transaction.

According to the SFSU's position, the customs value benchmarks are intended to be used only for comparison purposes, and should not be used as a substitute for the customs value declared by the importer.

Furthermore, the Ministry of Finance of Ukraine (MFU) advised that it will examine the effect of introduction of benchmarks, and conclude on the necessity of adjusting the mechanism of their application in the risk management system.

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Registration of alcohol wholesalers postponed

The tax authorities (HMRC) have announced that the opening of the on-line registration system for the Alcohol Wholesalers Registration Scheme has been postponed.

According to the announcement, "…pre-launch testing has revealed some technical issues that need to be fixed before the service is launched."

HMRC now plan to open the registration system fully from 1 January 2016 (albeit some wholesalers will be invited to use it before then) and alcohol wholesalers will then have to register by 31 March 2016.

New businesses that wholesale alcohol will be obliged to register at least 45 days before trading commences. From 1 April 2017 all businesses who trade in, or retail, alcohol will need to make sure that any UK wholesalers that they buy from are registered with HMRC.

Recovery of VAT on pension scheme costs

As expected, 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.

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Trade Preferences

EU-Singapore

Update on European Union-Singapore Free Trade Agreement

The European Union-Singapore Free Trade Agreement (EUSFTA) negotiations were concluded on 16 December 2012, including the finalization of the legal text, which has since been approved by the European Commission. Currently, the Agreement is awaiting an advisory opinion by the Court of Justice of the European Union (CJEU)

on the separation of competences between Member States and the EU. See **Singapore-EU** for details.

Turkey-Singapore

Singapore and Turkey conclude Free Trade Agreement

The negotiations for the Turkey-Singapore Free Trade Agreement (TRSFTA) were concluded on 6 October 2015. See **Singapore-Turkey** for details.

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Eurasian Economic Union

Eurasian Economic Union

Kyrgyzstan joins the Eurasian Economic Union

On 12 August 2015, Kyrgyzstan joined the Eurasian Economic Union, according to the Agreement of 23 December 2014. The other Eurasian Economic Union members are: Armenia, Belarus, Kazakhstan and Russia.

The Decision of the Board of the Eurasian Economic Commission No. 68 of 30 June 2015 establishes a transition period from 2015 to 2020, when special rates of import customs duty are applied on the import of certain types of goods to Kyrgyzstan. In particular, zero or decreased import customs duty rates are applied to certain products of animal origin, pharmaceutical products, certain types of agricultural machinery and vehicles, etc.

The Agreement and the Decision came into effect on 12 August 2015.

Classifiers used to complete customs declarations

Due to Kyrgyzstan's accession to the Eurasian Economic Union, EEC Board Resolution № 91 dated 18 August 2015 has introduced amendments to the following classifiers used to complete customs declarations:

- For customs payments (Appendix 7)
- Taxes, charges and other payments collected by the customs authorities (Appendix 9).

The Resolution entered into force on 19 September 2015.

Customs value of imported goods

EEC Board Resolution № 118 dated 22 September 2015 has approved rules for the accounting treatment of interest payments when calculating the customs value of goods (the Rules).

The term 'interest payments' means customers' interest payments made within the framework of financial relationships to purchase imported (estimable) goods.

The Rules are applied to determine the customs value of goods when using the transaction with imported goods method (method 1), and when other methods are used to determine customs value (methods 2 – 6).

If financing (within the framework of a financing agreement or foreign economic agreement) is provided by a seller (including in the form of payment deferrals or instalments) or banks, loan organisations, other legal entities or individuals, interest is not included in the customs value of imported goods, provided the conditions established by the Rules are met.

Interest payments are not included in the customs value of imported goods if the following conditions are met simultaneously:

1) Interest payments are referred to separately from the price actually paid or due for imported (estimable) goods (for example, in a separate invoice line);

2) Financial relations are drawn up in writing or electronically in a separate financial agreement or section of a foreign trade agreement;

3) Imported (estimable) goods are sold at the price declared as the price actually paid or due, i.e., the seller does not include interest in the price, and even if financial relations did not exist with the purchaser the goods would have been sold at the same price;

4) The interest rate in a financing agreement or foreign trade agreement does not exceed that deemed typical for similar financing relationships in the same country and for the relevant period in which the financing agreement or foreign trade agreement were concluded.

If a seller allowing a customer to defer payment for goods does not highlight interest in the price actually paid or due, and fixes prices for goods in a foreign economic agreement based on payment deadlines, this type of financing will impact the customs value of goods. In this case, the price actually paid by the customer is used to determine the customs value of imported (estimable) goods.

Furthermore, the Rules provide examples of cases when interest should be included in the customs value of imported goods and should not be included.

The Resolution entered into force on 23 October 2015.

Decrease in rates of import customs duties on several goods in accordance with Russia's WTO obligations

A number of decisions of the Eurasian Economic Commission (Decision of the Board of the Eurasian Economic Commission No. 85 of 2 June 2015, Decision of the Board of the Eurasian Economic Commission No. 72 of 8 July 2015, Decision of the Council of the Eurasian Economic Commission No. 44 of 15 July 2015) introduce a decrease in the rates of import customs duties on nearly 4,000 classification codes in accordance with Russia's WTO obligations.

In particular, the import customs duty rates were decreased on furniture, tableware, household appliances, textile fabric, paper, spare parts for aircraft and shipbuilding, precious metals and seafood.

The majority of rates established by the said Decisions came into effect on 1 September 2015. The remaining rates will be effective from 31 December 2015 and 1 January 2016.

Anti-dumping measures in relation to steel tubes

EEC Board Resolution № 101 dated 18 August 2015 has introduced anti-dumping duties with respect to imported seamless steel tubes used for drilling and exploitation of oil and gas wells and originating from the People's Republic of China.

The anti-dumping measures will be in place for five years, from 23 September 2015 to 23 September 2020.

EEU FEA CN Code	Manufacturer	Anti-dumping duty (% of customs value)
7304 22 000 1	Tianjin Pipe Manufacturing Co., Ltd.	31%
7304 22 000 2 7304 22 000 9	Hengyang Valin Steel Tube Co., Ltd.; Hengyang Valin MPM Co., Ltd.	25.21%
7304 23 000 1	Hunting Energy (Wuxi) Co. Ltd.	12.23%
7304 23 000 2 7304 23 000 9 7304 24 000 1 7304 24 000 2	Shanghai Hilong Drill Pipe Co., Ltd.; Nantong Hilong Steel Tube Co., Ltd.; Shanghai Tube-Cote Petroleum Pipe Coating Co., Ltd.	12.30%
7304 24 000 3 7304 24 000 4 7304 24 000 5 7304 24 000 6 7304 24 000 9 7304 29 100 1 7304 29 100 2 7304 29 100 3 7304 29 100 9 7304 29 300 1 7304 29 300 2 7304 29 300 3	Shengli Oil Field Freet Petroleum Equipment Co., Ltd.; Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.; Jiangsu ChangBao Steel Tube Limited Co.; Jiangsu ChangBao Precision Steel Tube Co., Ltd.; Shandong Molong Petroleum Machinery Co., Ltd.; Dongying Weima Petroleum Drilling Tools Co., Ltd.; Tianjin Tiangang Special Petroleum Pipe Manufacture Co., Ltd.; Dalipal Pipe Company; Anhui Tianda Oil Pipe Company Limited; Pan Gang Group Chengdu Steel & Vanadium Co., Ltd.; Baoji Petroleum Steel Pipe Co., Ltd.	23.18%
7304 29 300 4 7304 29 300 9 7304 29 900 1 7304 29 900 9	Others	31%

Furthermore, steel seamless pipe imports are exempt from anti-dumping duties, provided the manufacturers are in the approved list, and the manufacturer provides a standard certificate signed by an authorised official and stamped.

EEC Board Resolution № 133 dated 6 October 2015 has extended anti-dumping duties on steel tubes from Ukraine until 5 July 2016, inclusive.

EEU FEA CN Code	Manufacturer	Anti-dumping duty (% of customs value)
7304 24 000 1 7304 24 000 2 7304 24 000 3 7304 24 000 4 7304 24 000 5 7304 24 000 6 7304 24 000 9 7304 29 100 1 7304 29 300 1 7304 29 100 2 7304 29 300 2 7304 29 100 3 7304 29 300 3 7304 29 300 4 7304 29 100 9 7304 29 300 9 7304 29 900 1 7304 29 900 9	Pipe casing	18.9%
7304 24 000 1 7304 24 000 2 7304 24 000 5 7304 29 100 1 7304 29 300 1 7304 29 100 2 7304 29 300 2 7304 29 100 9 7304 29 300 9	Oil well tubing	19.9%
7304 7305 7306	Oil pipelines, up to 820 mm diameter inclusive, gas pipelines up to 820 mm diameter inclusive and general purpose hot-deformed pipes up to 820 mm, inclusive	19.4% - 37.8%

Resolution № 101 entered into force on 23 September 2015.

Resolution № 133 enters into force on 19 November 2015, but no earlier than at the end of 30 calendar days from its official publication date, which was 12 October 2015.

Tariff quotas for specified agricultural goods

EEC Board Resolution № 99 dated 18 August 2015 has established tariff quotas on specific agricultural goods imported into the EEU in 2016.

Tariff quotas apply to agricultural goods imported into the EEU and released for domestic use, except for goods originating and imported from CIS member countries.

Tariff quotas are set for goods with the EEU FEA CN codes 0201, 0202, 0203, 0207 and 0404.

Goods imported under tariff quotas should be accompanied with a license from the authorised state body.

The Resolution entered into force on 19 September 2015.

Amendments to the EEU Integrated Customs Tariff

Introduction of new classification codes and import customs duty rates on certain types of tunneller and cleaning machines

Decision of the Board of the Eurasian Economic Commission of 10 September 2015 No. 113 introduced new classification codes and relevant import customs duty rates on certain types of tunneller and cleaning machines classified under Heading 8430 of the Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union. Depending on the classification code of the tunneller and cleaning machines the rates vary from 0% to 7.5%.

The decision came into effect on 11 October 2015.

Decrease in import customs duty rates for parts for specific types of turbines and some goods for civil ships

Decision of the Board of the Eurasian Economic Commission of 28 September 2015 No. 127 increased the import customs duty rate on some parts for hydraulic turbines above 25,000Wt from 7.5% to 13% of the customs value. The import customs duty rate of 13% entered into force upon the enactment of the decision until 31 August 2016.

In addition, the decision nullifies the import customs duty rate on some goods for civil ships.

The decision came into effect on 29 October 2015.

Other amendments

EEC Council Resolution № 54 dated 21 August 2015 amends the EEU Integrated Customs Tariff codes 0602, 2009, 3921, 4411, 4813, 6103, 8408, 8418, 8528, 8539, 8701, 8702, 803, 8704, 805, 9401, 9403 and 9609 in accordance with Russian WTO obligations. Notes to the EEU Integrated Customs Tariff have also been added.

The approved amendments entered into force on 20 September 2015.

The table below shows the EEC Resolutions amending the EEU Integrated Customs Tariff:

EEC Council Resolution No., publication date	EEU FEA CN code	Brief overview of goods	Import duty rate[1]
55[2] 10 September 2015	3901 20 900 1	Selected types of polyethylene	0%[3]
EEC Board Resolution No., publication date	**EEU FEA CN code**	**Brief overview of goods**	**Import duty rate[4]**
86[5] 20 August 2015	8411 99 001 1	Selected jet turbine, turboprop and gas turbine engines	5%
	8411 99 001 9		5%(21C)
89[6] 20 August 2015	8108 30 000 0	Titanium waste and scrap	0%[7]
108[8] 2 September 2015	2710 12 110 1 2710 12 110 9 2710 12 150 1 2710 12 150 9 2710 12 900 2 2710 12 900 8	Selected types of light distillations	5%
113[9] 11 September 2015	8430 41 000 2	Selected drilling or tunnelling machines, mechanical vehicles	2%
	8430 41 000 8		0%
	8430 50 000 2		7.5%
	8430 50 000 3		0%
127[10] 29 September 2015	8410 90 000 1	Selected parts for hydraulic turbines and selected goods for civil aircraft	7.5%[11]
	8518 10 300 1		0%
	8518 29 300 1		0%

1. Import duties show as a % of customs value, or in EUR/ USD
2. Resolution entered into force on 20 September 2015
3. Import duties of 0% of customs value applies from the date this Resolution enters into force until 31 October 2016, inclusive. Note 58C to the EEU Integrated Customs Tariff
4. Import duties show as a % of customs value, or in EUR/ USD
5. Resolution entered into force on 19 September 2015. Note 21C to the EEU Integrated Customs Tariff: import duties of 0% of customs value apply from 2 September 2014 until 1 September 2016, inclusive
6. Resolution entered into force on 19 September 2015
7. Import duties of 0% of customs value applies from the date this Resolution enters into force until 31 December 2016, inclusive. Note 57C to the EEU Integrated Customs Tariff
8. Resolution withdraws commodity positions 2710 12 110 0, 2710 12 150 0 and 2710 12 900 9. Valid from 2 October 2015
9. Resolution withdraws commodity positions 8430 41 000 9 and 8430 50 000 1. Valid from 11 October 2015
10. Resolution enters into force at the end of 30 calendar days from its official publication
11. Import duties of 13% of customs value apply from the date this Resolution enters into force until 31 August 2016, inclusive. Note 56C to the EEU Integrated Customs Tariff

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

Trade Preferences

Free trade zone with Israel

The Supreme Eurasian Economic Council has started talks with the Israeli Government to enter into a free trade zone treaty with the Eurasian Economic Union. (Council Resolution № 49 dated 21 August 2015.)

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