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

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

Features of this edition include the release of draft GST rules and forms in India, a proposal to impose VAT on nonresident suppliers of e-services in Taiwan, cashflow advantages for AEO certified companies in Romania, and the entry into force of the free trade agreement between the Eurasian Economic Union and Vietnam.

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

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Americas

Colombia

Tax reform includes change in VAT rate

The National Government is to present to Congress the tax reform draft, including changes to corporate and indirect tax regulations.

One of the major VAT changes proposed is an increase in the general rate from 16% to 19%; if the tax reform is approved, goods that were taxed at 16% will be taxed at the 19% rate.

The main objective of the Government is to have the tax reform approved during this legislature, so it can come into force next year – if the tax reform is approved, it should come into force on 1 January 2017.

Tax credit balances can be offset against custom debts

In Legal Opinion No. 20374 of 2016, the tax authorities have clarified that it is possible to offset customs debts with credit balances originated in any tax return.

Importers and exporters can agree currency to be applied in foreign trade operations

The Colombian Central Bank has clarified that local exchange regulations do not restrict which currency can be displayed in an invoice to a foreign trade operation. Accordingly, an importer or exporter established in Colombia can state the payment obligation in any currency, provided payment is only made in foreign currency.

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Asia Pacific

China

Changes to consumption tax on cosmetics from 1 October

On 30 September 2016, China's Ministry of Finance and the State Administration of Taxation issued a circular (Caishui [2016] No. 103 (Circular 103)) to remove consumption tax on non-luxury beauty and makeup products, and lower the consumption tax rate for taxable cosmetics to 15%. Circular 103 took effect from 1 October 2016.

Highlights

Taxable items

Non-luxury beauty and makeup products are no longer subject to consumption tax after 1 October 2016. Therefore, the name of the tax category is now changed from simply 'Cosmetics' to 'Luxury (high-end) Cosmetics', with the following items included in the taxable scope:

- Luxury beauty and makeup products;
- Luxury skincare products; and
- Cosmetics in packaged sets.

'Luxury' cosmetics are defined based on the value thereof, specifically those with a selling price upon production or import (dutiable value), exclusive of VAT, of RMB 10/ml (g) or RMB 15/piece or more.

Tax rate

The consumption tax rate for cosmetics is reduced from the previous 30% to 15%.

Import taxes

The Government also announced a series of import tax regulations to implement the corresponding adjustments to import tax policies for cosmetics.

The General Administration of Customs issued Bulletin 55 on 30 September 2016 to provide guidance for the import declarations for relevant cosmetics. According to Bulletin 55, cosmetics subject to import consumption tax are now covered under a list of 27 ten-digit HS code items.

Where non-luxury beauty and makeup products are transported into China through the mail or as luggage or articles by passengers for self-use purposes, the regulations indicate the combined import tax computation rate (i.e. a rate covering consumption tax and other taxes upon importation, e.g. customs duty, etc.) will be reduced from the previous 60% to 30%, if the value thereof reaches the threshold to trigger the import taxes.

Comments and recommendations

Circular 103 will have a significant impact on the cosmetics sector:

Beauty and makeup products

The costs of beauty and makeup products are expected to be significantly lowered, as non-luxury products are no longer subject to consumption tax, and the tax rate for luxury products is cut by half.

Skincare products

Although luxury skincare products remain in scope of consumption tax, previously many skincare products were not subject to consumption tax in practice due to the long absence of guidance on the determination of 'luxury' skincare products. With the clarifications by Circular 103 on 'luxury' cosmetics, the scope of taxable skincare products might be effectively expanded after the issuance of Circular 103.

As consumption tax will affect the costs of cosmetics, affected cosmetics companies are advised to take immediate action, including, but not limited to, the following:

- Assess the impact to the business from costs and sales perspectives, where a simulation would be necessary since the impact of the above changes could be positive or negative, depending on the portfolio of the company; whether and how the change to the purchase costs should be reflected in the retail price needs to be carefully examined;

- Notify and coordinate with suppliers and the import department/agents in order to ensure the correct and accurate Customs declaration of imported cosmetics, given Customs is responsible for collecting consumption tax upon importation and have announced the relevant changes to tariff codes, unit and other declaration elements;

- Carefully examine the import price of cosmetics and ensure compliance from a Customs valuation perspective, as it is foreseeable that cosmetics products will be an area of focus for Chinese Customs, especially in terms of import value;

- Explore supply-chain planning opportunities to optimize the costs while ensuring compliance for certain cosmetics products whose prices are close to the taxable threshold; and

- Consider transitional tax issues which could arise, for example, the return or replacement of previously sold cosmetics products after the new policy come into force.

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India

Draft rules for GST registration, returns, invoices, payments and refunds

The Government has issued draft rules for registration, returns, invoicing, payment and refunds under GST, along with the applicable forms. Some of the salient features of the rules are given below.

Registration

- Taxpayers registered under existing indirect tax laws and having Permanent Account Number (PAN) issued under the Income Tax Act, 1961 will be granted registration on a provisional basis. Existing taxpayers will be given six months in which to provide the requisite details, following which, the provisional registration will be converted into final registration.

- Every person liable for registration must, before applying for registration, declare their PAN, which will be validated with the records of the income tax department.

- The application for registration will be forwarded to the proper officer, who will examine the application and the accompanying documents, and if these are found to be in order, approve the grant of registration to the applicant within three common working days from the date of submission of the application.

Returns

- The details of outward supplies furnished by the supplier are to be made available electronically to each of the registered taxable persons (recipients).

- While furnishing the details of inward supplies, recipients must specify the inward supplies in respect of which the recipient is not eligible for input tax credit.

- The claim of input tax credit is to be considered as matched, where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note, as the case may be, by the corresponding supplier.

- Any discrepancy between the claim for input tax credit and the details of output tax furnished will be made available electronically to the supplier as well as to the recipient. Where the discrepancy is not rectified, the amount pertaining to the discrepancy will be added to the output tax liability of the recipient.

Invoices

- Invoices must be prepared in triplicate for the supply of goods, with a duplicate copy being marked to the transporter. Alternatively, the duplicate copy is not required to be carried by the transporter if the supplier obtains an Invoice Reference Number.

Payment

- Deposits over INR 10,000 must be made electronically using internet banking, debit card, credit card, National Electronic Fund Transfer (NeFT) or Real Time Gross Settlement (RTGS).

Refunds

- For supplies made to a Special Economic Zone (SEZ) unit or a developer, or supplies regarded as deemed exports, the recipient must file a refund claim for GST levied by the supplier.

- Provisional refunds may be granted by proper officer on account of export of goods and/or services.

Forms

Via the above rules, the Government has released 26 forms for registration, 27 forms for returns, 1 form for invoices, 7 forms for payments and 10 forms for refunds.

GST Council

The rules were taken up for consideration and approved by the GST Council on 30 September 2016 and will be notified after the enactment of the GST Act.

Release of these rules is expected to assist companies in carrying out necessary changes in their systems and processes ahead of the GST rollout on 1 April 2017.

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Singapore

Update of Strategic Goods (Control) Order effective from 1 November 2016

With effect from 1 November 2016, Singapore Customs will implement Strategic Goods (Control) Order 2016 (SGCO 2016), superseding the current SGCO 2015.

Implementation of SGCO 2016 aligns Singapore's Strategic Goods Control List with the 2015 Wassenaar Arrangement Munitions List, and the 2015 European Union's List of Dual-Use Items (EUDL).

Key changes under the SGCO 2016 will principally impact the following sectors:

- Aerospace and Defence;
- Marine;
- Computers and Electronics;
- Information Security and Encryption;
- Special Materials and related Equipment;
- Materials Processing; and
- Sensors and Lasers.

Exporters must ensure that all goods subjected to controls under the SGCO 2016 are covered by the appropriate Strategic Trade Scheme (STS) approval prior to export, transit and transshipment. Exporters are also encouraged to assess the impact of changes under SGCO 2016 to their existing processes and procedures.

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Taiwan

Proposal to impose VAT on nonresident suppliers of digital services

The Minister of Finance (MOF) published a draft bill on 22 September 2016 that would require nonresident providers of e-services to private consumers in Taiwan to register with the Taiwan tax authorities, account for VAT and remit a 5% VAT to the authorities. If approved, the draft bill would amend the Value-Added and Non-Value Added Business Tax Act (VAT Act) and would apply as from 1 January 2017. The rules are designed to ensure that VAT on cross-border transactions is paid in Taiwan when the individual recipient is located in Taiwan, and are similar to the rules introduced in the EU and in Korea in 2015. They also take into account the recommendations in the OECD's International VAT/GST Guidelines published in 2015.

As noted above, the proposed measures would apply only to business to consumer (B2C) supplies, and the existing threshold of NTD 3,000 below which VAT is not payable would be abolished (because the VAT compliance obligations would shift to the foreign seller). The reverse charge would continue to apply to business to business (B2B) supplies of e-services.

Although not included in the draft law, a registration threshold and a definition of e-services would be incorporated in rulings or in the Enforcement Rules of the VAT Act following enactment of the amended VAT Act. A simplified electronic VAT registration is expected to apply to foreign suppliers.

As it may be difficult for a foreign service provider without a fixed place of business in Taiwan to open a bank account in Taiwan to pay the VAT due in Taiwan currency, a foreign service provider would be allowed to appoint a tax agent to assist in meeting the nonresident's VAT compliance obligations.

Comments

Definition of e-services

A ruling issued by the MOF in 2005 (Ruling No. 09404532300) currently governs the VAT and income tax treatment of online transactions. The ruling specifies several types of transactions that are deemed to be online transactions, for example:

- Electronically supplied services, such as films and games;
- The supply of audio and audio-visual content; and

- The transmission of signals for interactive communications.

However, since the ruling is more than 10 years old and the pace of technology change continues to accelerate and evolve, it is possible that the tax authorities may refer to the rules introduced in other countries when making changes to the Enforcement Rules of the VAT Act.

Parties required to register

Various parties may be involved in the supply of e-services, such as an actual direct service provider, businesses that supply e-services through electronic platforms and payment processors. The draft bill does not specify which party would be required to register for VAT, so this would need to be clarified. The Government may look to the rules in other countries when deciding who would bear the burden of registration.

VAT registration and permanent establishment (PE)

The draft bill does not stipulate whether VAT registration would create a PE for the foreign company in Taiwan for income tax purposes.

A foreign supplier of services to Taiwan customers would be required to register for VAT purposes if it has a fixed place of business in Taiwan (this already is the case under the current VAT Act). The draft act would extend the registration requirement (although under a simplified process) to foreign e-service suppliers that do not have a fixed place of business in Taiwan.

Foreign service providers should assess whether they have a fixed place of business in Taiwan under their current business models, their VAT risks, as well as the retroactive VAT liability of the failure to comply with the VAT Act, if any. Foreign providers without a fixed place of business in Taiwan, but supplying e-services to individual consumers in Taiwan should be prepared to make the simplified registration if the draft bill is enacted.

Future developments

Many issues relating to the VAT rules applying to foreign service providers still require interpretation and clarification – these include the scope of ‘e-services’, the person responsible for registration and the PE issue. Foreign businesses supplying e-services to Taiwan private consumers should closely monitor the progress of the draft bill and assess any potential tax risks.

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Vietnam

FTA between Vietnam and the Eurasian Economic Union in force

On 5 October 2016, the Free Trade Agreement of 29 May 2015 between the Eurasian Economic Union and its member states, of the one part, and the Socialist Republic of Vietnam, of the other part, came into force. For more information, see FTA between the EAEU and Vietnam in force.

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EMEA

Gulf Cooperation Council

Whitepaper on VAT in the GCC member states

Deloitte Middle East has released the first volume of its whitepaper series VAT in the GCC – Insights by industry.

The whitepaper series addresses the impacts of VAT introduction on specific industry types. The series will enable readers to understand what needs to be done by businesses and the potential effects of VAT on their day-to-day activities.

Volume 1 covers the following chapters and industries:

- **Preparing for change**

  VAT – It's coming, so how do we get ready for it?

- **Retail industry**

  VAT and the pricing conundrum

- **Automotive industry**

  Gearing up for change, the view ahead for dealers and buyers

- **Meetings, Incentives, Conferences, and Events industry**

  Lead times lead to complex VAT challenges

- **Financial Services and Insurance industry**

  Why VAT, Financial Services and Insurance are a difficult combination

UAE announces establishment of Federal Tax Authority

The process of VAT implementation in the United Arab Emirates has moved a step forward with the announcement on 24 October of the establishment of the Federal Tax Authority, under Federal Law number (13) of 2016.

With the hoped-for imminent agreement of the GCC Treaty, this is another significant step forward in the journey towards VAT implementation, and businesses should continue to consider the likely impact VAT will have on them, and begin preparations to ensure compliance with the VAT laws when announced.

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Germany

Official forms published for annual VAT return 2016 and 2017

With letters dated 30 September 2016 and 4 October 2016, the Federal Ministry of Finance introduced the official forms for the annual VAT return 2016 and 2017. One of the most important amendments regards line 56 of 'Exhibit UR' to the VAT return. There is a new box 211, in which a transfer of a going concern pursuant to sec. 1 (1a) German VAT Act must be reported. In addition, the taxpayer must now declare if the taxpayer is deviating in the VAT return from the opinion of the tax authorities.

The official forms for the preliminary VAT return 2017 are essentially caused by the entry into force on 1 January 2017 of the statutory amendment of sec. 150 (7) and 155 (4) German Fiscal Code. From that date, a taxpayer using the official pre-printed form or data sheet, which can lead to an entirely computer-operated tax assessment, must be able to make a declaration in a certain field of the VAT return form as to why, in the taxpayer's opinion, a public officer should review the VAT return. If, in addition to the declarations made in the VAT return, further declarations or facts should be taken into account, the taxpayer must enter a '1' in line 22 of the official VAT form 'USt 2 A' from the VAT assessment period 2017 onwards. The same applies if declarations made in the VAT return are knowingly based on a legal opinion that is deviating from the opinion of the tax authorities. Such declarations must be made in a separate exhibit produced by the taxpayer, which must be headed: 'Supplementary Declarations to the VAT Return' (*Ergänzende Angaben zur Steuererklärung*).

The early announcement and publication of the official forms for the annual VAT return, which is happening for the first time prior to the beginning of the respective calendar year, will enable taxpayers that end their business in the course of a calendar year and are thus required to render an annual VAT return declaration within a month, to use the official form valid for the respective calendar year. As the official forms and data sheets for electronic transfer of the VAT return declaration will in future be available at the beginning of the year, it will be possible for taxpayers that end their business in the course of a calendar year to comply with their general duty to submit their annual VAT return declaration electronically. The exception to file the VAT returns on paper in cases of hardship under Paragraph 18.1 (2) (2) German Administrative VAT Guidelines will no longer apply from 1 January 2017.

CJEU confirms that corrected VAT invoices have retroactive effect

In the case of *Senatex GmbH*, the Court of Justice of the European Union held that Germany must allow taxpayers to apply a corrected invoice in relation to a detail to the tax period in which goods were supplied, and not the period in which it was corrected. In connection with this judgment, another decision has been issued; *Barlis 06* concerned the Portuguese tax authorities' refusal to allow the deduction of input VAT paid by Barlis as the recipient of legal services rendered by a law firm, on the basis that the invoices issued by the law firm did not satisfy the formal requirements laid down by national legislation. See **CJEU rules that deficiencies in invoices may not prevent VAT recovery**.

The decision in *Senatex* must be seen in the context of the CJEU decisions in the cases *Terra Baubedarf-Handel GmbH*, *Pannon Gep Centrum Kft* and *Petroma Transports SA*.

In *Terra Baubedarf*, the CJEU held that subsequent receipt of an invoice does not lead to a VAT deduction with retroactive effect at the time goods were delivered/ services were performed. According to the decisions *Pannon Gep* and *Petroma Transports*, it is possible to correct an invoice. However, until now it remained unsettled as to when (which period) correction of an invoice is effective.

With the *Senatex* decision, the CJEU has clarified that retroactive correction of an invoice is possible if the VAT-ID number, which was missing in the original invoice, is added.

However the CJEU does not answer the question of when the amended invoice must be submitted, and whether it may even be sufficient if this occurs in the course of proceedings – because Senatex submitted the corrected invoice during a tax audit, and thus before an amended VAT assessment notice had been issued. Advocate General Bot opined that even if the invoice is corrected after an amended VAT assessment notice is issued, a complete refusal of VAT deduction would probably not be in accordance with EU law.

Senatex contradicts the established practice in Germany regarding the correction of an invoice with retroactive effect, which is that the right to deduct VAT can only be exercised in the year when the invoice is corrected. This practice also means that a taxpayer deducting VAT in an earlier period may be required to pay interest until the time the invoice is corrected.

The CJEU decision means that a taxpayer may deduct VAT even if there is a formal mistake in an invoice and that the addition of missing specifications has retroactive effect, and therefore there is no longer a requirement to pay interest.

Penalties other than refusal of VAT deduction can be applied for lack of compliance with the formal requirements of the right to deduct VAT, e.g. a fine which is proportionate to the offense (see in this respect the CJEU decision *Salomie and Oltean)*.

After this clear guidance from the CJEU, the German Lower tax Court which referred the case to the CJEU will have to consider the view that an invoice generally is a substantive rather than a mere formal condition of the right to VAT deduction.

The question of the time limit for the correction of invoices remains unsettled and will be subject to further decisions, as does the issue of the minimal requirements necessary for an invoice to be subject to correction – if certain information is missing, an invoice may not be able to be corrected with retroactive effect.

Enterprises that have been refused the right to deduct VAT and have been charged with interest in similar cases should consider whether this decision could apply to them.

CJEU rules that local authority can reclaim 'business' input VAT

The CJEU has gone straight to judgment in the case of *Landkreis Potsdam-Mittelmark*, about the recovery of VAT on purchases of machinery by a local authority that used it mostly for its 'non-economic' activities but also (to a small extent – 2.65%) for business activities where it was required to charge VAT.

The tax authorities refused any input VAT deductions, on the grounds that the business use was less than 10%, relying on provisions in German law authorized by a 'simplification' derogation that permitted denial of input tax if 'private' or 'non-business' use exceeded 90%.

The CJEU considered the derogation (and its past case law) and drew a distinction between the 'private'/'non-business' use of a purchase by a 'mainstream' business and the kind of functions carried on by a local authority, most of which are outside the scope of VAT altogether, and concluded that the derogation, and hence the German law that relied on it, did not apply in the context of the case. It would follow that the authorities' claim for deduction of the tax, to the extent that it related to its taxable activities, should succeed.

CJEU decides that supplies of blood plasma were not VAT exempt

The CJEU has delivered its judgment in the case of *TMD Gesellschaft für transfusionsmedizinische Dienste mbH* (TMD), about the VAT treatment of supplies of blood plasma to be used to manufacture medicinal products.

TMD lodged a claim for a refund of input VAT on the costs of producing the plasma, which it sold to a Swiss Company that used it to manufacture medicinal products at plants located in other EU countries. TMD argued that the supplies fell outside the VAT exemption in German and EU law for the supply of human blood and that the VAT on the production costs relating to its intra-EU supplies was deductible. The tax authorities did not agree, and refused the claim.

The Advocate General agreed with the tax authorities and suggested that the EU law VAT exemption covered the supplies, but the CJEU has not followed the opinion. The CJEU agreed with TMD and ruled that the EU law "... must be interpreted to the effect that supplies of human blood which Member States are required to exempt ... do not include supplies of plasma obtained from human blood where that plasma is intended to be used, not for direct therapeutic purposes, but exclusively for the manufacture of medicinal products."

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Italy

New urgent VAT measures

The Government has approved Law Decree n°193 dated 22 October 2016, laying down a number of urgent tax measures. The Law Decree has been officially published in the Official Gazette n. 249 dated 24 October 2016, and entered in force on the same day.

The Law Decree, which is immediately effective, shall be converted into law within 60 days from its publication date; therefore, it may be that one or more of its provisions may be subject to material amendments.

Under the Law Decree, the VAT warehouse regime will be subject to significant amendment from 1 April 2017. An Act of the Director of the Revenue Agency will regulate the implementing measures of the new VAT warehouse regime, which will affect the following key issues:

- The list of supplies that can be introduced into a VAT warehouse.

- Less subjective requirements for withdrawal: Based on the current VAT rules, the withdrawal can only be undertaken by VAT registered subjects that:

  a) Are registered at the Chamber of Commerce for at least one year;

  b) Are trading entities; and

  c) Have attested to having duly made VAT payments, if any.

  The Decree states that the withdrawal may be undertaken by VAT taxable subjects without any further requirements.

- Effective payment of VAT at the time of withdrawal from the VAT warehouse: The VAT will remain due by the VAT registered subject withdrawing goods, but it will be actually paid, in the name and on behalf of the VAT registered subject, by the VAT warehouse keeper.

- VAT relief will only be available for frequent exporters, upon submission of letters of intent by electronic means.

- Accounting for the VAT actually paid in the purchases VAT ledger: This implies that a VAT credit will arise from the withdrawal of goods from the VAT warehouse, while the reverse charge mechanism will no longer apply.

- Omitted VAT payments by a VAT registered subject withdrawing goods from a VAT warehouse will be subject to administrative penalties equal to 30% of the VAT not paid.

- Joint liability of the VAT warehouse keeper in case of omitted VAT payments: The VAT warehouse keeper will be jointly liable for the payment of penalties equal to 30% of the VAT not paid.

- Further obligations for the VAT warehouse keeper: Amongst others, communication to the Customs office of the data related to the withdrawal of goods from the VAT warehouse for the redemption of the guarantee due at the time of the import of goods introduced into the VAT warehouse.

- A risk of revocation of authorization to the management of a VAT warehouse, in the case of any violation of the new obligations by the VAT warehouse keeper.

In addition to the amendment to the VAT warehouse regime, the Government has also approved the following urgent VAT measures:

- New periodical reporting obligations for invoices issued and received: On a quarterly basis, taxpayers must electronically submit to the tax authorities a new communication including all the invoices issued and received in the relevant quarter. A subsequent Act of the Director of the Revenue Agency will regulate the implementing measures of the new rules. Penalties from EUR 25 to EUR 25,000 will apply for omitted or incorrect communication of the data related to each invoice.

- New periodical reporting obligations of VAT calculations: On a quarterly basis, taxpayers must electronically submit to the tax authorities a new communication including the VAT calculations for the relevant quarter. A subsequent Act of the Director of the Revenue Agency will regulate the implementing measures for the new rules. Penalties from EUR 5,000 to EUR 50,000 will apply for omitted, incomplete or incorrect communication of the periodical VAT calculations.

- No more European Purchases Listing for intra-Community acquisitions of goods and services: The current obligation to declare intra-Community acquisitions of goods and services will be abolished as of 1 January 2017.

- There will be no more ‘Black List’ reporting obligations starting from FY2017.

- New deadlines for the submission of the annual VAT returns: For FY2016, annual VAT returns must be submitted in February 2017. From FY2017 onwards, annual VAT returns must be submitted from 1 February to 30 April.

- Ad hoc provisions for the submission of integrative VAT returns: For VAT returns with errors or omitted data, an integrative VAT return must be filed by 31 December of the 5th year following the year of submission of the annual VAT return to amend the return. The integrative VAT return must be filed by the deadline for the submission of the VAT return for the following year, in order to offset or to request a refund of the VAT credit reported in the integrative VAT return.

- There are new reporting obligations for taxpayers undertaking supplies of goods or services through automatic machines.

Upcoming changes in Budget Law for 2017

The Government has published the draft of the 2017 Budget Law.

As anticipated, it includes the introduction of VAT grouping into Italy, starting from 1 January 2018. The new VAT law provisions, as currently included in the last available draft of the Budget Law, will provide for the following:

- Only taxable subjects established in the Italian territory will be entitled to join a group and become part of a new single taxable person for VAT purposes – namely, the VAT group.

- The VAT group will be allowed, upon condition that the group members will be closely bound to one another by:

  a) A financial link: Meaning that one group member must have direct or indirect actual control of another or they must be under the direct or indirect control of the same taxable subject;

  b) An economic link: Meaning the existence of at least one of the following situations of economic cooperation: the principal activity of the group members must be of the same nature, or the activities of the group members must be complementary or interdependent, or one member of the group carries out activities which must be wholly or substantially to the benefit of the other members;

  c) An organizational link: Meaning the existence of a coordination of the management of the various entities.

- VAT grouping will be an optional scheme, to be chosen in advance with certain terms and with specific procedural requirements to satisfy. This option will be valid for three years and automatically renewed for each following year until expressly revoked.

- The VAT group's internal transactions will not exist for VAT purposes. This implies they will be out of the scope of Italian VAT.

- All the supplies of goods and services made by any of the VAT group members to a recipient not belonging to the VAT group will be deemed to have been carried out by the VAT group itself (not by the individual member). In the same way, all the supplies of goods and services by third parties to one or more of the members of the VAT group will be considered to have been made to the VAT group itself. On the other hand, there is no direct mention of the VAT treatment of supplies between a head office and its branch in the draft of the Budget Law (see the *Skandia America* CJEU case).

- A representative of the VAT group shall exercise the rights and fulfil the obligations of the VAT group.

Among other changes included in the draft of the Budget Law for 2017, there is also the application of the 5% VAT rate to supplies of sea, lake, river and canal transport services, which have been treated as VAT exempt to date.

VIES cancellation for inactive taxpayers

With a press release dated 3 October 2016, the tax authorities have announced that approximately 60,000 taxpayers will be receiving a communication about their upcoming VIES cancellation. This communication will be sent to all taxpayers that have not undertaken any intra-Community transactions as of the 1st quarter 2015 and which appear as inactive, based on the outcomes of VIES checks performed by the authorities.

The VIES cancellation will be not automatic, but it will be effective after 60 days from the receipt of the communication. During this period, taxpayers may avoid the cancellation by submitting to the tax authorities proper documents attesting the intra-Community transactions actually undertaken in the past or by declaring their intention to undertake such transactions in the future.

Potential VIES cancellation will not prevent taxpayers from e-submitting a new VIES registration request.

40% restriction of right to VAT deduction for certain vehicles extended to end of 2019

Under Article 395(1) of the Principal VAT Directive, the Council, acting unanimously on a proposal from the Commission, may authorize any Member State to apply special measures for derogation from the provisions of the Directive in order to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance.

With Decision 2007/441, Italy obtained from the Council an individual derogation allowing it to restrict, until 31 December 2010, the right of deduction to 40% in relation to motorized road vehicles not wholly used for business purposes. This Decision was extended to 31 December 2013 by Council Implementing Decision 2010/748, and to 31 December 2016 by Council Implementing Decision 2013/679. Recently, Italy obtained a new extension of this derogation in order to continue restricting the right to deduct for certain vehicles and related expenditure for the period 2017 to 2019.

This extension is limited in time in order to assess whether the conditions on which the derogation is based remain valid. If Italy opts for a further extension beyond 2019, a new evaluation report will be submitted to the Commission, together with the extension request, not later than 1 April 2019.

Role of VAT representative under discussion

The Supreme Court has recently challenged the conduct of a foreign company, which made purchases from Italian suppliers through the Italian VAT representative and made domestic supplies to Italian customers acting as a foreign taxable subject (without using the Italian VAT representative).

According to the Supreme Court, it is necessary to use the VAT representative on a global basis, without splitting the Italian business, from a subjective perspective, between transactions (purchases) that pass through the Italian VAT representative and transactions (supplies) that do not.

These conclusions contrast with the tax authorities' opinion and with some previous tax court decisions and, for this reason, the Unified Sections of the Supreme Court have been asked to take a final position on this issue.

Clarifications regarding regularization of VAT returns with errors

Through Circular letter n°42/E dated 12 October 2016, the tax authorities have provided some significant clarifications regarding regularizations of annual tax returns with errors, following recent changes in the VAT law (introduced by the Stability Law 2015 and Legislative Decree n° 158/2015 as discussed in previous editions of this newsletter).

In particular, the tax authorities make a 'double' distinction in terms of: (i) **the timing of regularization** (within 90 days from the deadline for the submission of the tax return relating to the fiscal year in which the violation is made or over this time range); (ii) **the type of errors to regularize** (detectable or not detectable during the automatic or formal checks of the tax authorities).

As a result of this distinction, the tax authorities have clarified that:

- For regularizations within 90 days:
    - Penalties for late payment of taxes and penalties for violations related to the content and the documentation of the tax return will both apply for non-detectable errors;
    - Only penalties for late payment of taxes will apply for detectable errors;
- For regularizations after 90 days:
    - Only penalties for the inaccurate return (meaning return with 'untrue values') will generally apply for non-detectable errors;

- Only penalties for late payment of taxes will apply for detectable errors.

The tax authorities have also provided some guidelines regarding:

- Applicable penalties for omitted tax returns;
- The timing of regularization of late VAT payments;
- The procedure for regularization of late VAT payments through offsetting with VAT credits.

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Special procedures under the UCC

With Note No 84724 of 10 October 2016, the Customs and Monopoly Agency provided clarification regarding certain issues relating to the special procedures under the Union Customs Code, together with some operative guidelines to be taken into account by operators.

Among them, there are clarifications regarding the customs offices in charge for issuing authorizations for inward processing relief (IPR), outward processing relief (OPR) and end-use, further to the guidelines provided for specific cases of the transfer of the rights and obligations of the holders of a procedure.

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Poland

Draft bill introduces changes to VAT law

The Government has recently published a draft bill amending the VAT provisions. The new legislation introduces a number of changes to the currently binding VAT law (the so called 'VAT sealing package'), some of which may significantly impact taxpayers from 1 January 2017. The abolition of quarterly VAT was discussed in the September 2016 edition of this newsletter. A brief overview of the significant changes is set out below.

Compulsory e-filing

Compulsory e-filing of all VAT, ECSPL and local ECSPL returns is to be implemented as of 1 January 2018. However, in respect of taxpayers that are registered for VAT-UE (UE) transactions or to which the obligatory reverse-charge applies or are required to submit returns electronically under Corporate Income Tax (CIT) and Personal Income Tax (PIT) the obligatory e-filing of VAT, ECSPL and local ECSPL returns will apply as of 1 January 2017. As a result, the deadline for ECSPL reporting will be extended until the 25th of the month following the reporting period.

Nevertheless, e-filing may trigger significant issues for foreign based entities, as e-filing generally requires an e-signature, and due to the technical constraints of the Ministry of Finance's platform for e-filing, at present only Polish e-signatures are accepted.

VAT sanctions

The new provisions reinforce VAT sanctions (additional VAT liability), which applied in the VAT law until the end of November 2008. (The Court of Justice of the European Union has concluded that the sanctions are in line with the EU Principal VAT Directive.) VAT sanctions of 30% of the amounts of arrears can be applied where it is identified in the course of an audit or tax proceedings that the taxpayer has:

- Understated the VAT liability;
- Overstated the amount of the VAT refund;
- Overstated the amount of excess input VAT to be carried forward;
- Reported a VAT refund when in a payable position.

The above does not apply for minor mistakes made by a taxpayer or for reporting of transactions too late or too early. It also does not apply where, prior to a VAT audit, the taxpayer has corrected the VAT returns and settled the arrears, with penalty interest.

In practice, this requires that tax proceedings are held and decisions assessing the VAT liability of the taxpayer and providing for the amount of sanctions are issued.

Furthermore, the tax authorities may impose sanctions of 100% of the amount of input VAT resulting from invoices issued by a non-existing entity or in the case of so called 'empty invoices'.

Bearing in mind the above, the increased penalty interest of 150% will not apply to arrears where sanctions are assessed by the tax authorities.

The above will apply to settlement periods from 1 January 2017.

VAT neutrality on ICA and other reverse charge transactions

Further to the planned changes, the right to recover input VAT on intra-Community Acquisitions (ICA) arises at the tax point, provided the taxpayer:

- Reports output VAT in the correct reporting period **not later than within three months of the end of the month in which the ICA tax point arose;** and
- Receives the invoice documenting the ICA within three months of the end of the month in which the ICA tax point arose.

In practice, this provision will affect the late and non-reporting of ICA transactions. This is very common for large entities, which tend to report ICA upon the receipt of an ICA (due to delays), rather than upon the issuance of the invoice (as this triggers a number of corrections to previous VAT reporting). In particular, including an ICA invoice in settlements (VAT returns) after the three month deadline, will mean that the taxpayer reports output VAT at the time of the tax point, but only recovers input VAT in the current reporting period.

Consequently, ICA transactions will not be VAT neutral, at least temporarily. Therefore, to maintain VAT neutrality on ICA, taxpayers will need to monitor the three month deadline.

A similar requirement to report output VAT in the correct reporting period not later than within three months of the end of the month in which the tax point arose will be implemented in relation to other self-charge transactions, such as the compulsory local reverse charge for goods and services as well as the deemed ICA of goods.

Changes to 25 day and 60 day VAT refunds

The requirements allowing taxpayers to apply for VAT refunds within the deadline of 25 days will become more stringent, in practice, leaving this possibility open to only a small group of taxpayers. In particular, this option will be excluded for all newly registered taxpayers.

In addition, in the case of 60 day VAT refunds, the provisions will allow the tax authorities to extend the period in order to verify not only the settlements of the taxpayer but also of the taxpayer's contractors and other entities included in the supply chain. Consequently, there is a risk that due to irresponsiveness of the taxpayer's contractors or long and complicated supply chains, taxpayers may experience delays in obtaining VAT refunds.

Registration and deregistration process

The Bill foresees a number of changes as regards the registration and deregistration process, which are aimed at restricting registration for some entities as well as ensuring that the active VAT taxpayers register does not include entities that are dormant or may be involved in fraudulent transactions. In particular, in some cases VAT deregistration could be refused by the tax authorities, in others, this would depend upon making a registration deposit. In addition, entities not filing VAT returns for two quarters/six months or filing nil VAT returns for such period would be VAT deregistered by the tax authorities, unless such nil returns are triggered by the specifics of the business activity.

Moreover, where registration documents were submitted by a proxy, the proxy will be held jointly responsible for all the tax arrears of the represented entity that have occurred within the six month period following the registration of that entity as an active VAT taxpayer. The value of the responsibility cannot exceed ten-fold of the average monthly remuneration announced in the quarter preceding the registration. The responsibility will be entirely excluded where the arrears did not result from fraudulent actions aimed at achieving tax benefits.

VAT rates

Finally, the 23% and 8% VAT rates are to be binding until the end of 2018.

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Portugal

State Budget proposal 2017 includes several changes to VAT rules and other indirect taxes

The 2017 budget law proposal has already been announced and has been submitted by the Government to the Parliament for its approval. Below are the main measures that the Government has proposed, which include changes to the VAT rules and other indirect taxes, namely the extension of the application of the alcohol tax to added sugar drinks.

All the listed proposed amendments will enter into force on 1 January 2017, except where indicated for the VAT reverse charge mechanism on the import of goods, provided that the 2017 budget law proposal is approved by the Parliament and published in the Official Journal, after being promulgated by the President of the Portuguese Republic.

VAT

- Creation of a mechanism that will allow taxpayers to apply the reverse charge for the VAT due on the import of goods (eliminating the associated financial impact). Only those with a regularized situation from a taxation point of view could benefit from this regime. It is proposed that this amendment come into effect on 1 September 2017 for the import of goods listed in Annex C of the VAT Code, similar to Annex V of EU VAT Directive, except for mineral oils. This VAT reverse charge procedure will be extended to all goods as of 1 March 2018, including for mineral oils.

- The communication to the tax authorities of the content of the invoices issued in a certain month, which is generally done through submission of SAF-T(PT) files at the platform known as 'e-fatura', will be made until the 8th day of the month following the one in which the invoices have been issued (currently the deadline is the 25th).

- An authorization has been proposed so the Government may extend the intermediate VAT rate to all beverage services provided by restaurants (currently beverage services of alcoholic drinks, soft drinks, juices, nectars and sparkling waters or added with carbon dioxide or other substances are subject to the normal VAT rate – 23% in Portugal Mainland).

Tax on alcohol, alcoholic drinks and sugar added drinks

- The tax rate applicable to beers, intermediate products and spirit drinks, will rise by about 3%.

- The tax rate on other fermented beverages such as still wine is established at EUR 10.30 per hectolitre (currently EUR 0.00).

- Drinks containing added sugar or other sweeteners, wine and other fermented beverages with alcohol content above 0.5% vol. and less than or equal to 1.2% vol., will be subject to the tax amount of EUR 8.22 per hectolitre if the sugar content per liter of those drinks is lower than 80 grams, or of EUR 16.46 per hectolitre if the sugar content is equal to or higher than 80 grams per litre.

  Taxpayers are to report to the tax authorities on the quantities of non-alcoholic drinks covered by the tax held at 1 January 2017. Quantities not sold by the end of April 2017 will be subject to the tax.

  Milk, soy or rice based drinks, fruit and vegetable juices and nectars, and cereal, almond, cashew and hazelnut beverages, as well as drinks for special dietary needs and dietary supplements, are exempt from the tax.

Tobacco tax

- The rate of the specific component regarding cigarettes will increase from EUR 90.85 to EUR 93.58 per 1,000 cigarettes. For smoking tobacco, snuff, chewing tobacco and heated tobacco the tax rate will increase from EUR 0.078 to EUR 0.08 per gram.

- The ad valorem component will be reduced to 16% (currently 17% for cigarettes and 20% for smoking tobacco, snuff, chewing tobacco and heated tobacco).

- There will be an increase in the tax on the nicotine-containing liquid, in recipients used to fill and refill electronic cigarettes, from EUR 0.60 to EUR 0.618 per milliliter.

Tax on petroleum products

- Tax applicable to methane and oil gas used as a propellant will increase from EUR 127.88 to EUR 131.72 per 1,000 kilos, which represents an increase of 3%.

- Tax applicable to natural gas used as a propellant will increase from EUR 2.84 to EUR 2.87 per gigajoule, and when used as fuel, it will increase from EUR 0.30 to EUR 0.303 per gigajoule, which represents, in both cases, a 1% increase.

- Although not yet quantified yet, there is expected to be a decrease in the gasoline taxation that will be offset by an increase in taxation on diesel.

Vehicle tax

- This tax will increase, in respect to both the cubic cylinder capacity and environmental components, by about 3%.

- There will be an exemption for passenger vehicles intended for rental activity without a driver, when tailored for the access and transportation of disabled persons.

- The incentives for vehicle renovation are to be maintained for 2017, amounting to EUR 562.50 for the acquisition of hybrid plug-in cars only (50% of the amount applicable in 2016).

Circulation tax

- The tax rates for the Car Circulation Tax will increase by about 1%.

CJEU rules that deficiencies in invoices may not prevent VAT recovery

The Court of Justice of the European Union has delivered its judgment in the case of *Barlis 06 - Investimentos Imobiliários E Turísticos SA*, which concerns the description of supplies shown on a VAT invoice.

The tax authorities claimed that the description shown on fee notes relating to legal advice provided to Barlis, was insufficient and disallowed the input VAT claimed by Barlis. The CJEU agreed that the description 'legal services' might not be sufficient to identify the nature of the supply as a matter of EU law, and that invoices that do not specify a beginning and an end date for the supplies (like those involved in the case) did not conform with EU law requirements.

However, whilst the judgment confirms that, on the face of it, the invoices were deficient, the CJEU went on to state that EU law does not allow the refusal of input tax where the tax authorities have all the information needed to validate the claim even when there are defects in the actual invoicing (as seems to have been the position in the case).

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Romania

20% cashflow advantage for AEO certified companies

Authorized Economic Operators (AEO) have the right to apply the reverse charge for VAT on imports into Romania (based on prior authorization). This means that AEO importers no longer have to pay 20% VAT on importation of non-EU goods. This option gives AEO certified companies a significant cash-flow advantage compared with non-AEO certified companies.

Similar advantages apply in relation to intra-Community trade. AEO certified companies are waived from the requirement to guarantee 20% on intra-Community sales which are imported under regime 4200 in Romania.

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Russia

Amendments to list of technological equipment the import of which is not subject to VAT

Russian Federation Government Resolution No. 935 of 17 September 2016 amends the list of technological equipment (including components and spare parts) without an analogue manufactured in the Russian Federation, the import of which into the territory of the Russian Federation is not subject to VAT.

In particular, the description is amended for several types of pyrolysis ovens (classification code 8417 80 700 0); calendar production lines (8420 10 800 0); extrusion tooling (8477 20 000 0); automatic lines for production of wheel pairs (classification code 8479 89 970 8); gas turbine generator units (8502 39 200 0).

Also several types of reducing sizing blocks (8455 21 000 1) are added to the list.

The Resolution came into effect on 27 September 2016.

Temporary introduction of zero export customs duty rate with respect to wheat and meslin

Resolution of the Russian Government No. 966 of 26 September 2016 introduces zero export customs duty rate with respect to wheat and meslin classified under the classification code 1001 99 000 0. The zero export customs duty rate is effective from 23 September 2016 to 1 July 2018. The effective export customs duty rate is RUB 50-6.5K per 1 ton, but not less than RUB 10 per 1 ton (i.e. 50% of the customs value minus RUB 6,500 per 1 ton, but not less than RUB 10 per 1 ton).

The Resolution came into effect on 5 October 2016 and is effective to relations that arose from 23 September 2016.

Abolishment of prohibition of import into Russia of several stone fruits originating from Turkey

Resolution of the Russian Government No. 1020 of 9 October 2016 abolishes prohibition of the import into Russia of several stone fruits originating from Turkey. The prohibition is now not applied with regard to fresh or dried oranges (classification code 0805 10); fresh or dried mandarins (tangerines) (classification code 0805 20); fresh apricots (classification code 0809 10); fresh peaches, including nectarines (classification code 0809 30); fresh plums and blackthorn (classification code 0809 40).

The Resolution came into effect on 20 October 2016.

Draft guidelines of Russian Tax Policy for 2017-2019

The official website of the Russian Ministry of Finance has published Draft of General Guidelines of the Russian Tax Policy for 2017-2019.

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

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 Draft General Guidelines are the following:

VAT

- Introduction of Tax Free system;
- Introduction (starting from 2018-2019) of the obligation to pay VAT with respect to goods imported into Russia supplied by foreign online shops to Russian private customers.

Excise duties

- Increase of excise rates twice with respect to wine (excluding certain types of beverages);
- Inclusion of electronic cigarettes into the list of excusable goods;
- Increase at 10% of excise rates with respect to all types of tobacco products;
- Introduction of the coefficient (1,3) with respect to specific excise rates for tobacco products sold on the territory of Russia in the period from 1 October to 31 December of each calendar year, the volume of sale of which increases in any of these months the average volume of sale in the previous calendar year (in order to avoid building by taxpayers of the substantial stock of tobacco products at the end of the year in anticipation of the coming increase of excise rates starting from next year);
- Increase of excise rates with respect to motor petrol of class 5, diesel fuel, and middle distillate with simultaneous maintenance of excise rates with respect to motor petrol not meeting class 5 and straight-run petrol.

Federal Tax Service launches portal 'VAT office of an internet company' in test mode

The Federal Tax Service launched in test mode the portal 'VAT office of an internet company' (the link is http://lkio.gnivc.ru/). The portal will allow foreign e-services suppliers to register with the Russian tax authorities in order to pay Russian VAT with respect to e-services supplied to Russian private customers. Currently only the Russian version is available but it was confirmed by the tax authorities that it will also be available in English at a later stage.

At the moment, the following services are available in test mode:

1) An online test where a foreign company can check whether it is obliged to register with the Russian tax authorities,

2) Submission of an application for tax registration,

3) General information on the ESS legislation.

As it was reported earlier, there are new VAT rules to be applied to e-services in Russia from 1 January 2017. A Deloitte presentation summarizing the main rules to be applied can be found here: Russian VAT rules for electronically supplied services

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South Africa

SADC-EU EPA now effective

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

The EPA will allow for the maintenance of SACU common external tariffs (CETs) as well as the correction of trade imbalances between South Africa and the EU. An information document issued by the European Commission summarizes the trade benefits of the EPA as follows:

- 99% of all South African products exported to the EU will have preferential market access, compared to 95% under the Trade, Development and Cooperation Agreement (TDCA).

- 96% of South African products will not be subject to customs duties, quotas or other restrictions.

- Reciprocal protection of Geographical Indications will protect over 100 South African products like rooibos, Karoo lamb and 102 wines and 250 EU products.

- Improved protection: The EU will eliminate its use of agricultural export subsidies and have five bilateral safeguards where EPA countries can increase customs duties on any products where imports rise to a point of threatening local industries.

- EPA has introduced extensive cumulation which will allow for greater flexibility on rules of origin, thereby facilitating trade and industrialization across Southern Africa.

- Additional protection, in the form of temporary export duties, exist under the EPA for:
    - Industries that are viewed as 'infant industries', or;
    - In the case of exceptional circumstances or industrial development needs by the EPA States.

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Spain

Mandatory e-communications with tax authorities

As from 2 October 2016, the Law of the Common Administrative Procedure (Law 39/2015) came into force, which provides that from that date, the following taxpayers will be required to communicate with the tax authorities exclusively through electronic means:

a) Legal entities;
b) Entities without legal personality;
c) Those performing a professional activity that requires membership in a professional association in order to be able to contact the authorities;
d) Representatives of any subject required to contact the authorities by electronic means.

According to the above, those appeals, writs submitted to the tax authorities through tax Registries (i.e. on paper) will be considered to be filed out of time. Appeals before the Central Economic Administrative Court will also be considered as out of time if they are submitted on paper. Indeed, such appeals will be considered by the tax authorities as not having been submitted.

This new obligation is significant for tax and legal purposes. Bearing this in mind, it has now become even more important to remain aware of the expiration date of electronic user certificates.

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United Kingdom

Offshore businesses selling goods in the UK via on-line marketplaces

The UK tax authorities (HMRC) have published new guidance on VAT: overseas businesses using an online marketplace to sell goods in the UK. The guidance reflects the measures announced in the Budget to try and improve UK VAT compliance by offshore sellers selling through digital marketplaces. Under the new regime, an on-line marketplace operator, or an agent or representative of the overseas seller, can be held jointly and severally liable for any UK VAT that the offshore seller fails to pay.

HMRC Brief on 'use and enjoyment' of insured repairs for VAT purposes

HMRC have issued a reminder that repairers making supplies of repair services to offshore insurers need to charge UK VAT if the services are 'used and enjoyed' in the UK, on supplies made on and after 1 October 2016, see VAT – use and enjoyment of insurance repair services. According to HMRC's Tax Information and Impact Note about the law change, the measure will yield about GBP 5 million a year from 2017/18, and "…will only impact on the businesses that are structuring their arrangements to avoid irrecoverable VAT".

Consultation on new penalty for participating in VAT fraud

HMRC have published a consultation document, Penalty for participating in VAT fraud, seeking views on a range of options for a new penalty to be imposed on those who knew or should have known their transactions were connected with VAT fraud. The consultation explores the case for a new penalty, how it should be structured, whether it should apply to company officers, etc.

The closing date for comments is 11 November 2016.

Excise Duty: Consultation on draft raw tobacco approval scheme regulations

In the March Budget 2015, the Government announced its intention to introduce an approval scheme to tighten controls on the use of raw tobacco, in order to reduce the risk of evasion. Legislation in the Finance Act 2016 requires those carrying on a 'controlled activity' in relation to raw tobacco to be approved by HMRC.

HMRC have now begun a technical consultation, which will close on 14 November 2016, about the draft regulations that have been published (which deal with applications for approval to carry on any activity involving raw tobacco, the conditions and restrictions which may apply to such an approval, certain exemptions from the requirement to be approved and certain enforcement provisions) and the associated draft explanatory memorandum. See: Draft legislation: Raw Tobacco Approval Scheme.

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Eurasian Economic Union

FTA between the EAEU and Vietnam in force

On 5 October 2016, the Free Trade Agreement of 29 May 2015 between the Eurasian Economic Union and its member states, of the one part, and the Socialist Republic of Vietnam, of the other part, came into force. The FTA provides for the mutual decrease or annulment of import customs duty rates for nearly 10,000 classification codes, mostly from the date the FTA came into force and partially after transition periods. The FTA also provides for simplification of customs formalities, as well as cooperation in electronic commerce.

In the framework of cooperation with Vietnam, a Protocol was also signed by Russia and Vietnam on 21 March 2016 in support of the production of motor vehicles in Vietnam. Under the Protocol, Russian authorized companies (e.g. GAZ, KamAZ, Sollers) create joint ventures with Vietnamese partners for the production of vehicles. Generally, Vietnam will grant tariff quotas on the duty free import of models and sets necessary for production of such motor vehicles. The Protocol has not yet come into force.

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