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In this issue:
Country summaries
Americas
Asia Pacific
EMEA

Related links:
Global Indirect Tax
GITN archive
Indirect tax rates around the world

Contact us:
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Global Indirect Tax News

Indirect tax updates from around the world

June 2013

Message from David Raistrick, Global Indirect Tax Leader

Welcome to the June 2013 edition of GITN, which includes updates from the Americas, Asia Pacific and EMEA regions.

Some of the highlights of this edition include news from China on the expansion of the VAT reform pilot program, a report on the CJEU AG's Opinion on the European Commission's infringement proceedings regarding the application of the special scheme for travel agents, and more VAT rate news, with an increase in Slovenia from 20% to 22% on 1 July and the postponement of the previously announced Italian VAT rate increase to 1 October 2013.

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

David Raistrick
Global Indirect Tax Leader

Country summaries

Americas

Colombia: Consumption tax applies to bars and restaurants. **More**

United States: The manufacturing exemption in Florida will be expanded on a temporary basis. Changes have been made to the definition of taxable sales and purchases in Minnesota. The U.S. Senate has approved legislation authorizing states to collect sales and use taxes from out-of-state sellers. **More**

Asia Pacific

China: Update on the VAT reform pilot program. **More**

India: There are several updates on indirect taxes. **More**

New Zealand: An Officials' issues paper has been released on the GST treatment of immigration and other services and the Officials' report has been released on a bill that includes a number of GST amendments. **More**

EMEA

Bosnia and Herzegovina: The tax authorities have issued an opinion regarding the registration of branch offices of foreign legal entities for VAT purposes. There are new rules for the VAT registration of nonresidents. **More**

European Union: The AG has issued an opinion in the infringement proceedings regarding the application of the special scheme for travel agents. **More**

Germany: The regulations regarding the evidence needed for intra-community supplies have been enacted. **More**

Greece: The deadlines for filing VAT returns have been amended. **More**

Italy: The VAT rate increase has been postponed and updates on VAT rules. **More**

Lithuania: Rules regulating the information system for keeping and managing VAT invoice data have been approved. **More**

Netherlands: The CJEU has ruled on the transfer of a minority shareholding. **More**

Norway: There are new rules on VAT representation requirements. **More**

Poland: The CJEU has ruled on the Polish tax point rules for transport and shipping services. There is a further update on the CJEU case of *BGŻ Leasing sp. z o.o*. **More**

Portugal: A special VAT cash basis system will be introduced on 1 October 2013. **More**

Russia: Changes have been made to the penalty rules for retroactive increases in the value of goods and the Federal Arbitration Court of the Moscow District has ruled on the VAT treatment of lease improvements. **More**

Slovenia: The VAT rates increased on 1 July 2013. **More**

United Kingdom: The government has issued a consultation document on the VAT treatment of refunds made by manufacturers. **More**

Americas

Colombia

Consumption tax on restaurants and bars

From 1 January 2013 a new consumption tax has applied in Colombia to restaurants and bars at the rate of 8%. The scope of the consumption tax includes food services provided under catering contracts, restaurant and bar services provided at social clubs, and commercial establishments with mixed activities that include restaurant and bar services. Restaurants operating under a franchise or on a concession, royalties or similar basis (i.e. the exploitation of intangibles) are excluded

from the consumption tax, and are subject to sales tax.

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United States

Temporary expansion of manufacturing exemption in Florida

From 30 April 2014, a new law will temporarily expand Florida's sales/use tax exemption for manufacturers. Currently, only new or expanding businesses are eligible for the manufacturing exemption. Under the new exemption, certain industrial machinery and equipment will be exempt from state sales/use tax when purchased by eligible manufacturing businesses for use at a fixed location within Florida for the manufacture, processing, compounding or production of items of tangible personal property for sale. An eligible manufacturing business for these new provisions is a business whose primary business activity (i.e. an activity representing greater than 50% of all activities) at the location where the industrial machinery and equipment is located is within the scope of industries classified under 2007 NAICS codes 31, 32, and 33. The temporary sales/use tax manufacturing exemption is part of a broad economic development accountability bill and is set to expire on 30 April 2017.

Taxpayers not meeting the eligibility requirements for the exemption still may be eligible for relief under another rule that provides a state sales/use tax exemption for new and expanding manufacturing businesses.

Cathy Newport, cnewport@deloitte.com, Senior Manager, Deloitte United States

Minnesota enacts Omnibus Tax Bill including changes to sales and use tax

For sales made after 30 June 2013, the definition of taxable sales and purchases are expanded to include the following:

- Specified digital products, such as digital audio works, digital audiovisual works and digital books that are transferred electronically or in a tangible medium;
- Repair and maintenance of electronic and precision equipment such as computers, monitors, photocopying machines, printers, televisions and stereo systems if deducted as a business expense under the Minnesota Internal Revenue Code; and
- Repair and maintenance of commercial and industrial machinery and equipment.

For sales and purchases made after 31 March 2014, the definition of taxable sales and purchases will be expanded to include warehousing or storage services for tangible personal property. Sales tax will not be levied on the warehousing or storage of agricultural products, refrigerated storage, electronic data and self-storage of motor vehicles, recreational vehicles, and boats not deductible as a business expense under the Internal Revenue Code.

For sales and purchases made after 31 August 2014, capital equipment (machinery and equipment used in manufacturing) will be exempt from sales and use tax at the time of purchase. Currently, manufacturers are required to pay tax on capital equipment and

request a refund of the tax.

For sales and purchases made after 30 June 2013, the new law provides relief to purchasers that do not have a direct pay permit for purchases of digital goods, computer software delivered electronically or services in which the goods or services will be available for use in more than one taxing jurisdiction. In such cases, the purchaser may provide the seller with a multiple points of use exemption certificate. This will allow companies to use a reasonable method of apportionment to allocate a portion of the price to other taxing jurisdictions for purposes of calculating and remitting Minnesota use tax.

For sales and purchases made after 30 June 2013, remote sellers that enter into an agreement with a resident of Minnesota whereby the resident receives a commission or other consideration to direct potential customers to the seller will be presumed to have a Minnesota nexus for sales and use tax purposes unless rebutted by proof that the resident did not engage in any solicitation in the state on behalf of the retailer.

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U.S. Senate approves legislation authorizing states to collect sales and use taxes from out-of-state sellers

On 6 May 2013, the U.S. Senate approved legislation that generally would make it easier for a state to collect sales and use taxes from sales made by out-of-state or “remote” sellers (such as catalogue or online retailers) that do not have an in-state physical presence. The Marketplace Fairness Act of 2013 now heads to the House of Representatives for consideration.

The Marketplace Fairness Act generally provides a state that is a member of the Streamlined Sales and Use Tax Agreement (SSUTA) with the authority to enact laws requiring remote sellers to collect and remit sales and use taxes to the state with respect to “remote sales” sourced to that state.

If a state is not a member of the SSUTA, the state may exercise such authority if the state adopts certain “minimum simplification requirements” relating to the administration of the tax, including a single audit for all state and local taxing jurisdictions within the state, a single sales and use tax return and uniformity of the tax base. A nonmember state also must provide remote sellers with free software for purposes of calculating sales and use taxes due on each transaction at the time the transaction is completed and for purposes of filing state sales and use tax returns.

Small businesses are exempt under the Act if their annual gross receipts from remote sales in the U.S. do not exceed USD 1 million.

Other relevant provisions of the Marketplace Fairness Act include the following:

- The Act will not be interpreted to create nexus or alter the standards for determining nexus.
- Remote sellers may deploy or utilize a certified software provider of their choice.

- A cascading sourcing rule is used to determine the location where the product or service is sold.

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Asia Pacific

China

Update on VAT reform pilot program

On 24 May 2013, China's Ministry of Finance and State Administration of Taxation issued a circular (Circular 37), announcing that the services (i.e. transportation and the six groups of modern service sectors) covered under the VAT reform pilot program will be rolled out to the whole country as from 1 August 2013.

Circular 37 follows the main principles of the current VAT pilot rules, but it also makes some clarifications/adjustments:

- Radio, film and TV production, distribution and broadcasting will be covered by the VAT reform and will be subject to 6% VAT. Broadcasting and the distribution of TV and radio programs and films outside of China and the production of TV and radio programs and films for overseas entities will be exempt from VAT;
- If a pilot service is eligible for both VAT exempt and zero-rated treatment, the zero-rating should take precedence;
- A domestic entity or individual that provides services eligible for zero-rating can opt to waive such treatment and instead apply the VAT exemption, or treat the transaction as a taxable supply and pay VAT. However, once the zero-rated treatment is waived, the taxpayer cannot apply the zero-rating for the subsequent 36 months;
- Trading companies should use the "exempt and refund" method for the provision of zero-rated services;
- An input VAT credit is allowed for the self-use of automobiles, motorcycles and yachts that are subject to consumption tax; and
- For finance leasing of tangible and movable property provided by approved pilot taxpayers, the service revenue as the basis for an output VAT calculation should be the total proceeds net of certain specified expenses. The current provisions that allow pilot taxpayers to deduct the payments to non-pilot taxpayers from their sales revenue are eliminated in Circular 37.

The Ministry of Finance and the tax authorities have taken into account the experience gained from the pilot program and have introduced some positive changes in Circular 37. In particular:

- Taxpayers are allowed to consider and chose whether zero-rating or VAT exemption is the most VAT efficient and compliance cost saving treatment.
- The clarification that the VAT refund calculation method for trading companies should be “exempt and refund” for zero-rated pilot services which may reduce their compliance burden and irrecoverable VAT cost from the current practice where trading companies have had to adopt the “exempt, credit and refund” method;
- The allowance of an input VAT credit for the self-use of automobiles, etc. provides more input VAT credit for taxpayers; and
- The allowance of an expense deduction for finance leasing businesses is likely to provide some relief to those who previously claimed that they suffered from an increased VAT burden as a result of the pilot program.

Circular 37 does not specify the treatment for small-scale taxpayers, which may be further clarified.

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India

Exemption from excise duty for goods sold to duty-free shops

From 23 May 2013, the goods sold in duty-free shops located in the arrival halls of international airports will be exempt from excise duty, subject to certain conditions. The procedure for moving domestic excisable goods from the factory of a manufacturer to duty-free shops also has been specified.

Sponsorship of sports team exempt from service tax

Services supplied in relation to the sponsorship of sporting events do not qualify as taxable services and, hence, were not subject to service tax.

In a recent case, a taxpayer entered into an agreement with the owners (franchisee right holders) of a sports team to sponsor the team in a sports event. The taxpayer argued that service tax did not apply because services in relation to sponsorship of sporting events are not taxable services. The tax authorities sought to levy tax on the basis that sponsorship of a team is not sponsorship of a “sporting event”. The Delhi Tribunal concluded that the term “in relation to” has a broad meaning and held that service tax did not apply.

Ruling on input tax credit

As from 1 May 2013, dealers registered in the State of Maharashtra and engaged in the business of leasing/transferring rights to use goods are not eligible for input tax credits on the purchase of passenger motor vehicles treated as capital assets.

Input tax credit rules for developers and units in Special Economic Zones

The provisions relating to the claiming of input tax credits (ITC) by developers and units located in the processing areas of Special Economic Zones were eased with effect from 15 October 2011 as follows:

- ITC will be allowed even if gross receipts on account of the sale of goods is less than fifty percent of the total receipts;
- ITC will be allowed on purchases effected by way of works contracts resulting in immovable property;
- ITC will allowed on the purchase of goods that are used to erect immovable property.

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New Zealand

GST treatment of immigration and other services

On 5 June 2013, the New Zealand tax authorities (Inland Revenue) released an Officials' issues paper, **The GST treatment of immigration and other services,** which considers two problems with the application of the GST zero-rating rules relating to services supplied to nonresidents that are offshore. The issues concern the difficulty in ascertaining the location of the nonresident at the time services are supplied and the interaction between the zero-rating and the income tax residence rules.

It is suggested that services to nonresidents remain zero-rated even if a nonresident visits New Zealand during the period of service, provided the visit is not in direct connection with the services performed. It also is proposed that the retroactive application of the tax residence rules be made redundant in relation to the application of the zero-rating rule. Submissions are sought from the public on this issue.

Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill

On 6 June 2013, the Finance and Expenditure Committee released the **Officials' report** on the ***Taxation (Annual Rates, Foreign Superannuation, and Remedial Matters) Bill.*** Below is a summary of the material proposed GST changes:

Enhanced GST registration for nonresidents

The bill contains draft legislation to change the rules governing when a nonresident business can register for GST and claim input tax deductions. These changes, which would apply as from 1 April 2014, are intended to allow nonresidents to register and claim GST input tax in a manner comparable to New Zealand residents, thereby decreasing the risk of GST leakage. Although nonresidents must meet certain registration criteria and the Commissioner of Inland Revenue has the ability to deregister a nonresident in certain circumstances, the proposed change generally is positive as it promotes cross-border business-to-business neutrality. This is a fundamental change to the New Zealand GST legislation and will be of interest to nonresident businesses incurring GST on costs in New Zealand.

GST grouping rules for nonresidents

As introduced, the bill would not have allowed a nonresident company to register for GST as part of a group of companies if the group also includes a New Zealand resident company. However, this restriction is to be removed so that nonresident companies would be able to register within a cross-border group rather than having to meet the onerous requirements of nonresident registration.

Agent and principal supplies

Under the current GST agency rules, supplies made to an agent are deemed to be made to the principal. The bill contains draft legislation to enable principals and agents to agree to treat the principal's provision of the goods and services to the agent and the agent's supply to the customer as separate supplies for GST purposes.

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EMEA

Bosnia and Herzegovina

VAT registration of established branch offices of foreign legal entities

Recent changes to tax and company act provisions enable the establishment of branch offices of foreign legal entities. As a result, a foreign legal entity can establish a branch office within the territory of Republika Srpska, enter the branch office into the commercial court registry and obtain a tax ID for that branch office. This tax ID will be issued by the tax authority of Republika Srpska and can be used only for direct tax reporting purposes (corporate income tax, personal income tax, etc.).

The Indirect Tax Authority of Bosnia and Herzegovina (ITA) has issued an opinion stating that registration for VAT purposes (i.e. obtaining a VAT ID) cannot be made via a branch office; in other words, a foreign legal entity that is carrying out business activities through its branch office is required to appoint a VAT representative in Bosnia and Herzegovina (i.e. a local VAT payer) in order to obtain a VAT ID for VAT reporting purposes.

VAT registration of nonresidents

The recent adoption of the new Book of Rules on Entering into the Single Register for Indirect Taxes requires the registration for VAT purposes of nonresidents that carry out taxable economic activities in Bosnia and Herzegovina, even if they do not exceed the VAT registration threshold of BAM 50,000.

Under the Book of Rules, if a nonresident carries out economic activities in Bosnia and Herzegovina, it must appoint a VAT representative in Bosnia and Herzegovina that is already registered as a VAT taxable person with the ITA. The foreign person and the

VAT representative are jointly and severally liable for VAT. The representative submits all the returns, claims and other documents on behalf of the non-resident.

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European Union

AG issues opinion on application of special scheme for travel agents

The AG of the Court of Justice of the European Union (CJEU) issued the opinion in the Commission's infringement proceedings against a number of EU member states regarding the application of the special scheme for travel agents (Czech Republic, Finland, France, Greece, Italy, Poland, Portugal and Spain). The opinion considers whether the special scheme applies regardless of whether the customer is the traveler; in other words, whether wholesale supplies fall within the scope of the special scheme.

The issue arises because different language versions of the VAT Directive do not make it clear whether the scheme applies only when travel services are sold on a retail basis to a "traveler" or also on a wholesale basis to any "customer". The AG has opined that the better approach is to include wholesale supplies within the scheme.

The CJEU decision in the case is expected to be issued within the next three to six months, so wholesale tour operators will need to prepare for change, as it seems likely that the VAT rules that apply to wholesale tour operators will need to change in at least some EU member states.

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Germany

Evidence required for intra-community supplies

As mentioned in a previous edition of GITN, Germany has enacted the amendments to the regulations regarding the evidence needed for intra-community supplies (Gelangensbestätigung), i.e. a confirmation by the recipient that the goods arrived in the country of destination, which must be held by the supplier in addition to the invoice. The new regulations will apply from 1 October 2013.

Amongst other requirements, the new legislation set out the following details:

- Where the Gelangensbestätigung is transmitted electronically, the recipient's signature should not be mandatory if it is evident that the recipient has sent the confirmation. A valid electronic signature of the recipient or a further control mechanism from the supplier's side are no longer required.
- Bulk confirmations per month or maximum per quarter are allowed.
- The confirmation can consist of several documents, which overall show the necessary content.

The new legislation provides for alternative means to provide evidence, such as:

- Waybills, e.g. a CMR waybill signed by the consignor and the consignee;
- Transport documents, such as a confirmation by the freight forwarder showing, amongst other information, the month in which the goods arrived;
- Further options have been introduced for shipments via postal or courier services, as well as for pick-up supplies.

In line with recent CJEU rulings, further proof will be accepted on a case-by-case basis, whilst the various documents described above remain the evidence of choice.

Now that the legislation has been enacted, affected taxpayers should review existing documentation on EU cross-border supplies before the new rules take effect in October.

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Greece

Changes to deadlines for filing VAT returns

Greece's Ministry of Finance has issued a decision granting an extension for companies to file their annual VAT returns for FY12.

According to the decision, the final date for the electronic filing of the annual VAT return for the FY12 (where the due date was originally 10 June 2013) was amended to 17 June 2013, provided any VAT payables stemming from provisional returns was paid by 12 June 2013.

The Ministry of Finance also has changed the deadline for submission of the periodic VAT return:

- In the case of a debit VAT balance, the periodic VAT return must be submitted by the 20th day of the month following the end of the tax period to which the return relates (rather than the 26th day). The deadline for a return where there is a nil or a credit VAT balance remains unchanged, i.e. the return must be submitted by the last day of the month following the end of the tax period to which the return relates.
- The periodic VAT return will be considered to be duly submitted where the entire VAT amount due, along with any additional taxes, or at least an amount of EUR 10, is paid to the state. This provision applies to periodic VAT returns submitted in a timely manner as from 1 June 2013 and to late returns submitted as from 1 July 2013.

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Italy

Increase in standard VAT rate postponed

The last Italian budget law announced an increase in the standard VAT rate from 21% to 22% as from 1 July 2013, unless the government found alternative means of financing before that date.

On 26 June, the Italian Council of Ministers approved the postponement of the increase to 1 October 2013.

Supply of food and beverages in vending machines

As from 1 January 2014, the reduced VAT rate of 4% will no longer apply to the supply of food and beverages through vending machines; instead, the 10% reduced rate or the standard 21% will apply.

The 10% VAT rate, which applies to the supply of food and beverages in general, will apply to the supply of food and beverages made through vending machines in factories, hospitals, nursing homes, offices, schools, police stations and other buildings available to the general public. The supply of food and beverages through vending machines located in other places will be subject to the standard rate.

Registration tax

The tax authorities have issued a circular clarifying certain operational aspects of registration tax. The circular focuses on the general principles of the tax, in particular by providing guidance on the application of the tax where there is more than one transaction and the principles determining the tax base with particular reference to barter transactions.

The circular also analyzes the rules for the taxation of transfers involving buildings and of transfers involving land, donations and other goods or services free of charge.

Clarification of chargeable event for services

As mentioned in previous editions of GITN, a recent circular issued by the tax authorities clarifies the tax point rules for cross-border supplies of services.

The circular distinguishes between services supplied under contracts that involve a single service and contracts where the service is spread or repeated over time, and confirms that for one-time supplies, the chargeable event of the transaction coincides with the completion of the services, while for the continued or periodic supplies, the time of accrual is taken into consideration. In both cases, according to the tax authorities, individual contract clauses are relevant to identify when the individual service is considered to be completed or the consideration accrued.

If there is a lag between the time the services are completed and the time the customer becomes aware of the completion, the documents exchanged between the parties (for the purposes of communicating the progress of the work and the amount of the consideration payable) will be relevant.

If the price cannot be determined because the contract is still in progress and therefore is not known by the counterparties at the transaction date, the tax authorities have

clarified that the completion of the services or the accrual of the consideration may be recognized when these aspects are known, provided the criteria for their identification were established by the contract. Only at that time will there be a chargeable event for VAT purposes (unless any advance payments of the consideration have been made).

For supplies made by an EU or non-EU supplier that fall under the general place of supply rule for services (B2B services taxable in the place of establishment of the customer), the receipt of the invoice from the same supplier can be taken as an indication of the chargeable event.

The circular also clarifies the chargeable event of supplies of services under the general rule:

- If an Italian customer receives an invoice issued by an EU supplier before the completion of the services, the customer can integrate the invoice and account for the VAT (recovering input VAT if appropriate), as, for reasons of legal certainty and simplification, the invoice issued by the EU supplier can be presumed to be the chargeable event.
- Where the conclusion of the transaction is uncertain or there is an excusable error in identifying when the transaction was concluded, the recipient will not be penalised for an early issuing of a self-invoice, except where there has been abuse.

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Lithuania

Information system for keeping and managing VAT invoice data

Rules regulating the information system for keeping and managing the data of VAT invoices (VAT information system) have been approved. The rules define the main objectives of the VAT information system and establish its functional and organizational structure, as well as the requirements for the submission, use and protection of the data.

The creation of the VAT information system constitutes a main part of the EU-funded project “VAT electronic services,” which should be implemented by 28 February 2015.

The VAT information system will provide VAT payers with the ability to:

- Collect data from VAT invoices issued and received by VAT payers from various sources or to upload them directly to the VAT information system;
- Check such data against data contained in the VAT information system and other information systems of the tax authorities (with inaccuracies communicated to the VAT payer);
- Receive the preliminary VAT returns and preliminary registers of VAT invoices prepared based on the collected data.

The electronic services should become available upon the completion of the EU-funded project in 2015.

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Netherlands

CJEU rules on transfer of minority shareholding

The CJEU has ruled in a Dutch case (*Staatssecretaris van Financien v X BV*) involving a transfer of a minority (30%) shareholding of a company and whether that disposal can be regarded as a transfer of a going concern for VAT purposes, in which case a VAT deduction would be available for associated costs.

A holding company qualified as a VAT entrepreneur may sell shares exempt from VAT. Technically, therefore, VAT on directly attributable selling expenses cannot be deducted. Following the *SKF* case, it may be possible to regard the shares as transparent and regard the transfer of 100% participation as the equivalent of a transfer of the underlying assets and liabilities. The transfer of the shares could then be regarded as the transfer of a company. If so, the VAT incurred on the selling expenses usually would be deductible.

According to the CJEU, the disposal of the minority participation cannot be treated as a VAT-free transfer of a going concern. The purpose of treating a going concern as VAT-free is to prevent the acquiring party from having to prefinance a significant amount of VAT. This does not arise in a share transaction because, irrespective of the size of the participation, it is either nontaxable (if the transferring party does not qualify as a VAT entrepreneur) or is exempt (if the transferring party does qualify as a VAT entrepreneur).

The CJEU further ruled in the *X BV* case that the partial transfer of a participation does not constitute a transfer of a company because it does not enable the acquiring party to continue an autonomous economic activity. The acquiring party obtaining 100% of the shares from the remaining shareholders is irrelevant, according to the CJEU. Likewise, discontinuing the management activities performed by X does not lead to an enterprise being transferred; according to the CJEU, terminating the activities is the direct and logical consequence of the disposal of the participation.

The CJEU referred the case back to the Netherlands Supreme Court to determine whether VAT is deductible on the selling expenses incurred.

It can be inferred from the CJEU decision that exclusively transferring a participation and considering this to be equivalent to transferring a company is only possible in very unusual circumstances.

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Norway

VAT representation

The following changes to Norway's VAT representation rules take effect on 1 July 2103:

- It will no longer be a legal requirement for an invoice from a foreign business to be sent through a VAT representative in Norway. Invoices can be sent directly from a foreign business to the customer, but the invoice must still include the name of the representative and meet other formal invoice requirements.
- A VAT representative will no longer be jointly and severally liable for the correct payment of VAT with businesses from countries with which Norway has entered into agreements regarding the exchange of information and collection of VAT (currently Belgium, Czech Republic, Denmark, Finland, France, Iceland, Italy, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and UK). Since a VAT representative normally requires a bank guarantee because of this liability, the new rules provide relief for foreign companies doing business in Norway. A Norwegian VAT representative will continue to be jointly and severally liable for the correct payment of VAT with businesses from other countries.

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Poland

Application of specific tax point rules to provision of services

On 16 May 2013, the CJEU issued a judgment in the Polish case, *TNT Express Worldwide (Poland) sp. z o.o.,* ruling that the Polish rules on tax point recognition in respect of transport and shipping services do not conform to the EU VAT Directive.

Under Polish VAT law, the tax point for transportation and shipping services is the date of receipt of payment, but no later than the 30th day from the date on which the services were supplied.

TNT argued that this rule is not in line with the VAT Directive and that it could recognize the tax point on the basis of the general rule, i.e. upon the issuance of an invoice, but not later than seven days from the performance of the services (and not waiting for the receipt of payment or the lapse of the 30th day from the performance of the services). The CJEU confirmed this interpretation.

Based on this decision, Polish taxpayers can account for VAT on transportation and shipping services in accordance with the general rule, and not the specific tax point rule. Although this may be less favorable in terms of cash flow, it often involves significantly less administration. The CJEU decision also may apply to other services subject to special tax point rules.

As discussed in previous editions of GITN, the Polish tax point rules will change on 1 January 2014. After this date, the tax point for VAT on transportation services will be at the time the service is completed.

Insurance of leased goods

As discussed in previous editions of GITN, the CJEU suggested in the Polish case of *BGŻ Leasing sp. z o.o.* that, in principle, the lease and insurance of goods should be regarded as distinct and independent supplies, and that the recharge of the exact cost of the insurance provided with a supply of leased goods should be exempt from VAT.

Despite this decision, many leasing companies find that the tax authorities are refusing to make refunds of VAT paid. The tax authorities tend to argue that the CJEU's ruling contains only guidelines on the VAT treatment of the insurance of leased goods, and that the Polish VAT regulations still conform to the EU VAT Directive.

The Ministry of Finance is planning to issue a general tax ruling on the issue, which will be binding on all taxpayers to which the case applies.

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Portugal

VAT cash basis system

A special VAT cash basis system was introduced by decree on 30 May 2013 and applies as from 1 October 2013.

This system will be optional for taxable persons registered for VAT purposes for more than 12 months that did not exceed an annual threshold of EUR 500,000 in the previous year and have a regularized tax status. Under the VAT cash basis system:

- VAT will be due when the acquirer actually makes payment (either in whole or in part) of the outstanding invoice amount, or after 12 months of the invoice date if no payment occurs by then;
- Taxpayers that opt for this regime only may deduct input VAT if they have the receipt/invoice receipt that proves the payment.

The decree sets out specific rules for taxpayers covered by the current VAT cash basis regime. This regime will be abolished on 1 October 2013.

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Russia

Retroactive increase in value of goods

With respect to periods before 1 July 2013, where there is an increase in the value of goods supplied (due to an increase in the price or quantity) a taxpayer should submit an amending VAT return for the tax period in which the shipment of goods was made, and pay late payment interest.

As from 1 July 2013, however, no late payment interest is to be paid by the taxpayer where there is an increase in the value of goods shipped, because from that date, the increase in the tax base for VAT purposes should be taken into account in the period in

which the documents supporting the increase were issued, and not in the period in which the goods were shipped.

Leasehold improvements

In a decision dated 17 April 2013 (# A40-69829/12-108-55), the Federal Arbitration Court of the Moscow District held that leasehold improvements made by the taxpayer during the lease period and transferred to the lessor after the termination of the lease agreement for free represent a supply, being a separate taxable event for VAT purposes.

When leasehold improvements are paid by the lessee at its own expense and with the consent of the lessor, the lessee is entitled to reimbursement of the costs arising following the termination of the lease, unless otherwise agreed in the lease agreement. As such, the court concluded that, after termination of the lease agreement, the lessee should have accounted for VAT upon transferring the leasehold improvements to the lessor for free.

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Slovenia

Change of VAT rates

The recent budget contained a VAT rate increase. The standard VAT rate will be increased from 20% to 22% and the reduced VAT rate from 8.5% to 9.5% as from 1 July 2013.

The following transitional provisions apply:

- For supplies of goods and services carried out partly before and partly after 1 July 2013, taxpayers must charge VAT for the full supply of goods or services at the higher VAT rates;
- However, on or before 30 June 2013 a taxpayer was able to charge VAT on partial supplies of goods or services carried out before 1 July 2013 at the VAT rates applicable before 1 July 2013, provided the invoice for supplies already carried out is issued by 20 July 2013;
- Taxpayers that receive full payment for supplies of goods or services before 1 July 2013 relating to supplies entirely carried out after 1 July must charge VAT at the rates applicable before 1 July;
- Taxpayers that receive partial payments for supplies of goods or services before 1 July 2013 relating to supplies carried out in full after 1 July must charge VAT on the prepayment received at the rates applicable before 1 July 2013, and on the remaining amounts, at the rates applicable from 1 July 2013.

The latter two provisions also apply to prepayments made for supplies of goods or services in relation to which the recipients are liable to charge VAT.

Amendment to VAT law

The Ministry of Finance recently published a proposal on the government's website to amend the VAT law. The proposal includes the following:

- Correction of the VAT rates as per the provisions in the budget;
- Correction of the calculated VAT rates for prepayments, i.e. the calculated VAT rate of 22% is 18.0328% and the calculated VAT rate of 9.5% is 8.6758%;
- Implementation of grounds for denial (in whole or in part) of VAT refund claims;
- Changes in the criteria for application of the flat-rate scheme for agricultural products and services of particular groups; and
- New Annexes VIII (VAT return) and X (recapitulative statement).

If enacted, the proposed rules would apply as from 1 July 2013.

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United Kingdom

Consultation on VAT treatment of refunds made by manufacturers

In Budget 2013, the UK government announced its intention to legislate to allow manufacturers to adjust their VAT to take account of refunds they make to final consumers. The tax authorities have now issued a **consultation document** seeking views on the extent to which manufacturers make such refunds, the range of circumstances that may give rise to a refund, how the change should be implemented, its impact and potential administrative burdens. The deadline for responses is 31 August 2013.

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