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## Global Indirect Tax News

### Your reference for indirect tax and global trade matters

September 2014



Welcome to the September edition of GITN, containing updates from the Americas, Asia Pacific, and EMEA regions.

Features of this edition include updates from China on a number of VAT and customs developments and the potential for significant VAT claims in Denmark based on the *ATP PensionService* case.

The CJEU has delivered its judgment in the Finnish case of *K Oy* about the VAT treatment of books supplied on 'alternative' carrier mediums (i.e., CDroms, USB sticks, memory cards, etc.). The Court has decided that EU law permits different VAT treatments for paper books and those on different carrier mediums – provided that this does not breach the principle of fiscal neutrality (which depends on the views of an 'average consumer'). Given increasing sales of e-publications, a number of EU Member States have been considering the VAT rates applicable to e-publishing, with some inconsistency in the approach taken. For example, the European Commission has referred France and Luxembourg to the CJEU for applying a reduced VAT rate to e-books, which the Commission considers cannot benefit from a reduced rate. In Germany, the government is reducing the VAT rate on audio books and would like to see a reduction in the VAT rate applicable to e-books at EU level. And in the UK, the tax authorities' current approach, which treats physical books as zero-rated but e-books as subject to the standard rate of VAT, is being challenged. This is certainly an ongoing issue, especially with the upcoming 2015 place of supply changes, and we will keep you updated on developments in future editions of this newsletter.

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

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United Kingdom: The CJEU has issued its decision in a case on the VAT treatment of bad debt relief. Additional guidance has been issued on the domestic reverse charge on the supply of gas and power. Potential additional excise duty on fuel used in corporate jets and boats. [More](#)

## Americas



### Colombia

#### **Munitions and weapons are restricted disposal merchandise and can only be imported via the Military Industry**

The National Tax and Customs Authority (DIAN) has clarified that the importation of guns and munitions must be processed through the national Military Industry (INDUMIL). If goods are imported by a non-authorized entity and the tax authorities seize the goods, there is no right of appeal to the courts, because this is a security condition and a matter of national defense.

DIAN also confirmed that guns and munitions can be imported by individuals under the travelers' regime.

#### **Invoice can be used as certification of origin**

DIAN has advised on its website that under the Commercial Agreement between Colombia and the European Union, an exporter can prove the origin of goods by the invoice or document of delivery, provided the value of the goods is less than EUR 6,000 and certain conditions are met.

It is therefore not necessary to provide the certification of origin to DIAN.

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## United States

### **New Jersey: Division of Taxation issues reminder of new law imposing remote seller 'click-through' nexus standard**

Pursuant to recently enacted legislation (A. 3486 / S. 2268; see the previously issued **Multistate Tax Alert** for more details on this new law) that creates a rebuttable presumption that an out-of-state seller who makes taxable sales of tangible personal property, specified digital products, or services, is soliciting business and has nexus in New Jersey under certain circumstances, the Department of Revenue has issued a reminder that such nexus standards apply to sales occurring on or after 1 July 2014.

More specifically, this rebuttable presumption is created if such an out-of-state seller:

- i) enters into an agreement with a New Jersey independent contractor or other representative for compensation in exchange for referring customers via a link on their website, or otherwise, to that out-of-state seller; **and**
- ii) has sales from these referrals to customers in New Jersey in excess of USD 10,000 for the prior four quarterly periods ending on the last day of March, June, September, and December.

Out-of-state sellers that meet both conditions must register for state sales tax purposes and collect and remit sales tax on all sales delivered to New Jersey. The notice explains that because the law creates a rebuttable presumption, the out-of-state seller may provide proof that the independent contractor or representative did **not** engage in any solicitation on their behalf in New Jersey; the burden is on the seller to prove that it is not required to collect and remit state sales tax. The notice then provides an example scenario to illustrate how the new law is applied.

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## Asia Pacific



### China

#### **Guidance re-issued on VAT-exempt treatment for cross-border services**

China's State Administration of Taxation (SAT) has re-issued the implementation guidance on the application of VAT-exempt treatment for cross-border services. Bulletin [2014] No. 49, which will become effective on 1 October 2014, supersedes the existing guidance in Bulletin [2013] No. 52 and also will only apply to qualifying services provided before 1 October and for which the VAT exemption has not yet been applied for.

The updates in Bulletin 49 generally result from the further expansion of the VAT reform after the issuance of Bulletin 52 to new industries, such as railway transportation, post and telecommunications. The three key updates in Bulletin 49 all clarify that exemption is possible for the following:

- Two categories to the list of cross-border services qualifying for VAT-exempt treatment:
  - Postal/delivery services for export goods; and
  - Telecommunications services provided to foreign entities
- Where the service income is 'deemed' to be received from overseas
  - For qualifying cross-border services provided to a foreign related party, where the income actually is received from a domestic company that acts as an internal treasury/clearing house for a multinational group; and
  - For logistic ancillary services provided to a foreign airline, where the income actually is received from the Accounting Centre of China Aviation, the Settlement Center of the Civil Aviation Administration of China (CAAC) or the foreign airline's CAAC-approved representative office in China
- Services in relation to Hong Kong, Macau and Taiwan.

Bulletin 49 confirms that Hong Kong, Macau and Taiwan are considered foreign jurisdictions for VAT exemption purposes.

Affected taxpayers are recommended to review their business activities and assess whether the company can benefit from VAT-exempt treatment for qualifying cross-border services, and proactively communicate with the competent tax authorities to seek clarifications or guidance for any issues.

#### **Nationwide implementation of pilot tax refund policy for financial leasing of goods**

The Ministry of Finance (MOF), SAT and the General Administration of Customs (GAC) jointly issued Caishui [2014] No. 62 to expand the pilot scope of the tax refund policy for the financial leasing of goods from Tianjin Dongjiang Free Trade Port Zone to nationwide. The tax refund policy is only limited for certain qualified exports such as aircraft, aircraft engines, railway vehicles, and watercraft.

Caishui [2014] No. 62 also provides guidance on the tax refund calculation method and procedure.

Caishui [2014] No. 62 takes effect from 1 October 2014.

#### **Supplementary notice for railway transportation enterprises calculating and paying VAT on a consolidated basis**

Further to Caishui [2013] No. 111, which stipulated that certain listed railway transportation enterprises can pay VAT on a consolidated basis, SAT and MOF issued a supplementary notice on 5 August 2014 (Caishui [2014] No. 54), mainly to add/amend some enterprises in Appendix 2 of Caishui [2013] No. 111, and to provide guidance for the joint ventures in the railway transportation industry listed in the abovementioned Appendix 2 to compute and pay VAT on a consolidated basis.

Caishui [2014] No. 54 took effect from 1 September 2014.

#### **Expansion of pilot scope of tax refund policy for port of departure**

MOF, SAT and GAC jointly issued Caishui [2014] No. 53 to expand the pilot scope of the VAT refund policy for the exit of goods from the listed ports to overseas through Yangshan Port.

Caishui [2014] No. 53 takes effect from 1 September 2014.

The highlights are:

- Expanding the ports of departure from two to eight listed ports, including Longtan port in Nanjing, Taicang port in Suzhou, Zhujiqiao port in Wuhu.
- Expanding the transportation enterprises from two listed companies to all the qualified companies approved by the local authorities.
- Expanding the transportation facilities from four listed facilities to all the qualified facilities approved by the local authorities.
- Clarifying the criteria for export enterprises to enjoy this tax refund policy.

Notice No. 53 provided guidance on the main procedures for claiming the tax refund, while details are separately clarified in Bulletin of SAT [2014] No. 52.

#### **Postponement of cancellation of bonded treatment for importation of steel materials under processing trade relief scheme**

Further to Caiguanshui [2014] No. 37 (see the August 2014 edition of this newsletter), MOF, GAC and SAT jointly announced Caiguanshui [2014] No.54 on 28 August 2014, to postpone the cancellation of bonded treatment for the imports of steel materials under processing trade relief for 78 tariff codes of imported steel products from 31 July 2014 to 31 December 2014. The customs duty and import taxes will be levied from 1 January 2015.

#### **Expansion of scope of mutual recognition of Authorized Economic Operators**

Further to the Bulletin of the General Administration of Customs 2014 No. 38 (see the June 2014 edition of this newsletter), the GAC announced the Bulletin of the General Administration of Customs 2014 No. 64 to expand the scope of the mutual recognition of Authorized Economic Operators (AEO) from listed land ports to all sea, land and air ports from 1 September 2014.

AEOs are 'Recognized Business Operators in Hong Kong' by Hong Kong Customs and 'Customs compliance rating AA companies' approved by People's Republic of China Customs.

A number of customs clearance preferential treatments will be provided, such as lowered inspection rates, simplified document reviews, faster clearances, and designated customs officials to facilitate imports/exports, etc.

#### **Nationwide rollout of 19 customs innovative supervision and management measures**

Further to the 14 new customs measures announced in April 2014 (see the May 2014 edition of this newsletter), Customs introduced five innovative supervision and management measures in the Shanghai Pilot Free Trade Zone (SPFTZ) in July 2014.

The five newly introduced measures are:

- **Customs registration reform**  
Customs declaration companies with a customs compliance rating of A or above are allowed to perform declarations to any regional Customs within the China Customs boundary.
- **Promotion of mutual AEO recognition**  
Companies with the highest customs compliance rating (i.e., AA) are able to enjoy trade facilitation to the highest extent in the import/export activities from both China Customs and Customs of ship-to/ship-from country or region.

- **Customs coordinator pilot**

The Shanghai Customs coordinator service platform will be established, whereby a specific coordinator will be designated to assist the qualified company to improve its management from a customs perspective.

- **Credit information disclosure**

The credit information of companies will be summarized and disclosed on Customs' own initiative or upon application to the public on a regular basis, to strengthen social supervision and encourage business integrity, as well as to meet the need for credit information in public offerings or bidding.

- **Voluntary disclosure program**

This pilot program encourages companies to voluntarily report noncompliance with customs rules and regulations, in exchange for potential relief from penalties associated with the noncompliance.

These 19 measures have been rolled out to all the Customs supervised areas in China from 3 September 2014, and will be rolled out nationwide from 18 September 2014.

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## **India**

### **Accounting principles to determine 'exchange rate' for value of taxable services**

The service tax law prescribed the exchange rate notified from time to time for customs duty purposes as the basis for determining the value of taxable services.

This practice will be discontinued and with effect from 1 October 2014, the rate of exchange for determining the value of taxable service shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when the point of taxation arises in terms of the Point of Taxation Rules, 2011.

This change will ensure that the value of taxable services as per the service tax return will now match the value of services recorded in the books of accounts.

### **Notional interest on security deposit not consideration for rental of immovable property**

There was a dispute regarding the valuation of the taxable service of the rental of immovable property. The lessor of the immovable property had collected an interest free security deposit from the lessees. The tax authorities were of the view that lease rentals were suppressed because of the deposit. Accordingly, a notional interest should be added to the rent received for the purpose of determining the value of the taxable service of the renting of immovable property, and service tax should be demanded on this amount.

The Mumbai Tribunal observed that the security deposit was taken to safeguard the interest of the lessor in the event of default by the lessee. Further, there was no evidence adduced by the tax authorities that the security deposit taken had influenced the rent in any way. There was no provision in the service tax law for deeming notional interest on a security deposit as consideration for leasing.

Thus it was held that the notional interest was not consideration for the leasing of property and could not be subjected to service tax.

### **Mobile towers are neither capital goods nor inputs for availing credit**

In a case regarding a telecom operator, the Bombay High Court denied a credit of duty paid on tower parts, prefabricated building, etc. and held that these could not be considered as capital goods or inputs.

The telecom operator had contended that the Base Transceiver Station (BTS) and antenna were capital goods and the prefabricated building and tower, being part of the BTS, and the tower, being an 'accessory' of the antenna, should also qualify as capital goods.

In the alternative, the operator contended that such items were used in providing output services and hence could be considered as inputs.

The Bombay High Court rejected both the contentions and held that:

- Each item had an independent function and could not be treated as a single unit of the BTS, and hence could not qualify as capital goods
- Towers were structures fastened to the earth on which antenna were installed, and hence could not be an accessory of the antenna, and in turn could not be capital goods
- Towers and prefabricated buildings were in the nature of immovable goods and were non-marketable, and hence could not qualify as inputs.

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### **Japan**

#### **Japan ends retaliatory duties on U.S. products over Byrd Amendment**

On 20 August 2014, the Ministry of Finance (MOF) announced that it would discontinue additional tariffs imposed on U.S. products in retaliation for the U.S. Continued Dumping and Subsidy Offset Act of 2000 (commonly known as 'Byrd Amendment'). The Byrd Amendment is U.S. legislation enacted in 2000, which provided that revenue from anti-dumping/countervailing duties be distributed to U.S. companies that initially filed an anti-dumping complaint. The U.S. eventually repealed the law in February 2006, but has continued to distribute anti-dumping/countervailing tariff revenue under transitional measures.

Subsequent to the WTO's 2003 decision ruling the legislation illegal, in September 2005, Japan introduced retaliatory duties on 15 items imported from the U.S., mainly consisting of steel products. Since then, the duties have been extended every year until 31 August 2014, while the scope of items covered and applicable tariff rates have been changed from time to time.

The MOF's decision to end the retaliatory duties came after the U.S. announcement that the amount of anti-dumping duties distributed to U.S. companies related to imports from Japan during federal fiscal year 2013 was very small, totaling USD 2,765. The MOF also noted that it will consider resuming retaliatory duties if there is a significant increase in the amount of Byrd distributions in the future.

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## Belgium

### **Movement of goods between two Belgian VAT warehouses**

The Belgian VAT authorities have published an administrative decision dealing with the Belgian VAT consequences of the movement of goods between two Belgian VAT warehouses.

In essence, the decision deals with the situation whereby the owner of the goods removes goods from a first Belgian VAT warehouse and puts them into a second Belgian VAT warehouse, covered by a different VAT warehousing license. Under certain conditions, the Belgian VAT authorities, only for this specific situation, allow goods other than those listed in Royal Decree No. 54 of the Belgian VAT Code to be inbound into the second Belgian VAT warehouse.

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### **Increased threshold for VAT exemption for small enterprises**

Following the recent publication of the new Royal Decree dealing with the VAT exemption for small businesses, amongst other measures, having retroactively increased the threshold from EUR 5,580 to EUR 15,000 as from 1 April 2014, the Belgian VAT authorities have meanwhile published a new administrative circular letter in this respect.

The VAT exemption for small enterprises is an optional VAT exemption, which is only open for Belgian-established enterprises. When applying this VAT exemption, the small enterprise does not have to charge VAT on its outgoing transactions and it will have fewer VAT compliance obligations. On the other hand, these small enterprises cannot deduct their input VAT.

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## **Customs Union between Belarus, Kazakhstan and Russia**

### **Reduction of import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to aniline**

Eurasian Economic Commission Board Resolution No. 53 of 15 August 2014 reduces the import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to aniline and its salts classified under the classification code 2921 41 000 0 to the level of 0% of the customs value (import customs duty rate before reduction – 5% of the customs value).

The reduced import customs duty rate will be in effect from 17 September 2014 to 31 December 2015.

This Resolution came into effect on 17 September 2014.

### **Reduction of import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to parts of gas turbines**

Eurasian Economic Commission Board Resolution No. 110 of 15 July 2014 reduces the import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to parts of gas turbines classified under the classification code 8411 99 001 9 to the level of 0% of the customs value (import customs duty rate before reduction – 6.7% of the customs value).

The reduced import customs duty rate will be in effect from 2 September 2014 to 1 September 2016.

This Resolution came into effect on 2 September 2014.

### **Amending import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, made from cast steel**

Eurasian Economic Commission Board Resolution No.129 of 19 August 2014 increases the import customs duty rate of the Unified Customs Tariff of the Customs Union in relation to machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features, made from cast steel and classified under the classification code 8487 90 510 0 to the level of 5% of the customs value (import customs duty rate before increase – 0% of the customs value).

This Resolution comes into effect on 19 September 2014.

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## **Denmark**

### **New guideline from tax authorities on domestic reverse charge on mobile phones etc.**

The tax authorities have issued an official guideline regarding the new rules (from 1 July 2014) on the domestic reverse charge on mobile phones, tablets, notebooks etc.

The authorities state that sales from retail shops are not covered by the local reverse charge.

The guidelines include descriptions of how the seller and the purchaser of the products are required to deal with the VAT and the reporting.

### **Potential for *ATP PensionService* claims may be significant**

In Denmark, the statute of limitations prescribes that claims can be made retrospectively for 10 years for VAT paid due to an incorrect VAT practice.

Therefore both suppliers to pension funds and the pension funds are now eager to claim back incorrectly charged VAT based on the *ATP PensionService* case.

Also, the fact that the concept of 'management of investment funds' is not defined in detail triggers claims including a wide scope of services, ranging from portfolio management to marketing and IT services.

The judgment from the national court still awaits, and until then it is strongly recommended that impacted parties establish further whether there is a potential VAT claim and the consequences of the VAT exemption.

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## **Finland**

### **EU law may permit different treatment of digital and paper books**

The Court of Justice of the European Union (CJEU) has delivered its judgment in the Finnish case of *K Oy*, about the VAT treatment of books supplied on 'alternative' carrier mediums (i.e., CDroms, USB sticks, memory cards, etc.).

The Court has agreed with the Advocate-General in the case and decided that EU law permits different VAT treatments for paper books and those on different carrier mediums – provided that this does not breach the principle of fiscal neutrality (which depends on the views of an 'average consumer').

The CJEU suggested that "... if what matters for that consumer is essentially the similar content of all books, regardless of their physical support or characteristics, the selective application of a reduced rate of VAT is not justified.

It seems probable that the case will now return to the Korkein hallinto-oikeus (the Finnish Supreme Administrative Court) for it to hear argument about the views of the 'average consumer' on the similarity (or otherwise!) between paper books and those on another carrier medium, and that a similar debate will emerge in other Member States that currently apply different rates of VAT to paper and digital books.

### **Discretionary asset management services**

The Korkein hallinto-oikeus (Supreme Administrative Court) has published two decisions regarding discretionary asset management services.

**The first case** (KHO:2014:121) concerned asset management services rendered by an asset management bank A that (1) forwarded sale and purchase instructions in the client's name to a securities-based assets broker (B) in the same VAT group as the bank and (2) forwarded marking and redeeming instructions in the client's name regarding acquisitions of shares in investment funds to a management company (C) in the same VAT group.

The fees for these services that were charged from the customer's account directly by B and C were, according to the Supreme Administrative Court, considered fees charged for services that were not rendered as part of the discretionary asset management services (sold by A). Thus, the fees were deemed as not subject to VAT.

The fees that bank A charged from the customer's account itself were deemed by the Supreme Administrative Court as fees related to the discretionary asset management services and, thus, subject to VAT.

The Supreme Administrative Court noted that notwithstanding the fact that the management bank A, assets broker B, and the management company C were all parties in the same VAT group, the taxation of the companies' service supplies that were directed outside of the group should be considered to be rendered by each company individually.

Further, it should be noted that the Finnish legislation regarding VAT groups does not allow the VAT group to have its own VAT identification number. Thus, the supplier in the VAT group that actually renders the service is identified by its own VAT ID, and also the fees of the services rendered are charged/invoiced by each company individually.

**The second case** (KHO:2014:122) also concerned a supply of discretionary asset management services sold by company A which charged both (1) a fee for the discretionary asset management service and (2) the fees for every sale and purchase transaction related to purchases/sales of securities-based assets.

The Supreme Administrative Court noted that although company A did outsource the sales and purchases of the security-based assets to an assets broker, the service that A invoiced and rendered to the client was to be regarded as one discretionary asset management service that included both the management service of the assets and transactions related to purchases and sales of securities-based assets. Therefore, the fees charged to the client were deemed as subject to VAT.

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## **Italy**

### **Tax implication of purchase, sale and rent of immovable properties**

Two guidelines have been published on the tax authorities' website (on 12 and 14 August 2014), summarizing the main tax implications of the purchase, sale and rent of immovable properties (in particular of residential buildings).

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## **Netherlands**

### **Period for reduced VAT rate on renovation of houses extended**

As of 1 January 2015, the temporary reduced VAT rate on the renovation of houses would come to an end.

Prior to the budget plans released on 16 September, the Dutch government announced that the period for the application of the reduced VAT rate on the renovation of houses will be extended to 1 July 2015.

This is the second time the period has been extended.

### **Expected change to VAT exemption for sport organizations**

In response to questions from the Dutch parliament, the Dutch State Secretary of Finance has made it clear that the Dutch exemption for sport organizations is under evaluation.

The expected outcome of such an evaluation is that the Dutch exemption for sport organizations will be extended to activities carried out for non-members. The Dutch exemption currently only applies for activities carried out for members.

Any possible change to the exemption is not to be expected until the spring of 2015.

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## **Poland**

### **Plans to widen scope of tax avoidance regulations**

The Polish government has launched a legislation procedure on introducing new regulations aimed at widening the scope of cases that can be treated as tax avoidance.

The planned changes concerning the tax avoidance clause are aimed at eliminating transaction schemes that are established only to avoid taxation.

Under Polish tax regulations currently in force, the tax authorities can refuse a taxpayer the right to deduct input VAT from 'illusory' transactions.

After the introduction of the proposed clause, the tax authorities will also be able to challenge transactions considered artificial and having no economic grounds. Such regulations may influence, for example, tax optimizations that make use of international tax treaties.

A major issue with the proposed law is that it does not specify any factors or elements that could clearly define transactions to be considered artificial or having no economic grounds. As indicated, the proposal is still going through the legislative procedure. Future editions of this newsletter will provide updates, in particular when the final wording of the bill is agreed.

### **Ministry of Finance guidelines concerning taxable basis for tour operators under margin scheme**

As mentioned in previous editions of this newsletter, after the introduction of new VAT regulations on 1 January 2014 concerning (among others) the taxable basis, taxpayers whose main business activity consists of tour operator services have raised numerous concerns regarding how to calculate their VAT under the margin scheme.

As previously indicated, the calculation of the taxable basis is still based on the margin scheme (being the difference between the amount settled by the purchaser of the service and the actual costs incurred by the tour operator for providing the service), whereas the tax point occurs at the time of service completion. Consequently, it may be difficult to accurately determine the taxable basis at the time of the tax point (as the actual costs are based on the invoices which are often received after the service is completed), resulting in subsequent corrections to VAT returns filed, and/or potentially VAT arrears to be settled.

According to recently published Ministry of Finance guidelines, it should be assumed that by the time a customer settles his/her liability for the tour operator services, the operator is aware of the anticipated final costs to be incurred in relation to this service (and thus the anticipated margin). Accordingly, when an advance payment is received, the taxable basis should be calculated as the percentage of the overall liability reduced by the same percentage of the total planned/incurred costs. Where the final tour operator costs are higher than the costs estimated at the time of the payment, the taxpayer will be allowed to adjust output VAT in the settlement period in which the service was rendered. With respect to cash discounts received after the provision of touristic services, taxpayers will be allowed to increase the taxable basis in the period when such bonus/discount was granted. Nevertheless, it seems that tour operators will continue to face difficulties in calculating their VAT reporting without needing to file subsequent corrections.

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## **Portugal**

### **Simplification of application process for VAT refund**

As stated in the January 2014 edition of this newsletter, Decree-order 11/2013 of 27 December 2013 revoked the obligation for taxpayers to fill in and submit the annexes concerning VAT regularizations on VAT refund requests.

This Decree is now finally in effect, as the online platform of the tax authorities has only now been updated.

### **EU 2015 place of supply changes**

The government has been authorized by the parliament to legislate regarding this matter. However, to date no legislation has been published.

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## **Russia**

### **Services rendered by Russian organizations to organize exhibitions on Russian territory with participation of foreign and Russian entities**

Ministry of Finance Letter No. 03-07-08/41609 of 20 August 2014 reports that services rendered by Russian organizations to organize exhibitions for advertising purposes on Russian territory with the participation of foreign entities not registered in Russia are not subject to VAT.

If these services are rendered to Russian entities, they are subject to VAT.

### **Profits tax and VAT on improvements to rented property**

Federal Arbitration Court of West-Siberia District No. A45-12766/2013 of 30 May 2014 states that the transfer of improvements to rented property from the tenant to the landlord is subject to profits tax and VAT.

### **Accepting VAT for recovery when VAT invoices contain mistakes**

Ministry of Finance Letter No. 03-07-09/39449 of 8 August 2014 reports that mistakes in VAT invoices, including in addresses, are not considered grounds for refusing to accept VAT for recovery in cases when these mistakes do not prevent the tax authorities from determining the buyer or seller of goods/work/services/property rights, the nomenclature of goods/work/services, the tax rate and the VAT amount displayed to the buyer when conducting a tax audit.

### **VAT on interest received by vendors from buyers paying for goods in installments**

Ministry of Finance Letter No. 03-07-11/41787 of 21 August 2014 reports that interest received by vendors from buyers paying for goods in installments on the basis of a commercial credit agreement is not subject to VAT.

### **List of prohibited imports**

Government Resolution No. 830 of 20 August 2014 "On amending the Russian Federation Government Resolution No. 778 of 7 August 2014" amends the list of goods that are prohibited from importation into the territory of the Russian Federation, if the origin of such goods is the U.S., European Union countries, Canada, Australia or Norway. Certain goods are excluded from the list (lactose-free milk and milk products, onion sets classified under the classification code 0703 10 110 0, hybrid sweetcorn for seeds classified under the classification code 0712 90 110 0, etc.).

This Resolution came into effect on 29 August 2014.

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## **Ukraine**

### **New VAT administration model to go live on 1 January 2015**

On 31 July 2014, the Ukrainian Parliament adopted a Law “On amendments to the Tax Code of Ukraine and several other legislative acts of Ukraine (regarding the adjustment of certain provisions)” (the Law), which introduces a new VAT administration model. This model will take effect on 1 January 2015. Its main goal is to prevent fraudulent VAT transactions across the country.

#### ***VAT administration model***

The main characteristics of the new VAT administration model are:

- Special VAT accounts shall be opened for all VAT-payers in Ukraine. Special VAT accounts are similar to a bank account, but may be used for specific VAT purposes only.
- The VAT liability on each transaction entered into by a taxpayer shall be ‘guaranteed’ by the funds accumulated in the special VAT account.
- The special VAT accounts may be funded exclusively by VAT paid at customs, input VAT from suppliers processed through electronic cash registers and cash deposits made by VAT-payers.
- If there are not sufficient funds in a taxpayer’s special VAT account to ‘guarantee’ that taxpayer’s VAT liability, the taxpayer shall be required to deposit the amount of the deficiency before concluding the VAT-able transaction.
- Funds accumulated in the special VAT account may be used exclusively for the purpose of settling VAT liabilities to the government. Funds kept in the account cannot be transferred back to the taxpayer.
- The deadline for submitting VAT returns has not changed, i.e., 20 calendar days after the end of the reporting period.
- VAT document flows (VAT invoices, VAT returns) must be maintained electronically, without exception.

#### ***Changes to the VAT recovery regime***

The Law removes the existing procedure for confirming and conducting VAT recovery without introducing a new one. There is also no clear guidance regarding the transition of recovered VAT/VAT credit balances accumulated as of 31 December 2014. Further changes and instructions are expected to be introduced by the Ukrainian Parliament and the Cabinet of Ministers of Ukraine.

Meanwhile, the criteria for automatic VAT recovery have changed, including:

- The criteria regarding the taxpayer’s number of employees and their average salary have been eliminated.
- The taxpayer is now required to have non-current assets with a net book value of twelve times the amount of tax claimed for recovery, based on the tax accounting, by the reporting date.
- At least 40% of the transactions conducted by the taxpayer must be subject to 0% VAT, and/or the taxpayer must have made investment of at least UAH 3 million in non-current assets during the last 12 calendar months.

### **Next steps**

The government and the tax authorities are working on the following details to ensure smooth implementation:

- Developing software to operate the special VAT account system for both the operator (i.e., a special bank subordinate to the National Bank of Ukraine) and taxpayers;
- Making the necessary changes to the relevant legislation and instructions for the transitional period.

Given the lack of time remaining to prepare for the transition to the new VAT administration model, it is recommended that companies operating in Ukraine take the following steps:

- Calculate the amount of additional funds required for the purposes of special VAT accounts and consider the respective expenses for budget planning purposes;
- Prepare an analysis of internal business processes regarding VAT controls and plan the necessary changes required by the new system, such as:
  - Tracking the balance of the special VAT account
  - Control over the issuance of VAT invoices;
- Conduct diagnostics of all VAT invoices for 2014 and ensure their inclusion into VAT returns, in order to minimize potential problems during the transitional period;
- Analyze business relationships with clients/suppliers and consider potential changes that should be implemented to the process of cooperation.

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### **United Kingdom**

#### **VAT bad debt relief: CJEU decides ‘windfall’ case in favor of *GMAC UK plc***

The Court of Justice of the European Union (CJEU) has gone straight to judgment in the case of *GMAC UK plc* and rejected the tax authorities’ (HMRC) argument that the combination of GMAC’s reliance on its directly effective EU law rights to crystallize its bad debt relief claim and its application of UK law to ‘de-supply’ the sale of repossessed cars produced a windfall advantage for GMAC contrary to EU law.

The Court decided that “... a Member State may not prevent a taxable person from invoking the direct effect of [EU law] in respect of one transaction by arguing that that person may rely on the provisions of national law in relation to another transaction concerning the same goods and that the cumulative application of those provisions would produce an overall fiscal result which neither national law nor the Sixth Directive, applied separately to those transactions, produces or is intended to produce.”

The judgment should mean that part of GMAC’s claim (in relation to periods from 1990 to 1997) should succeed, but the earlier part of the claim (covering 1978 to 1989) seems likely to be held to be out of time, applying the Court of Appeal’s decision in the case of *British Telecommunications plc*, unless that decision is overturned by the Supreme Court.

### **Additional guidance on domestic reverse charge for wholesale gas and power**

The introduction, from 1 July 2014, of the domestic reverse charge regime for wholesale supplies of gas and power, to counter the threat of 'missing trader' fraud on transactions of this type, has led to problems for businesses affected by it. Despite HMRC's published guidance and discussions with market participants, many businesses have found it hard to understand the scope of the changes and their impact on supply chains, and to adapt systems to cope with them.

HMRC have now issued **additional guidance** confirming that certain supplies of renewable power are excluded from the reverse charge regime and advising on the wording of invoices for 'reverse charge' supplies.

### **Additional excise duty on fuel used in corporate jets and boats?**

HMRC have announced that businesses using jet aircraft and boats that they own to transport staff will be required to pay fuel duty of 57.95 pence per litre (current rate) on fuel used for domestic flights or voyages.

Following two decisions of the CJEU, the UK is extending the hitherto narrow definition of 'private pleasure' to include journeys where no payment has changed hands even if employees are being transported to undertake company business.

The new regime came into force from 1 September 2014.

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