Deloitte.

Global Indirect Tax

In this issue:
Country summaries
Americas
Asia Pacific
EMEA

Related links:
Global Indirect Tax
GITN archive
Global Indirect Tax Rates

Contact us:
Deloitte Global & Regional Indirect Tax Contacts

Global Indirect Tax News

Your reference for indirect tax and global trade matters

March 2014

Welcome to the March 2014 edition of GITN, containing updates from the Americas, Asia Pacific, and EMEA regions.

From this issue of the newsletter, we will be combining the Global Indirect Tax News (covering VAT, GST, and sales tax issues around the globe) and the Customs and Global Trade Newsletter (covering customs and global trade news).

Features of this edition include news on Free Trade Agreements, including the South Korea-Australia and Singapore-Taiwan Agreements; the release by the U.S. Bureau of Industry and Security of FAQs on export control reform; and further moves by the European Commission to counter VAT fraud.

I am also delighted to share with you the latest release of **The Link Between Transfer Pricing and Customs Valuation — 2014 Country Guide.** The Guide is one of the most broad-based and authoritative, annually updated, guides of its kind, compiling essential information on the customs-related requirements and implications of related party pricing and retroactive transfer pricing adjustments in numerous customs jurisdictions around the world. This year's edition contains updates from Deloitte's Customs and Global Trade specialists in 47 countries, addresses new regulatory and enforcement developments in this high-focus area of customs valuation compliance, and includes five new countries of increasing interest to multinational importers: Ecuador, Egypt, Israel, Saudi Arabia, and Turkey. Given the complexity of customs valuation and transfer pricing issues, as well as the increasing scrutiny of related party transactions by customs and tax authorities around the globe, the Guide provides a valuable starting point for inquiries into customs-related impacts of setting and adjusting transfer prices.

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

Mexico: Modifications to the Foreign Trade Rules were published on 7 February 2014. **More**

Paraguay: Significant changes to the Paraguayan indirect tax legislation came into effect on 1 January 2014. **More**

United States: A deadline has been set to implement the 'single window' for the filing of trade information. A general license is now available for personal communications items and services in Iran. The Bureau of Industry and Security has issued FAQs on export control reform. **More**

Uruguay: The procedure for requesting and approving VAT exemption for foreign artists performing in Uruguay has been approved. **More**

Asia Pacific

Australia: Increased penalties for customs law infringements. **More**

China: A Bulletin has been issued providing implementation guidance for the zero-rated VAT treatment on qualified taxable services. **More**

India: There are a number of indirect tax updates from India. **More**

Singapore: Singapore Customs rolls out Revised Strategic Trade Scheme. **More**

Vietnam: Export Processing Enterprise – establishment of separate branches to conduct trading activities. Importation of second hand goods and goods affecting national security and defense. New circular amending and supplementing guidance on customs valuation. **More**

Free Trade Agreements

South Korea-Australia: Conclusion of the South Korea-Australia Free Trade Agreement. **More**

Singapore-Taiwan: Free Trade Agreement. **More**

EMEA

Croatia: The VAT law has been amended, including changes to the TOMS scheme and the deduction of input VAT. Excise duties on tobacco products have increased. **More**

European Union: The European Commission issues reports on the fight against VAT fraud. The European Parliament has supported the introduction of a harmonized VAT return. There may be a lower additional duty rate on imports to the EU from the U.S. The European Commission proposes reduction or elimination of customs duties for products originating in Ukraine. **More**

France: Customs procedures for companies are to be improved. **More**

Iran: Limited relief of restrictions in place against Iran's automotive sector. **More**

Iraq: Update on the implementation of the new customs tariff. **More**

Italy: There are a number of indirect tax updates from Italy. **More**

Kazakhstan: There are a number of Customs and Global Trade updates**.** **More**

Luxembourg: Infringement case against Luxembourg on cost sharing groups and a potential VAT rate increase. **More**

Poland: Two recent judgments have ruled on the VAT treatment of an early termination of a lease agreement and the VAT rate applicable to hotel services. **More**

Portugal: Two decisions have been issued regarding the deadline for input VAT deduction and the inclusion of the 'advertising exhibition tax' in the VAT taxable basis. **More**

Russia: There is a procedure for the refund of input VAT incurred with respect to the XXII Winter Olympic Games and the XI Winter Paralympic Games in Sochi (the Games). **More**

Slovenia: Electronic filing of Intrastat returns has become mandatory. **More**

South Africa: Following the South African National Budget Speech for the year 2014, a number of changes were proposed to the customs and excise legislation. **More**

United Kingdom: Court of Appeal confirms that arrears of gym club fees are subject to VAT. Supreme Court allows taxpayer's appeal in 'agent/principal' case. Tax authorities issue guidance on the VAT and tax treatment of Bitcoins and cryptocurrencies. **More**

Americas

Mexico

Foreign Trade Rules modification

On 7 February 2014, the 7th and 8th FTR modifications were published in the Mexican Official Gazette.

The main changes are as follows:

- When a taxpayer requests a certified copy of the customs declaration, a copy of the documents electronically transferred to the customs electronic system (CES) will also be provided.
- The following have been added as causes for suspension from the Importer's Registry:
    - Incorrect data on the import invoice regarding the name or address of the supplier;
    - Where the importation of goods is considered to be involved in vulnerable activities (namely, money laundering);
    - Suspension of a sanitary license.

- Exported goods can be returned to Mexico without paying the import duty, provided the goods are not modified and did not remain in a foreign territory for more than one year.
- Maquilas or Strategic Bonded Warehouses (SBW) can determine a provisional value for goods to be temporarily imported.
- Tax on the importation of cigarettes or of goods considered to be involved in vulnerable activities must always be paid directly from the taxpayer's account.
- Tax due on the permanent importation of used or new vehicles can be paid with cash, provided the importer only imports one vehicle in a 12 month period.
- Guidelines have been established for the procedures to be carried out through the CES.
- SBWs can be located outside fiscalized premises, provided the SBW is located within a strategic development zone.
- Requests can be made for customs clearance to be carried out in unauthorized places, provided the facilities to be used are located in an international airport, at an authorized border, a port or a railway terminal, and are equipped with customs services.
- When the authorities have already commenced the verification of goods, the importation of those goods can still be regularized, with the payment of a penalty ranging from MXN 1,640 to MXN 2,460 (approximately, from USD 126 to USD 189).
- Companies that have machinery and equipment in their possession, without the documentation to prove legal possession, can regularize the goods without being registered in the Importer's Registry.
- Information sent through the CES is considered to be sent by the taxpayer and the customs broker.
- Specific guidelines for obtaining VAT and excise tax certification have been published. The following guidelines are included, among others:
    - Which suppliers must be registered;
    - How to obtain confirmation that tax obligations have been met;
    - The ability to include in the percentage of required exports the export of goods in the same condition as they were temporarily imported;
    - Compliance obligations.

Cecilia Montaño Hernández, cmontanohernandez@deloittemx.com, Partner, Deloitte Mexico

Paraguay

Changes to tax regime

On 1 January 2014, a law came into force including a number of indirect tax changes, mainly affecting VAT. Below is a summary of the changes.

Exemptions

The list of goods and service that became VAT exempt with the entry in force of the law include the following:

- Foreign currency and public and private securities, including the sale of shares.
- Books and newspapers printed or published electronically – under the previous rules, only books and newspapers published on paper were VAT exempt.
- Laptops and related supplies supplied under programs that provide such technology tools without charge to children and teenagers.
- Fuels derived from petroleum and biofuels.
- Services provided by sporting and cultural non-profit institutions (where dividends are not distributed directly or indirectly to their members or associates), including charges for social fees and income from ticket sales for sporting and cultural events that are organized solely by such institutions under specified terms and conditions.
- The sale of goods and services by:
    - Associations, federations, foundations, mutual funds and other legal entities engaged in medical, social, charitable, literary, artistic, union, sporting, scientific, religious or educational assistance that are recognized by the Ministry of Education and Culture or by law; and
    - Legally recognized political parties,

  provided they are non-profit and dividends are not directly or indirectly distributed among members or associates, and they have as their only goal the end for which they were created.
- Sales and imports on behalf of pre-school, primary, secondary, technical and university educational institutions recognized by the Ministry of Education and Culture or by law of:
    - Equipment and supplies for laboratories;
    - Tools, furniture and equipment for classrooms, auditoriums, and libraries;
    - Computers, photocopiers and telecommunications equipment.

Rates

Supplies of the following goods that were previously exempt are now taxed at the rate of 5%: agricultural products; fruits, horticultural products in a natural state and live animals; goods that are the product of hunting and fishing, alive or not; virgin vegetable or raw degummed oil; and the following items for family consumption: rice, noodles, edible oils,

mate, milk, eggs, raw meat, flour and iodized salt.

Excise rates

Some excise duty rates were also amended; the new rates are set out below:

Fuel: Up to 88 octane	24%
Fuel or super fuel: leaded or unleaded, more than 88 to 96.5 octane	34%
Fuel unleaded: 97 octane or more	38%
Aviation fuel	20%
Run fuel	20%
Kerosene	10%
Turbo fuel	0%
Gasoil	18%
Fuel oil	10%
Petroleum liquefied gas	10%

Daniel Fariña, dfarina@deloitte.com, Partner, Deloitte Paraguay

Abel Coronel, acoronel@deloitte.com, Manager, Deloitte Paraguay

Jorge Avalos, javalossanabria@deloitte.com, Manager, Deloitte Paraguay

United States

U.S. sets deadline to implement 'single window' for filing of trade information

On 19 February 2014, the White House issued Executive Order (EO) 13659 on Streamlining the Export/Import Process for America's Businesses.

The EO establishes a 31 December 2016 deadline for completing the International Trade Data System (ITDS). The ITDS will be a 'single window' for the electronic filing of trade information required by multiple U.S. government agencies, through which importers and exporters will file a single electronic report and the relevant data will be automatically distributed to the relevant agencies.

The use of the ITDS will reduce companies' administrative costs associated with import and export transactions that currently require filings with multiple government agencies and/or on paper, provide government agencies with more immediate access to required data, and expedite the clearance of shipments (or the identification of dangerous or prohibited items).

The ITDS will be built and operated by U.S Customs and Border Protection (CBP), and CBP is currently working with other federal agencies to interface the agencies' data collection points with ITDS. CBP and the affected agencies are employing a phased approach to meet the EO's December 2016 deadline. Spring 2014 is the target date for CBP to test technical ITDS capabilities for imports involving the Food Inspection Service and the Environmental Protection Agency, while spring 2015 is the target for filing both import and export data through ITDS and for expanding the range of industry partners'

filing capabilities (e.g., the filing of export and import manifests).

General license now available for personal communications items and services in Iran

On 30 May 2013, the U.S. Department of the Treasury, in consultation with the Departments of State and Department of Commerce, issued General License D (GL D) authorizing the export and re-export to Iran of certain hardware, software and services incident to personal communications.

With effect from 7 February 2014, the GL D was amended, such that the Office of Foreign Asset Controls (OFAC) can authorize several transactions relating to personal communication. This amendment to the GL D increases the scope of communications, software and telecommunication activity permissible with Iran. Transactions that are now permitted include: (1) fee-based services for the exchange of information via the Internet (e.g., instant messaging, social networking, photo sharing and blogging); (2) fee-based software (both controlled and not controlled under the EAR) necessary to enable the exchange of personal communications over the Internet; and (3) Internet connectivity services and telecommunications capacity from the U.S. to Iran. The transfer of funds from Iran, or on behalf of a person in Iran, in furtherance of the authorized services may be processed by U.S. institutions or brokers.

However, exporters should be aware that GL D, as amended, still does not authorize several items and services, such as those involving the government of Iran, commercial activity involving web hosting and domain registration, and any activities that may be prohibited or require a license (i.e., provision of services to specially designated nationals).

Bureau of Industry and Security issues 45 frequently asked questions on export control reform

On 26 February 2014, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued the questions and answers of the 45 most frequently asked questions (FAQs) to export control reform.

Many of the questions are derived from Assistant Secretary of Commerce Kevin Wolf's 'weekly calls' where the Assistant Secretary receives questions from around the U.S. regarding export control reform.

The FAQs cover a wide range of issues, including the 'specially designed' categorization (30 questions), and the transition of items from the U.S. Munitions List to the Commerce Control List. BIS's responses to the questions include citation links to the code, which may be helpful to members of the exporting community. The FAQs list is expected to be updated frequently as new rules come into effect and may be found at: **http://www.bis.doc.gov/index.php/2012-03-30-17-54-11/ecr-faqs.**

Helen Cousineau, hcousineau@deloitte.com, Director, Deloitte United States

Uruguay

VAT exemption for foreign artists performing in Uruguay

The Executive Power can exempt from VAT income derived by non-resident artists for performances carried out in Uruguay, provided the performances are for cultural, artistic or touristic purposes. To obtain the exemption, the performance must be declared to be of

national or departmental (state) interest.

A decree published on 19 February 2014 regulates the process and criteria to request and approve the VAT exemption.

Applications for the exemption must be submitted to the Ministry of Economy and Finance with the following documentation:

- A copy of the Declaration of National or Departmental Interest, as applicable; and
- Explanatory detail of the production, specifying the intended site for the performance, the expected number of spectators, ticket prices and the amount of personal income obtained by the non-resident artist(s) as a result of the performance for which the VAT exemption is requested.

The application must be filed prior to going to market with the performance.

To process the request, a report must be issued by the Ministry of Education and Culture or the Ministry of Tourism and Sports recommending that the exemption is required. The report must indicate the importance of the exemption for the viability of the performance of the artist(s), and the reasons for its cultural, artistic or touristic interest.

To obtain the exemption, the performance must be public; private events are excluded from its application.

Javier Bugna, jbugna@deloitte.com, Senior Manager, Deloitte Uruguay

Cecilia Valverde, cvalverde@deloitte.com, Senior, Deloitte Uruguay

Asia Pacific

Australia

Increased penalties for customs law infringements

Significant changes have been made to the customs law infringement notice scheme (INS), effective from 1 February 2014.

The INS is an administrative enforcement remedy used to deal with suspected contraventions of certain customs law provisions (e.g., those relating to handling of goods, reporting obligations, provision of information, record keeping, etc). Infringement notice recipients can opt to resolve the matter, without admission of liability or conviction, by paying a penalty.

The changes include:

- Increased maximum penalties;
- Corporate multiplier (x 3) applied to penalties imposed on companies;
- Longer timeframe for authorities to issue infringement notices (i.e., up to four years of the offence being committed).

Entities importing or exporting goods to or from Australia should ensure that they or relevant service providers are familiar with all of the obligations affected by the INS changes.

Michael Roche, miroche@deloitte.com.au, Principal, Deloitte Australia

China

Administrative measures on zero-rated VAT services

On 8 February 2014, China's State Administration of Taxation (SAT) released Bulletin 11, which provided the implementation guidance for the application of zero-rated VAT treatment on qualified taxable services. Bulletin 11 will take effect retroactively as from 1 January 2014 and has amended the previous SAT Bulletin 47 (which was abolished at the same time).

The key changes are as follows:

- For international railway transportation services and railway transportation services between China mainland and Hong Kong, Macao and Taiwan (newly added VAT-able item per Circular 106), the detailed requirements are as follows:
    - The calculation base for 'VAT Exemption-Credit-Refund' shall be the net service income the company obtained after deducting the relevant international freight-related costs;
    - When applying the export VAT refund qualification, the company's business license scope must include 'railway transportation services';
    - A number of documents must be provided to complete the 'VAT Exemption-Credit-Refund', such as international shipping documentation, income settlement notification, etc.
- For aerospace transportation services (newly added VAT-able item per Circular 106 – 'aerospace transportation' refers to using rockets and other carriers to send satellites or space probes into space orbits), the detailed requirements are as follows:
    - The calculation base for 'VAT Exemption-Credit-Refund' shall be the amount shown on the receipt voucher;
    - When applying for the export VAT refund qualification, the company's business license scope shall include 'commercial satellite launching services'.
    - A number of documents must be provided to complete the VAT filing, such as detailed application forms, service contract, income proof, etc.
- For international transportation services and transportation services between Hong Kong, Macao and Taiwan by time charter or wet lease (which qualify for zero-rating), the leaser is not required to provide the original bill of lading for the VAT filing.

- For zero-rating to apply to the export of purchased or self-developed R&D services and design services by foreign trade companies, certain VAT filing documents must be provided, including a VAT refund application form, documentation of the amount of services purchased for export, the service invoice, and documentation of the amount of input VAT for the services purchased.

Affected companies should be monitoring the above changes and preparing the relevant documents to enable them to apply for the zero-rated VAT treatment, if applicable.

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

India

Indirect tax changes in the Interim Budget for financial year 2014-15

The Union Finance Minister presented an Interim Budget for the financial year 2014-15 on 17 February 2014. Some of the significant indirect tax budget changes are as follows:

Excise duty

- The basic rate of excise duty on all goods classifiable under Chapter 84 and Chapter 85 has been reduced from 12% to 10%.
- Excise duty has been reduced on:
    - Small cars, taxis, motorcycles and scooters from 12% to 8%;
    - 1500 cc motor vehicles from 24% to 20%;
    - 1500 cc motor vehicles other than Sport Utility Vehicles from 27% to 24%;
    - Sport Utility Vehicles from 30% to 24%.

The benefits of the reduced rates are only available up to 30 June 2014.

Service tax

Exemption from service tax has been granted to the following services:

- The preservation of stem cells and any other activity in relation to the preservation, such as collection of umbilical cord blood, processing the same for segregation of stem cells, testing and cryopreservation of stem cells, carried out by cord blood banks;
- The loading, unloading, packing, storage or warehousing of rice.

Importer to obtain registration under Central Excise law and file returns to issue invoice on which credit can be taken

A previous edition of this newsletter discussed an amendment to the Central Excise Rules, 2002 (CER) and CENVAT Credit Rules, 2004 (CCR), which essentially laid down the procedures to be followed for obtaining CENVAT credit on invoices issued by an importer. These changes were supposed to come into force on 1 March 2014.

These proposed amendments have been withdrawn and instead excise registration has been made compulsory for importers for issuing invoices on which CENVAT credit can be taken. Further, registered importers are also required to file quarterly returns.

The changes shall take effect from 1 April 2014.

Safeguards, conditions, limitations and procedures for claiming refund of CENVAT credit to provider of specified services

On 3 March 2014, the Central Board of Excise and Customs provided safeguards, conditions, limitations and procedures for claiming refunds of unutilized CENVAT credit taken on inputs and input services for providers of the following output services where a service recipient is required to partially discharge service tax under the reverse charge:

- The renting of a motor vehicle designed to carry passengers on a non-abated value, to any person who is not engaged in a similar business;
- The supply of manpower for any purpose or for security services; or
- The execution of a works contract where the service portion is subjected to tax.

Amendment to the input service distributor mechanism

An input service distributor is an office of a taxpayer which receives invoices for the purchase of input services from service providers and issues invoices, challan etc. to manufacturing/service units to distribute credit of the service tax paid on such services. An amendment to the mechanism of the input service distributor was made by the Central Government on 24 February 2014.

The main amendments are as follows:

- The credit of service tax used by more than one unit now needs to be distributed on the basis of the turnover of such units to the total turnover of all operational units;
- The credit needs to be distributed based on the turnover of the preceding ‘financial year’.

The changes came into force with effect from 1 April 2014.

The above changes require further refinement in determining the proportions for the distribution of credit.

Stent and valve implanted in the course of surgical procedure not subject to VAT

In the recent decision of *International Hospital Pvt. Ltd*., the issue before the Allahabad High Court was whether a stent and valve implanted in a patient in the course of a surgical procedure in the hospital had the character of the sale of goods to be made subject to VAT.

The High Court held that the parties did not intend that there would be a sale of a stent or valve by the hospital to the patient, who entered hospital for the purpose of a surgical procedure. The contract, in substance, was an agreement in which the patient was to be provided treatment in the form of a medical procedure, and the implantation of a stent or valve in the heart of the patient was an intrinsic and integral element of that procedure. Thus, there was no element of sale in the transaction of the implantation of a stent or valve

and hence it was not subject to VAT.

Sales tax retained under state incentive scheme liable to excise duty

In the recent decision of *Super Synotex (India) Ltd.*, the Supreme Court observed that the taxpayer was availing himself of a benefit under the state incentive scheme under which he was entitled to collect 100% of the sales tax amount from the customer but was required to pay only 25% of the tax to the government and was able to retain 75% as an incentive.

The Supreme Court ruled that the amount retained by the taxpayer was to be treated as the price of the goods according to the definition of transaction value that was introduced with effect from 1 July 2000, and excise duty was to be paid on that amount.

This decision is likely to impact all manufacturers that have been availing themselves of the similar benefit under the incentive scheme, and not paying excise duty on the portion of tax retained by them.

'Service recipient' for the purpose of export of service

In the case of *GAP International Sourcing (India) Pvt. Ltd.,* it was observed that the tax authorities had denied the claim of export of service of an Indian subsidiary that provided support services pertaining to procurement of goods to its foreign holding company.

The tax authorities' view was based on the grounds that the services provided by the subsidiary were performed in India and were not capable of being used outside India, as was required by the law that applied at that time regarding exports of services.

The Appellate Tribunal took the view that a service would be treated as received outside India for use in relation to business if

- The services have been provided on the instruction of a person located outside India for use in his business;
- Payment for those services has been made by him in convertible foreign exchange and it is he who has used the service to satisfy the need of his business.

The service in relation to the procurement of goods provided by the Indian subsidiary was entirely meant for its foreign holding company, and it was used by them in relation to their business located abroad. Therefore, these services were to be treated as delivered and used outside India, and since the payment for services was received in convertible foreign currency, it was to be treated as an export of services.

Prashant Deshpande, pradeshpande@deloitte.com, Senior Director, Deloitte India

Singapore

Singapore Customs rolls out Revised Strategic Trade Scheme

The Strategic Trade Scheme (STS) is an enhanced permit regime aimed at promoting effective internal export control compliance and providing legitimate traders with greater facilitation in permit declarations relating to transactions of strategic goods for non-WMD related end-use.

Singapore Customs has revised the STS. From 1 April 2014, the permit type and scope of approval under the revised STS will be as follow:

Permit Type	Scope of Approval
Bulk Permit (replaces existing Tier 2 & 3 Permits)	Approval by Countries of Destination (Pre-approved) Multiple products to Multiple destination countries.
	Approval by Specific Entities (Pre-approved) Multiple products to Multiple end users.
Individual Permit (replaces existing Tier 1 Permit)	Approved on a per transaction basis.

The other key changes to the STS are as follows:

- Revised Internal Compliance Programme (ICP) requirements for Bulk Permits (previously known as Tier 2 & 3 Permits);
- New declaration procedures for TradeNet permits for exports/transhipment covered by the Bulk Permits;
- New documentary requirements for submission of a TradeNet outward permit under Bulk Permits.

The revised STS will allow for companies to enjoy a greater level of trade facilitation. For instance, companies will be able to cover multiple products and multiple end users within a single permit via an “Approval by Specific Entities” Bulk Permit, instead of maintaining multiple ones under the existing 3-tiered scheme.

There will be a six month adjustment period from 1 April 2014 to 30 September 2014.

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

Vietnam

Export Processing Enterprise – establishment of separate branches to conduct trading activities

From 1 January 2014, in accordance with Decree No. 164/2013/ND-CP issued by the Government, Export Processing Enterprises (EPE) that have been granted permits for trading activities in Vietnam (i.e., import from other countries to sell in the domestic Vietnamese market or import into Vietnam with subsequent sales to entities outside Vietnam) must establish separate branches under different investment certificates, and be located outside of export processing zones/enterprise, to engage in these activities.

The accounting for trading activities must be separated from the accounting for manufacturing activities for export at these branches. For goods imported for trading purposes, the branches will have to declare and pay VAT at importation. The subsequent sales of these goods will also require declaration and payment of VAT.

Importation of second hand goods and goods affecting national security and defense

Circular No. 04/2014/TT-BCT, issued by the Ministry of Industry and Trade, took effect from 20 February 2014. This circular promulgates the list of second hand goods prohibited from import (replacing the old list from Circular No. 04/2006/TT-BTM) and also a list of goods deemed to affect national security and defense.

For the first time, import restriction will apply to dual-use goods as these items have been included in the list of goods deemed to affect national security and defense. Accordingly, importers of goods deemed to affect national security and defense will have to meet specified criteria and adhere to strict procedures in order to import these items into Vietnam.

New circular amending and supplementing guidance on customs valuation

On 26 February 2014, the Ministry of Finance issued Circular No. 29/2014/TT-BTC which provides for guidance on customs valuation. This circular will take effect on 12 April 2014 with the following directives of particular note:

- Valuation consultation shall be applicable only in cases where (i) there is doubt as to the dutiable value of the imported goods included in the risk management list, and (ii) the importer is classified as a high-risk enterprise or has import-export transaction for a period of less than 365 days. For other cases, if there is doubt as to the dutiable value or inconsistent information in Customs' dossiers, the importers may clear the goods at the declared price but will be subject to post-customs clearance audit.

- Even in cases of valuation consultation, if the importer does not agree with the proposed dutiable value provided by Customs, the case shall then be transferred to post-customs clearance audit to determine the dutiable value.

Tuan Bui, tbui@deloitte.com, Partner, Deloitte Vietnam

Free Trade Agreements

Conclusion of South Korea-Australia Free Trade Agreement

The FTA between South Korea and Australia has been concluded.

The text of the agreement was finalized, legally reviewed and initialed by the two countries in February 2014. Upon ratification, the FTA is expected to enter into force in early 2015.

Upon entry into force, South Korea will eliminate tariffs on 90.8% of all tariff lines within eight years, while Australia will eliminate tariffs on almost all tariff lines within five years.

Notably, Australia will eliminate tariffs on small & mid-sized gasoline engine cars, home appliances, and certain types of machines with immediate effect upon implementation.

South Korea will eliminate tariffs on certain agricultural goods such as dairy, horticulture, seafood, sugar, wheat and wine, while tariffs on beef will be gradually reduced by 2-3% annually until fully eliminated. Nevertheless, sensitive goods such as rice, dry milk, fruit, soya beans, and potatoes have been excluded from tariff reduction and therefore will continue to be subject to duties upon importation into South Korea.

Jin Kon Jung, jinkjung@deloitte.com, Director, Deloitte Korea

Singapore-Taiwan Free Trade Agreement

The Agreement between Singapore and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Partnership (ASTEP), signed on 7 November 2013, was ratified by Taiwan on 27 December 2013.

The trade agreement will take effect 30 days after Taiwan and Singapore notify each other of the completion of domestic legal procedures.

Taiwan will remove 99.48% of its tariff lines within 15 years (including 83% immediate elimination), with the exception of 40 agricultural products, including rice, mangoes, garlic, shiitake mushrooms, red beans, shelled ground-nuts and liquid milk. In return, Singapore will remove all tariffs on goods from Taiwan.

Singaporean companies in the electronics, chemicals, pharmaceuticals, machinery, and processed food products sectors exporting to Taiwan will benefit from the removal of tariffs.

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

EMEA

Croatia

Amendments to VAT legislation

A number of amendments to the VAT legislation came into force on 1 January 2014, including the following.

Tour operator margin scheme (TOMS)

Following the CJEU ruling in the case *Commission v Spain* and seven other Member States on their interpretation of the TOMS rules, Croatia has amended its VAT regulations.

In particular, from 1 January 2014, the definition of 'traveller' was extended to include any person to whom a travel agent provides services; prior to 1 January 2014, only natural persons were regarded as travellers. As a result, Croatian travel agents must apply TOMS to their wholesale supplies.

In addition, from 1 January 2014 it will be sufficient to provide one service in relation to a journey, such as transportation or accommodation, to apply TOMS. Prior to 1 January 2014, TOMS applied only when a travel agent provided at least two services (transport, accommodation or any other tourist service).

Deduction of input VAT

A new procedure has been introduced for input VAT deduction.

Specifically, if the invoice for a supply is obtained before the deadline for filing a tax return, a taxable person has the right to deduct input VAT in the accounting period in which the goods and services were supplied. Otherwise, the taxable person has a right to deduct input VAT in the accounting period in which it received the invoice.

Other significant amendments

On 1 January 2014, the reduced rate of 10% (applied to accommodation and hospitality services, baby food and other prescribed supplies) increased to 13%.

There had been different interpretations of the rules regarding the currency to be used on invoices. The amended VAT regulations clarify that invoices may be issued in foreign currency, provided the total invoice amount and the amount of VAT to be paid are denominated in HRK.

Changes to VAT forms (the VAT return, annual VAT return, incoming and outgoing invoices ledgers) also took effect on 1 January 2014.

New excise duties for tobacco products

The Government issued a new decree on excise duty for cigarettes, fine cut tobacco and other smoking tobacco, which entered into force on 6 March 2014.

The regulation increased excise duties on tobacco products, as follows:

Tobacco products		Excise duty from 6 March 2014	Excise duty before 6 March 2014
cigarettes	specific excise duty	HRK 210 per 1,000	HRK 197 per 1,000
	proportional excise duty	37% of the retail price	37% of the retail price
fine-cut tobacco		HRK 520 per 1 kg	HRK 450 per 1 kg
other smoking tobacco		HRK 450 per 1 kg	HRK 380 per 1 kg

Helena Schmidt, hschmidt@deloittece.com, Senior Manager, Deloitte Croatia

Tatjana Orešković Trcin, toreskovictrcin@deloittece.com, Senior, Deloitte Croatia

European Union

Commission reports on countering VAT fraud

The European Commission has adopted two reports which address problems linked to fighting VAT fraud within the EU, and identify possible remedies. **The first report looks at VAT collection and control procedures across the Member States**, and concludes that Member States need to modernize their VAT administrations in order to reduce the VAT Gap, which was around EUR 193 billion in 2011. Recommendations are addressed to

individual Member States on where they could make improvements in their procedures.

The second report looks at how effectively administrative cooperation and other available tools are being used in order to combat VAT Fraud in the EU. It finds that more effort is needed to enhance cross border cooperation, and recommends solutions such as joint audits, administrative cooperation with third countries, more resources for enquiries and controls and automatic exchange of information amongst all Member States on VAT.

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

EU Parliament backs standard VAT return for all Member States

The European Parliament has voted to support the European Commission's proposal to introduce a standard VAT return to be used in all Member States. The proposal is intended to reduce burdens on businesses operating in several jurisdictions by introducing a common format for their VAT returns in each country that they operate in. Whilst the concept, and the Parliament's support for it, will be widely welcomed, it seems clear that the conflicting requirements of those countries that rely on VAT returns to collect a wide range of data and those that currently use very short forms and do not wish to impose additional burdens on businesses there, pose difficulties that will need to be overcome before the proposal is finally adopted. The Commission still hopes to reach a conclusion and adopt the new form of return by the end of 2014.

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

Considerable lower additional duty rate on imports from the United States

In 2005, the European Union introduced retaliatory measures on imports from the U.S. The additional duties are the result of the EU's 'Byrd Amendment' dispute with the U.S. Since then, both the list of U.S. originating products for which these measures apply and the additional duty rate have been adjusted several times, the last time on 1 May 2013.

In 2013, the additional duty rate was raised from 6% to 26%.

According to the latest reports from Brussels, on 1 May 2014, this rate is expected to drop from 26% to 0.35%. The list of products for which the retaliatory measures apply is expected to remain the same.

This would mean that for the following products, from 1 May 2014, an additional duty rate of 0.35%, instead of the current 26%, may apply for U.S. originating imports into the EU:

CN code	Description
0710 40 00	Sweet corn, uncooked or cooked by steaming or by boiling in water, frozen
9003 19 30	Frames and mountings for spectacles, goggles or the like, of base metal
8705 10 00	Crane lorries (excl. breakdown lorries)
6204 62 31	Women's denim trousers and breeches

At present, this measure is only draft legislation that is still to proceed through the (remaining) formal channels and to be officially published.

Fernand Rutten, frutten@deloitte.com, Partner, Deloitte Belgium

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

European Commission proposes reduction or elimination of customs duties for products originating in Ukraine

The European Union and Ukraine concluded their negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) at the end of 2011. Due to the recent developments in Ukraine, the DCFTA still has not been signed yet.

As an alternative, supporting the economic stabilization of the Ukraine, the European Commission has now adopted a proposal for a regulation unilaterally granting Ukrainian products preferential EU market access. EU customs duties on (mainly agricultural and food) products originating in Ukraine will be reduced or fully eliminated.

The proposal and the relevant Annexes with the products concerned can be found here: **Proposal COM 2014 0166**.

At present, Ukraine no longer depends on the entry into force of the DCFTA, which is now expected to take some more time. If Ukraine fails to comply with the conditions of this regulation, the European Commission, however, can suspend its autonomous preferences granted.

Fernand Rutten, frutten@deloitte.com, Partner, Deloitte Belgium

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

France

Import VAT deferral

Further to the announcement by French President, François Hollande, of measures to boost France's investment attractiveness, customs procedures for companies are to be improved.

From January 2015, a new regime will allow companies to defer the payment of the VAT due on imported goods on their VAT return. The procedure will be available for operators with a centralized customs clearance in place (which allows for the centralization of payments for duties and taxes due at one place for all imports/exports in France).

For exports, border procedures will be simplified from mid-2016. Also, 'approved exporters' will be able to obtain their visas, allowing them to benefit from preferential agreements, within a 48 hour deadline.

The next step relates to import VAT, in respect of which negotiations have been taking place for a reverse charge of import VAT, similar to the regimes adopted by 16 EU Member States. This reform will also allow France to anticipate the future reforms of the Union Customs Code (which apply in principle from May 2016).

Michel Guichard, mguichard@taj.fr, Partner, Deloitte France

Iran

Limited relief of restrictions in place against Iran's automotive sector

As a result of U.S. Executive Order 13645 (effective from 1 July 2013), the U.S. Secretary of State became authorized to impose a range of penalties on any person who "knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran."

On 20 January 2014, the Joint Plan of Action (JPOA) between Iran and China, France, Germany, the Russian Federation, the United Kingdom and the United States (the P5+1 group) came into effect, which provides for limited relief from these sanctions over a six month period, ending on 20 July 2014. The JPOA was issued in response to Iran taking specified steps to halt the progress of its nuclear weapons program and allow increased transparency and monitoring by the International Atomic Energy Agency (IAEA).

Some sanctions relief is effective immediately, including the restrictions in place against Iran's automotive sector. However, this temporary lifting is still subject to certain limitations which may nevertheless impact companies' ability to take advantage of this, such as:

- Dealings with Specially Designated Nationals are still prohibited, especially Iranian banks with Weapons of Mass Destruction ([NPWMD]) and/or Specially Designated Global Terrorist ([SDGT]) tags on the Specially Designated Nationals and Blocked Persons List, as well as those persons/entities on the newly created Foreign Sanctions Evaders List by the U.S. Department of Treasury, Office of Foreign Asset Controls, on 6 February 2014;

- Foreign entities owned or controlled by a U.S. person are considered U.S. persons that are still covered under the existing sanctions scope in place;

- Restrictions on, and active enforcement against, the following activities which may specifically impact the automotive sector remain in place under U.S. sanctions, such as:
    - Providing ‘significant’ goods or services used in connection with Iran’s ‘energy sector’, including any automotive vehicles or related parts which could be used in the energy sector; and
    - The supply of any military and dual-use goods, software, and technology to Iran, which would cover any controlled items in this sector found on the U.S. Military List or Commerce Control List;
- All transactions authorized by the sanctions rollback must be initiated and then fully completed during the JPOA Period (including payment, transfer of title, shipment, etc.);
- Contractual arrangements or transactions that (a) predate 20 January 2014 are not exempt from U.S. sanctions during the JPOA Period or (b) are initiated during the JPOA Period will not be grandfathered if they extend beyond 20 July 2014; and
- The temporary suspension could be revoked at any time if Iran does not appear to be fulfilling its commitments under the Agreement.

Based on the above, companies should proceed with caution and carefully consider the many remaining elements of the sanctions regime that could still hinder the ability to do business in or with Iran.

Stacey Winters, stwinters@deloitte.co.uk, Partner, Deloitte UK

Iraq

Update on the implementation of the new tariff

After the regime change in Iraq in 2003, the Coalition Provisional Authority was set up. This Authority suspended the operation of the Iraqi customs tariff, which was replaced with a flat rate import duty, known as the Reconstruction Levy at a rate of 5%, with limited exemptions.

Even after the handover of power to the Iraqi Government, the Reconstruction Levy remained in place, although several attempts were made in the last few years to replace it with a conventional customs tariff. These attempts were not successful initially.

Eventually, on 2 January 2014, the new tariff was implemented, but not in its entirety. The lack of widespread notification of the introduction, the fact that previously announced introductions had not materialized, and an absence of clear guidance to the trade and to customs and port officials, resulted in increased delays in customs clearance, and a degree of chaos, in some of the Iraqi ports of entry.

The situation was made more difficult by, in particular, two other aspects: the fact that it was decided to implement the new tariff on a phased basis (over 100 tariff codes became subject to the new customs tariff upon implementation on 2 January, with the remainder still subject to the 5% flat rate until the next phase is implemented); and the initial reticence of the autonomous Kurdistan Region to follow the federal government’s lead. This meant

that imports to the Kurdistan Region of Iraq were, initially, subjected to only the 5% Reconstruction Levy, which naturally posed something of an anomaly.

It is understood that Phase 1 of the new customs tariff was eventually implemented in Kurdistan Region, just over a month late on 6 February. As more clarity has begun to emerge, there are reports that the situation in the ports has eased, but with a new range of difficulties posed by inspections to verify that goods have been properly classified.

Alex Law, alexlaw@deloitte.com, Partner, Deloitte UAE

Paul McConville, paulmcconville@deloitte.com, Senior Manager, Deloitte UAE

Italy

'Web tax'

Law-Decree no. 16 dated 6 March 2014 has abolished the paragraph of the 'Stability Law 2014' (Law 27 December 2013, n. 147) under which Italian taxpayers had to purchase online advertising services and sponsored web links only from entities VAT registered in Italy, even if the purchase was made through media companies and/or third-party operators.

The other provisions of the 'Stability Law 2014' in this regard, in particular, specific transfer pricing rules and payment methods, have not been abolished. Accordingly, payment of online advertising services and ancillary services may only be made by bank or post wire transfer (which must show the identification information of the beneficiary), or by other traceable payment methods, in order to trace back the transactions and to enable the beneficiary's VAT number to be identified.

Clarification of indirect taxes applying to transfers of immovable property

The tax authorities have issued a Resolution (no. 2/E dated 21 February 2014) clarifying and summarizing the new provisions, which applied from 1 January 2014, regarding register tax, cadastral tax and legal transcription fee on transfers of immovable property,.

VAT grouping clarification

The tax authorities have issued a Resolution (no. 21/E dated 18 February 2014) clarifying that a VAT credit relating to a period prior to a VAT taxpayer joining a VAT group that has been denied can be recovered by the taxpayer in its annual VAT return, and cannot be transferred to the VAT grouping computation.

VAT rate for supplies of bottled source water

The tax authorities have issued a Resolution (no. 11/E dated 17 January 2014) stating that supplies of source water in bottles for human consumption should be taxed at the standard VAT rate of 22%.

Clarification of VAT treatment of services relating to contracts for the building of touristic-hotel residences

The tax authorities have issued a Resolution (no. 8/E dated 14 January 2014) clarifying the VAT treatment of supplies of services relating to contracts for the building of touristic-hotel residences and of the supplies and rents of single real estate that composes the touristic-hotel residences, including both housing and commercial use.

In particular, the tax authorities have clarified that the building of touristic-hotel residences composed of both housing and commercial real estate (based on the cadastral category) is subject to the standard VAT rate of 22%. Contracts for the building of real estate that include both housing and commercial can be subject to the reduced VAT rate of 10% or 4% only if the specific provisions and requirements are met (under the related provisions, e.g., the Tupini law).

Barbara Rossi, brossi@sts.deloitte.it, Partner, Deloitte Italy

Kazakhstan

Temporary ban on export of light distillates and products, kerosene, gas oil and other petroleum products

With effect from 1 January 2014, Government Resolution of the Republic of Kazakhstan No. 1312 dated 4 December 2013 has imposed a ban on the export of light distillates and products (commodity code 2710 12), kerosene (commodity code 2710192100 - 2710192500), gas oil (commodity code 2710194200 – 2710194800, 2710201100-2710201900) and other petroleum products (commodity code 2710209000), except specialized gasoline (commodity code 2710122100-2710 12 250 9) and heating gas oil for household use for the term of six months.

Application of IT technologies and creation of an integrated information system

The President of the Republic of Kazakhstan has signed the laws ratifying two agreements under the Customs Union (CU) of Belarus, Kazakhstan and Russia:

- The Agreement on the application of information technology in the exchange of electronic documents in foreign and mutual trade within the common customs territory of the CU; and
- The Agreement on the establishment, operation and development of an integrated information system in foreign and mutual trade of the CU.

The Agreement on the application of information technology in trade in the CU territory is intended to provide an opportunity to control the legality of foreign digital signatures within the CU and, starting from 1 January 2014, it allowed participation in interstate information exchange within the CU to promote the development of trade.

It is intended that development of an information system for CU trade will improve the quality of customs, tax, transport, etc. with the use of information communication technologies, will provide effective regulation of foreign and mutual trade in the customs territory of the CU, and will promote facilities to business entities.

The agreements are subject to ratification and applied temporarily from 15 January 2014.

Rules determining the country of origin of goods

Government Resolution of the Republic of Kazakhstan No. 1334 dated 13 December 2013 introduced amendments to the criteria for the sufficient processing of certain goods, which are used to determine the country of origin of goods. In addition, there were amendments to goods positions 8408, 8433, 8501 and 8601.

This Resolution entered into force on 13 December 2013 and was officially published on 7 January 2014.

List of goods subject to export control

Government Resolution of the Republic of Kazakhstan No. 1372 dated 20 December 2013 introduced amendments to the list of products subject to export control. The Resolution entered into force on 9 January 2014.

Amendments to export customs duties rates on crude oil

Government Resolution of the Republic of Kazakhstan No. 211 dated 11 March 2014 introduced amendments to export customs duties rates on crude oil. Based on this Government Resolution, export customs duties on crude oil are USD 80 per 1 ton. The resolution entered into force from the date of its official publication i.e., 12 March 2014.

Vladimir Kononenko, vkononenko@deloitte.kz , Partner, Deloitte Kazakhstan

Luxembourg

Infringement case against Luxembourg on cost sharing groups

The European Commission has announced that it is referring Luxembourg to the Court of Justice of the European Union (CJEU) over its implementation of the VAT exemption for 'cost sharing' groups. Following the delivery of a 'reasoned opinion' to Luxembourg, the VAT law there was changed in 2012 to restrict the scope of the exemption for 'cost sharing groups' but the Commission considers that the changes do not go far enough and is referring the issue to the CJEU.

Raphael Glohr, rglohr@deloitte.lu, Partner, Deloitte Luxembourg

Poland

Compensation for early termination of lease agreement subject to VAT

According to a recent judgment of the Polish Supreme Administrative Court (SAC), the payment of compensation for early termination of a contract should be subject to VAT.

The SAC held that, according to the Polish VAT Law, payments resulting from early termination of a contract should not be treated as compensation, but as payment for services, in particular, a commitment to waive any claims resulting from the agreement.

The SAC's approach in this judgment is consistent with decisions of the CJEU, and with the recent practice of the Polish tax authorities. Consequently, this amended approach has the potential to affect all taxpayers that are party to contracts subject to early termination.

VAT rate on comprehensive hotel services

The SAC recently held that different services provided by hotels as part of hotel packages, such as accommodation; dinner service, including alcohol; minibars; access to the spa, etc. cannot be considered as one comprehensive hotel service subject to the 8% VAT rate, and therefore should be taxed at the VAT rates applicable to the particular services. In particular, according to the SAC, comprehensive hotel services may include only

accommodation and breakfast.

As a result, the approach widely adopted by taxpayers, that assumed that all types of services provided by a hotel should be treated as one comprehensive hotel service and therefore subject to the reduced VAT rate, is now questionable. In particular, there is a high probability that the tax authorities will challenge the application of a single, reduced VAT rate to all types of services provided by a hotel and the documentation of such services on an invoice as just 'hotel service'.

Michał Kłosiński, mklosinski@deloittece.com, Partner, Deloitte Poland

Portugal

Decisions regarding input VAT deduction and the 'advertising exhibition tax'

Two decisions have been issued (by the Portuguese Administrative Arbitration Centre (CAAD) and the Portuguese Supreme Court of Justice (STA)), one providing a clear definition of material error and calculation error concepts (for which taxpayers have only two years to correct when the error is against them) and the other on the inclusion of the advertising tax in the taxable amount for VAT purposes:

Deadline to deduct input VAT (CAAD decision nr. 117/2013)

The general statutory limitation rule for VAT deduction in Portugal is four years. There is, however, a specific rule in the Portuguese VAT Code that restricts the right to deduct VAT to two years when it concerns a material or calculation error. However, there is no definition of material or calculation error, and the tax authorities historically took an extensive interpretation of these concepts.

In decision nr. 117/2013, the CAAD has defined what is meant by material/calculation errors. In brief, material errors are described as occurring when the taxpayer intended to write a certain amount and, through carelessness or oversight, actually writes a different amount, or when an error on a VAT return filling follows an earlier error of the same type on the accounting statements. Calculation errors occur when the arithmetic operations undertaken to calculate the amount of VAT were wrongly made in the VAT return itself or in any other documents on which it is based.

Companies that were not considering the deduction of VAT beyond the two year period or that are discussing issues in this regard with the tax authorities may find this new definition useful to support their arguments.

Inclusion of 'advertising exhibition tax' in taxable amount for VAT purposes (STA decision nr. 701/12)

This judgment of the STA reinforces previous decisions reported by other courts, including the CJEU (Cases C-618/11, C-637/11 and C-659/11), regarding the inclusion of a 'specific service tax' in the taxable amount for VAT purposes.

The STA decided that the 'advertising exhibition tax' must be included in the taxable amount for the service of a commercial advertising exhibition.

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

Russia

VAT incentive for Sochi 2014 Winter Olympic and Paralympic Games

The Russian Government has established a procedure to refund input VAT incurred with respect to the XXII Winter Olympic Games and the XI Winter Paralympic Games in Sochi (the Games). The VAT refund is available for the following members of the Games having obtained Russian tax registration (the Qualified Members of the Games):

- Foreign organizers of the Games as per the list approved by the Order of the Russian Government of 30 December 2009 (see **Appendix I**);
- Foreign marketing partners of the International Olympic Committee, including official broadcasting companies, and their Russian branches and representative offices as per the list approved by the Order of the Russian Government dated 6 May 2011 (see **Appendix II**).

Under the established procedure, supplies of goods, work, services, and property rights sold (transferred) in connection with the Games made to the Qualified Members of the Games should be subject to a zero VAT rate.

The zero VAT rate is applied via reimbursement by the tax authorities of VAT incurred by the Qualified Members of the Games. To receive the VAT reimbursement, an application must be submitted with the tax authorities, with a package of documents. The list of documents is described in a Resolution of the Russian Government and depends on a number of factors, such as the type of expenses, etc.

The tax authorities should verify the reasonableness of the amount claimed for the reimbursement of VAT within three months of receiving the application and documents. The reimbursement of VAT is carried out by transferring the refunded amount of VAT to the accounts of the Qualified Members of the Games opened with authorized banks in the Russian Federation.

Please contact Deloitte Russia if you are a Qualified Member of the Games and require further information or assistance in obtaining input VAT refunds from the tax authorities.

Andrey Silantiev, asilantiev@deloitte.ru, Partner, Deloitte Russia

Slovenia

Filing of Intrastat returns

From 1 February 2014, paper Intrastat returns are no longer accepted.

From 1 February, Intrastat returns must be filed electronically, by using one of the below methods:

- Via exchange of electronic messages, or
- Via a web form, which is available on the website of the Slovene statistical authority.

Electronic reporting requires the use of a personal digital certificate, which is required to enter the web application. Alternatively, it is also possible to authorize another person who has already acquired a digital certificate in Slovenia. The granting of authorizations for

reporting can be done using the relevant authorization forms, available on the Intrastat website.

For persons liable for intrastat reporting that are already using the electronic means of reporting, no other changes are scheduled for 2014.

Andreja Škofič Klanjšček, askofic@deloittece.com, Senior Manager, Deloitte Slovenia

South Africa

Following the South African National Budget Speech for 2014, a number of changes were proposed to the customs and excise legislation. The proposed changes cover various customs-related duties and taxes, and are set out below.

Specific excise duties

The annual changes to the so-called 'sin taxes' were expected, with an increase in excise duties on alcoholic beverages in line with the targeted total tax burden (23, 35 and 48 for wine, clear beer and spirits respectively).

In line with these targets, the government proposes to increase the excise duties on alcoholic beverages by between 6.2 percent and 12 percent in 2014. The specific excise duty rate for traditional African beer and powder remain unchanged (7.82c per litre and 34.7c per kg respectively).

The Minister of Finance also proposes to maintain the 52 percent tobacco benchmark by increasing the excise duties on tobacco products by between 2.5 and 9 percent. (The below-inflation increase is due to the 2013 Budget excise adjustment exceeding the targeted tax incidence).

The excise duty on malt beer increases by 8.01 percent from ZAR 63.81 to ZAR 68.92 per litre of absolute alcohol, which equates to an average increase of 8.52c per 340ml can to a total of 117c per 340ml can.

There were increases in the excise duty on wine of 6.30 percent unfortified, 7.42 percent fortified, and 10.02 percent sparkling. This has resulted in the rates per litre on these products equalling ZAR 2.87, ZAR 5.21 and ZAR 9.11 per litre respectively.

For ciders and alcoholic fruit beverages, there was an increase in excise duty of 8.15 percent.

The rate for spirits has decreased by 12.02 percent from ZAR 39.60 to ZAR 44.36 per 750ml bottle (compared to the 10 percent of the previous year).

Smokers will also face increased prices as a result of increases in the excise duties on cigarettes, 6.23 percent; cigarette tobacco, 7.15 percent; pipe tobacco, 2.54 percent; and cigars, 9.0 percent.

The excise duty amendments on the above were effective from 26 February 2014.

Fuel taxes and environmental levies

With effect from 2 April 2014, the Minister proposes to increase general fuel and Road Accident Fund levies by 12c (in line with inflation) and 8c per litre respectively.

Following public consultation, the National Treasury and the Department of Environmental Affairs agree on the need to align the design of the carbon tax and the proposed desired emission-reduction outcomes. To allow for this process and ensure adequate time for consultation on draft legislation, implementation of the carbon tax is postponed to 2016.

General customs and excise matters

- Agents: There is uncertainty as to which documentation is acceptable as proof of payment to entitle a vendor to deduct input tax in respect of VAT paid on the importation of goods. Clarity will be provided on which documentation is acceptable.
- The Lebombo one-stop border post will become operational shortly following the finalization of the remaining formalities.
- Alcoholic beverages classification for excise duty purposes: The current voluntary application for tariff determinations process will, on a date to be determined, be made compulsory for all newly launched (including product modifications) alcoholic beverages to ensure accurate and consistent classification.
- Protection of trade information: The South African Revenue Service (SARS) proposes amendments to the customs legislation for further provisions protecting information received from travellers and traders (pending the implementation of the Protection of Personal Information Bill).
- Excise duty increase on non-fruit fermented alcoholic beverages (NFFAB): The 2013 budget proposal to increase excise duties on NFFAB with effect from February 2014 is to be postponed to budget 2015 following consultations with stakeholders.
- Diesel refunds (DR): The DR policy and administrative system will be reviewed (due to benefits afforded to the electricity industry growing more than expected and reducing fuel levy revenue).
- Special Economic Zones (SEZ): The incentives, and funding, for SEZs will be strengthened.
- Biofuels production incentive: This incentive (infant industry support mechanism) will be introduced in 2015 and will work through the fuel levy system. (The exact levy is to be determined when the point of blending and cost structure has been determined.)
- SARS Single Registration: SARS will introduce single registration for all tax types.
- Further introduction of scanners: High volume scanners will be introduced at both the Cape Town and Durban ports to facilitate trade.
- The tobacco, as well as the clothing and textile industries, will be targeted by SARS (due to the importation of illicit goods and under-invoicing, respectively).
- Measures to address acid mine drainage will be explored, which may include measures such as environmental levies or equivalent instruments.

- Customs and excise duties anomalies corrected: Anomalies on customs and excise duty data relating to the Motor Industry Development Programme, textile and clothing, furniture and fixtures, etc. for the years 2009/2010 and 2010/2011 previously identified have now been rectified.

Fadiel Cader, fcader@deloitte.co.za, Manager, Deloitte South Africa

United Kingdom

Court of Appeal confirms that arrears of gym club fees are subject to VAT

The Court of Appeal has dismissed an appeal by Esporta Limited against the decision of the Upper Tribunal that arrears of fees collected from members who defaulted on payments to the club were subject to VAT.

The First-tier Tribunal agreed with Esporta that, since members in default were denied access to the club premises unless and until the arrears of fees were paid, there was no supply during the period of default, and hence no VAT on the arrears when paid. However, the Upper Tribunal then decided that the First-tier Tribunal had been wrong to conclude that the withdrawal of a member's access rights during a period of default made a difference, and that the arrears were subject to VAT when collected.

Whilst the Court of Appeal disagreed with the Upper Tribunal's reasoning that the 'late' payments represented additional consideration for the period when membership was 'live' (i.e., the period before the member defaulted), it concurred with the end result. As Lady Justice Arden put it "... [t]here was a continuing supply of a conditional right to use the premises throughout the period of membership, that is, the Commitment Period and the period up to the date of expiry of the notice period. That supply takes place even if the member does not exercise his right to make a payment in order to gain actual access ...".

Supreme Court allows taxpayer's appeal in 'agent/principal' case

The Supreme Court has allowed the taxpayer's appeal in the case of *Secret Hotels2 Limited.* The case turned on whether the company was acting as an agent for overseas accommodation providers when taking bookings for holiday accommodation, or as principal in a supply chain beginning with the owner of the overseas accommodation, passing through the company and ending with the holidaymaker.

The tax authorities (HMRC) took the view that the company was a principal in the supply chain, buying in and selling on the accommodation, that it was covered by the Tour Operators Margin Scheme and hence liable to UK VAT on its margin. Secret Hotels appealed against the assessment raised by HMRC, which claimed a total of £7,128,702 of UK VAT on the supplies made by the company.

Both the First-tier Tribunal and the Court of Appeal agreed with HMRC that the circumstances surrounding the transactions suggested that HMRC was right, and that Secret Hotels was acting as a principal in the supply chain, despite the fact that the contracts with the accommodation providers and the company's website terms and conditions indicated that it acted as the agent of the accommodation providers.

However, the Upper Tribunal concluded that, overall, the contracts were not inconsistent with the way that Secret Hotels operated and demonstrated that, as the company

contended, it acted as an agent and so was outside the Tour Operators Margin Scheme, which meant that its supplies were not subject to UK VAT.

The Supreme Court has now concluded that the Upper Tribunal "... reached the right conclusion for substantially the right reasons ...".

HMRC guidance on the VAT and tax treatment of Bitcoins and cryptocurrencies

HMRC have issued guidance on the VAT (and wider tax treatment) of activities involving Bitcoins and similar cryptocurrencies.

The guidance confirms that "… [i]ncome received from Bitcoin mining activities will generally be outside the scope of VAT…", that no VAT is due on the value of Bitcoins when they are exchanged for Sterling or another currency and that other charges relation to Bitcoins (e.g. the verification of specific transactions for which specific charges are made and charges – in whatever form – made over and above the value of the Bitcoin for arranging or carrying out any transactions in Bitcoin will be exempt from VAT.

When it comes to direct tax, HMRC simply confirm that traders pay income tax or corporation tax and others are liable to capital gains tax. Interestingly (and unusually), HMRC says "Taxpayers can rely on the VAT treatment outlined … unless and until HMRC announces any changes."

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

Appendix I: Russia: List of Foreign Games Organizers

1. Olympic Museum
2. Olympic Foundation
3. CIO Television & Marketing Services SA
4. Olympic Broadcasting Services S.A.
5. International Paralympic Foundation
6. Olympic Broadcasting Services SL
7. United States Olympic Committee (USA)
8. Le Comité National Olympique et Sportif Français (France)
9. Latvijas Olimpiskā komiteja (Latvia)
10. The British Olympic Association (United Kingdom)
11. Österreichisches Olympisches Comité (Austria)
12. Nederlands Olympisch Comité*Nederlandse Sport Federatie (Netherlands)
13. National Olympic Committee of Ukraine (Ukraine)
14. National Olympic Committee of the Republic of Belarus (Belarus)
15. Australian Olympic Committee Incorporated (Australia)
16. Canadian Olympic Committee (Canada)
17. Liechtensteinischer Olympischer Sportverband (Liechtenstein)
18. Comitato Olimpico Nazionale Sammarinese (San Marino)
19. Deutscher Olympischer Sportbund (Germany)

Appendix II: Russia:List of Foreign Marketing Partners

1. THE COCA-COLA COMPANY (USA)
2. THE COCA-COLA EXPORT CORPORATION (USA)
3. LLC Coca-Cola HBC Eurasia (Russia)
4. Representative office of the Coca-Cola Export Corporation (USA) in Moscow, Russia
5. LLC Coca-Cola Soft Drink Consulting (Russia)
6. Branch of ATOS INVESTISSEMENT 19 (France) in Russia
7. ATOS ORIGIN SOCIEDAD ANONIMA ESPANOLA (Spain)
8. SOCIEDAD DE INFORMATICA APLICADA, S.A. (Spain)
9. Panasonic Corporation (Japan)
10. LLC Panasonic Rus (Russia)
11. Panasonic System Networks Co., Ltd (Japan)
12. McDONALD'S CORPORATION (USA)
13. LLC McDonald's (Russia)
14. Omega SA (Switzerland)
15. Swiss Timing LTD (Switzerland)
16. ST Sportservice GmbH (Germany)
17. Cheil Worldwide Inc. (Republic of Korea)
18. SAMSUNG ELECTRONICS Co., Ltd. (Republic of Korea)
19. Procter & Gamble International Operations SA (Switzerland)
20. LLC Procter & Gamble (Russia)
21. LLC The Procter & Gamble Distributing Company (Russia)
22. The Procter & Gamble Company (USA)
23. Procter & Gamble International Operations Pte Ltd (Republic of Singapore)
24. LLC Visa International Consolidated Support Services (Russia)
25. Visa Cemea (UK) Limited (United Kingdom)
26. Visa International Service Association (USA)
27. Coca-Cola CIS Services LTD. (USA)
28. Panasonic Electric Works Co., Ltd (Japan)
29. SANYO Electric Co., Ltd. (Japan)
30. LLC GE Healthcare (Russia)
31. LLC GE Rus (Russia)
32. Dow Europe GmbH (Switzerland)
33. The Dow Chemical Company (USA)
34. LLC Dow Chemical (Russia)
35. HUZUR RADIO TV ANONIM SIRKETI (Turkey) 36. ATV Privat TV GmbH & Co KG (Austria)
37. Osterreichischer Rundfunk (Austria)
38. NBC Universal Media, LLC (USA)
39. NBC Olympics, LLC (USA)
40. Yleisradio Oy (Finland)
41. Nederlandse Omroep Stichting (Netherlands)
42. SPORTFIVE International SA (Switzerland)
43. Schweizerische Radio- und Fernsehgesellschaft (Switzerland)

44. TV 2 GRUPPEN AS (Norway)
45. TV 2 AS (Norway)
46. Sveriges Radio Aktiebolag (Sweden)
47. VIASAT BROADCASTING UK LIMITED (United Kingdom)
48. De Vlaamse Radio-en Televisieomroeporganisatie (Belgium)
49. Sky Italia - S.r.l. (Italy)
50. Corporacion de Radio y Television Espanola, S.A. (Spain)
51. SEOUL BROADCASTING SYSTEM (Republic of Korea)
52. France Televisions (France)
53. Japan Broadcasting Corporation (Japan)
54. Zweites Deutsches Fernsehen (Germany)
55. Bayerischer Rundfunk (Germany)
56. Representative office of Canadian Broadcasting Corporation (Canada) in Russia
57. Canadian Broadcasting Corporation (Canada)
58. Tokyo Broadcasting System Television, Inc (Japan)
59. The Japan Commercial Broadcasters Association (Japan)
60. Fuji Television Network, Incorporated (Japan)
61. TV TOKYO Corporation (Japan)
62. Nippon Television Network Corporation (Japan)
63. TV Asahi Corporation (Japan)
64. Czech Radio (Czech Republic)
65. GENERAL ELECTRIC COMPANY (USA)
66. GLOBOSAT PROGRAMADORA LTDA. (Brazil)
67. GLOBO COMUNICACAO E PARTICIPACOES S.A. (Brazil)
68. RADIO E TELEVISAO BANDEIRANTES LTDA. (Brazil)
69. Bulgarian National Television (Bulgaria)
70. CSJC Multon (Russia)
71. Dow AgroSciences Switzerland S.A. (Switzerland)
72. LLC Dow Izolan (Russia)
73. The National State TV and Radio Company of the Republic of Belarus (Belarus)
74. LAISVAS IR NEPRIKLAUSOMAS KANALAS (Lithuania)
75. Polskie Radio Spółka Akcyjna (Poland)
76. RADIOTELEVIZIJA SLOVENIJA javni zavod (Slovenia)
77. Samsung Electronics RUS company (Russia)
78. Radio e Televisão Record SA (Brazil)
79. MARKÍZA - SLOVAKIA, spol. s r.o. (Slovakia)
80. OLYMPIC BROADCASTING SERVICES, S.L. (Spain)
81. Olympic Broadcasting Services, S.A. (Switzerland)
82. CET 21 spol. s r.o. (Czech Republic)
83. TV2/DANMARK A/S (Denmark)
84. Network Ten Pty Limited (Australia)
85. Channel Four Television Corporation (United Kingdom)
86. ViaSat Pay Channels AB (Sweden)
87. China Central Television (China)

88. ATOS INTERNATIONAL (France)
89. DR (Denmark)
90. Eesti Rahvusringhääling (Estonia)
91. British Broadcasting Corporation (United Kingdom)
92. Lietuvos ryto televizija (Lithuania)
93. Rozhlas a televízia Slovenska (Slovenia)
94. NORSK RIKSKRINGKASTING AS (Norway)

Deloitte Global & Regional Indirect Tax Contacts

Global
David Raistrick
draistrick@deloitte.co.uk

Asia Pacific
Robert Tsang
robtsang@deloitte.com

EMEA
Rogier Vanhorick
rvanhorick@deloitte.nl

Canada
Robert Demers
rdemers@deloitte.ca

U.S. Indirect Tax (VAT/GST)
Benno Tamminga
btamminga@deloitte.com

U.S. Sales & Use Tax
Dwayne Van Wieren
dvanwieren@deloitte.com