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Global Indirect Tax News

Your reference for indirect tax and global trade matters

July 2014

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

Features of this edition include: the simplification and unification of VAT rates in China, customs news from the Philippines and Singapore, and a number of updates on the upcoming changes to the place of supply rules in the EU (see **EU: 2015 Place of Supply Changes** for further information on these changes).

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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Americas

Mexico

Publication of companies suspended from IMMEX Program

On 20 June 2014, the Ministry of Economy published in the Federal Gazette the list of companies that have been suspended from the IMMEX Program because they have not presented their Foreign Trade Annual Report, and those suspended because they have not complied with all their Taxpayers' Registry obligations.

Affected companies must correct their omissions before 30 August 2014 to reactivate the benefits granted under the IMMEX Program (such as importing raw materials without the payment of VAT, amongst others), otherwise, their IMMEX Program status will be cancelled on 1 September 2014 by way of resolution issued by the Ministry of Economy, which will be published in the Federal Gazette.

If a company's IMMEX Program status is cancelled, the company must pay all the duties and taxes on temporarily imported raw materials and assets that were deferred under the IMMEX Program.

Twelfth modification to the Foreign Trade Rules

On 4 July 2014, the Ministry of Finance published in the Federal Gazette the twelfth modification to the Foreign Trade Rules, which came into effect on 7 July 2014, except in certain cases.

The most significant changes include the following:

- Customs brokers may appoint a representative in case of death, permanent disability or voluntary permission;
- To promote efficiency in customs clearance, the customs authorities have set working days and hours as Monday to Saturday from 9:00 to 12:00 for goods classified as boats and vehicles;

- For goods classified as chemicals, weapons, ammunition or explosive goods, the trademark must be declared upon importation;

- The Ministry of Economy has redefined the information that must be considered as 'data of national interest', and that must be reported by importers and exporters in their customs documents. 'Data of national interest' now includes a description of the goods, the quantity of the goods, and origin of the goods. Previously, the value of the goods was also considered to be data of national interest.

The following changes were also published regarding VAT and excise tax (ET) certification requirements:

- The requirement to have the positive opinion of the tax duties for partners, shareholders, sole administrators, legal representatives and members of the board is confirmed.

- IMMEX Program companies must submit the value of social security contributions paid for their personnel for the two months before the date of the application.

- The requirement to include photographs as part of the productive process description has been eliminated.

- The authorities have set a 60 working day period to submit the renewal of the VAT and ET certification, instead of the original 30 working days.

- Similarly, there is now a 40 working day period in which the authorities must issue a resolution for the renewal, instead of the original 20 working days.

- The obligation to report any change to the partners, shareholders, sole administrator or board of directors and legal representatives, as well as changes to foreign clients and suppliers, and to domestic suppliers, must be reported monthly instead of six monthly.

- The latest report of balances of temporarily imported goods at 31 December 2014 in respect of which VAT credit has been granted must be submitted by 15 January 2015.

Publication of list of companies granted VAT and ET certification

On 4 July 2014, the Ministry of Finance published on its official website a list of 242 companies that have been granted VAT and ET certification and that will consequently be granted VAT and ET credit for their temporary imports from 1 January 2015.

The breakdown of companies by rating is as follows:

- 103 companies with an AAA rating (this certification is valid for a three year period from 1 January 2015);

- 15 companies with an AA rating (this certification is valid for a two year period from 1 January 2015);

- 124 companies with an A rating (this certification is valid for a one year period from 1 January 2015).

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Mexico

United States

US Court of Appeals for the Federal Circuit rules on tariff classification of certain sportswear

On 20 June 2014, the US Court of Appeals for the Federal Circuit (CAFC) held that football jerseys, pants and girdles are properly classified as articles of apparel rather than sporting equipment.

The Harmonized Tariff Schedule of the United States (HTSUS) classifications applicable to apparel typically carry significant duty rates, while the HTSUS provision for sporting equipment is duty free. In *Riddell, Inc. v. U.S.* (*Riddell*), the CAFC sets out a 'common sense' approach to this long-standing tariff classification issue. The CAFC articulated its 'strong general rule' that 'sports equipment' does not include an article that would be understood as clothing in its imported condition, even when the clothing is designed exclusively for use in a particular sport.

For an item to be considered 'sporting equipment,' it would not be 'apparel-like' and would be almost exclusively protective in nature. The CAFC identified examples of such 'sporting equipment' as padded hockey pants in which the foam padding and plastic guards constitute over 80% of the total weight of the hockey pants, as well as motor-cross jerseys, pants and motorcycle jackets that contain padding that accounted for 50% of the total weight of the clothing. However, the CAFC did not establish a percentage of protective padding that must be incorporated into clothing for it to be considered sporting equipment. The approach articulated in *Riddell* suggests that if the apparel article is worn exclusively for protection, it is more likely to be classified as sporting equipment.

US export controls on cloud computing remain cloudy

On 27 May 2014, the US Department of State's Directorate of Defense Trade Controls (DDTC) issued a non-binding advisory opinion to a cloud computing security company on its use of 'tokenization' to secure technical data that is controlled by the International Traffic in Arms Regulations (ITAR).

Tokenization is a technology that substitutes actual data (e.g., a credit card number) with a token (a series of numbers with no external value). The company's software creates a token for ITAR-controlled technical data while the actual ITAR-controlled technical data remains on a US-based server that is subject to access controls.

In its advisory opinion, the DDTC stated that "tokenization may be used without a license to process controlled technical data using cloud computing applications even if the cloud computing provider moves tokenized data to servers located outside the US provided *sufficient means* are taken to ensure the technical data may be received and used only by US persons who are employees of the US government or directly employed by a US corporation." (Emphasis added). However, the DDTC would have to separately authorize transfers of the technical data to foreign persons.

In a separate statement posted on 10 June 2014, the DDTC clarified its position and advised the public that its advisory opinion is not intended to imply that 'sufficient means' to accomplish the required security levels even currently exist, nor is the DDTC's opinion meant to suggest that tokenization, alone, is sufficient to achieve the required security levels.

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Asia Pacific

China

VAT levy rates simplified and unified

China's Ministry of Finance and State Administration of Taxation (SAT) announced on 17 June 2014 that the VAT levy rates of 6% and 4% both have been reduced to 3% as from 1 July 2014 (Caishui 2014 No. 57).

Caishui 57 is aimed at simplifying and unifying the various reduced VAT levy rates into one. The rate reduction may benefit certain companies such as producers of tap water and certain biological products, small-scale hydropower enterprises, etc.

The details are:

- The VAT levy rate for certain self-produced goods sold by general VAT payers (e.g., electricity generated by small-scale hydropower enterprises, qualified biological products, commodity concrete, tap water, etc.) is reduced from 6% to 3%.
- The VAT levy rate for certain goods sold by general VAT payers is reduced from 4% to 3%, including:
    - Goods sold on consignment by consignment shops; and
    - Unredeemed pawn goods sold by pawn shops.
- The VAT levy rate for the following goods is changed from 4% (with a deduction of 50%) to 3% (reduced to 2% for calculation purposes):
    - Self-used fixed assets sold by general VAT payers where input VAT has not been credited;
    - Secondhand goods; and
    - Self-used fixed assets sold by general VAT payers where the assets were acquired or self-produced before the local implementation of a consumption-type VAT system.

Further, SAT released Bulletin 2014 No.36, which announced that the simplified and unified VAT levy rates also apply to the following, so that the aim to simplify and unify the various reduced VAT levy rates into one is formally completed:

- The VAT levy rate for goods that are temporarily sold by general VAT payers outside the registered province/city is reduced from 6% to 3% in the local province/city where the goods are sold.
- The VAT levy rate for taxable goods trusteed for auction is reduced from 4% to 3%.
- The VAT levy rate for human blood for non-clinical use sold by general VAT payers through plasma collection stations is reduced from 6% to 3%.

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Free Trade Agreements

China and Iceland

The China-Iceland Free Trade Agreement (CIFTA), which was signed on 15 April 2013, came into effect from 1 July 2014.

Under the terms of CIFTA:

- 81.56% of Iceland's exports to China should enjoy tariff-free access to China, mainly including sea goods and processing products.
- 99.77% of China's exports to Iceland should enjoy tariff-free access to Iceland, mainly including textile and apparel, machinery products, and other light industrial products.

Apart from the origin requirements and direct consignment rules under the bilateral FTAs, Chinese importers need to pay attention to the specific local requirements from China Customs when applying the above rules for products to be eligible for preferential tariff treatment.

China and Switzerland

As reported in a previous edition of this newsletter, the China-Switzerland Free Trade Agreement (CSFTA), which was signed on 6 July 2013, has entered into effect as from 1 July 2014.

Under the terms of the CSFTA:

- 84.2% of Switzerland's exports to China should enjoy tariff-free access to China, mainly including sea products, food, agriculture products, metal products, and textile and apparel.
- 99.7% of China's exports to Switzerland should enjoy tariff-free access to Switzerland, mainly including textile and apparel, machinery products, metal products, food and agriculture products.

Apart from the origin requirements and direct consignment rules under the bilateral FTAs, Chinese importers need to pay attention to the specific local requirements from China Customs when applying the above rules for products to be eligible for preferential tariff treatment.

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India

Highlights of indirect tax changes in Union Budget

The Union Budget for the financial year 2014-15 was presented on 10 July 2014; the highlights, including indirect tax highlights, can be accessed **here**.

No service tax chargeable on India branch office for online database access or retrieval services received by overseas head office

British Airways, UK had entered into agreements with foreign based Computer Reservation Systems (CRS) for the procurement of services. These services were in the nature of the online maintenance of a database regarding their flights, schedules etc., and making such information available to their agents located all over the world, including India.

The tax authorities contended that the services of CRS companies were used in India by agents appointed by British Airways, India (the branch office of British Airways, UK). Since such services were received and consumed by British Airways, India, they were to be taxable in their hands as the service recipient.

Rejecting the contention of the tax authorities, the Larger Bench of Tribunal observed that the service recipient was the person who was legally entitled to the provision of the service and obliged to make payment for the same, which in this case was British Airways, UK. Thus, it was held that no service tax was payable by British Airways, India.

Cost of remote control, viewing card and software supplied free of cost to manufacturer to be included in value of set top box for excise duty purposes

In the case of *Jabil Circuit India Pvt. Ltd*, it was observed that the manufacturer of a set top box did not include the cost of the remote control, viewing card and software, that were supplied free of cost to them in the value of the set top box, for the purposes of payment of excise duty. The exclusion was on the grounds that the items were not an integral part of the set top box and the set top box could be considered to be complete even without them.

The Tribunal observed that:

- The remote control, though an accessory, was an additional feature providing value in addition to the set top box;
- The viewing card was a key component and an active security device of the set top box;
- The software was incorporated in the flash memory chip that was soldered onto the Print Circuit Boards of the set top box.

It was held that the remote control, viewing card and software were an integral part of the set top box and their cost was to be included in the excisable value of the set top box.

Imported coal having chemical properties in excess of the prescribed limits to be classified as bituminous coal and not as steam coal

Subsequent to the introduction of a concessional rate of customs duty on steam coal, which resulted in a disparity in rate with customs duty on bituminous coal, the classification of coal has been a matter of dispute.

In the case of *Coastal Energy Pvt. Ltd.* the importer had classified a certain variety of coal as steam coal (although the chemical properties of the coal as given in Customs Tariff law was that of bituminous coal) on the grounds that in trade parlance, steam coal could be bituminous coal also, and vice versa. It was also contended that the intention of the law maker in granting the concessional rate was to give relief to domestic power producers, and denying them the benefit of the concession would defeat the intention of the legislature.

Rejecting the contention of the importer, the Tribunal held that provided the imported coal was covered by the definition of bituminous coal as given in Customs Tariff law, i.e., had the chemical properties in excess of the prescribed limit, it should be classified as bituminous coal, and should not be entitled to the concessional rate of custom duty available for steam coal.

Postscript: Differential customs duties on various types of coal have been unified into a single duty rate structure in Budget 2014-15 announced on 10 July 2014.

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Japan

Update on proposed Japanese Consumption Tax regime for digital services

The government Tax Commission has announced further specifics of a new Japanese Consumption Tax (JCT) regime for the taxation of digital services, proposed for 2015 tax reform.

As reported in an earlier edition of this newsletter, the initial draft of the regime was released in April 2014. In the latest International Taxation Group meeting held on 26 June, the Tax Commission confirmed that the changes would be included in tax reform proposals for 2015.

The regime will (i) categorize the supply of digital items as the provision of services, and (ii) change the place of supply of services when the location of service performance is unclear or when the services are conducted on a cross-border basis, to where the main office of the recipient is located (destination principle). Also, to ensure that JCT is effectively reported and paid by overseas suppliers, a reverse charge mechanism will be introduced for business to business (B2B) transactions.

In addition, the Tax Commission indicated that they would add the following provisions to JCT law along with the proposed changes in order to avoid any confusion over the definition of 'cross-border services':

1. Include in JCT law a provision stating that the following transactions will not be considered as 'cross-border services,' and therefore will remain outside the scope of JCT under the new regime:

    a. The provision of legal consulting, agency or intermediary services, or services consisting of the collection, organization and analysis of information related to foreign countries, which are finalized outside of Japan upon request from Japanese customers, when the relevant deliverables or reports are delivered to customers via telecommunications networks;

    b. The provision of services conducted in a foreign country related to the purchase, management or transfer of financial assets, etc., located in the country, when the relevant account statements, etc., are delivered to Japanese customers via telecommunications networks.

2. Include in JCT law a provision clarifying that the new regime will also apply to cross-border intercompany transactions (e.g., provision of uniform training programs to group subsidiaries, centralized procurement and supply of uniform IT systems for group subsidiaries).

However, it should be noted that if a service that is finalized outside Japan and therefore appears to fall into 1.a. above is effectively a part of services performed in Japan, these services may be considered to constitute a single transaction performed on a cross-border

basis (e.g., development of IT systems for implementation in Japan, provision of services to incorporate R&D efforts into manufacturing processes used in Japan). In this case, the destination principle would apply, and the entire transaction would be deemed to take place at the main office of the service recipient in Japan.

Also, the Tax Commission decided on several measures regarding a reverse charge mechanism:

- Foreign suppliers must notify Japanese recipients that a reverse charge applies to the transaction.
- Japanese recipients that satisfy certain conditions, such as those with a taxable sales ratio of 95% or more, will be allowed to deem the amount of output JCT on the transaction as equal to the amount of the corresponding input JCT, and be exempt from reporting them on a JCT return.

Further, the government is reportedly discussing a special rule for foreign suppliers regarding the determination of their JCT status. Currently, whether an enterprise has JCT filing obligations is basically determined by whether it had JCT taxable sales of more than JPY 10 million in its base period (the fiscal year two fiscal years prior to the current fiscal year). This current rule would allow large companies already earning significant sales revenue from Japanese consumers to enjoy a two-year JCT exemption period under the proposed regime. To prevent this, the government is considering a special rule for foreign suppliers, which requires them to use, instead of JCT taxable sales, the sales from business to consumer (B2C) supplies in Japan during their base period to determine whether they are required to file and pay JCT for the current fiscal year.

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Philippines

Philippines Customs propose pre-shipment inspection for all containerized cargo

The Philippines Bureau of Customs (BOC) have proposed an expansion of the Pre-Shipment Inspection (PSI) requirements to include all imported containerized cargoes under a draft Customs Administrative Order (CAO). This move is part of BOC's efforts to combat incorrect customs declarations, and in particular undervaluation of imported goods, which result in significant revenue leakage.

The more stringent PSI requirements are expected to be effective from September/October 2014. Once ratified, all imports (including containerized cargoes) destined for the Philippines will have to undergo a pre-shipment inspection for 15 key data elements (e.g., HS Classification, Description of goods, Price) by an Accredited Cargo Surveyor (ACS) at the country of export. Companies who fail to comply with the PSI requirements can be fined and/or have their import rights cancelled.

Currently, the draft CAO exempts the following shipments from PSI:

- Air shipments
- Containerized shipments of Super Green Lane (SGL) members
- Consolidated shipments or loose container load shipments with 3 or more consignees

- Importations of Customs Bonded Warehouses
- Importations covered by an import or admission permit and bound for the Philippine Economic Zone Authority (PEZA)
- Importations by government agencies, government owned and controlled corporations (GOCCs) and other government instrumentalities, except the importation of rice by the National Food Authority.

This listing may be revised when the final CAO is released.

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Singapore

Full Implementation of Advanced Export Declaration effective 1 October 2014

The Advanced Export Declaration (AED), whereby all exporters are required to submit export declarations to Singapore Customs before the physical export of goods, will be fully implemented from 1 October 2014.

The export reporting timelines under the AED are as follows:

Type of goods/ mode of transport	Before AED implementation	After full AED implementation (effective 1 October 2014)
Strategic goods (individual and bulk permits) **Dutiable** **Controlled** **By road** **By rail**	Before export	Before export
Non-dutiable, non-controlled, by sea/ air	Up to 3 days **after** export	**Before** export*

* Singapore Customs has recommended that:

- For air freight – export declarations are submitted to them before cargo is lodged with the ground handling agents (GHAs)
- For sea freight – export declarations are submitted to them before cargo arrival at the port gates.

Companies exporting goods from Singapore are encouraged to assess their internal processes and systems to ensure that appropriate updates and/ or enhancements have been put in place to ensure that they can satisfy the AED requirements by 30 September 2014.

Signing of Singapore-Hong Kong Mutual Recognition Arrangement

Singapore and Hong Kong signed a Mutual Recognition Arrangement (MRA), on 27 June 2014, to enhance supply chain security and facilitate trade between the two countries.

With the Singapore-Hong Kong MRA in place, traders under the Secure Trade Partnership (STP) and the Authorized Economic Operator (AEO) in Singapore and Hong Kong respectively, shall be recognized as compliant and low-risk traders when trading in the partner country.

Under the STP program, companies shall either be awarded the STP or STP-Plus status, depending on their implemented internal controls, which are assessed by Singapore Customs, against a set of assessment criteria such as conveyance security. Companies with the STP-Plus status shall enjoy full recognition by the Hong Kong Customs and Excise Department (HK C&ED), and could benefit from faster border clearance into Hong Kong.

Similarly, under the AEO program in Hong Kong, companies are either classified as Tier 1 or Tier 2. Companies under either tier shall be recognized by Singapore Customs, and thus could enjoy fewer border checks and quicker clearance when goods are imported into Singapore**.**

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EMEA

Belgium

Mini One Stop Shop simplification

The Belgian VAT authorities have launched a website with additional information on the Mini One Stop Shop (MOSS) simplification introduced on a European level for companies registering in Belgium. This simplified procedure has been introduced to deal with the additional administrative burden resulting from the changes in the place of supply rule for telecommunications, broadcasting and electronically-supplied services in a business to consumer (B2C) context.

As of 1 January 2015, the VAT place of supply rule for the following services will change in a B2C context:

- Telecommunications services;
- Radio and television broadcasting services; and
- Electronically-supplied services (e.g., downloading of songs, online data warehousing, subscriptions to newspapers, etc.).

These services, supplied to non-taxable persons (B2C), will, as of 1 January 2015, be subject to VAT where the customer is established, has a permanent address or usually resides.

The main consequence of this new place of supply rule for EU service providers is that they should in principle register and pay VAT on these services in each Member State where their customers are established. As a simplification measure, the MOSS has been introduced on a European level (an extension of the existing simplified regime for non-EU suppliers with respect to electronically-supplied services to EU non-taxable persons). This simplified procedure is

optional and allows these service providers to only register for VAT in one EU country, regardless of how many other EU countries they are supplying (to the extent that they are not established in these countries). That country collects and distributes the VAT on behalf of all the other countries, charged at the applicable national VAT rate depending on where the customer belongs.

An EU company planning to make use of the MOSS needs to register in the Member State where that company has established its business (i.e., head office). A non-EU company can choose to register in one Member State where that company has an establishment.

The main highlights with respect to the new MOSS VAT return from a Belgian point of view (i.e., for those registered for MOSS in Belgium) are:

- Quarterly Belgian VAT returns;
- Only online via the Belgian Intervat web portal;
- No Belgian VAT current account required – a unique payment reference will be generated per Belgian VAT return;
- The registration module in Intervat will be available as of 1 October 2014 (registration should be done prior to the quarter in which the company wishes to apply the MOSS);
- The first MOSS-return will have to be filed by 20 April 2015 at the latest.

Catering services: supply of services or supply of goods?

The Belgian VAT administration recently published an administrative decision commenting on the VAT qualification and possible VAT consequences of a number of types of restaurant and catering services.

Supply of goods versus supply of services

Making reference to the CJEU *Manfred Bog* case (where the court ruled that the activities of a party catering service constitute the supply of a service unless the party catering service does no more than deliver standard meals without any additional elements of supply of services, or in which other special circumstances show that the supply of the food represents the predominant element of a transaction), the Belgian VAT authorities now lists the activities which, in their view, qualify as restaurant and catering services (subject to the 12% Belgian VAT rate, excluding beverages):

- The supply of meals including its serving to the table;
- The supply of prepared meals including the putting at the disposal of an infrastructure (tables, chairs, plates, glasses, etc.) in view of its immediate consumption (e.g., fast food and self-service restaurants);
- The supply of prepared meals including a material intervention at the client's premises (preparation of the meals, serving, the provision of plates, glasses, etc.).

The administrative decision confirms that the supply of meals is to be qualified as a supply of goods if the material interventions referred to above are performed by a person other than the one supplying the actual meals. However, the decision makes explicit reference to the anti-abuse clause in the Belgian VAT Code: “Specifically, in case two persons are related (shareholder, control, …) the supply of meals can be regarded as being a supply of a service. This is for instance the case if a catering service provider establishes a subsidiary whose sole activity is to serve the meals prepared by the mother company”.

The ‘putting at the disposal of’ a catering infrastructure

If the client puts its kitchen and/or other rooms at the disposal of the catering provider for consideration, whereby the catering provider limits its activities to the mere preparation of the meals, the Belgian VAT authorities explicitly accept the qualification as a supply of goods and thus the application of the reduced 6% VAT rate for foodstuffs (again referring to the anti-abuse rules).

If the client puts its kitchen and/or other rooms at the disposal of the catering provider for free, the activities performed by the catering provider qualify as a supply of services. As to the taxable base of this service, the Belgian VAT authorities accept that the costs related to the actual use of the infrastructure are not to be included in the taxable base for the provision of the service (as these costs are already borne by the client directly and should hence not be subject to VAT for a second time). The fact that the client puts his kitchen and/or other rooms at the disposal of the catering provider for free and bears a number of costs directly (without output transaction) will, under these circumstances, not have a negative effect on his right to recover input VAT. The latter however only applies if and to the extent that the catering provider renders activities to the client itself. If the catering provider also uses the same kitchen for serving other clients, the owner of the kitchen should limit his input VAT recovery on a pro rata basis.

Entry into force

The above decision will enter into force on 1 October 2014. As the date of entry into force is “still relatively far away”, the decision explicitly states no administrative tolerances will be granted.

The entry into force date does not seem to take into account existing contracts.

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Crimea

Decreased VAT rate in the Crimea

The Decree of the State Council of the Crimea Republic No. 2093-6/14 of 30 April 2014 has amended VAT rates in the Crimea territory for a period until 1 January 2015.

In particular, the delivery of goods previously taxed at a 20% VAT rate will be taxed at 4%. The delivery of certain goods, in particular, food products, juvenile products, periodic printed publications and medical goods will be taxed at 2% rate (previously the rate was 10%).

This decree came into effect on 30 April 2014.

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Eurasian Union Treaty between Russia, Belarus and Kazakhstan

Eurasian Union Treaty between Russia, Kazakhstan and Belarus signed on 29 May 2014

The Eurasian Union Treaty between Russia, Kazakhstan and Belarus was signed on 29 May 2014. The Eurasian Economic Union (EAU) will officially go into effect on 1 January 2015. The creation of EAU is aimed at promoting integration and free trade between the three member states.

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European Union

EU 'VAT Expert Group' opinion on definitive system for intra-EU B2B trade in goods

On 12 June 2014, the EU's 'VAT Expert Group' adopted an **Opinion** on the definitive VAT regime for the taxation of intra-EU B2B supplies of goods. Among other things, the Group calls for "... the Commission, the Council i.e. all Member States, and the Parliament to make this a strategic and urgent priority in order to reach an agreement with an implementation plan on the definitive VAT system as soon as possible and by 2019 at the latest."

EU study on possible changes to the treatment of intra-EU B2B supplies of goods

The European Commission is looking at changing the rules relating to the VAT treatment of intra-EU B2B supplies of goods. It has arranged for **a survey to be undertaken** to look at the potential cost implications for businesses, in particular how to reduce costs while ensuring that transacting business is as simple and safe as engaging in domestic transactions.

European Commission reminder about countdown to 1 January 2015 place of supply changes

The European Commission has issued a press release about what it describes as the six month countdown to a major change in the EU VAT system, which it considers will ease life for many businesses and ensure fairer revenue distribution between Member States – the 1 January 2015 changes to the place of supply of telecommunications, broadcasting and electronic services. The release serves as a useful reminder that affected businesses need to prepare for the changes, which may affect the VAT treatment of their supplies and the way that they account for them to the tax authorities. The associated 'Questions and Answers' paper also refers to the prospect of a wider change, to the treatment of other cross-border B2C supplies generally, which the Commission proposed in 2004 and **which was endorsed by the Commission's high level expert group on taxation of the digital economy when it reported in May**.

Cross-border VAT rulings pilot – Interim review

The EU VAT Forum has published an **Interim Report setting out its first evaluation of the VAT cross-border rulings pilot program** that started in June 2013. The program allows taxpayers to obtain advance rulings on the VAT treatment of complex cross-border transactions involving any two or more of the 15 Member States that participate in this project (Belgium, Cyprus, Estonia, Finland, France, Hungary, Latvia, Lithuania, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the UK). The Interim Report contains an outline of the rulings

given, which include views on the treatment of training and conferences; building renovations; and the VAT treatment of machinery and tires supplied separately and assembled at their destination. A further assessment of the pilot program will take place at the end of this year.

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Germany

Mini One Stop Shop

The legislation implementing the statutory provisions of the EU VAT Package to change the VAT place of supply rules for telecommunications, broadcasting and electronically-supplied services has been adopted in the German parliament.

In line with the EU provisions, the new rules will come into force on 1 January 2015. German businesses who want to use MOSS simplifications can submit a respective application with the Federal Tax Office as from 1 October 2014.

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Iceland

China-Iceland Free Trade Agreement

The China-Iceland Free Trade Agreement (CIFTA), which was signed on 15 April 2013, came into effect from 1 July 2014, see **Free Trade Agreements – China-Iceland** for details.

Italy

Electronic invoicing

The tax authorities have issued a resolution (no. 18/E dated 24 June 2014) providing clarification regarding electronic invoicing and answers to some questions regarding invoicing obligations.

In particular, amongst other matters, the resolution states that:

- Invoices filed/made available, received and accepted in electronic format by the recipient qualify as e-invoices. Invoices generated in paper format and subsequently (following the legal requirements) transformed into electronic invoices to be electronically filed (for example, through email) can be considered e-invoices.
- If the recipient is not willing to accept the e-invoice received as such, the recipient can print the invoice and store it on paper. The invoice can be considered as a 'paper-format' invoice for the recipient and electronic for the issuer which, in this respect, has to keep it electronically (complying with the corresponding requirements).

The tax authorities have also clarified the requirements for e-invoices (authenticity of origin, integrity of the content and readability) and the suitable instruments to grant them (i.e., the system of business management respecting certain conditions or qualified electronic signature of the issuer or EDI system).

Finally, there has also been clarification regarding simplified and deferred invoices. In particular:

- Deferred invoices for services rendered can be issued even if only one supply of service is made in a given month;
- Deferred invoicing for services must be supported by suitable documentation identifying the service carried out, the date and contracting parties.

E-invoicing and e-archiving obligations

A decree dated 17 June 2014 published in the Official Journal on 26 June 2014, and in force since 27 June 2014, replaces a previous decree dated 23 January 2004 and provides new rules regarding tax obligations for electronic documents.

In particular, amongst other things, the decree provides that:

- The process of archiving electronic documents must be finalized on an annual basis (even for invoices, which were previously subject to a shorter deadline);
- The obligation to file the imprint (the so called 'impronta') of the electronic archive has been abolished;
- The electronic archiving of documents for tax purposes must be communicated in the annual tax return; and
- Stamp duty on electronic invoices, documents and ledgers (when due) must be paid, in a one-off payment, within 120 days from the end of the fiscal year.

Simplifications proposed by draft legislative decree

A draft legislative decree approved by the government on 20 June 2014, still under discussion, proposes some VAT simplifications. In particular:

- Simplifications to the procedure for claiming a VAT refund, in particular, regarding the requirement to present a guarantee with reference to the VAT credit claimed;
- Transmission to the Italian tax authorities of data included in the 'lettere d'intento' issued (rather than received);
- Transmission on an annual basis of the 'black list communication', increasing the minimum threshold to EUR 10,000;
- Immediate inclusion in the VIES database, upon request;
- Reduction of the information to be included in service Intrastat returns;
- Alignment of the value for 'gifts' for VAT and corporate income tax purposes (to EUR 50);
- Extension of the ability to issue credit notes for VAT purposes to particular cases of uncollected VAT credits, i.e., the taxpayer may issue a credit note relevant for VAT purposes, i.e., not only for income tax purposes, where the VAT has not been paid;
- Alignment of the definition of 'first home' for VAT and register tax purposes.

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Kazakhstan

Excisable goods according to country of origin

Government Resolution No. 507 dated 19 May 2014 has approved rules for determining an additional list of imported goods subject to excise duties according to country of origin. The Resolution entered into force on 18 June 2014.

The rules were drafted in accordance with article 279 of the Tax Code of the Republic of Kazakhstan.

The additional list of imported goods subject to excise duties according to country of origin was drafted by the authorized body for the regulation of trade together with the interested state authorities of the Republic of Kazakhstan.

Import of combine harvesters and combine harvester modules into Kazakhstan

Rules to allocate quotas on the import of combine harvesters and combine harvester modules classified as 8433 51 000 1, 8433 51 000 9 and 8433 90 000 0 have been drafted to implement EEC Council Resolution No. 143 dated 25 June 2013 and Government Resolution No. 616 dated 5 June 2014. The Resolution entered into force on 5 June 2014.

Among others, the Rules have set quotas for the year in question as follows:

- 30% – participants of foreign activities;
- 70% – historical customers.

The table below gives information on Kazakhstan quotas while the special protective measures are valid until 21 August 2016.

Import quota (pieces)		
2014	2015	2016
300	309	204

Export of timber from Kazakhstan

Government Resolution No. 578 dated 29 May 2014 has restricted timber exports to 2,360 m3 (CU FEA CN Code 4407 10) to Afghanistan, for six months. The Resolution entered into force on 18 June 2014.

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Netherlands

Cost sharing exemption

As part of a wider reform of the Dutch pension system, the Dutch government announced that it will remove pension fund administration from the cost sharing exemption.

Currently several Dutch pension fund administrators apply the cost sharing exemption on services to pension funds to minimize irrecoverable VAT at the level of the pension fund. According to the Ministry of Finance, the application of the cost sharing exemption on these types of services results in a distortion of competition, and the services should therefore be excluded from the exemption.

Dutch VAT regulations have been amended per 1 July 2014; accordingly, pension fund administration services are no longer eligible for the cost sharing exemption as of 1 January 2015.

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Poland

Draft framework of amendments to the Polish VAT Act

Recently a draft framework of amendments to the Polish VAT Act was presented.

The proposed changes are planned to enter into force on 1 January 2015. However, the proposals are only a framework (and are not even yet a draft law) and it is difficult to state at this time what the final provisions will look like and when they will be finally implemented into the Polish VAT regulations.

This draft framework, among others matters, proposes the implementation of new regulations in the following areas:

Obligatory reverse charge mechanism

The draft framework presents three main changes with respect to the obligatory reverse charge regulations currently in force. In particular, it is proposed that the obligatory reverse charge mechanism would only apply to goods specified in the respective attachment to the Polish VAT Act, provided they are supplied to active VAT payers and the daily value exceeds PLN 20,000 (approx. EUR 4,900).

In addition, the obligatory reverse charge mechanism is to be extended to the following types of goods: gold, some new groups of steel products, and mobile phones.

Finally, VAT payers making the above-mentioned supplies would be obliged to file to the tax office collective information (similar to EU Sales/ Purchase Listings) providing information on the amount of supplies subject to the reverse charge mechanism and on purchasers (to allow the authorities to establish whether VAT has been accounted for by the purchaser).

Joint responsibility for VAT liabilities

It is proposed that the current catalogue of goods subject to joint responsibility should be extended by including silver and platinum (in the form of raw materials and semi-finished products) and portable electronic devices such as laptops, tablets and gaming devices. Also, because gold is to be subject to the reverse charge mechanism, joint responsibility will no longer apply to supplies of gold.

Pro-rata deduction

The draft framework proposes that the current pro-rata regulations should be amended. Currently, the pro-rata is calculated by dividing the amount of supplies subject to VAT (other than exempt supplies) by total supplies (supplies subject to VAT and VAT-exempt supplies).

Under the proposed changes, before applying this calculation, taxpayers will be required to apply a ‘pre-calculation’ that takes into account supplies within the scope of VAT (supplies subject to VAT and VAT-exempt supplies) and supplies not within the scope of VAT (such as the receipt of compensation). The initial pro-rata would be calculated by dividing the amount of

sales within the scope of VAT (VAT and VAT-exempt) by supplies subject to VAT (VAT and VAT-exempt) plus supplies outside the scope of VAT. The pro-rata would then be calculated based only on the sales within the scope of VAT.

These provisions will mainly impact Polish-based taxpayers.

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Portugal

Technical requirements for invoicing software

Order nr. 8632/2014, published on 3 July 2014, outlines the technical requirements that invoicing software solutions must meet for certification purposes by the Portuguese Tax Authorities (PTA).

Most of these technical requirements were already included in the administrative instructions issued by the PTA (Ofício-Circulado nr. 50001/2013). However, new requirements have also been published in the Order.

An example of the new technical requirements refers to situations in which issued documents contain more than one page. In such a scenario, the information regarding the document type, document number, accumulated values, page number and the total number of pages shall be disclosed on each of the document's pages.

CJEU judgment in *Banco Mais*

A Court of Justice of the European Union judgment was published on 10 July 2014, referring to a request for a preliminary ruling filed in proceedings between the PTA and Banco Mais S.A. (a commercial bank which also has leasing activity) concerning the pro-rata calculation rules.

The question referred for preliminary ruling was the following:

> *In a financial leasing contract under which the customer makes rental payments, the latter comprising redemption payments, interest and other charges, does the rent paid fall to be taken into account, in its entirety, in the denominator of the deductible proportion (prorata) or, on the contrary, must only the interest be taken into account, since it constitutes the remuneration or profit accruing to the bank under the leasing contract?*

The CJEU has ruled that Article 17(5) of the EU VAT Directive:

> *must be interpreted as not precluding a Member State, in circumstances such as those in the main proceedings, from requiring a bank, which, inter alia, carries out leasing activities, to include in the numerator and denominator of the fraction used to determine a single deductible proportion for all of its mixed use goods and services just the part of the rental payments made by customers as part of their leasing agreements that corresponds to interest, where that use of the goods and services is primarily caused by the financing and management of those contracts, that being a matter for the national court to ascertain.*

This decision will have a major impact in Portugal, as the majority of the commercial banks and leasing companies are currently in discussions with the PTA on this issue (either at court level or at administrative appeal level).

Environmental tax reform: preliminary draft

The Green Tax Commission was appointed by the Portuguese Government to study and propose tax reform in the environmental tax area. The Commission, which comprises 10 specialists in the fields of environmental law, environmental economics and green taxes, including Afonso Arnaldo (Deloitte Portugal Partner), has issued a preliminary draft report, see **here**. This draft is available for public consultation until 15 August.

The proposals/recommendations cover several different areas, namely energy, transportation, water, waste, urbanism, forests and biodiversity.

Three examples of the Commission's proposals are the introduction of a surtax on CO_2 emissions by non-CELE entities, a tax on the air transportation of passengers and the introduction of a tax on plastic bags.

The final conclusions of the Commission are to be delivered to the Government by 15 September 2014.

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Russia

List of technological equipment the import of which into Russia is not subject to VAT

The Government's Resolution No. 574 dated 21 June 2014 has amended the list of technological equipment (including components and spare parts) without an equivalent manufactured in the Russian Federation, and the import of which onto the territory of the Russian Federation is not subject to VAT. In particular, certain gas turbines (classification code 8502 39 200 0) have been introduced into the List.

This Resolution came into effect on 4 July 2014.

Decision of the Plenum of the RF Supreme Arbitration Court on VAT-related cases

The RF Supreme Arbitration Court (RF SAC) Plenum Decision No. 33 of 30 May 2013 "On some issues raised by the arbitration courts during the resolution of VAT-related cases" was adopted. The document contains the official position of the RF SAC to which lower courts and the RF SAC itself must adhere to when resolving VAT-related cases. In particular, the RF SAC ruled on the VAT consequences of property withdrawal for reasons beyond the reasonable control of the taxpayer, free-of-charge supplies, refunds of overpaid VAT and VAT recovery issues.

License-free export of controlled items

The Federal Law No. 372-FZ "On Amendments to the Federal Law on Export Control" (the Federal Law) introduces the right of license-free export for certain controlled items for Russian entities that conform to the requirements established by this Federal Law.

In particular, such entities must execute foreign-trade activity with controlled items for more than three years and the entity or its executive staff must not have been brought to responsibility for certain violations while its personnel shall be duly qualified.

This Federal Law came into force on 22 June 2014.

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Spain

Draft law on tax system reform

A significant number of modifications have been proposed to the Spanish VAT Law by the recent draft tax law. These modifications are focused on achieving five major objectives:

- The necessary adaptation of the Spanish VAT Law to the European Council Directive 2006/112/EC (VAT Directive) and to CJEU case law;
- The technical improvement of VAT;
- The contribution to the fight against tax fraud;
- The ease of certain limits and requirements included in the VAT Law; and
- Amendments with the objective of clarifying certain aspects or contributing to other ends.

The following is a summary of the main modifications proposed, which will come into force on 1 January 2015 if approved by Parliament. As the law is a draft, changes to the current wording are to be expected.

Modifications for necessary adaptation of Spanish VAT Law to the VAT Directive and to CJEU case law

- Modification of the place of supply rules with regards to the place of supply of goods for installation or assembly in the Spanish VAT territory. The rule will be applied although the installation cost does not exceed 15% of the total consideration. The immobilization of the goods after their installation remains necessary to apply this rule.
- The following two amendments are proposed to the rules for determining the taxable base:
    - Following the CJEU's judgment in the case *Le Rayon d'Or SARL* (Case C-151/13), the general rule for determining the taxable base will be amended to differentiate between amounts that are not directly linked to the price of supplies (which are not part of the taxable base) and the consideration paid by a third party (which is part of the taxable base).
    - The special rule for determining the taxable base where there is no monetary consideration (barter transactions) will also be modified. The taxable base will be the value agreed by the parties, which will have to be expressed in monetary terms, with reference to the rules for determining the taxable base for self-supplies.

- Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-360/11), the VAT rates applicable to sanitary products will be modified. In particular, the reduced VAT rate of 10% shall apply to supplies, intra-community acquisitions and imports of the following goods:
    - Medicines for veterinary use (excluding products necessary for obtaining those medicines);
    - Pharmaceutical products covered by Chapter 30 of the Combined Nomenclature, if destined for direct end-consumer use;
    - Pads, tampons, panty-liners, preservatives and other non-medical contraceptives; and
    - Medical equipment, aids and other appliances, normally intended to alleviate or treat deficiencies, for personal use and for the exclusive use of people who have physical, mental, intellectual or sensory impairments. These products will be listed in a new Annex VIII to the Spanish VAT Law. Other similar equipment to be used for different means will now be taxed at the standard 21% rate.

  The super-reduced rate of 4% will continue to apply to supplies, intra-community acquisitions and imports of medicines for human use.
- Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-189/11), related to the Tour Operator Margin Scheme (TOMS), certain amendments must be implemented in the VAT Law. For example, removing the ability to determine the taxable base on a global basis for transactions to which TOMS applies and the ability to deduct a certain amount of VAT on TOMS invoices. Additionally, the draft also includes the option to not apply TOMS (and apply the VAT general regime instead) to each individual transaction, whenever the recipient is an entrepreneur or a professional with the right to deduct VAT.
- With regards to the VAT grouping scheme, a modification will be implemented to align the VAT Law with the VAT Directive regarding the requirement for three linking points between the entities forming part of the group, namely: economic, financial and organizational. However, the dominant entity must also have effective control of the dependent entities, with more than 50% of their capital or voting rights.
- Several amendments are introduced as a consequence of the new rules which will come into force as from 1 January 2015 regarding the place of supply of B2C telecommunication, radio broadcasting and television services, as well as services supplied by electronic means.

Modifications for the technical improvement of VAT

- Modifications are included with regards to certain transactions not subject to Spanish VAT, in particular, corporate restructuring transactions (Transfer of Going Concern – TOGC) and transactions carried out by public bodies.

For TOGC transactions, the proposed amendment clarifies that the concept of 'independent economic unit' stated in the VAT Law refers to the transferring entity and not to the acquiring entity. It also states that TOGC is not applicable to transactions merely consisting of the transfer of goods or rights.

For transactions carried out by public bodies, the proposed amendment clarifies that the exclusion from VAT taxation will be applied to transactions performed by 'public administrations' and not by 'public bodies'. In addition, there are two new specific types of transactions that will not be subject to VAT in connection with public entities.

- The exit of goods from tax free zones or customs regimes will no longer be treated as a deemed import of goods when such an exit would constitute an exempt export (or deemed export) or intra-Community supply of goods.

- The scope for waiving the exemptions applicable to supplies related to immovable property will be in principle extended, as it will no longer be necessary for the acquirer to have the right to fully deduct the input VAT (partial deduction would in principle suffice).

- Regarding the subjective requirements for VAT deduction, a modification is included to allow 'dual public bodies' (performing transactions both subject and not subject to VAT) to deduct the VAT amounts related to carrying out both type of transactions, subject to 'reasonableness' criteria.

- The special pro-rata scheme will be extended. At present, if there is up to a 20% difference in the amount of input VAT that could be claimed under the standard and special methods, the standard method pro-rata method must be applied. The proposal is to reduce this difference to up to 10%.

Modifications for the contribution to the fight against tax fraud

- The exemption to the requirement for imports of goods to be placed in a VAT warehouse will be restricted to the following goods:
    - Goods subject to excise duties, referred to in Annex 5 of the VAT Law;
    - Goods coming from the Customs Union territory, but excluded from the VAT common system territory; and
    - Certain goods specifically mentioned by the European Community Law.

- The reverse charge mechanism will be extended, in particular regarding the following goods:
    - Silver, platinum and palladium;
    - Mobile phones; and
    - Game consoles, laptop computers and tablets.

- A new range of penalties will be established for not communicating certain transactions to which the reverse charge mechanism applies, such as the supply of services for the construction or renovation of a building. The penalties would amount to 10% of the VAT amounts to which such transactions relate.

- A new specific import VAT audit procedure will be implemented (still to be developed).

Modifications for the ease of certain limits and requirements included in the VAT Law

- Certain measures are proposed to ease the formal requirements for VAT recovery procedures regarding bad debts. For instance, the period for modifying the taxable base for bad debts related to insolvency procedures will be extended to three months, instead of one month.

- The VAT refund procedure for entrepreneurs not established within the Spanish VAT territory, the European Union, the Canary Islands or the Spanish city of Ceuta will be extended to include cases where there is no reciprocity agreement, in respect of the following imports and acquisitions of goods and services:

    - Hotel, restaurant and transport services, related to fairs and congresses, which are performed on the Spanish VAT territory; and

    - The purchase or import of molds and equipment acquired by the non-established entrepreneur, to be made available to an established entrepreneur for its use in the manufacturing process of goods which will be dispatched or transported outside the European Union to this non-established entrepreneur if, at the end of this manufacturing process, the mentioned molds and equipment are either exported to the non-established entrepreneur or destroyed.

- In connection with the payment of import VAT, it will be possible for certain operators (to be further determined) to reverse charge import VAT when the relevant VAT return is submitted. In addition, a specific penalty will be introduced for those cases where such import VAT is not properly declared (or not declared at all) in the VAT return. Such penalty would amount to 10% of the import VAT amount not (properly) declared.

Modifications to clarify certain aspects or contributing to other ends

- A new concept of the supply of goods is introduced for supplies of stock giving the holder the right of the property, the use or the possession over immovable property or part thereof.

- The exemption for supplies of services (and the supply of goods ancillary to those) carried out by legally recognized non-profit making entities whose objectives are political, trades union, religious, patriotic, philanthropic or civic will apply even if these are not the sole objectives of such entities.

- The use and enjoyment rule will be extended to electronically-supplied services where the recipient is a non-taxable person established (or having its residence or domicile) outside the European Community.

- The regulation regarding VAT refunds to customs agents for imports of goods is revoked.

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Mini One Stop Shop and 2015 place of supply changes – Seminar videos and slides

The tax authorities (HMRC) have published **a series of videos and copies of the slides used in the presentations** given at the 'VAT 2015' seminar that took place on 2 June. The seminar was arranged jointly between HMRC and the European Commission and was one of a series of events taking place around the EU at which the **1 January 2015 changes to the treatment of B2C supplies of telecoms, broadcasting and e-services, and the associated introduction of the Mini One Stop Shop' to facilitate compliance with the new obligations** are being discussed.

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