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Global Indirect Tax News

Your reference for indirect tax and global trade matters

November 2014

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

Features of this edition include a number of updates on global and regional trade agreements, news from Japan that the second round of the Consumption Tax increases may be postponed, the announcement by Spanish tax authorities of a potential new system for taxpayers to supply information to the tax authorities, and more news on the implementation of the EU 2015 changes, from Portugal.

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

David Raistrick
Global Indirect Tax Leader

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World Trade Organization

WTO Trade Facilitation Agreement back on track

The agreement between the United States and India, on 13 November 2014, on the contentious issue of public stockholdings of foodgrains for security paves the way for full implementation of the WTO's Trade Facilitation Agreement (TFA).

The TFA was concluded in December 2013 at the Bali Ministerial Conference, as part of a wider 'Bali Package'. WTO members had committed to ratify the TFA in July 2014. However, a small group of countries, led by India, raised concerns about the status of the WTO's work on food security issues and blocked consensus on implementing the TFA.

With the US-India agreement on food security, India is ready to ratify the TFA. Once ratified by two-third of WTO members, the TFA will be on track for implementation by July 2015. Upon entry into force, the TFA will create binding obligations for WTO members to improve customs procedures, transparency and efficiency as well as cooperation amongst border regulatory agencies and the private sector. According to OECD estimates, business can expect to enjoy 10% to 15% reductions in trade costs upon the WTO TFA entering into force.

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Americas

Colombia

VAT refund for foreign tourists

The Ministry of Finances and Public Credit has issued a decree providing that from 1 October 2014 foreign (non-resident) tourists and visitors in transit who purchase goods within Special Units for the Development of Frontiers may claim a refund of the VAT paid,

provided the VAT-inclusive price of the goods is between (approximately) USD 130 and USD 14,000.

National Tax and Customs Authority regulates conditions for authorization of places for import and export of oil and gas

By way of official resolution, the National Tax and Customs Authority has established the requirements and conditions for the authorization of places for the arrival and departure of oil and gas and its derivatives that are imported or exported via oil pipelines and mixed pipelines, and also the duties to be applied to the authorization holders.

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Mexico

Control system for temporary imports

Although the specific rules and access requirements have not officially been released by the Tax Administration Service (SAT by its acronym in Spanish), SAT has indicated (in a number of conferences with taxpayers) that Annex 31 of the General Foreign Trade Rules will be the control system for the credit accounts and guarantees that must be applied from 1 January 2015 for the VAT exemption on temporary imports to apply. This is the mechanism through which SAT will verify that temporarily imported goods have been exported, and will also provide taxpayers with a statement of credits and guarantees**.**

Official publications are expected to be released in the coming weeks.

Goods subject to this new control system are inputs, raw materials and fixed assets.

Fifth Omnibus Tax Ruling for 2014

The fifth Omnibus Tax Ruling for 2014 has been published and included important changes, including the refund of favorable balances of VAT for Certified Companies for VAT and Excise Tax purposes.

Refunds of VAT credit balances must paid to Certified Companies in accordance with the following chart:

Certification level	Deadline for tax refund resolution
A	20 Days
AA	15 Days
AAA	10 Days

The following conditions apply:

- Refund requests must be made through the SAT website;
- The credit balance must have been generated and declared since January 2014;
- The refund must have been requested following the date on which certification was obtained, and
- The refund request must not have been submitted previously or been withdrawn.

The taxpayer must indicate the type of certification that has been granted at the time of request, in order to identify the limit period in which the refund request should be resolved.

Mutual Recognition Agreement between Mexico and the U.S.

On 19 October, Mexico and the United States signed the Agreement for Mutual Recognition of Supply Chain Security Programs C-TPAT (Customs-Trade Partnership Against Terrorism) and NEEC (Nuevo Esquema de Empresas Certificadas).

The Agreement seeks to expand cooperation between both countries and recognize the existence and validity of both C-TPAT and NEEC certifications in the neighboring country, with the aim of avoiding the transportation of illicit merchandise.

The benefit for companies that register for the Programs is a reduction in customs reviews and therefore increased efficiency in clearing goods to cross the border.

This Agreement will facilitate the operations of around 100,000 international traders.

Preferential rates and import quotas for the Economic Complementation Agreement 51 (ACE51) between Mexico and Cuba

On 3 November, Mexico published the list of tariff preferences and the import quotas applicable to goods originating from Cuba.

The main products of interest in the decree are: agro-industrial products, poultry, dairy, sausage, chemicals, rum, tobacco, medicine, instruments and medical equipment.

Countervailing quotas about to expire

A number of the countervailing quotas imposed by the Mexican government on foreign products are due to expire at the beginning of 2015.

If a national producer of goods affected by the expiration of the quotas is willing to commence an examination process to determine the consequences of the expiration, the request must be made in a written format 25 days before the quota officially expires.

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United States

State tax implications of a changing international tax landscape

As federal and international tax policy participants continue to consider reform efforts, companies should be aware that the discussion has not been lost on the U.S. states.

Particularly relevant are those states that expand nexus beyond the traditional physical presence standard applicable to the most common form of U.S. indirect tax – sales/ use tax. Certain states have enacted ‘click-through’ nexus provisions, which create a presumption of nexus for out-of-state sellers who compensate an in-state company based upon a percentage of sales from referrals through the in-state company’s website. The out-of-state seller may rebut the presumption provided it can document that the in-state company is not actively soliciting sales within the state on the out-of-state seller’s behalf. Additionally, some states have enacted ‘affiliate nexus’ statutes, which confer nexus upon an out-of-state seller who is under common ownership with an in-state affiliate when the entities share common logos and trademarks or the in-state affiliate otherwise engages in activities that are deemed to expand the marketplace on behalf of the out-of-state seller.

States are not uniform in their enactment of these nexus provisions.

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Asia Pacific

APEC leaders agreed to start FTAAP process

Leaders of 21 economies at the APEC Summit in Beijing in November 2014 have agreed to start the process of the Free Trade Area of the Asia-Pacific (FTAAP). The study of FTAAP is scheduled to take two years to complete, with recommendations to be submitted by APEC members by the end of 2016. The agreement to start the FTAAP process demonstrates APEC's intention to advance regional integration.

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ASEAN

Pilot testing of ASEAN Customs Transit System

An ASEAN Customs Transit System (ACTS) will be piloted in Malaysia, Singapore and Thailand with a view to facilitating the movement of transit goods by road within ASEAN. The work of the ACTS pilot system, beginning on 20 October 2014, is scheduled to be completed within 18 months, followed by testing from April to October 2016.

Three ASEAN sectoral bodies including customs, transport and finance will be involved in the implementation of the pilot system. The customs sector led by the Sub Working Group on ACTS will play a leading role in managing and monitoring the implementation of the ACTS. National ACTS Project Teams have been appointed to manage the implementation of the ACTS pilot application at national level.

ACTS is intended to act as a catalyst for harmonization and modernization of the ASEAN customs and transport environment to meet the objectives of making ASEAN a single market and a production base. ACTS is also expected to reduce transaction costs, improve delivery times of transit cargo, provide electronic tracking of transit cargo and expedite the implementation of ASEAN transport facilitation agreements.

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China

Provisional Rules on the Customs Credit Administration launched

On 14 October, the General Administration of Customs (GAC) released the ‘Provisional Rules on the Customs Credit Administration’ (GAC [2014] Circular No. 225), which will take effect from 1 December 2014. The ‘Administrative Measures on Customs Compliance Rating’ (GAC [2011] Circular No. 197) will be abolished.

The highlight of Circular 225 is that Authorized Companies * (including General Authorized Companies and Advanced Authorized Companies) are able to enjoy certain favorable import/ export treatment including a lower inspection rate for daily import/ export activities,

simplified review procedures on import/ export documents, and priority in import/ export clearance.

Advanced Authorized Companies will be able to enjoy further benefits, such as the release of goods prior to the settlement of classification/ valuation/ country of origin, waiver of the deposit for imports under the processing trade relief operation, and favorable treatment under the AEO (Authorized Economic Operator) program between China and other countries.

* GAC is expected to issue the certification standards for Authorized Companies at a later stage.

Application for Authorized Companies

Authorized Companies status is only granted upon application. Third-party agents may be engaged by Customs or companies to conduct reviews on applicants. Upon Custom's approval, the conclusion of such a review could be used as a reference for Customs to evaluate the application.

Subsequent Customs supervision

Customs will review the compliance status of Advanced Authorized Companies every three years and of General Authorized Companies from time to time. In addition, the following information on importers/ exporters will be made public by Customs:

- Registration information
- Results of Customs credit administration
- The administrative penalty record (for a five year period).

Observations and comments

- Under the current Customs compliance management scheme in Circular 197, there are five ratings including AA, A, B, C and D. It is not specified how the previous five ratings would be linked and transitioned to the three categories in Circular 225, however, it is expected that:
    - Advanced Authorized Companies will be similar to rating AA;
    - General Authorized Companies will be similar to rating A;
    - General Compliant Companies will be similar to rating B; and
    - Incompliant Companies will be similar to rating C and D.
- Although certification standards for Authorized Companies have not been released, it is understood that the key application requirements for Authorized Companies will be similar to the main requirements for rating AA/A applications.
- The application procedure and required documents for Authorized Companies are not specified in Circular 225; it is expected that a further, detailed guidance for Circular 225 will be released to support the implementation.
- As the effective date of Circular 225 is 1 December 2014, Customs will still accept companies' applications under Circular 197 for the rating upgrade; however, they will be very likely to hold their review and approval until more detailed guidance is published.
- As Customs will conduct subsequent supervision of Authorized Companies, regular internal reviews are highly recommended to identify any potential

noncompliant activities, to meet Custom's requirements for subsequent supervision.

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India

Levy of service tax on restaurant for supply of food and drink

The Division bench of Kerala High Court has held that the consideration received by a restaurant owner for the supply of food and other articles for human consumption cannot be characterized as a service for the imposition and levy of service tax.

The Court held that the supply of food and drink in a restaurant was a deemed sale transaction and VAT/ sales tax was paid on the entire consideration received from the customers, including the service element. The authority to levy such tax was vested in the State Government and the Union Government did not have authority to levy service tax on restaurant service. This finding differs from a previous decision of the Bombay High Court on the same issue.

Although this decision is a welcome outcome for the hospitality industry and for end customers, the ambiguity in the levying of service tax by restaurants is likely to continue in light of the contradictory decisions of two High Courts.

Levy of VAT on movable goods where consideration split in business transfer agreement

The sale of a business as a whole on a going concern basis is not subject to VAT. However, businesses often identify the value of assets and liabilities separately for the purpose of the valuation of a business.

In a recent case, an entire business, along with the incidental tangible and intangible property, was to be transferred. An application was filed with the tax authorities for determination of the question as to whether such a transaction would amount to the sale of goods and be subject to VAT in the State of Maharashtra.

The Commissioner observed that the business transfer agreement presented the transaction as the transfer of business. However, as the split of the consideration was available from the Agreement, the transaction became a 'sale of goods' to the extent of the consideration received in respect of the movable assets.

Therefore, it was held that VAT was payable on the movable assets.

Aluminum dross and skimming liable to excise duty

The Larger Bench of the Tribunal has held that aluminum dross, skimming and other non-ferrous metal dross and skimming which arise as a by-product in the process of manufacture of aluminum/ non-ferrous metal products are manufactured goods. Further, given the explanation inserted in section 2(d) of the Central Excise Act, 1944 in May 2008 according to which any goods capable of being bought and sold for a consideration are deemed to be marketable and in light of the specific tariff entry given in Heading 262040 for aluminum dross in Central Excise Tariff Act, 1985, the said goods are liable to excise duty.

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Indonesia

Regulation on the Rules of Origin (RROO) released

In October 2014, Indonesia's Ministry of Trade released its Regulation on the Rules of Origin (RROO, Reg. # 77/M-DAG/PER/10/2014) as a guideline for the issuance of preferential and non-preferential Certificates of Origin. While the RROO stipulates the regulations for identifying goods of Indonesian origin, it does not lay out guidelines to be used by exporters in securing certificates of origin.

Prior to the RROO, Indonesian Customs relied on international agreements and/ or its own ad-hoc assessments in certifying the origin of goods. In order for exported goods to be certified of Indonesian origin under the new law, they must satisfy the origin criteria (which is further broken down into 'Wholly Obtain' or value added content, change in tariff classification, and special processing rule) and consignment criteria. Specifically, preferential Rules of Origin are only used to obtain tariff reduction/ exemption under the provisions of the agreed international treaty and non-preferential Rules of Origin are used to fulfil the request of a state/ importer/ exporter with no tariff reduction/ exemption.

The RROO will take effect on 1 January 2015, and will mean greater certainty on the Rules of Origin to be met for goods to be identified as Indonesian origin.

Government eases supply restriction for foreign retailers

The Trade Ministry has removed the requirement imposed on foreign retailers to source locally for at least 80 percent of their products sold in their Indonesian outlets.

Under the revised ruling, modern stores that belong to global retail networks, selling premium products manufactured overseas or serving the needs of foreign communities living in Indonesia will not be required to source 80 percent of their overall goods domestically. The supply rule still applies to modern stores that do not fall into the categories of stand-alone brands, outlets or specialty stores.

The new trade ministerial regulation is set to come into effect on 17 September 2016. The new regulation should boost investors' and business confidence and provide certainty to carry out business in Indonesia.

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Japan

Second round of consumption tax increases likely to be postponed

The increase in Japanese Consumption Tax (JCT) in April 2014 from 5% to 8% impacted the Japan economy more than had been expected, and the second JCT increase from 8% to 10% planned for October 2015 is likely to be postponed.

On 18 November, Prime Minister Shinzo Abe announced his intention to postpone the second JCT increase until 1 April 2017, and to call a snap election in 14 December to seek a public mandate for his economic policies.

Attention has now shifted to whether the JCT rise will be accompanied by the introduction of multiple JCT rates. Last year, the ruling coalition had decided to implement lower JCT rates for daily necessities "when the JCT rate is 10%." However, the exact timing of the implementation had been left undecided, and many policymakers have remained cautious

about supporting the idea of reduced rates. On 19 November, the ruling coalition agreed on joint efforts to reduce the JCT rate on daily necessities at the same time as the second JCT increase on 1 April 2017 and confirmed that this policy will be incorporated in their joint campaign manifesto for the general election.

On the other hand, a regime to impose JCT on cross-border digital services currently discussed by the Tax Commission is likely to be included in tax reform proposals for 2015 as planned, although the release of the proposals is now expected to be delayed until January 2015. The timing of the introduction of the regime has yet to be decided, but the speculation is that the start date may be 1 October 2015.

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Free Trade Agreements

China-Australia

Free Trade Agreement (ChAFTA) negotiations concluded

ChAFTA negotiations were concluded on 17 November 2014. Over 10+ years, China will progressively eliminate import tariffs (some as high as 30%) on a wide range of Australian agricultural, food, resources, pharmaceutical and manufactured products.

Australia will eliminate tariffs currently remaining on Chinese imports, with timing yet to be announced. Australian importers will need to review the ChAFTA 'Rules of Origin' (once made) to determine whether their Chinese imports will qualify for preferential tariff treatment. If not, opportunities to increase the Chinese content of manufactured goods sufficient to benefit from ChAFTA should be explored.

ChAFTA will be signed in 2015. The planned date for entry into force is unknown.

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EMEA

Customs Union between Russia, Belarus and Kazakhstan

Amendment of import customs duty rates for certain parts for civilian aircraft

The Eurasian Economic Commission Board Resolution No. 82 of 9 October 2014 introduces an import customs duty rate of 0% in relation to certain parts for civilian aircraft (classification codes 3926 90 970 6, 7019 39 000 2, 8481 30 910 2, 8481 40 900 1, 8481 80 819 1, 8481 80 990 2, 8504 40 900 1, 8505 90 200 1, 9025 90 000 3).

This Resolution came into effect on 13 November 2014.

Increase in import customs duty rates for oil treatment separators

The Eurasian Economic Commission Board Resolution No. 188 of 14 October 2014 sets higher import duty rates under the Common Customs Tariff of the Customs Union on separators for refining oil and petroleum gases classified under classification codes 8421

29 000 3 (customs duty rate before increase – 0%, after increase – 3% of the customs value) and 8421 39 800 2 (customs duty rate before increase – 0%, after increase – 4.7% of the customs value).

This Resolution came into effect on 13 November 2014.

Amendment of Unified Nomenclature of Goods of Foreign Economic Activity of the Customs Union and the Unified Customs Tariff of the Customs Union in relation to certain types of polyethylene

The Eurasian Economic Commission Board Resolution No. 97 of 9 October 2014 introduces new classification codes with respect to certain types of polyethylene 3901 20 900 1 (customs duty rate – 6.5% of the customs value, but from 1 December 2014 until 31 August 2015 the customs duty rate will be 0%) and 3901 20 900 9 (customs duty rate – 6.5% of the customs value).

This Resolution came into effect on 15 November 2014.

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Denmark

Guidance on Ex Works supplies

Official guidelines have been published regarding intra-Community supplies (not exports) where the customer arranges for the transport from Denmark to another EU country under Ex Works conditions, and is to pay for the goods before or at the time the customer picks up the goods. The guidelines will come into force on 1 January 2015.

Under the guidelines, the following documentation must be retained for VAT exemption to apply:

- *Transportation of goods to another EU-country*

  A seller must retain documentation regarding the transportation of the goods out of Denmark.

  As from 1 January 2015, the guidelines proscribe that the seller must obtain a statement from the customer including:

  - Confirmation that the goods have been transported from Denmark;
  - The place of destination;
  - Confirmation that the goods have been received at the destination; and
  - Information regarding the means of transport and its registration number (license plate).

  Further, the seller must obtain a copy of relevant ferry tickets, tickets for crossing bridges etc. if such ways of transport have been used.

  Other statements from the customer used in connection with other legislation (e.g., requirements concerning animal trading), containing the same information as mentioned above, can be used to meet the above shipping documentation requirements according to the VAT Act.

  The seller is able to present alternative documentation provided it complies with the same requirements as the customer's statement outlined above.

Furthermore, the fact that the customer has accounted for acquisition VAT in the VAT return can provide additional evidence that the goods have left the country of the seller, but this is not crucial evidence for the VAT exemption.

(Currently it is, by default, sufficient for the seller to ask for and retain the customer's statement that the customer has received the goods in another EU country. It is necessary for the customer to state that the goods have actually been **received** in another EU country and it is, for example, not sufficient that the customer states that the customer will transport the goods out of Denmark. By default, the tax authorities require the seller to do what is necessary and common to document that the goods have been transported from Denmark.)

- *VAT number validation and identity of customer*
  - The seller must validate the customer's VAT registration number and retain the documentation of the VIES notice. The validation includes both validation that the VAT number is valid and also validation that the seller has the correct name and address stated in the records (at present, this is not possible for customers from Germany and Spain).
  - When the customer or a representative picks up the goods in Denmark, the driver must identify himself to the seller. The seller must keep a copy of the driver's identification with a readable signature.

  If the goods are picked up by a representative (and not the purchaser himself), the driver must provide the seller with a Power of Attorney stating that the driver is authorized to pick up the goods.

  (Currently there is no default practice that the seller must obtain the identification of the person who picked up the goods in Denmark.)
- *Documentation to be collected within three months*

  The seller must collect the above documentation within three months of the month in which the supply has taken place. If the supply, for example, has taken place on 20 January 2015, the documentation must be collected before 31 March 2015.

  The seller must collect the documentation and store it for five years.

  If the documentation is not collected within the deadline, the seller must invoice the customer with Danish VAT. The seller will be entitled to correct the output VAT if the seller obtains the documentation after having issued an invoice with Danish VAT.

  (Currently there is no such period in which the seller must obtain the documentation from the customer, however a three year statute of limitation applies. Within this period the tax authorities are entitled to adjust VAT if the documentation is not sufficient.)

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European Union

MOSS: European Commission publishes guidance on selected national VAT rules

The European Commission has **published a searchable spreadsheet** containing information about such things as whether B2C invoices are required, use and enjoyment

rules, the treatment of vouchers, bad debt relief, penalties, etc. together with **instructions for use of the spreadsheet (and the guidance it contains)**. The guidance has been produced to help businesses to comply with national VAT rules under the Mini One-Stop Shop when the place of supply of B2C supplies of telecoms, broadcasting and e-services changes on 1 January 2015.

European Commission options for a simpler and more robust VAT regime

Ideas on how to ensure a simpler, more effective and more fraud-proof VAT system tailored to the Single Market in the EU have been outlined in a paper published by the European Commission. The aim is to create a 'definitive VAT regime', to replace the "temporary and outdated VAT system, which has been in place in the EU for over 2 decades." The future VAT regime should better meet the needs of businesses in the Single Market and be less susceptible to fraud than today's system.

The Commission services document sets out five options for shaping the future VAT regime. These are: keeping the status quo (with some modifications); the supplier would be responsible for charging and paying the VAT, and supplies would be taxed according to either where the goods are delivered or where the customer is established; and the customer – rather than the supplier – would be liable for the VAT, and taxation would take place either where that customer is based or where the goods are delivered.

The Commission is now undertaking an in-depth assessment to determine the impact of each of the options for businesses and for Member States. On the basis of its findings, it will present the possible way forward in Spring 2015.

'VAT Gap' in Europe – European Commission report

The European Commission has published its most recent (2012) report on the 'VAT Gap' (the difference between the theoretical VAT payable and the sum actually collected). It suggests that an estimated EUR 177 billion or 16% of the total expected VAT revenues was lost due to non-compliance or non-collection in 2012. According to the report, in 2012, VAT Gaps ranged from 5% (in the Netherlands) to 44% (in Romania).

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Finland

IT services charged within a cost sharing group not subject to VAT

In a recent ruling (039/2014, 10 September 2014) the Finnish Central Board of Taxes (CBT) considered the establishment of a cost sharing group. X Oy was a limited liability company providing system maintenance services that were essential for the provision of statutory employee pension insurance services. X Oy was fully owned by its customers, consisting of companies providing VAT exempt insurance services. The services were supplied at cost to the owners.

Identical services as the ones supplied by X Oy could not have been purchased from other service providers, as the services were tailored for the customers. The customers would have purchased the services from X Oy, irrespective of whether VAT was invoiced or not. The reason for the customers to act as shareholders in X Oy was that the customers could influence the services supplied by the company. Thus, X Oy's supplies could not be deemed to distort competition.

The CBT considered that X Oy and its customers formed a cost sharing group as intended in Article 60a of the Finnish VAT Act. X Oy was not liable to account for VAT on its supplies to the members of the group.

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Germany

German Air Passenger Duty not unconstitutional

The German Federal Constitutional Court (Bundesverfassungsgericht) has decided that the German Air Passenger Duty introduced in 2011 is not contrary to the German constitution, as it does not breach the principle of equality and the fundamental right of freedom to exercise a trade or profession, of the airlines or of the passengers (Case 1 BvF 3/11).

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Italy

VAT simplifications approved

On 30 October 2014, the Council of Ministers approved the legislative Decree regarding a number of simplifications, as anticipated in the July 2014 edition of this newsletter. The Decree was published in the Official Journal on 28 November 2014 and will enter into force on 13 December 2014.

The main VAT simplifications are as follows:

- 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.

  VAT refunds of less than EUR 15,000 will be repaid with no guarantee.

  VAT credits for amounts exceeding EUR 15,000 will be repaid with no guarantee if the annual VAT return or quarterly VAT refund claim has obtained the 'conformity visa' and the taxpayers self-assess their reliability. Certain taxpayers are considered to be not reliable (such as taxpayers that have recently commenced activity, or ceased activity, or that have been subject to significant adjustments after tax assessments) for the purposes of the guarantee exemption and therefore need to submit the guarantee to obtain the VAT refund.
- Transmission to the tax authorities of data included in the '*lettere d'intento'*.

  It will be the issuer (and no longer the recipient) who will need to file the communication to the tax authorities and provide a copy of the communication receipt to the supplier along with the *lettere di intento*. The recipient will summarize the *lettere d'intento* received in its annual VAT return.

  This provision will apply for supplies carried out from 1 January 2015.

  Details for the practical implementation of this measure are still to be issued.
- Transmission on an annual basis of the 'black list communication', increasing the minimum threshold to EUR 10,000.

  (It is to be clarified as to whether the threshold applies on annual basis, per each counterparty.)

This provision could apply, in principle, from the entry into force of the Decree. If this takes place in 2014, clarification will be required in terms of how to co-ordinate this new provision with existing rules.

- Immediate inclusion in the VIES database of taxpayers who request the authorization to carry out intra-Community transactions.

  Exclusion from the VIES would apply where a taxpayer has not submitted Intrastat returns for four consecutive quarters, in which case the tax authorities will send a communication in advance to the taxpayer.

  Details for the practical implementation of this measure are still to be issued.

- Reduction of the information to be included in service Intrastat returns.

  Details for the practical implementation of this measure are still to be issued.

- Application of penalties for the omission/ inaccuracy of statistical data in Intrastat forms; only for operators who have carried out in the given month dispatches or arrivals for an amount equal to or higher than EUR 750,000 (and only once for each incorrect monthly Intrastat).

- The special regime, as set out in art. 74, par 6 of the d.P.R. no. 633/1972, applicable to entertainment has been modified to increase from 10% to 50% the non-deductible VAT in relation to sponsorship costs.

- An increase from EUR 25.82 to EUR 50 in the value of supplies of free gifts and entertainment costs.

- The ability to issue credit notes relevant for VAT purposes for more than one year after the original transaction, in particular for cases of uncollected VAT credits.

- Alignment of the definition of 'first home' for VAT and register tax purposes.

Reduced VAT rate for certain tourist accommodation

Law no. 164, dated 11 November 2014 (in force from 12 November 2014), which converted the 'Sblocca Italia' Decree, includes measures aimed at the recovery of the real estate sector.

In particular from a VAT perspective, from 12 November 2014 until 31 December 2014, the reduced 10% VAT rate will apply to structures organized for the accommodation provided to tourists in pleasure boats (so-called 'marina resorts').

VAT credits applied to refunds or offsets

Resolution no. 99/E dated 11 November 2014, has clarified that it is possible to change whether a VAT credit is applied to a refund or to an offset after the deadline for the filing of the tax return.

A request to change a credit from a refund to an offset can be made provided the tax authorities have not approved the VAT credit repayment. A request to change a credit from an offset to a refund can be made provided the credit has not been offset.

The tax authorities have clarified that requests for such amendments must be made by filing a new tax return.

Clarification regarding timeframe for exportation by or on behalf of a purchaser not established in Italy

Following Court of Justice of the European Union (CJEU) case C-563/12 (*BDV Hungary Trading Kft*), Resolution no. 98/E, dated 10 November 2014, has clarified that the exportation by or on behalf of a purchaser not established in Italy can be considered VAT exempt when:

- The goods have left the territory of the European Union within 90 days of the date of supply (timeframe provided by the Italian VAT law), but the proof of the exportation is obtained after a subsequent 30 days. The payment of VAT within that 30 day period (in order to regularize the transaction), can be recovered when the proof that the goods have left the EU is obtained.
- The goods have left the territory of the European Union after 90 days of the date of supply (as provided by the Italian VAT law), and:
    - The proof of exportation is obtained within the subsequent 30 days: in this case no regularization is necessary and the original invoice as VAT exempt due to exportation is correct;
    - The proof of exportation is obtained after the subsequent 30 days: in this case, it is necessary to pay the VAT within the 30 days, however when the proof that the goods have left the EU is obtained, it is possible to recover VAT paid.

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Customs guidelines issued for Expo 2015 in Milan

On 8 August 2014, Italian Customs issued customs guidelines to assist participants in Expo 2015, to be held in Milan. The clarifications are intended to assist participants in fulfilling customs formalities and to explain the facilitations and simplifications provided for the event. For example, the following are outlined:

- The application procedure for obtaining an Economic Operator Registration and Identification number (i.e. E.O.R.I.); and
- Procedures for benefiting from customs duties exemptions, simplifications and/ or so-called fast lanes (e.g., priority custom clearance of goods at harbors and airports).

Payment of customs duties via transfer

Through acts issued in September and October 2014, Customs has provided practical guidelines on the bank and/ or postal transfers for the payment of customs duties.

Experimental pre-clearing: Customs guidelines updated

On 12 September 2014, Customs updated the guidelines previously issued concerning the experimental pre-clearing procedure in Italy (i.e., allowing the operator to anticipate the customs clearance of goods when they are still on the sea).

Impact of CJEU Case C-272/13 in Italy

On 20 October, Customs issued Circular letter no. 16/D, clarifying the impact in Italy of the CJEU judgment of 17 July 2014 in the Case C-272/13 (*Equoland Soc. coop. arl*) concerning the VAT exemption for imported goods intended to be placed under warehousing arrangements other than a customs warehouse. The Circular letter explains, in particular, the implications of the judgment on litigation still pending in Italy that is analogous to the judgment.

In this respect, Customs have taken the view that they may cancel assessments requesting payment of the import VAT on goods not physically placed in a VAT warehouse (provided the placement has been recorded by the warehouse-keeper and the import VAT has been settled under the reverse charge mechanism). In these cases, Customs will, however, retain assessments for the payment of penalties for the late payment of import VAT (where the import VAT is not paid at the time the goods are imported, but a later stage under the reverse charge mechanism), which could eventually be reduced if certain conditions are met.

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Netherlands

Cost sharing exemption to be abolished for services supplied to jointly governed organisations

As from 1 January 2015, the Dutch cost sharing exemption will be abolished for services performed for organizations that are jointly governed, such as Employee Participation Councils and Works Councils.

The services involved include secretarial services and services relating to employment relations and employment conditions, as well as services rendered for collective bargaining.

This is in addition to the cancellation of the cost sharing exemption for pension administration services that was previously announced.

Supreme Court seeks preliminary ruling on whether municipality is an entrepreneur for VAT purposes

The Dutch Supreme Court recently asked the CJEU for a preliminary ruling on the provision of student transport by a municipality, for which some of the students' parents do not pay a contribution, while other parents have to pay an income-related contribution.

The key question is whether the municipality provides the transport as an entrepreneur (entitling it to deduct VAT) or performs the supplies without receiving a real payment.

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Poland

VAT and fixed establishments

The CJEU has issued a judgment in the case of *Welmory sp. z o.o.* – a company based in Poland which took the view that the services it provided to a company based in Cyprus should not be subject to VAT in Poland, as the Cypriot company had no fixed establishment in Poland.

According to a co-operation agreement, the Cypriot company provided services which constituted, inter alia, a server lease and access to a webpage, which were used by Welmory to sell goods via online auctions. In particular, customers bought from the Cypriot company so called 'bids' which allowed them to take part in online auctions and, therefore, purchase goods offered by Welmory. Welmory also provided to the Cypriot company marketing services, data processing services, etc. which were considered by Welmory to be outside the scope of Polish VAT (and taxable in Cyprus).

According to the Polish tax authorities, despite the fact that the assets of the Cypriot company were located in Cyprus, the Cypriot company made use of human and technical resources owned by Welmory, which were vital for conducting the business of the Cypriot company and, therefore, the Cypriot entity had a fixed establishment in Poland. As a result, the services supplied by Welmory were provided to the fixed establishment of the Cypriot company in Poland and should be taxed in Poland.

The CJEU reaffirmed its previous jurisprudence on the issue of when a fixed establishment exists and confirmed that this depends on whether there is "... a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive the services supplied to it and use them for its business ...".

The fact that the Cypriot company had no technical and human assets in Poland of its own does not itself exclude the existence of a fixed establishment; using the assets of a third party may be considered sufficient for a fixed establishment to exist.

The CJEU left the final decision to the referring court, however, there is a strong hint in the judgment that if, as Welmory asserted, "... the human and technical resources for the business carried on by the Cypriot company, such as computer servers, software, servicing and the system for concluding contracts with consumers and receiving income from them, are situated outside Polish territory ... the referring court would then be led to conclude that the Cypriot company does not have a fixed establishment in Poland, since it does not have the necessary infrastructure to enable it to receive services supplied by the Polish company and to use them".

Whilst the Polish tax authorities previously focused on a business's own resources when determining the existence of a fixed establishment, it has become apparent that the tax authorities are now considering arrangements made with third parties. This case is consistent with that trend. It remains to be seen what approach the referring court in Poland will take.

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Portugal

Implementation of the EU 2015 place of supply changes

The necessary changes to the VAT Code to implement the VAT changes related to the place of supply of telecoms, broadcasting and e-services and the Mini One-Stop Shop regime have been adopted, coming into force on 1 January 2015. The changes introduced in the Portuguese VAT law are in line with the existing EU Directive and Regulations in this area.

VAT changes in Budget Law Proposal for 2015

The Budget Law Proposal for 2015, which was presented to the Parliament for discussion on 15 October 2014, includes a number of VAT issues, including VAT related to bad debts, the agricultural producers regime and a new obligation to communicate inventory information (as of 31 December of each year) on an annual basis to the tax authorities.

Environmental Tax Reform

The law proposal (based on the Final Project for the Environmental Tax Reform released in September 2014) has been filed by the Government with the Parliament for discussion.

Some of the measures included in the Final Project were not included in the Law proposal, such as a passenger air transport tax, vouchers for public transportation not taxed for the purposes of personal income tax, and a tax increase on immovable property tax applicable to land with abandoned forest areas.

From the original 59 measures proposed by the Commission, the Government accepted 49.

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Russia

Simplification of procedure for applying the zero VAT rate

The Russian State Duma is considering a draft bill "On amending Article 165 of the Russian Federation Tax Code." This draft bill is aimed at simplifying the procedure to apply the zero VAT rate when carrying out exports. If the draft bill is adopted, taxpayers will be able to submit the documents required for the zero VAT rate confirmation electronically.

New Procedure for issuance and receipt of VAT invoices in electronic form

The Russian Ministry of Finance has prepared a draft new Procedure for the issuance and receipt of VAT invoices in electronic form via telecommunication channels.

According to the Procedure, in particular, the customer will not be required to provide to the seller notification of receipt of the VAT invoice in order to consider the VAT invoice to have been issued or received.

Furthermore, the customer may claim VAT for recovery on the basis of the VAT invoice issued by the seller in electronic form with the use of telecommunication channels, provided the VAT invoice is signed by an enhanced encrypted and certified digital signature.

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Spain

Proposed new system for supplying information to the tax authorities – Immediate Supply of Information

The tax authorities recently announced the launch of a new strategy for the modernization of the VAT administration through a new system allowing taxpayers to supply information to the tax authorities, referred to as 'Immediate Supply of Information' (S.I.I.).

Through this new system, the tax authorities aim to improve tax control and to assist taxpayers obtain data for the VAT returns and by speeding up the refund process.

Based on the information provided by tax authorities, this system would enter into force on 1 January 2017 and would be mandatory for all taxpayers which are considered to be large sized companies for VAT purposes, are part of a VAT group, or are enrolled in the monthly refund register. However, any other taxpayer could also opt to apply the system.

The tax authorities have provided the following information:

- Taxpayers applying this new system would not have to submit the annual VAT return, the local sales and purchases listing, or the monthly VAT ledgers (if enrolled in the monthly refund register);
- VAT ledgers would be submitted through the tax authorities' on-line platform. Therefore, taxpayers would be required to send certain data regarding their issued and received invoices within a four day timeframe from when they issue or receive an invoice;
- Taxpayers would be able to compare their own information with that gathered by the tax authorities from customers or suppliers also applying this system or from the tax authorities' data base. The due date to file the VAT return would be extended 10 days for these companies;
- Finally, the ability to register summary entries in the VAT ledgers (which currently applies) would be removed, and control over cash registers would be intensified.

At this stage, there is no written draft legislation. However, based on this information, this new system could lead to a significant change in the management of VAT.

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Switzerland

Extension of Swiss VAT liability for foreign domiciled suppliers from 1 January 2015

The Swiss VAT Ordinance was amended with effect from 1 January 2015 so that all foreign-domiciled entities that supply goods, which are subject to the place of recipient rules, to Swiss-domiciled customers, are liable to register for Swiss VAT if the value of the supplies in Switzerland exceeds the annual threshold of CHF 100,000. This amendment will be followed by a wider change of the VAT code per 1 January 2016 or 2017.

In addition to foreign craftsmen doing business in Switzerland, this change will mainly impact foreign-domiciled suppliers and traders of electric power and natural gas in pipelines. When a foreign entity (not Swiss VAT-registered) sells electric power or gas in pipelines to a Swiss or Lichtenstein resident company for more than CHF 100,000 per annum, regardless of the place of consumption, the foreign entity would be required to VAT register from 1 January 2015.

Whether foreign stock exchanges would also affected by the legislative change will depend upon the trading conditions.

The Swiss Federal Tax Administration (SFTA) has become aware of the unfavorable impact on foreign power/ gas traders doing business with Swiss resident buyers. It seems that options are being considered as to how to exclude such foreign traders from the requirement to VAT register. Discussions with the SFTA have resulted in a verbal confirmation that foreign natural gas and power suppliers currently not VAT-registered in Switzerland and exclusively selling these supplies to Swiss and Liechtenstein resident and

VAT-registered buyers should be able to retain the status quo upon introduction of the new VAT code, which is expected to come into force from 1 January 2016. It is understood that in the next few days a standard letter will be issued by SFTA confirming their practice upon request.

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United Kingdom

No change in UK rules on VAT grouping following *Skandia* judgment – for now at least

The UK tax authorities (HMRC) have issued a **Brief confirming that, for now at least, there is to be no change in law, practice or policy on the treatment of VAT groups** in the wake of the CJEU's decision in the case of *Skandia America Corporation*.

According to the Brief, "…the UK VAT grouping rules differ from the Swedish VAT grouping rules …." HMRC are still considering the implications of the CJEU judgment and have stated that they will provide a further update in due course.

In the meantime, HMRC advise that "… businesses should continue to follow existing guidance."

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