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Global Indirect Tax News
Your reference for indirect tax and global trade matters

Welcome to the February 2015 edition of GITN, covering updates from the Americas, Asia Pacific and the EMEA regions.

Highlights of this edition include the entry into force of the Agreement on the Eurasian Economic Union on 1 January 2015, the entry into force of the Economic Partnership Agreement between Japan and Australia on 15 January 2015, and the introduction by France of an optional VAT reverse charge for imports into the country.

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

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Back to top

Country summaries

Americas

Canada

New form and filing requirement for GST/HST closely related companies election from 1 January 2015.

Treatment of downward transfer pricing adjustments.

Colombia

Additional protocol to Pacific Alliance Agreement signed.

Costa Rica

Amendment to General Sales Tax regime for multilevel marketing.

Changes in General Sales Tax calculation for carbonated beverages.

Mexico

Extension to period in which vehicles can be imported into Sonora State without bond or deposit.

Protocol approved to Economic Complementation Agreement between Mexico and Cuba regarding dispute settlement procedure.

Modifications to Foreign Trade Rules and Criteria of the Ministry of Economy regarding export permits for iron minerals and import permits for textiles and apparel.

Rules concerning importation of textile and apparel goods.

United States

Michigan: New law imposes affiliate nexus and click-through nexus standards with rebuttable presumptions.

Back to top

Asia Pacific

China

Adjustment of export VAT refund rates for selected products as from 1 January 2015.

Battery and coating products included in scope of Consumption Tax.

India

High Court judgment on sales tax on use of brand name by subsidiaries.

The Supreme Court upholds the constitutional validity of the levy of sales tax on the processing and supply of photographs, photo prints and negatives.

A Madras High Court judgment on whether multifunctional network printers are classified as computer peripherals.

Indonesia

Government imposes safeguard duties on construction steel.

Planned review of Indonesia-Japan Economic Partnership Agreement.

Japan

Japan Customs publishes guidance on the self-certification system under the Japan-Australia Economic Partnership Agreement.

Singapore

Singapore Customs has released guidance regarding the export of dutiable goods from licensed warehouses.

Vietnam

A Customs law decree has been issued, including a number of changes to procedures.

Trade Preferences

Japan-Australia

The Japan-Australia Economic Partnership Agreement has entered into force

Back to top

EMEA

Denmark

A bill has been introduced concerning the implementation of a reverse charge rule on the domestic supply of gas and electricity.

There have been changes to the rules regarding the storage of electronic accounting records.

Eurasian Economic Union

The Agreement on the Eurasian Economic Union came into effect on 1 January 2015.

The customs duty rate in relation to some types of separators has been amended.

There have been changes to the Foreign Economic Activity Commodity Nomenclature of the Eurasian Economic Union regarding precious and semi-precious stones.

European Union

The European Commission has published an updated edition of its list of VAT rates applied in each EU Member State.

France

France has implemented an optional VAT reverse charge for imports.

Advocate-General Maciej Szpunar has delivered his opinion on the VAT treatment of secondhand car breakdown warranties.

Italy

The Ministry of Economy and Finance has made available the text of the implementing decree for the split payment procedure, and the tax authorities have provided some further clarification about the scope of the new rules.

There has been a Supreme Court decision regarding the application of the VAT rules regarding the transfer of a going concern.

There is an update on excise duty rates for alcoholic products and certain energy products.

The deadline for the use of electronic documents for certain excise purposes has been deferred.

The customs local clearance procedure can now also apply to an authorization issued to the direct customs representative.

Decrease to tax credit for relief for fuel used by owners of taxi license and ‘rental with driver’ authorization.

Annual excise duty returns for electricity and natural gas

Payment of customs duty via transfer.

Kazakhstan

There have been changes to a number of VAT and customs laws, including payment deadlines for import VAT and excise duty for goods released into domestic circulation, classification of goods for customs purposes, in-house customs audits, the filing of documents for the customs declaration of goods, and the responsibilities of declarants.

Netherlands

Judgment in case regarding VAT deduction for certain expenses incurred by a holding company.

Poland

Judgment confirming 100% input VAT deduction in respect of company cars.

Portugal

Tax authorities refusing VAT deductions made by branches related to costs then allocated to a head office located abroad.

Practical implications of the new rules for local VAT refunds.

Practical effect of the new rules regarding VAT recovery related to bad debts.

Russia

VAT treatment of interest received from organizations for granting credit deferment.

Decrease in VAT rate for organizations providing internal air transport services.

Temporary export customs duty for wheat and meslin.

Imported equipment used for iron production will be VAT exempt upon importation.

Obligation of taxpayers to make payment of taxes.

Slovenia

Tax-certified cash registers to become mandatory for taxable persons operating with cash.

Increased tax rates for financial services and insurance contracts tax.

United Kingdom

A CJEU reference on the VAT treatment of 'payment processing'.

Back to top

Americas

Canada

New form and filing requirement for GST/HST closely related companies election

With effect from 1 January 2015, there is a new election form and filing requirement for closely related companies. This election allows the qualifying parties to the election not to charge Goods and Services Tax/Harmonized Sales Tax (GST/HST) on taxable transactions between them, creating administrative ease and cash-flow savings.

The Canada Revenue Agency (CRA) released a new election from RC 4616 to replace form GST25 – Closely Related Corporations and Canadian Partnerships – Election or Revocation of the Election to Treat Certain Taxable Supplies as Having Been Made for Nil Consideration. The prior election form did not have to be submitted to CRA but was required to be kept with the companies' books and records.

GST/HST registrants who rely on the existence of a current election to not charge tax among related companies and want to benefit from the election after 2015 should (1) ensure the related group still meets all the eligibility requirements and (2) file the new form with CRA no later than 31 December 2015. If the elections are not filed with CRA and tax is not collected, then the parties are jointly and severally liable for the payment of uncollected tax, plus interest and penalty, if applicable.

Under the new rules, all pre-existing elections under section 156 of the Excise Tax Act (ETA) prior to 2015 must now be filed with the CRA before 1 January 2016 using the election form. The effective date specified on the form should be the original effective date of the existing election.

Any new election made after 31 December 2014 must be filed no later than the earliest day on which any of the specified members must file their GST/HST return for the reporting period which includes the effective day of the election.

Electronic filing of an election/revocation will be available through CRA's My Business Account in April 2015. Until electronic filing is available, the election must be filed using the paper form.

Treatment of downward transfer pricing adjustments

The Canada Border Services Agency (CBSA) has recently released a notice reversing its long-standing position on the treatment of transfer pricing adjustments that have the effect of reducing the intercompany price paid for goods purchased from related parties and imported into Canada (downward TP adjustments).

Effective immediately, the CBSA will, under certain circumstances, consider duty refund claims where the downward TP adjustments are made pursuant to a written agreement between the Canadian purchaser and a related foreign vendor.

Historically, it has been the CBSA's position that retroactive downward TP adjustments made subsequent to the importation of the goods should be ignored for customs valuation purposes, based on its interpretation of a particular section of the Customs Act. Largely as a result of recent jurisprudence, the CBSA has now reversed that policy and will entertain duty refund claims when an importer can demonstrate that the written agreement between the related parties was in place prior to, or at the time that, the goods in question were imported into Canada.

Notably, the revised policy also stipulates that downward TP adjustments affecting duty-free goods must now be reported to the CBSA, and import declarations amended to reflect the reduced price payable for those goods. These adjustments will be required to be reported to the CBSA within 90 days of the day the importer makes the adjustment in its books and records. Failure to correct the customs value within the stipulated timeframe could result in penalty assessments. The CBSA has historically maintained, and still maintains, that upward TP adjustments (i.e., those that effectively increase the price paid by the Canadian purchaser of the imported goods) must be reported and any resulting duties and/or taxes paid, including import GST.

Deloitte Canada's Customs and Global Trade team is presently working to secure more details regarding the documentary evidence that importers will need in order to substantiate their duty refund claims. The statutory period for filing duty refund claims is four years from date of importation.

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Colombia

Additional Protocol to Pacific Alliance Agreement signed

The national government has signed Law 1746 from 2014, which approved the Additional Protocol to the Pacific Alliance Agreement, to continue the integration process between the members of the Pacific Alliance (currently Chile, Colombia, Mexico and Peru), and move towards free mobility of goods, services, and people.

This law provides import tariff relief for 92% of the negotiated products; the tariff for the remaining 8% of the products will be reduced progressively over the next fifteen years.

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Costa Rica

Amendment to General Sales Tax regime for multilevel marketing

With effect from 1 February 2015, the General Sales Tax (GST) treatment of multilevel marketing has changed. From that date, the GST will be paid by the wholesalers, based on the estimated price to the customer.

The change followed a study carried out by the Ministry of Treasury on these types of sales schemes, which found that it was difficult to ensure compliance with the GST rules, given the large number of affiliates involved. From 1 February, affiliates will no longer be the taxpayers, as the wholesalers will pay the GST.

Changes in GST calculation for carbonated beverages

In the Official Gazette of 4 February 2015, changes were announced to the GST calculation for imported and locally produced carbonated beverages. Currently, the GST calculation is based on a 40% presumptive profit for importers, and a 20% presumptive profit for local producers.

Under the new rules, which apply from 1 March 2015, the GST is based on a presumptive profit of 22%, collected through wholesalers.

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Mexico

Extension to period in which vehicles can be imported into Sonora State without bond or deposit

On 1 January 2015, the Ministry of Finance published in the Official Gazette an extension to the period in which tourists and Mexican foreign residents can import vehicles into the Sonora State without the payment of a bond or deposit. The authorization was published initially in November 2005. The extension will expire on 31 December 2015.

Protocol approved to Economic Complementation Agreement between Mexico and Cuba regarding dispute settlement procedure

On 21 January 2015, the Mexican Senate approved the Fourth Additional Protocol of the Economic Complementation Agreement No. 51 between the United Mexican States and the Republic of Cuba. This protocol establishes the dispute settlement procedure recognized by the Mexican authorities.

Modifications to Foreign Trade Rules and Criteria of the Ministry of Economy

The Foreign Trade Rules and Criteria were modified, as follows:

- Additional requirements were imposed to obtain export permits for iron minerals, with effect from 29 January 2015;
- Additional requirements were established to submit automatic import permits for textile and apparel goods, with effect from 2 March 2015.

Rules concerning importation of textile and apparel goods

In December 2014, the Ministry of Finance published in the Federal Official Gazette the lists of the tariff codes for which an importer of textile and apparel goods must register with the Specific Sector Importers' Registry.

On 30 January 2015, the Ministry of Finance modified the Foreign Trade Rules 2014, establishing a benefit whereby companies certified for VAT and excise tax (ET) purposes were able to obtain the Importers' Registry authorization to import textile and apparel goods by submitting only the authorization of the VAT and ET certification.

The obligation to have an Importers' Registry for specific sectors (textile and apparel goods) will enter into force on 1 March 2015.

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United States

Michigan: New law imposes affiliate nexus and click-through nexus standards with rebuttable presumptions

Effective from 1 October 2015, a new law creates a rebuttable presumption that certain sellers are engaged in the business of making sales at retail in Michigan, or have nexus with Michigan, and are thus required to collect Michigan sales tax on in-state sales of tangible personal property when the sellers and/or their affiliates are engaged in or have performed certain activities related to such sales. More specifically, the new law provides that a seller who sells tangible personal property to a purchaser in Michigan is presumed to be engaged in the business of making sales at retail in Michigan if the seller or a person, including an affiliated person, other than a common carrier acting as a common carrier, engages in or performs any of the following activities in Michigan:

- Sells a similar line of products as the seller and does so under the same business name as the seller or a similar business name as the seller;
- Uses its employees, agents, representatives, or independent contractors in Michigan to promote or facilitate sales by the seller to purchasers in Michigan;
- Maintains, occupies, or uses an office, distribution facility, warehouse, storage place, or similar place of business in Michigan to facilitate the delivery or sale of tangible personal property sold by the seller to the seller's purchasers in Michigan;
- Uses, with the seller's consent or knowledge, trademarks, service marks, or trade names in Michigan that are the same or substantially similar to those used by the seller;

- Delivers, installs, assembles, or performs maintenance or repair services for the seller's purchasers in Michigan;
- Facilitates the sale of tangible personal property to purchasers in Michigan by allowing the seller's purchasers in Michigan to pick up or return tangible personal property sold by the seller at an office, distribution facility, warehouse, storage place, or similar place of business maintained by that person in Michigan;
- Shares management, business systems, business practices, or employees with the seller, or in the case of an affiliated person, engages in intercompany transactions related to the activities occurring with the seller to establish or maintain the seller's market in Michigan; or
- Conducts any other activities in Michigan that are significantly associated with the seller's ability to establish and maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

This presumption may be rebutted by demonstrating that the person's activities in Michigan are not significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

In addition, a seller of tangible personal property is presumed to be engaged in the business of making sales at retail of tangible personal property in Michigan if the seller enters into an agreement, directly or indirectly, with one or more residents of Michigan under which the resident, for a commission or other consideration, directly or indirectly, refers potential purchasers, whether by a link on an Internet website, in-person oral presentation, or otherwise, to the seller, if the following conditions are satisfied:

- The cumulative gross receipts from sales by the seller to purchasers in Michigan who are referred to the seller by all residents of Michigan with an agreement with the seller are greater than USD 10,000 during the immediately preceding twelve months, and
- The seller's total cumulative gross receipts from sales to purchasers in Michigan exceed USD 50,000 during the immediately preceding twelve months.

This presumption may be rebutted by demonstrating that the Michigan residents with whom the seller has an agreement did not engage in any solicitation or any other activity within Michigan that was significantly associated with the seller's ability to establish or maintain a market in Michigan for the seller's sales of tangible personal property to purchasers in Michigan.

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Back to top

Asia Pacific

China

Adjustment of export VAT refund rates

China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) recently issued a circular (Caishui [2014] No. 150) that adjusts the export VAT refund rates for selected products as from 1 January 2015. The government last adjusted the export refund rates in 2010.

Major changes

Circular 150 increases and reduces some export VAT refund rates and cancels others, as follows:

Export VAT refund adjustment	Products	Effective date[2]
Increase in rates	• Certain high value-added products, including electrical energy and some medical products. • Certain products made of corn, such as corn starch[1] • Certain textile products/ clothing	1 January 2015
Cancellation of refund	• Boron-containing alloy steel	1 January 2015
Reduction in rates	• Certain products made of human or animal hair (including wigs)	1 April 2015

Note 1: Increased export VAT refund rate is effective only for 12 months and will expire on 31 December 2015.

Note 2: The export date stated on the export declaration form (export refund copy).

Comment

The export VAT refund is an important tool used by the Chinese government to encourage/discourage the export of certain products. Circular 150 aims to demonstrate the government's intention to encourage the production and export of high tech/value-added products, but restrict the production/export of high polluting/energy consuming products.

Changes to the export VAT refund rates will affect the profit level of exporters, so affected exporters are recommended to take the following actions, and seek consultation from professionals as needed:

- Review export products and assess the possible impact due to the change in export VAT refund rates;

- Review the pricing policy and initiate discussions with overseas buyers to adjust the export price where possible and necessary; and
- Review the adopted tariff codes of the export products and explore options to change the applicable codes where appropriate in order to obtain a higher export refund rate (which is determined by the tariff code of the export products).

Battery and coating products included in scope of Consumption Tax

MOF and SAT recently issued a Notice of Imposing Consumption Tax (CT) on Battery and Coating Products (Circular [2015] No.16), which took effect on 1 February 2015.

According to Circular 16:

- 4% CT is to be levied on the production, processing and importation of battery and coating products;
- Some specified battery and coating products are exempted from CT, including mercury-free primary battery, lithium primary battery, solar battery, fuel battery, volatile organic compounds.

Comment

CT is a turnover tax levied on the production, processing, importation and sale of stipulated products. CT has certain characteristics that are comparable to excise duties and, thus, there is no recovery or deduction. As a cost to the supply chain, CT has an immediate impact on profit levels and pricing.

Companies in the battery and coating products industries are advised to:

- Review whether its products fall under the taxable scope;
- Perform a technical review of the products to see whether there are opportunities for some products to be eligible for exemption or grandfathering treatment;
- Assess the impact to costs and business;
- Review existing contracts, identify whether it is necessary to update the contract terms (e.g., CT-related tax terms, pricing), and map out a strategy to manage internal and external communications on the CT changes; and
- Configure business processes (e.g., tax compliance, ERP systems) to accommodate the CT changes.

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India

Sales tax on use of brand name by subsidiaries

A holding company of a large diversified group had entered into a brand equity and business promotion agreement with its subsidiaries to systematically develop, promote and enhance the equity of the brand as well to legally protect the same.

The tax authorities assessed sales tax under the Maharashtra Sales Tax on the Transfer of Right to use any Goods for any Purpose Act, 1985. The assessee contended that the right to use the trademark was not exclusive, but conditional. Thus, the assessee claimed that such an agreement would not attract the provisions of the Act.

The High Court considered that, as long as the agreement transferred the right to use intangible goods, which were trademarks, there was no escaping the consequences of the enactment. Further, the enactment (the definitions and the substantive provisions) did not require the transfer of the right to be exclusive and unconditional.

Therefore, the Court upheld the levy of sales tax on the use of the brand name.

Supreme Court upholds constitutional validity of levy of sales tax with retrospective effect

The constitutional validity of Entry 25 of Schedule VI to the Karnataka Sales Tax Act, 1957, dealing with the levy of sales tax on the processing and supply of photographs, photo prints and negatives, was challenged before the Supreme Court.

On three occasions, High Court had considered the entry as unconstitutional. The High Court had applied the dominant intention test, and observed that the contract of processing and supplying photographs, etc. was predominantly a service contract with a negligible component of goods and, therefore, it was beyond the competence of the state legislature to impose sales tax on such a contract.

The Supreme Court held that, after insertion of Clause 29A in Article 366 of the Constitution, the works contract which was indivisible by legal fiction, altered into two contracts – one for the ‘sale of goods’ and the other for ‘services’, and made the goods component of the contract exigible to sales tax. Further, the dominant intention behind such a contract, whether it was for the sale of goods or for services, was rendered otiose or immaterial.

Therefore, the Supreme Court upheld the constitutional validity of Entry 25 of Schedule VI.

The Supreme Court also stated that the basis on which Entry 25 of Schedule VI was previously declared unconstitutional was erroneous. Accordingly, the legislature was justified in enacting the law from the date when the law was passed originally, i.e., 1 July 1989.

Multifunctional network printers classified as computer peripherals

The assesse had classified the product ‘image runner’, a multifunctional network printer, as ‘computer peripherals’. However, the tax authorities objected to this classification on the grounds that the image runner could act as a copier, and had added functions, including printing, scanning and faxing. Therefore, they contended that it should be classified under the entry covering ‘photo copying machines and any other electronic apparatus for obtaining duplicate copies’ or under ‘residuary entry’.

The assesse contended that the primary and predominant function of the equipment was printing, with add-on features such as scanning, copying etc. Further, it was usable only when connected to a computer and therefore it functioned as a peripheral to the computer.

The Madras High Court held that the tax authorities had misconstrued the classification of the goods by splitting the function of the multifunction machine. Further, accepting the classification of the assesse, it held that what was relevant was the nature of the equipment and its predominant use, and thus the goods were to be classified as peripherals to a computer.

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Indonesia

Government imposes safeguard duties on construction steel

The Indonesian government has imposed a safeguard duty on imported construction steel to curb a sharp rise in shipments into the local market. The investigation by the Indonesian Trade Security Committee (KPPI) revealed that the surge in imports of I and H sections of other steel alloys, from a low level of 20,331 tons in 2010 to 395,814 tons in 2013, has negatively affected the domestic industry because of the loss of market share to the increased imports.

With effect on 19 January 2015, according to regulation number 12/PMK.010/2015 issued by the Ministry of Finance, the safeguard duties for imports of I and H sections of other steel alloys will last three years: 26% of the import price in the first year, 22% in the second year, and 18% in the third year. Safeguard duties will apply to key suppliers from China (96.62% of total related steel imports), South Korea (1.56%), and Singapore (0.96%). Importers of related steel alloys from these countries should review their cost structure based on the customs duties being imposed.

Planned review of Indonesia-Japan Economic Partnership Agreement

The Japanese government has promised to consider Indonesia's requests in the planned review of the two countries' Economic Partnership Agreement (EPA), which according to Indonesia is disproportionately beneficial to Japan. The program is intended to increase the penetration of Indonesian manufactured goods into Japan and strengthen the structure of Indonesia's manufacturing industry. In terms of trade, Indonesia seeks increased market access for its agriculture, fishery and forestry products. In industrial areas, Indonesia is keen to obtain Japan's aid in increasing the standards of local products for exports not only to Japan, but also to other foreign destinations. Importers that mainly import from Japan may look forward to the change of this EPA agreement to further reduce the duties on imported goods.

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Japan

Japan Customs publish guidance on self-certification system under JAEPA

On 15 January 2015, the Japan-Australia Economic Partnership Agreement (JAEPA) entered into force, following an exchange of notes by Australia and Japan on 16 December 2014, see **Japan-Australia**.

JAEPA provides two ways to demonstrate the originating status of goods, i.e., via certificates of origin and via origin certification documents (commonly referred to as 'self-certification'). While certificates of origin are issued by organizations authorized by the Japanese or Australian governments, origin certification documents may be completed by importers, exporters or producers.

Although Japan has concluded several economic partnership agreements providing the 'origin declaration' clause under which approved exporters may create a document claiming the preferential origin of goods, this is the first time it has introduced a 'full' self-certification system.

To facilitate the use of self-certification under JAEPA, in January 2015, Japan Customs issued detailed guidance on how the system works when goods are imported into Japan, as well as what information is required to complete origin certification documents. The highlights of the guidance are as follows.

Origin certification document

- An exporter, a producer or an importer intending to use the self-certification system to import goods into Japan needs to complete an origin certification document (OCD) listing the following information:

- Name and address of the exporter or producer
- Description of the goods
- HS tariff classification number
- Preference criteria and other provisions applied
- Details of the importer, exporter or producer who has completed the document, accompanied by their seal or signature.

- Form C-5292 published by Japan Customs or any other format may be used to create an OCD provided that the above data elements are included.
- An OCD should be prepared either in English or Japanese.
- An OCD is valid for one year and applies to a single importation.

Goods Specification

- An importer needs to submit to Japan Customs, in addition to the usual importation documents, the relevant OCD and a document supporting the claim for originating status (Goods Specification), which lists the following information:
  - Number and date of the relevant invoices
  - HS tariff classification of the goods shown on the OCD
  - Preference criteria
  - Written statement and supporting documents verifying that the goods satisfy the preference criteria
  - The party retaining the supporting documents
  - Details of the importer or customs broker who has completed the Goods Specification, accompanied by their seal or signature.
- A Goods Specification may be prepared by an importer or a customs broker prior to import declaration.
- A Goods Specification is not required in the following cases:
  - A written advance ruling on tariff classification has been obtained for the goods and the ruling number is shown on the import declaration form
  - The goods were wholly obtained in Australia and that fact can be confirmed on the customs clearance documents
  - The customs value of the goods is JPY 200,000 or less.

- Form C-5293 published by Japan Customs must be used, and the form should be completed in Japanese.

The party who has prepared an OCD or a Goods Specification must retain the document as well as any other records relating to the goods (e.g., relevant contracts, invoices, bill of process, bill of materials, etc.) for a period of five years, and provide them to customs authorities if required during a verification process.

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Singapore

Export of dutiable goods from licensed warehouses

To enhance the monitoring of the movement of dutiable goods into and out of bonded facilities in Singapore, Singapore Customs recently released Circular (No. 02/2015), emphasizing the requirements to directly export and correctly declare transport details for the export of dutiable goods from a licensed warehouse (LW).

Dutiable goods released from a LW are required to be exported out of Singapore and are not allowed to be stored in a Free Trade Zone (FTZ) in Singapore. In the event of a delay in the export of dutiable goods, the goods must be returned to a LW. Transport details and place of receipt must be correctly declared on the export declaration.

Any incorrect declaration and non-compliance shall potentially subject LW operators, declaring agents and exporters to penalties and exposure to duty and/or GST liabilities for breach of the relevant permit conditions.

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Vietnam

New decree on customs law

The government has issued Decree 08/2015/ND-CP providing guidance on the Law on Customs No. 54/2014/QH13. The Decree shall take effect from 15 March 2015, replacing Decree No. 154/2005/ND-CP and other related regulations.

The major changes include the following:

- E-customs declarations, which would replace traditional manual procedures, with some exceptions.

- A National Single Window, which when implemented will be used by all Customs declarants and the Customs authority for declaration purposes, and shall be a single platform also used by other related authorities.

- The requirements of the priority enterprise (PE) scheme, including procedures for accreditation, renewal and suspension of the PE status of a business.

- A clearer definition of ‘first entry gate’ for the determination of the dutiable value of import goods.

- Customs procedures for the import/export of goods under export production and toll manufacturing schemes.

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Trade Preferences

Japan-Australia

Japan-Australia Economic Partnership Agreement (JAEPA) enters into force

The Economic Partnership Agreement between Japan and Australia (JAEPA) was signed on 8 July 2014, and entered into force on 15 January 2015.

For Australian exports to Japan, there are significant tariff reductions over a period of 16 years and immediate elimination for beef, wine, fruit, vegetables, nuts and juice.

For Japanese exports to Australia, 5% tariffs on Japanese passenger and motor goods vehicles, electronics and white goods will be eliminated immediately. Where sensitive sectors for Japanese exports are concerned, such as auto parts, steel, copper, plastics, chemicals, clothing, textiles and footwear, the 5% tariff will be reduced over a period of up to eight years.

Companies in the manufacturing, electronics, automotive, chemicals, commodity, clothing and textile sectors will benefit from the removal of tariffs.

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Back to top

EMEA

Denmark

Domestic reverse charge on supply of gas and electricity

A bill has been introduced concerning the implementation of a reverse charge rule on the domestic supply of gas and electricity to other gas and electricity traders, as well as a reverse charge rule on the domestic supply of gas and electricity certificates. The aim of the bill is to prevent economic organized crime (missing trader activities).

The bill may affect the suppliers' ability to include the supply of gas in the (special Danish VAT scheme) Export VAT Scheme (Eksportmomsordningen). However, the bill does include the possibility for manufacturers under the Export VAT Scheme to continue invoicing the 'eksport-delregistrering' with Danish VAT. This requires permission from the tax authorities and only applies to manufacturers.

It is expected that the bill will be passed without significant amendment. It is intended that the bill will have effect from 1 July 2015.

Storage of electronic accounting records

Under the previous main rule in the Danish Bookkeeping Act, entities must apply for and obtain a dispensation to keep accounting records on servers outside Denmark. There has been some incongruence between the Danish VAT Act on the storage of electronic invoices and the Danish Bookkeeping Act on the storage of electronic accounting records. The Danish VAT Act allows companies to store electronic invoices on servers in the EU and some other countries.

An amendment to the Bookkeeping Act came into force on 1 March 2015. According to this amendment, companies are no longer required to apply for dispensation to keep accounting records on servers outside Denmark. Certain conditions apply.

From 1 March 2015, the VAT rules seem to limit the possibility of keeping electronic invoices outside the EU. The question is therefore whether the Danish tax authorities will allow electronic invoices to be kept on servers outside the EU, with reference to the wider provisions of the Bookkeeping Act.

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Eurasian Economic Union

Entry into force of Agreement on the Eurasian Economic Union

The Agreement on the Eurasian Economic Union (EAEU) came into effect on 1 January 2015. The Agreement introduces the free movement of goods, capital, services and human resources and provides for common transport, agriculture and energy policies.

The member states of the EAEU are the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation, and the Republic of Armenia (which joined the EAEU from 2 January 2015).

The Agreement of Accession of the Republic of Kyrgyzstan to the EAEU is currently under consideration.

Amendment of import customs duty rate in relation to some types of separators

The Decision of the Board of the Eurasian Economic Commission No. 2 of 20 January 2015 increased the import customs duty rate with respect to some types of separators classified under the classification code 8421 39 800 2. In particular, the import customs duty rate will be 4.7% of the customs value of these goods (customs duty rate before increase – 0% of the customs value). The Decision came into effect on 20 February 2015.

Changes to Foreign Economic Activity Commodity Nomenclature of the Eurasian Economic Union regarding precious and semi-precious stones

The Decision of the Board of the Eurasian Economic Commission No. 4 of 27 January 2015 changes the Foreign Economic Activity Commodity Nomenclature of the Eurasian Economic Union with respect to precious and semi-precious stones; particularly in the sub-sections on extracted jade. The import customs duty rate on diammonium hydrogen phosphate (diammonium phosphate) has also been reduced from 8.3% to 6.5% of the customs value (classification code 3105 30 000 0).

The Decision came into effect on 27 February 2015.

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European Union

Updated European Commission table of VAT rates in use around the EU

The European Commission has published **an updated edition of its list of VAT rates applied in each EU Member State**. The latest edition sets out the position at 1 January 2015. As well as listing the rates in use in each country, the publication contains tables that set out brief (and not exhaustive) details of the categories of goods and services to which each rate in use applies in each Member State and historic information about rates applied in the past.

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France

Optional reverse charge VAT accounting for imports

France has implemented an optional VAT reverse charge for imports into the country. The new simplified regime, which applies to taxable events taking place as from 1 January 2015, is available to taxable persons importing goods under a centralized customs clearance certificate (PDU certificate). Rather than having to pay VAT at the time the goods are imported and subsequently claim a deduction on the VAT return submitted to the French tax authorities, qualifying importers can collect and deduct the import VAT on their VAT return.

Both EU and non-EU taxable persons can opt for the reverse charge, provided the importer of record (i.e., the taxable person) is VAT-registered in France (establishment in France is not necessary) and holds an authorization to apply the centralized customs clearance procedure in its own name. When the reverse charge option is elected, it will apply for three years and will be automatically renewed, unless the taxpayer provides notice at least two months before the date the three year period expires.

Advocate-General opinion on VAT treatment of car breakdown warranties

Advocate-General Maciej Szpunar has delivered his opinion in the French case of *Mapfre Warranty SpA*, about the VAT treatment of secondhand car breakdown warranties.

Mapfre provided a secondhand car breakdown repair service, under which it charged dealers selling the cars a fixed sum and agreed to meet the cost of repairing the vehicles if they broke down during a specified period. It treated the charges to the dealers as subject to VAT. The tax authorities took the view that the supplies made by Mapfre constituted VAT exempt ‘insurance’ and that the charges made by Mapfre were subject to French Insurance Premium Tax and not VAT.

Maciej Szpunar agreed with the tax authorities and suggested that the CJEU should find that the service provided by Mapfre (which he described as providing for a certain duration and on payment of a sum determined in advance, a guarantee covering the costs of repair of cars in the event of a technical breakdown covered by the guarantee) is included in the category of the operations of insurance within the meaning of article 13 of the Sixth Directive and hence is exempt from VAT.

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Italy

Implementing decree for split payment procedure

The Minister of Economy and Finance has signed the implementing decree for the split payment procedure (new article 17-ter of Presidential Decree no. 633/1972). (Under the split payment procedure, VAT on goods and services supplied to certain public bodies is paid to the State by those public bodies, and not the supplier.)

Prior to its publication in the Official Gazette, the Ministry of Economy and Finance made the text of the implementing decree and the explanatory report available on its official website.

The decree confirms that:

- Suppliers should issue their invoices to public bodies showing the VAT amount and including the wording: 'scissione dei pagamenti' (Italian for split payment). The VAT amount must be accounted for by the supplier, but 'credited' from the amount of output VAT payable by the supplier to the tax authorities.
- Suppliers are included as VAT claimant subjects with the right to be refunded as a matter of priority. However, the VAT refund must not be more than the total VAT charged on the invoices issued in the period in which the VAT credit accrues.
- The split payment procedure applies to supplies of goods and services invoiced from 1 January 2015, where the VAT is due after that date.
- Public bodies, which need to update their administrative accounting systems, must implement the split payment procedure not later than the end of March 2015 and, therefore, the first split payment by public bodies will be made on 16 April 2015.

Further clarification about the application of the split payment procedure

The tax authorities have provided some official clarification regarding the scope of the new rules (circular letter n°1/E).

With regards to penalties, the tax authorities have stated that due to the uncertainty about the correct application of the new rules, penalties will not be applied for the incorrect application of the split payment procedure until 9 February 2015 (the date of the issue of circular letter n°1/E). As a consequence, for transactions carried out between 1 January and 9 February 2015:

- If a supplier has collected VAT from the public customer and accounted for the VAT as VAT due in the VAT computation (for invoices issued from 1 January 2015), the supplier is not required to issue a credit note;

- If a supplier has incorrectly issued an invoice quoting ‘split payment’, the supplier is required to regularize the situation and to charge VAT to the customer (in which case, the public authority should pay the VAT amount to the supplier).

The tax authorities have also made available an online list of public authorities subject to the split payment procedure (IPA list), see **http://indicepa.gov.it/documentale/ricerca.php**.

The IPA list is not a complete and exhaustive list of the scope of the split payment procedure. Therefore, where there is uncertainty about the application of the new rules to a public entity not included in the IPA list, a specific ruling petition could be submitted to the tax authorities.

Clarification of rules regarding the split payment mechanism and the reduced VAT rate for overnight stays in marina resorts

During a meeting with the Italian specialized press ‘Il Sole24ore’, the tax authorities replied to questions about the VAT changes introduced by the Simplification Decree and the Stability Law 2015 (both discussed in previous editions of this newsletter). Some of the uncertainties regarding the recent VAT changes were not clarified, but some issues were clarified, including the following:

- The split payment mechanism for certain public authorities does not apply to supplies of services subject to withholding tax.

- The reduced 10% VAT rate for overnight stays in marina resorts until 31 December 2015: the marina resorts have been compared to open air accommodation facilities, as they are places where tourists can berth their own boats and stay overnight, thus providing the same function for boats as parking lots provide for caravans and campers. In this respect, the tax authorities clarified that the 10% VAT rate applies only to daily or seasonal transit mooring and berthing, and not to these services provided on a yearly basis.

During a meeting with the Italian specialized press ‘ItaliaOggi’, the tax authorities also made the following clarification regarding the split payment procedure:

- The new rules do not apply to transactions subject to those VAT special regimes where the VAT is not separately shown on the invoice but is included in the total amount (e.g., the margin scheme).

Supreme Court decision regarding the transfer of a going concern

In a recent judgment regarding whether a transfer of assets was a complex supply of several sales of goods (and thus subject to VAT) or a unique transfer of a going concern (and thus not subject to VAT) the Supreme Court stated that, whenever all the following actions take place:

- The transfer of tangible goods (e.g., warehouse, raw materials, finished goods, etc.);
- The transfer of intangible goods (e.g., know-how, software, etc.);
- The secondment of employees that are key members of the team;
- The transfer must be considered to be the transfer of a going concern (TOGC).

Therefore, in this case, according to the principle of 'alternativity' (i.e., registration tax applies when VAT is not due), the transfer is subject to a proportional registration tax.

In the light of this, the Supreme Court stated that, with respect to the VAT incorrectly applied to the transactions that were part of the TOGC:

- The seller can request a refund of the VAT;
- The purchaser cannot deduct the VAT (the purchaser is entitled to bring a civil law action against the seller to recover the incorrectly paid VAT).

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Increase in excise duty rates for alcoholic products for 2015

In note RU 141456 of 22 December 2014, Italian Customs listed increased excise duty rates for beer, intermediate alcoholic products and ethyl alcohol with effect from 1 January 2015, as follows:

- Beer: EUR 3.04 per hectoliter and per degrees plato
- Intermediate alcoholic products: EUR 88.67 per hectoliter
- Ethyl alcohol: EUR 1,035.52 per hectoliter.

Excise duty rates for certain energy products

Italian Customs issued note RU 147797 on 31 December 2014, clarifying that, with effect from 1 January 2015, the excise duty rates for gasoline ('benzina' and 'benzina con piombo') and gasoil used as fuel are as established under previous note RU 88789 of 9 August 2012, and confirmed by art. 1, par. 487 of Law 24 December 2012 no. 228:

- Gasoline (Benzina): EUR 728.40 per 1000 liters
- Gasoil (Oli da gas o gasolio) used as fuel: EUR 617.40 per 1000 liters.

For completeness, Law no. 190 of 23 December 2014 (Legge di Stabilità 2015) introduced a compulsory reverse charge for VAT purposes for sales of goods to hypermarkets, supermarkets and food discounts, the applicability of which is subject to the Council of the European Union granting a derogation. In this respect, the Law stated that, in the absence of a derogation, Italian Customs will increase, by 30 June 2015, the excise duty rates on gasoline and gasoil used as fuel, in order to ensure the relevant tax entries to the Italian State.

Deferral of deadline to use electronic documents for certain excise purposes

On 24 December 2014, Italian Customs issued note 144415/RU, deferring to 1 January 2017 the obligation:

- To use electronic accompanying documents for the circulation of products with excise duties paid and of lubricant oils and petrol bitumen;
- To transmit electronically accounting data for small commercial warehouse keepers.

Local clearance procedure

On 19 January 2015, Italian Customs issued Circular Letter No 1, clarifying that, in the light of a recent ‘EU Pilot’ by the European Commission, the local clearance procedure (LCP) can also be applied to an authorization issued to the direct customs representative, and not only to the importer or to the indirect representative.

Decrease to tax credit for relief for fuel used by owners of taxi license and ‘rental with driver’ authorization

On 29 December 2014, Italian Customs issued note no. 141442/RU, providing clarification regarding the decrease to the tax credit for the relief for fuel used by the owners of a taxi license and ‘rental with driver’ authorization, as provided for by the Presidential Decree of 20 February 2014.

Annual excise duty returns for electricity and natural gas

In Circular letter no. 20/D of 29 December 2014, Italian Customs advised that the forms and relevant instructions, as well as the software, for the annual excise duty returns for electricity and natural gas are available on their internet website.

Payment of customs duty via transfer

In note no. 9164 of 23 January 2015, Italian Customs provided operative guidelines regarding the payment of customs duty by bank or postal transfers.

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Kazakhstan

Law No. 269 dated 29 December 2014 amends 11 codes and 94 laws and makes certain other improvements to business conditions in Kazakhstan.

Below is an overview of the main changes to tax and customs law.

VAT and excise duty payment deadlines

A new article 51-3 has been added to the Tax Code changing the import VAT and excise duty payment deadlines for goods released into domestic circulation. The exception is excise duties on goods that require excise duty stamps under the Tax Code.

The payment deadline for indirect taxes changes if:

- Customs clearance documents stipulated by customs law are filed with the customs authorities; and
- In accordance with a risk management system an entity has not been prohibited from changing the deadline for paying indirect taxes.

The deadline for payment of indirect taxes is the 20th of the month following the month in which the imported goods were released for domestic consumption.

At an Association of Taxpayers of Kazakhstan roundtable held in Astana on 22 January 2015, the tax authorities announced that the change in the indirect tax payment deadline for imports extends to entities included in the list of major taxpayers subject to monitoring under tax law.

Customs regulations

The below amendments came into force on 1 January 2015.

Classification of goods

During an customs audit, the customs authorities are entitled to review the classification of goods after they have been released, if:

- It has been established that documents provided by the declarant for customs declaration are inaccurate or incomplete, and if this has led to the incorrect classification of the goods; and/ or
- It has been proved that a customs official incorrectly classified the goods before they were released. If this is the case, the declarant would not be subject to administrative accountability.

The deadline for paying customs duties and taxes will be the day of acceptance of the revised customs authority decision on the classification of goods.

If additional documents required to classify goods are not filed by the deadlines, the customs authorities will release the goods if the payment of customs duties and taxes has been secured. The validity of this type of security, which should be no less than 40 calendar days from the date goods are released, has been extended.

In-house customs audit

Another measure that has been introduced is the in-house customs audit, which may be carried out in line with the application of the risk management system.

If a customs declaration is filed electronically, the customs authorities are entitled to request the documents referred to in it. The deadline for filing these documents is five working days from the day following the day the request is made.

If, after an in-house audit, the customs authorities declare a transgression in a customs declaration, the entity being audited will be entitled to correct it. At the same time, the declarant will not be made accountable provided it corrects any transgressions within 10 working days of the day following that on which notification was served.

Filing of documents for the customs declaration of goods

The Law has reduced the list of documents to be filed for the customs clearance of goods when using a hard copy customs declaration. The newly worded list of required documents is as follows:

- An invoice, if an invoice is not available, then a document confirming the conclusion of a foreign economic transaction
- A transportation document (document of carriage), depending on the mode of transport used.

In addition, the requirement to provide a document confirming payment of customs charges and taxes has been removed.

Declarant's responsibility

The Law establishes that declarants cannot be made accountable according to the Code of Administrative Offences of the Republic of Kazakhstan for:

- Changing codes if goods have been reclassified because it has been proven that a customs official incorrectly classified the goods in question before they were released
- Correcting transgressions discovered by an in-house customs audit themselves within 10 working days of the day following that on which in-house customs audit notification was received to correct transgressions

- Discovering and voluntarily correcting transgressions themselves within one year of the release of goods and before a field or on-site customs audit is started.

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Netherlands

Judgment in case regarding VAT deduction claimed for certain expenses by a holding company

Following the judgment of the Court of Justice of the European Union (CJEU) in *Staatssecretaris van Financiën v X BV* (C 651/11), the Den Bosch Court of Appeal gave its long-awaited judgment rejecting the taxpayers' claim for a deduction of VAT on expenses (a.o. advisory services) incurred in relation to the sale of a participation in another entity.

The taxable person requesting the deduction of VAT on the expenses was a holding company engaged in paid management activities. The management activities were supplied to a company whose shares were held by an intermediate holding company in which the holding company held one third of the shares. The intermediate holding company sold the shares it held in that company in 1998. Hence, the management activities by the holding company were terminated. The holding company had incurred costs when selling this company. It did not charge these costs, involving advisory services, to the intermediate holding company.

The decision of the Den Bosch Court of Appeal was based on several reasons. First of all, the holding company failed to prove that engaging the advisor was within the scope of its VAT-taxed management activities. Secondly, the management fee received was significantly lower than the amount of expenses incurred. Also, the costs were non-recurrent costs and did not form part of the operating expenses of the holding company and hence it was unlikely that the costs would have been included in the regular VAT-taxed sales. Finally, the holding company's attempts to undertake new management activities (this did not succeed until 2003) and connect them with expenses incurred were to no avail.

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Poland

Judgment confirming 100% input VAT deduction in respect of company cars

As discussed in previous editions of this newsletter, since April 2014 taxpayers have been allowed to deduct 100% VAT in respect of company cars, provided a number of requirements are met – in particular, the car must be used for business purposes only and the possibility of private usage must be excluded, and a mileage register maintained. However, even if the above conditions are met, the tax authorities have questioned full VAT deduction where cars were stored overnight by employees (and not on the company's lot).

Recently there has been the first judgment regarding the ability to claim a full VAT deduction in respect of company cars, even if the car is at the disposal of the company's employee at all times.

In a judgment of the Administrative Court in Cracow, the court confirmed that the taxpayer is able to deduct the whole input VAT related to a company car (used for business purposes only), despite the fact that the car was stored during the nights and weekends by the employee.

Although the above judgment may still be appealed to the Supreme Administrative Court by the tax authorities, it is a helpful decision for taxpayers when discussing this issue with the tax authorities.

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Portugal

VAT deduction by local branches

Based on the *FCE Bank* CJEU case, the Portuguese Tax Authorities (PTA) have been refusing VAT deductions made by branches related to costs then allocated to a head office located abroad. The PTA consider that, as the outputs of the local branches are outside of the scope of VAT, input-related VAT cannot be recovered.

A number of taxpayers are challenging this view.

Practical implications of new rules for local VAT refunds

Following the entry into force of the new rules for local VAT refunds, the PTA are not paying VAT refunds (until the divergences are resolved or justified) when a taxpayer or its supplier has not fully complied with the obligation to communicate to the PTA on a monthly basis the invoices they have issued, even if the invoices that were not communicated did not relate to the tax periods covered by the VAT refund.

VAT recovery related to bad debts

The rule according to which the VAT related to bad debts that are overdue for more than 24 months may be recovered (provided that such recovery is authorized by the PTA, upon a request made within the six months following the 24 months overdue period), is now beginning to have practical effect, as the rule only applies to credits overdue from 1 January 2013.

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Russia

VAT treatment of interest received from organizations for granting credit deferment

A Letter of the Ministry of Finance dated 30 December 2014 (RF # 03-07-05/68784) states that amounts of interest received by selling organizations from buyer organizations for providing deferral of payment on credit terms are not subject to VAT.

Decrease in VAT rate for organizations providing internal air transport services

The government has proposed to lower the VAT rate from 18% to 10% for organizations providing internal air transport services, as well as fixing the same rate for suburban rail companies.

Temporary export customs duty for wheat and meslin

Government Resolution No. 1495 of 25 December 2014 introduced a temporary export customs duty in relation to wheat and meslin. In particular, the export customs duty rate with respect to these goods is 15% of the customs value, but not less than EUR 35 per ton.

The export customs duty applies from 1 February 2015 to 30 June 2015.

Imported equipment used for iron production will be VAT exempt upon importation

In accordance with the ruling "On amending the list of technical equipment (inclusive of components and repair parts to it), analogues of which are not produced in Russia, importation of which is not subject to VAT", the Ministry of Industry and Trade has included as VAT exempt upon importation, equipment for the direct reduction of iron, double-deck sanders, line equipment for hot rolling and other equipment related to hot briquetted iron production.

Obligation of taxpayers to make payment of taxes

Representatives of Ministry of Finance have reiterated that, according to the legislation, amounts of tax must be paid by taxpayers themselves. To support the fact of payment, a taxpayer must keep the document indicating who actually made the payment (Letter of the Ministry of Finance #03-02-08/66327 dated 22 January 2015).

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Slovenia

Tax-certified cash registers to become mandatory for taxable persons operating with cash

The Slovene government has prepared an action plan for the introduction of certified cash registers, which are to be introduced by 1 January 2016, at the latest – certified cash registers may become mandatory by 1 October 2015, if administrative and legislative procedures proceed quickly.

As a solution to tax evasion cases, the non-issuance, modification or deletion of invoices, especially by taxpayers involved in cash payments, the government has proposed the introduction of tax-certified cash registers. This is intended to prevent non-transparent modifications of data concerning issued invoices, and allow a more transparent and reliable recording of cash payments and more effective supervision of the cash operations of the relevant taxpayers.

The proposed action plan for the introduction of tax-certified cash registers envisages the introduction of online or virtual tax-certified cash registers, where the exchange of relevant information between the taxable person issuing the invoice and the tax authorities is carried out in real time. More details concerning the use of tax-certified cash registers have not been presented yet and are expected to be made public in the coming months.

Taxable persons required to use tax-certified cash registers will be any legal and natural persons that have an obligation to issue an invoice in accordance with the taxation regulations and that are engaged in business activities involving cash payments.

Increased tax rates for financial services and insurance contracts tax

As of 1 January 2015, the tax rate for the financial services tax and the insurance contracts tax increased by two percentage points from 6.5% to 8.5%.

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United Kingdom

CJEU reference on the VAT treatment of ‘payment processing’

The Upper Tribunal has dismissed the tax authorities’ (HMRC) appeal against the First-tier Tribunal’s decision that ‘booking fees’ charged by the National Exhibition Centre Limited (NEC) were payments for handling debit and credit card payments (and not for a wider bundle of services that together were standard-rated, as HMRC had argued).

However, like the First-tier Tribunal which heard the similar ‘payment processing’ case of *Bookit Limited*, the Upper Tribunal concluded that to finally decide the VAT treatment of the charges made by the NEC, it needed guidance from the CJEU on the scope of the EU law exemption and its application to the charges made by the NEC.

It seems probable that, once the questions to the CJEU have been finally settled and referred to the court, it will consider the two cases together.

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Back to top

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Back to top