



Global Tax & Legal | Global Indirect Tax | January 2015



Perspective  everything

# Global Indirect Tax News

## Your reference for indirect tax and global trade matters

Welcome to the January 2015 edition of GITN, covering updates from the Americas, Asia Pacific and the EMEA regions. We hope you enjoy the new format of the newsletter. If you have any queries or comments about the GITN, I would be delighted to hear from you.

A feature of this edition includes the release by the OECD of its discussion drafts on two new elements of the International

January 2015

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VAT/ GST Guidelines, relating to the place of taxation of business-to-consumer supplies of services and intangibles, and provisions to support the application of the Guidelines in practice. Comments are invited on the drafts, and must be submitted by 20 February 2015.

Other highlights include the tabling of a bill to enable the introduction of a GST in India, VAT rate changes on 1 January 2015 in Iceland and Luxembourg, further developments regarding the implementation of the 1 January 2015 place of supply changes in the EU, and news of a number of trade deals.



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## Country summaries

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Negotiations for a Korea-Vietnam FTA have concluded.

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# EMEA

## **Belgium**

The application of the new rule requiring directors acting through companies to charge VAT on their fees has been deferred until 1 January 2016 (from 1 January 2015).

The entry into force of new tax point rules has been deferred until 30 June 2015.

The tax authorities have issued a decision on the VAT place of supply rules for port taxes/dues.

## **Croatia**

On 1 January 2015, there were significant amendments to the Croatian VAT legislation, regarding, inter alia, the reduced VAT rate, the cash accounting system, the suspension of VAT identification numbers, the responsibility of a taxpayer for payment of unpaid VAT, the adjustment of VAT deductions for stocks of goods, VAT returns and compliance forms, and the supply of real estate.

## **Denmark**

A full input VAT deduction is now allowed for hotel accommodation.

There has been a change of administrative practice for corrections of VAT.

A bill has been introduced regarding mini one stop shop invoicing requirements for foreign businesses.

Owners of new buildings and building sites may be able to sell without VAT in certain circumstances.

The simplification rule for foreign tourist buses' activities has been abolished.

There is an update on a number of customs issues.

## **Eurasian Economic Union**

On 2 January 2015, Armenia became a full EEU member together with Belarus, Kazakhstan and Russia.

## **European Union**

EU consultation on 'public interest' VAT exemptions and VAT for public bodies.

## **Finland**

Supply of scrap metal is subject to domestic reverse charge mechanism as of 1 January 2015.

Books published on physical means of support other than paper cannot be deemed subject to the reduced VAT rate.

The SAC considered remuneration for a transfer of outstanding debts a taxable collection service.

The SAC has published two rulings regarding the management services provided to SIFs.

A buyer was allowed to deduct input VAT on prepayments, although the supply was not carried out due to liquidation of the supplier.

An amount withheld by the buyer from a payment to the supplier was regarded as an indemnity and not a discount.

## **Germany**

Threshold established for reverse charge on base and precious metals.

## **GCC**

Update on implementation of the FTA between the Gulf Cooperation Council and European Free Trade Association countries.

## **Iceland**

There have been changes to the VAT rates and the excise duty regime, and amendments to the VAT legislation.

## **Italy**

New software for the mandatory e-filing and e-sending of letters of intent and new 2015

VAT forms are now available on the official website of the tax authorities.

A number of VAT changes apply from 1 January 2015, including 'split payment' rules for certain public bodies, extension of the scope of the reverse charge mechanism, new VAT rules for e-books and wood pellets, and potential future increases to the VAT rates.

Clarification has been provided regarding the new VAT refund rules.

The draft of a new legislative decree implementing the EU Mini One Stop Shop regime has been sent by the Italian Government to the competent Commissions of the Parliament

The Supreme Court has recognized the right to be heard before the adoption of a decision about the abuse of right.

### **Lithuania**

The VAT Law has been amended in relation to the application of the cost sharing exemption, the 2015 EU place of supply changes, and the VAT treatment of tourism services. The reduced VAT rate has been extended.

There have been amendments to the excise duty law.

### **Luxembourg**

The VAT rates have increased

### **Netherlands**

The Court of Justice of the European Union has delivered its judgment in the Dutch case of *Italmoda* about VAT evasion as a type of VAT fraud.

### **Poland**

New VAT rules are scheduled to come into force, in most cases, on 1 April 2015, concerning the reverse charge mechanism, and a number of other amendments.

As of 1 January 2015, some important changes to the excise duty law were introduced.

### **Portugal**

The Budget Law for 2015 has been approved and includes a number of VAT changes.

The Environmental Tax Reform was also approved and includes several measures that

cover a number of topics.

The tax authorities have released a ruling regarding the 2015 EU place of supply changes and their application in respect of services rendered in the Autonomous Region of Madeira or Azores.

There are new rules in respect of VAT refunds.

## **Spain**

There have been significant amendments to the VAT Law, which mainly came into force on 1 January 2015.

## **Ukraine**

There been significant amendments to the Tax Code of Ukraine, including a number of changes to VAT law.

## **United Kingdom**

Change to the Intrastat arrival threshold from 1 January 2015.

New tax authority guidance on VAT and prompt payment discounts.

Tax authority guidance for businesses supplying digital services to private consumers.

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# OECD

## **OECD releases discussion drafts on new elements of International VAT/ GST Guidelines**

[The OCED has released its discussion drafts on two new draft elements of the International VAT/ GST Guidelines](#), relating to the place of taxation of business-to-consumer supplies of services and intangibles, and provisions to support the application of the Guidelines in practice. Comments are invited on the drafts, and must be submitted by 20 February 2015.

## **Consumption tax trends**

[The OECD has released reports on consumption tax trends and the distributional effects of consumption taxes in OECD countries](#). The consumption tax trends report highlights the

strong increase in standard VAT rates over the past five years. The OECD average standard VAT rate has reached 19.1% (as of January 2014) and the average standard VAT rate for EU countries is 21.7%.

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## Americas

### Colombia

#### **Requirements for offshore permanent free trade zones for oil and gas industry**

By decree, the national Government has established from 24 December 2014 the requirements and conditions for the recognition of offshore permanent free trade zones (PFTZ), for activities related to the oil and gas industry, namely, technical evaluation, the exploration and production of hydrocarbons, logistics, compression, and the transformation and liquefaction of gas related to hydrocarbons. Continental or insular areas can also qualify as a PFTZ.

#### **0% customs tariff for importation of cotton**

On 12 December 2014, the national Government issued a decree, under which a 0% customs tariff was set for the importation of up to 20,400 tons of cotton not carded or combed, falling under tariff code sub-heading 5201.00.30.00. The import quota will be assigned and managed by the Ministry of Agricultural and Rural Development.

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### Mexico

#### **Antidumping investigation for U.S. origin apples**

On 14 August 2014, UNIFRUT submitted an investigation request to the Ministry of Economy to review the application of unfair practices in connection with import price discrimination of goods falling under tariff code 0808.10.01 having U.S. origin.

UNIFRUT argue that they are in a crisis situation in which it is impossible to market national apples at prices that allow for a profit margin. This would be due to the increasing

volume of imports of U.S. grown apples and the prices set by importers, which, UNIFRUT argue, are uncompetitive for national producers. UNIFRUT argue that the price discrimination is approximately 249.94%.

The Ministry of Economy accepted the request to open an antidumping investigation for imports of apples with U.S. origin and will proceed with the investigation.

### **Compensatory quota investigation for ethylene glycol monobutyl ether imported from the U.S.**

A compensatory quota investigation was targeted at imports from the U.S. of ethylene glycol monobutyl ether, regardless of the country of origin. The antidumping duties imposed under the preliminary resolution of the antidumping investigation had no corrective effect on prices, causing the margin of price discrimination to double.

The Ministry of Economy revised the antidumping duties for the import of ethylene glycol monobutyl ether, with tariff code 2909.43.01, and a new higher rate has been imposed.

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## United States

### **New Jersey adopts sales tax rules for software and related services**

The New Jersey Division of Taxation recently released new regulations that address the imposition of sales and use taxes on sales of software and software-related services. The new regulations, which are effective 1 December 2014 through 28 October 2015, address the following:

- Modification of the definitions of custom software and installation services; and
- Addition or clarification of the definitions of customer support service, modified software, servicing of software and certain software maintenance contracts.

### **U.S. and Singapore signed Customs Mutual Assistance Agreement and Mutual Recognition Arrangement, see [Singapore](#).**

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# Uruguay

## International delivery packages

In 2012, a decree was issued regulating the VAT and customs duty exemptions applicable to international packages imported to Uruguay with express delivery by authorized private mail services, couriers or the National Mail.

This decree included exemption from VAT and custom duties for packages weighing less than 20 kg and with a customs value not exceeding USD 200 (CIF value). Other conditions were also required for the exemption to apply, namely that packages had to be received at the destination by the addressee, it could only be applied up to five times per calendar year, and it was not intended to be commercialized.

However, since 1 January 2015 a new decree has entered into force, imposing further limitations to the exemptions described above, with the intention of generating fairer conditions for local retailers.

The new requirements of the decree are as follows:

- Payment must be made with an international debit or credit card owned by the same person that will receive the package, and whose name appears in the package. The person needs to be over 18 years old;
- This exemption can be used only five times per calendar year per person, and all international delivery packages count towards these five times. (Before this decree was issued, packages of non-express delivery with a value below USD 50 were excluded); and
- New obligations are imposed on postal operators to establish further control by the Customs Office of these activities.

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# Asia Pacific

## ASEAN

### **Abolishment of FOB value under AJCEP Form AJ**

With effect from 26 January 2015, ASEAN Member States (except Cambodia and Myanmar\*) will remove the requirement to state the FOB value in Box 9 of the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Form AJ when the origin status is determined under the following criteria:

- Wholly Obtained
- Change in Tariff Classification
- Process Rule or
- Specific Processes.

\* There is a two year grace period for Cambodia and Myanmar to adopt the changes.

Consequently, there is only a requirement to indicate the FOB value of the imported goods in Box 9, where the Regional Value Content (RVC) criterion was applied in the origin determination.

Exporters and declaring agents should note that all other requirements for the ATIGA Form D and AKFTA Form AK remain unchanged. The FOB value of the product is still required to be declared in the export declaration regardless of the origin criterion used.

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## China

### **China tariff policy for 2015 announced**

The Tariff Commission of the State Council issued a circular (Shuiweihui [2014] No. 32) on 12 December 2014 setting out China's tariff policy for 2015. The circular, which took effect from 1 January 2015, will bring both opportunities and challenges for affected industries.

## ***Major changes***

### *Interim duty rate*

The Government sets interim import and export duty rates to encourage imports or restrict exports of certain products. Interim duty announcements are usually made at the end of each year.

#### 1. Interim export duty

For 2015, the export duty and the interim export duty are applicable to 343 export commodities. In comparison with 2014:

- Certain energy and resource commodities (e.g. coal, zinc) remain subject to interim export duty rates, although rates for certain export commodities (e.g. fertilizer, coal) have been adjusted.
- Further (beneficial) changes are possible in the near future, probably for energy and resource commodities, such as rare earth and base metals.

#### 2. Interim import duty

For 2015, the interim import duty, which is generally lower than most favored nation (MFN) duty rates, is applicable to 749 import commodities. In comparison with 2014:

- 19 new items (e.g. automatic welders for copper wire, electronic vehicle motor controllers) now become subject to the interim import duty, and the interim import duty rates for 12 items are decreased to encourage the import of certain commodities.
- 33 items (e.g. compressors for freezing, certain items with small import trade volume) are removed, and the interim import duty rates for five items (e.g. image pick-up modules for digital cameras) are increased to promote manufacturing in China.

### *Conventional duty rate*

Conventional duty rates, which generally are more favorable than MFN duty rates, are applicable to commodities originating from countries or regions that have concluded a free trade agreement (FTA) with China.

- FTAs with Iceland and Switzerland entered into effect in 2014, bringing China's total number of FTAs to 13. Many commodities under these new FTAs are granted conventional duty rates in 2015.
- China has completed substantial negotiations for FTAs with Australia and Korea, with the FTAs expected to take effect in 2015.

Note: China has FTAs with ASEAN, Chile, Costa Rica, Iceland, New Zealand, Pakistan, Peru, Singapore, Switzerland and the Asia-Pacific Trade Agreement. Commodities originating from Hong Kong and Macau with specified preferential origin standards continue to enjoy a zero duty upon import into Mainland China. Certain commodities originating from Taiwan continue to benefit from the conventional duty rates agreed in the Early Harvest Plan under the Cross-Strait Economic Cooperation Framework Agreement.

#### *Revisions to import and export tariff codes*

Several new items are added to the 2015 tariff codes, such as gulfweed, air compressors and synthetic rubber, as a result of which the number of import and export tariff codes for 2015 will increase from 8,277 to 8,285.

#### *Comments*

As noted above, interim export duty rates are expected to be future adjusted in 2015 for specific commodities, so companies in affected industries should closely monitor developments and take steps to prepare for potential financial impacts and the need to make changes to pricing/ tax-related contractual arrangements.

Certain industries that are encouraged under the national policy may wish to consider recommending to the Government that interim rates be applied in their sectors.

Companies engaged in import and export activities should revisit the adopted classification in a timely manner and apply for customs pre-classification, where necessary, to manage the risk of noncompliance with the current classification of import/export commodities.

Companies also should monitor the conventional duty rates under FTAs and review their supply chain and duty rates.

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## India

### **Aluminum dross and skimming not subject to excise duty – even post May 2008**

In the November 2014 edition of the newsletter, there was a mention of a decision of the Larger Bench of Tribunal. It was held in this decision that aluminum dross and skimming

which arise as a by-product in the process of manufacture of aluminum products are manufactured goods and were excisable with effect from May 2008 in view of an explanation inserted in Section 2(d) of Central Excise Act, 1944 which stated that goods capable of being bought and sold were deemed to be marketable.

There has been a further development regarding the levy of excise duty on goods in terms of the amendment carried out by the insertion of the above explanation in 2008, with the decision of the Larger Bench being quashed by the Bombay High Court.

The High Court has held that the attempt by the Tribunal to hold that goods that are marketable and satisfy the requirement in the explanation inserted in Section 2(d) of Central Excise Act, 1944 are necessarily liable to excise duty was directly contrary to the binding judgments of the Supreme Court on the same issue.

### **Increase in Sikkim VAT rates and Sikkim sales tax rates**

From 1 January 2015, the rate of VAT leviable under the Sikkim Value Added Tax Act, 2005 has been increased to 1.1% on goods specified in Schedule II, 4.5% on goods specified in Schedules III and IV, 13.5% on goods specified in V, and 22% to goods specified in Schedule VI.

The rate of sales tax leviable under the Sikkim Sales Tax Act, 1983 on all types of liquor, beer and other alcoholic drinks has been increased to 25% with effect from 1 January 2015.

### **Salient features of the Constitutional Bill 2014 to enable the introduction of GST**

The Union Finance Minister has tabled the Constitution Bill, 2014 to enable the introduction of Goods and Services Tax (GST). The salient features of the Bill are:

- Concurrent powers on Parliament and State Legislatures to make laws governing GST;
- The GST council shall be formed within 60 days from the enactment of the bill;
- GST shall be levied on all supplies of goods and services except alcoholic liquor for home consumption;
- GST shall not be levied on petroleum crude, high speed diesel, motor spirit, natural gas, and aviation turbine fuel, until a date to be notified on the recommendation of the GST Council;
- The levying of Integrated Goods and Service Tax on interstate transaction of goods and services; and
- An additional tax at the rate not exceeding 1% on the supply of goods in the course of inter-state trade or commerce is proposed to be collected by Government of India for a

period of two years or such other period as the GST council may recommend.

### **Division of Non Processing Areas for use by Special Economic Zone and Domestic Tariff Area entities**

The Special Economic Zone (SEZ) rules have been amended to provide for the division of Non Processing Areas (NPA) into two parts:

- Social/ Commercial infrastructure and other facilities permitted to be used by both SEZ and Domestic Tariff Area (DTA) entities; and
- Social/ Commercial infrastructure and other facilities permitted to be used exclusively by SEZ entities.

For infrastructure that is allowed to be used by both SEZ and DTA entities, no exemption/ concessions/ drawbacks shall be admissible for the creation of such infrastructure. The tax benefits (customs duty, central excise duty, service tax, etc.) availed by the developer for the creation of such infrastructure would have to be refunded in full without interest. In the case of short payment of the amount refundable, interest would be applicable.

The area to be used exclusively for SEZ entities shall be bonded and physically segregated from the DTA, NPA permitted for dual use, and processing area of the SEZ. The infrastructure for this part of the NPA will be eligible for exemptions/ concessions and drawbacks.

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## **Indonesia**

### **Government revokes thousands of import licenses**

The Indonesian Government has revoked thousands of import licenses due to administrative non-compliance.

More than two thousand licenses, representing 43.17% of registered importers (IT), were revoked across industries such as electronics, apparel, food and beverages, cosmetics and home care, toys, medicine and food supplements, and footwear. This affects USD 849 million in imports.

The new Government is focused on the aim of becoming a self-sufficient country, and has started to limit imports of certain products. Businesses should consider improving their

compliance level with regard to import licenses, including regular disclosure of realized overseas purchases within six months. While the Government may not blacklist the offending importers, they will still keep records, and new permits will not be issued to them for an extended period of time.

### **Import duties on finished goods to be increased**

The Indonesian Government is assessing the possibility of raising import duties on a wide range of finished goods as part of its efforts to harmonize its tariffs. The potential increase will cover 741 out of over 10,000 existing tariff codes in the current customs tariff.

Potential changes will impact textiles, downstream chemical products, and base metals and vehicles. The objective is to reach a tariff system in which imported finished products are charged higher duties compared to raw materials or intermediate goods.

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## Japan

### **Updated on proposed changes to taxation of cross-border digital services**

On 30 December 2014, the ruling coalition issued an outline of the proposals for 2015 tax reform, which includes new Japanese Consumption Tax (JCT) rules for digital services provided via telecommunications networks (e.g., the provision of e-books, music streaming, and online advertising services). The new rules will apply for transactions occurring on or after 1 October 2015. The highlights of the proposed changes are as follows.

#### ***Changes in the place of supply rules***

Currently, whether the supply of digital services takes place in Japan is determined by whether the office of the supplier is located in Japan. From 1 October 2015, digital services will be treated as provided at the domicile of the recipient, and as a result, supplies of such services by suppliers located outside of Japan to Japanese customers will be subject to JCT.

#### ***New taxation rules***

Under the new regime, supplies of digital services by foreign enterprises to Japanese

customers will be treated as business-to-business (B2B) supplies, if it is clear based on the nature of the services or service terms that the recipient is an enterprise. If not, such supplies will be treated as business-to-consumer (B2C) supplies. The proposed JCT taxation rules for each of these two types of supplies are as follows:

*B2B supplies:*

- A reverse charge mechanism will apply, and the liability to file and pay JCT will be shifted to the recipient enterprise.
- Foreign suppliers must notify the Japanese enterprises receiving the services in advance that they will be liable to file and pay JCT.

*B2C supplies:*

- Foreign suppliers will be liable to file and pay JCT on B2C supplies, unless they are treated as JCT-exempt enterprises under JCT exemption rules. (JCT law provides several exemption rules, but the primary rule is the Base Period rule – an enterprise is exempt from JCT filing/ payment obligations if the amount of JCT taxable sales in its Base Period, i.e., the fiscal year two fiscal years prior to the current fiscal year, is JPY 10 million or less.)

***Other key issues***

- A foreign enterprise that satisfies the following conditions may apply for registration with the Japanese tax authorities.
  - The enterprise has an office or other place of business in Japan, or has appointed a tax representative in Japan.
  - The enterprise has no outstanding JCT liabilities, and at least one year has elapsed since the prior revocation of registration.
- Applications for registration will be accepted from 1 July 2015.
- Once registered, foreign suppliers will be required to file and pay JCT regardless of the Base Period rule.
- Input JCT incurred on B2C supplies from foreign suppliers will not be creditable, unless the suppliers are registered with the tax authorities.
- For both foreign enterprises and Japanese enterprises, payments for B2B supplies subject to a reverse charge will be excluded from the calculation of JCT taxable sales in the Base Period under the Base Period rule.

***Transitional measures***

If the beginning of an enterprise's Base Period is before 1 October 2015, the

determination of whether the enterprise had JCT taxable sales of more than JPY 10 million in the Base Period should be made as if the new rules had been implemented on that beginning date. However, if this is difficult, such determination may be made based on the amount obtained by (i) calculating the JCT taxable sales for the period between 1 April 2015 and 30 June 2015 that would be accounted for if the new rules were in place during that period, and then (ii) multiplying such sales amount by a factor of four.

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## Singapore

### **U.S. and Singapore sign Customs Mutual Assistance Agreement and Mutual Recognition Arrangement**

On 1 December 2014, the U.S. and Singapore signed a U.S.-Singapore Customs Mutual Assistance Agreement (CMAA) and a Mutual Recognition Arrangement (MRA).

Under the CMAA, both countries agreed to exchange information and render assistance to each other in the prevention and investigation of customs offences.

Separately, the MRA provides mutual recognition of the U.S. Customs-Trade Partnership against Terrorism program (C-TPAT) and Singapore's Customs' Secure Trade Partnership (STP). Companies that have been certified by Singapore Customs/ U.S. Customs and Border Protection can enjoy faster customs clearance for goods exported to the respective countries.

The signing of the MRA and CMAA between the U.S. and Singapore demonstrates the partnership and commitment of each country to combating customs fraud and to a secure global supply chain.

### **Strategic Goods (Control) (Amendment) Regulations 2014 take effect on 1 January 2015**

The Strategic Goods (Control) (Amendment) Regulations 2014 (SGCR) took effect on 1 January 2015.

Under the amended Regulations, permit exemptions will not apply to transshipment or transit of strategic goods listed in the Fourth (revised and expanded) and Fifth Schedules (newly added) of the SGCR respectively.

New items such as lithium isotope separation facilities and sensitive dual-use items (e.g. arms, ammunition) have been added to the Fourth and Fifth Schedules respectively. Specific to the Fourth Schedule, items like production equipment under Category Code 5A2 and 5B2 have also been removed.

Strategic goods permit applications will have to be made at least five working days before:

- Loading of strategic goods onto the conveyance for transshipment
- Arrival of transit strategic goods.

### **Singapore signs Arms Trade Treaty**

On 5 December 2014, Singapore signed the Arms Trade Treaty (ATT) which aims to eliminate the illicit trade of conventional arms and prevent their diversion through a set of common international standards that regulates the international transfer of conventional arms.

Singapore is in the process of implementing these obligations domestically, a further affirmation of Singapore's commitment to eliminate the threat brought about by international illicit arms trading and a positive step towards promoting global peace and security.

Aside from the ATT, Singapore also focuses on strategic goods control and works closely with countries around the world to impede the proliferation of chemical, biological, radiological, nuclear and explosive weapons.

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## **South Korea**

### **Introduction of advanced adjustment system for customs and internal tax**

With effect from 1 January 2015, under the advanced adjustment system, companies may concurrently apply for Advance Pricing Agreement (APA) and Advance Customs Valuation Arrangement (ACVA) through either the National Tax Service (NTS) or the Korea Customs Authority (KCS).

When taxpayer (importer) applies for the APA and ACVA, both authorities will agree and decide the method of appraisal for determining the taxable value and appropriate

range under discussion.

### ***Eligibility***

The advanced adjustment system is only applicable for companies using a similar method for determination of arm's length price and customs value (refer as below).

Internal Tax	Customs
Comparable Uncontrolled Price Method	Transaction value of identical imported goods method, 2nd method Transaction value of similar imported goods method, 3rd method
Resale Price Method	Deductive method, 4th method
Cost plus Method	Computed method, 5th method

### ***Adjustment process***

- NTS prompt notice of ACVA application to KCS.
- Discussion on method for determination of the taxable value (customs value and arm's length price) and acceptable ranges by both NTS and KCS.
- If there is any difficulty regarding adjustment between customs and the tax administration, the applicant is able to process ACVA and APA respectively within 30 days.

While the advanced adjustment system is expected to facilitate companies in their application to obtain certainty of treatment on the taxable value, it remains to be seen how the decisions of NTS and KCS will be integrated in practice.

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# Trade Preferences

## Philippines-European Union

### **Philippines first ASEAN country to join EU's GSP+**

The EU Parliament approved the Philippines' application to qualify for the EU General System of Preference Plus (GSP+) status during its plenary meeting on 18 December 2014. The decision to grant GSP+ privileges was published in the Official Journal of the European Union on 24 December 2014.

With effect from 25 December 2014, the Philippines enjoys the GSP+ privileges which extend duty-free access to Philippines exports for over 6,200 products (66% of tariff lines) including fruit and foodstuffs, coconut oil, footwear, fish and textiles. With the GSP+, Philippines exporters will enjoy improved access and comparative advantage in the EU market.

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## Singapore-Gulf Cooperation Council

### **Dubai eliminates customs duties on Singapore origin products**

With effect from 1 January 2015, Dubai implemented the Gulf Cooperation Council (GCC)-Singapore Free Trade Agreement (FTA). The GCC comprises of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

The GCC-Singapore FTA was signed by the governments of the GCC member states and Singapore on 15 December 2008, and was ratified by the UAE in the Federal Decree No. (115) of 2009.

With effect from 1 January 2015, Singaporean products on a pre-set list that enter the GCC are exempt from Customs duties, according to a timetable. Approximately 93.9% of all Singapore origin goods exported to the GCC qualified for immediate duty-free concessions, while an additional 2.7% of tariff lines will qualify for the same tariff-free concessions in 2018. Singapore also granted duty exemption for all GCC origin goods with immediate effect.

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## South Korea-Australia

**Korea-Australia FTA entered into force**

The Korea-Australia FTA (KAFTA) has entered into force on 12 December 2014.

Under the KAFTA, 84% of Australia's exports (by value) to Korea will have their tariffs eliminated with immediate effect. This percentage will rise to 95.7% within 10 years and 99.8% on full implementation.

86% of Korea's exports (by value) to Australia will have their tariffs eliminated with immediate effect, rising to 100% in eight years.

The KAFTA will increase trading opportunities across a wide range of industries from agricultural and commodities, to automotive and energy industries.

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## South Korea-New Zealand

**Negotiations for a Korea-New Zealand FTA have concluded**

Negotiations for a Korea-New Zealand FTA (KNZFTA) concluded on 15 November 2014.

Upon implementation of the KNZFTA, Korea will eliminate tariffs on 48% of its imports and progressively eliminate tariffs on up to 97% of tariff lines within 15 years.

The tariffs slated for elimination include:

- 45% rate on kiwifruit
- 22.5% on sheep meat
- 40% levy on beef
- 89% tariff on butter.

Korean exporters in the consumer goods and industrial products industry can expect to

enjoy significant tariff savings. In addition to tariff reductions, the FTA will also help remove non-tariff barriers such as labelling, certification and testing requirements.

The KNZFTA is expected to be ratified in 2015, upon legal verification and translation.

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## South Korea-Vietnam

### **Negotiations for a Korea-Vietnam FTA have concluded**

Negotiations for a Korea-Vietnam FTA (KVFTA) concluded on 10 December 2014.

Under the KVFTA, Korea has committed to liberalize 95.43% of its tariff lines and Vietnam has committed to 89.75% of tariff lines. With the FTA, Korea's exports of industrial products to Vietnam are likely to increase as tariffs will be eliminated over the next 10 years on automotive, home appliances, and cosmetics.

The KVFTA is expected to be ratified in the second half of 2015, upon legal verification and translation.

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## EMEA

### Belgium

#### **Company acting as director must apply VAT on fees – deferred until 1 January 2016**

The current optional regime, in place since 1993, whereby companies could treat their director mandates as not subject to VAT, is to be abolished. Directors acting through a company were to be obliged to charge VAT on their fees from 1 January 2015. Where the business in which the directors are appointed cannot (fully) recover input VAT, the new regime would generate a VAT cost. In a late decision in November 2014, the VAT

administration decided to postpone the entry into force of this new regime to 1 January 2016. VAT will still not apply for director mandates held by natural persons.

Under the traditional administrative viewpoint, applicable since 1993, directors acting through a company had the option to register for VAT. Hence, they could choose whether to charge VAT on their director fees or not. In a 2010 decision, the Belgian VAT authorities took the view that this option applied to all a director's mandates and that the option could not be revoked. Under the new regime, this option is to be abolished. According to the VAT authorities, this change was consequent to an 'advice' from the European Commission.

The late publication of the decision to defer the implementation of the new regime gave rise to several questions. As director-companies were to apply the normal VAT rules as from 1 January 2015 onwards, this also implied that in some cases, their services could qualify for VAT exemption (such as under the exemption regime for small enterprises, management of collective investment vehicles, etc.). Additionally, in some cases, the new regime implied that director agreements already in place had to be revised; to differentiate director's fees from operational fees, for example. Moreover, the director-companies concerned needed to apply for a VAT registration number, which created time pressure for the businesses concerned.

Accordingly, the new regime's delayed entry into force provides businesses with much-needed time to prepare for the entry into force of the new rules on 1 January 2016.

### **Final tax point rules – entry into force deferred until 30 June 2015**

In an update to an article published in the October 2014 edition of this newsletter regarding the final tax point rules for 2015, the Belgian VAT authorities have now decided not to enforce these new guidelines until 30 June 2015. The VAT authorities will not scrutinize businesses applying the current transitional rules of 2014 until that date.

To recap, the new decision allows a supplier to issue an advance invoice (even if no tax point has yet occurred); with a special reference to the 'expected' tax point date if the invoice is issued more than seven days before the taxable event. These advance invoices will be considered as fully compliant and the customer can also deduct VAT based on them. This deduction is 'final' unless the tax point (supply or payment) does not occur during the 'window period' of three months after the invoice date (no window period applies for reverse charge invoices). For intra-EU transactions (both goods and services), the simplifications only concern the invoice content for advance invoices. Reporting of intra-EU transactions in the VAT return and the ESL, from a supplier perspective, should

always align with the actual tax point rather than the invoice date.

The deferred entry into force of this major change to the tax point rules allows time to comply with the new invoice specifications and system and process changes.

### **VAT on port taxes/ dues**

Recently, the Belgian VAT administration issued a non-published decision on the VAT place of supply rules for port taxes/ dues. The authorities specify that port services are landed to port infrastructure and should be considered as access to such infrastructure. As a consequence, these fees are subject to VAT at the place where the immovable structures are located.

Since the 2010 changes to the place of supply rules for B2B supplies, the VAT treatment of port taxes/ dues has been unclear. According to the rules introduced in 2010, most B2B supplies of services are taxed where the customer is situated, rather than where the supplier is located. However, a specific rule applies in this case, as according to the tax authorities, the use of port infrastructure is taxed according to the rules for services linked to immovable property.

Hence, Belgian VAT needs to be accounted for on Belgian port taxes/ dues, unless the exemption for services to sea-going vessels (article 42, §1, 5° of the Belgian VAT Code) applies. To apply this exemption, specific formal conditions must be met.

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## Croatia

### **Amendments to Croatian VAT legislation from 1 January 2015**

Amendments to the Croatian VAT legislation entered into force on 1 January 2015. The new VAT Act extended the application of the reduced VAT rate to medicaments; introduced new rules for the cash accounting scheme, the suspension of VAT identification numbers, the responsibility of a taxpayer for payment of unpaid VAT and the adjustment of VAT deductions for stocks of goods; and abolished the filing of the annual VAT return. The supply of real estate and construction land became subject to VAT as of that date. New VAT compliance forms were also introduced.

## ***Medicaments***

As of 1 January 2015, the reduced VAT rate of 5% applies to medicaments prescribed by a doctor, having approval from the competent authority for medicaments and medicinal products, even if they are not included on the list of the Croatian Health Insurance Institute (which was previously a prerequisite for application of the reduced VAT rate).

## ***Cash accounting scheme***

The Croatian tax authorities have amended the rules for the cash accounting scheme from 1 January 2015.

The cash accounting scheme may be applied by resident taxpayers (private individuals and legal entities) with an annual turnover below HRK 3,000,000 (VAT excluded). Taxpayers opting to apply the cash accounting scheme have to do so for the following three years. They have to charge and pay VAT upon the collection of receivables and may deduct input VAT upon payment to their suppliers. The cash accounting scheme does not apply in respect of, inter alia, the intra-Community supply of goods, the intra-Community acquisition of goods, a taxpayer's transfer of its own goods to another Member States, B2B services, etc.

## ***Annual VAT return***

To reduce the administrative burden for taxpayers, the filing of the annual VAT return (PDV-K Form) was abolished as of 1 January 2015. The first year for which the filing will not be required is 2015, meaning that PDV-K form for 2014 must be filed.

## ***Suspension of VAT identification number***

Under the new rules, the tax administration will be allowed to suspend a VAT identification number where there is suspicion of its abuse. The suspension would not be regarded as a cancellation, and the tax administration would be able to reactivate the VAT identification number or to cancel it if the taxpayer, within one year, does not provide evidence for revoking the suspension.

## ***Payment of VAT***

The new rules also extend the responsibilities of a taxpayer who procured goods or services in respect of its liability for payment of VAT. A taxpayer-customer will, inter alia, be liable for settlement of VAT to the tax administration when it fails to pay to its supplier at least the amount of VAT stated on the invoice within deadlines for the settlement of liabilities provided by the relevant laws.

### ***Capital goods***

Under the previous VAT Act, an adjustment of the VAT deduction was required in respect of capital goods (goods which, according to accounting legislation, are non-current assets of the taxable person), if the deducted VAT was higher or lower than the deduction to which the taxable person was entitled. The adjustment had to be made if conditions applicable to the VAT deduction had changed.

Under the amendments to the VAT Act, such adjustments must also be made in respect of the stock of goods, which the taxable person has purchased for carrying out his registered activity.

### ***Property***

The supply of buildings or parts thereof and of land on which they stand, before the first occupation (or use) or where less than two years have passed from the date of the first occupation (or use) to the date of the next supply, as well as the supply of construction property made by taxable persons will be subject to Croatian VAT from 1 January 2015. The supply of land and real estate built, or supplied, prior to 1 January 1998 was previously outside the scope of Croatian VAT.

### ***Compliance forms***

Amendments to the VAT regulations have introduced two new compliance forms – PPO form and INO PPO form.

The PPO form must be filed by taxable persons making supplies of construction services, used materials, supplies of immovable property sold by a judgment debtor in a compulsory sale procedure, and the transfer of emission units of greenhouse gases, i.e., supplies taxed under the reverse charge mechanism. It has to be filed electronically on a quarterly basis.

Non-resident taxable persons who are registered for VAT purposes in Croatia must complete and submit the INO PPO form when making supplies of goods and services in respect of which the customer must self-assess VAT by application of the reverse charge mechanism. The form must be filed electronically on a monthly basis by the 20th of the month for the previous month.

New fields were added to the VAT return form to align the content of the return with newly introduced legislation.

The previous version of the VAT return form was supplemented by the following fields:

data on adjustments of deductions related to capital goods, supply of business units, supply of real estate, total value of services received from non-residents, total value of services provided to non-residents, value of goods received within triangular transaction, and information on the application of the cash accounting scheme.

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## Denmark

### **Full deduction for input VAT on hotel accommodation as from 1 January 2015**

With effect from 1 January 2015, a full input VAT deduction is allowed for hotel accommodation expenses. The deduction has increased from 75% to 100%; the expense must relate strictly to the business' taxable activities.

### **Change of administrative practice for corrections of VAT**

In response to EU case law, the tax authorities have issued official guidance on a change in administrative practice regarding corrections of VAT. The change affects situations where a business has, for example, treated a supply of goods or services as VAT exempt, but it then transpires that VAT should have been charged.

Previously, the tax authorities took the view that the invoiced amount was the VAT basis. According to the new practice, the tax authorities will, in many situations, consider the invoiced amount to be VAT-inclusive, if it transpires that VAT should have been charged.

Accordingly, correcting the VAT under these circumstances will result in the payment of less VAT than was previously the case.

Businesses are able to correct VAT back to January 2007 according to the new practice.

The deadline for corrections is 17 May 2015.

### **Mini One Stop Shop invoice requirements**

A bill has been introduced according to which it will be possible for the tax minister to exempt foreign businesses registered for the Mini One Stop Shop in another country from issuing invoices in relation to supplies to Danish consumers.

The purpose of the bill is to ease the administrative burden for these businesses, as they

would otherwise be required to issue invoices complying with the Danish invoice requirements.

It is proposed that the bill will take effect as of 1 April 2015.

Even if the bill is passed, it will be necessary to comply with the Danish invoice requirements until the tax minister implements such an exemption.

### **Owners of new buildings and building sites may be able to sell without VAT in certain circumstances**

Since 2011, the sale of building sites and new buildings has been subject to VAT in Denmark. The tax authorities have proposed new draft official guidelines under which it would be possible to sell new buildings and building sites without VAT if the owner of the new building or building site rented out the property without VAT. It is, however, a precondition that the property has solely been used for renting without VAT and that the seller did not have a previous intention to sell the property.

### **Abolition of simplification rule for foreign tourist buses' activities**

As of 1 July 2014, the simplification rule for foreign tourist buses was abolished. The consequence of this is that foreign (non-Danish) haulage contractors driving tourist buses in Denmark must VAT register according to the ordinary rules for registration. Previously, foreign tourist buses were only required to account for Danish VAT occasionally when driving in Denmark.

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### **Customs update**

Upon exportation of goods, a customs declaration can be made orally, if below the statistical threshold. Prior to 1 January 2015 this rule did not apply for consignments to the Faroe Islands and Greenland. As from that date, consignments for these two territories, outside the EU customs territory, will be treated like any other third country exports.

From 1 January 2015, a number of new procedure codes have been introduced to be utilized upon importation into Denmark. These relate to outward processing relief situations.

The customs authorities have started preparing for new customs legislation that will apply from 1 May 2016. Consequently, there will be a window for interested parties such as business and legal associations, and large traders to identify inappropriate and impractical local interpretations to the authorities, with a view to abolishing or amending them as appropriate.

Finally, discussions will continue into 2015 between some business associations and the authorities in respect of the Danish interpretation of the customs debt provisions of the customs code, following customs audits on mineral oil products carried out during 2013 and 2014.

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## Eurasian Economic Union

### **Armenia's accession to the Eurasian Economic Union**

On 2 January 2015, an agreement on Armenia's accession to the EEU entered into force. Armenia became a full EEU member together with Belarus, Kazakhstan and Russia.

The EEU is aimed at the free movement of goods, services, capital and employees, and also at creation of a key economic centre for development.

Intended benefits of the EEU are: an increase in the exchange of goods due to the removal of physical and administrative barriers, the increased mobility of human resources through a common employment market, sustained economic development due to reduced economic isolation, the advancement of infrastructure projects, and participation in generating a global agenda through EEU mechanisms.

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## European Union

### **EU consultation on 'public interest' VAT exemptions and VAT for public bodies**

In October 2013, the European Commission issued a consultation document reviewing the existing VAT legislation on public bodies and tax exemptions in the public interest.

The Commission has now [published a summary report on the outcome of the consultation](#).

The report notes that the consultation attracted considerable attention, with nearly 600 contributions. Views on the functioning of the current VAT rules clustered around two views: one group (mainly composed of public bodies) considered that the current system does not require significant reform; the other (including private business) considered that the current system lacked neutrality and argued for comprehensive reform.

Those favoring reform identified distortions and noted that public bodies are increasingly offering goods and services in competition to the private sector. Public bodies, on the other hand, generally considered that the current distinction between taxed and non-taxed supplies were appropriate, highlighting their links with their social purpose and public interest. A similar range of views were also expressed in relation to reform measures, from retaining the status quo to fundamental reform.

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## Finland

### **Supply of scrap metal subject to domestic reverse charge mechanism as of 1 January 2015**

New regulations regarding the supply of scrap metal came into force on 1 January 2015. In accordance with the regulations, all taxable sales of scrap metal by a VAT registered seller to a VAT registered buyer are subject to the reverse charge mechanism. The definition of scrap metal is based on the CN code classification from 2013, and the applicable codes have been listed in the Finnish VAT Act.

### **Books published on physical means of support other than paper not subject to reduced VAT rate**

On 31 December 2014, the Finnish Supreme Administrative Court (SAC) gave ruling KHO:2014:199, which concerned the supply of books published on physical means of support other than paper. In this context, the SAC had previously requested a preliminary ruling from the European Court of Justice (C-219/13, K).

The SAC considered that books published on, e.g., CD-ROMs, memory sticks or in other similar formats do not resemble printed books to the extent that the reduced VAT rate

applicable to printed books would need to be extended to supplies of books in these formats. Thus, books published on other physical means of support than paper are subject to the standard VAT rate.

### **SAC considered remuneration for transfer of outstanding debts a taxable collection service**

In ruling KHO:2014:191 (23 December 2014) the SAC deliberated the VAT treatment of factoring services. In addition to standard collection services, a collection company provided a service where the customer transferred certain outstanding debts and all rights to the debts to the collection company, without receiving any remuneration at the time of the transfer. The collection company proceeded to collect the debt from the debtor. If the collection was successful, the collection company paid a percentage of the collected amount to the customer. The percentage amount was agreed on a contract signed by the parties at the time of the debt transfer.

The SAC considered that the service the collection company offered was a specific type of a collection service and, as such, subject to VAT.

### **SAC has published two rulings regarding the management services provided to SIFs**

Ruling KHO:2014:193 (23 December 2014) concerned the VAT exemption of services in relation to the management of special investment funds. The case concerned a limited partnership company to be established, in which fund A would be the only silent partner. The intention of A was to use the limited partnership company to only invest its funds. Neither the limited partnership company nor A would have their own personnel, but management services required by the limited partnership company would be purchased from an external service provider established outside of Finland.

The Finnish VAT Act does not include an exemption in relation to the management of special investment funds. However, taking into account the court practice of the CJEU and what has been stated in the VAT Directive, the SAC considered that the limited liability company could not be considered a special investment fund, since only A invested in it. Therefore, the limited partnership company was liable to account for VAT on the basis of the reverse charge mechanism on the services it acquired from the external service provider.

In ruling KHO:2014:194 (23 December 2014) the SAC also considered the nature of special investment funds. An insurance company provided unit-linked life and pension insurances to its customers. The yield on insurance savings that consisted of the

premiums paid by the policyholder was linked to insurance portfolios. The portfolios consisted of, e.g., shares. The insurance company owned the assets in the insurance portfolios and retained the title to the assets for the entire term of the insurance. The policyholder's yield was merely calculated on the basis of the value of the assets. The insurance company had a discretionary asset management contract with another party regarding the management of the assets in the portfolios.

The SAC ruled that the insurance portfolios could not be deemed special investment funds as meant in the VAT Directive and in the CJEU's court practice. The insurance company was not considered to make any investments in the name of the policyholder, as the title to the assets remained with the insurance company. The services supplied by the asset management entity to the insurance company were deemed discretionary asset management services and not services in relation to the management of SIFs. Thus, the asset manager was liable to account for VAT on the services it provided to the insurance company.

### **Buyer allowed to deduct input VAT on prepayments, although supply not carried out due to liquidation of the supplier**

In a recent ruling KHO:2014:190 (23 December 2014) the SAC considered whether a taxpayer was liable to rectify the amount of input VAT on prepayments that it had deducted on earlier VAT returns, when the seller was not able to supply the ordered goods due to being placed in liquidation. The SAC deemed that rectification was not required, as the regulations in the VAT Act regarding the liability to adjust the amount of deducted input VAT only concern cases in which the supplier has granted a discount or has agreed to decrease the sales price on other grounds. Thus, the taxpayer was able to deduct the input VAT on prepayments, irrespective of the planned transactions not taking place.

### **Amount withheld by buyer from payment to supplier regarded as indemnity and not a discount**

In another ruling KHO:2014:192 (23 December 2014) the SAC deliberated the nature of indemnities. In accordance with the terms agreed to by the parties, the buyer was entitled to compensation in case of delayed delivery by the supplier. The compensation amount was based on a percentage of the sales price for each day the delivery was delayed.

The SAC considered that a payment withheld by the buyer on a payment instalment was to be considered a VAT exempt indemnity and not a rectification of the sales price. Therefore, the supplier was liable to account for VAT on the entire payment instalment

and the amount withheld by the buyer could not be deducted from the tax base.

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## Germany

### **Threshold established for reverse charge on base and precious metals**

With effect from 1 January 2015, the German VAT Act has been amended to establish a threshold for the application of the reverse charge to the supply of base and precious metals with a minimum value of EUR 5,000 (any subsequent reduction to the value of the supply is not taken into account). Furthermore, appendix 4 of the German VAT Act listing the relevant base and precious metals was amended again; some metals were removed from the list.

On 22 January 2015, the German tax authorities published an official decree for a transitional period until 30 June 2015 for the application of the recent amendments of the reverse charge mechanism for the supply of base and precious metals.

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## GCC-EFTA

### **Update on implementation of Free Trade Agreement**

Recent press reports in the Gulf region indicate that the Joint Committee between the GCC (Gulf Cooperation Council) and EFTA (European Free Trade Association) countries has met in Oman on 15 January 2015 and discussed the final technical procedures and arrangements before the full implementation of the FTA between both parties and which is now expected to occur mid-2015. The FTA was originally supposed to have become effective in mid-2014 but the GCC countries had been unable to fully implement it at that time.

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# Iceland

## Changes to VAT rates and excise duty regime and amendments to VAT legislation

With effect from 1 January 2015, the standard VAT rate was decreased from 25.5% to 24%, and the reduced VAT rate increased from 7% to 11%. In addition, the excise duty regime, applicable to imports and domestic production of certain goods, was abolished. Excise duties, previously collected on a range of items from food to kitchen appliances, are now only collected on the import and production of motor vehicles and fossil fuel.

The Icelandic Parliament also approved a number of changes to the VAT legislation that are to take effect on 1 January 2016.

First, the current VAT exemption for passenger transport will be limited as of 2016. The exemption will only apply to public transport on scheduled routes, by land, air, and sea; to the organized transportation of individuals with disabilities and school children; and transportation by taxi. All other passenger transportation, such as of tourists, shall be taxable at the reduced VAT rate.

Secondly, the services of foreign and domestic travel agents will be taxable for VAT at the reduced rate, insofar as these parties supply goods or services that tourists utilize in Iceland. Currently, these services are VAT exempt. In connection with this amendment, the services of travel agents involving the international transport of passengers and services that tourists utilize outside Iceland will from 1 January 2016 be classified as zero-rated services. Currently these services are exempt from VAT with no right to input tax.

According to the Minister of Finance and Economic Affairs, further changes to the VAT legislation are expected in the coming weeks and months.

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# Italy

## New rules for letters of intent

The tax authorities have announced by press release dated 22 December 2014, that the new software for the mandatory e-filing and e-sending of letters of intent is now available on the official website of the tax authorities.

Furthermore, the new online check service is now available on the official website of the tax authorities. This online service allows the recipient of a letter of intent to check the mandatory e-filing and e-sending of the letter of intent by the net exporter.

The previous rules for the transmission of a letter of intent apply during the transitional period (until 11 February 2015). However, the new e-filing is mandatory for letters of intent submitted before this date but related to transactions to be performed after it.

The letters of intent as well as the receipts of submission will be available in the Tax Mailbox (i.e., *'cassetto fiscale'*) of the recipient and of the net exporter, as of FY 2015.

### **New 2015 VAT form (annual VAT return FY 2014)**

The tax authorities announced in a press release dated 22 December 2014 that the new 2015 VAT forms are now available on the official website of the tax authorities. Of particular note among the main changes are: a) the amended VX, including the new VX6 box related to taxpayers exempted from the submission of a guarantee; and b) the amended VE30 box, where net exporters include the same data as reported in the new form of the letters of intent.

### **Stability Law 2015 (Law n° 190 dated 23 December 2014) published in the Official Gazette on 29 December 2014**

The main VAT changes in the Stability Law that apply from 1 January 2015, are as follows:

- 'Split payment': where goods and services are supplied to certain public bodies that are not taxable subjects for VAT purposes, the VAT will be paid to the State by those public bodies. The procedures and terms of payment of VAT by the public bodies will be fixed by a decree of the Ministry of Economy and Finance. The Ministry has already stated that the public bodies will need to update their accounting systems to implement the split payment procedure no later than the end of March 2015. The Italian Foundation of Chartered Accountants has issued a note clarifying practical aspects of the split payment regime.
- The scope of the reverse charge mechanism has been extended. In particular, the reverse charge will apply to: the construction industry, the energy industry, large retail businesses (subject to the authorization of the EU Council according to art. 395 of the Principal VAT Directive) and the business of waste or used materials.
- Changes to the procedure and time limits related to voluntary regularization: a taxpayer can apply for voluntary regularization before notification of a tax assessment. (It is not relevant whether the breach has been or is being verified, as only the notification of a tax assessment or a tax irregularity document can prevent the taxpayer from the

voluntary regularization). New reduction of penalties rules apply.

- There is a new deadline for the submission of annual VAT returns starting from FY 2015 and a new procedure for submission (i.e., the obligation to file a unified annual return has been removed). Starting from FY 2015, the obligation to file an annual VAT communication is also removed.
- There are new VAT rates for e-books (4% VAT rate) and wood pellets (22% VAT rate).
- In the absence of legislative provisions able to guarantee the achievement of budgetary targets, the following increases to the VAT rates shall apply:
  - The current 22% VAT rate shall increase to: 24% from 1 January 2016, 25% from 1 January 2017, and 25.5% from 1 January 2018;
  - The reduced 10% VAT rate shall increase to: 12% from 1 January 2016 and 13% from 1 January 2017.

### **Clarification of new VAT refund rules**

The tax authorities have provided some preliminary clarification regarding the new VAT refund rules in the so-called 'Simplification Decree' dated 21 November 2014, no. 175, in force from 13 December 2014. The clarifications involve:

- The level of guarantee required (no guarantee is required for refund claims of less than EUR 15,000);
- How to calculate the EUR 15,000 threshold:
  - It applies to the sum of VAT refund claims submitted during the fiscal year; and
  - It is separately considered for VAT offsetting purposes and VAT refund purposes.
- For VAT refund claims already submitted but not yet executed on 13 December 2014, it is now clarified that:
  - For VAT credits of less than EUR 15,000, the VAT Offices will no longer request the submission of the guarantee. If the guarantee has been already requested, the claimant will be exempted from the submission.
  - For VAT credits greater than EUR 15,000, claimants who have already submitted a VAT return with the 'endorsement of conformity', will be exempted from the submission of the guarantee, upon meeting certain further conditions (i.e., a declaration under art. 47 of the Presidential Decree n°445/2000 and a copy of the ID document of the signing subject to be submitted to the tax authorities).
  - The checks of the tax authorities (linked to the 'endorsement of conformity' and the declaration under art. 47 of the Presidential Decree n°445/2000) shall be made with reference to the taxpayer position at the effective date of the Simplification Decree (i.e., 13 December 2014).
- With regard to the checks linked to the 'endorsement of conformity' (for VAT refunds

higher than EUR 15,000), it has now been clarified that they are the same checks as performed for VAT offsetting purposes (for the VAT refund procedures, the only additional request is the declaration under art. 47 of the Presidential Decree n°445/2000 to be reported on the new form of the VAT return).

### **Draft of legislative decree on MOSS regime sent to Parliament for analysis**

The Italian Government recently sent to the competent Commissions of the Parliament the draft of a new legislative decree, implementing the EU Mini One Stop Shop regime. When the draft returns to the Government with the Opinion of the Commissions, it will be approved.

According to the draft under discussion, the place of supply of e-services, telecommunication services and broadcasting services carried out from 1 January 2015 will be the place where the non-taxable customer is resident, instead of the place where the supplier is established (as per the previous rule).

The draft of the legislative decree proposes the following:

- The MOSS regime: This is already available on the official website of the tax authorities, allowing taxable suppliers – providing e-services, telecommunication services, television and radio broadcasting services to non-taxable customers in EU countries where they are not established – to account for the VAT due on those supplies only in Italy.
- The terms and procedures for the calculation of the VAT due on the supplies of these services.
- Automatic checks on MOSS procedures by the tax authorities and applicable penalties.
- Terms and conditions for the VAT refund procedures applicable to suppliers providing these services.

### **Right to be heard before a decision about the abuse of right – Supreme Court (sentence n°406 dated 14 January 2015)**

For the first time, the Supreme Court has recognized the right to be heard before the adoption of a decision about the abuse of right. In particular, the Supreme Court has made reference to the CJEU principles (including Sopropè, Case C-349/07,) and stated that the subject of an adverse decision must be placed in a position to submit his observations before that decision is adopted.

As a consequence, the infringement of the rights of the defence, and in particular of the right to be heard before the adoption of any decision liable to affect his interests adversely, entails the annulment of the decision taken by the tax authorities.

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## Lithuania

### **VAT amendments**

In accordance with European Union legislation and case law of the Court of Justice of the European Union, on 11 November 2014 the Parliament of the Republic of Lithuania adopted a number amendments to the VAT Law, including the following:

#### ***Cost sharing exemption***

As from 20 November 2014, services provided by independent groups, whose members are persons engaged in VAT exempt activities or non-economic activities, to their members necessary for the mentioned activities are VAT exempt when mutual expenses of the group are reimbursed by group members and a member does not pay more than its portion of mutual expenses.

Prior to the amendment, the cost sharing exemption could only have been applied where members of such a group were engaged solely in activities that are exempt from VAT (or outside the scope of VAT).

#### ***1 January 2015 place of supply changes***

As of 1 January 2015, e-services, telecommunications, and radio and television broadcasting services provided to non-taxable persons are considered to be provided in the state where the customer is established (resides). The Mini One Stop Shop simplification has also been introduced to deal with the additional administrative burden of the new rules.

#### ***VAT for tourism services***

As of 1 January 2015, the VAT scheme for tourism services (margin scheme) is to be applied where tourism services acquired from third parties as a single tourism service or a travel package are sold to any customer (including persons engaged in resale).

#### ***Reduced VAT rate***

On 4 December 2014 the application of the 9% VAT rate was extended to 1 July 2015 in respect of thermal energy supplied to heat residential premises, hot water supplied to

residential premises or cold water and thermal energy consumed to prepare hot water supplied to residential premises.

### Amendments to the excise duty law

On 25 November 2014, the Law amending the excise duty law came into force, based on which the following changes to excise duty rates for tobacco products as well as for alcohol products apply:

Before 1 March 2015	From 1 March 2015
<b>Tobacco products</b>	
<ul style="list-style-type: none"><li>• combined excise duty rate on cigarettes not be less than EUR 74.14 for 1,000 cigarettes;</li><li>• the specific component of excise duty rate on cigarettes amounts to EUR 45.47;</li><li>• excise duty rate on cigars and cigarillos amounts to EUR 26.93 per kilogram of the product.</li></ul>	<ul style="list-style-type: none"><li>• combined excise duty rate on cigarettes not be less than EUR 77.91 for 1,000 cigarettes;</li><li>• the specific component of excise duty rate on cigarettes amounts to EUR 48.08;</li><li>• excise duty rate on cigars and cigarillos amounts to EUR 28.09 per kilogram of the product.</li></ul>
<b>Alcohol products</b>	
<ul style="list-style-type: none"><li>• excise duty rate on beer (1 hectolitre of the product) is EUR 2.71 for 1% of actual alcoholic strength by volume;</li><li>• excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume (in case of other fermented beverages – received only by fermentation) of not more than 8.5% vol. and in which fermented beverages with an actual alcoholic strength by volume are of not more than 8.5% vol. (1 hectolitre of the product) – EUR 24.62. Excise duty rate on other wine and fermented beverages (products with an actual alcoholic strength by volume exceeding 8.5%) – EUR 65.16 (1 hectolitre of product);</li></ul>	<ul style="list-style-type: none"><li>• excise duty rate on beer (1 hectolitre of the product) is EUR 3.11 for 1% of actual alcoholic strength by volume;</li><li>• excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume (in case of other fermented beverages – received only by fermentation) of not more than 8.5% vol. and in which fermented beverages with an actual alcoholic strength by volume are of not more than 8.5% vol. (1 hectolitre of the product) – EUR 28.67. Excise duty rate on other wine and fermented beverages (products with an actual alcoholic strength by volume exceeding 8.5%) – EUR 72.12 (1 hectolitre of product);</li></ul>

- 
- excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15% vol. – EUR 81.38 (1 hectolitre of the product);
  - excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15 % vol. – EUR 115.85 (1 hectolitre of the product);
  - excise duty on ethyl alcohol shall be levied at the rate of EUR 1,291.71 per 1 hectolitre of absolute ethyl alcohol.
- excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15% vol. – EUR 89.49 (1 hectolitre of the product);
  - excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15 % vol. – EUR 126.27 (1 hectolitre of the product);
  - excise duty on ethyl alcohol shall be levied at the rate of EUR 1,320.67 per 1 hectolitre of absolute ethyl alcohol.
- 

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## Luxembourg

### **VAT rate increase**

On 19 December 2014 the law amending the Luxembourg VAT Law was adopted (Memorial A – N°255 published on 24 December 2014).

Based on this law, and in line with our previous announcements (see our [VAT Newsletter of September 2014](#)), the Luxembourg VAT rates increased as of 1 January 2015 as follows.

The VAT rates of 6%, 12% and 15% increased to 8%, 14% and 17%. The VAT rate of 3% remains unchanged.

The standard VAT rate of 17% remains the lowest within the EU.

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## Netherlands

### **No benefits under EU law where conscious involvement in VAT fraud**

The Court of Justice of the European Union has delivered its judgment in the Dutch case

of *Italmoda* about VAT evasion as a type of VAT fraud.

The *Italmoda* case concerns a Dutch company that, predominantly engaged in shoe trading, is also involved in supplying computer equipment (hereinafter, the goods). The goods were purchased in the Netherlands and Germany, and subsequently supplied to customers in Italy.

With respect to the goods purchased in Germany, *Italmoda* acquired these goods under its Dutch VAT number, but the goods were transported directly from Germany to Italy. *Italmoda* neither reported an intra-Community acquisition in Italy (although this operation was VAT exempt in Germany), nor an intra-Community acquisition in the Netherlands.

Against this background, the Italian tax authorities have collected the VAT due from the Italian customers and denied them the right of deduction of input VAT otherwise incurred. At the same time, the Dutch tax authorities considered that *Italmoda* was consciously involved in a fraud designed to evade the payment of VAT in Italy.

On that basis, the Dutch tax authorities denied *Italmoda* the right of exemption in relation to the intra-Community supplies from the Netherlands, the right to deduct input VAT, and the right of refund of VAT.

According to the CJEU, the national authorities should, based on the EU law, refuse to apply the exemption pertaining to an intra-Community supply, the right to VAT deduction or the refund of VAT when the taxable person was or should have been aware of the VAT evasion, even where the national law does not provide for the basis for such a refusal.

Additionally, the fact that:

- The VAT evasion occurred in a Member State other than that which is competent to refuse the application of the mentioned rights;
- The VAT evasion is also punished in that Member State, or
- The taxable person has satisfied all formal obligations;

does not affect the obligation of national authorities to apply such a refusal.

The *Italmoda* judgment has confirmed once again that rights under EU law cannot be relied upon for abusive or fraudulent ends. This includes not only situations where the taxable persons in question are directly committing a fraud, but also where the taxable persons consciously participated in the fraud carried out by another taxable person upstream or downstream in the supply chain. The case emphasises that businesses should be careful as regards international trade. If they 'should have been aware' that

VAT fraud takes place in previous or subsequent links in the supply chain they can be refused the right to deduct VAT or to apply the exemption for intra-Community supplies, even when they consider themselves innocent parties. Indirectly they are then liable for the VAT unpaid by the fraudster.

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## Poland

### **Potential changes to Polish VAT law**

On 22 December 2014, the Polish Government accepted the draft bill amending the VAT Act in relation to the planned changes in respect of the reverse charge mechanism and other issues mentioned in previous editions of this newsletter. The new law is scheduled to come into force potentially with some exceptions from 1 April 2015.

The most important changes are as follows:

#### ***Expansion of the catalogue of goods for which the reverse charge mechanism applies***

In the draft bill the Government included the catalogue of goods subject to the domestic reverse charge mechanism. According to the draft bill the following will be subject to the reverse charge mechanism:

- Portable machines for automatic data processing weighing up to 10 kg, in particular: laptops, notebooks, tablets;
- Mobile phones (for wireless networks only), including smartphones;
- Game consoles (with own video screen or cooperating with TV) and other devices for arcade games or gambling, excluding spare parts and accessories.

According to the draft law, the application of the reverse charge mechanism is limited to cases where the total value of goods within **a single economic transaction** exceeds approximately EUR 4,800. Based on the new legal definition, a single economic transaction would mean, in general, a transaction based on one contract, which may result in one or more supplies of goods, even if they are made on the basis of individual orders, or there are one or more invoices issued documenting particular supplies.

### ***Sales lists of transactions subject to local reverse charge mechanism***

According to the new rules, taxpayers undertaking transactions subject to the local reverse charge mechanism would need to file summary information (similar as ECSPLs) about the relevant transactions for each settlement period.

### ***New mechanism for calculating input tax that results from purchased goods and services used for performing business and non-business activity***

The draft bill stipulates a new mechanism that should be applied by taxpayers performing both activities that can be classified as falling within the scope of their business activity and not.

In the light of the planned regulations, if a taxpayer uses purchased goods and services not only for performing its business activity, it will be allowed to deduct input VAT only from the purchased goods and services used for its business activity. In such situations, the taxpayer will be obliged to apply an additional mechanism of allocating the input VAT to activities that would be considered as its business activity and other activities. Only the part of input VAT relating to taxable activities will be deductible.

### **Changes to excise duty provisions as of 1 January 2015**

As of 1 January 2015, some important changes to the excise duty law were introduced.

Some of the main amendments are as follows:

#### ***Binding Excise Duty Information***

As of 1 January 2015, a new instrument is available for excise duty purposes – The Binding Excise Duty Information (BEDI).

BEDI is a new instrument available for entrepreneurs interested in obtaining binding confirmation of the treatment of goods for excise duty purposes. The concept of BEDI is similar to the Binding Tariff Information (BTI); however, there are some important differences. BEDI is issued for excise duty purposes only. In the BEDI, the tax authorities will determine the classification of excise duty goods based on the Combined Nomenclature (CN) – in the version currently used for excise duty purposes in Poland. Where the CN classification will not be sufficient, a BEDI will determine the description of the product at the level of detail that will be sufficient for excise duty purposes.

A BEDI is binding for the entity that applied for it. In general, a BEDI is valid for an indefinite period of time unless the excise duty regulation changes. To receive a BEDI, an

official application form must be submitted. It may be also necessary to attach samples or additional documents (e.g., certificates, photographs, etc.) or to perform laboratory tests.

The tax authorities may refuse to issue a BEDI in certain cases. In particular, the authorities will refuse to issue a BEDI: (i) if the application for the ruling concerns goods not subject to excise duty; or (ii) in cases where the taxpayer has already obtained a Binding Tariff Information or Binding Tax Ruling for the goods subject to the BEDI ruling request.

Where there are doubts as to the treatment of goods for excise duty purposes, it is highly recommended that entrepreneurs apply for a BEDI, to confirm the classification and excise duty treatment of the goods in question. (During tax audits the tax authorities will be bound by a BEDI received by the taxpayer.)

### ***Documentation rules for preferential excise duty rate for heating oils (fuels) transactions***

From 1 January 2015, the documentation rules for the application of the preferential excise duty rate for the supply of heating oils (fuels) have been amended.

According to the Polish excise rules, in order to apply the preferential excise duty rate to the sale of heating oil (heating fuels) specific conditions must be met. One of these conditions is that the buyer must submit to the seller a formal declaration that the purchased oils will be used for heating purposes. Until the end of 2014, this declaration had to be submitted for each supply separately. As of 1 January 2015, it is now also possible to include such declarations in the wording of the sales contract between the buyer and the seller. This option will be, however, available only for contracts concluded for periodic supplies. In order to benefit from the new option, some requirements must also be met (i.e., a copy of the contract should be submitted to the respective tax authorities before the first sale is performed and every sale should be confirmed with an invoice).

Entrepreneurs interested in the above simplification should consider changing the wording of their contracts and internal procedures to adjust to the new regulations.

### ***New rules on sanctions for distributors of heating oil (fuels)***

According to amended rules, formal irregularities in declarations submitted by buyers on the use of purchased oil (fuel) for heating purposes should no longer automatically result in a loss of the right to use the preferential excise duty rate by the seller.

As of 1 January 2015, the basic tax rate may be applied only when the tax authorities can prove that heating oils (fuels) were used not for heating purposes or when it will not be possible to determine the buyer of the oil. The new regulations also apply to tax proceedings that had been initiated before 1 January 2015. The amended rules may give distributors of heating oil (fuels) with ongoing tax proceedings a chance for a positive outcome of the pending proceedings.

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## Portugal

### **VAT changes in Portuguese Budget Law for 2015**

The Budget Law for 2015 has been approved and includes a number of changes, including VAT related to bad debts, the agricultural producers regime, and a new obligation to communicate inventory information on an annual basis (as of 31 December of each year) to the tax authorities.

### **Environmental Tax Reform**

The Environmental Tax Reform was also approved and includes several measures that cover a number of topics, namely energy, transport, urbanism, forests and biodiversity. Some of the measures introduced, which came in force on 1 January 2015, were: a carbon tax, a tax on plastic bags and tax 'benefits' regarding the acquisition of electric, hybrid 'plug-in', LPG and LNG cars.

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

The tax authorities have released a ruling regarding the place of supply of e-services, telecommunication, and radio and television broadcasting services rendered in the Autonomous Region of Madeira or Azores (where currently 'reduced' standard VAT rates of 22% and 18% apply, respectively), providing that for the purposes of the Mini One Stop Shop, the standard rate of the Mainland must be applied.

### **New rules for local VAT refunds**

Under new rules, which came into force on 1 January 2015, to obtain a VAT refund, a taxpayer must be compliant with a number of other obligations (not related to the VAT repayment itself), such as, the obligation to communicate monthly to the tax authorities

the invoices issued to its clients. Also, if a bank guarantee is requested by the tax authorities, it must be provided electronically.

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## Spain

### **Amendments to VAT Law**

There have been significant amendments to the VAT Law, focusing on five major objectives:

- The necessary adaptation of the VAT Law to the EU VAT Directive and to Court of Justice of the European Union case law;
- The technical improvement of VAT;
- The contribution to the fight against tax fraud;
- The relaxation of certain limits and requirements included in the VAT Law, and
- Amendments with the objective of clarifying certain aspects or contributing to other ends.

The main modifications are set out below. They mainly came into force on 1 January 2015.

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

Regarding the exemptions applicable to supplies of services (and supplies of ancillary goods) made by legally recognized non-profit making bodies having a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature purpose, the requirement that such objectives are the only objectives that those entities may have, has been eliminated.

The place of supply rule for the supply of goods with installation will be now applied regardless of whether or not the installation cost exceeds 15% of the total consideration. The immobilization of the goods after their installation is, however, still necessary to apply this rule.

Regarding the rules for determining the taxable basis, the following two amendments are introduced:

- Following the CJEU's judgment in the case *Le Rayon d'Or SARL* (Case C-151/13) on

14 March 2014, the general rule for determining the taxable basis is amended in order to differentiate between amounts that are not directly linked to the price of supplies, which are not part of the taxable basis, from the consideration paid by a third party, which is part of the taxable basis; and

- The special rule for determining the taxable basis for transactions where there is no monetary consideration (barter transactions) is also modified. The taxable basis will be the value agreed by the parties, which will have to be expressed in monetary terms, with reference to the rules related to the determination of the taxable basis for self-supplies.

Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-360/11) on 17 January 2013, the VAT rates applicable to sanitary products are modified. Thus, the reduced 10% rate shall apply to the supplies, intra-community acquisitions and imports of the following goods:

- Medicines for veterinary use (excluding the products necessary for obtaining those medicines);
- Pharmaceutical products covered by Chapter 30 of the Combined Nomenclature, if destined for direct end-consumer use;
- Pads, tampons, pantyliners, preservatives and other non-medical contraceptives; and
- Medical equipment, aids and other appliances, normally intended to alleviate or treat deficiencies, for personal use and for the exclusive use of people who have physical, mental, intellectual or sensory impairments. Accessories and spare parts of these products do not benefit from such reduced VAT rate.

Those products are listed in a new Annex VIII to the Spanish VAT Law. Other similar equipment to be used for different means will now be taxed at the standard 21% rate.

The 4% super-reduced rate will continue to apply to the supplies, intra-community acquisitions and imports of medicines for human use.

Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-189/11) on 26 September 2013 related to the Tour Operator Margin Scheme (TOMS), certain modifications are made to the VAT Law. For example, removing the ability to determine the taxable base on a global basis for transactions to which TOMS applies and the ability to deduct a certain amount of VAT in the TOMS invoices. Additionally, the Law also includes the option to not apply TOMS (and apply the VAT general regime instead) to each transaction individually, whenever the recipient is an entrepreneur or professional with the right to deduct VAT.

With regards to the VAT grouping scheme, the VAT Law has been modified to be

consistent with the VAT Directive regarding the requirement for three linking points between the entities forming the group, namely, economic, financial and organizational. However, the dominant entity must also have effective control of the dependent entities, by holding more than 50% of their capital or voting rights. However, entities that did not comply with these linking requirements by 1 January 2015 may continue to apply the VAT grouping scheme until 31 December 2015, provided they meet the requirements that applied before this amendment. Additionally, the law stipulates that mercantile companies not acting as entrepreneurs or professionals for VAT purposes may be considered as dominant entities of a VAT group. Finally, transactions carried out between members of a VAT group should not be taken into account in order to determine the deduction percentage applicable to VAT incurred by entities to which the direct allocation scheme applies.

A number of modifications were introduced as a consequence of the new rules which came into force on 1 January 2015, with regards to the place of supply of telecommunications, radio-broadcasting and television services, as well as those supplied by electronic means, when the recipient is not a taxable person and regardless of the supplier's place of establishment.

### ***Modifications introduced for the technical improvement of VAT***

The VAT law has been amended regarding certain transactions excluded from VAT taxation (not subject to Spanish VAT), when carried out by public bodies. According to the new definitions included in the VAT Law, transactions performed by 'Public Administrations' and not by 'Public Bodies' are not subject to VAT. Additionally, two new specific cases of transactions that would not be subject to VAT in connection with public organizations are proposed.

The exit of goods from tax free zones or customs regimes is no longer a taxable event for 'imports of goods' or 'deemed imports of goods', when such exit would constitute an exempt export (or deemed export) or an intra-community supply of goods.

The scope of the 'educational exemption' is extended to childcare services in educational establishments during school lunch times or in nursery establishments outside school hours, regardless of whether such services are performed by own means or by external means.

The scope for waiving the exemptions applicable to supplies related to immovable property is in principle extended, as it is not necessary that the acquirer has the full right to deduct the input VAT (partial deduction would in principle suffice).

In connection with the requirements for VAT deduction, 'dual public bodies' (performing both transactions subject and not subject to VAT) are now allowed to deduct input VAT amounts on goods and services aimed at carrying out both types of transactions, subject to a reasonableness criteria. In addition, it is specified that input VAT on acquisitions or imports of goods and services connected to transactions not subject to VAT when carried out by public bodies would not be deductible.

The scope of the prorata special rule is extended by decreasing the threshold from 20% to 10%. This percentage refers to the excess of input VAT to be deducted as calculated by the general rules of the prorata, and the special rules.

### ***Modifications introduced for the contribution to the fight against tax fraud***

The exemption to the requirement for imports of goods to be placed in a VAT warehouse is restricted to the following goods:

- Goods subject to excise duties, referred to in the Annex 5 of the VAT Law.
- Goods coming from the Customs Union territory, but excluded from the VAT common system territory.
- Certain goods specifically mentioned by the European Community Law.

The owners of a VAT warehouse have subsidiary liability for the tax debt arising from the exit of goods from the warehouse, with the exception of goods subject to excise duties.

These modifications will come into force on 1 January 2016.

With effect from 1 April 2015, the reverse charge mechanism is extended, in particular regarding the following goods:

- Silver, platinum and palladium.
- Mobile phones.
- Game consoles, laptop computers and tablets.

With respect to goods mentioned in the second and third bullet points, the reverse charge applies when the recipient of the transaction is a taxable person deemed as a reseller of those goods, or a taxable person who does not act as a reseller of goods when the total value of the supplies of those goods, documented through the same invoice, exceeds EUR 10,000 (VAT excluded). Proof of the taxable person's status should be given prior or simultaneously to the purchase of the goods. Where the reverse charge mechanism is applied, the invoice must have a special serial number.

New penalties have been established for the non-communication of certain transactions subject to the reverse charge, such as the supply of services for the construction or renovation of a building. The penalties would amount to 1% of the VAT amount on those transactions, with a minimum of EUR 300 and a maximum of EUR 10,000.

New specific import VAT audit procedures are introduced, limited to tax obligations stemming from the import transactions. When the VAT amounts settled through these audit procedures refer to import transactions carried out by taxable persons applying the import VAT deferral system, such VAT amounts would be paid through this deferral system.

### ***Modifications introduced regarding certain limits and requirements***

The threshold for free samples or advertising products not to be considered as subject to VAT is increased from EUR 90.15 to EUR 200.

Certain amendments are introduced regarding the formal requirements for VAT recovery procedures for bad debts. For instance, the period for modifying the taxable basis for bad debts related to insolvency procedures is extended to three months (instead of one month).

The VAT refund procedure under the 13th Directive is extended to countries where no reciprocity agreement exists, in respect of the following imports and acquisitions of goods and services:

- Hotel, restaurant and transport services, related to fairs and congresses, performed in the Spanish VAT territory.
- The supply of molds and equipment acquired or imported into the Spanish VAT territory by a non-established entrepreneur, to be made available to an established entrepreneur, for its use in the manufacture process of goods which are to be dispatched or transported outside the European Community for the non-established entrepreneur if, at the end of the manufacture of the goods, the molds and equipment are either exported to the non-established entrepreneur or destroyed.

An import VAT deferral system is introduced for certain taxpayers by which the payment of import VAT is made through the VAT return. In addition, a specific penalty is introduced for those cases where this import VAT is not properly reported or not reported at all in the VAT return. Such penalty would amount to 10% of the import VAT amounts not properly reported or not reported at all.

### ***Modifications to clarify certain areas of the VAT Law***

With respect to the transfer of going concern, it is clarified that the transferring entity must

be an 'independent economic unit' (and not the acquiring entity). It is also clarified that classification as a TOGC does not apply to transactions that consist merely of the transfer of goods or rights.

Supplies of stocks giving the holder the right to the property, the use of or the possession over immovable property or part thereof are considered to be a supply of goods.

The scope of the application of the exemption for services directly related to exports of goods, when they are provided to the exporter, the recipient of the goods or their customs representatives, has been delimited.

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

The reduced 10% VAT rate is applied to the supply of seeds and the other goods which are used to obtain flowers and live plants.

The regulation regarding VAT refunds to customs agents on imports of goods is revoked as from 1 January 2016.

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## Ukraine

### **Tax reform enacted**

A law published on 31 December 2014 has made significant changes to the Tax Code of Ukraine (TCU) and other laws, particularly regarding corporate income tax, VAT and personal income tax. Overall, the law reduces the total number of taxes and duties from 22 to 11 (nine taxes and two duties), through partial abolition and consolidation. The new law is effective from 1 January 2015, although some measures will take effect at a later date.

The main changes regarding indirect taxes are set out below.

There is clarification that the taxable basis for goods and services may not be lower than the price of their purchase, and the taxable basis for transactions involving the supply of goods and services of own manufacture/ production may not be lower than their cost, except for specific cases.

A five month transitional period (starting from 1 February 2015) is introduced for the registration of VAT invoices, without limitation of the amount of funds on the special VAT account calculated according to a formula.

The ability to refund amounts from special VAT accounts into the taxpayer's current account or to the budget is formalized in legislation.

The mechanism for recognizing outstanding VAT amounts claimed for refund or the VAT asset carried forward (including the amounts stated as of 1 February 2015) is formalized in legislation.

The formula for calculating a maximum VAT amount to which a supplier has the right to register VAT invoices has been amended. Effective from 1 July 2015, this amount may be increased by the average monthly amount of VAT stated as payable to the budget and paid for the previous 12 consecutive months.

A liability is established for failure to comply with the deadlines for registration of VAT invoices with the Unified State Register in the form of a penalty at the rate of 10% to 40% of the relevant VAT amount, depending on the duration of delay in the said registration.

For the supply of services by a non-resident in Ukraine, the right to VAT input arises immediately at the date of drawing up a VAT invoice covering such transactions, subject to registration with the Unified Register.

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## United Kingdom

### **Change to Intrastat arrival threshold from 1 January 2015**

Information on trade in goods between EU Member States is collected by the Intrastat system. The UK tax authorities (HMRC) have reviewed the Intrastat exemption threshold, below which businesses involved in such trade are not required to submit Intrastat

declarations, and [announced that from 1 January 2015, the exemption threshold for arrivals will increase from £1,200,000 to £1,500,000](#). The exemption threshold for dispatches remains unchanged at £250,000.

### **HMRC guidance on VAT and prompt payment discounts**

HMRC [have issued guidance for suppliers and customers issuing/ receiving VAT invoices offering a prompt payment discount after 1 April 2015, when a change to the rules takes effect](#). At present, suppliers offering a prompt payment discount are able to account for the VAT on the discounted price, even if the prompt payment discount is not taken up by the customer. Following the change, suppliers must account for VAT on the amount actually received. The change took effect from 1 May 2014 for supplies of broadcasting and telecommunication services where there is no obligation to provide a VAT invoice; for other supplies, the change takes effect on 1 April 2015. The guidance sets out the processes for accounting for and recovering VAT when a prompt payment discount is offered and taken up, and provides for an alternative to issuing credit notes. If suppliers do not wish to issue credit notes, certain information must be included on the invoice, including the terms of the prompt payment discount and a statement that the customer can only recover as input tax the VAT paid to the supplier – the HMRC guidance provides recommended wording. In addition, proof of receipt of the discounted amount will be required.

### **HMRC guidance for businesses supplying digital services to private consumers**

From 1 January 2015, the EU VAT place of supply rules changed for sales of digital services (broadcasting, telecommunications and e-services) to non-taxable recipients – the place of taxation is now determined by the location of the recipient. HMRC have issued [guidance for businesses supplying digital services to private consumers](#). The guidance includes: the scope of the rule change, determining the place of supply and taxation, defining digital services and ‘electronically supplied’, determining whether the customer is in business or a private consumer, and determining the place of supply. The guidance also includes [a flowchart to help businesses decide if they are affected by the rule changes](#).

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