Global Tax & Legal | Global Indirect Tax | March 2015

Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Highlights of this edition include developments in the U.S. to ease the U.S. trade embargo with Cuba, a number of updates on trade matters in the Asia Pacific region, and developments regarding the VAT treatment of e-books in the EU.

GST in Malaysia came into effect on 1 April 2015. In a Dbriefs Conversations video, Robert Tsang (Indirect Tax Asia Pacific Regional Leader) discusses the introduction of GST in Malaysia – to view the video, visit the **Dbriefs Conversations website**.

The OECD's Base Erosion and Profit Shifting (BEPS) actions are well underway with proposals and consultations on all actions. Change is coming. Deloitte's **BEPS website** will help businesses navigate what is happening, key deadlines and issues they might want to consider.

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

David Raistrick
Deloitte Global
Indirect Tax Global Leader

March 2015

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Malta

The VAT authorities have published guidance on the definition and scope of 'electronically supplied services'.

The legislator has introduced an exemption from the obligation to issue fiscal receipts with respect to supplies made under the mini one stop shop.

A reduced VAT rate has been introduced for books 'disseminated through electronic means'.

The VAT registration threshold for persons established in Malta was abolished with effect from 1 January 2015.

The rules regarding the remission of interest and administrative penalties have been amended.

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The draft law to regulate online gambling and betting has been approved, but has not yet entered into force.

It is intended that the reduced and intermediate VAT rates applicable in the Autonomous Region of Azores will be reduced this year.

The tax authorities have issued an administrative ruling regarding the agricultural producers' regime.

Slovenia

A special VAT arrangement has been introduced for the provision of occasional international road transport of passengers.

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Americas

Costa Rica

General Sales Tax reform

Costa Rica's executive branch recently presented a proposal to reform General Sales Tax. The proposal is in a public consulting process, and is not yet at the legislative process.

The main proposal in the draft is to convert the General Sales Tax into a Value Added Tax. It is proposed that the taxation of the sale of goods and the provision of services in the territory will increase from 13% to 15%. A special fee of 5% is also proposed for certain types of products, such as packing and some other products mainly in agribusiness, fishing and some other industries. The provision of services in third countries would be taxed, the use of tax credit would be more rigorous, and there would be changes in the tax base for sales between related parties.

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Mexico

Mexican sugar subject to export quotas

On 6 February 2015, the Ministry of Economy published in the Mexican Official Gazette an agreement under which sugar exports will now be subject to export quotas.

Under the agreement, entered into between the Ministry of Economy and the U.S. Department of Commerce on 19 December 2014, the U.S. investigation into Mexican sugar subsidies was suspended.

The investigation had led to the imposition in August 2014 of preliminary countervailing duties on imports of Mexican sugar into the U.S.

As a result of the December 2014 agreement, the countervailing duties were suspended. However, Mexico committed to control the volume of sugar that is exported to the U.S. by establishing export quotas.

The total amount of the quota for sugar exports to the U.S. in the cycle 2014-2015 is 1,162,604.75 metric tons.

Countervailing duties imposed on imports of ammonium sulfate

On 19 February 2015, the Ministry of Economy published its preliminary resolution regarding the antidumping investigation that is in process on imports of ammonium sulfate from the U.S. and China.

This investigation began in August 2014 under the modality of price discrimination.

The preliminary resolution imposed countervailing duties on goods classified under the Mexican HS Code 3102.21.01, corresponding to ammonium sulfate.

From 20 February, imports of U.S. origin are subject to a countervailing duty of USD 0.1858 per kilogram, while imports of Chinese origin are subject to a countervailing duty of USD 0.1782 per kilogram.

Eighth Amendment to Mexican Foreign Trade Rules

On 24 February 2015, the Tax Administration Service (SAT) published the Eighth Amendment to the Mexican Foreign Trade Rules, establishing that for abandoned goods in the custody of the customs authorities, the former owner of the merchandise can return it abroad if the owner declares under oath that the goods are high risk in connection to plant, animal or public health.

In addition, the following obligations for companies with certification for VAT and excise tax (IEPS) purposes, were postponed:

- Transmitting the inventory of goods subject to the customs regime linked to VAT/IEPS certification, through the website of tax authorities, from 30 January to 28 February 2015;
- Registering all companies with which virtual and sub-manufacture transactions are carried out, as well as automotive companies that provide certificates of transfer of goods, from 1 January to 1 July 2015.

As of March 2015, around 3,150 companies have obtained certification.

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United States

U.S. Supreme Court issues decision in Colorado remote seller reporting case

On 3 March 2015, the U.S. Supreme Court issued a unanimous decision for the petitioner in *Direct Marketing Association v. Brohl*, reversing the decision of the U.S. Court of Appeals for the Tenth Circuit (the 10th Circuit).

The 10th Circuit had held that the Tax Injunction Act (TIA) (28 U.S.C. § 1341) deprived the U.S. District Court of jurisdiction to enjoin Colorado from enforcing its remote seller sales and use tax notice and reporting requirements.

In the Opinion of the U.S. Supreme Court, delivered by Justice Thomas, the Court held that the TIA does not bar the suit brought by the Direct Marketing Association because the relief sought would not enjoin, suspend, or restrain the assessment, levy or collection of Colorado’s sales and use taxes. The Court remanded the case to the 10th Circuit for further proceedings.

Also, in a concurring opinion Justice Kennedy agreed in full with the Court's opinion but also emphasized that in light of the "far-reaching systemic and structural changes in the economy[,]" "it is unwise to delay any longer a reconsideration of the Court's holding in *Quill*." Justice Kennedy also suggested that the "legal system should find an appropriate case for this Court to reexamine *Quill* and *Bellas Hess*."

See this **Tax Alert** for more details, including some taxpayer considerations.

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New process for consolidated electronic filing of cargo release and ISF data in ACE

On 10 February 2015, U.S. Customs and Border Protection (CBP) published a Federal Register notice announcing a significant development in the Automated Commercial Environment (ACE) functionality. ACE is the preferred system used by importers to file the 13 required ACE Cargo Release data elements (e.g., importer of record number, buyer name and address, consignee number, etc.) with CBP.

Beginning on 1 November 2015, electronic cargo release and entry summary data submitted to CBP will have to be transmitted to ACE. Through Importer Security Filing (ISF), CBP also requires importers and carriers to submit certain data elements before the cargo is loaded onto the vessel at the foreign seaport (ISF currently is not required for other modes of transport). The ISF data elements may be submitted via the same electronic submission as the entry/cargo release data through CBP's legacy system, the Automated Commercial System (ACS), but CBP's response messages will be returned separately through ACS. Through the ACE Cargo Release Test, CBP now allows importers, meeting certain eligibility requirements, to transmit both the cargo release and the ISF data in a single electronic submission through ACE. During the test, CBP's cargo release message will be returned via ACE and the ISF message will be returned via ACS. This test program runs from 10 February 2015 through to 1 November 2015.

To submit a combined filing in ACE, importers and customs brokers will need to transmit three additional data elements – the ship to party, container stuffing location and the consolidator (stuffer) – in addition to the 13 ACE Cargo Release data elements. As a result of combined filing, ACE Cargo Release data elements must be transmitted earlier than their normal required timeframes because many of the required ISF data elements must be submitted no later than 24 hours before the cargo is laden aboard the vessel.

The Federal Register notice identifies the eligibility and procedural requirements for the combined filing. Eligibility to file a combined submission requires that the filer: (1) is considered an 'ISF Importer' (e.g., the party who causes the goods to arrive by vessel within the limits of the U.S.) under CBP regulations; and (2) is a self-filing importer or a customs broker who either has the

ability to file ACE Entry Summaries or intends to participate in the test. A party that already is enrolled in the ACE Cargo Release Test may file its combined submission after notifying its ACE account representative. If a party is not enrolled in the test, it must request participation in the test and provide certain information to CBP.

BIS and OFAC amend regulations on Cuba and State Department publishes statement on goods and services eligible for importation

Since December 2014, when President Obama announced policy changes with regard to the Cuban Assets Control Regulations (CACR), several developments have taken place to ease the trade embargo with Cuba. As part of these policy changes, on 16 January 2015, both the Department of Commerce's Bureau of Industry and Security (BIS) and the Office of Foreign Assets Control (OFAC) issued amendments to regulations toward Cuba.

The BIS amendments to the Export Administration Regulations (EAR) include a new license exception created for 'Support for the Cuban People (SCP),' which authorizes the export from the U.S. to Cuba of certain (i) building materials, equipment, and tools; (ii) tools and equipment for private sector agricultural activity; and (iii) tools, equipment, supplies, and instruments for use by private sector entrepreneurs. Additional revisions to the EAR include amendments to license exception Consumer Communications Devices (CCD), and Gift Parcels and Humanitarian Donations (GFT). The CCD license exception amendment removes the requirement that the CCDs (e.g., computers, mobile phones, digital cameras) be donated. The GFT license exception now allows for the export and re-export of multiple gift parcels in a single shipment.

The OFAC amendments include a new provision, 31 CFR §515.582, that authorizes the importation of certain goods and services produced by independent Cuban entrepreneurs. Pursuant to OFAC's regulation, on 13 February 2015, the State Department published a statement outlining the goods and services eligible for importation into the U.S. pursuant to the amended CACR under the 'Section 515.582 List.' The Section 515.582 List references sections and chapters of the Harmonized Tariff Schedule of the United States (HTSUS) to indicate which categories of goods are not eligible for import. Goods not on the list may be imported, subject to compliance with all other U.S. state and federal laws. For example, all chapters of HTSUS Section IV (which includes foodstuffs, spirits and tobacco products), HTSUS Chapter 51 (yarn and fabric of wool or animal hair) and HTSUS Chapter 52 (cotton) remain ineligible for importation into the U.S. Importers must obtain documentation to demonstrate that the entrepreneur/producer is independent of the Cuban government (e.g., not wholly or partially owned or controlled by the Cuban government). Independent verification by third-party organizations may suffice.

Caution still should be exercised in transacting business with Cuba. Many transactions remain restricted for export to Cuba (e.g., military items) and for import from Cuba (e.g. Section 515.582 List product categories).

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Trade Preferences

Mexico-Brazil

Mexico and Brazil agree on free trade in the automotive sector

On 9 March 2015, in Rio de Janeiro, the Mexican and Brazilian governments signed an agreement to modify Economic Complementation Agreement 55, which establishes bilateral trade in the automotive sector.

This agreement sets some commitments, including increasing export quotas, increasing the percentage of the rule of origin from 35% to 40%, and free trade from 19 March 2019.

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Mexico-Paraguay

Mexico and Paraguay resume negotiations for a trade agreement

On 25 February 2015, representatives of the governments of Mexico and Paraguay met with the objective of strengthening commercial bilateral relations, as agreed by the presidents of both nations during the XXIV Ibero-American summit celebrated in Veracruz, Mexico, in December 2014.

Both nations agreed to resume negotiations for an economic complementation agreement in the context of ALADI (Latin American Integration Association).

In the last 12 years, commerce between both nations has increased by a factor of 28, reaching USD 330 million during 2014.

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Asia Pacific

ASEAN

ASEAN ministers advance AEC blueprint after two-day retreat

At the 21st ASEAN Economic Minister's Retreat held in March 2015, it was announced that much progress has been achieved towards implementing the ASEAN Economic Community (AEC) Blueprint. ASEAN has progressively removed trade obstacles such as non-tariff barriers (NTB). To date, 45 out of the 69 NTBs identified have been resolved.

The ASEAN ministers' focus for this year would be on further simplification of customs procedures, harmonization of standards, liberalization of services and trade facilitation. The ministers have also discussed the progress in developing the SME Strategic Action Plan, with a specific focus on micro and small enterprises, and the promotion of globally accepted regulatory practices.

The vision for the AEC beyond 2015 is still work in progress.

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India

Highlights of the indirect tax changes in the Union Budget for the financial year 2015-16

The Budget highlights may be accessed at: **Union Budget 2015**.

Highlights of the VAT-related changes in the State Budget for the State of Rajasthan

- With effect from 9 March 2015, the rate of VAT under the Rajasthan Value Added Tax Act, 2003 has been increased from 14% to 14.5% on goods specified in Schedule V which, inter alia, includes goods chargeable at the residuary VAT rate.
- A single return has been prescribed for VAT, central sales tax (CST), entry tax and luxury tax.
- For the year 2013-14 and onwards, if a refund becomes due as a result of an assessment order, the refund shall be transferred to the account of the dealer within 30 days of the assessment.

Service tax paid on works contract transaction not to be part of sale price for levy of VAT in State of Maharashtra

The issue of whether VAT is to be levied on service tax where a transaction involves both the transfer of goods and a service has always been a matter of dispute.

In a matter concerning the transfer of property in goods involved in the execution of a works contract, the Maharashtra Sales Tax Tribunal has recently held that service tax cannot form part of the sale price in a transaction of the sale of goods involved in the execution of a works contract and VAT cannot be levied on service tax.

The decision is expected to provide significant relief to those executing works contracts in the State of Maharashtra.

Amendments to Rajasthan Investment Policy Scheme 2014

The Rajasthan Investment Policy Scheme (RIPS) 2014 has been amended to extend further benefits to the electronic system design manufacturing (ESDM) sector.

A unit making an investment of more than INR 2,500 million in the ESDM sector under RIPS 2014 will be provided with:

- A capital investment subsidy of 90% of VAT and CST paid for a period of seven years;
- An employment subsidy of 10% of VAT and CST paid for a period of seven years;
- A 50% exemption from payment of entry tax on capital goods, for the setting up of plant for new unit or for expansion of existing enterprises.

For units making an investment of more than INR 5,000 million, the benefits will be provided for a period of ten years instead of seven years.

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Exemption and reduction in basic customs duty and countervailing duty for certain medical devices/inputs for use in manufacturing of certain medical devices

India imports 80% of the medical devices used in the country. Recently, the government allowed 100% foreign direct investment in medical devices through an automatic route, as part of a strategy to not just reduce imports but also promote local manufacturing for the global market. To promote and accelerate domestic manufacturing, the government of India has granted exemption and reduction in basic customs duty (BCD) and countervailing duty (CVD) related to certain medical devices/inputs for use in the manufacturing of certain medical devices.

With effect from 1 March 2015, CVD is exempted on the import of specified raw materials (inputs) for use in the manufacture of pacemakers, subject to an actual user condition.

Further, these goods are also exempted from special additional duty (SAD) subject to an actual user condition. Also, excise duty on specified raw materials for use in the manufacture of pacemakers has been reduced to nil from 12%.

BCD has been reduced to 2.5% from 5% with effect from 1 March 2015 on specified inputs for use in the manufacture of flexible medical video endoscope.

There is a complete exemption from BCD and CVD on the import of artificial hearts (left ventricular assist device).

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Japan-Malaysia

Implementation of Japan-Malaysia mutual recognition of AEO programs

On 1 March 2015, Japanese and Malaysian customs authorities implemented the mutual recognition of Authorized Economic Operator (AEO) systems based on the Mutual Recognition Agreements signed in Brussels on 27 June 2014.

This is the seventh mutual recognition that Japan has implemented, following those entered into with Canada, the EU, New Zealand, Singapore, South Korea and the U.S.

This arrangement allows Japanese and Malaysian AEO-certified importers/exporters to enjoy less frequent inspections of goods by both customs authorities, as well as simplified customs procedures. Non-AEO importers/exporters also benefit from reduced inspections when their trading partners are AEO-certified companies.

The start of the mutual recognition is expected to further facilitate trade between Japan and Malaysia, and help improve supply chain security.

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New Zealand

Draft statement on GST and mortgagee sales

The tax authorities (Inland Revenue) have released a draft operational statement in relation to their position on GST and the costs of sale associated with mortgagee sales. A link to the draft statement can be found **here**.

There are many situations where GST on costs on mortgagee sales will not be able to be claimed, especially where the lender only makes GST exempt supplies.

However the draft document from Inland Revenue states that input tax cannot be claimed in relation to the costs associated with mortgagee sales even where the underlying loan security which gives rise to the mortgagee sale qualifies for GST zero-rating due to the business to business (B2B) financial services rules. Deloitte New Zealand will be responding to the consultation on this issue, submitting that input tax on mortgagee sale costs should be claimable for GST B2B qualifying lenders.

GST and bodies corporate

The proposed new rules for GST and body corporate entities included in the Taxation (Annual Rates for 2015-16, Research and Development, and Remedial Matters) Bill (the Bill) will go a long way to resolving many of the issues in this area. The proposed legislation addresses most of the issues enabling body corporate entities to be able to elect to either be GST registered or opt out of the GST system.

It is likely that there will be some further amendments prior to the final enactment of the Bill, but in its current form, the proposed legislation resolves many of the concerns raised by tax professionals when the original changes were proposed in 2014.

The GST registration of body corporate entities established to look after the routine functions of building and common property areas held under a unit title structure has been an area of focus in recent years. Historically there has been a lot of confusion over positions regarding the GST registration of bodies corporate resulting in some bodies corporate being GST registered, whilst others opting not to register, resulting in inconsistencies amongst bodies corporate in practically the same situations.

Inland Revenue has now clarified that it considers a body corporate that makes supplies to its owners to be carrying on a taxable activity. Despite this, a body corporate that makes routine supplies only to its members will not be required to be GST registered. This will be achieved by excluding the value of the body corporate supplies to members, from the body corporate’s total

value of supplies, when determining whether a body corporate is required to register for GST purposes. However, if a body corporate is required to register because supplies to third parties exceed the registration threshold, or the body corporate decides to voluntarily register, it will be required to return output tax on the full value of its body corporate and third party supplies.

As a form of revenue protection for Inland Revenue, the Bill provides that a body corporate registered after enactment of the legislation cannot backdate their registration and a four year lock-in period is proposed to prevent these bodies corporate from continually changing their registration status. The body corporate also needs to return output tax on the funds held at the date of registration. Care needs to be taken by bodies corporate when considering if they should change their GST status under these new proposed rules.

Individual body corporate entities will need to carefully consider how they will be impacted by these changes.

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Singapore

Application for customs permit via Tradenet® for importation of ship spares for repair

With effect from 1 April 2015, all importations of used ship spares for repair must be accompanied by a customs permit applied for via TradeNet® instead of a manual declaration form.

A three month adjustment period starting from 1 April 2015 and ending on 30 June 2015 is provided to facilitate the switch from the current manual declaration procedure to the new requirement to apply for the relevant customs permit via TradeNet® for the importation of ship spares for repair. During the adjustment period, the manual declaration form may be used for exceptional cases.

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Singapore-Hong Kong

Implementation of Hong Kong-Singapore mutual recognition of AEO programs

The Mutual Recognition Arrangement (MRA) on Authorized Economic Operators (AEO) signed by Singapore and Hong Kong in June 2014 came into effect on 9 March 2015.

Under this MRA, Hong Kong will recognize Singapore's Secure Trade Partnership-Plus (STP-Plus) companies as being of lower risk and thus facilitate the clearance of goods that are exported to or imported from these companies. Singapore Customs will extend the same treatment to Hong Kong's AEO companies and to the goods that are exported to or imported from these companies.

This signing of the MRA between Singapore and Hong Kong demonstrates the partnership and commitment to enhance global supply chain security and facilitate the movement of legitimate goods.

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South Korea

Amendment of interest rate for customs duty penalty tax

With effect from 6 February 2015, the interest rate for the customs duty penalty tax was amended to 0.03% from 0.013% per day, in accordance with the interest rate for the penalty tax under the Framework Act on National Taxes.

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South Korea-Mexico

Implementation of Korea-Mexico mutual recognition of AEO programs

The Korea-Mexico AEO MRA entered into force on 16 February 2015.

An AEO is a company who is approved by the customs authorities as complying with supply chain security standards. In accordance with the MRA signed between Korea and Mexico, AEOs can enjoy customs clearance benefits for exporting and importing goods between the two countries, including a reduction of the cargo inspection.

Moreover, AEOs are supported by Customs Liaison Officials assigned by each customs administration if they encounter difficulties in the customs clearance process.

In order to obtain preferential customs clearance, AEOs are requested to inform importers of the relevant information including AEO Authorization Number.

Currently, South Korea has AEO MRAs with nine countries including China, USA, and Japan.

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Trade Preferences

China-Korea

China-Korea Free Trade Agreement

The governments of China and Korea initialled a free trade agreement (CN-KR FTA) on 25 February, concluding several years of negotiations. Although both countries still must complete their internal procedures, the CN-KR FTA is expected to be formally approved and signed during the first half of 2015. This update will focus on the trade of goods aspects of the CN-KR FTA.

Tariff concessions

Although details on the tariff concession arrangement still need to be finalized, based on currently available information, the CN-KR FTA will eliminate many tariffs.

Both countries have committed to a schedule of tariff concessions to reduce the tariff rates to zero immediately, or gradually over a period of 5, 10, 15 or 20 years. Specifically:

- China will eliminate tariffs on 91% of imported Korean products, representing 85% of its total imports from Korea (equivalent to USD 137 billion) over the next 20 years. Industries such as electrical, textiles, iron and steel are expected to benefit from the CN-KR FTA.
- Korea will eliminate tariffs on 92% of imported Chinese products, representing 91% of its total imports from China (equivalent to USD 73.6 billion) over the next 20 years. Industries such as electrical, household and chemicals are expected to benefit from the CN-KR FTA.

Rules of origin

If goods fall under the schedule of tariff concessions, mere shipments of goods from Korea to China, or vice versa, would not be sufficient to qualify for a preferential duty rate under the CN-KR FTA. To enjoy FTA benefits, two requirements would have to be met: the goods would have to be ‘originating goods’ and they would need to be directly transported. The rules of origin have also been specified in the CN-KR FTA.

Some highlights are:

- The CN-KR FTA enables certain goods made in North Korean factories to be considered as Korean originating and thus enjoy FTA benefits, provided specified conditions are satisfied.
- The CN-KR FTA specifies the acceptance of a non-party invoice, i.e., the importing party may

not reject a Certificate of Origin merely because the invoice was issued by a non-party.

Comment

The CN-KR FTA is China's most comprehensive FTA and it covers the highest trade volume for the country and, therefore, the agreement has been eagerly awaited by affected industries.

In addition to the tariff concessions, the CN-KR FTA promises faster import/export clearance through customs controls in both countries.

Although the FTA has not yet been signed, potentially affected companies are recommended to take the following actions:

- Monitor developments relating to the CN-KR FTA;
- Identify whether their goods/purchases fall under the schedule of tariff concessions (to do that, a company will need to have the correct HS codes);
- Familiarize themselves with the relevant origin implementation procedures (such as application of the Country of Origin and origin claim requirement);
- Train staff to understand the basic logic for determining HS codes of goods and Rules of Origin for each HS code;
- Evaluate the need to re-structure their supply chains (production, sales and purchase) to take full advantage of the preferential duty treatment under the CN-KR FTA;
- Review supply/purchase contracts, in particular with respect to duty clauses relating to the liabilities for origin information and application;
- Assemble the appropriate resources to deal with new requirements associated with implementing FTA (manually and automatically); and
- Establish a regular review mechanism to ensure compliance with relevant FTA requirements.

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EMEA

Egypt

Update on VAT introduction and revisions to existing sales tax

Egypt has just hosted its Economic Development Conference in Sharm el Sheikh. It had been rumored that the much anticipated VAT system, that is expected to replace sales tax, would be unveiled at the event along with a series of other reforms that would enable sustainable Egyptian fiscal revenues, whilst helping investment and development in the country.

Christine Lagarde from the IMF referenced the proposed new VAT in her opening speech and, albeit details including timeframes were not given, the **Conference Brochure** contained some wider commentary:

> "In addition, the government will introduce a new fully-fledged Value Added Tax (VAT) system in 2015 to replace the existing General Sales Tax, which suffers from a number of distortions. The new VAT regime will assure a better investment environment by providing incentives to investors and producers as the VAT tax refund mechanism for capital inputs will improve company cash flow while reducing the need to resort to debt to finance normal operations. The benefits of the VAT regime are expected to have further far-reaching impacts by encouraging informal economic actors to join the formal sector, and will help small enterprises to become larger and more competitive. To mitigate any potential adverse impacts on the poor, the government is carefully designing the new VAT law to maintain exemptions on vital goods and services".

In the meantime the government also announced some changes in the existing sales tax regime, in particular in relation to the situations in which sales tax refunds can be obtained.

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European Union

France and Luxembourg lose 'reduced VAT rate on e-books' cases at CJEU

The Court of Justice of the European Union has gone straight to judgment in the infringement cases brought by the European Commission against France and Luxembourg over the application of reduced rate VAT to supplies of electronically supplied e-books.

In both cases, the Court agreed with the Commission that the domestic provisions allowing reduced rating for sales of e-books went beyond the scope of EU law. It rejected the contention that the principle of fiscal neutrality meant that for VAT purposes, e-books should be taxed in the same way as their physical counterparts, since EU law permits lower rating for paper books, etc., but expressly excludes electronically supplied services (which would include downloaded e-books, etc.) from the relief.

The Luxembourg tax authorities have announced that the reduced rate for e-books will be abolished from 1 May 2015.

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Finland

Port fees charged by port operator to shipping company's agent VAT exempt

The Finnish Supreme Administrative Court (SAC) gave a ruling KHO 2015:5 on 12 January 2015, which concerned a port operator providing water, waste disposal services, mooring and unmooring services to vessels used in commercial international traffic. In addition, the port operator also charged port fees. The fees were invoiced to a Finnish agent, who charged the fees to the shipping company. The port operator's invoices, addressed to the agent, specified the name of the vessel in question, but not the name of the shipping company.

The Finnish agent was required to submit certain details, such as the arrival time of the vessel, the departure port, and the next destination to a PortNet database upheld by the Finnish Transport Agency, from which the details were transferred to the port operator's system. Considering the nature of the services, it was evident that the services and water were not used by the agent. Further, it was proven by the details in the PortNet system that the vessels were used in commercial international traffic. Based on this, the SAC ruled that the VAT exemption applied in this case, i.e., extending the VAT exemption to supplies made to the shipping company's agents did not result in obligations incompatible with the correct and straightforward application of the exemptions to the Finnish state or to the other parties, as referred to in the European Court of Justice Joined Cases C-181/04 to C-183/04, *Elmeka*.

Therefore, the port operator did not need to account for VAT for the services or water provided to the vessels, even though they were invoiced to the shipping company's Finnish agent.

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Italy

New filing obligations for VAT returns and communications postponed

Based on a recently approved provision introduced in Law Decree n° 192/2014, changes to the submission of VAT returns and the cancellation of the VAT communication (introduced by the Stability Law 2015) have been postponed to FY 2016. In particular:

- For FY 2015, the VAT return and the 'UNICO' form must be submitted by 30 September 2016 and the VAT communication will remain mandatory, unless the VAT return will be submitted within the deadline for the submission of the VAT communication (thus avoiding at all the filing of the VAT communication by submitting directly and exclusively the VAT return, by the end of February 2016).
- For FY 2016, the VAT return must be submitted by 28 February 2017, and the VAT communication will no longer be mandatory.

Invoicing obligations for domestic supplies made by foreign companies subject to reverse charge

Regarding invoicing obligations for domestic supplies of goods by foreign companies (VAT-registered in Italy) to Italian-established customers that are subject to a mandatory reverse charge, Resolution n° 21/E has clarified that the foreign company must issue invoices using its foreign VAT number (of its place of establishment).

Therefore, where an Italian customer has received domestic sales invoices issued by the foreign company under that company's Italian VAT number, those documents are not relevant for VAT purposes, according to the tax authorities, and the customer must request:

- The cancellation of those invoices by way of credit notes;
- The re-issuance of the correct invoices under the foreign VAT number.

If the foreign company does not comply with the request, the customer should issue a self-invoice.

VAT refunds for suppliers under split payment regime

Under the split payment regime, VAT on goods and services supplied to certain public bodies is paid to the State by those public bodies, and not the supplier. Following the introduction of this regime, the Ministry of Finance has reviewed the conditions to be met by suppliers in order to fall within the class of VAT claimants with the right to be refunded as a matter of priority.

In particular, suppliers of public bodies (subject to the split payment regime) are entitled to be refunded, within the limit of the VAT charged (under art. 17-ter of the Italian VAT Code) on invoices issued under the split payment rules, even if they do not meet the following generic refund requirements:

- At least three years of business activity;
- VAT credits exceeding EUR 10,000 for annual VAT refunds and EU 3,000 for quarterly VAT refunds;
- VAT refunds exceeding 10% of the total input VAT paid on purchases and import transactions carried out during the relevant year or quarter.

This exception from the generic requirements is aimed at simplifying access to VAT refund procedures for suppliers that may be in a VAT credit position due to the implementation of the split payment regime (with no output VAT to be offset with input VAT).

Clarification of requirements for e-invoicing for supplies made to public administrations

Given the introduction of the requirement to issue e-invoices for supplies made to public administrations, the Department of Finance of the Minister of Economy and Finance and the Department of the Public Administration of the Prime Minister's Office have issued interpretative circular letter n° 1/DF, mainly focused on the scope of the new requirement.

In particular, as from 31 March 2015, invoices in hardcopy format will no longer be accepted by public administrations, nor will payment be possible, as transmission via the exchange system (ES) will be mandatory.

As expressly clarified, the e-invoicing obligation will apply to all public administrations and, thus, also to those entities not included in the list of the institutional units published on yearly basis by Istat (the National Institute of Statistics).

Clarifications on e-invoicing and the split payment mechanism

In response to objections from the CNA (the National Confederation of Crafts and Small and Medium Sized Businesses), the government officially replied to the following points:

- Possible simplifications to current VAT refund procedures;
- Possible derogations to the split payment regime, particularly in light of the additional e-invoicing requirements for suppliers of public administrations from 31 March 2015.

According to the government:

- No further simplifications to the VAT refund procedure are needed, as the VAT Law has already introduced several legal/administrative measures to facilitate and to speed up VAT refunds where the reverse charge or the split payment mechanism applies;
- There will be no derogations to the split payment regime for suppliers required to issue e-invoices to public administrations. On the other hand, the government does not seem to have excluded the possibility of derogations to the split payment regime in favor of non-profit organizations; at present this issue is being considered by the tax authorities.

Endorsement of conformity – Circular letter n° 7/E dated 26 February 2015

The tax authorities have officially confirmed that the checks linked to the release of the 'endorsement of conformity' (i.e., the conformity approval by a tax professional or by a statutory auditor), for exemption from the submission of the guarantee under the new VAT refund rules, will not change in terms of content and terms. Therefore, they are the same as ordinarily performed for the offsetting of VAT credits with other taxes.

In line with Circular letter n° 57/E dated 23 December 2009, the tax authorities have clarified that, even for VAT refund procedures, the above checks will still be focused on the VAT accounting and bookkeeping obligations in order to verify, from a formal point of view, that the declared VAT data match with the accounting data and that, in turn, the accounting data match the data reported on the relevant documents (i.e., invoices and additional supporting documentation).

In the light of the use of the 'endorsement of conformity' for VAT refund purposes, the tax authorities have stated that, in addition to the analysis focused on the origin of the VAT credit, it will also be checked that all the requirements and conditions according to the VAT refund law provisions are met.

Confindustria ask EU not to authorize application of reverse charge mechanism to large-scale retail businesses

As previously announced, the 2015 Stability Law introduced the reverse charge mechanism for sales of goods to hypermarkets, supermarkets and discount stores, the main objective of which is combat tax fraud. Implementation of the reverse charge mechanism is subject to the authorization of the European Council under Article 395 of the Principal VAT Directive.

On 9 March 2015, Confindustria (the Italian Manufacturers' Association) asked the EU not to authorize the mechanism, arguing that:

> "the main effect of the reverse charge is that suppliers will constantly accrue VAT credits that will be very hard to recover, especially in the Italian legal system. The suppliers of supermarkets, hypermarkets and discount stores, therefore, are especially worried about the possibility that the new rules might be approved by the EU's bodies, given the financial repercussions it would have on them".

Supreme Court decision in VAT fraud case

A recent decision of the Supreme Court concerned a company that, on the basis of false letters of intent, supplied cars without charging VAT (zero-rated) to 'exporters' who in fact did not export the vehicles, but supplied them on to Italian retailers, so that the cars did not leave Italian territory.

The Supreme Court held that the supplier was required to pay the VAT due, unless the supplier was able to prove that all reasonable measures aimed at avoiding tax fraud had been duly taken.

Supreme Court confirms right to VAT deduction following CJEU judgment

In a case dated 13 March 2015, the Supreme Court has returned to the dispute about formal violations linked to the accounting of intra-Community acquisitions by issuing a decision compliant with the principles previously stated by the Court of Justice of the European Union (in the case *Idexx Laboratories Italia Srl* (Case C- 590/13)).

Idexx Laboratories Italia was an Italian company, which, among other violations, had wrongly accounted for intra-Community purchase invoices, as VAT exempt transactions instead of as subject to VAT under the reverse charge mechanism.

The tax authorities had challenged that the failure to register was a breach that was not formal but substantive in nature.

In its judgment, the CJEU stated that the right to deduct the VAT payable in relation to the intra-Community acquisitions could not be denied to the Italian company on the ground that this did not satisfy the formal requirements laid down by national law in the implementation of Article 18(1)(d) and Article 22 of the Sixth Directive, as the tax authorities had all the information necessary to establish that the substantive requirements for the intra-Community acquisitions of goods had been satisfied.

In compliance with the CJEU's principles, the Supreme Court confirmed that when the substantive requirements governing the right of deduction are met, violations of the formal requirements will not cause the loss of that right. On the other hand, if these formal violations prevent the tax authorities from verifying compliance with the substantive requirements, the right of VAT deduction will be denied.

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Malta

Guidance on scope of 'electronically supplied services'

Since 1 January 2015, the place of supply of 'electronically supplied services' to a non-taxable person (B2C services) is the place where that person is located. The VAT authorities have published guidance on the definition and scope of 'electronically supplied services' in this context.

The guidance provides a non-exhaustive list of those services which shall not be regarded as e-services for the purposes of the application of the VAT legislation. The list includes, amongst others, the following:

- The offering of a facility for the placing of bets on the internet or via an electronic network in connection with live horse races and other live sporting events; and
- The offering of a facility for internet gambling pursuant to the streaming of a live casino event.

Pursuant to this interpretation, the new B2C place of supply rules for supplies of e-services will not apply to such supplies made by a service provider established outside Malta to a Maltese consumer.

Exemption from obligation to issue fiscal receipts for supplies made under MOSS

The legislator has introduced an exemption from the obligation to issue fiscal receipts with respect to supplies made under the mini one stop shop (MOSS): since 1 January 2015, businesses established outside Malta that are providing telecom, broadcasting or e-services to non-business customers in Malta under the MOSS are not required to issue fiscal receipts to their customers in respect of such supplies made.

Introduction of reduced VAT rate on books 'disseminated through electronic means'

The VAT rate applicable to books disseminated through electronic means was reduced from 18% to 5% to bring the rate in line with the VAT rate that applies to books published in paper format. The measure took effect retroactively, as from 1 January 2015.

The reduced rate applies solely to books supplied on physical means of support (such as audio books or books published on CDs, DVDs, SD-cards or USB drives). In accordance with the provisions of the EU VAT Directive and the CJEU's decisions in the cases referred to it by the European Commission in connection with the application of a reduced VAT rate to e-books by Luxembourg and France, the reduced rate does not apply to e-books downloaded/streamed from the internet or, more generally, to electronically supplied services.

Abolition of exemption from VAT registration for established persons

With effect from 1 January 2015, the rules regarding VAT registration for established persons have been amended. The VAT registration threshold for persons (whether natural or legal persons) established in Malta was abolished (previously a EUR 7,000 annual turnover threshold applied). As a consequence, these persons have to obtain a VAT registration as from their first VAT transaction in Malta. As a transitory measure, taxable persons providing taxable or exempt with credit supplies of goods/services that are currently not VAT registered must register or re-activate a previously held VAT number by 30 June 2015.

This measure will not impact non-established persons, as there is no threshold for their VAT registration in Malta.

Remission of interest and administrative penalties rules amended

On 28 March 2014, rules for the remission of interest (due by virtue of late payment of Malta VAT) had been introduced. In terms of these rules, the Commissioner for Revenue may, at his discretion, remit wholly or in part, any interest incurred by a taxpayer by virtue of late payment of VAT due if he is satisfied that the VAT due was not paid due to a reasonable cause.

The scope of the rules has now been extended to also cover administrative penalties that may become due under any of the provisions of article 37 to 41 of the Malta VAT Act (i.e., administrative penalties that may become due, for example, for failure to (timely) register for VAT, failure to (timely) submit a VAT return/EC Sales List, failure to correctly declare VAT due in a VAT Form 004, etc.).

The Commissioner for Revenue may impose additional conditions to allow the reduction of the interest/administrative penalties, such as:

- The requirement for no further defaults within a specified period; and
- The requirement to pay any outstanding VAT amount within a specified period.

It may also be possible to agree a payment plan with the VAT Department in respect of any outstanding VAT amounts.

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Poland

Court ruling expected on VAT bad debt relief provisions

The Polish Supreme Administrative Court is to rule on the bad debt relief provisions in the VAT legislation that applied until the end of 2012.

Prior to 1 January 2013, the conditions for bad debt relief did not state that when the seller claimed bad debt relief, the purchaser could not be in the process of liquidation. This additional requirement was added with effect from 1 January 2013.

There were doubts as to whether the amendment created a new regulation or just confirmed the status quo. As a result, the Polish tax authorities and administrative courts have issued a number of rulings where, with similar backgrounds, different conclusions were drawn.

The ruling to be issued by the SAC may provide an argument for taxpayers to adjust their previous settlements and decrease their output VAT using bad debt relief if their purchasers were in the process of liquidation.

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Portugal

Gambling tax

The draft law to regulate online gambling and betting in Portugal was approved by the government on 26 February 2015, but has not yet entered into force (it is still to be ratified by the President).

This Gambling Tax Law regulates gambling and betting activities in Portugal, including the requirements that an entity that develops such activities must comply with. Once the Law is in force, games of chance (including Black Jack/21, Slot, Poker, Roulette, among others), odds-type sports betting, and horse race betting provided online will be subject to gambling tax and therefore VAT exempt.

Reduction of reduced and intermediate VAT rates applicable in the Autonomous Region of Azores

The Azores Regional Government has announced that it intends to reduce this year the reduced and intermediate VAT rates from 5% to 4% and from 10% to 9%, respectively.

Agricultural producers regime

Following the VAT changes implemented by the Portuguese Budget Law for 2015, the Portuguese Tax Authorities (PTA) have issued an administrative ruling explaining the application of the agricultural producers' regime which, in general terms, exempts from VAT supplies made by agricultural producers that meet certain requirements. Also, agricultural producers that opt into this regime can benefit from compensation calculated through the sales price of certain goods and services. This compensation is intended to reduce the impact of the VAT paid on purchases.

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Slovenia

Introduction of special VAT arrangement for provision of occasional international road transport of passengers

A new special VAT arrangement for the provision of services for the occasional international road transport of passengers has been introduced in Slovenia, which will be effective as of 1 April 2015.

The arrangement is a simplification of the procedures for calculating and paying VAT on services related to international passenger services in the territory of Slovenia. Therefore, the simplification may be used by taxable persons established in other EU Member States or third countries under following conditions:

- The services of international road transport of passengers are only occasionally provided in Slovenia by vehicles not registered in Slovenia;
- The right for VAT deduction and VAT refund shall not be enforced; and

- The taxable person does not provide any other transactions that are be subject to VAT in Slovenia.

The use of the special arrangement is optional. However, if a taxable person fulfils the conditions for the use of the special arrangement and decides to apply it, the person must use the special arrangement for at least one tax period, namely one calendar year. The simultaneous use of the special arrangement and the general arrangement for calculating VAT in the same calendar year is not possible.

Action plan for introduction of fiscal cash registers approved by government

The action plan for the introduction of tax-certified cash registers, described in the February 2015 edition of this Newsletter, has been followed up by an official proposal for the Act on the verification of invoices. The proposal has been published for public consultation. It sets the date for the mandatory introduction of tax-certified cash registers as 1 October 2015.

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Switzerland

Proposal issued on VAT law revision

Federal Ministers have issued the proposal on the VAT law revision to the national parliament. The two parliamentary chambers typically amend and decide on such proposals within about six months. The application date for the final revision would be 1 January 2016 at the earliest.

Major changes proposed concern foreign persons doing business in Switzerland. Most foreign persons will be obliged to VAT register with the first Swiss Franc of turnover in Switzerland, provided their global turnover exceeds CHF 100,000 p.a. of VAT relevant supplies.

The proposal also aims to prevent foreign businesses exploiting the de-minimis limits for importations into Switzerland. The place of supply of goods will be deemed to be Switzerland if the business importing the goods generates more than CHF 100,000 from the supply of the goods, in which case the foreign business would be required to register for VAT in Switzerland.

All foreign persons doing business in Switzerland and the Principality of Liechtenstein remain obliged to appoint a Swiss resident fiscal representative.

In future, the supply of electronic journals and newspapers may be subject to the lower VAT rate of 2.5%. This proposal was unexpected, as it is inconsistent with recent responses to requests for the

lower rate to apply. It is believed that the interpretation of what an electronic service is and what an electronic newspaper is will become a challenge.

There are further numerous changes anticipated to the Swiss VAT law.

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United Kingdom

VAT grouping and offshore branches – changes in practice from 1 January 2016

The tax authorities (HMRC) have published guidance about the implications for UK VAT grouping following the CJEU's decision in the case of *Skandia America Corporation*. The guidance announces a change in practice that will take effect from 1 January 2016, from when UK VAT groups will be required to account for reverse charge VAT on supplies that are not exempt when received from an overseas establishment of a UK taxpayer (whether VAT grouped overseas or not) and that overseas establishment is in a Member State which applies 'Swedish style' VAT grouping (i.e., grouping of the local branch rather than the entity as a whole, as is the case in the UK).

The current requirement to account for VAT on the basis of the cost of certain services bought in through an overseas establishment will not apply in cases where reverse charge VAT is payable (based on the actual charge). It appears that no change is contemplated in cases where supplies originate outside the EU and in EU countries that either do not operate VAT groups or operate them on the same basis as the UK.

Court of Appeal judgment in VAT 'restitution' claims

The Court of Appeal has delivered its judgment in the case of *Investment Trust Companies*, in which the investment trusts are seeking refunds from the tax authorities of VAT that was found to have been wrongly charged by the managers of the trusts. In the High Court, Henderson J decided that the trusts had a restitutionary claim for the full amount of VAT paid by them to the managers, rather than the lower amount paid to the tax authorities by the managers (after allowing for the recovery of related input VAT) but that by analogy with the VAT Act 1994, those claims were capped applying the then three-year limitation period.

The Court of Appeal allowed appeals by HMRC against the finding that it was liable to repay a sum equal to the input tax claimed by the managers (which reduced the amounts repaid to them, and on to the trusts in the 'in time' periods) and by the trusts, against the finding that the restitutionary claims were time limited in the same way as a VAT Act claim.

Consultation on removal of manual customs declarations

Currently, importers and exporters can submit customs declarations for non-EU freight in a paper (manual) format.

HMRC wish to remove this route **and is asking for comments (by 5 June 2015) on the impact on businesses and the public of removing manual customs declarations for imported and exported goods**.

HMRC would like to hear from all those involved in the import and export of non-EU goods into and from the UK who currently submit manual customs declarations.

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