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Global Indirect Tax News

Your reference for indirect tax and global trade matters

Welcome to the January 2016 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Highlights of this edition include news regarding the relief of sanctions against Iran, the publication of the Delegated Act and Implementing Act of the EU Union Customs Code, an increase to the VAT registration threshold in Finland, future VAT rate increases in Italy, and the future implementation in Poland of the Single Audit File (SAF-T).

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

David Raistrick
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January 2016

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From 1 January 2016, only private dwellings that are in use for at least 10 years (previously 5) can benefit from the 6% VAT rate for renovation.

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There have been amendments to the Croatian VAT Regulations with effect from 8 December 2015; the most important of which relate to the treatment of food donations and the taxation of exchange rate differences in financial leasing arrangements.

Finland

There was an increase in the VAT registration threshold with effect from 1 January 2016.

There has been a court ruling on the right to deduct input VAT on purchases related to services both in scope and out of the scope of VAT.

A case concerning the deductibility of overhead costs has been resolved by the principle of protection of legitimate expectations.

There has been a case regarding the VAT liability of a non-profit organization.

France

The CJEU has ruled that airlines must pay VAT on sums paid for tickets that passengers did not use.

Gulf Cooperation Council

There have been recent reports and announcements in relation to the implementation of VAT in Gulf Cooperation Council member states.

Hungary

There has been a CJEU judgment on whether a cross-border licensing structure is ‘abusive’.

Italy

Stability Law 2016 has been published in the Official Gazette, including changes to the credit note rules, the statute of limitations and the VAT rates.

Italy is taking part in the Cross Border Rulings pilot project, set up by the EU VAT Forum.

Guidelines have been issued for drafting the Single Administrative Document.

Customs has set up a database of end-use authorizations.

Customs has issued a circular regarding payment via bank or postal transfer.

There has been clarification of some news on rulings and tax litigation, and of liability for administrative penalties.

Netherlands

There has been a CJEU judgment on the VAT treatment of the management of real estate investment funds.

Parliament has asked a third party to research whether the difference between the VAT treatment of Defined Contribution and Defined Benefits pension funds is justified based on CJEU case law.

Poland

A general ruling has been issued regarding the VAT rate for spare parts for medical devices.

The Single Audit File (SAF-T) is to be implemented in Poland from as early as July 2016.

There has been an Advocate General's opinion in a CJEU case regarding the application of the VAT exemption for insurance services.

Portugal

Local government authorities and other entities under public law shall not be regarded as a taxable person in respect of the activity of solid waste management if they engage in the provision of these services as public authorities where the daily production of solid waste does not exceed 1,100 liters/ person.

There has been clarification that fees charged for real estate valuation under the management of credit guarantees are VAT exempt.

Ukraine

The temporary import surcharge has been abolished.

United Kingdom

New regulations deal with partial exemption and overseas branches, following the CJEU decision in the French case of *Société le Crédit Lyonnais*.

Local authorities lose the 'car parking VAT' case in the Court of Appeal.

HMRC have released further guidance on VAT groups and the *Skandia America* judgment.

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Trade Preferences

EU-Iran

From 16 January 2016, some of the EU sanctions against Iran have been lifted following the 'Implementation Day' of the Joint Comprehensive Plan of Action.

EU-Vietnam

The EU-Vietnam Free Trade Agreement has been signed and concluded.

Ukraine

There have been changes to the trade regime with the Russian Federation.

The DCFTA between Ukraine and EU became operative from 1 January 2016.

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Americas

Costa Rica

New technical regulation on pharmaceutical products and human medicinal products (imported and domestically produced)

Executive Decree no. 39294-S, published in Section no. 101 of the Official Gazette on 26 November 2015, brought into force the new technical regulation “RTCR 470: 2014 Pharmaceutical products, human medicinal products. Administrative provisions on bioequivalence, intellectual property, homeopathic medicines and sanitary registration and import”.

The technical regulation extends the provisions of the Central American technical regulation “RTCA 03.11.59: 11 Pharmaceutical products. Human medicinal products. Sanitary registration requirements”, by establishing national provisions on intellectual property, therapeutic equivalence and administrative requirements under which sanitary registration is granted for human medical products and homeopathic medicines.

The new regulation applies to human medicinal products sold in Costa Rica, whether imported or domestically produced, except for magistral formulae.

Biological and biotechnological medicinal products must be registered under the terms of the new technical regulation, technical regulation “RTCR 440: 2010 Regulations for the Registration and Control of Biological Medicines”, and the Central American Technical Regulation “RTCA 03.11.59: 11 Pharmaceutical products. Human medicinal products. Sanitary registration requirements”.

Finally, the Decree repealed Decree no. 28466-S (2000), which refers to “Regulations for the Registration, Control, Import and Advertising of Medicines”, with effect from 26 November 2015.

The new technical regulation enters into force from its publication in the Official Gazette.

Implications of the new regulation

Costa Rican companies that export, distribute, market, prescribe and/ or promote medicinal products for human use will need to comply with the provisions of this new national technical regulation and the respective Central American technical regulations, in order to undertake the corresponding sanitary registration of products with competent authorities, previously the import and customs clearance in Costa Rica.

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United States

City of Chicago Personal Property Lease Tax amendment

As part of the Chicago 2016 Budget Proposal, Mayor Emanuel recently signed the 2016 Revenue Ordinance (SO2015-7403). SO2015-7403 amended various sections of the Chicago Revenue Ordinance, including the following changes made specifically to Chicago Revenue Ordinance Article I, titled the 'Personal Property Lease Transaction Tax' (Lease Tax), as applied to cloud computing (i.e., nonpossessory computer leases):

- The amendment of the Lease Tax to codify the specific application of the Illinois Mobile Telecommunication sourcing rules for determining which customers and charges are subject to the tax where a user accesses the provider's computer from a mobile device.
- A reduction in the tax rate from 9% to 5.25% for cloud-based services where customers access their own data or information.
- The addition of a 'small new business' exemption from the Lease Tax.

The small new business exemption and tax rate reduction were both effective 1 January 2016, while the sourcing amendment was effective upon passage and publication of SO2015-7403.

See **Multistate tax alert** of 16 December 2015 for more details.

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Trade Preferences

United States-Iran

Relief of U.S. sanctions against Iran

On 16 January 2016, the Joint Comprehensive Plan of Action (JCPOA) was fully implemented between the U.S. and Iran after the International Atomic Energy Agency (IAEA) verified that Iran has implemented its key nuclear-related measures. Therefore, the U.S. Office of Foreign Asset Controls (OFAC) has lifted certain sanctions on Iran. Specifically, OFAC has removed 'secondary' sanctions on non-U.S. persons outside of the U.S (generally including foreign subsidiaries but not branches of U.S. parent companies) related to financial, banking and insurance activities, as well as certain sanctions in the areas of energy and petrochemicals, shipping, precious metals, industrial metals, commercial aircraft and automotive. OFAC implemented a new General License H to allow for these non-U.S. persons to engage in these activities with Iran. Additionally, OFAC established a new general license to allow for the import into the U.S. of Iranian-origin carpets and certain foodstuffs. OFAC has also made revisions to its List of Specially Designated Nationals (SDN) and Blocked Persons, Foreign Sanctions Evaders List and/ or Non-SDN Iran Sanctions Act List to remove certain individuals and entities. To assist the community, OFAC has published a number of guidance documents to provide further details on the changes to the sanctions on Iran.

The 'primary' sanctions and U.S. controls on the export or re-export of goods, technology, and services to Iran per the OFAC, Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), for the most part remain in place. In addition, U.S.

companies are still faced with the difficulties of operating in Iran and entering this market, including remaining restrictions on U.S. dollar clearing and the lack of access between the U.S. and Iranian financial systems, the regulatory and political obstacles in Iran, and expected stringent enforcement for sanctions violations from the U.S. authorities.

See also **Relief of EU sanctions against Iran**.

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Asia Pacific

India

Expenditure for pre-delivery inspection and after sale service not included in value for paying excise duty

Excise duty is payable on the transaction value, which covers within its purview the price of the goods and includes any amount that the buyer is liable to pay by reason of sale or in connection with sale.

In this case, the assessee is a two-wheeled motor vehicle manufacturing company. The arrangement of the assesse with their dealer was such that services of pre-delivery inspection and after sale service were to be undertaken by the dealer on their own account. The tax authorities proposed to include the said expenditures in the transaction value of the assessee for the purpose of charging excise duty, on the ground that such expenses incurred by the dealer from the margin allowed to them by the assessee were selling expenses of the manufacturer assessee.

The Supreme Court observed that the services of pre-delivery inspection and after sale service were provided by the dealers on their own account and not on behalf of the assessee. The court further pointed out that where the assessee has sold his goods to his dealer and the dealer thereafter incurs expenditure on after sale service, the same cannot be added back to the sale price charged by the assessee

from the dealer for computing value. This was more so, where after sale service was many weeks after the goods were sold.

Thus, the court held that expenditure on pre-delivery inspection and after sale service were not to be included in the value for excise duty purposes.

Previously, the Larger Bench of Tribunal and Bombay High Court had taken contradictory views on this issue. Therefore, this decision of the Supreme Court will now settle this issue once and for all, thereby bringing welcome relief for the industry.

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Kazakhstan

Export customs duty rates on crude oil

The Ministry for the National Economy issued Order № 18 on 20 January 2016 reducing export customs duty rates on crude oil from USD 60 per tonne to USD 40 per tonne.

The Order came into force the day after its official publication, which was on the **www.adilet.zan.kz** website on 22 January 2016, and covers relations arising from 1 January 2016.

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Malaysia

Amendments to GST regulations and orders

Amendments to the GST Regulations, GST Relief Order, GST Exempt Supply Order and GST Zero Rated Supply Order have recently been published in the Malaysia Federal Gazette. The amendments took effect from 1 January 2016.

Below is a summary of Deloitte Malaysia’s understanding, at this stage, of the key changes.

No.	Legislation	Changes	Deloitte comment
	GST Exempt Supply Order Item 22, Second Schedule	Additional exemption on passenger transportation in aircraft of economy class operated by an operator for the route specified under the Rural Air Services (RAS) Agreement.	This is consistent with the Budget 2016 announcement. According to the information from Ministry of Transport on RAS, the currently appointed operator to provide air services on specified routes within and between Sarawak, Sabah and Labuan is MASWings. Only economy class domestic fares on routes within East Malaysia, by the operator under the RAS Agreement, are exempted from GST. The exemption does not extend to other transport services undertaken by MASWings within East Malaysia.
1.	GST Zero Rated Supply Order Item 2, First Schedule	Addition of controlled drugs, medical devices and some other vegetables and basic food items into the zero rated list.	This is consistent with the Budget 2016 announcement. Several items such as peas (Pisum sativum) and manioc (cassava) were removed from the list at the same time.
2.	GST Zero Rated Supply Order Item 23, Second Schedule	Services comprising the arranging of "*inbound tours*" have been removed from the zero rated list.	This indicates these services should be standard rated from 1 January 2016.
3.	GST Zero Rated Supply Order Item 27, Second Schedule	Expansion of zero rating for online services for newspapers to include journals and certain reading materials.	Online journals and reading materials under tariff codes 4905.91.000 and 4911.99.300 should be zero rated from 1 January 2016.
4.	GST Relief Order Item 5(c), First Schedule	The words "*Universities and University Colleges Act 1971* (UUCA)" have been deleted; and the person to sign the	Institutions established under the UUCA may no longer enjoy GST relief when

		relief certificate has been changed to the DG of Higher Education or any other officer authorized by him. The relief for acquisitions of the specified teaching aids has also been extended to Skills Training Providers that conduct training programs accredited under the National Skills Development Act 2006.	acquiring the specified teaching aids. In addition, the institution's vice chancellor may no longer be authorized to sign the relief certificate, and there may be additional time and process required to obtain the approval from DG of Higher Education.
5.	GST Relief Order Item 16, First Schedule	Relief is now given to the re-importation of goods after being exported for promotion, research or exhibition; or under lease, hire and rental contract.	This is consistent with the Budget 2016 announcement.
6.	GST Relief Order Item 1&3, Second Schedule	No relief certificate is required for fundraising activities and purchases at duty free shops.	Relief on the goods and services supplied in a fund raising event would still be subject to approval from the Director General of the Royal Malaysian Customs Department, among other conditions.
7.	GST Regulations – Regulation 38(1)(e)	The timing for claiming input tax credit in relation to imported services has been revised to either the payment date or invoice date, depending on which date is applied when accounting for the output tax.	This is a significantly improved outcome as it seems to align with the proposed changes on time of supply for imported services and consequently there should be no timing difference between accounting for output tax and claiming input tax under the reverse charge regime. As a result, the reverse charge process may now be simply a paper trail rather than causing a cash flow consequence.

8.	GST Regulations – Regulation 41	Treatment of financial supplies as *incidental* financial supplies is no longer available in respect of such supplies made by investment holding companies.	Investment holding companies may become mixed suppliers following this change, with the result that partial exemption, annual adjustment and capital goods adjustments may be applicable. This is potentially a significant change for these entities.
9.	GST Regulations – Regulation 58	This amendment provides for the rewording of "*registered person*" to "*taxable person*" and deletion of sub-paragraph (e) that describes the period of capital goods adjustments.	Capital goods adjustments (for mixed suppliers) should now apply when a person is registered or liable to be registered, as opposed to under the old provision where the same adjustments are only applicable **after** a person is registered for GST.
10.	GST Regulations – Regulation 91	Minor rephrase to clarify that a registered person can apply for the Approved Toll Manufacturer Scheme if the **total** value of supplies made to **any** person who belongs in a country other than Malaysia is above MYR 2 million.	This clears the previous confusion over whether each supply to a foreign person would need to exceed MYR 2 million in order to participate in ATMS.

The relevant legislation is available here:

- **GST (Amendment) (No. 2) Regulations 2015**
- **GST (Exempt Supply) (Amendment) (No. 2) Order 2015**
- **GST (Zero-Rated Supply) (Amendment) (No. 2) Order 2015**
- **GST (Relief) (Amendment) (No. 2) Order 2015.**

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New Customs online system for declaration, payment and clearance

uCustoms is a new Customs online system developed by the Royal Malaysian Customs to serve as the country's National Single Window for the declaration, payment and clearance of goods. Upon full implementation, uCustoms will effectively replace the current Customs system, i.e., Sistem Maklumat Kastam (SMK), which is not fully automated.

Under the new Customs online system, traders will be able to manage permit/ licensing and Certificate of Origin applications including the payment of customs duties and border taxes. The system will also be integrated with relevant trade-related agencies in order to facilitate relevant import/ export approvals. With consistent operating procedures, minimal people intervention and accessible via the Internet, uCustoms is intended to ease the process for the declaration of goods and payment of customs duties/ taxes at the Customs checkpoints in Malaysia.

The roll out for the Registration and Broker Affairs Module scheduled for January 2016 has been postponed due to technical issues. uCustoms is expected to go live in January 2017.

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Singapore

Revised security requirements for liquor and tobacco products

Traders or their appointed Declaring Agent are currently required to furnish security to Singapore Customs for the importation or payment of duty of dutiable goods.

With effect from 1 April 2016, traders or their Declaring Agent will also be required to furnish security to Singapore Customs for the following types of cargo movement involving liquor or tobacco products:

- Movement between Licensed Warehouses
- Export from Licensed Warehouse by sea or air
- Import for re-export by road

- Transhipment under 'Through' Bill of Lading or Air Waybill through Customs territory with outward movement by road
- Transhipment under 'Non-Through' Bill of Lading or Air Waybill through Customs territory with outward movement by road
- Export from Licensed Warehouse by road.

All traders and their Declaring Agents must ensure that sufficient security is lodged with Singapore Customs by 1 April 2016 to ensure timely processing of the relevant TradeNet® permit(s).

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Trade Preferences

China-Australia

China-Australia Free Trade Agreement entered into force on 20 December 2015

The China-Australia FTA (ChAFTA) entered into force on 20 December 2015. Upon entry into force, the ChAFTA will mean that:

- 86% of Australia's exports to China will be duty free, with the percentage increasing to 96% by 1 January 2029.
- 82% of China's exports to Australia will be duty free, with the percentage increasing to 100% by 1 January 2019.

China will have greater access to natural resources and finished products like high-quality food. Australia will also benefit from reduced duty rates on Chinese-made goods such as clothing.

To take advantage of preferential tariffs under ChAFTA, the imported goods must satisfy the Rules of Origin, and be evidenced with either:

- A preferential Certificate of Origin from the issuing authorities, or
- A Declaration of Origin issued by the supplier who has obtained an advance ruling issued by the Customs authority in the importing country.

ChAFTA permits retrospective Certificates of Origin to be issued within 12 months of the date of export provided there is a 'valid reason' as defined in the text of ChAFTA. However, interest cannot be recovered upon refund of overpaid duties, if any.

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Kazakhstan

Kazakhstan's accession to World Trade Organization

Resolution of Eurasian Economic Commission Board № 59 dated 14 October 2015 approved the list of goods in respect of which Kazakhstan applies import customs duty rates lower than CCT EEU (1,347 commodities) and amounts of such import duty rates in accordance with the commitments accepted as a condition of joining the World Trade Organization (the 'reduced rates').

The full text of the document can be found on the official EEC website and EEU legal portal.

The Resolution entered into force 11 January 2016.

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Korea

South Korea's three bilateral FTAs with China, Vietnam and New Zealand entered into force on 20 December 2015

The Korea-China FTA (CKFTA), Korea-Vietnam FTA (VKFTA), and Korea-New Zealand FTA (KNZFTA) entered into force on 20 December 2015.

The following table summarizes highlights of the tariff reductions for the above mentioned Free Trade Agreements:

	Highlights of tariff reductions schedules:
CKFTA	• Immediate tariff reductions for 50% of Korea's and 20% of China's tariff lines starting 20 December 2015. • More than 90% of all products traded between the 2 countries will be eliminated over a period of 20 years.
VKFTA	• 95.4% of Korea's tariff lines and 89.9% of Vietnam's tariff lines will have their tariffs eliminated within 15 years from 20 December 2015. • Most Vietnamese textile and garment products exported to Korea will enjoy tariffs of 0% instead of 8-13%.
KNZFTA	• Immediate tariff reductions for 76.5% of Korea's and 85.7% of New Zealand's tariff lines. • 98% of Korea's and 100% of New Zealand's tariff lines will have their tariffs eliminated upon full implementation of the KNZFTA.

In addition to immediate tariff eliminations/ reductions for certain tariff lines on 20 December 2015, the second round of tariff reduction started on 1 January 2016.

The three FTAs are expected to bring about a 1% increase of GDP, a USD 15.1 billion improvement in customer benefit, the creation of 55,000 jobs, and a USD 600 million improvement in the trade balance to Korea.

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Vietnam

Vietnam to reduce import tariffs on auto parts by 2016

Under the ASEAN Trade in Goods Agreement (ATIGA), the Vietnam Ministry of Finance has proposed to eliminate import tariffs for various automobile parts and spare parts by the end of 2016, two years ahead of schedule in 2018.

In addition, the import tariffs are also lowered under the ASEAN FTA with Korea, Japan and China, whereby:

- Import tariffs on vehicle engines imported from South Korea will be reduced to 3% from 20% in 2016.
- Import tariffs on gearboxes and accessories used in trucks imported from South Korea and Japan will be reduced to 0% in 2016, ahead of the originally planned schedules of 2018 and 2019.
- Import tariffs on auto parts from China will be 0% by 2018.

The tariff reductions are aimed at supporting the development of Vietnam's automotive industry.

EU-Vietnam Free Trade Agreement signed and concluded

The European Union (EU) and Vietnam officially signed the EU-Vietnam Free Trade Agreement (EVFTA) on 2 December 2015, after 14 rounds of intensive negotiations which began in 2012. Both parties agree to complete the ratification process on the deal as soon as possible for the FTA to take effect from the beginning of 2018. Vietnam is the second ASEAN country to sign an FTA with the EU, after Singapore in 2014.

Under the EVFTA, the parties shall eliminate over 99% of all customs tariffs. Vietnam's commitment is to liberalize 65% of import duties on EU exports upon implementation, and the remaining tariffs over a 10-year period. The EU tariffs will be eliminated over a 7-year period. For remaining tariff lines, both parties will grant each other certain tariff quota or partial tariff reductions.

Major Vietnamese export products qualifying for EU preferential tariffs include textile products, footwear, seafood, rice products, and some agricultural products. In return, Vietnam will remove/ reduce tariffs on EU consumer electronics, automobiles, drugs and medicines, textile fabric, alcohol and various meats.

The agreement also covers non-tariff barriers to trade and other trade-related aspects such as public procurement, regulatory issues, competition policies, services, investment, intellectual property rights, and sustainable development.

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EMEA

European Union

Delegated Act and Implementing Act of the Union Customs Code

The Delegated Act (DA) and the Implementing Act (IA) of the Union Customs Code (UCC) were officially published on 29 December 2015.

These regulations entered into force on 18 January 2016, the 20th day following the date of publication. The IA and DA will apply as of 1 May 2016.

The Regulations can be found in the **Official Journal of the European Union L 343**.

In addition to the DA and IA, the European Commission also adopted a delegated act to provide for transitional rules for economic operators and customs authorities pending the introduction of new IT systems. This is the so-called Transitional Delegated Act (TDA). It is expected that not all Member States will have their IT systems updated and running as required based on the UCC before 1 May 2016. This will mean that economic operators will have to exchange data, etc. with the customs authorities in an alternative way. Therefore the TDA provides for transitional provisions on the exchange and storage of data in the absence of certain IT systems. The Act lays down rules for, amongst others, the use of existing systems or the use of paper forms, to allow implementation of the UCC while work continues on the development and deployment of the relevant IT systems. These transitional rules will

apply from 1 May 2016 until the respective IT system has been updated or deployed. The last system should however (according to planning) be deployed at the end of 2020.

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2016 Commodity Codes

The European Commission has recently published the Combined Nomenclature applicable as of 1 January 2016. As a consequence, from 1 January 2016 the new commodity codes must be used for customs operations, Intrastat declarations, etc.

The Combined Nomenclature is available in **Commission Implementing Regulation (EU) 2015/1754**.

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Belgium

Belgian VAT code aligned with *Skandia* case

In the *Skandia* case, the Court of Justice of the European Union ruled that supplies of services from an overseas head office to a branch, which is part of a VAT group in an EU Member State, should be subject to VAT.

In the past, such supplies remained untaxed as the head office and branch are part of the same legal person.

The government has now abolished a specific anti-abuse rule that aimed to tax recharges from a foreign establishment into a Belgian VAT group. This legislative change confirms that the taxation of such internal recharges has become the general rule.

Supplies from an overseas head office to a branch were in the past considered outside the scope of VAT (the CJEU case, *FCE Bank*), as the head office and branch constitute one legal person.

In order to counter abusive recharges, the Belgian VAT code laid down an anti-abuse measure stating that services supplied by an oversees head office to a branch are taxable if the branch formed part of a VAT group. It was, however, accepted that the anti-channelling measure

only applied if the branch recharged the services to other members of the VAT group.

In the 2014 *Skandia* case, the CJEU ruled that supplies of services from an overseas head office to a branch, which is part of a VAT group in a Member State, should be subject to VAT.

The *Skandia* judgment therefore makes the anti-abuse measure redundant, so it has been removed from the Belgian VAT code.

Since 1 July 2015, the Belgian tax authorities have been applying the *Skandia* case, in accordance with which all services between a head office and branch are subject to VAT even when no recharge is made to other members of the VAT group.

Reduced VAT rate of 6% for construction and renovation of school buildings

From 1 January 2016, the transfer of ownership and the transfer of 'rights in rem' subject to VAT, renovation work, and immovable leases of school buildings destined for VAT exempt education can benefit from the reduced 6% VAT rate.

From 1 January 2016, the VAT rate of 6% (instead of 21%) can apply to the below transactions related to school buildings used for VAT exempt education:

- The supply of ownership and the supply of rights in rem subject to VAT. The latter implies that the 6% rate can only apply if the transfer of ownership or the establishment of the right in rem takes place before 31 December of the second year after the building has been occupied.
- Immovable work with the exception of cleaning.
- An immovable lease of a school building subject to VAT.

Reduced VAT rate for renovation of private dwellings

From 1 January 2016 only private dwellings that are in use for at least 10 years can benefit from the 6% VAT rate for renovation; in the past 5 years sufficed. There is a transitory period for buildings in use between 5 and 10 years.

One of the conditions that must be met to benefit from the reduced 6% rate for renovation work on private dwellings is that a certain number of years must have passed since the first time the building was put into use. As from 2016 this condition increased from 5 to 10 years.

The authorities introduced transitional measures for renovation works to private dwellings in use between 5 and 10 years (i.e., in use since 2007, 2008, 2009 and 2010). Buildings which qualify for the 6% rate under the old rules and for which the renovation works are subject to an agreement with a fixed date before 2016, or subject to a building permit or a building notification filed before 2016, can continue to benefit from the 6% rate if the invoices are ultimately issued on 31 December 2017.

In principle, the new condition should have been applied as from 1 January 2016. However, as the legislation is not yet published, the old rules can still be applied at present.

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Croatia

Amendments to VAT Regulations

Amendments to the Croatian VAT Regulations entered into force on 8 December 2015. The most important amendments relate to the tax treatment of food donations and taxation of exchange rate differences in financial leasing arrangements. Other amendments provide a clarification on the tax base elements for motor vehicle transactions, and introduce new rules on the exemption of goods imported for the benefit of disaster victims and proportional input VAT deduction.

Food donations

From 8 December 2015, the VAT Regulations prescribe that the donation of food, undertaken to prevent its destruction, protect the environment and provide aid to end users pursuant to special regulations governing the donation of food, exclusively to non-profit entities who participate in the food donation chain, of up to 2% of the taxpayer’s previous year revenues, are not subject to VAT in Croatia.

Food donations that do not exceed 2% of the taxpayer's previous year revenues would also not be subject to VAT when given directly to private individuals in case of natural disasters, provided that such donations are carried out in accordance with the relevant regulations.

Accordingly, all other food donations under normal circumstances (excluding natural disasters), i.e., those given to recipients who are not non-profit entities participating in the food donation chain and those for an amount above 2% of the taxpayer's revenues, would be subject to VAT.

Under the new rules, taxpayers that make food donations free of charge must report those on the prescribed form – 'Report on executed donations' (DONH Form).

Exchange rate differences

The amendments to the VAT Regulations prescribe that exchange rate differences, arising from a currency clause, following the delivery of the goods under a financial lease are regarded as an element of a financing service (interest) and are VAT exempt.

Other amendments

The new rules clarify that the VAT tax base for motor vehicle transactions should not include the special tax on motor vehicles if a vendor is a registered motor vehicle vendor or a leasing company, provided that it does not purchase the motor vehicles for its own purposes, but for further sales.

The amendments also introduced new rules requiring the possession of a certified CIM (a bill of lading) as proof of the VAT exemption for the rail transport of goods, when a transit procedure is applied. Also, when applying the export exemption, taxpayers should ensure appropriate documentation. By use of the paper customs declaration, the proof of exportation for VAT purposes is the original declaration certified by the exiting customs office. The amendments abolish (from 8 December 2015) the VAT exemption for imports of materials and equipment for the rebuilding of disaster affected areas carried out by authorized institutions and humanitarian and charitable legal entities.

Finally, from 8 December 2015, the VAT Regulations prescribe that all taxpayers, irrespective of their reporting period (monthly or quarterly),

must deduct input VAT during the first reporting period of the current year on the basis of pro-rata assessed in the December VAT return. Prior to the amendments, taxpayers who filed VAT returns on monthly basis were allowed to apply the previous year pro-rata when deducting input VAT during the first reporting period of the current year.

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Finland

Increase in VAT registration threshold from 1 January 2016

From 1 January 2016, the VAT registration threshold increased from EUR 8,500 to EUR 10,000 and the second threshold (graduated relief from output VAT) from EUR 22,500 to EUR 30,000.

Where they have exceeded the registration threshold of EUR 10,000, small businesses must be registered and pay VAT, but a graduated relief (from output VAT) is available until they reach a second threshold of EUR 30,000. That relief decreases as turnover increases.

Right to deduct input VAT on purchases related to services in scope and out of scope of VAT

On 22 December 2015, the Finnish Supreme Administrative Court (SAC) gave a ruling (KHO:2015:184) which considered a co-operative enterprise's right to deduct input VAT on its purchases made during the fiscal years 2008 and 2010.

Co-operative Enterprise A had four subsidiaries (Company B, Company C, Company D and Company E) in the 2008 year. The subsidiaries undertook businesses in scope and out of scope of VAT. In 2010 Co-operative Enterprise A also had subsidiary Company F. Company F was a mutual real estate company and Co-operative Enterprise A was its only shareholder. Co-operative Enterprise A undertook rental business in scope of VAT via Company F. Co-operative Enterprise A sold administrative services in scope of VAT to Companies B and C, which were only undertaking business out of scope of VAT. In addition, Co-operative Enterprise A received dividend income from its subsidiaries.

Co-operative Enterprise A employed two people. According to Co-operative Enterprise A, during year 2008, 15% and during year 2010, 45% of its personnel's time (i.e., the labor input) was related to the business in scope of VAT (i.e., administrative services and rental business).

According to the earlier decision of the Finnish Administrative Court, Co-operative Enterprise A had a right to deduct 15% of the VAT for the year 2008 based on the labor input and also the corresponding share of the co-operative enterprise's overhead cost. In total, the deductible part of the VAT for the year 2008 was 27.75%. For the year 2010, in total 69.85% was considered as deductible based on the same method.

The SAC confirmed that the labor input could be used to determine the VAT deductible part of the costs.

Deductibility of overhead costs resolved by principle of protection of legitimate expectations

In a ruling of the SAC (KHO:2015:183), Company A was a parent company of a group of companies. Company A had many subsidiaries and associated companies during the period in question. Company A provided taxable administrative services to three of these companies. For other companies, Company A acted as a mere holding company. In addition, Company A undertook other operations in and out of scope of VAT (e.g., taxable and VAT exempt rental business and acting as a parent company). Dividends derived from the subsidiaries and associated companies formed the majority of Company A's income. Company A had on average three employees.

Company A had fully deducted the VAT related to its overhead costs. During a tax audit, the deductible part of the overhead costs had been calculated based on the relation between Company A's taxable income and its total revenues (including also interest and dividends derived from the subsidiaries and other companies). Company A complained, and claimed that the deductible part should be calculated based on the relation between its taxable and tax exempt income (i.e., by excluding interest and dividends from the tax exempt income).

According to the SAC, neither of the allocation methods of VAT deductions presented (by Company A or the tax authorities) were fully in compliance with the Finnish VAT Act. However, the SAC considered that as Company A had acted in accordance with the current taxation practice at the time when it had fully deducted the VAT related to the overhead costs, the question should have been solved to the benefit of the taxpayer by the Finnish VAT act 176 § concerning the principle of protection of legitimate expectations. Therefore, the appeal of Company A was approved.

VAT liability of a non-profit organization

On 14 December 2015, the SAC gave a ruling (KHO:2015:179) concerning a non-profit organization A, which transferred its rehabilitation services to Company B. Company B was a subsidiary of a subsidiary to the non-profit organization A. After the transfer non-profit organization A began to charge support services related to the rehabilitation services (e.g., calculation, data administration, communication and management services) to Company B, as the work was done by the non-profit organization A's own staff. The services were charged on a cost price.

The SAC considered that the supply of support services was in the form of business intended in the Finnish VAT Act 1 §, but the income received from the sale of the support services was not considered as business income for the non-profit organization intended in the Finnish VAT Act 4 §. Therefore, the non-profit organization A was not liable for VAT for the sale of support services to Company B. The fact that A had voluntarily opted for VAT for its forestry business did not have an effect on the decision, as the income derived from the forestry business could be easily separated from the support services which were rendered to Company B.

Before this decision, the fact that a non-profit organization had voluntarily opted for VAT on a certain business area, triggered automatically a VAT liability for other business areas as well, when carried out in the form of business intended in the Finnish VAT Act.

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France

CJEU rules that airlines must pay VAT on sums paid for tickets that passengers did not use

The Court of Justice of the European Union has delivered its judgment in the joined cases of *Air France-KLM* and *Hop!-Brit Air SAS*.

It decided that the airlines had to pay VAT on sums paid for tickets that passengers did not use where they are unable to obtain a refund for these tickets (non-refundable tickets or exchangeable tickets that have expired). According to the Court, the sum retained by the airline companies is not intended to compensate for prejudice, but constitutes remuneration for a service, even where the passenger did not actually use the transport. In exchange for the price paid when the ticket was purchased, the passenger is considered as obtaining the right to benefit from the transport services.

This judgment supplements previous case law by the CJEU in the case *Sociéte thermale d'Eugenie-Les-Bains*. This decision should be distinguished from that earlier decision, where deposits (as defined under Article 1590 of the French Code Civil (Civil Code)) retained by a hotelier when a cancellation option was exercised by the customer were found to be outside the scope of VAT as compensation.

Companies active in the hotel, transport or leisure business that retain amounts for unconsumed services should carefully review the terms governing the cancellation conditions to determine whether or not they have to pay VAT on these amounts.

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Gulf Cooperation Council

Reports and announcements on VAT

There have been recent reports and announcements in relation to the implementation of VAT in Gulf Cooperation Council (GCC) member states (comprising of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE).

The Minister of Finance of Saudi Arabia was quoted in December 2015 saying that the Kingdom is intending to introduce VAT in two years. In addition, UAE officials have recently made a number of announcements that would generally suggest that VAT will be implemented in 2018. Also, a member of the Majlis Al Shura's Economic Committee in Oman was recently quoted saying that "Implementation of VAT is in the final stages. Oman is working out a mechanism on how to collect the tax. So, by the mid-2017, we can expect VAT being introduced in Oman".

These recent announcements by the three GCC member states officials reflect the fact that VAT implementation is no longer a matter of press speculation, and that the GCC States are moving, meaningfully, towards a decision on implementation. Bearing these factors in mind, any move to implement VAT in the GCC will be announced well in advance. Updates on developments will be provided in future editions of this newsletter.

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Hungary

CJEU judgment on whether cross-border licensing structure is 'abusive'

The Court of Justice of the European Union delivered its judgment in a case related to a Hungarian company. The case dealt with the legislation related to the place of supply of services performed by electronic means and the abuse of rights related to this issue.

WebMindLicenses Ltd (WML), a Hungarian company, concluded a leasing agreement with a Portuguese company (seated in Madeira) regarding the know-how of a website. Subsequently, the Portuguese company provided services through the website to private individual customers. Therefore, in line with the VAT legislation in force during the audited period, these services were subject to Portuguese VAT, and a lower VAT rate than the Hungarian one.

During the tax audit for the period of 2009-2011 the Hungarian tax authorities assessed a HUF 21.5 billion tax underpayment. The Hungarian tax authorities supported their findings by the fact that the utilization of the know-how was not performed for and on behalf of the Portuguese company. According to the Hungarian tax authorities it was WML who provided the services. Therefore, these services should have been subject to Hungarian VAT. Based on the resolution of the Hungarian tax authorities, WML committed an abuse of rights by the licensing of the know-how, in order to apply the lower VAT rate applicable in Portugal.

In its judgment, the CJEU declared that in order to identify the abuse of rights, objective circumstances related to the Portuguese company's physical presence in Portugal (such as place of business, staff, technical instruments) should be examined. By investigating these, the Hungarian court may find that it was not the Portuguese company that provided the services from Portugal through the website using WML's know-how, in which case the services would be subject to Hungarian VAT.

The CJEU declared in its judgment that the following circumstances "do not appear decisive in themselves" for the purpose of establishing the abuse of rights:

- The manager and sole shareholder of WML was the creator of WML's know-how, the same person exercised influence or control over the development and utilization of that know-how and over the supply of services;
- The management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors;

- Economic and financial reasons led WML to make the know-how available to the Portuguese company.

The CJEU provided guidance to the Hungarian national court in relation to the investigation. The Hungarian national court must now interpret this guidance and evaluate the relevant facts and circumstances of the case.

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Italy

Stability Law 2016 published in Official Gazette

Stability Law 2016 (Law n° 208, dated 28 December 2015) was published in the Official Gazette n° 302, dated 30 December 2015.

Changes to credit note rules

In addition to some specific new rules applicable under insolvency proceedings, Stability Law 2016 states that:

a) Where there is cancellation/ termination of a contract for supplies of goods or services, performed on a permanent or recurring basis, due to a breach by one of the parties, credit notes cannot be issued for the supplies that have been duly performed by both the parties;

b) A customer that is liable for the payment of VAT via the reverse charge, for domestic purchases of goods or services listed by the law and for intra-Community acquisitions, can issue credit notes, provided all the requirements for the issuance of credit notes are met.

Changes to the statute of limitations

The main new provisions concerning the statute of limitations are as follows:

- The tax assessment (for both income taxes and VAT purposes) can now be notified by 31 December of the fifth year following the year in which the tax return was submitted;

- In the case of an omitted/ invalid tax return, the tax assessment (for both income taxes and VAT purposes) can now be notified by 31 December of the seventh year following the year in which the tax return should be submitted (no longer the eighth year, as was the case in the draft of the rules);
- For criminal violations, as provided by Decree no. 74/2000, the above terms are now not to be doubled (as was this the case in the draft of the rules).

The above new rules regarding the statute of limitations will apply only to tax assessments related to the fiscal year 2016 onwards; the previous rules will still apply to previous 'open' fiscal years.

Changes to VAT rates

The Stability Law 2016 extends the 4% VAT rate to newspapers, daily news bulletins, dispatches of news agencies and periodicals identified via ISBN or ISSN codes and spread through electronic means as from 1 January 2016. (The 4% rate already applied to e-books, from 1 January 2015, according to Stability Law 2015.)

Based on Stability Law 2016, the ordinary 22% VAT rate will increase to 24% from 1 January 2017, and to 25% from 1 January 2018. The reduced 10% VAT rate will increase to 13% from 1 January 2017.

New time of entry into force for administrative VAT penalties amended by Legislative Decree n° 158

As discussed in the October 2015 edition of this newsletter, Legislative Decree n° 158 dated 24 August 2015 introduced several changes to:

a) Criminal penalties, with immediate effect;

b) Administrative penalties with deferred effect, starting from 2017.

Based on Stability Law 2016, the amended administrative penalties are immediately effective as of January 2016.

Extension of reverse charge mechanism upon authorization by European Union Council

Stability Law 2016 extends the reverse charge to supplies of services performed by member companies of a consortium to the consortium itself, providing the latter is the winner of a Public Administration tender

and the relevant services will be invoiced under the split payment mechanism.

The new provision is conditioned upon a special authorization to be granted by the European Union Council according to Article 395 of the Principal VAT Directive.

EU pilot project on VAT cross border rulings

By way of a press release dated 29 December 2015, the tax authorities officially announced that Italy is taking part in the Cross Border Rulings (CBR) pilot project, set up by the EU VAT Forum. Currently, the participating Member States are Belgium, Cyprus, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal, Spain, Slovenia, Sweden and the United Kingdom.

The project started on June 2013, and it will continue until 30 September 2018.

In particular, through Act n° 165827 (dated 29 December 2015), the Director of the Italian tax authorities stated that a cross border ruling request can be submitted, provided the transactions envisaged are complex and have a cross border impact (in two or more Member States participating in the CBR project).

Following the submission of a cross border ruling request, a consultation between the competent authorities of the involved Member States take place. However, such consultation does not guarantee a response, or a solution, jointly agreed by the Member States involved. Even if there is a response, the tax authorities have clarified that the response falls within the consultancy activity of the tax authorities, and therefore it cannot be compared, in terms of effect, to the ordinary ruling replies provided by the Italian law provisions (it does not have the same status as a reply to a ruling from the Italian tax authorities).

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Guidelines for SAD drafting

In December 2015, Customs issued guidelines on how to draft the Single Administrative Document (SAD) in specific cases of exports, exports linked to transit and transit, in the light of Reg. (EEC) No 2454/93. In particular:

- For exports and exports linked to transit, the guidelines relate to the type of declaration to be shown in SAD box 1, second subdivision;
- For transit, the guidelines relate to the identity of the means of transport at departure to be shown on SAD box 18.

End-use authorizations database

With Note No 75669/RU of 14 December 2015, Customs advised that, based on Reg. (EEC) No 2913/92 and Reg. (EEC) No 2454/93, a database of the end-use authorizations granted to operators has been set up, providing guidelines to customs offices about the fulfillments and controls they shall perform with reference to said authorizations prior to their inclusion on the database.

Customs duty payment via bank or postal transfer

On 21 December 2015, Customs issued Circular letter No 20/D summarizing the operative and procedural guidelines to be followed in order to pay customs duties via bank or postal transfer. They also clarified how penalties and interests are be paid in case of late payment.

Clarification of news on rulings and tax litigation

In Circular letter No 21/D of 23 December 2015, Customs provided an overview of the tax news introduced in September 2015 in Italy, with reference to ruling procedures and litigation. In particular, they explained the content of such news and some procedural aspects, outlining which of them can be applied to the customs field.

Administrative penalties and customs operators

On 28 December 2015, Customs issued Circular letter No 22/D, in order to clarify who, within the customs clearance process, is liable for administrative penalties.

In this respect, they firstly provided a general overview of the relevant EU provisions (i.e., Reg. (EEC) No 2913/92) and Italian provisions to be considered, and specific clarifications with reference to cases of direct and indirect customs representation. Then, they stressed the following:

- For operators, the need to pay attention to the correctness of customs transactions and to the relevant responsibilities, for the purpose of the administrative penalties, linked to the specific fulfillments required (i.e., submission to customs of goods and documents);
- For customs offices, the need to allow operators to explain their arguments, in case of challenges, not only with reference to customs duties, but also with reference to penalties applied by the authorities, inviting local offices to ascertain if the penalties are proportionate with the amount of the assessed customs duties and to recognize, if needed, the relevant reductions.

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Netherlands

CJEU judgment on VAT exempt management of (real estate) investment funds

On 9 December 2015, the Court of Justice of the European Union delivered an important judgment regarding the VAT consequences of managing real estate investment funds. The Court ruled that a real estate investment fund can qualify as a collective investment fund, with the result that managing such a fund is VAT exempted.

For an investment fund to qualify as collective investment fund there must be governmental supervision, and there must be a spread of risk. In the case at hand, the spread of risk is present, because the real estate investment fund invests in different types of real estate in different geographical areas.

Pursuant to the judgment, the property management as such can, however, not qualify as management under the VAT exemption and is therefore VAT taxable.

Equal VAT treatment of Defined Contribution and Defined Benefit pension funds?

The Dutch State Secretary of Finance has made a strict difference between the VAT treatment of the management of Defined Contribution pension funds and Defined Benefit pension funds. The management of Defined Contribution pension funds is VAT exempted in the Netherlands, while the management of Defined Benefit pension funds is VAT taxable. This different treatment is justified by the State Secretary of Finance based on the CJEU cases *Wheel*s and *ATP PensionService*, as he has explained on several occasions to the Dutch Parliament.

The Parliament, however, is not satisfied with this explanation. Therefore, independent research will be carried out by a third party to determine whether this strict difference is justified based on CJEU case law.

Given this research, it may be wise to file an objection to VAT returns in respect of the management of Defined Benefit pension funds, because the Dutch view on the VAT treatment may change.

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Poland

General ruling on VAT rate for spare parts of medical devices

On 29 December 2015, the Minister of Finance issued a general ruling on the VAT rate applicable to spare parts of medical devices. Further to the ruling, the supply of such spare parts cannot benefit from the reduced VAT rate of 8% (as in case of medical devices) and is subject to the standard VAT rate (unless the part itself can be considered as a medical device).

This issue has been the subject of some controversy over the years. Based on the Polish VAT law, the reduced 8% VAT rate can be applied to medical equipment (as defined in the Polish Medical Equipment Act), admitted to circulation within Poland. The Polish Medical Equipment Act differentiates between medical equipment and its spare parts/ accessories. In particular spare parts/ accessories are considered to

be elements of medical equipment (not being themselves medical equipment) which are designed by the producer to be used with the medical equipment and are aimed at ensuring proper functioning of the equipment. Nevertheless, the Polish Medical Equipment Act also indicates that if the term 'medical equipment' is used in provisions other than the provisions of the Polish Medical Equipment Act, then the term shall be understood broadly, i.e., by including, apart from the medical equipment, also the accessories, etc.

The tax authorities initially accepted the abovementioned approach (and accepted in a number of individual binding rulings application of the 8% VAT rate to spare parts), but then started to interpret the VAT provisions very strictly, and concluded that only when goods are medical equipment under the Polish Medical Equipment Act, admitted to free circulation within the EU, does the 8% VAT rate apply.

The above approach has been reflected in the general ruling issued, which was preceded by changes to the individual binding rulings that had been issued to taxpayers. Bearing in mind the changes in the tax ordinance as regards binding ruling applications (i.e., excluding the possibility to apply for an individual tax ruling concerning a case with respect to which a general tax ruling has been issued), it seems that the general ruling will put an end to discussions in this respect.

Changes to Polish Tax Ordinance – SAF-T/JPK

There have been a number of changes to the Polish Tax Ordinance (providing for general tax rules in Poland), which may impact the position of taxpayers in Poland. One such change is the Single Audit File (SAF-T), to be implemented in Poland from as early as July 2016 for, so called, 'big' companies. In brief, taxpayers will be obliged to provide the tax authorities upon their demand (e.g., for audit/ verification purposes) all of the books in specifically determined electronic format, i.e., via structured XML files named JPK – 'Jednolity Plik Kontrolny'.

On 23 December 2015, the Minister of Finance published the initial scheme of files being part of JPK, which has launched the consultancy phase. Seven separate JPK files corresponding to seven different tax issues (accounting books, bank account statement, warehouse, VAT ledgers, VAT invoices, revenue and expense ledger and revenue

ledger) were published, which is the major difference between the worldwide recognized SAF-T standard and the Polish JPK standard. The layout of the files is to be further specified, but there are already some doubts regarding the level of details required and their availability in financial systems. When operational, the expectation of the authorities will be that all the required information is provided in electronic format within the deadlines set. It can be assumed that not complying with this obligation may negatively affect the position of taxpayers during audits.

Updates will be provided on further developments in this respect. The final version of the file should be known by the end of March 2016.

No VAT exemption for outsourced insurance claims handling – AG opinion

Court of Justice of the European Union Advocate General Juliane Kokott has delivered her opinion in the Polish insurance outsourcing case of *Aspiro SA*, (formerly BRE Ubezpieczenia sp. z o.o.).

Aspiro provides an end-to-end claims handling service to insurance companies. This includes the assessment of claims made by policyholders to determine if a claim should be paid by the insurer and, if so, determining the quantum of the payment. Aspiro acts in the name of and on behalf of the insurers and has no contractual relationship with the policyholders.

The opinion suggests that the CJEU should find that the outsourced claims handling services supplied by Aspiro do not qualify for exemption under EU law.

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Portugal

Solid waste management services rendered by local government authorities and other legal entities governed by public law

According to recent binding information made available by the tax authorities, local government authorities and other entities under public law shall not be regarded as a taxable person in respect of the activity of solid waste management if they engage in the provision of these

services as public authorities where the daily production of solid waste does not exceed 1,100 liters/ person.

However, if the abovementioned activity is carried out by private operators, they shall be regarded as taxable persons. In this case the reduced VAT rate, which is 6% in Portugal Mainland, is applicable.

This decision may have an impact on local government authorities or other public or private entities whose activity includes solid waste management.

It should also be analyzed as to whether these transactions can create distortions of competition, in which case they should be subject to VAT, even if performed by public entities (the ruling does not include this issue).

This decision of the tax authorities is also in line with the Advocate General's opinion in the Court of Justice of the European Union case *Gemeente Borsele* (C-520/14), regarding the transport of school pupils by a municipality, in which the Advocate General concluded that the municipality does not act as a taxable person, unless competition is distorted by a significant number of individual transport services.

Real estate valuation under the management of credit guarantees

The tax authorities have clarified that fees charged for real estate valuation services related to administration or management of credit guarantees made by the grantor are VAT exempt under article 9(27)(b) of the Portuguese VAT Code, corresponding to article 135(1)(c) of the Principal VAT Directive. This decision has revoked the tax authorities' previous understanding, which stated that such fees were VAT exempt only if the assessment value was linked to the specific value of the credit guaranteed by the grantor.

This decision will impact financial entities undertaking such operations that are considered to be located in Portugal for VAT purposes. Experience indicates that the majority of financial entities that have established business in Portugal or with a fixed establishment in Portugal are currently exempting this type of transaction from VAT.

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Ukraine

Temporary import surcharge abolished

On 24 December 2015, the Ukrainian Parliament abolished the additional import surcharge applied in 2015 to the importation of all goods irrespective of the country of their origin and free trade agreements concluded by Ukraine.

Effective from 1 January 2016, no additional import surcharge of 5% and 10% of the customs value of the imported goods is applied.

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United Kingdom

New regulations on partial exemption and overseas branches

The tax authorities (HMRC) have laid a Statutory Instrument (SI 2015 No 1978) giving effect to changes to the VAT Regulations to implement HMRC's view of the impact of the Court of Justice of the European Union decision in the French case of *Société le Crédit Lyonnais*.

HMRC have dropped the requirement for 'separate business accounts' to be maintained where a partial exemption method approved or directed under the Regulations is based on sectors that appeared in an earlier draft of the SI. The focus instead is on the use made of goods and services in each business sector, the structure of the business and the type of activity undertaken by the sector. The changes to the partial exemption Regulations made by the SI came into force on 1 January 2016.

Local authorities lose 'car parking VAT' case in the Court of Appeal

The Court of Appeal has dismissed an appeal by the Isle of Wight Council and Others in the long running 'VAT on local authority car parking' case.

The case was started by the Isle of Wight Council, and the Tribunal first heard argument in it early in 2004. Since then, the case has been considered (twice) by the High Court, by the CJEU and three times by the first instance tribunal. Following the judgment of the CJEU in the

case, the High Court decided that it needed to go back to the first instance tribunal for a third time, so that it could make findings of fact to decide the case in the light of the CJEU's judgment.

The First-tier Tribunal decided the case in favor of HMRC and the councils then appealed to the Upper Tribunal.

The Court of Appeal has now agreed with the Upper Tribunal's conclusion that the First-tier Tribunal reached conclusions that were open to it on the facts that it found, and dismissed the appeal.

More HMRC guidance on VAT groups and the *Skandia America* judgment

HMRC have released further guidance on their position following the CJEU decision in *Skandia America Corporation*.

This latest guidance is a follow-up to HMRC's earlier guidance in which HMRC set out their understanding of how VAT grouping is operated by other Member States, for the purposes of applying their interpretation of *Skandia*. HMRC have now obtained further information regarding VAT grouping in Spain and the Netherlands, and updated the guidance accordingly. HMRC have reiterated that it remains the responsibility of individual taxpayers to confirm the position with the relevant Member State tax authorities as appropriate.

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Trade preferences

EU-Iran

Relief of EU sanctions against Iran

A legal framework was introduced by the Council of the European Union on 18 October 2015 setting out the necessary legal acts to lift EU economic and financial sanctions taken in connection with the Iranian nuclear program. The gradual relief of sanctions against Iran would enter into force when the International Atomic Energy Agency

(IAEA) verified that Iran has kept its nuclear-related commitments as set out in the Joint Comprehensive Plan of Action (JCPOA).

On 16 January 2016, the IAEA presented a report confirming that Iran has taken the measures specified in paragraphs 15.1 to 15.11 of Annex V of the JCPOA. This means that as from 16 January 2016, some of the EU sanctions against Iran have been lifted following the 'Implementation Day' of the JCPOA.

Implications

As a consequence of the lifting of these sanctions, the following activities (not limitative), including associated services, are allowed as of Implementation Day (i.e., 16 January 2016):

- Financial, banking and insurance measures as the prohibition of financial transfers to and from Iran is lifted.
- Import, purchase, swap and transport of crude oil and petroleum products, gas and petrochemical products from Iran.
- Sale, supply, transfer or export of naval equipment and technology for ship building, maintenance or refit, to Iran or to any Iranian persons engaged in this sector.
- Certain persons, entities and bodies are delisted and are no longer subject to asset freeze, prohibition to make funds available etc.

After Implementation Day, not all EU sanctions are lifted against Iran and some sanctions remain in place. These concern, for example, the arms embargo, sanctions related to missile technology, and restrictions on certain nuclear-related transfers and activities. Also, certain sanctions imposed by the EU in view of the human rights situation in Iran will remain in place.

Next steps

Taking the above into account, it is (in principle) possible to (re-) establish trade relations with Iran.

However, as not all sanctions are lifted and in some situations a trade license is still applicable, it is recommended that organizations review

if and how their trade plans will be affected by the sanctions, including U.S. sanctions, against Iran.

See also **Relief of U.S sanctions against Iran**.

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EU-Vietnam

EU-Vietnam Free Trade Agreement signed and concluded

The EU and Vietnam officially signed the EU-Vietnam Free Trade Agreement on 2 December 2015. For more information, see **Vietnam: EU-Vietnam Free Trade Agreement signed and concluded**.

Ukraine

Changes in trade regime with the Russian Federation

Following the Russian Federation's suspension of the operation of the CIS Free Trade Agreement dated 18 October 2011 with respect to Ukraine and the inclusion of Ukraine in the list of countries under the ban on the import of agricultural goods, raw materials and foodstuffs, on 30 December 2015, the Cabinet of Ministers of Ukraine introduced the following measures regarding trade with the Russian Federation:

- A ban on the importation of certain goods originating from Russia into Ukraine, effective from 10 January 2016. The banned goods include meat, fish, confectionery and bakery products, some milk products, alcoholic beverages, detergents, pet food, etc. The ban will apply until 5 August 2016 or until the Russian Federation lifts the similar ban on the importation of goods originating from Ukraine.
- The application of preferential import duty rates to all other imported goods originating from the Russian Federation as set by the Customs Tariff of Ukraine. Preferential rates will be applied from 2 January 2016 to 31 December 2016 or until the Russian Federation complies with the terms and conditions of the CIS Free Trade Agreement.

DCFTA between Ukraine and EU becomes operative

The Deep and Comprehensive Free Trade Area (DCFTA) established by the Association Agreement between Ukraine and the European Union is operative from 1 January 2016. Under the DCFTA, Ukraine undertakes to harmonize its national trade-related rules, norms and standards with those of the EU.

In addition, Ukraine abolishes import customs duties for goods originating from EU Member States and will gradually reduce import duty rates for specific EU goods. Duties will be reduced for European foodstuffs, alcoholic products, passenger cars, leather articles, some electric appliances and industrial equipment, etc. Duty reduction will last for three to ten years (depending on the commodity category). EU sugar, pork and poultry will be subject to tariff quotes. Furthermore, over a 10 year period, export duties applied in Ukraine will be gradually abolished.

Under the DCFTA, a preferential import arrangement for Ukraine will apply to goods imported into Ukraine directly from EU Member States, provided the European origin of such goods is confirmed by the movement certificate EUR.1 or the invoice declaration.

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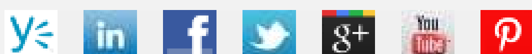

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