Deloitte.

Global Indirect Tax News

Your reference for indirect tax and global trade matters

Welcome to the April 2017 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Features of this edition include the proposed introduction of a tourism tax in Malaysia, new VAT rules for nonresident suppliers of e-services in Colombia and Taiwan, and further updates on VAT and excise duty in the Gulf Cooperation Council.

David Raistrick
Deloitte Global Leader – Indirect Tax

In this edition of GITN:

Country summaries
OECD
Americas
Asia Pacific
EMEA
Eurasian Economic Union
Contacts

Back to top

OECD

OECD	At the Fourth Meeting of the OECD Global Forum on VAT, the VAT/GST Recommendation was released, incorporating the International VAT/GST Guidelines.	**Read More**

Country summaries

Americas

Canada	On 23 March 2017, the rate of Provincial Sales Tax in Saskatchewan increased from 5% to 6%.	**Read More**
Colombia	The Tax and Customs Administration has clarified that the withholding tax for VAT generated on digital services provided abroad came into force on 1 January 2017. The Government has published a draft decree to regulate the VAT exclusion for digital services. The Government has published a draft decree to regulate the VAT exclusion for personal computers and smart mobile devices.	**Read More**
United States	The Connecticut Department of Revenue Services Commissioner has announced that economic nexus standard will be enforced against some remote sellers. The Massachusetts Department of Revenue has issued a directive adopting a 'bright line' economic nexus rule for some remote sellers.	**Read More**

Asia Pacific

Australia	The tariff concession system rules have been changed, making it easier for Australian manufacturers to oppose duty free treatment for imports.	**Read More**
China	The customs declaration reporting requirements have been revised.	**Read More**

Indonesia	There are regulations on import duty rates in the context of the: • ASEAN Trade In Goods Agreement; • ASEAN-Australia-New Zealand Free Trade Area; • ASEAN-China Free Trade Area; • ASEAN-Korea Free Trade Area; • Agreement between the Republic of Indonesia and Japan on an Economic Partnership; • Preferential Trade Agreement between the Government of the Republic of Indonesia and the Government of the Islamic Republic of Pakistan. Guidelines have been released regarding the criteria to obtain the facility of Import Duty Borne by the Government. There has been an adjustment to the classification of goods subject to provisions on the export and import prohibition and limitation based on the goods classification system. Plastic excise is to be applied this year.	**Read More**
Malaysia	The GST General, Supply, Import, Free Zone, and Accounting Software Guides have been updated. The Royal Malaysian Customs Department has indicated that they intend to issue a number of GST public rulings this year. There is a report on some of the key messages from the recent National GST Conference 2017. A new tourism tax is to be introduced.	**Read More**

South Korea	The Korea Customs Service has introduced an Annual Import Tax Settlement Report Program for AEO. The Korea Customs Service will allow transfer price adjustments to be reflected in customs values.	**Read More**
Taiwan	VAT rules governing nonresident suppliers of e-services have been announced.	**Read More**

EMEA

Southern African Customs Union	The Annex to the SACU Agreement on Mutual Administrative Assistance entered into force on 8 March 2017.	**Read More**
Cyprus	Following the introduction of recent legislation, the electronic (online) submission of VAT returns will become mandatory as of 2 May 2017. On 27 January 2017, the House of Representatives approved a new law regulating the settlement of overdue taxes providing for a scheme that allows eligible taxable persons to apply for the payment of their overdue VAT liabilities through a regulated instalment scheme which also grants some relief on interest and/or penalties.	**Read More**
France	Questions have been referred to the CJEU in the *Morgan Stanley* case on input tax recovery by a branch. Non-EU companies must appoint a VAT representative when registering for VAT in France except if they are located in a country that has signed a treaty with France including assistance for the recovery of tax debts. This list of countries has been updated. The VAT return has been modified.	**Read More**

Gulf Cooperation Council	The Kingdom of Saudi Arabia has published new VAT information on its website in the form of FAQs, aimed to provide basic information for businesses on the introduction of VAT in the KSA. Also in the KSA, draft excise legislation has been approved by the Shurah Council and a version of the draft excise legislation has been published. Impacted taxpayers are now able to register for excise duty. The Ministry of Finance in the United Arab Emirates has recently launched a series of VAT and excise awareness sessions to present to advisors and businesses on the progress of VAT and excise implementation.	**Read More**
Italy	On 24 April 2017, the *Manovrina* or 'Integrative Budget Law' was enacted on urgent financial measures, including significant VAT changes relating to: • The split payment rules; • VAT deductions; and • VAT credit offsetting. A new form has been introduced for the withdrawal of goods from a VAT warehouse. Updated instructions have been issued for the TR form. Clarifications have been issued in relation to art. 139 of the Union Customs Code.	**Read More**
Poland	The approach of the tax authorities and courts on the meaning of fixed establishment for VAT purposes is changing. Stringent criminal code amendments have come into effect in relation to VAT fraud. A significant number of VAT taxpayers have been deregistered.	**Read More**

Portugal	The Arbitration Court has issued a decision regarding VAT invoicing requirements.	**Read More**
Russia	The Ministry of Finance has clarified that foreign companies supplying software to Russian individuals through the internet are required to be registered with the tax authorities notwithstanding the fact that VAT exemption applies. The Ministry of Finance has clarified the VAT and corporate income tax implications of the supply of gift certificates in the context of marketing events. The Ministry of Finance has clarified the VAT implications where there is an assignment of a claim to compensate losses under a supply agreement The amended draft law on the introduction of a tax-free system has been published. The President has supported an initiative to develop internal air transportation through a decrease in the VAT rate applicable. The importation of certain Turkish goods will now be allowed.	**Read More**
Switzerland	Revised VAT law, which is to apply from 1 January 2018, will have a major impact, particularly for foreign domiciled entities generating turnover in Switzerland.	**Read More**
Tunisia	There have been some changes to the VAT rates. The suspensive regime has been amended. There have been changes to the rules regarding Authorized Economic Operators.	**Read More**

United Kingdom	A number of indirect tax consultations have been published by the tax authorities. The tax authorities have responded to a judgment regarding the VAT treatment of historical bad debt relief claims. A court has ruled on the VAT treatment of employment businesses. A court has considered the VAT treatment of third party repair costs. Questions have been referred to the Court of Justice of the European Union in a case concerning VAT partial exemption. The Prime Minister has notified the European Council of the UK's intention to withdraw from the European Union, and a White Paper has been published.	**Read More**
Eurasian Economic Union	A technical regulation has been established on requirements for the safety of fish and fish products. There has been a change to the date on which changes to requirements on the marking of explosives come into effect.	**Read More**

Back to top

OECD

International VAT/GST Guidelines

The Fourth Meeting of the OECD Global Forum on VAT was held in Paris on 12 to 14 April 2017, see Global Forum on VAT.

The OECD's Deputy Secretary-General Rintaro Tamaki announced the release of a Recommendation, the VAT/GST Recommendation, which is the first OECD Act on VAT and is open to 'adherence' by non-OECD members. The Recommendation incorporates the International VAT/GST Guidelines, "which were developed with the active involvement of a wide range of countries beyond the OECD and the global business community".

Back to top

Americas

Canada

Provincial Sales Tax rate change in Saskatchewan

The Government of Saskatchewan announced an increase to the Provincial Sales Tax (PST) of 1 percentage points commencing 23 March 2017, raising the PST rate from 5% to 6%. This will affect any PST registrant making supplies into the province of Saskatchewan.

Janice Roper, jroper@deloitte.ca, Deloitte Canada

Andrew Azmudeh, aazmudeh@deloitte.ca, Deloitte Canada

Colombia

VAT withholding tax for digital services provided abroad from 1 January 2017

The supply of services from abroad is considered to be a VAT triggering event where the service recipient is located in Colombian territory.

The Tax and Customs Administration has clarified that this rule also applies with respect to electronic or digital services from 1 January 2017.

Accordingly, local Colombian companies must withhold 100% of the VAT triggered from electronic or digital services provided by foreign companies. In this case, the reverse charge mechanism has been applied.

Draft decree to regulate VAT exclusion for some digital services, defined by law

The most recent tax reform added numbers 23, 24 and 25 to article 476 of the Tax Code, which determine the digital services that are excluded from VAT. The Government has now published a draft decree defining which services are included in these types of digital services, and excluded from VAT, as follows:

- Virtual education services for the development of digital content, provided in Colombia or abroad, according to the Technology and Communication Authority Regulation;
- The provision of web pages, hosting, cloud computing and programs and equipment maintenance;
- Software license acquisition for digital commercial development, according to the Technology and Communication Authority Regulation.

The aim of the VAT exclusion is to support and increase the development of the technology industry, to contribute to the national economy and generation of employment.

Draft decree to regulate VAT exclusion for personal computers and smart mobile devices

The most recent tax reform (numbers 5 and 6 of article 424 of the Tax Code) excluded from VAT personal computers and smart mobile devices as follows:

- Personal computers with a value that does not exceed 50 units of tax value (UVT for its initials in Spanish);
- Smart mobile devices with a value that does not exceed 22 UVT.

In line with the tax reform, the Government has published a draft decree to define personal computers and smart mobile devices. In addition, the draft decree states that for the purpose of applying the VAT exclusion, the sales value of the goods must be considered.

Carolina Bueno, **cbueno@deloitte.com, Deloitte Colombia**

Tomás Barreto, **jbarreto@deloitte.com, Deloitte Colombia**

United States

Connecticut: Department of Revenue Services Commissioner announces that economic nexus standard will be enforced against some remote sellers

On 28 March 2017, Kevin Sullivan, Commissioner of the Connecticut Department of Revenue Services announced in a media release that the Department is "stepping up its effort to collect sales taxes not paid by on-line and other out-of-state retailers with a significant volume of sales into Connecticut".

In doing so, the announcement explains that, "current state law requires out-of-state sellers of goods that have a substantial economic presence in the state to collect and remit sales tax".

Jack Lutz, jacklutz@deloitte.com, Deloitte Tax LLP

Shona Ponda, sponda@deloitte.com, Deloitte Tax LLP

Massachusetts: Department of Revenue directive adopts 'bright line' economic nexus rule for some remote sellers

The Massachusetts Department of Revenue has issued Directive No 17 -1: Requirement that out-of-state internet vendors with significant Massachusetts sales must collect sales or use tax (Mass. Dept. of Rev. (4/3/17)).

Addressing circumstances under which an internet vendor with a principal place of business located outside Massachusetts would be required to register, collect and remit Massachusetts sales or use tax pursuant to Massachusetts General Laws chapters 64H and 64I, the recently issued directive "adopts an administrative bright line rule" as follows:

- For the six-month period 1 July 2017 to 31 December 2017, if during the preceding 12 months, 1 July 2016 to 30 June 2017, the internet vendor had in excess of USD 500,000 in Massachusetts sales and made sales for delivery into Massachusetts in 100 or more transactions; and

- For each calendar year beginning with 2018, if during the preceding calendar year the internet vendor had in excess of USD 500,000 in Massachusetts sales and made sales for delivery into Massachusetts in 100 or more transactions.

In doing so, the Department's directive references US Supreme Court Justice Kennedy's concurring opinion in *Direct Marketing Assn. v. Brohl*, and explains that internet vendors were not the subject of *Quill* and that internet commerce was an unknown phenomenon at the time of the *Quill* case – noting also that the business and activities of internet vendors are "factually and legally distinguishable from those of mail order vendors".

Accordingly, the Department directive states that an internet vendor with significant Massachusetts sales, as defined by the directive's 'bright line' threshold sales and transactions rule, meets the statutory and constitutional standards that apply for purposes of imposing a Massachusetts sales or use tax collection duty.

Dwayne Van Wieren, dvanwieren@deloitte.com, Deloitte Tax LLP

Bob Carleo, rcarleo@deloitte.com, Deloitte Tax LLP

Back to top

Asia Pacific

Australia

Tariff concession system rules changed – easier for Australian manufacturers to oppose duty free treatment for imports

The Government has altered the tariff concession order (TCO) rules in the customs law, with effect from 5 April 2017.

TCOs provide relief from the imposition of Australian customs duty on imported goods in circumstances where there are no local manufacturers (producers) producing substitutable goods.

Broadly, the changes will make it easier for Australian producers to oppose new TCOs being made or to request that existing TCOs be revoked. This could lead to fewer imports qualifying for 'free' duty treatment under the TCO system.

What is a TCO?

TCOs are made in response to an application by an importer. However, a TCO applies to generically described goods, rather than just the particular goods the applicant imports. Thus, once a TCO is made, any importer can use it to obtain concessional duty treatment for imports fitting the generic description.

A TCO can only be made if the Comptroller of Customs is satisfied that there is no relevant local industry to protect by means of the applicable customs duty (usually 5%). Specifically, this requires that there are no 'substitutable goods' produced in Australia in the ordinary course of business.

Goods produced in Australia – removal of 25% Australian content test

Under the altered TCO rules, the test of whether substitutable goods are 'produced in Australia' no longer requires that at least 25% of the factory or works costs of the locally-produced goods is made up of the value of Australian labor and materials, and factory overhead expenses incurred in Australia (25% Australian content test).

The removal of the 25% Australian content test has removed the need for local producers to divulge detailed and confidential accounting evidence when challenging a TCO. A local producer opposed to a particular TCO now merely needs to establish that its goods are 'wholly or partly manufactured in Australia'. To be partly manufactured in Australia, goods must have 'at least one substantial process in their manufacture' carried out in Australia.

Made-to-order capital equipment – goods produced in past five years

The altered TCO rules could also increase the instances where TCOs for certain types of imported capital equipment can be successfully challenged, by substantially extending the period in which goods imposing similar manufacturing demands on the producer have previously been produced. The rules now provide that substitutable goods that are 'made-to-order capital equipment' are taken to be produced in Australia if, among other things, an Australian producer has made goods requiring the same labor skills, technology and design expertise as the substitutable goods in the **five years** before the TCO application was lodged. Prior to the change, the existence of similar manufacturing demands was only considered for the two-year period before the TCO application was lodged. The change reflects the Government's view that a two-year period could be insufficient to give a fair indication of a local producer's capabilities in relation to made-to-order capital equipment, given the time and labor generally involved to produce such equipment.

Impact for vendors currently supplying goods to Australian customers under a TCO

Local producers will be able to apply for existing TCOs to be revoked on the basis that the TCO requirements are not satisfied under the altered rules. This will result in duty applying to subsequent imports of the goods previously covered by that TCO.

In a broad sense, the resultant duty liability on affected imports may influence the buying decisions of Australian businesses in favor of sourcing equivalent goods locally.

The revocation of a TCO will have a direct adverse impact on offshore vendors in cases where goods are being supplied to Australian customers on a DDP basis.

David Ware, dware@deloitte.com.au, Deloitte Australia

China

Customs declaration reporting requirements revised

On 17 March 2017, China's General Administration of Customs (GAC) published guidance (Bulletin [2017] No. 13 (Bulletin 13)), which makes significant changes to the customs declaration form and the information that needs to be reported. The new rules, which apply with effect from 29 March 2017, will affect enterprises' import and export operations. Bulletin 13 modifies and clarifies 12 major customs form reporting areas and further regulates certain declaration requirements for entities located in special customs supervision areas (e.g. bonded zones, export processing zones).

The main changes are as follows.

Royalty fee

The 2016 guidance (Bulletin [2016] No. 20 (Bulletin 20)) introduced three new reporting requirements: (1) the existence of a 'special relationship' between the parties; (2) the price affected by such special relationship; (3) the payment of a royalty relating to the imported goods.

With respect to the revised reporting requirements relating to royalty payments:

- Bulletin 13 revises the requirement that the importer confirm the 'payment of royalties' (from the buyer of the goods to the seller of the goods or other related parties (collectively 'the seller')) to instead require the confirmation of the 'payment of royalties related to the imported goods'. Under the revised requirement, the importer must report whether a royalty fee (which is not included in the import price, and paid or to be paid, directly or indirectly, by the buyer (importer) to the seller) is related to the imported goods.

- Bulletin 13 further provides the following guidance on how to report the royalty fee question:

Situations	Whether a royalty fee is related to the imported goods
Buyer directly or indirectly has paid or is to pay a royalty fee to seller, and: • The royalty payment is not included in the import price declared by the buyer, and • The royalty is confirmed to be related to the imported goods	Report 'yes'
Buyer directly or indirectly has paid or is to pay a royalty fee to seller, and: • The royalty payment is not included in the import price declared by the buyer, and • Whether the royalty is related to the imported goods is unconfirmed	Report 'yes'
Buyer directly or indirectly has paid or is to pay a royalty fee to seller, and: • The royalty payment is not included in the import price declared by the buyer, and • The royalty is confirmed to be irrelevant to the imported goods	Report 'no'
Buyer has not directly or indirectly paid, or is not to pay, a royalty fee to seller; or the buyer directly or indirectly paid, or is to pay, a royalty to seller and the payment is included in the import price declared by the buyer	Report 'no'

- Bulletin 13 specifies that certain goods are exempt from the three new reporting requirements introduced by Bulletin 20. These goods includes export goods, processing trade or bonded supervision goods (except for domestic sales).

Customs declaration in special customs supervision areas

Goods transferred into or out of special customs supervision areas should be declared by enterprises both inside and outside the area as follows:

- Enterprises within the special customs supervision area should complete the 'registration form'. This includes transfers of goods between two enterprises within the same or in different special areas.

- Enterprises outside the special customs supervision area should complete the 'customs declaration form'.

Other changes

The revised declaration requirements in Bulletin 13 are more stringent to ensure consistency with other customs regulations updates, including, for example: Column 14 (Nature of Levy or Tax Exemption) for certain imported cars for self-use; Column 31 for declaration reporting requirement under preferential trade agreements; Column 32 for imported goods with respect to service outsourcing business.

Comments

With the ongoing reform of customs clearance processes and national integration, China Customs is publishing a series of compliance requirements for importers and exporters. At the same time, Customs is dedicating more resources to risk management and post-clearance investigation. Therefore, enterprises may need to build a more comprehensive compliance framework to deal with customs-related issues, for example:

- The coordination of internal functions, such as logistics, finance, tax and risk management, to complete customs declaration forms;
- The identification of import/export procedure risks, development of mitigation strategy and proactive action;
- The implementation of trade automation solutions to discover potential data errors and enhance centralized control to reduce risks;
- The review and optimization of customs clearance operational procedures in a timely manner to follow new requirements from Customs; and
- The active pursuit of Authorized Economic Operator (AEO) status and enhanced internal controls, together with a new AEO application process or regular AEO qualification review.

Sarah Chin, sachin@deloitte.com.hk, Deloitte China

Yvonne Ye, yvye@deloitte.com.cn, Deloitte China

Indonesia

Regulation on import duty rates in context of ASEAN Trade In Goods Agreement

This regulation contains provisions on the rates of import duty for goods imported from ASEAN member countries, namely Brunei Darussalam, Cambodia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, in the context of the ASEAN Trade In Goods Agreement (ATIGA), as set out in the attachment to this regulation.

The regulation also stipulates that the rates of import duty in the context of the ATIGA that are lower than the rates of import duty applicable in general will only be applied on imported goods having Certificates of Origin (Form D) that have been signed by the authorized officials in the relevant countries or invoice declarations signed and issued by certified exporters and have complied with the provision on the origin of goods set out in the ATIGA.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of ATIGA, the provisions in this regulation apply to imported goods in respect of which the customs declarations have obtained registration numbers and dates from the relevant customs offices.

Regulation on import duty rates in context of ASEAN-Australia-New Zealand Free Trade Area

This regulation contains provisions on the rates of import duty for goods imported from ASEAN Member States, Australia and New Zealand in the context of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), as set out in the attachment to the regulation as the adjustment to Indonesian commitments based on the Harmonized System 2017 and ASEAN Harmonized Tariff Nomenclature 2017 in the context of the AANZFTA.

The regulation also stipulates that the rates of import duty in the context of the AANZFTA that are lower than the rates of import duty applicable in general will only be applied on imported goods having Certificates of Origin (Form AANZ) that have been signed by the authorized officials in the respective countries and that have complied with the provision on the origin of goods set out in the context of the AANZFTA.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of the AANZFTA, the provisions in this regulation apply to imported goods in respect of which customs declarations have obtained registration numbers and dates from the relevant customs offices.

Regulation on import duty rates in context of ASEAN-China Free Trade Area

This regulation contains provisions on the rates of import duty for goods imported from ASEAN member countries and the People's Republic of China in the context of ASEAN-China Free Trade Area (ACFTA), as set out in the attachment to the regulation. These import duty rates comprise import duty rates in the context of the ACFTA for goods imported from all ASEAN member countries.

The regulation also stipulates that the rates of import duty in the context of ACFTA that are lower than the rates of import duty applicable in general will only be applied on imported goods having Certificates of Origin (Form E) that have been signed by the authorized officials in the relevant countries and have complied with the provision on the origin of goods set out in the ACFTA Treaty.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of the ACFTA, the provisions in this regulation apply to imported goods in respect of which customs declarations have obtained registration numbers and dates from the relevant customs offices.

Regulation on import duty rates in context of ASEAN-Korea Free Trade Area

This regulation contains provisions on the rates of import duty for goods imported from ASEAN member countries and the Republic of Korea in the context of the ASEAN-Korea Free Trade Area (AKFTA), as set out in the attachment to the regulation. Those import duty rates comprise import duty rates in the context of the AKFTA for goods imported from all ASEAN member countries.

The regulation also stipulates that the rates of import duty in the context of AKFTA that are lower than the rates of import duty applicable in general will only be applied on imported goods having Certificates of Origin (Form AK) that have been signed by the authorized officials in the relevant countries and have complied with the provisions on the origin of goods set out in the AKFTA Treaty.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of the AKFTA, the provisions in this regulation apply to imported goods in respect of which customs declarations have obtained registration numbers and dates from the relevant customs offices.

Regulation on import duty rates in context of Agreement between the Republic of Indonesia and Japan on an Economic Partnership

This regulation contains provisions on the rates of import duty for goods imported from Japan in the context of the Agreement between the Republic of Indonesia and Japan on an Economic Partnership (IJEPA).

The regulation also stipulates that the rates of import duty in the context of the IJEPA that are lower than the rates of import duty applicable in general will only be applied on imported goods having Certificates of Origin (Form JIEPA) that have been signed by the authorized officials in Japan and have complied with the provisions on the origin of goods set out in the IJEPA.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of the IJEPA, the provisions in this Regulation apply to imported goods in respect of which the customs declarations have obtained registration numbers and dates from the relevant customs offices.

Regulation on import duty rates in context of Preferential Trade Agreement between the Government of the Republic of Indonesia and the Government of the Islamic Republic of Pakistan

This regulation contains provisions on the rates of import duty for goods imported from Pakistan in the context of the Preferential Trade Agreement (PTA) between the Government of the Republic of Indonesia and the Government of the Islamic Republic of Pakistan, as set out in the attachment to the regulation as the adjustment to Indonesian commitments based on the Harmonized System 2017 and ASEAN Harmonized Tariff Nomenclature 2017 in the PTA.

The regulation also stipulates that the rates of import duty in the context of the PTA between Indonesia and Pakistan that are lower than the rates of import duty applicable in general will only apply to imported goods having Certificates of Origin (Form IP) that have been signed by the authorized officials in Pakistan and have complied with the provisions on the origin of goods set out in the PTA.

However, if the generally applicable rates of import duty are lower than the rates of import duty in the context of the PTA, the provisions in this regulation apply to imported goods in respect of which customs declarations have obtained registration numbers and dates from the relevant customs offices.

Guidelines on ratification of Goods Importation Plan and industrial verification in context of implementation of Import Duty Borne by the Government

Pursuant to this regulation, industries in certain sectors meeting the criteria set out in the regulation may obtain the facility of Import Duty Borne by the Government. One of the requirements to obtain such facility is that the company concerned must have a Goods Importation Plan that has been approved and ratified by the Director General supervising the relevant industry. Further, to obtain the ratification of Goods Importation Plan, the company concerned must have a Certificate of Industrial Verification issued by an independent industrial verification agency appointed by the Minister of Industry.

Adjustment to classification of goods subject to provisions on export and import prohibition and limitation based on goods classification system

This regulation provides for adjustment to the classifications of goods subject to the provisions on export and import prohibition and limitation based on the goods classification system. The classification of exported and imported goods must be in accordance with the description of goods and tariff line in the Goods Classification System for 2017 stipulated through a regulation of the Minister of Finance.

The implementation of goods export and import also refers to the 2017 Goods Classification System if the description of goods and tariff line in the regulation of the Minister of Trade providing for goods export and import prohibition and limitation has not been adjusted.

Plastic excise to be applied this year

The Government has confirmed that plastic excise will be imposed this year, and has set the target of plastic packaging excise of IDR 1.6 trillion out of the target of excise revenue of IDR 157.16 trillion in the State Revenues and Expenditures Budget for year 2017.

According to the Director General of Customs and Excise, various parties have given a positive sign for the application of plastic excise this year. The application of plastic excise will not violate the applicable Customs and Excise Law.

The application of plastic excise is currently under discussion with Commission XI of the House of Representatives; thus, detailed information on this matter is not available. However, it is confirmed that plastic bags will be subject to excise.

Turmanto, tturmanto@deloitte.com, Deloitte Indonesia

Malaysia

GST General Guide as at 13 February 2017

The Royal Malaysian Customs Department (RMCD) has updated the GST General Guide.

Paragraph 101 of the amended Guide has been updated for consistency with the changes in time of supply for imported services, in particular for non-registered persons. Declaration and payment of GST have to be made no later than the last day of the subsequent month from the earlier of payment date or the foreign invoice received date.

Paragraph 188 on the mechanism to claim input tax has been updated to provide clarity on the duration to recover the input tax not claimed in the taxable period where the taxable persons hold the tax invoice. The RMCD has removed the words "claim within (6) six years from the date of supply to or importation by him", and replaced them with "the DG may allow such claim at the earlier of the date the tax invoice is posted into the company Accounts Payable or one year from the date the tax invoice was held".

The definition of passenger motor vehicle (for the purpose of blocked input tax administration) in paragraph 192 was amended to provide a consistent interpretation of passenger motor vehicle, in line with the changes previously made in the Input Tax Credit Guide. A passenger motor car means "a vehicle that is legally licensed and constructed, modified or adapted for the purpose to carry or capable to transport and commonly available or used on public roads in Malaysia. The specification and features of a passenger motor car is to have seats of not more than nine passengers including the driver and the unladen weight does not exceed three thousand kilograms".

Paragraph 198, which elaborated on the financial institutions whose exempt supply does not qualify as incidental exempt financial supplies, was amended to be in sync with Regulation 41 of the GST Regulations 2014. Specifically, item (h) – "person who supplies goods and provides finance under agreement which expressly stipulates that the property will pass at some time in the future" – was removed. Additionally, item (j) was added to elaborate the meaning of 'investment holding company' which also could not treat the exempt financial supplies as incidental.

Paragraph 199 on the refund of input tax section has been amended to substitute the words "twenty-eight (28) working days for manual GST submission" with "within the time practicable". This implies that the RMCD could defer any GST refund should they require additional time to process. This amendment did not reference the refund period for manual submission; however, according to the GST Regulations, the refund duration of 28 days should be applicable.

Paragraph 202(c)(ii), (iii) and (iv) on the treatment of input tax incurred prior to GST registration has been updated. The amendment provides greater consistency with the Input Tax Credit Guide, and confirms that a registered person may claim the input tax incurred on goods (including capital goods) that the person holds at the time of registration based on the amount approved by the DG. The capital goods must also be capitalized in accordance with the standard accounting principle in Malaysia for any input tax claim. Furthermore, paragraph 202(d)(ii) was also amended to remove the wording on claiming such input tax within six years from which a taxable person **should have been registered**, consistent with the amendment in the GST regulations.

Paragraph 203(a) on the input tax claim in relation to the Transfer of Going Concern (TOGC) was amended slightly to reinforce that the input tax can only be claimed if it is attributable to taxable supplies.

Comment

The General Guide was updated to reflect the changes arising from the recent changes in the legislation, and also to be consistent with other specific GST guides. While most of the changes are self-explanatory, it is worthwhile highlighting the amendment in paragraph 188 where a taxable person (seemingly) can no longer claim any unclaimed input tax within six years from the date of supply. The Guide implies that the input tax can only be claimed when the invoice is posted into the accounts or one year from the date of receiving – effectively restricting the claim period to 12 months at most. While Regulation 38(4) allows for six years to claim, the conditions imposed in the Guide may be the policy that the DG may practice in exercising discretion to allow any such claims. However, this policy could only go so far as limiting a taxpayer from claiming the input tax in subsequent periods and cannot prevent the taxpayer from amending the past return in which the invoice was posted and claiming the input tax. Nevertheless, wherever practical, businesses should endeavour to claim any input tax promptly.

Supply Guide as at 13 February 2017

The RMCD has updated the Supply Guide.

Paragraph 14, which describes imported services, was further elaborated to state that "if the imported services relate to a regulatory and enforcement function, the recipient such as a statutory body will not have to account and pay GST on those services acquired".

Paragraph 75(q) has also been updated to state that the time of supply for imported services is when the supplies are paid for by the recipient or the **date of invoice** from the supplier if it is received earlier than the date of payment. This is effective 1 January 2017.

Comment

The words used in paragraph 14 are ambiguous. It is unclear if the **services** that relate to regulatory and enforcement function such as application of work permit, immigration charges by a foreign service provider are not subject to reverse charge, or if it is only any **recipient** who is involved in regulatory and enforcement function that would not be subjected to reverse charge. In view of this uncertainty, businesses should be cautious with how they treat the imported services.

The update in paragraph 75(q) on time of supply for imported services is not aligned with the revised section 13(4)(b) of the GST Act 2014. The Act provides that the time of supply shall be the earlier of the **received date** of the supplier's invoice, or the date of payment. Deloitte Malaysia's view would be to follow the wording in the law which requires "received date" and not invoice date.

Import Guide as at 25 January 2017

The RMCD has updated the Import Guide.

In this latest Guide, FAQ 7 was updated to clarify the timeframe and requirements for taxpayers to pay any amount of GST short paid during importation, and the manner to claim the GST paid as input tax credit. The taxpayer is required to apply to the GST Division Headquarters within 14 days from the date of payment of the GST short paid, stating the reasons along with other information and proof. Only upon the approval by the DG can the taxpayers make adjustments in their GST returns following the approval date.

The Guide on Import was also updated to reflect the changes in the latest Finance Act 2017. The changes are as follows:

1. Table 1: GST on supply or removal of goods from the Free Commercial Zone (FCZ) to Free Industrial Zone (FIZ) is suspended (previously only suspended with Approved Traders Scheme (ATS)).

2. Table 2: GST on supply or removal of imported goods from a bonded warehouse to FIZ is suspended (previously only suspended with ATS).

3. Table 3: GST on supply or removal of goods that belong to Licensed Manufacturing Warehouse (LMW) or FIZ companies from a bonded warehouse to FIZ is suspended (previously relieved under section 56(3)(b) of the GST Act 2014).

The matrix on transaction type, movement type and GST chargeable status in Appendix 1 and 2 has also been amended to reflect the updates.

Comment

The update on FAQ 7 outlines clear instructions for taxpayers to claim input tax credits on any additional GST paid after importation. It is assumed that the procedure is to involve a manual application to the RMCD as no corresponding forms or facility in the Taxpayer Access Point (TAP) have been noted.

The changes in GST treatment for the supply or removal of goods into FIZ are in line with the amendments in the Finance Act 2017 for section 161 and section 162A(2) of the GST Act 2014.

Free Zone Guide as at 1 January 2017

The RMCD has released the Free Zone Guide that serves to replace the Free Commercial Zone Guide dated 5 January 2016. Following the amendment made through the Finance Act 2017, Free Zone (FZ) would now include FCZ and FIZ.

The following summarizes the general GST treatment for FZ:

Event	GST treatment	Reference
Import of goods into FZ **	No tax shall be due and payable	Section 162(a)
Supply of goods from Principal Customs Area (PCA) to FZ **	Standard rate	Free Zone Guide as at 1 January 2017
Supply of goods within FZ **	Disregarded	Section 162(b) Previously relieved
Removal of goods from FZ to PCA	GST payable upon importation	Section 162A(1)
Removal of goods from FZ to FZ/Designated Area (DA)/ Bonded Warehouse (BW) through PCA	Suspended	Section 162A(2)
Export of goods from FZ	Zero rate	Section 17(1)(b)

** Application may depend on specific business scenarios.

The Guide has laid down rather comprehensive scenarios of goods movement involving FZ and other parts of Malaysia or overseas that provide a good reference. The key points from the Guide are summarized as follows:

1. Imported goods that are removed from the place of import (not FCZ) to PCA are subject to GST as importation, but suspended if the goods are removed into FCZ.

2. Movement of goods within FCZ is not chargeable to GST; however, the taxable person must issue a tax invoice with nil GST and insert a clause "Supply of goods within FCZ under section 162(b) of GSTA 2014". This scenario includes the situation where the FCZ company sells the goods to an overseas company or a local company in PCA, which sells the goods onward to another company in FCZ but the goods are delivered directly from the FCZ company. The goods essentially moved within the zone. The overseas company or PCA company is also not required to charge GST; however, the requirement to issue a tax invoice with the additional clause mentioned earlier is applicable if they are a GST registrant.

3. Movement of goods from FCZ to PCA is not the supply of FCZ company, but is to be treated as importation into PCA. Hence, the FCZ company is not required to charge GST; however, a tax invoice with the additional clause is still required. The additional clause mentioned "Section 162(b) of the GSTA 2014", which is actually not applicable in this case. There may be some typographical mistakes in the Guide.

   The requirement above applies also to an overseas company or PCA company (if registered) that purchases the goods from the FCZ company and sells onward to another PCA company, but the goods are removed from the FCZ company directly.

4. Goods from PCA that are brought into FCZ for outright export are zero rated.

The treatment for FIZ varies slightly. The notable differences are as follows:

1. GST on goods imported into FIZ is waived only if the FIZ is located in a FCZ at port or airport, as provided in paragraph 37. If the goods are removed from the place of import (not FIZ) into FIZ, GST is applicable for the importation, and a FIZ company with ATS can suspend the payment of import GST.

2. Movement of goods between FIZ, either directly or under dropshipment arrangement involving a third party (overseas or local), no GST shall be charged but the seller must issue a tax invoice with the additional clause "Supply of goods within a FIZ under section 162(b) of GSTA 2014."

3. The invoicing requirement above is also applicable to the movement of goods from FIZ to PCA, either directly or under dropshipment arrangement, albeit the GST is imposed upon importation.

4. Goods that are removed from FIZ to PCA for subcontracting work, albeit no transfer of ownership, are subject to GST. Nevertheless, the GST relief under item 16B of the GST Relief Order 2014 applies.

5. Goods that are brought into FIZ for subcontracting work and subsequently returned to the PCA are subject to GST as importation.

6. Processed goods under an Approved Toll Manufacturer Scheme (ATMS) arrangement that was delivered from the toll manufacturer in FIZ to PCA is subject to GST as importation.

Comment

The Guide provides examples on the movement of goods involving FCZ and FIZ, in line with the changes in the GST Act 2014. The treatment focuses on the movement of goods, rather than the 'supply' per se. Also, while the changes seek to streamline the GST treatment involving the FCZ and FIZ, there are still differences in terms of the treatment for FCZ and FIZ. It is advisable to scrutinise transactions to ascertain the proper treatment.

The imposition of GST on the processed goods that moved from the toll manufacturer in FIZ to a person in PCA (item 6 on FIZ above), could potentially result in double taxation. This is because under section 72(2) of the GST Act 2014, the recipient must self-account for the GST for the goods, while GST is imposed again upon the importation declaration. A further clarification should be sought for this scenario.

Businesses are given three months from 1 January 2017 to make all the necessary compliance adjustments following the changes, such as updating invoices to factor in the additional clause (Q&A 22).

Guide on Accounting Software Enhancement towards GST Compliance as at 2 March 2017

The RMCD has refreshed the accounting software guide after its revocation shortly after its release in August 2016. The key changes are summarized below:

Some recommended 'new' tax codes were removed in this guide, as below:

TX-ER	Input tax allowed on the acquisition of goods or services by local authority or statutory body
IM-CG	Import of goods with GST incurred for a capital goods acquisition
IM-RE	Import of goods with GST incurred that is not directly attributable to taxable or exempt supplies (residual input tax)
OS-ER	Out-of-scope supplies for enforcement and regulatory functions
OS-OV	Out-of-scope supplies between overseas country with other overseas country

Meanwhile, some new tax codes were recommended:

OS-TXM	Out-of-scope supplies made outside Malaysia which will be taxable if made in Malaysia
NTX	Supplies with no tax chargeable (such as supply within free zones and Designated Areas (DA))

There are several important changes to the GST tax code and GST-03 return form mapping, which need to be taken into account for accurate reporting.

Tax code	New mapping
NTX	Field 10 (total value of local zero-rated supplies)
ZDA	Field 11 (total value of export supplies) *(previously mapped to field 10)*
GS	Not required to be disclosed *(Previously proposed to be mapped to field 13 but suspended)*

The formula for apportionment and *de minimis* rule described in Appendix 5 was updated with the new tax codes suggested in this Guide. There has been no change to the principle of calculations. There are two methods suggested for the apportionment calculation, where one could choose depending on how the data is segregated with additional tax codes.

Comment

The recommendation on tax codes remains a mere recommendation and it is not compulsory for businesses to follow strictly. However, proper planning and usage of tax codes could help in GST reporting and apportionment calculations for mixed suppliers.

Some of the tax codes such as TX-NC (GST incurred but business chooses not to claim the input tax) could be useful not only for GST, but also for corporate tax computation, as the input tax is likely not allowed as tax deduction (needs to be 'added back').

On the other hand, the new requirement to disclose certain supply values in the GST return form ought to be adhered to, despite the Guide on GST-03 form having not been updated. Businesses should look into this as soon as possible and make the necessary changes.

Impact of GST public rulings

At various conferences and forums, RMCD has indicated that it is their intention to issue a number of GST public rulings this year. It is understood that these public rulings would progressively replace the existing Director General's Panel Decisions or 'DG's Decisions' as more commonly known.

So what does this change in approach mean for taxpayers? In short there are some positives but also some shortcomings.

With respect to the positives, a public ruling is actually binding on the Director General whereas the DG's Decisions are not. Pursuant to section 76(3) of the GST Act, where a person interprets and applies the GST law according to the ruling, the RMCD is required to uphold it and cannot apply that provision differently to the ruling. This provides taxpayers much greater protection and comfort when applying those provisions.

Another positive is that public rulings will set out a particular fact pattern and the technical analysis for the Director General's view. One of the challenges with the current set of DG's Decisions is that they do not contain any detailed analysis that would allow them to be applied to a broader range of arrangements. The more detailed public rulings will provide taxpayers with at least a set of principles that they can apply more broadly.

However, there is a downside. Whilst the DG's Decisions are perhaps the 'fast food' to the 'fine dining' public rulings, like fast food they come out very quickly and are easy to consume. Given the extent of work required to produce a public ruling, it can be expected that they will not be released as frequently as DG's Decisions, and this can be problematic for taxpayers requiring quick answers and solutions.

It is hoped that the Director General can provide both clarity and timeliness by continuing to issue DG's Decisions and public rulings.

National GST Conference 2017

The National GST conference was held recently, and was attended by over 1,000 participants.

The Conference speakers included the Deputy Minister of Finance (Dato' Wira Othman Aziz), senior officials from RMCD, the Chairman of the GST Tribunal, and indirect tax leaders from a number of accounting firms. The theme of the conference was 'Managing the GST Ecosystem'.

Some of the key messages from the conference are summarized below:

- After exceeding the revenue collection target from 2016, the GST collections target set for RMCD this year would be MYR 42 billion.

- RMCD has acknowledged that whilst they are not meeting the 14 working day turnaround for refunds, this is improving. They hope to meet this requirement for 85% to 90% of refund claims by 2017.

- The number of GST registrants had increased from 430,000 to 435,000, which exceeded the original target. Deloitte Malaysia would expect that this figure would increase with increased audit activity and the focus of RMCD this year to target online businesses they believe should be registered.

- RMCD acknowledged that there are areas for improvement and efforts are being made to rectify this. Some of the areas highlighted include the inconsistency of views provided by different RMCD officers on GST treatment and lack of resourcing.

- Businesses that are subject to an audit would be given 30 days to rectify any mistakes found. Whether additional penalties are imposed would be decided on a case-by-case basis, e.g. if the errors arose due to an honest mistake and not serious fraud. Leniency in audit is most welcome, but more structure is required on when penalties would be remitted, to give taxpayers more certainty.

- Due to the uncertainty surrounding when to use a particular customs declaration form for importation and exportation of goods, the RMCD are contemplating publishing additional guidance on the customs portal to assist taxpayers.

- RMCD is now considering relaxing its position on voluntary GST registration for companies who do not have any or only limited taxable activity in the first 12 months of commencing business. This is a welcome move, however, it is unclear when and how this change in approach would be implemented.

- Malaysia is looking to follow suit with other countries globally to introduce new rules to tax nonresident digital service providers that provide services to Malaysian consumers. It is likely that these new rules would result in these foreign service providers registering for Malaysian GST and charging GST on these services. Businesses involved in this activity, or that provide a platform for offshore digital providers to sell products to Malaysian consumers, should take note of this development.

- The GST Tribunal may develop a portal to upload all case judgments made by the Tribunal without publishing the identities of the involved parties.

- As a follow up to the announcement in the Budget and the amendments to the GST legislation, the RMCD has launched the GST 'dongle' for retailers on a trial basis. The dongle is intended to capture GST transaction data from point of sale systems operated at retailers. The trial, which will be undertaken at selected premises in the Klang Valley, would serve to monitor the effectiveness of the device before it is rolled out more broadly.

Tourism tax

On 6 April 2017, the Dewan Rakyat (the lower house of the Parliament of Malaysia) approved the Tourism Tax Bill 2017. Once enacted, the bill would introduce a new tourism tax in Malaysia.

What is a tourism tax?

A tourism tax is a tax on room or accommodation rental. It is a form of tax that does exist in other countries, and can go by names such as 'occupancy tax', 'hotel tax' or 'lodging tax'. The tax is imposed on the guest and is collected by the accommodation provider (referred to as an 'operator') as a separate amount to the nightly room rental.

When does it start and what is the rate?

The expected date of effect and rate is not known, and will only be known once the relevant orders are effected. The rate is to be determined by the Minister of Finance.

However, it has been reported in the media that the rate would vary depending on the status of the accommodation. Non-rated accommodation would be subject to a rate of MYR 2.50, whilst 2-star, 3-star, 4-star and 5-star hotels would be subject to a tax of MYR 5, MYR 10, MYR 15 and MYR 20 respectively on a per room per night basis. Furthermore, it is expected that the tax will take effect in the coming months, with the RMCD tasked with administering and enforcing the tax.

Who is a 'tourist' and what types of accommodation are in scope?

The definition of 'tourist' is taken from the existing Tourism Industry Act and it is a very broad definition. It essentially covers anyone (including Malaysians) who are travelling for any purpose except where they are remunerated (i.e., employed) by the place they are staying at.

'Accommodation' is also defined very broadly and covers any form of accommodation that is held out as offering 'lodging or sleeping accommodation to tourists for hire, or any other form of reward'. Based on this broad definition of accommodation, it is likely to capture all forms of commercial accommodation (hotels, motels, etc.) but, unless specifically covered by exemptions, it could also potentially bring into scope other forms of accommodation such as private rental. Another area that could be included is workers' housing provided to employees, where the employee contributes towards the rental.

Who is responsible for collecting the tax and are there any exclusions from registration?

The tax is imposed on the tourist and must be collected by the operator and paid to RMCD. At present there is no registration turnover threshold, and provided the accommodation is in scope, there is a requirement to register and collect the tax. This is regardless of whether an operator is currently licensed as a tourist accommodation premises; if an operator is licensed, RMCD has the power to unilaterally register the operator.

Subject to any exemptions being introduced, it also appears accommodation in Labuan, Langkawi and Tioman will be in scope (i.e., there is no equivalent to the GST Designated Areas).

The law appears silent on whether an operator must be a Malaysian resident entity, so further clarification is required on this issue.

Operators are required to register within 30 days of the Act coming into effect. Failure to do so can result in a penalty of up to MYR 30,000 or one year imprisonment or both.

Are there exemptions?

The expectation is that there will be, but these will only be known officially when the Minister of Finance releases the order covering these exemptions.

Other administrative matters

For those operators already GST registered, the reporting period would follow the GST taxable period, and for other operators, it would be a period of three months. Similar to the GST, late payment penalties can be imposed, with an initial penalty of 10% of the tax for being late up to 30 days, between 30 and 60 days, it increases to 20%, and over 60 days it becomes 30% of the tax due.

There will be a requirement to issue an invoice showing the amount of tourism tax imposed, and this will need an enhancement/update of existing invoices.

Unlike GST, there are no time of supply rules, and recognition and reporting of tax is purely based on receipt. However, if no payment is received for 12 months then there is a deeming provision that requires the operator to pay the tax. The existence of different recognition rules for GST and tourism tax will pose an issue for operators, as there will be a need to reconcile these differences to ensure that the correct amount of tax is paid.

The ability to recover overpaid tax and bad debt relief is much more limited and onerous than the GST regime. Refunds of overpaid tax require a special application to be made to RMCD and cannot be claimed via self-assessment, whilst bad debt relief is only available upon ceasing business.

Preparation

Much like the GST, it is important to be pro-active and take steps towards getting ready for the tax. The key areas to be prioritized include:

1. **Dialogue and consultation:** Although the Bill has been made public, many details are still to be finalized. It will be important to engage with RMCD and the Ministry of Finance, either individually or through industry bodies and associations, with respect to any practical or administrative challenges that might be faced.

2. **Systems and process change:** There may be a need to upgrade existing systems to ensure that the tax is collected and update invoices to ensure compliance. Depending on the exemptions provided, there may be a need to use multiple general ledger and tax codes to ensure that the data is appropriately captured. As mentioned above, the tax would operate on a 'receipt' basis and as such there may be a need for additional reconciliation including monitoring of the 12-month deeming rule.

3. **Communication:** As with the introduction of GST, a clear communication strategy, both within organizations and with customers, will be important to ensure a smooth transition.

Tan Eng Yew, etan@deloitte.com, Deloitte Malaysia

Senthuran Elalingam, selalingam@deloitte.com, Deloitte Malaysia

South Korea

Korea Customs Service introduces Annual Import Tax Settlement Report Program for AEO

In April 2017, the Korea Customs Service (KCS) introduced a new program: the 'Annual Import Tax Settlement Report Program for AEO'. The program has been adopted to minimize tax conflict between AEO (Authorized Economic Operators) importing companies and the customs authority.

The Annual Import Tax Settlement Report Program is a scheme that allows an importing company that is an AEO to review and assess the company's own tax payment records and report the result to the customs authority. Once the annual settlement report is confirmed by the customs authority, customs audit for that year will be exempted.

An AEO importing company wishing to utilize this program would apply to the competent customs authority, and companies that satisfy certain requirements would be designated by the customs authority for the program. The designated company must submit the self-assessed import tax report annually.

KCS allows transfer price adjustment to be reflected in customs value

The KCS now allows multinational corporations to make import declarations with a provisional value when the import price is subject to change due to the transfer price policy. The relevant enforcement regulations were revised in March 2017, and will enter into force on 1 July 2017.

The provisional value declaration usually applied to goods with high price fluctuations, such as raw materials. That is, when the import price is not yet determined at the time of importation, the importer can declare with a provisional value for customs clearance, and then declare with the finalized value subsequently.

As importers will also be able to make provisional value declarations for goods the price of which will be adjusted as per the range of the arm's length price after importation, this is expected to enhance the harmonization of customs valuation and transfer pricing.

Jin Kon Jung, jinkjung@deloitte.com, Deloitte South Korea

Taiwan

VAT rules governing nonresident suppliers of e-services announced

Amended VAT registration rules were promulgated in Taiwan on 29 March 2017, and on 22 March, the Ministry of Finance (MOF) published an official ruling that sets the annual sales threshold for a nonresident e-services provider to be required to register for Taiwan VAT purposes at NTD 480,000 (around USD 15,500). The MOF ruling follows the announcement by the Executive Yuan on 13 February 2017 that the new VAT rules requiring nonresident business entities providing e-services to domestic individuals to register with the tax authorities for VAT purposes and pay a 5% VAT in Taiwan will apply as from 1 May 2017. A public consultation was held 11-17 March 2017 on draft amended Enforcement Rules.

An online VAT registration website opened on 1 May 2017.

Once a foreign e-service provider is registered, it will be required to file bimonthly VAT returns and pay VAT due before the 15th of the following odd month. In other words, the first VAT return for a registered foreign e-service provider for the VAT period May-June 2017 will have to be submitted by 15 July 2017.

Definition of e-services

According to the draft amended Enforcement Rules, e-services would be defined as the following:

1. Services that can be downloaded from the internet and stored in a computer or mobile device;

2. Services that can be used via the internet without downloading or storing; and

3. Other services that can be used through the internet or other electronic environment.

The scope of item 3 is very broad, and it is expected that affected foreign service providers will be allowed to request clarification from the tax authorities as to whether their services fall within the scope of the definition of e-services before 1 July 2017.

Registration requirements

The draft Enforcement Rules do not specify which party would be required to register for VAT when various parties are involved in a supply of e-services, and since the amended VAT Act will be effective from 1 May 2017, the nonresident e-service provider may not have a basis to request clarification before that date.

There remains some uncertainty about the treatment where electronic platforms are involved in a transaction because the draft Enforcement Rules and amended VAT registration rules do not explicitly require foreign electronic platforms to register for VAT. In particular, it is unclear whether in such cases (1) a local supplier is selling to the electronic platform, which then makes the sale to individual buyers (buy-sell model); or (2) a local supplier makes the sale to individual buyers and the platform merely acts as an agent of the local supplier (agent model). In the latter case, the platform would not be treated as a 'seller' and, therefore, relief from the VAT registration requirement would be available.

In an effort to clarify the issue, the MOF posted press releases on its website on 6 March 2017 that include two examples of online supplies: one relating to a local supplier selling online games through an electronic platform and the other a local hotel selling hotel rooms through the online hotel booking platform. Although the press releases address the VAT compliance obligations of local service suppliers, they imply that if the local supplier does not have information on the ultimate individual customers at the time an electronic platform sells services to such consumers, the transaction may be viewed as a 'buy and sell' model, and the foreign platform may be treated as the supplier of the services.

However, the foreign platform could argue that the local supplier does know the individual buyer's information when services are supplied via the platform and the platform merely acts as an agent, with the effect that the 'agent services' sold by the platform to the local supplier would be a business-to-business transaction and the VAT reverse charge should apply. However, this remains a controversial issue and platforms should request private rulings from the tax authorities to obtain clarification.

The amended VAT registration rules require nonresident e-service providers to submit the following information and documents at the time they register for VAT:

- Company name (the certificate of incorporation of the nonresident e-service provider must be notarized and authenticated by the Taiwan consulate);
- Name of the company representative;
- Operating information, including the domain name, IP address, commencement date of services, country of registration and registered name in that country, and company registered identification in that country;
- Contact information, including the phone number, mailing address and email address;
- Information about the entity's Taiwanese tax agent (the power of attorney issued to the tax agent is required); and
- Bank account information (domestic and/or foreign bank account).

VAT invoicing obligations

Unlike domestic sellers that are required to issue VAT invoices to buyers, based on a ruling issued by the MOF, registered nonresident e-services providers are not required to issue invoices for supplies made to Taiwanese individuals during the period 1 May 2017 to 31 December 2018.

Taiwan has a unique system of invoicing for VAT purposes. The invoice, which is called a Government Uniform Invoice (GUI), is regulated by the tax law as to its format, content and submission. The Government assigns GUI numbers to VAT payers every two months. In addition, the tax authorities are encouraging businesses to issue electronic VAT invoices (eGUI) in lieu of 'paper computerized' invoices to comply with the 'green policy'. As part of this initiative, the tax authorities no longer grant new approval to use paper computerized GUI applications and encourage business entities that were approved to use such GUI before 2017 to upgrade their systems to issue eGUIs.

Registered nonresident e-service providers should begin to assess the potential impact of eGUIs once the invoice exemption period has expired.

VAT payment and input VAT

Since VAT can only be paid with New Taiwan Dollars, the draft Enforcement Rules address the exchange rate for a nonresident e-service provider to determine its VAT sales. The spot rate quoted by the Bank of Taiwan on the last day of a VAT period will have to be used.

The draft Enforcement Rules allow input VAT on local purchases that are used solely for the foreign e-service provider's further sales to individuals in Taiwan to be credited against the provider's output VAT. However, the rules do not explain how to determine whether a domestic purchase is 'solely' for e-services sold to individuals in Taiwan.

Comment

Foreign e-service providers should assess the potential impact of the amended VAT rules so they can adjust their business models as needed, and prepare to register with the tax authorities, if necessary.

Ming Chang, mingchang@deloitte.com.tw, Deloitte Taiwan

Christine Hung, chrihung@deloitte.com.tw, Deloitte Taiwan

Back to top

EMEA

Southern African Customs Union

Annex to Agreement on Mutual Administrative Assistance enters into force

The Annex to the SACU Agreement on Mutual Administrative Assistance entered into force on 8 March 2017 after being ratified by Namibia on 6 February 2017. (The members of the Southern African Customs Union (SACU) are: Botswana, Lesotho, Namibia, South Africa and Swaziland.)

The purpose of the Annex is to afford each other mutual administrative assistance. The Annex was adopted on 16 September 2011, but required ratification by each member country before an effective implementation date could be finalized.

Wian de Bruyn, wdebruyn@deloitte.co.za, Deloitte South Africa

Cyprus

Electronic (online) submission of VAT returns becomes mandatory

Following the introduction of recent legislation, which was published in the Official Gazette of the Republic of Cyprus on 16 December 2016, the electronic (online) submission of VAT returns will become mandatory as of 2 May 2017.

The VAT returns in paper form will be abolished from that date onwards and as such taxable persons in Cyprus will no longer be in a position to submit their VAT returns manually. An exception to this has been granted only to taxable persons that are under the Special Schemes for Farmers and Urban Taxis.

A necessary requirement for the electronic submission of VAT returns is that taxable persons must be registered with the TAXISnet system, the online platform of the Cyprus Tax Authorities (CTA) that enables the e-submission.

As such, all VAT registered companies and individuals are strongly advised to proceed with registration with the TAXISnet system.

Taxable persons that are in a net VAT refundable position will be able to claim the VAT refund online by submitting an e-claim form during the submission of their electronic VAT return.

For taxable persons that are in a net VAT payable position the settlement of any VAT liabilities arising will still have to be made manually at the bank, as in the past. It is expected that going forward the CTA will introduce the electronic settlement of VAT liabilities.

The move to electronic submission of VAT returns comes in the course of the modernization of procedures in the CTA and is expected to result in cost savings and administrative efficiency for both businesses and CTA officials.

New law regulating settlement of overdue taxes

On 27 January 2017, the House of Representatives approved a new Law Regulating the Settlement of Overdue Taxes, which provides for a scheme that allows eligible taxable persons to apply for the payment of their overdue VAT liabilities through a regulated instalment scheme which also grants some relief on interest and/or penalties.

The Law, which also covers taxes other than VAT, was published in the Official Gazette on 3 February 2017, however it is expected to come into effect in May/June 2017.

The main provisions of the Law are set out below; however the details with regards to the practical application of the Law are expected to be clarified in notifications to be issued by the Commissioner of Taxation and published in the Official Gazette.

What falls within the scope of the regulated settlement scheme?

The provisions of the Law apply to VAT liabilities that relate to periods which precede the effective date of the Law and arise under the VAT legislation. The effective date of the Law, as well as the relevant periods covered under the Law, are expected to be announced in a notification that will be issued by the Commissioner and published in the Official Gazette.

The overdue VAT liabilities under the regulated scheme will have to be settled in equal instalments, the number of which should not exceed:

- 54 instalments for overdue taxes not exceeding EUR 100,000, provided that each instalment is not less than EUR 50;

- 60 instalments for overdue taxes exceeding EUR 100,000, provided that each instalment is not less than EUR 1,852.

For overdue taxes that are regulated under the provisions of the Law, no new interest and/or penalties will accrue and no criminal proceedings will commence.

In addition, taxpayers may be relieved of interest and/or penalties already imposed on the overdue taxes. However, the amount of such relief will depend on the number of instalments agreed. Further details with regards to the amount of this relief are expected to be communicated by the Commissioner and published in the Official Gazette during the next months.

Application process to join the regulated settlement scheme

A taxable person wishing to benefit from the scheme should file an application to the tax department within three months from the date the Law enters into force. The format of the application and the method of its submission are expected to be communicated by the Commissioner and published in the Official Gazette.

Assuming the request is made within the specified time frame, the CTA will examine the application form and communicate its decision to the applicant within 15 days from the date of the decision. If the application is accepted, the taxable person will receive a detailed statement showing a breakdown of the overdue taxes, the corresponding interest and/or penalties, the proposed number of monthly instalments and the amount of each monthly instalment.

The Law provides further details with regards to accepting/objecting the decision of the Commissioner.

Details with regards to payment process and other provisions

According to the Law, the instalments will need to be paid to the CTA in the manner specified in the Commissioner's decision.

The Law also provides details for cases when an instalment is not paid on time, and also the specified cases when the Commissioner may cancel an agreed regulated settlement scheme. In addition, it contains certain provisions for specified cases where the scheme may not apply.

Eligibility for joining scheme

In order to be eligible to apply for the settlement of outstanding VAT liabilities, taxable persons must meet the below two pre-requisites:

1. They must submit all their VAT returns to date in accordance with the applicable VAT legislation,

2. They must register with Ariadne, the online platform for e-services from the public service in order to be in position to apply electronically for the settlement of overdue taxes when the relevant law becomes effective. Applications for joining the scheme for the settlement of overdue taxes can only be made electronically via the Ariadne platform.

It is recommended that all taxable persons wishing to benefit from the regulated settlement scheme should ensure that the above conditions are met.

Christos Papamarkides, cpapamarkides@deloitte.com, Deloitte Cyprus

France

Questions referred to CJEU by Conseil d'Etat in *Morgan Stanley* case on input tax recovery by branch

The Conseil d'Etat followed the recommendations of the Public Rapporteur and on 29 March 2017 referred two preliminary questions to the CJEU in the case *Morgan Stanley*:

- If costs incurred by a branch established in a Member State are exclusively allocated to operations carried out by its head office established in another Member State, on what basis can the branch recover input tax? Is the input tax calculated on the basis of the branch's input tax recovery, or the head office's input tax recovery, or a specific deductible proportion combining the rules applicable in the Member States of the branch's VAT registration and the head office's registration? In particular, is the existence of a VAT option scheme for financial services relevant?

- Which rules should apply where the costs incurred by the branch contribute to the carrying out of operations in the Member State of its VAT registration and in the Member State of the head office, in particular regarding the concept of overhead costs and the deductible proportion?

Appointment of VAT representative for non-EU companies.

Non-EU companies must appoint a VAT representative when registering for VAT in France except if they are located in a country that has signed a treaty with France including assistance for the recovery of tax debts. This list of countries has been updated. For example, Argentina is no longer on the list and other countries have been added, such as Japan and Tunisia.

Below is the list of countries, updated on 25 March 2017, which have signed such a treaty with France:

- Aruba
- Australia
- Azerbaijan
- Curaçao
- French Polynesia
- Georgia
- Ghana
- Greenland
- The Faroe Islands
- India
- Ireland
- Japan
- Mauritius
- Mexico
- Moldavia
- New Zealand
- Norway
- Republic of Korea
- Saint Barthelemy
- Saint Martin
- Tunisia
- Ukraine.

On the other hand, companies established in an EU country can VAT register directly or appoint a VAT agent, who will not be liable to the tax authorities.

VAT return modified

A new line (line 5 A) has been added in the French VAT return. On this line, distance sales that are taxable in the country of arrival must now be included.

Michel Guichard, mguichard@taj.fr, Taj

Marie Manuelli, mmanuelli@taj.fr, Taj

Gulf Cooperation Council

Kingdom of Saudi Arabia: Ministry of Finance releases new VAT information

The Ministry of Finance of the Kingdom of Saudi Arabia (KSA) has published new VAT information on its website. The new section is in the format of FAQ and is aimed to provide basic information for businesses on the introduction of VAT in the KSA.

Of particular note are the following points:

1. VAT will be introduced on 1 January 2018.

2. The VAT rate is expected to 5%, however some goods and services may be zero-rated or exempt.

3. All companies with an annual revenue of SAR 375,000 or above will need to register for VAT with the General Authority for Zakat and Tax. Companies below this threshold but still generating revenue of at least SAR 187,500 annually can voluntarily register for VAT.

4. Registration for VAT will be made available towards mid-2017.

For full information, see VAT: Basic information for businesses.

KSA: Draft excise duty law approved by Shurah Council and published, registration for excise duty now available

The Shurah Council of the KSA has approved its draft excise legislation, with the tax expected to be applied on the importation and manufacture of tobacco, energy drinks and soft drinks. The next step is approval by the KSA cabinet.

KSA recently published a version of its draft excise legislation, with the full text available on the website of the General Authority of Zakat and Tax (GAZT), see Draft of Excise Tax Law. The law is currently in draft so changes should be expected before the law is finalized.

GAZT has recently made available the option for impacted taxpayers to register for excise duty on its electronic filing system (ERAD). It is understood that users can login to ERAD and submit an excise registration online. Details of GAZT online services can be accessed via GAZT website.

United Arab Emirates: VAT and tax framework

As the expected implementation of VAT across the GCC approaches, the Ministry of Finance (MOF) in the United Arab Emirates (UAE) has recently launched a series of VAT and excise awareness sessions to present to advisors and businesses on the progress of VAT and excise implementation. As the national legislation has not yet been published, this is an important information session to allow for awareness of the impact of VAT to be understood.

The first awareness session was held in Dubai on 21 March 2017. The MOF provided details on the content of the VAT Treaty, and some further details on the VAT policy choices available to the UAE. The MOF also revealed key decisions already taken by the UAE, including the treatment of some industry sectors and special rules such as VAT grouping.

Deloitte Middle East has issued a report providing more detail about the discussion, see Introduction of Value Added Tax (VAT) in the UAE.

The MOF will also hold a number of seminars throughout the UAE, particularly in Sharjah, Ajman, Fujairah, Ras Al Khaimah, Abu Dhabi and Al Ain. For details of these sessions, see MOF Workshops.

In another step towards the implementation of VAT, the UAE Federal National Council passed the Federal Tax Procedures law on 15 March 2017. This law, when enacted, will set the framework for the interaction between the Federal Tax Authority (FTA), the people and the taxable persons in the UAE.

Justin Whitehouse, jmwhitehouse@deloitte.com, Deloitte Middle East

Nibale Hamdan, nhamdan@deloitte.com, Deloitte Nibale Middle East

Italy

Manovrina law decree

On 24 April 2017, Italy enacted the *Manovrina* or 'Integrative Budget Law' (Law Decree of 24 April 2017, n° 50) on urgent financial measures.

The *Manovrina* law decree entered into force on its publication in the Official Journal of the Italian Republic n° 20/L of 24 April 2017 and it will be discussed by Parliament for conversion into law within the following 60 days from its publication.

The decree includes the following significant VAT changes:

Extension of split payment

The split payment rule will also apply to supplies to the following classes of subject:

- Companies directly or indirectly controlled by the State, under the meaning of article 2359 (1) and (2) of the Italian Civil Code, which specifically considers as controlled companies:

    1. Companies in which another company holds the majority of votes that can be exercised in the ordinary shareholders' meeting;

    2. Companies in which another company has sufficient votes to exercise a dominant influence in the ordinary shareholders' meeting;

- Companies directly controlled by local public bodies, under the meaning of article 2359 (1) of the Italian Civil Code;

- Companies listed in the FTSE MIB Index;

- Companies directly or indirectly controlled by the above classes of companies, under the meaning of article 2359 (1) of the Italian Civil Code.

A Ministerial decree, to be issued within 30 days from the date of entry into force of the *Manovrina* decree, will identify the subjects falling within the above new split payment rule.

The new split payment rules will apply to transactions for which an invoice is issued from 1 July 2017.

New terms for right of VAT deduction

Based on the *Manovrina* decree, VAT can be deducted, at the latest, within the annual VAT return relating to the year in which the right of deduction arose. The taxpayer must account for purchase invoices and import bills before the periodical VAT calculation in which the right of VAT deduction is exercised and, in any case, within the deadline for the submission of the annual VAT return related to the year in which the invoice is received and with reference to the same year. This means that a purchase invoice received in 2017 must be accounted for within the deadline for the submission of the FY2017 VAT return (30 April 2018) and thus the relevant right of VAT deduction can be exercised within the same deadline (30 April 2018).

The rationale for this rule seems to be to improve the quality of the tax authorities' automatic checks, by focusing audit activities on those significant VAT discrepancies related to each fiscal year, thus disregarding any mismatching arising from deductions of past VAT credits that are exercised late.

Changes to VAT credit offsetting with other taxes

The *Manovrina* decree also amends art. 10 of Law Decree n° 78 dated 1 July 2009 (as implemented by Law n° 102 dated 3 August 2009) laying down provisions for the so-called 'horizontal offsetting' of VAT credits with other taxes. In particular, the most significant changes are as follows:

- **Reduction of threshold for horizontal offsetting without Certification Visa (from EUR 15,000 to EUR 5,000)**: Taxpayers willing to offset their VAT credits for an amount higher than EUR 5,000 per calendar year (the old threshold was equal to EUR 15,000), must obtain the release of a Certification Visa (set forth by art. 35, par. 1, let. a) of Legislative Decree n° 241 dated 9 July 1997), with reference to VAT returns showing this VAT credit or, as an alternative, these VAT returns must be signed by subjects performing the accountancy control provided by art. 2409-bis of the Civil Code;

- **Stricter measures for incorrect horizontal offsetting**: The tax authorities will recover the amount of VAT credits wrongly offset together with the relevant interest accrued, and will also levy penalties for the irregular offsetting of VAT credits;

- **Exclusive use of e-services offered by the tax authorities (via *Entratel* and *Fisconline*) for the offsetting of VAT credits with other taxes by the online F24 forms, without any threshold**: Based on the former rules, the use of *Entratel* or *Fisconline* was mandatory for the horizontal offsetting of VAT credits higher than EUR 5,000.

New form introduced for withdrawal of goods from VAT warehouse

By Act of the Director of the Tax Authorities n° 59277 dated 28 March 2017, the tax authorities have published the form to be used for the guarantee for the withdrawal of goods originally imported into a VAT warehouse. The guarantee, which is mandatory when the VAT subject withdrawing the goods does not met the 'reliability conditions', must be valid for six months from the date of withdrawal and must be issued to the competent tax office, for a value equal to the VAT due. A copy of the guarantee must be submitted to the VAT warehouse keeper. See the November 2016 and March 2017 editions of this newsletter for more details.

Updated instructions for TR form

By Act of the Director of the Tax Authorities n° 59279 dated 28 March 2017, the tax authorities have updated the instructions for completing the TR form, together with the technical specifications for the e-transmission of the TR form. The content and layout of the TR form remain unchanged (the TR form approved by Act of the Director of the Tax Authorities dated 21 March 2016 remains valid).

Based on the updated instructions, the following VAT guarantee exonerations (recently introduced in Italy) will be introduced, starting from the upcoming submission of the quarterly VAT refund claim related to the first quarter 2017 (to be submitted by 2 May 2017):

- VAT guarantee exoneration for refunds of VAT credits under the threshold of EUR 30,000;
- VAT guarantee exoneration for refunds of VAT credits exceeding the threshold of EUR 30,000 for:
    - Taxpayers who opt for the cooperative tax compliance program (according to art. 3 of the Legislative Decree n° 128 dated 5 August 2015). This program, which may be adopted by taxpayers that meet specific conditions and undertake particular obligations, entails transparency and full disclosure of tax information between the taxpayer and the tax authorities;
    - 'Small taxpayers' who opt for the tax authorities' assistance program (according to art. 4 of the Legislative Decree n° 127 dated 5 August 2015). This program is aimed at the electronically availability of the documents needed for periodical payments and for the annual VAT return.

Antonio Piciocchi, apiciocchi@sts.deloitte.it, Deloitte Italy

Clarifications issued on art. 139 of Union Customs Code

Several clarifications have been issued in March 2017 by the Customs and Monopoly Agency on art. 139 of the Union Customs Code (UCC), allowing presentation of goods to Customs at a place approved by them instead of at the designated Customs office. In particular, the following has been affirmed:

- Customs authorizations issued according to art. 238 of Reg. (EU) No 2015/2447 (i.e. allowing the examination of goods at a place other than customs premises) for export shall not be converted in authorizations issued according to art. 139 of the UCC;
- A place approved according to art. 139 for import can be used only by the authorization holder, but Customs can issue more authorizations to different subjects for the same approved place;
- The authorization issued according to art. 139 shall be considered as a national act and thus the Italian rules on administrative process will apply (i.e. among which, for the authorization issuance, the current deadline of 60 days from the application's acceptance).

Alessandra Di Salvo, adisalvo@sts.deloitte.it, Deloitte Italy

Poland

Fixed establishments for VAT purposes in principal structures

Recently the administrative court concluded that a foreign-based entity that entered into a cooperation agreement with a Polish-based manufacturing company, producing goods for the benefit of the foreign principal from the entrusted materials, has a fixed establishment (FE) in Poland. The court stated that despite not having its own technical and/or personnel resources in Poland, the foreign entity exerted control over the Polish manufacturer, which resulted in the latter being considered as the FE of the foreign company in Poland. In this respect the administrative court shared the position of the tax authorities.

A similar approach was taken recently by the Supreme Administrative Court (SAC). In this case, the Polish manufacturer produced goods exclusively for the foreign principal (based on an agreement concluded for an indefinite period of time) and rendered auxiliary services of warehousing and logistics in relation to the finished products. The SAC concluded, referring *inter alia* to the Court of Justice of the European Court case of *DFDS* case, that an FE of the foreign principal in Poland arises, as the entity is in possession (via the Polish manufacturer) of the technical and personnel resources, and thus all of the services rendered by the Polish manufacturer to the foreign principal will be subject to VAT in Poland.

The above illustrates that the approach of the both the tax authorities and the administrative courts as regards the issue of FE in principal structures is changing. From this perspective, it is recommended that businesses review their structures to ensure correct treatment of manufacturing and related services, in particular given recent changes to the VAT law reinforcing VAT sanctions.

Stringent criminal code amendments in relation to VAT fraud

Recent changes to the Criminal Code (*Kodeks Karny*), with effect from 1 March 2017, introduced new types of criminal offences and penalties related to VAT fraud.

In particular, imprisonment penalties were established for issuing false invoices, invoice forgery, and using forged invoices to receive VAT refunds. The sentence can be between six months to eight years, with a minimum period of three years if the invoice(s) amount exceeds PLN 5 million and between 5 to 25 years if the value of a single falsified invoice/total value of falsified invoices exceeds PLN 10 million (EUR 2.2 million). Under certain circumstances, extraordinary mitigation of penalties is allowed.

The above regulations are a new means of combating fraud by the tax authorities. Although aimed at missing traders and VAT carrousel fraud, it cannot be entirely excluded that they would impact also the position of unaware VAT-payers involved in chain supplies also including such dishonest entities at some later/earlier stage, in particular given the current practice of the authorities when such frauds are identified in the supply chain.

Moreover, it may be expected that VAT audits will become more frequent and less flexible, in particular given the recent changes in the structure of the tax authorities (including tax police). From this perspective it is important that respective procedures aimed at verifying contractors and ensuring their credibility are implemented and followed and any one-off/non-standard transactions are subject to increased attention, allowing taxpayers to present the authorities a sound defense file in case of a potential dispute/verification.

Deregistration of VAT taxpayers

Following recent changes to the VAT law, the authorities have undertaken the verification of VAT-payers and, where the conditions for their deregistration *ex officio* were met, removing them from the VAT register of active VAT-payers.

As of January 2017, 36,000 entities were removed by the authorities from the VAT active payer register. As this is undertaken without any formal and prior notification, in some cases, the taxpayers are not aware of this removal, conducting their business as usual.

Accordingly, it is recommended that the status of entities be verified.

In addition, the authorities are challenging input VAT recovery with respect to invoices raised by such deregistered taxpayers. Thus, to secure their position, taxpayers should verify whether suppliers are active VAT payers as at the time of concluding a transaction, and implement procedures in this respect, allowing them to provide the authorities with a defense file in case of a potential dispute.

Michal Klosinski, mklosinski@deloittece.com, Deloitte Poland

Portugal

Arbitration Court decision regarding VAT invoicing requirements

The Arbitration Court (CAAD) has recently delivered a judgment regarding a dispute between the Portuguese Tax Authorities (PTA) and a taxpayer in relation to the fulfilment of invoice requirements foreseen in Article 36 (5) of the VAT Code (which in general terms follows Article 226 of the EU Principal VAT Directive) and the respective denial of the right to deduct the VAT mentioned in invoices not fully compliant with such requirements.

In this context, the PTA argued that the invoices at issue did not comply with the legal requirements foreseen in the VAT Code as the information disclosed therein was not enough to ascertain "*the quantity and usual name of the goods transferred or of the services supplied*".

After analyzing the invoices under debate, the Court held that the information disclosed in the invoices was, indeed, in line with the requirements foreseen by the VAT Code and that the principle of neutrality requires that deduction of input VAT must be allowed when the substantive requirements are satisfied, even where the taxpayer failed to comply with some formal requirements laid down by the domestic legislation.

The CAAD ruled that where the tax authorities are able to obtain the necessary information to verify that the material and substance conditions of transactions at issue have occurred and, therefore, are able to ensure the correct collection of the VAT or prevent abuse and fraud, they shall not impose additional conditions which may preclude the taxpayer from deducting the input VAT.

Despite the PTA's argument, the Court followed the Court of Justice of the European Union's findings in similar cases, in which the CJEU has stated numerous times the prevalence of substantive rules over formal requirements.

Afonso Arnaldo, afarnaldo@deloitte.pt, Deloitte Portugal

Russia

Foreign companies supplying online software to Russian individuals must register with tax authorities notwithstanding VAT exemption

The Ministry of Finance has clarified that from 1 January 2017 a foreign company rendering e-services to individuals the place of supply of which is deemed to be Russia is subject to be registered with the tax authorities notwithstanding the fact that VAT exemption applies.

A foreign company that provides rights to use software to individuals through the internet based on a license agreement is exempt from VAT under subpoint 26 point 26 of article 149 of the Tax Code. Nevertheless, this company will be required to register with the tax authorities.

Ministry of Finance clarifies VAT and corporate income tax implications of supply of gift certificates

The Ministry of Finance has clarified that providing gift certificates as a prize as part of a marketing event is considered to be a supply of goods subject to VAT.

Further, where the gift certificates are provided to customers in the framework of the marketing event, their value as an expense for corporate income tax purposes must not exceed 1% of the revenue from sales.

Ministry of Finance clarifies VAT implications where assignment of claim to compensate losses under supply agreement

The Ministry of Finance has clarified that assignments of a claim for compensation of losses under a supply agreement are subject to VAT. As the Tax Code does not include special rules for determining the tax base in this situation, the VAT should be accounted for under general rules, i.e. on the basis of all income received by the taxpayer related to settlement and payment for the property rights in monetary and/or non-monetary forms.

It has also been clarified that the buyer of such a right will be entitled to claim VAT recovery in the event of a subsequent assignment of the claim that is subject to VAT.

Amended draft law on introduction of tax-free system published

The draft law on the introduction of a tax-free system in Russia has been amended for further consideration as follows:

- The terms used in the draft law are amended, in particular, instead of the term 'VAT refund' the term 'compensation of the amount of tax' is used;
- It is envisaged that the Government will have the right to determine the list of goods with respect to which the tax-free system will not be applied;
- It is envisaged that the criteria for the participation of retail organizations in the tax-free system will be determined by the Government;
- It is established that the value of purchase must be at least RUB 10,000 in a particular shop during a calendar day in order to issue the cheque within tax-free (i.e. to receive a refund).

President supports initiative to develop internal air transportation through decrease to VAT rate

The President has supported the initiative to develop internal air transportation within Russia through a decrease to the VAT rate applicable to such transportation. An instruction to facilitate this proposal has been forwarded to the Ministry of Finance and the Ministry of Transportation.

Import of certain Turkish goods now allowed

The import into Russia of certain goods with Turkey as the country of origin has been prohibited since 1 January 2016. Resolution of the Russian Government of 9 March 2017 No. 276 excludes classification codes 0603 12, 0703 10, 0704 10, 1704 10 and 2501 00 from that list of goods.

In this regard, carnations, onions, cauliflower, broccoli sprouts, chewing gum, salt and sea water originating from Turkey are now allowed for import into Russia from 18 March 2017.

Resolution No.276 came into effect on 18 March 2017.

Andrey Silantiev, asilantiev@deloitte.ru, Deloitte Russia

Switzerland

Revised Swiss VAT Law from 1 January 2018

The revised Swiss VAT Law, which should be effective from 1 January 2018, will have a major impact in particular for foreign domiciled entities generating turnover in Switzerland.

Details will be finalized in an ordinance that will be published in autumn 2017. Accordingly, the final ordinance may differ from the current proposals.

The main changes are as follows.

Worldwide annual taxable turnover of CHF 100,000

With the first taxable supply of goods or provision of services in Switzerland and the Principality of Liechtenstein, a foreign domiciled entity will become VAT-liable in Switzerland and will have to register for Swiss VAT unless its worldwide annual taxable turnover is less than CHF 100,000.

Reduced VAT rate on e-magazines, e-newspapers and e-books

As of 1 January 2018, e-magazines, e-newspapers and e-books will be subject to the same reduced VAT rate of 2.5% as printed media. Important distinctions will be made for, e.g. marketing and e-services, which are still taxed at the standard VAT rate (currently 8%). In particular videos and movies will not qualify as e-media under the reduced VAT rate scheme. E-media, which also incorporates videos and movies, need to be classified for the accurate application of VAT rates in the future. E-books will only qualify for the reduced rate if they are published by a professional publishing house, with some other conditions.

VAT rates as per 1 January 2018

Due to specific temporary financing measures, which end on 31 December 2017, without a vote on the Swiss constitution on 24 September 2017, the VAT rates would decrease as per 1 January 2018. The VAT rates would decrease as follows:

- Standard rate to 7.7%
- Special rate for accommodation to 3.7%
- Reduced rate to remain at 2.5%.

Introduction of broadcasting charge

The revised Swiss Federal Television and Radio Act foresees that all (i.e. Swiss and foreign domiciled) VAT registered entities with an annual worldwide turnover of more than CHF 500,000, declared under Cipher 200 of the Swiss VAT return (after the reduction of consideration granted), will be required to pay the broadcasting charge on an annual basis – starting from CHF 400 up to maximum CHF 39,000 depending on the total worldwide turnover.

Detailed information covering collection, filing and payment deadlines, as well as related topics will be published in November 2017.

Import of small (low) value goods to Switzerland

In connection with the import of low value goods into Switzerland and the Principality of Liechtenstein, where the VAT amount is up to and including CHF 5, the place of supply for such deliveries of goods will shift from abroad to Switzerland, where the annual turnover from such deliveries into Switzerland is higher than CHF 100,000.

The respective turnover should be monitored in the course of 2017, and once the threshold of CHF 100,000 is reached, the Swiss VAT registration (with the simplified import procedure) would apply as of 1 January 2018. Affected entities, primarily foreign businesses, will have to import the goods in their own names and sell them with Swiss VAT to local customers. Hence, a VAT registration will be mandatory – with the obligation for foreign companies to appoint a fiscal representative. All other goods supplied via imports by the respective business will then also have a deemed place in Switzerland – and it will be necessary to apply for a 'simplified import procedure'.

Provision of taxable 'reverse-chargeable' services – consequences of the Swiss VAT registration (already applicable)

Once a foreign domiciled entity is VAT registered in Switzerland, taxable 'reverse-chargeable' services rendered to Swiss/Liechtenstein domiciled businesses or individuals (B2B or B2C) will no longer be subject to Swiss acquisition tax due by the recipient, but will be subject to Swiss output tax due by the supplying entity.

Action required

These changes will have a significant impact, especially on businesses involved in distance sales of goods via the internet, the provision of electronic and telecommunication services (B2C), supplies and installations in Switzerland, and physical work (e.g. repairs, installations) performed in Switzerland.

To allow for Swiss VAT numbers to be issued by 1 January 2018 by the Swiss Federal Tax Administration, a detailed review of the internal processes with the relevant Swiss VAT registration filing (if applicable) would have to be initiated as soon as possible, but not later than October 2017. It is recommended that set-up or review of internal ERP systems, especially in the light of the planned introduction of the decreased VAT rates and worldwide turnover reporting, should already be underway.

Benno Suter, bsuter@deloitte.ch, Deloitte Switzerland

Tomáš Rodák, trodak@deloitte.ch, Deloitte Switzerland

Tunisia

VAT rate changes

With effect from 1 January 2017, the following changes apply to the VAT rates:

- Broadening the scope of the application of the 18% rate: This rate will apply to certain activities that were previously exempt from VAT or excluded from the scope of VAT.
- Increase of the VAT rate from 12% or 6% to 18%: This increase covers activities such as computer services, including, for example, electronic certification services, internet services rendered by telecommunication network operators, computer training services.
- Decrease of the VAT rate from 12% to 6%: The 6% rate will apply to the majority of activities previously subject to the 12% rate.
- Broadening of the scope of the application of the 6% rate: This change covers transportation, education and catering services.
- Limitation of the application of the 12% VAT rate to a shorter list of activities.

The changes to the VAT rates are due to the following reasons:

- Unification of the VAT rates applicable for certain services such as catering and computing.
- Limitation of the scope of the application of the 12% rate.
- Application of IMF recommendations and implementation of tax reforms.
- Simplification of the VAT system.
- Application of the principle of VAT neutrality.

Amendment to suspensive regime

With effect from 1 April 2017, companies will be able to apply the suspensive regime if they realize at least 50% of their turnover from export sales or sales in suspension. Previously, there was no numerical limit.

(The suspensive regime consists of purchase with suspension of the VAT. The regime consist of the non-application of VAT (at the purchase of certain goods and services) under certain conditions and rules.)

Authorized Economic Operator procedural changes

Pursuant to the Finance Act 2016, the partnership between the customs administration and the Authorized Economic Operator (AEO) regime has been strengthened by the:

- Establishment of a legal framework for the operation of the AEO regime;
- Addition of new conditions to benefit from the regime, for example, AEO status can be granted to wholly exporting companies;
- Granting of additional advantages for AEOs.

The AEO regime existed in Tunisia before 2016, but without any legal framework. The provisions of the Finance Act aim to:

- Establish a legal framework for AEO in Tunisia;
- Facilitate customs controls with a possible ex post control;
- Simplify procedures and reduce the customs clearance terms.

Although the disposition was published in 2016, the conditions and procedures for granting, suspending and withdrawing the status of AEO will be determined by decree, which has not yet been published.

Sonia Louzir, slouzir@deloitte.tn, Deloitte Tunisia

Maha Bouhrira, mbouhrira@deloitte.tn, Deloitte Tunisia

United Kingdom

Indirect tax consultations

Following the Spring Budget 2017 announcements, as discussed in the February 2017 edition of this newsletter, a number of consultations and calls for evidence have been published by the tax authorities (HMRC). These include:

- A consultation on fraud in the construction sector which proposes the application of a domestic reverse charge to combat missing trader supply chain fraud where companies providing labor fail to account for VAT on their services. Response are due by 9 June 2017. See: Fraud on provision of labour in construction sector: consultation on VAT and other policy options.

- A call for evidence to be provided by 30 June 2017 from online retailers and payment processing companies, and other interested parties, on how technology could be used to collect VAT at the point of sale, where overseas traders may not otherwise be respecting an obligation to account for UK VAT. See: Alternative method of VAT collection – Call for evidence.

- A consultation on proposals for extending landfill tax to illegal waste sites. Responses are due by 5 May 2017. See: Landfill Tax: Whether to bring illegal waste sites within the scope of Landfill Tax.

- A number of excise duty consultations.

VAT treatment of historical bad debt relief claims

In October 2016, the Court of Appeal ruled in *GMAC* that features of the bad debt relief (BDR) regime that existed in UK law before 1997 (in particular, that a retention of title clause precluded any claim) were disproportionate. HMRC have now responded to this judgment, and invited BDR claims in certain specific circumstances. In principle, HMRC accept that BDR claims can now be made for supplies of goods between 1989 and 1997, although periods prior to 1989 are time-barred.

However, HMRC are naturally concerned to ensure that relief is not claimed twice, and that taxpayers do not submit claims where BDR was given at the time. This is likely to mean that issues will arise in relation to the evidence that is available for supplies that were made many years ago. For example, retention of title would not have prevented a BDR claim if the customer had resold the goods (albeit in breach of a Romalpa clause). HMRC note that this might be rare in the case of high value goods that were routinely repossessed, but would be more common in businesses which purchased goods for resale. The challenge, therefore, will now be to establish what evidence will satisfy HMRC that claimants suffered bad debts on supplies of goods made under retention of title terms, have not previously claimed relief, and are now claiming the correct amount of BDR.

VAT treatment of employment businesses

The Upper Tribunal has found in favor of HMRC in *Adecco*, which concerns the nature of supplies made by employment businesses. Adecco argued that it was introducing certain temporary workers to its clients, and should only charge VAT on its commission. The Upper Tribunal, however, has ruled that Adecco should account for VAT on all charges (i.e. including earnings paid to temps).

Its decision focuses exclusively on the contractual position, and considered it significant that the temps had no direct contract with the clients, and were paid by Adecco rather than by the clients. There is, however, little analysis of either the impact of the Employment Business Conduct Regulations (which affect the legal form of temps' employment) or of the question of whether the client (rather than Adecco) consumes the services of the temps. The decision therefore potentially leaves scope for further clarification of the relationship between contractual analysis and economic reality.

VAT treatment of third party repair costs

People driving self-drive hire cars and vans are normally covered by the hire company's insurance when they cause accidents. U-Drive Ltd asked its customers to hand over 'bump cards' when accidents occurred, so that it could contract with garages to repair the third party's car, and thereby control the speed and cost of repairs. Was U-Drive entitled to recover VAT on the garage's charges? The Upper Tribunal, agreeing with the First-tier Tribunal, has decided that it was not. It recognized that there was a legal relationship between the garages and U-Drive, and that the contracts (viewed in isolation) supported input tax recovery. However, the Upper Tribunal decided that the economic reality was that U-Drive simply agreed to pay for the repairs – other than discharging its liability to the third party, it had no interest in the work, and the mere fact that it contracted to pay the garages direct was not sufficient to justify VAT recovery. The decision further illustrates the complex VAT treatment of tripartite agreements.

Questions to the Court of Justice of the European Union in VAT HP partial exemption case

The Supreme Court has decided to refer questions to the Court of Justice of the European Union in the HP partial exemption case of *VW Financial Services Limited* (VWFS). Although the questions being referred have not been published yet, the Press Summary released by the Supreme Court suggests that they will focus on whether the fact that the cost of overheads was met from the VAT exempt finance charges (since the vehicles were sold on at cost price) meant that input tax on them was not recoverable, and if EU law permits the taxable sale of the vehicles to be ignored in the partial exemption calculation. HMRC's secondary argument – that the Court of Appeal and Tribunals should have considered an alternative to the approaches advanced by the parties – was rejected by the Supreme Court.

Article 50 and the Great Repeal Bill

On 29 March, the Prime Minister notified the European Council of the UK's intention to withdraw from the European Union, and a White Paper concerning the Great Repeal Bill has now been published, see: The Great Repeal Bill: White Paper.

The White Paper confirms that case law precedent from the CJEU will continue to be relevant. Any question as to the meaning of UK law that has been derived from the EU will be determined by reference to the CJEU's case law as it exists on the day the UK leaves the EU, as failing to follow CJEU precedent would create new uncertainties about the application of VAT. The Great Repeal Bill is therefore expected to give historical CJEU case law the same precedent status as decisions of the UK Supreme Court.

The White Paper also states that the UK will introduce a customs bill for implementing a UK customs regime.

Donna Huggard, dohuggard@deloitte.co.uk, Deloitte United Kingdom

Back to top

Eurasian Economic Union

Entry into force of technical regulation on the safety of fish and fish products

Decision of the Council of the Eurasian Economic Commission of 18 October 2016 No. 162 containing the technical regulation "On safety of fish and fish products" establishes safety requirements for food fish products imported and released in the Eurasian Economic Union. The technical regulation contains also requirements for production, storage, transportation, realization and utilization, and requirements on the marking and packaging of food fish products.

Most parts of the technical regulation will come into force on 1 September 2017.

Change of entry dates of requirements on marking of explosives

Decision of the Council of the Eurasian Economic Commission of 17 March 2017 No. 11 introduces changes in Decision of the Council of the Eurasian Economic Commission of 20 July 2012 No. 57 "On safety of explosives and goods made thereof".

Decision No. 11 provides that most of the technical regulation on the marking of explosives (i.e. Decision No. 57) will be effective from 1 January 2021 instead of 1 January 2017.

Decision No. 11 will come into effect on 29 April 2017 and will apply to the legal relations arising since 1 January 2017.

Andrey Silantiev, asilantiev@deloitte.ru, Deloitte Russia

Back to top

Contacts

Deloitte Global & Regional Indirect Tax Contacts

David Raistrick, Deloitte Global Leader – Indirect Tax
draistrick@deloitte.co.uk

Fernand Rutten, Deloitte Global Leader – Customs & Global Trade
frutten@deloitte.com

Ronnie Dassen, Deloitte Global Leader – Indirect Tax Americas
ronniedassen@deloitte.com

Sarah Chin, Deloitte Global Leader – Indirect Tax Asia Pacific
sachin@deloitte.com.hk

Darren Stephens, Deloitte Global Leader – Indirect Tax EMEA
darrenstephens@deloitte.co.uk

Deloitte Touche Tohmatsu Limited
30 Rockefeller Plaza
New York, NY 10112-0015
United States

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245,000 professionals make an impact that matters, please connect with us on Facebook, LinkedIn, or Twitter.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2017. For information, contact Deloitte Touche Tohmatsu Limited.

To no longer receive emails about this topic please send a return email to the sender with the word "Unsubscribe" in the subject line.