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# Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include introduction of the Tourism Tax in Malaysia, introduction of a domestic VAT reverse charge on certain supplies of goods in Greece, and proposed VAT split payment mechanisms in Poland and Romania.

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# Country summaries

## Asia Pacific

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| **Malaysia** | The Royal Malaysian Customs Department (RMCD) has made an announcement regarding the GST treatment of repair charges under warranty claims.<br><br>Suppliers will be relieved from charging GST for services supplied under contracts with their customers that do not belong in Malaysia (subject to specific conditions) for certain categories of supplies.<br><br>A number of RMCD guides have been amended.<br><br>There is an update from the December 2016 GST Technical Committee.<br><br>Additional information is now available in relation to the 'Electronic Information System'.<br><br>The Tourism Tax will take effect on 1 September 2017. | **Read More** |
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| **Italy** | The tax authorities have released guidelines regarding the calculation of reduced penalties under the voluntary regularization procedure.<br><br>Customs has provided clarifications regarding applications for repayment and remission of customs duties. | **Read More** |
| **Netherlands** | The mandatory reverse charge rule for telecommunication services is expected to apply from 1 September 2017.<br><br>The Government has launched an internet consultation on the definition of 'medicine' for VAT purposes. | **Read More** |
| **Poland** | A new draft bill has been published regarding the proposed VAT split payment mechanism.<br><br>The Ministry of Finance has published a reminder concerning mandatory bad debt relief for purchasers. | **Read More** |

Following changes to the VAT law concerning the methodology for input VAT recovery on reverse charge transactions from 1 January 2017, incorrect reporting of the reverse charge is now more easily identified by the tax authorities.

There has been a Supreme Administrative Court ruling on the tax point for continuous supplies.

The Government plans to increase the 8% VAT rate with respect to certain medical related products.

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| **Portugal** | Further to the implementation of the new system for the VAT exemption for the export of goods by a traveler who is a non-resident in the EU (tax free), the tax authorities have made available on their website instructions and technical specifications for compliance.<br><br>In the context of the new reverse charge mechanism for the VAT due on the import of goods which will come into effect on 1 September 2017, the VAT return refund annexes have been updated and the tax authorities have released a new functionality on their website. | **Read More** |
| **Romania** | According to a draft Government Ordinance, VAT split payment will apply in Romania from 1 October 2017. | **Read More** |
| **Russia** | There have been amendments to the draft law regarding the application of the 0% VAT rate to exporters.<br><br>The Government of the Russian Federation is considering a draft law on the introduction of an exemption from VAT for supplies of gold.<br><br>Under a draft law, the Government will be authorized to define a list of services related to aircraft maintenance that are exempt from VAT. | **Read More** |

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| | The Ministry of Finance has clarified VAT deduction on the acquisition of property.<br><br>From 30 August 2017, the Government will be able to prohibit the import of certain goods into Russia.<br><br>Restrictions have been introduced on the importation of ozone depleting substances. | |
| **South Africa** | There are safeguarding duties on certain flat hot-rolled steel products. | **Read More** |
| **United Kingdom** | Changes to the VAT use and enjoyment rules for telecommunication services will apply from 1 November 2017.<br><br>A Tribunal has ruled on the application of a penalty imposed by the tax authorities under the Senior Accounting Officer regime.<br><br>Under Making Tax Digital, the Government's proposal to introduce a system of digital tax accounts for use by taxpayers, businesses will be required to provide their VAT information to the UK tax authorities through MTD software with effect from April 2019.<br><br>The European Union (Withdrawal) Bill has been published.<br><br>The Government has published a position paper, in which it sets out its aspirations to facilitate the 'most frictionless trade possible' between the UK and the European Union after the UK leaves the EU. | **Read More** |
| **Eurasian Economic Union** | There has been a decrease in the rates of import customs duty for certain goods. | **Read More** |

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# Asia Pacific

## China

### New supervision model for processing trade in pilot ports

On 13 July 2017, the General Administration of Customs (GAC) issued Circular [2017] No. 29, which introduces a new supervision model for processing trade in nine pilot ports of Tianjin, Shenyang, Nanjing, Hangzhou, Wuhan, Gongbei, Huangpu, Chongqing and Chengdu. Circular 29 became effective on 1 August 2017.

***Highlights of Circular 29***

- Under the new supervision model, each enterprise is treated as a single unit and the enterprise's processing trade manual is the main document for turnover control and cancellation of the processing trade materials. The manual can be set up based on the HS code of the enterprise's material code or the self-classified HS code;

- Enterprises can choose the cancellation period based on the production cycle. For enterprises whose cancellation period exceeds one year, the enterprise needs to declare to Customs on a yearly basis;

- For outsourced processing activities and factory transfers, enterprises are no longer required to submit the goods delivery list. Enterprises can declare the last month's carry-forward status to Customs before the 15th of each month;

- Enterprises can inform Customs voluntarily, by way of a declaration, of issues caused by incidental situations or discovered during self-inspection within the cancellation period.

***Comment***

The new supervision model offers more flexibility on operating process control to enterprises and simplifies compliance procedures for enterprises. However, it also poses higher standards on enterprises' internal controls on the design and management of the operating process. It also requires enterprises to improve their automation levels.

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## Indonesia

### Director General of Customs and Excise issues amendment to regulation regarding guidelines on implementation of import of postal goods

Regulation of the Director General of Customs and Excise Number PER-09/BC/2017, regarding Amendment to Regulation of the Director General of Customs and Excise Number PER-02/BC/2017 regarding Guidelines on the Implementation of Import of Postal Goods, came into effect on 6 June 2017.

The amendments set out in the new Regulation are as follows:

1. Addition of a new article, Article 8A, regarding the submission of Consignment Notes by courier service providers for releasing postal goods in the form of letters from Customs Areas;

2. Addition of one new paragraph, paragraph (4), in Article 12 regarding the issuance of goods release approval and determination of tariff and customs values by Customs Working Units (SKP) based on the determined criteria;

3. Amendment to the provision of Article 11, namely by amending the provisions of paragraph (1) and paragraph (4) regarding selective inspection and physical inspection on postal goods, as well as adding one new paragraph, namely paragraph (4a), regarding suspicion of customs officials as the basis for the implementation of physical inspection of postal goods;

4. Amendment to Article 7 paragraph (7) regarding the use of a separate sub item for postal goods in the form of post cards, letters, documents, and certain postal goods sent through postal operators and letters sent through courier service providers;

5. Amendment to the title of part one of Chapter VI;

6. Addition of new articles, namely Article 26A, regarding the cancellation of Consignment Note, and Article 26B, regarding the cancellation of Special Goods Import Notification (PIBK);

7. Amendments to Attachment III, Attachment IV, and Attachment V to Regulation Number PER-02/BC/2017, to become as set out in Attachment I, Attachment II and Attachment III to this Regulation.

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## Malaysia

### GST on repair charges under warranty claims

The Royal Malaysian Customs Department (RMCD) has made an announcement that from 1 July 2017, charges made by a local distributor to overseas manufacturers will no longer be subject to GST.

***What scenarios are impacted?***

The most common scenario would be the following:

- An overseas manufacturer supplies goods in Malaysia through a local distributor;

- The overseas manufacturer provides a warranty in relation to the goods sold to the local distributor;

- A customer makes a warranty claim and the local distributor incurs costs to repair the goods;

- The cost of repair is recharged by the local distributor to the overseas manufacturer with GST (based on the prevailing RMCD view) as it relates to work performed on goods in Malaysia;

- The overseas manufacturer is not entitled to register for GST in Malaysia and the GST becomes a cost.

The announcement is intended to alleviate the cost of the GST to the manufacturer and/or local distributor relating to the repair charges.

***Application of concession***

The concession is only available via application, and this must be made by the local distributor.

There are a number of complying conditions involved, including the fact that the goods must have formed part of the local distributor's business assets as trading stock and that there was no mark-up on the repair costs.

**Minister's Relief 1/2017**

Minister's Relief 1/2017 was issued by the Ministry of Finance (MoF) under Section 56(3) of the GST Act 2014. Suppliers are relieved from charging GST for services supplied under contracts with their customers that do not belong in Malaysia (subject to specific conditions) for the following categories of supplies:

- **Group 1: Handling or storage services**

  This covers a specific list of supplies relating to handling and storage services that are supplied directly in connection with goods for export.

  GST relief may also apply to other services (in addition to the above) that are subcontracted by the supplier to third parties – though subject to conditions.

- **Group 2: Services of manufacturing activities and activities in installation, repair, cleaning, restoration and modification of goods and certain activities specific to oil and gas industry, activities in construction, building and modifications of ship and aircraft**

  This applies to the supply of services by a company licensed under section 65A of the Customs Act, 1967 or operating in a free zone, directly in connection with goods for export to an overseas customer that belongs in a country other than Malaysia that is outside Malaysia at the time the services are performed.

- **Group 3: Research & Development (R&D) services**

  This is specific to the supply of services directly in connection with goods involved in R&D of a new product or the enhancement of an existing product to an overseas customer that belongs in a country other than Malaysia that is outside Malaysia at the time the services are performed.

- **Group 4: Supply of tools or machines, or services related to such tools or machines**

  This applies to the supply of tools or machines and services directly in connection with such tools or machines relating to manufacturing goods that are to be exported to an overseas customer that belongs in a country other than Malaysia that is outside Malaysia at the time the services are performed.

For further details and Deloitte Malaysia's comment, see GST Chat: July 2017.

**Revised guides**

The following RMCD guides have been amended; for further information and Deloitte Malaysia's comment, see GST Chat: July 2017.

- General Guide as at 12 July 2017
- Guide on Insurance and *Takaful* as at 6 June 2017
- Guide on Transfer of Business as a Going Concern as at 21 March 2017
- Guide on Tourist Refund Scheme as at 6 June 2017
- Guide on Duty Free Shop (DFS) as at 15 June 2017.

**GST Technical Committee meeting update**

The GST Technical Committee was formed to resolve and bring clarity to various technical issues faced by businesses. The Committee, comprising various industry associations, professional bodies and senior officers of the RMCD, convened its meeting on 22 December 2016 to deal with several technical issues where clarification was needed. The meeting minutes were circulated on 14 June 2017. Based on a review of the minutes, a number of issues remain unclear and remain to be addressed by the RMCD.

Issues raised include the below. For further detail, RMCD's responses, and Deloitte Malaysia's analysis, see GST Chat: July 2017.

- Item 1: Licensed Manufacturing Warehouse (LMW)
- Item 2: Approved Trader Scheme (ATS)
- Items 3 and 4: Contract manufacturer's claim on material purchase price variance and inventory revaluation related to manufactured goods to export

- Item 5: Section 65(6) GSTA 2014
- Item 6: Issuance of tax invoice by a registered person for non-taxable supply
- Item 8: Removal of goods from a free zone to another free zone through Malaysia
- Item 9: New requirement for claiming ITC for goods exported
- Item 10: Post-importation adjustment.

**GST (Provision of Information) Regulations 2017**

Additional information is now available in relation to the 'Electronic Information System' (EIS) or more commonly called 'dongle' for collection of GST data.

In the latter part of June 2017, the GST (Provision of Information) Regulations 2017 were enacted and came into force on 1 July 2017.

The Regulations provide further guidance in relation to what 'device' means and the function of the software, such as receiving, transmitting, storing, and reporting of data. Furthermore, the Regulations establish the particulars required for a GST registered person to provide to the RMCD. In particular, details such as the address of the business premises including branches, and the accounting system used, or any other information as deemed required. Any changes to the business operation, such as an address or a replacement of an electronic machine, would require the business to immediately notify the RMCD of said changes.

Businesses that operate within the retail (hardware, grocery, bookstore and pharmacy), entertainment (any business providing the services of entertainment) and food and beverages (restaurants) industries are likely to be most affected by these Regulations. The RMCD will notify those impacted, and arrange an installation of the said device. Enrolled businesses are then required to store the device and maintain it during the course of business.

***Comment***

It is understood that upon coming into effect on 1 July 2017, the RMCD commenced implementation in phases, starting with the Klang Valley region and moving on to other areas. This was to be expected, as the RMCD had previously conducted pilot testing on the EIS in this region.

From the industries selected, it is clear that the focus is on those industries that operate in the cash economy and that would pose greater risks in relation to under-declared sales.

Impacted businesses are advised to comply as soon as possible when notified by the RMCD. This is to avoid business disruption and possible penalties imposed for failure to comply with the new requirements.

**Tourism Tax**

On 1 August 2017, through a notice published by the Attorney General's Chambers, the Second Minister of Finance, Datuk Seri Johari Bin Abdul Ghani stated that the Tourism Tax (TTx) would take effect on 1 September 2017. The registration provisions took effect on 1 August 2017. The Tourism Tax Regulations 2017 were also gazetted on 1 August 2017. The Orders covering the rate of tax and exemptions were gazetted on 23 August 2017.

***Background***

The Tourism Tax is a tax that will be collected by accommodation operators in Malaysia from 'tourists' on a per room per night basis. The tax will be a federal tax administered by the RMCD and is a new and separate tax to the existing GST and state-based tourism taxes.

The definitions of 'tourist', 'accommodation' and 'accommodation provider' for the purposes of the Tourism Tax are very broad and cover any person, any type of accommodation and all accommodation providers (regardless of whether that person is registered with the Ministry of Tourism and Culture). However, the Tourism Tax Act 2017 (TTx Act) allows for specific exemptions from being taxed and collecting the tax.

***Tourism Tax portal***

The RMCD has launched its Tourism Tax portal (MyTTx), which allows taxpayers to do the following:

1. Register for the Tourism Tax through an online application;

2. Access copies of the TTx Legislation, Regulations and Orders;

3. Access copies of the various forms and documentation including a sample copy of the TTx Return (TTx-03);

4. Access newly published RMCD guides in relation to the TTx that cover:

    a. Registration;

    b. General guidelines;

    c. Guidelines on completing the various forms (i.e., returns, refunds and bad debt relief).

The Regulations contain some useful information relating to the process for registration, filing of returns, making of payments, and claiming of refunds and bad debt relief. They also contain sample copies of the registration form and the Tourism Tax Return (TTx-03).

As the registration portal is now open, accommodation operators are required to complete the online registration through the portal. It is understood that operators currently registered with the Ministry of Tourism and Culture have been automatically registered; a number of operators have received registration confirmations despite not yet applying for registration. This is consistent with the powers granted to the Director General of the RMCD that allow him to register those providers already in the system.

For operators that have not yet registered or been notified by the RMCD of their registration, it is important to complete the registration as soon as possible. Failure to do so can result in a fine of up to MYR 30,000 or a compound of up to MYR 15,000.

***Key exemptions***

Some of the key exemptions include:

- Homestays and *kampong* stays that are approved and registered with the Ministry of Tourism and Culture;
- Accommodation premises provided to a person for education, training or welfare purposes;
- Operator operating accommodation with less than four rooms;
- Employer operating accommodation to accommodate employees;
- Rooms provided to Malaysian nationals and permanent residents.

***RMCD sessions***

The RMCD has commenced a national series of training and consultation sessions with operators. It is expected that these will be conducted in a similar fashion to those that took place when GST was introduced, with RMCD officers discussing key aspects of the tax and addressing operational and administrative issues.

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## South Korea

### Foreign Exchange Transaction Law penalties strengthened

A new Foreign Exchange Transaction Law (FX Transaction Law) entered into force on 18 July 2017.

The law revision includes enhanced penalties for a breach of reporting duties required for FX transactions. In connection with Articles 16 and 18 of the FX Transaction Law, a penalty will be imposed on an entity if the entity does not report an offset trade or a third party payment to the Foreign Exchange Bank or the Bank of Korea; the penalty is 2% and 4% of the relevant violated amount respectively (previously 1% and 2%). The maximum penalty amount also has increased from KRW 50 million to KRW 100 million. A penalty may be reduced by up to 50% if certain criteria, as listed in the FX Transaction Law, are met (previously, 20%).

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# EMEA

## EU

### Changes in alcohol denaturing procedures for excise duty exemption

It is common for European Union Member States to levy excise duty on goods containing alcohol. However, when the alcohol is denatured and no longer suitable for human consumption, an exemption from excise duty may apply. Recently the European Commission published an amendment to the implementing regulation on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of this excise duty exemption. The amendment repeals the 2016 implementing regulation, in which a mutual procedure for denaturing alcohol was recorded. Due to the objection of a Member State that this denaturing procedure was open to misuse, evasion, avoidance or abuse, the Annex of Regulation (EC) 3199/93 has been replaced.

The Annex, with amended denaturing procedures, is published in Commission Implementing Regulation (EU) 2017/1112 which applies as of 1 August 2017.

***Implications***

For companies that trade in alcoholic goods that are denatured, an exemption from excise duties may apply. This would depend upon which denaturing procedure is used for these goods and in which Member State the denaturing took place.  Each Member State has their own procedure to determine if alcohol is really denatured. The company could benefit from this exemption provided the correct procedure for the applicable Member State is used.

However, if a company already benefits from this excise duty exemption in a certain country by denaturing alcohol, but does not comply with the denaturing procedures of that country, the exemption may no longer apply and excise duties would be due.

***Next steps***

For companies that trade in (denatured) alcohol, it is important to check if a denaturing procedure is used for the goods and in which country this takes place. In the Annex of Implementing Regulation (EU) 2017/1112 the procedures and applicable countries are recorded. Also, national simplified procedure documents may be necessary to export these goods with exemption from excise duties.

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## Belgium

### Government announces plan to introduce optional VAT on immovable letting

Immovable letting has been exempt from VAT in Belgium since the introduction of the VAT system. As part of the 2018 Budget and the Tax Reform initiatives, the Government has decided to introduce a regime allowing landlords to opt to apply VAT to the immovable letting of buildings used for professional (VAT taxable) purposes.

Under the current VAT legislation, immovable letting is exempt from VAT. There are a number of exceptions to this rule (*inter alia*, immovable finance leases, the letting of car parks, storage facilities, and immovable equipment). However, the standard letting of office or industrial buildings has always been VAT exempt. This VAT exemption blocks the recovery of upstream VAT incurred on construction and maintenance costs, and this VAT cost was reflected in the rental fee charged by the landlord.

In 1993, the Belgian VAT Code already provided for the possibility to apply VAT to immovable letting, but this regime had to be implemented by Royal Decree. Such Royal Decree was never executed in view of budgetary constraints, and the above mentioned possibility was dropped from the VAT Code in 1994. Since then, the question of the introduction of an (optional) VAT regime, as it exists in other EU Member States, was discussed from time to time, only to be subsequently dropped again due to fears of the negative budgetary impact.

The Government has formally announced, in a press release dated 3 August 2017, that a new optional regime for applying VAT on the immovable letting of buildings to professional users will be put in place. This decision aims to remedy the 'competitive handicap' of Belgian real estate operators, since they will be entitled to recover the upstream VAT incurred on a property's construction and maintenance costs. According to the press release, the option will be available for contracts concluded as of 1 January 2018, and there will be specific measures to prevent the option being applied to existing contracts.

The regime's implementation will require a number of hurdles to be overcome, such as the scope and conditions for applying the option and the impact on existing agreements and on the VAT recapture rules. Further information on this major development for the Belgian real estate market will be available in the coming months.

### VAT exemption for diplomats

From 1 August 2017, an electronic control system for the VAT exemption available to diplomats in Belgium will apply. New legislation abolishes the immediate exemption for covered transactions; instead, VAT will be applied to the transaction, and the diplomat will have to claim a refund of the VAT through an accredited company. This system should ensure greater legal certainty for vendors and retailers, and should reduce challenges by the tax authorities on the application of the exemption during VAT audits. There is a transition period until 31 December 2017, and the forms used to claim the immediate VAT exemption (Forms 450 and 451) will be abolished as from 1 January 2018.

In Belgium, covered transactions carried out by diplomatic missions, consular posts and their personnel in Belgium, as well as certain international organizations (for example, NATO and SHAPE) and their personnel in Belgium, generally are exempt from VAT. Under the previous regime, diplomatic missions, consular posts and their personnel in Belgium have had to complete Form 450 (for official use transactions) or Form 451 (for private use transactions) and deliver the form to the supplier to benefit from the VAT exemption (as provided in article 42, section 3, 1° or 2° of the VAT code).

Forms 450 and 451 will be abolished from 1 January 2018 for diplomatic missions, consular posts and their personnel. Other international organizations and their personnel, however, are excluded from the new e-system, as are certain operations for which an explicit validation by the relevant tax authorities is required (for example, purchase of a car, purchase of a new official building, etc.).

The electronic control system that applies as from 1 August 2017 will involve the use of electronic certificates (e-certificates) for specific goods and services listed by the authorities that are purchased in Belgium by diplomatic missions, consular posts and their personnel for private and official use. The e-certificates will enable the beneficiary to claim a refund of the VAT that will be charged on the initial sales transaction. A new threshold of EUR 125 (VAT exclusive) is provided for official use transactions (instead of EUR 123 in Form 450), and the threshold is EUR 50 (VAT exclusive) for private use transactions (instead of EUR 247 in Form 451).

A procedure will enable the recovery of VAT through an accredited company chosen by the beneficiary of the exemption. This company will be responsible for verifying that the conditions to obtain the exemption are fulfilled. Once verification is made, the accredited company will transfer the e-certificate to the seller and request the seller to transfer the VAT to their bank account. Credit notes based on the e-certificate received from the accredited company, therefore, must be issued by the seller in such cases. Finally, the accredited company will transfer to the beneficiary the amount of VAT previously paid to the seller.

In the past, the correct application of these VAT exemptions was often challenged during VAT audits. Under the new regime, the vendor should avoid potential challenges of the exemption by the tax authorities (and thus the potential obligation to pay additional VAT), since VAT will be charged on the relevant sales. In addition, the seller no longer will have to verify whether the conditions for obtaining the exemption have been fulfilled. The risks for vendors and retailers created by the former regime, therefore, will be mitigated.

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## Finland

### Tax Account Online shut down permanently

The Tax Account Online service will be shut down permanently on 31 August 2017. Tax Account Online was replaced as the channel for e-filing and paying self-assessed taxes by the new e-service MyTax as of 1 January 2017. However, Tax Account Online was available in read-only mode in order to allow users to print out historical tax account statements and submitted returns. At the end of August, the service will be terminated completely and users no longer have access to these files.

### Supreme Administrative Court ruling on VAT exemption of cargo services supplied at earlier stage in commercial chain

In *A Oy* (Case C-33/16), in response to a referral by the Supreme Administrative Court of Finland (SAC), the Court of Justice of the European Union ruled that:

1. Article 148(d) of the EU Principal VAT Directive must be interpreted as meaning that loading and unloading of cargo are services supplied for the direct needs of the cargo of the vessels referred to in Article 148(a).

2. In those circumstances, the answer to the second and third questions is that Article 148(d) of the Principal VAT Directive 2006/112 must be interpreted as meaning that, first, not only supplies of services concerning loading or unloading cargo onto or from a vessel covered by Article 148(a) which take place at the end of the commercial chain of such a service may be exempt, but also supplies of services made at an earlier stage, such as services supplied by a subcontractor to an economic operator which then re-invoices them to a freight forwarder or transporter and, secondly, services for loading and unloading of cargo supplied to the holders of that cargo, such as the exporter or importer may also be exempt.

Following the CJEU’s judgment, the SAC ruled that the loading and unloading of the cargo of vessels used for navigation on the high seas and for the purposes of a commercial activity are considered VAT exempt on the basis of article 71 (3) of the Finnish VAT Act (1501/1993) where A invoices the services carried out by its subcontractor to a forwarding or transport company, i.e., not directly to the ship owner.

### SAC ruling on deductibility of costs relating to sale of shares

A Oy was a parent company that invoiced product development and administrative services to its daughter companies. The group of companies had decided to terminate its business activities in relation to which A Oy sold its shares in the daughter companies. The SAC had to decide whether A Oy was entitled to deduct the VAT included in purchases of specialist services it had acquired relating to the sale of the shares. It had been clarified that the costs had not been included in the sales price of the shares.

The SAC referred to the CJEU case *AB SKF* (Case C-29/08), and ruled, in accordance with the earlier Administrative Court ruling, that the costs had to be considered overhead costs and, by reference to the CJEU case *Abbey National* (Case C-408/98), were deductible as costs relating to the termination of business. With respect to specific corporate finance costs that A Oy had reported on its VAT return as reverse charged, the SAC required the tax administration, to which the case was returned to be finalized, to consider whether these costs would need to have been considered VAT exempt from the start, and not have been reported on the VAT return because of this.

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## Germany

### Court rules again on VAT treatment of supplies via consignment stock

On 16 November 2016 the Federal Tax Court (BFH) issued a decision (V R 1/16) concluding that supplies made by a Dutch BV to its German customer from consignment stock do not qualify as intra-Community supplies and, therefore, are subject to VAT in Germany.

#### *Facts*

The case before the BFH involved a Dutch BV entrepreneur that sold goods to a German company, which the German company resold to its customers. The goods were supplied by the BV to the German company from consignment stock located in Germany, where the German customer was granted free access to the goods. The BV retained ownership of the consignment stock until the German customer had provided to the BV, on a weekly basis, a list of the goods it had sold during the previous week. The German company then removed the listed goods from the consignment warehouse, and the BV issued an invoice for the goods to the German company.

The invoice price paid by the German customer to the BV for the goods was determined on the day the German customer resold the stock. The BV was obliged to leave the consignment stock in the warehouse in Germany for at least three weeks, after which the German company was entitled to return all or part of the inventory it had not resold to the BV.

#### *BFH decision*

The BFH concluded that the supplies made by the Dutch BV to the German customer from the call-off stock (i.e., where only one specific customer (here, the German company) may withdraw goods from the warehouse) located in Germany are subject to German VAT. Further, these shipments do not qualify as intra-Community supplies (which would be VAT-exempt), as this would require the customer to be known, through the existence of a binding purchase contract, at the time the goods were originally dispatched by the BV into Germany.

The BFH found that the customer could not be known at the time of the original dispatch, since it was not certain whether the German customer would keep the items, or was willing to pay for the items, until the goods were removed by the German company from the consignment stock. As such, a binding purchase contract was concluded only after the goods had been taken out of the storage for its own benefit by the German customer, because the customer was not obliged from the outset to purchase the goods sent to the warehouse by the Dutch entrepreneur. The German customer was obliged to pay for the goods only after it had removed the goods from the consignment warehouse.

Under German law, if the parties involved in a sale of goods agree, even based on a misunderstanding of the law, on consideration that does not include VAT, the agreed amount will be deemed to be inclusive of VAT. Since the BV had declared the sales in the Netherlands as tax-exempt intra-Community supplies and the German customer had declared corresponding intra-Community acquisitions in Germany, no VAT had been paid on the sale consideration. Accordingly, the BFH held that the basis for assessing VAT to the BV should be calculated by subtracting the VAT deemed to be included from the agreed price. With regard to the determination of the additional interest for late payment of the VAT actually incurred, the BFH stated that the same principles of law that govern the principal tax claim also apply to the interest, as this is an auxiliary tax claim.

***Comment***

In a decision dated 20 October 2016 (see German and Legal News), the BFH also ruled on the VAT treatment of supplies made via consignment stock. The BFH disagreed with the tax authorities' position regarding supplies via German consignment stock. According to the tax authorities, the supply of goods from other EU Member States via consignment stock located in Germany should be deemed to be an intra-Community supply of goods followed by a domestic supply by the supplier. The BFH concluded that a supply via a call-off stock should be considered a direct intra-Community supply only if the final customer is identified at the beginning of the transfer from the EU Member State of dispatch, and if a binding order existed on that date. It is irrelevant that the right to dispose of the goods was transferred in Germany.

The BFH has now confirmed the 2016 decision by holding that the customer cannot be determined if there is no binding purchase contract between the supplier and the customer at the time of the original dispatch. However, the BFH has left open the question of which conditions must be fulfilled to establish the existence of a binding purchase contract that identifies the customer at the beginning of the shipment.

The tax authorities must now apply the BFH decisions.

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## Greece

### New reverse charge mechanism introduced and other recent changes to VAT rules

The Government enacted a law (Law 4484/2017) on 1 August 2017 that adopts the reverse charge mechanism found in article 199a of the EU Principal VAT Directive for certain domestic supplies of goods, reduces the VAT rate for certain goods and services, and makes other changes to the VAT code. Specific provisions of the new law and other recent changes to the VAT rules are discussed below.

#### *Reverse charge*

Article 39a of the VAT code (Special scheme for the payment of tax by the recipient of goods and services) is amended to introduce the reverse charge on domestic sales of mobile phones, console gaming devices, tablets and laptops, provided the purchaser is entitled to deduct the input VAT incurred. The VAT amount due on B2B domestic sales of these goods is not charged on the invoice issued by the supplier; instead, the invoice must indicate that "the purchaser is liable for the payment of VAT", and the purchaser must account for the both the payment of the VAT and the offsetting input credit through its books and returns.

The new reverse charge rules apply from 1 August 2017.

The Government's objective in introducing the EU Principal VAT Directive reverse charge provisions into Greek law is to adopt measures to prevent carousel fraud and general tax avoidance activities within the EU and globally.

It is expected that a ministerial decision will be issued to provide further clarifications and guidelines on the application of the reverse charge.

#### *Other VAT changes*

*Refunds*

The processing of VAT refunds of amounts up to EUR 10,000 per beneficiary in audit cases pending on 1 August 2017 is accelerated to facilitate and support business activities. Audit cases for which a temporary corrective tax assessment has not been issued are considered to be pending audit cases for these purposes.

Audits of refunds up to EUR 10,000 still may take place in a sample of cases selected through a decision issued by the Chief Officer of the Independent Authority of Public Revenue based on specific risk analysis criteria.

*Rates*

Annex III of the VAT code is amended to reclassify the following goods so that they are subject to the 13% VAT rate rather than the 24% rate, effective 1 July 2017:

- Certain cut flowers;
- Miscellaneous grains and seeds used for sowing; and
- Prepared foods used in animal feeding (except for prepared foods intended for pets).

The Ministry of Finance has not issued any additional guidance on the treatment of invoices already issued with the standard (24%) rate, especially with respect to B2B sales (namely, whether a credit invoice should be issued).

The following goods and services were added to Annex III under Law 4472 dated 19 May 2017, making such supplies subject to the lower 13% rate:

- Certain animals, i.e., horses (except race horses), mules, bovine animals, sheep and goats;
- Chickens, hens, ducks, geese, turkeys and guinea fowl to be used for human consumption;
- Live animals and birds to be used for human consumption, animals raised for fur production and insects to be used in crops in place of insecticides;
- Certain oil seeds for sowing;
- Straw, skin of unprocessed cereals, clover, livestock roots and similar livestock products;
- Residues and food waste used in animal feed, with certain exceptions;
- Fertilizers;
- Raw mastic (white or otherwise);
- Insecticides, rodenticides, fungicides, herbicides and similar products; and
- Services provided for agricultural production.

Separately, the following categories of goods have been amended:

- Fish: The exemption from the application of the reduced 13% VAT rate has been extended to liver, eggs, sperm, fins, heads, tails, crayfish, bladders and other edible fish;
- Goods to be used by the disabled: Typewriters and Braille writing frames for persons with limited sight, as well as wheelchairs and other vehicles used by the disabled are added to Annex III;

- Other flowers: Certain bulbs, onions, roots, flowers and roots, and other live plant cuttings have been added to Annex III;

- Catheters: The wording has been amended by adding the phrase 'catheters for human medical use' and removing certain types of catheters.

Other clarifications relating to the application of the reduced VAT rate on goods and services and the regulation of other issues arising under Law 4472/2017 were provided in Circular Pol. 1119/2017, dated 27 July 2017.

***Commission sales of agricultural products***

The VAT code is amended to provide that, in the case of commission sales of agricultural products on behalf of individual farmers, agricultural associations and legal entities/persons conducting only agricultural activities, where the relevant clearance is not issued on a monthly basis, the commission agent is liable for the payment of VAT.

***Self-supplies***

Law 4474/2017 amended the VAT code with respect to free of charge supplies of goods, effective 7 June 2017. Edible foods supplied to the Ministry of Education, Research and Religious Affairs or the Ministry of Labour, Social Insurance and Social Solidarity in the context of a humanitarian crisis, and that are to be further supplied free of charge to primary and secondary public education students are considered gifts that are exempt from the self-supply obligation (meaning that no VAT has to be remitted to the Greek State).

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## Italy

### Application of voluntary regularization for penalties for violations linked to new quarterly e-reporting VAT obligations

Based on Resolution n° 104/E, dated 28 July 2017, taxpayers may benefit from the voluntary regularization (*Ravvedimento Operoso)* procedure in order to regularize the following violations:

- Omitted, incomplete or inaccurate e-submission of the quarterly communication of invoices and customs bills, subject to penalties ranging from EUR 2 per each invoice up to EUR 1,000 (reduced by half, in case of e-submission within 15 days from the deadline).

- Omitted, incomplete or inaccurate e-submission of the quarterly communication of the periodical VAT calculation data, subject to penalties ranging from EUR 500 EUR to EUR 2,000 EUR (reduced by half, in case of e-submission within 15 days from the deadline).

In this respect, the tax authorities released specific guidelines regarding the correct calculation of reduced penalties under the voluntary regularization.

Furthermore, with respect to omitted, incomplete or inaccurate e-submission of the quarterly communication of the periodical VAT calculation data, the tax authorities clarified the amending actions to be taken in order to regularize this violation, in particular:

- When the regularization is made before the submission of the annual VAT return, taxpayers shall: (1) pay penalties; and (2) e-submit the corrected quarterly communication of the periodical VAT calculation data;
- When the regularization is made with the submission of the annual VAT return (the annual VAT return reports the corrected periodical VAT calculation data), taxpayers will pay penalties only, without e-submitting the corrected quarterly communication of the periodical VAT calculation data;
- When the regularization is not made with the submission of the annual VAT return (the annual VAT return does not report the corrected periodical VAT calculation data), taxpayers must: (1) pay penalties for the omitted, incomplete or inaccurate e-submission of the quarterly communication of the periodical VAT calculation data; (2) pay penalties for irregular submission of the annual VAT return; (3) e-submit an integrative annual VAT return thus reporting the corrected periodical VAT calculation data.

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**Applications for repayment and remission of customs duties**

In August, Customs issued Note No 84923 R.U., providing clarifications regarding applications for repayment and remission of customs duties.

In particular, it has been outlined that in the light of art. 172 of Reg. (EU) 2015/2447, applications can be submitted to Customs by the customs representative of the person that has paid or is liable to pay the customs duties (i.e., thus, not only by such person) and in this case the competent office shall check the specific power of representation granted to the customs representative for the repayment or remission as well as notifying the repayment or remission decision both to the customs representative and to the person represented by the representative.

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## Netherlands

**Mandatory reverse charge rule for telecommunication services expected 1 September 2017**

As covered in the June 2017 edition of GITN, the Dutch State Secretary of Finance allowed taxable persons to immediately apply a VAT reverse charge mechanism to business to business (B2B) supplies of telecommunications services in the Netherlands between taxable persons carrying out such services as from 2 June 2017. It was announced that the optional reverse charge rule was to be followed by a mandatory reverse charge rule. It has now been announced that the mandatory reverse charge rule is to be expected to apply as from 1 September 2017 (or as soon as possible after that date).

## Internet consultation on refinement of definition of ‘medicine’ for VAT purposes

On 17 July 2017 the Ministry of Finance launched an internet consultation on the proposal for a refinement of the definition of ‘medicine’ for the application of the reduced VAT rate.

### *Supreme Court*

The direct reason for the refinement of the definition was the judgment of 11 November 2016 of the Supreme Court, which ruled that sunscreen lotions containing UVA and UVB filters and toothpaste containing fluoride qualify as medicines in the VAT definition of medicines, and are therefore subject to the reduced VAT rate of currently 6%.

The broad interpretation by the Supreme Court of the term ‘medicine’ also creates opportunities for other products to be subject to the 6% VAT rate. The purpose of the proposal is to end this broad interpretation.

### *Proposal*

By refining the VAT legislation, as of 1 January 2018 the reduced VAT rate of 6% will only apply to products for which a marketing authorization has been issued as stipulated in the Dutch Medicines Act (*Geneesmiddelenwet*) or which are specifically excluded therefrom. As of 1 January 2018 products that are currently subject to the reduced VAT rate of 6% due to their presentation, but which from the perspective of the Dutch Medicines Act and the European regulations for cosmetics, medicinal products and medical devices are not allowed to be introduced into circulation as medicines, will no longer be subject to this reduced VAT rate.

According to the Ministry of Finance the large majority of the products that currently qualify as medicines for VAT purposes will remain subject to the reduced VAT rate of 6%.

### *Internet consultation*

The internet consultation was launched on 17 July 2017 and closed on 14 August 2017. The consultation was open to the public and sought the views of business, the public, and representative organizations.

### *Impact of proposal*

The proposal aims to achieve clarification, legal certainty, and unambiguous VAT treatment of products qualifying as ‘medicine’ in relation to the current situation. By linking products to the marketing authorization as stipulated in the Dutch Medicines Act, cosmetic, cleansing, and care products such as sunscreen lotions and toothpastes containing fluoride and other pharmaceuticals for which an authorization as medical device has been issued, will no longer qualify as a medicine for VAT purposes.

Examples of these products are: certain (baby) creams; mouth wash; insect spray; anti-dandruff shampoo; certain products for hemorrhoids, acne, bladder inflammation, heartburn, gastrointestinal cramps, diarrhea, eczema, coughs, head lice, lime, sore throat, scars, fungal infections, colds, blocked nose, warts; and kidney dialysis concentrates. As of 1 January 2018 these products will probably no longer be subject to the reduced VAT rate.

As there is an internet consultation, it is not yet clear what the final version of the proposal will be.

The Supreme Court considers that the term 'medicine for VAT purposes' should be interpreted in accordance with the definition of the term 'medicine' in the Medicinal Products Directive, including a broad explanation of the presentation criterion on the basis of European case law.

By way of background, an earlier attempt to amend the law was not successful.

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## Poland

### Amendments to VAT split payment mechanism

A new draft bill introducing the split payment mechanism was published recently. In general, the new bill incorporates the provisions of the previous version, with amendments proposed in the course of the public consultation phase. First, the entry into force of the mechanism was postponed until 1 April 2018 (initially 1 January 2018), as the Ministry of Finance decided that banks required more time to make changes in their computer systems, allowing both the financial institutions and taxpayers to prepare for the new regulations.

In addition, it has been decided to allow the split payment mechanism where only part of the liability is settled (previously the whole invoice amount must have been paid to utilize the scheme). Also, the deadline for release of the amounts included in the VAT account for other purposes has been shortened from 90 to 60 days, and if there is an application in the VAT return for the refund of an excess of input VAT to the special VAT account, the amount shall be transferred by the authorities within a non-extendible deadline of 25 days. Finally, it was stated in the bill that running a VAT account cannot trigger any additional bank charges.

As implementing the split payment mechanism is likely to be one of the elements of due diligence standards currently being developed by the Ministry of Finance (as discussed in the July 2017 edition of GITN), albeit optional, it may be widely applied in practice. Thus, it is recommended that taxpayers start to assess the impact of the proposed changes on their systems to secure their positions and ensure there is sufficient time to process amendments to their systems.

## Mandatory bad debt relief for purchasers

The Ministry of Finance published recently a reminder concerning mandatory bad debt relief for purchasers.

Under the Polish VAT law, a taxpayer must correct input VAT recovered in the VAT return if the taxpayer did not settle the invoice within 150 days from the due date. Settlement of the invoice allows the purchaser to again include the respective input VAT amount in the VAT settlement for the period when the liability was paid. As of 1 January 2017, not complying with the obligation to decrease input VAT recovery in this respect may result in VAT sanctions on the taxpayer.

The Ministry of Finance has advised that they will now be focusing on verifying whether taxpayers comply with these obligations, in particular, when reviewing VAT settlements, they will investigate payment deadlines on the purchase side versus the dates of actual settlement of the liability. From this perspective, payment deadlines should be closely monitored to ensure input VAT is accordingly adjusted if necessary.

## Accounting for reverse charge

There were changes to the VAT law concerning the methodology for input VAT recovery on reverse charge transactions implemented in Polish VAT law as of 1 January 2017.

To ensure VAT neutrality on such transactions, output VAT must be reported in the correct reporting period (as per the tax point rules) and not later than within three months from the month in which the tax point occurred. If the transaction is not properly reported, output VAT must be reported in the period when the tax point of the transaction occurred, whilst input VAT can only be recovered in the current return. If such transactions are not reported at all, the risk of VAT sanction arises.

The new provisions have increased the number of corrections in previous reporting periods submitted on a monthly basis. In the experience of Deloitte Poland, incorrect reporting of the reverse charge is now more easily identified by the tax authorities when reviewing the SAF-T files submitted by taxpayers, triggering increased attention by the authorities (in particular with respect to returns in which application for VAT refunds are made). As non-compliance can trigger penalties, review of the methodology of reverse charge transactions is recommended.

## Tax point for continuous supplies

Under Polish VAT law, the tax point arises in general on the date of the supply of goods. However, for a supply for which subsequent payment deadlines have been agreed, the tax point arises at the end of each settlement period. The tax authorities have developed a practice that these provisions only apply to supplies of goods where particular deliveries cannot be separated. If it is possible to determine the dates of particular supplies, the authorities consider these to be single repetitive supplies and assign separate daily tax point dates to the particular deliveries.

Recently the Supreme Administrative Court issued a ruling in which the above approach of the authorities was challenged. In particular, the Court stated that the tax point provisions do not require the supplies to be of a continuous inseparable character; to benefit from the tax point recognition simplification it is sufficient if subsequent payment deadlines are agreed in relation to such deliveries.

This is a further court ruling allowing for application of the respective provisions to monthly supplies of goods, and can be considered as an element of a defense file if such an approach is challenged by the authorities in the course of verification of settlements.

**Planned VAT rate changes**

The Government plans in the coming months to increase the currently applicable 8% VAT rate with respect to certain medical related products. It is expected that the standard 23% VAT rate will apply to auxiliary medical equipment and equipment that is not intended for personal use by persons with disabilities, as well as to non-pharmaceutical products normally used for the protection of health, disease prevention, and medical and veterinary purposes.

The above comes as a result of the Court of Justice of the European ruling of 4 June 2015 in a case against Poland, in which the CJEU stated that by implementing the lowered 8% VAT rate for certain medical equipment and pharmaceutical products, Poland violated the EU law (*Commission v Poland* (Case C-678/13)). The draft bill will be proposed by the end of the year.

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## Portugal

**VAT exemption for acquisitions by non-EU-residents – tax free**

Further to the implementation of the new system aimed at modernizing the procedures to control and validate the requirements for the VAT exemption applicable to the export of goods by a traveler who is a non-resident in the EU (tax free) – covered in the March 2017 and June 2017 editions of GITN – the Portuguese Tax and Customs Authorities (PTCA) have made available on their website the instructions and technical specifications for compliance with the requirements and conditions of electronic communications and the documents that should be presented by travelers to benefit from the VAT exemption.

In this context, on 31 July 2017, the PTCA published Circular Letter no. 30192 to clarify the new procedures to be adopted. The Circular Letter provides taxpayers more details regarding requirements for invoices, the electronic communication for certification on the PTCA's website, how to proceed in case of cancellation or replacement of such communications, how to report these operations on the VAT return, among other specifications.

Additionally, the Circular Letter summarizes how non-EU-residents should proceed to benefit from this VAT exemption, as well as the documentation needed to present to the PTCA for the certification of exportation.

### Reverse charge for VAT due on import of goods

#### *VAT return refund annex for suppliers updated*

The new reverse charge mechanism for the VAT due on the import of goods (eliminating the associated financial impact) will come into effect on 1 September 2017 for the import of goods listed in Annex C of the VAT Code (similar to Annex V of the EU Principal VAT Directive) except for mineral oils, and as from 1 March 2018 for all other goods (including mineral oils). The State's Secretary for Tax Affairs has published Legislative Order no. 7/2017 to make the necessary additions to the guidelines to fill out the VAT refund annexes (both suppliers and clients annexes) to adapt them for the reverse charge mechanism.

As such, when the VAT import reverse charge mechanism applies, in the VAT refund annex related to suppliers, applicable for VAT refund requests, such VAT amount must be marked in the column *Prefixo* with the code 'IM'.

The new annexes will enter into force on 1 September 2017.

#### *Online requests to apply for reverse charge regime*

The tax authorities have released a new functionality, available on the *Portal das Finanças* website, called 'Imports – Option for payment of the VAT due through the periodical VAT return', whereby a taxpayer may submit a request to apply for the regime, in accordance with Articles 2 and 5 of Ordinance n 215/2017 of 20 July 2017.

This request can only be made online by following this path: *Servicos/entregar/Pedido/Importacoes – Opcao pagamento do imposto na DP de IVA*, and no additional documentation will be required from the taxpayer. If the taxpayer is a resident entity required to have a Certified Accountant, the request should be made by such Certified Accountant.

To make the request, the EORI (Economic Operators Registration and Identification) number may be provided and the taxpayer must choose in which reporting period the new mechanism for import VAT payment will apply. To apply for this new mechanism as of 1 September 2017, a taxpayer must ensure that from that date onwards it will not benefit from the deferral of the payment of VAT on imports, and will not hold outstanding import VAT debts in favour of the tax authorities.

The tax authorities will reply to this request within five days, through the electronic mailbox VIA CTT.

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## Romania

### VAT split payment

VAT split payment will apply in Romania from 1 October 2017, according to a draft Government Ordinance (GO) published by the Ministry of Public Finances (MFP) on 4 August 2017.

Taxable persons registered for VAT purposes will be required to open a separate bank account (the VAT account) to receive the VAT charged to customers and pay the VAT invoiced by suppliers.

The VAT split payment applies as follows:

- Opening of a bank account by taxable persons, including public institutions, registered for VAT purposes at the Treasury or at any bank. The IBAN will include the characters 'TVA'.

- Direct receipt in the VAT account of the VAT invoiced to clients for supplies of goods/services.

  - This does not apply to payments in cash, cards or cash substitutes; however, the supplier must transfer the VAT amount into the VAT account within three working days.

- The amounts from the VAT account can be used to pay the VAT invoiced by suppliers and to pay the VAT due to the State Budget.

- The possibility of transferring amounts from VAT accounts to another (current) account by the holder only with the approval of the tax authorities (Agenția Națională de Administrare Fiscală (ANAF)). The draft GO does not provide for any deadline for such approval.

- Cash withdrawals from VAT account are prohibited.

- As of 1 January 2018, for debiting and crediting the VAT account, banks must also put in place an automatic/manual mechanism to verify that payments are made only between these accounts.

The draft GO includes fines for breaches of VAT obligations under this system – of up to 50% of the amount of VAT.

In the substantiation note of the GO the MFP states that: "This mechanism aims to increase the level of compliance of taxable persons by providing the financial resources for the payment of VAT due to the State budget, since the amounts collected from customers can no longer be used for other payments, but only for the VAT payable to suppliers or the State budget."

For more information and Deloitte Romania's comment on the proposal, see Deloitte Romania's Tax and Legal Weekly Alert: 07-11 August 2017.

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## Russia

### Amendments to draft law regarding application of 0% VAT rate to exporters

Draft Law No. 113663-7 was approved by the State Duma of the Russian Federation in the first reading on 7 April 2017. The Government of the Russian Federation has prepared amendments to the Draft Law, under which it has been suggested that:

- It will be possible to apply a 0% VAT rate with respect to the supply of goods produced as a result of processing and goods produced with the use of foreign goods exported under the customs procedure of re-export, as well as with respect to transportation services related to these goods;

- A list of documents should be determined to confirm the application of the 0% VAT rate with respect to the supply of goods produced as a result of processing and goods produced with the use of foreign goods exported under the customs procedure of re-export;

- Taxpayers will have a right not to apply the 0% VAT rate with respect to the above operations.

The Draft Law is expected to come into force on 1 January 2018.

### Draft law on VAT exemption for supplies of gold

The Government of the Russian Federation is considering a draft law on the introduction of an exemption from VAT for supplies of gold. The authors of the draft law (the State Duma Committee on Financial Markets) state that currently the application of VAT to supplies of gold brings to the budget less than RUB 100 million a year, whereas the introduction of an exemption will bring approximately RUB 2 billion, due to a predicted increase in supplies of gold (and a corresponding increase in the amount of profit tax).

### Government to define list of services related to aircraft maintenance that are exempt from VAT

A draft law is under consideration by the State Duma under which the Government of the Russian Federation will be authorized to define the list of particular services related to aircraft maintenance services the supply of which is exempt from VAT.

Under the current provisions of the Tax Code of the Russian Federation, the supply of services rendered in Russian airports and the air area of the Russian Federation on aircraft maintenance, including air navigation services, are not subject to VAT.

In practice, there are disputes between the tax authorities and taxpayers with respect to what particular services should be treated as aircraft maintenance services not subject to VAT.

It is expected that the approval of the draft law will clarify the law.

**Ministry of Finance clarifies VAT deduction on acquisition of property**

The Ministry of Finance has clarified that the amounts of VAT charged to a taxpayer upon acquisition of real estate can be deducted in full regardless of the fact that the property will be used in VAT-able and non-VAT-able operations.

When the property is put into operation for a non-VAT-able purpose, the amounts of VAT deducted must be repaid to the budget within 10 years.

**Right for Government to prohibit import of certain goods into Russia**

Federal law of 29 July 2017 N 232-FZ, effective from 30 August 2017, introduces a right for the Government to prohibit the import of certain goods into Russia, as follows:

- Goods that were imported into the Eurasian Economic Union (EEU) under rates different from the rates established by the unified customs tariff of the EEU;

- Goods with regard to which an EEU Member State has an obligation on turnover and/or use of goods only in such Member State;

- Goods with regard to which an EEU member state applies unilateral tariff benefits and preferences, tariff quotas and/or prohibitions and restrictions that differ from the EEU law and/or Russian law;

- Goods with regard to which customs formalities are undertaken by importers using certain special simplifications that are provided only on the territory of one EEU Member State;

- Goods with regard to which unilateral tariff measures and/or prohibitions and restrictions are applied in Russia, if the importer was not compliant with such measures on the importation of the goods.

**Restriction on importation of ozone depleting substances**

Resolution of the Russian Government N 888 of 27 July 2017 has established a quota for the importation of ozone depleting substances into Russia, divided between importers that submit an application to *Rosprirodnadzor* (the Federal Service for Supervision of Use of Natural Resources). For importers that do not submit the relevant application and receive a quota, there is a prohibition on the importation of ozone depleting substances

The Resolution is effective from 8 August 2017.

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## South Africa

### Safeguarding duties on certain flat hot-rolled steel products

Safeguarding duties were implemented on certain flat hot-rolled steel products, imported and originating from all countries, classifiable within the following tariff subheadings:

- 72.08
- 7211.14
- 7211.19
- 7225.30
- 7225.40
- 7225.99
- 7226.91
- 7266.99

Safeguarding duties of 12% were implemented, effective from 10 August 2017 up to and including 10 August 2018. The safeguarding duties will decrease to 10% from 11 August 2018 up to and including 10 August 2019.

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## United Kingdom

### Use and enjoyment of telecoms services for VAT purposes

It was announced in the Spring Budget that the VAT use and enjoyment place of supply provisions for telecommunications services would be amended so that they no longer apply to such services when they are provided to a person who is not a 'relevant business person'. The VAT (Place of Supply of Services) (Telecommunications Services) Order 2017, which implements this amendment, has now been laid before the House of Commons.

The only material change from the draft Order published in May is that the new provisions will come into force from 1 November rather than 1 August.

### Senior Accounting Officer 'main duty' decision: Greater clarity on 'reasonable steps'

The First-tier Tribunal has allowed an appeal against a Senior Accounting Office (SAO) main duty penalty for financial years 2012 and 2013 where the SAO was the finance director of a privately owned group. The tax authorities (HMRC) had imposed the penalties on the previous SAO of the group as a result of an error correction notice filed by advisors in 2014 in relation to VAT returns, estimating an overall net error of GBP 1.36m. The Tribunal found that HMRC had not established that the SAO failed to meet his main duty, although did agree that there were not 'appropriate tax accounting arrangements' in place. HMRC had relied on the absence of selective or 'thematic' testing to conclude that there had been a main duty failure.

The Tribunal cited several activities undertaken by the SAO that were part of taking 'reasonable steps'. These included:

- A board approved tax policy;
- A tax risk register;
- Documentation of processes (although it was noted that formal documentation was desirable rather than always required);
- Appropriately qualified and trained team members;
- Assurance in the form of audits and advice from external advisors;
- Engagement with HMRC's VAT specialists.

Consideration was given to the size and complexity of the business, and the SAO's access to and control over resources to undertake such activities. The Tribunal found that, although the SAO may not have undertaken specific tax testing, his approach and the activities that he evidenced were proportionate to the business and that 'one size does not fit all' when it comes to approaching 'reasonable steps'. The judge did note, however, that more would be expected of an FD of a publicly quoted group, so such groups should assume that such testing would be expected to be undertaken in relation to their tax risks.

Finally, the Tribunal expressed some concerns over HMRC's approach to the case, notably the handling of confidential taxpayer information where one taxpayer (the SAO) would reasonably be expected to have access to another's (the company's) information to respond to the penalties imposed.

**Making Tax Digital: VAT takes the lead**

Making Tax Digital (MTD) is the Government's proposal to introduce a system of digital tax accounts for use by taxpayers. On 13 July, the Government announced a new timetable for the application of MTD. Businesses will be required to provide their VAT information to the UK tax authorities through MTD software with effect from April 2019, but will not be required to maintain and provide digital records for other taxes until at least 2020. The normal timeframe for submitting quarterly VAT returns should not change under MTD. The tax authorities are currently piloting MTD services, and more information regarding requirements will become available in due course.

**European Union (Withdrawal) Bill**

The European Union (Withdrawal) Bill has been published. This is intended to repeal the European Communities Act 1972, and will seek to address some of the consequences of that repeal. Amongst other things, if enacted, the Bill sets out that courts will be unable to make any referrals to the Court of Justice of the European Union after the UK leaves the EU, and will not be bound by subsequent CJEU decisions (although they may take them into account if they think it appropriate).

Further detail on this is also provided in a position paper published by the Department for Exiting the European Union, which suggests that it may be appropriate for CJEU proceedings (where considerable time and resources have been invested) to continue to judgment see Ongoing Union judicial and administrative proceedings – position paper.

**Future customs arrangements**

The Government has published Future customs arrangements: a future partnership paper, in which it sets out its aspirations to facilitate the 'most frictionless trade possible' between the UK and the EU after the UK leaves the EU. It sets out two broad approaches that might be adopted. The UK could align its approach with the EU so as to avoid the need for a customs border (for example, by mirroring the EU's requirements for imports destined for the EU). Alternatively, a highly streamlined customs arrangement could be developed, including new technology-based solutions (such as the new Customs Declaration Service scheduled for January 2019). An interim period for implementing the customs arrangements is considered desirable, and discussions with affected businesses will continue ahead of the publication of a Customs Bill in the autumn.

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# Eurasian Economic Union

**Decrease of import customs duty rates according to Russia's WTO obligations**

Decision of the Board of Eurasian Economic Commission of 23 June 2017 N 42 decreases import customs duty rates for certain types of juices, plastic goods, tires, clothes, freezing plants, and vehicles according to Russia's World Trade Organization obligations. The Decision provides for a gradual decrease of import customs duty rates for the said goods. Firstly, import customs duty rates will be decreased from 1 September 2017 to 31 December 2017. After 31 December 2017 there will be a further decrease of import customs duty rates for the said goods.

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