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Global Indirect Tax News
Your reference for indirect tax and global trade matters

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

Features of this edition include the introduction of a carbon levy in Alberta, Canada; a GST update from India; a Court of Justice of the European Court judgment on the application of the VAT cost sharing exemption, from Luxembourg; and the signing of a new Customs Code for the Eurasian Economic Union.

David Raistrick
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Americas

Canada

Alberta: Carbon levy introduced

A carbon levy on purchases and imports of fossil fuels that produce greenhouse gases was introduced, effective 1 January 2017 in Alberta. The carbon levy rate is CAD 20 per tonne of carbon dioxide-equivalent emissions for 2017 and will increase to CAD 30 per tonne on 1 January 2018.

The rates on major fuels will be as follows:

Fuel	Rate (1 January 2017 to 31 December 2017, inclusive)	Rate (after 31 December 2017)
Gasoline	CAD 0.0449/L	CAD 0.0673/L
Diesel	CAD 0.0535/L	CAD 0.0803/L
Natural gas	CAD 1.011/GJ	CAD 1.517/GJ
Propane	CAD 0.0308/L	CAD 0.0462/L
Coal coke	CAD 63.59/tonne	CAD 95.39/tonne

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Asia Pacific

India

Highlights of GST Council meetings and parliamentary session

- The Lok Sabha (lower House of Parliament) in its session held on 29 March 2017 approved four bills namely the Central Goods and Services Tax (CGST), Integrated Goods and Services Tax (IGST), Union Territory Goods and Services (UTGST) and compensation to states, followed by the President's assent to all four bills into law on 12 April 2017.

- In the meeting of the GST Council held on 18 and 19 May 2017, the GST Council finalized sets of rules relating to registration, refunds, payment, tax invoices, credit and debit notes, input tax credit, the composition scheme, and valuation. The rules relating to transition and returns were deferred for clearance and are expected to be approved in the next GST Council meeting scheduled on 3 June 2017.

- Over and above the nine rules that the GST Council is either considering or has already cleared, there are another five draft rules that are not taken up so far, these include the e-way bill, accounts & records, advance rulings, appeals & revisions, and assessment & audit.

- The GST Council has finalized rates of services and commodities to be taxed under the GST regime. All commodities and services have been fitted into the tax brackets of nil, 5%, 12%, 18% and 28%. Essential commodities such as dairy produce, vegetables, fruits, cereals, printed books, agricultural implements etc. will be subject to a nil rate of GST. Most other commodities are to be taxed at the general rate of 18%.

- The list of exempted services has also been prescribed. Most of the services that are currently exempt will continue to be exempt under the GST regime. Services by Government, foreign diplomatic missions, educational institutions, and healthcare services etc. are covered in the exemption list.

- A further element of compensation cess will be applicable on certain specified products such as tobacco and tobacco products, motor vehicles, aerated waters etc.

- Tax rates for precious metals, bidis, footwear, textiles, agriculture implements etc. have been deferred and will be decided in the next GST Council meeting scheduled on 3 June 2017.

- The list of services to be taxed under the reverse charge mechanism has also been prescribed. GST on all such prescribed services will be levied completely in the hands of the service recipient.

- The enrolment window will reopen on 1 June 2017 for taxpayers not able to enroll themselves.

Key features of approved legislation

Taxability

- IGST and CGST provisions will not apply to Jammu and Kashmir.

- There will be no GST on alcoholic liquor for human consumption; existing taxes are to continue for these products.

- GST on the supply of petroleum crude, HSD, petrol, natural gas and ATF will apply from a date to be notified based on recommendation of the GST Council.

- The levy of cess on specific goods such as pan masala, tobacco, coal, briquettes, lignite, aerated water, motor cars, and others are to be as notified by the Government.

Supply and levy

- Gifts exceeding INR 50,000 in a financial year given by an employer to an employee will be considered as a supply.

- The supply of land, buildings and actionable claims (other than lottery, betting and gambling) are neither a supply of goods nor services.

- Goods or services procured by a registered dealer from an unregistered dealer will be subject to GST under the reverse charge mechanism.

Input tax credit

- There will be no input tax credit on telecommunication towers and pipelines.

- There will be a reversal of input tax credit where there is nonpayment by the recipient to the supplier within a period of 180 days.

Taxation of ocean freight on import of goods

Changes have been made in respect of the transportation of goods by vessel from a place outside India to a customs station in India, where the service provider and receiver are located outside the taxable territory.

These changes, made applicable from 23 April 2017, are stated below:

- The Service Tax Rules, 1994 have been amended to prescribe that the person liable to pay service tax in relation to the services of transportation of goods by vessel into India between nonresidents will be the importer of such goods. As such, the importer will have an option to pay an amount of service tax, calculated at the rate of 1.4% of the sum of the cost, insurance and freight (CIF) value of such imported goods. *Swachh Bharat Cess* (SBC) and *Krishi Kalyan Cess* (KKC) will be paid at the rate of 0.05% each.

- The point of taxation rules have been amended to state that the point of taxation in relation to the services between nonresidents pertaining to the transportation of goods by vessel into India, will be the date of the bill of lading filed in respect of such goods at the port of export. This change will apply from 22 January 2017.

- Also, there has been an amendment to the reverse charge notification which casts 100% liability to discharge service tax on the importer of goods. However, the importer of the goods can avail CENVAT credit on the basis of the challan of payment of service tax by the said importer on the services pertaining to transportation of goods by vessel into India between nonresidents.

  A circular in respect of the above changes has been issued which, among other things, clarifies that the conditional exemption, which provides for 70% abatement in the value of the service for the calculation of service tax liability when goods are transported by vessel, will not be available in the above case.

With an change made in the point of taxation rules from 22 January 2017, the ‘person-in-charge’ who was earlier liable to discharge service tax in relation to the service of the transportation of goods by vessel into India between nonresidents, will now be required to reassess the service tax liability for the interim period from 22 January to 22 April 2017.

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Indonesia

Implementing guidelines on release of imported goods for use

In order to control the submission of import declarations, improve resource efficiency in Customs offices, and provide legal certainty about approval of goods release, the Director General of Customs and Excise has issued Per-07/BC/2017 concerning amendment of the Regulation on Implementing Guidelines on the Release of Imported Goods to Be Used.

The amendment set out in the new regulation is in the form of the addition of a new article, namely Article 22A. The new article relates to the examination of the conformity of the importer's name stated in the import declaration and the name of the consignee or notifying party in the customs declaration regarding the goods being transported (BC 1.1) through the Service Computer System (SKP) or by an official of the Directorate General of Customs and Excise, which must be conducted based on certain conformity levels stipulated by the Director of Customs Technical Affairs.

Furthermore, the new article also sets out exemptions from the conformity levels that may be applied on import declarations submitted by importers obtaining acknowledgement as Authorized Economic Operator (AEO) or importers that have been designated as Customs Main Partners as well as importers with a low risk category.

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Malaysia

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 comprises various industry associations, professional bodies and senior officers of the Royal Malaysian Customs Department (RMCD) and convened its last meeting on 29 September 2016 to deal with several technical issues where clarification was needed.

The meeting minutes were circulated on 16 December 2016. Based on a review of the minutes, a number of issues remain unclear and need to be addressed by the RMCD.

Issue 1 – Claim for bad debt relief

The RMCD clarified that any taxable person that wishes to claim bad debt relief after the six month period is only required to notify the RMCD once through the Tax Access Point (TAP) portal. After such notification, the taxable person is required to claim bad debt relief within 12 months of the taxable period in which the output tax has been paid or the date when the bad debt is written off, whichever is earlier.

The RMCD also reiterated that it is a policy made by the Director General (DG) whereby bad debt relief is only allowed where the supply is made by a GST-registered person to another GST-registered person.

Comment

The application of a 12 month requirement for the claiming of bad debt relief is onerous and this requirement is not included in the legislation. Nonetheless, it is expected that RMCD auditors would enforce the proposed approach and unless a taxpayer is willing to challenge this position to appeal, the recommended approach would be to comply. The same applies to the limitation on claiming relief to only situations where the customer is GST-registered, which is also not included in the legislation.

Issue 3 – Directors as connected persons

Para 2(1)(a) Third Schedule of GST Act 2014 states that "persons shall be deemed to be connected if they are officers or directors of one another's business…".

The RMCD has clarified that connected persons are between companies and not between the individuals itself.

The RMCD further clarified that a 'director' is treated as an employee and free service is not a supply and is not subject to GST. As there has been no distinction made among the types of directors (i.e., executive directors, non-executive directors, etc.), it is recommended that clarification be sought from the RMCD in relation to the classification of these directors.

Comment

The RMCD's clarification that directors are treated as employees and not deemed as connected persons brings much clarity on the issue. Consideration should be given to the treatment adopted in the past GST returns to determine whether an amendment needs to be made if the deemed GST output tax accounted for previously is substantial.

The RMCD has also clarified that provision of accommodation free of charge to the employee by the employer is related to an exempt supply as opposed to 'not a supply'. This continues to be an area of confusion and it is hoped that the RMCD will address this issue shortly.

Issue 4 – Input tax credit (ITC) claim on services for pre-commencement of business

Regulation 46 allows claims of ITC on goods acquired prior to GST registration; however, no such concession exists for services. The RMCD was asked to explain the rationale behind the disallowance of ITC on services and whether the position could be changed.

The RMCD has stated that the present policy does not cater for ITC incurred on services. Regulation 46 applies to goods only.

Comment

The RMCD is applying the law as it stands. However, a startup business could incur a significant amount of service costs and disallowing the ITC could further burden new businesses. As such, Deloitte Malaysia consider that the RMCD should revisit this and consider broadening the concession to cover services as well. It is recommended that businesses taking on new ventures consider how to manage this risk.

Issue 10 – Supply of development rights

The RMCD treat the provision of development rights related to residential development as an exempt supply notwithstanding that it is not a supply specifically exempted under the Second Schedule to the GST (Exempt Supply) Order 2014. The rationale provided by RMCD is that it is a right over the land that is for residential use based on the development order from the public authority and is therefore exempt.

Comment

Deloitte Malaysia consider that the basis adopted by RMCD does not accord with the current GST law and complicates the GST treatment on such transactions, and consider that the RMCD should reassess the basis of treating the supply of such rights and provide further clarity to those in the property development industry.

Issue 12 – Exports to Designated Areas (DA)

A supplier from a Principal Customs Area (PCA) that makes a supply of goods to a DA will be entitled to zero-rate the supply if the supply can be supported by a K2 form. A K3 form is only applicable for GST-paid goods.

Comment

The RMCD Guide on Designated Area as at 1 January 2017 provides that the supply of goods from Malaysia to a DA will qualify for zero-rating if the movement is supported with a K2 form that states the supplier's name and address as the consignor and the recipient's name and address in the DA as the consignee, with supporting documents such as invoice, packing list, etc.

Businesses should ensure that a K2 form is used (instead of K3 form) for the supply of goods from Malaysia to a DA in order to apply the zero-rating treatment.

A K3 form is not the right documentation to substantiate zero-rating for GST, and it seems more relevant for declaring movements of GST-paid goods or other dutiable goods, in accordance with RMCD clearing procedures. More clarification should be sought to fulfil the administrative requirements.

Issue 14 – Indirect export (back to back)

In a scenario where a local supplier (A) supplies goods to a local customer (B) that then arranges for the export of those goods, the local supplier (A) must charge GST. This is because the local customer (B) is the one listed on the K2 form as the exporter.

Comment

Businesses should take note of the RMCD's view on indirect export where the ultimate person whose name is declared in the export form, i.e., K2 form, would be considered as the exporter and the supply by that person would be eligible for zero-rating. Deloitte Malaysia concur with the RMCD's view that where the ownership of goods has transferred within Malaysia, the supply should be treated as standard rated and the subsequent export should then be zero-rated. However, in scenarios where the ownership is not transferred and the exporter is merely clearing the export on behalf (due to licence restriction, for instance), the current interpretation of the RMCD may not be in favour of the business arrangement.

Issue 15 – Redemption of reward points under loyalty program to customer

A clarification was sought from the RMCD with regards to the GST treatment for redemption of loyalty points in monetary form (i.e., cash or cheque).

The RMCD clarified that redemption of loyalty points in monetary form (i.e., cash or cheque) is not subject to GST.

Issue 16 – Disclosure under field 10 (total value of local zero-rated supplies) or 11 of GST-03 form (total value of export supplies) for adjustments via credit note or debit note

Where a credit note is issued in the current taxable period for zero-rated supplies relating to previous taxable periods, it may result in negative value in field 10 or 11 in the GST-03 form when the credit amount is greater that the zero-rated supplies. The RMCD has clarified that:

(i) The value should be based on K2 forms and not the invoice value.

(ii) When the credit note is issued, no adjustment needs to be made as the credit note cannot relate to the customs forms, which cannot be amended after the goods are released from RMCD control.

(iii) Since there are no adjustments to be made in the GST-03 form, there will be no set-off balance (negative amount from the issuance of the credit note) reported.

Where a supplier issues a debit note to increase the consideration of a prior export supply of goods, the RMCD has taken the view that this adjustment should be subject to 6% GST on the basis that the adjustment cannot relate to a K2 form.

Comment

The RMCD had provided that the value to be declared in the GST-03 form should follow the K2 form. This is in slight contrast with the current GST legislation, which does not address it as such.

Not making adjustments on credit notes issued for previous export supplies to avoid negative values in the GST-03 form may seem convenient. It may, however, result in confusion for businesses, especially in applying tax codes and GST reporting, as it deviates from the ordinary practice of aligning the adjustment tax code to the initial invoice's. A pragmatic approach should be taken to allow negative value disclosure in the GST-03 form as it reflects the actual business transactions. The RMCD should also consider the practicality of substantiating all values in field 10 or 11 with a customs form – there are simply many other transactions that could operate without one and yet are required to be disclosed in this field.

On the other hand, treating a debit note adjustment for an export supply as standard rated is technically incorrect. Again the justification that it is not supported by a K2 form reflects the impracticality of this notion. The RMCD should assess if the adjustment is genuinely related to goods that are already exported from Malaysia and if so, the zero-rated treatment should prevail.

Issue 18 – Reimbursement

Two scenarios involving a centralized procurement centre that incurs expenses on behalf of companies in the group were presented for the purposes of confirming the GST treatment.

The scenarios are as follows:

(i) Centralized postage services. The procurement company will recover from the respective group company the postage services acquired based on actual expenses incurred for each company every half year.

Type of supply

- For local postal service – standard rated reimbursement;
- For postal service performed in relation to international mail, it is a zero-rated reimbursement.

Time of supply

Whether the recovery of postal expenses could be treated as continuous supply and time of supply would be earlier of tax invoice issued or payment received.

The RMCD agreed with the GST treatment set out above. Although the RMCD required further time to assess the time of supply issue, they agreed that in the interim the services could be treated as continuous supplies.

(ii) The procurement company will purchase materials on a group basis to take advantage of bulk purchase discount. The respective companies in the group would then be billed based on actual goods distributed to each on a half yearly basis.

Type of supply

Can it follow the original GST treatment for supply of goods, i.e., if the original goods acquired were zero-rated, the reimbursement would also be zero-rated.

Time of supply

Account for output tax based on the general time of supply rule when the goods are delivered.

The RMCD agreed with the view that GST treatment of the reimbursement should follow the same treatment as the earlier supply. The output tax should be accounted for based on the general time of supply rule, i.e., earlier of payment, invoice or the goods being made available.

Comment

Views are evolving on the treatment of reimbursement. From this development, it would seem that the GST treatment of the earlier (original) supply has a bearing on the GST treatment for the subsequent reimbursement, and this is a welcome move. It is expected that there will be further official guidance on this matter.

Issue 21 – Foreign exchange

Exchange rates policy remains as per set out in the DG's Decision 1/2014. In particular:

- The exchange rate in para ii (a) and (b) of item 6 is only applicable to wholly taxable transactions between GST-registered persons. In all other scenarios, the supplier must use the prevailing selling exchange rate in Malaysia (i.e., the rate provided by Bank Negara Malaysia) at the time of supply, unless the supplier has received specific approval from the RMCD to use an alternative rate.

- Item 5, Third Schedule of the GST Act 2014, only the RMCD can determine the exchange rate for importation of goods.

Comment

Many businesses have misunderstood the concession provided in DG's Decision 1/2014, and have applied it more broadly than the RMCD had allowed. The concession in the DG's concession does not apply to traders that make exempt supplies or provide services to overseas customers. Businesses should utilize the specific approval process to apply for alternative exchange rates when the selling rate is not suitable.

Issue 23 – Employee benefits

The RMCD has previously expressed their view that the provision of accommodation to employees whether or not for a consideration (and whether or not under employee benefit) is an exempt supply.

A clarification was sought on the treatment of utilities, repair, construction, security and cleaning charges associated with the accommodation that were separately charged by employer to employee or provided free of charge. Further, a question was asked whether the supply of accommodation should be reported in field 12 – total value of exempt supplies in the GST-03 form.

The RMCD responded that it was not normal practice for an employer to recover the costs from the employee by way of separate charge. As a consequence, all recoveries should be treated as exempt supply. However, the employer is not required to declare in field 12 of the GST-03 form.

Comment

Deloitte Malaysia consider that the requirement to not disclose such supplies as exempt supplies on the GST-03 form is likely to cause more confusion than convenience for businesses, as this is in contrast to the current requirement to disclose all exempt supplies made.

Issue 24 – Time of supply of development rights

The supply of a right by the land owner to the property developer to use the land is a supply of services. Based on the DG's decision 4/2014 item 7, the land owner is required to account for GST on the supply of rights to use the land based on the land owner's entitlement, at the earlier of when the payment is received or tax invoice is issued.

The RMCD has clarified that the time of supply should be earlier of payment received from the developer, issuance of invoice by the land owner or upon receiving vacant possession if the consideration to the land owner involves completed property (in kind). Deloitte Malaysia understand that the DG's Decision 4/2014 item 7 will be amended soon for this update.

Comment

There are uncertainties on the issue of basic tax point for the supply of rights based on the above clarification. Due to the impending changes to be made to the above DG's decision, it is recommended that a written confirmation be obtained from the RMCD to ensure certainty in the GST treatment for the supply of rights in the meantime. A detailed review of the joint venture agreement between the land owner and property developer should be made prior to making representation to the RMCD to determine the GST treatment.

Issue 25 – GST returns – GST-03 form

The RMCD has clarified the following items in the GST-03 form:

(i) Item 16 – total value of capital goods acquired excluding GST:

- If input tax is not claimed, the value of capital assets need not be reported.
- If advance payment is made for acquisition of capital goods, the value of advance payment should be included in item 16.

(ii) Item 14 – total value of goods imported under Approved Trader Scheme:

- Value of imported capital goods declared in item 14 need not be reported in item 16.

Comment

This is inconsistent with the guidelines provided by the RMCD in their guide to filing the GST form-03, see Guideline: Goods and Services Tax Return.

Issue 26 – K1 endorsement for input tax claims

K1 is a prescribed form for imported cargo. When a company pays the GST, an official receipt will be issued by the RMCD. These documents are sufficient as evidence to substantiate a claim of input tax. The RMCD system would have recorded the K1 transaction (paperless transaction) and therefore no endorsement is required.

Comment

Businesses should take note that K1 endorsement may not be required for the RMCD clearance with paperless transactions. On the other hand, it is also clear that the K1 form and the official receipt from the RMCD remains as imported documentation to substantiate any claims of import GST. Businesses are reminded to maintain good records as supporting documents.

Scope of zero-rating expanded to cover more drugs and medicines

In order to expand the scope of zero-rating to cover more drugs and medicines, the RMCD has revised the National Essential Medicines List (Suffix X & Suffix N) and the Controlled Drug List (Suffix A). Many new additions have been made to expand the scope of zero-rating on drugs and medicines, in the continued efforts by the Government to balance the cost of healthcare.

The changes in the list could warrant a review of the products and their treatment by businesses in this industry. Correct tax coding should be made and businesses should also consider any transitional adjustments for the change in rate of these products.

Customs and Excise Duties Orders replaced

To be aligned with the implementation of the Customs Duties Order 2017 (which resulted in changes, especially the usage of a 10-digit tariff code system and additional category of items), the following orders have been replaced:

Previous Order	New Order
Excise Duties Order 2012	Excise Duties Order 2017
Customs (Prohibition of Imports) Order 2012	Customs (Prohibition of Imports) Order 2017
Customs (Prohibition of Exports) Order 2012	Customs (Prohibition of Exports) Order 2017
Customs Duties (Goods of ASEAN Countries Origin) (AHTN and ATIGA) Order 2012	Customs Duties (Goods of ASEAN Countries Origin) (AHTN and ATIGA) Order 2017

The new Orders above came into effect on 1 April 2017.

For information on the implementation of the Customs Duties Order 2017, see the Deloitte Malaysia newsletter Customs Duties Order 2017: Highlight on changes to Customs Duties Order 2017.

Additionally, the Customs Duties Order 2017 has been amended *vide* the Customs Duties (Amendment) Order 2017.

Given the above changes, businesses need to ensure the correct HS codes and product description are declared. Businesses should also assess the impact of these changes on any upcoming importations, especially where excise duty or import/export restrictions or duty exemption are of concern. Additionally, communication may need to be established with relevant parties such as freight forwarders/customs agents for any changes in the declaration process of goods as a result of the implementation of the Orders.

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France

Decree regarding digitalization of invoices

Previously, paper invoices had to be stored in their original format. Although from January 2017 it has been possible to store invoices that had originally been received in paper format in an electronic format, the decree stating the methods of digitalization had not been issued.

A decree issued on 22 March 2017, which entered into force on 30 March 2017, states notably that the digitalization of invoices originally received on paper must be subject to a specific procedure (the accepted digitalization formats are described) which is also subject to internal audit and guarantees the availability, the readability and the integrity of the digitalized invoices during the entire storage period.

The digitalization can be carried out by the taxpayer or a third party.

The decree is codified under Article A 102 B-2 of the French Tax Proceedings Code.

Application of extended statute of limitations for 'hidden activity'

In a ruling on 31 March 2017 in the case *SARL Estienne d'Orves*, the French Administrative Supreme Court held that the tax authorities' extended statute of limitations concerning 'hidden activity' (10 years) cannot be replaced by the standard statute of limitations (three preceding years and the current year for VAT purposes) when a foreign entity's VAT returns were not submitted for the same professional activity as the one that led to an audit of the tax authorities. In this particular case, the entities had submitted returns but for another activity from the one being qualified as 'hidden'.

Application of interest for late payment of certain customs taxes

Since the 2016 Amending Finance Law, interest applies notably for late payment of:

(i) Import duties (Article 114 of the Union Customs Code); and

(ii) Import VAT, *octroi de mer et octroi de mer régional*, TGAP (general tax on polluting activities) and *taxe intérieure de consummation sur les produits énergétiques* (domestic consumption taxes on energy products) … (Article 440 bis of the French Customs Code).

A circular of 20 April 2017 confirms how and when these new rules apply.

The late payment interest rate applicable for late payment of import VAT amounts to 0.40% per month (4.8% per year). It is the same rate as provided by Article 1727 of the Tax Code. Taxpayers are informed of the amount of late payment interest due in the assessment notices.

As indicated in Article 390 ter of the French Customs Code, the circular confirms that taxpayers may request total or partial remission of late payment interest. The request must be duly justified.

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Hungary

Summary of proposed VAT changes

Proposed VAT changes have been introduced to Parliament, as follows.

As of 1 January 2018, the VAT rate for internet access services and fish for consumption will be reduced to 5%.

The definition of internet access services will also be clarified. Network services will not qualify as internet access services, therefore, the preferential VAT rate will not apply.

In addition, the decrease in the reporting threshold for the domestic sale and purchase listing to HUF 100,000 and real time data reporting (regarding invoices issued by invoicing software) will not enter into force as of 1 July 2017, as proposed, but as of 1 July 2018.

Taxpayers may comply with the real time data reporting obligation on a voluntary basis until the postponed 'go live' date. However, the technical details for real time data reporting have yet to published.

Advertisement tax

Parliament approved an amendment to the advertisement tax law on 16 May 2017. From 1 July 2017, the tax rate will increase from 5.3% to 7.5% for taxpayers with advertising revenue exceeding HUF 100 million (approx. EUR 320,000). Below HUF 100 million, tax exemption applies in line with the EU's *de minimis* regulations.

In line with the resolution of the European Commission issued on 4 November 2016, advertisement tax paid from 2014 until 30 June 2017 will qualify as overpayments and will be reimbursed to taxpayers (the details have yet to be published). In the first half of 2017, until 1 July 2017, the advertisement tax rate is reduced to 0% to avoid retroactive taxation.

The possible 'adverse' tax liabilities of the companies ordering advertisements are not impacted by the changes.

The previously introduced penalties remain applicable in future.

- Default penalty for failing to register – HUF 10 million (approx. EUR 33,000) may be levied for the first time and if the taxable person still does not comply with this obligation, the amount of additional default penalties would reach HUF 30 million (approx. EUR 100,000).

- Default penalty for failing to provide a declaration to the purchasers of the advertisement:

    - 1st time: HUF 500,000 (approx. EUR 1,700)

    - 2nd time: HUF 10 million (approx. EUR 33,000)

    - 3rd time and following: three times the amount of the previous default penalty (i.e. HUF 30 million, HUF 90 million and so on).

The cumulated maximum amount of the above two types of default penalties is capped at HUF 1 billion (approx. EUR 3.3 million).

In addition, should the taxable person fail to declare advertisement tax, the tax authorities will assess an assumed tax liability of HUF 3 billion (approx. EUR 10 million).

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Iceland

Exemption and refund of VAT according to international and bilateral agreements

In March 2017 a Bill was proposed to amend the VAT legislation to fulfil Iceland's obligations according to international and bilateral agreements. It has been proposed that the article that exempts goods from VAT upon importation, when they are exempt from VAT according to international agreements, will be amended so that the exemption also covers goods that are exempt according to bilateral agreements. Furthermore, it is proposed that the exemption also covers goods that are imported by foreign forces and their civil wards including NATO, Partnership for Peace, the forces of the United States of America and other parties that are exempt from paying VAT according to international and bilateral agreements or specific law.

In addition, it has been proposed that an article will be added to the VAT legislation that states that VAT on purchased goods and services based on international and bilateral agreements will be reimbursed from the time that the agreement came into force concerning Iceland. That includes foreign forces and their civil wards including NATO, Partnership for Peace, the forces of the United States of America and other parties that are exempt from paying VAT according to international and bilateral agreements or specific law.

If the bill is passed as law, these changes will take effect from 1 January 2017.

Exemption from customs duty according to international and bilateral agreements

The Bill also proposes a change to the customs legislation article under which parties are exempt from paying customs duty on imported goods according to specific law; this includes NATO, Partnership for Peace and forces of the United States of America. It is proposed that the exemption will also cover parties that are exempt from the liability for paying customs duty according to international and bilateral agreements. In other words, the exemption would now cover not only specific laws but also international and bilateral agreements.

If the bill is passed as law, these changes will take effect from 1 January 2017.

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Italy

Online software available for preparation of 'quarterly communication of the VAT calculation'

In a press release published on 10 May 2017, the tax authorities announced that the online software for the preparation of the 'quarterly communication of the VAT calculation' is now available.

The software (which can be downloaded from the website of *Agenzia delle Entrate* at the following path: *Cosa devi fare → Comunicare dati → Fatture e corrispettivi → Software di compilazione*) will generate the xml file according to the technical specifications previously advised by the authorities (i.e. Act of the Director of the Tax Authorities n° 58793 dated 27 March 2017).

The xml generated by the software must be signed, with an electronic qualified signature (*firma digitale*), before submission to the tax authorities.

VAT warehouse update

In response to a ruling petition on the new VAT warehousing regime (which entered in force on 1 April 2017), the tax authorities have clarified the following (in Resolution n° 55/E dated 3 May 2017):

- The VAT treatment to be applied when goods are withdrawn from the VAT warehouse (reverse charge or VAT payment) depends upon the type of the original transaction by which the goods entered into the VAT warehouse. Practically speaking, this means that where the goods have been originally introduced into the VAT warehouse in execution of intra-Community acquisitions or imports, the reverse charge mechanism will apply and the additional/subsequent transactions inside the warehouse will not affect the nature of the original transaction. Where the goods have been originally introduced into the VAT warehouse in execution of domestic purchases, the VAT should be paid through F24 forms. The tax authorities also provided some further clarifications regarding: (a) the way to calculate the taxable base with reference to the goods withdrawn from the VAT warehouse (the ruling petition refers to specific types of goods subject to fluctuation in market price in the timeframe from their introduction into the VAT warehouse to their final withdrawal); (b) timing and method to rectify the above taxable base;

- When the reverse charge does not apply (and thus VAT is to be paid), the taxpayer cannot offset the periodical VAT credit arising from the periodical VAT calculations against the VAT debt due at the time of withdrawal of the goods from the VAT warehouse;

- The taxpayer, if qualified as a 'frequent exporter', in order to avoid VAT payments at the time of withdrawal of goods from the VAT warehouse, must submit electronically to the tax authorities the declaration of intent (*dichiarazione di intento*) for each singular withdrawal, by indicating the VAT warehouse keeper as recipient of this declaration of intent. Subsequently the declaration of intent together with its proof of e-submission must be provided to the VAT warehouse keeper. This is in line with the former clarifications released with Resolution n° 35/E dated 20 March 2017.

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Import duty and import VAT calculation for imports of certain finished products

In April, the Customs and Monopoly Agency issued a note to clarify, in the light of the Union Customs Code (UCC), how to calculate import duty and import VAT for imports of finished products carried out under Inward Processing (IP) and Processing under Customs Control (PCC) authorizations.

In particular, the Agency has confirmed that:

- For imports carried out under IP authorizations that are valid from 1 May 2016 (i.e. the UCC application date), both import duty and import VAT must be calculated according to Art. 85 of the UCC (i.e. on the value of finished products, including any EU goods used in the processing), unless the importer opts to make the calculation under art. 86, par. 3 (i.e. on the value of goods placed under IP);

- For imports carried out under PCC authorizations that are valid after 1 May 2016 (i.e. due to the UCC transitional rules) both import duty and import VAT must be calculated according to art. 85 of the UCC, without the ability to benefit from art. 86, par. 3.

The calculation of import VAT under art. 85 of UCC would lead to double VAT taxation where the finished products include Union goods that are processed together with non-Union goods previously placed under IP or PCC.

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Latvia

Changes to registration process for new EDS users for VAT payers

In Latvia all tax reporting must be performed electronically via an e-filing system – EDS. Previously, it was possible to register new EDS users for a Latvian VAT payer by submitting a Power of Attorney (PoA) signed by the official/legal representative (to ensure the new EDS user is authorized to submit tax returns on behalf of the entity) and an updated EDS user list to the tax authorities. No physical presence of the official/authorized person signing the PoA was required nor any other type of confirmation from that person.

However, on 11 April 2017 the tax authorities issued a statement that from that date, in order to combat possible VAT fraud by third parties, any changes to EDS users of an entity will need to be confirmed by the official/authorized person of the entity either via EDS or in person at the Latvian tax office if the confirmation cannot be made by the official/legal representative via EDS. For confirmation by way of personal attendance, the official should be authorized to **solely** represent the entity if the official is attending the Latvian State Revenue Service alone. Thus a registered EDS account for entities' officials is now highly recommended to avoid unnecessary personal visits to the Latvian State Revenue Service. Previously for many Latvian taxpayers only the accountants had registered access to an entities' EDS account.

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Luxembourg

CJEU rules on application of cost sharing exemption

The Court of Justice of the European Union has ruled that Luxembourg's legislation on the cost sharing exemption has been drawn too widely. Services supplied by a 'cost sharing group' to its members can be exempt where those services are 'directly necessary' for the non-taxable activities of the members. Luxembourg accepted that this test was automatically satisfied where members' exempt and non-business activities were more than 70% of their turnover.

The CJEU found that this threshold was not compatible with the EU Principal VAT Directive and appears to restrict the exemption to those instances where direct attribution to the exercise of exempt (or non-business) activities can be demonstrated.

The CJEU also ruled that members should not be able to deduct VAT incurred on supplies rendered for the benefit of the cost sharing group, and that goods and services acquired in the name of the members to be transferred to the cost sharing group should not fall outside the scope of VAT.

All the implications for the cost sharing VAT exemption will only be known when the CJEU releases its decisions in the other three pending cases (i.e. *Commission v Germany*, *DNB Banka*, and *Aviva*).

The VAT legislation and other practice for the cost sharing group in other EU Member States (e.g. France and Belgium) that are based on the same rule and kind of tests may also have to be revised.

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Malta

VAT refunds by cheque phased out

On 1 May 2017, the VAT authorities announced their intention to phase out the issuing of VAT refunds through cheque payments. June 2017 was announced as the last month when such cheques would be issued. As from July 2017, refunds are to be made solely by bank transfers through the Single Euro Payments Area (SEPA) system. Taxpayers entitled to a VAT refund will receive a letter which includes a PIN number and instructions for the electronic completion of the required information, including providing the taxpayer's SEPA bank account details.

Excise duty and eco-contribution amendments

By means of Act no. XVI of 2017, the Government has implemented the budget measures for the financial year 2017. This includes amendments to excise duty and eco-contribution regulations. Eco-contribution is no longer levied on plastic containers and kitchen utensils, batteries, mattresses, detergents, toiletries and oil and fuel filters. It is replaced by the introduction or increase in excise duty on selected products, as follows:

- Cigarettes, tobacco, non-alcoholic beverages, plastic sacks and bags (increase in rates of excise duty with effect from 17 October 2016);

- Toiletries and washing preparations, pre-fabricated structural components for building or civil engineering, ceramic tiles, float glass, iron and steel bars and rods used in the construction industry (introduction of excise duty with effect from 1 January 2017).

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The Netherlands

VAT adjustment rules for 'expensive services' announced

With a letter of 10 May 2017, the State Secretary of Finance informed the parliament of his intention to change the VAT adjustment rules in the Netherlands. The change is in relation to 'expensive services' that are written off for (corporate) income tax purposes.

Currently, the adjustment period for these types of services is one year. The intention is to extend this period to five or ten years. If the use of the expensive services deviates from the use in the year of first use of those services, the VAT needs to be adjusted, which may result in a VAT payment or an additional VAT deduction.

It is not yet clear when this change will take effect and whether there will be any transitional rules.

Supreme Court delivers final ruling in VAT company car cases

On 21 April 2017, the Supreme Court ruled on four cases regarding VAT for private use of company cars. The cases show that the Dutch rules can be maintained and that pending objections will probably be rejected. However, if taxable persons do not have kilometer records, the cases provide opportunities for establishing the private use in other ways. This may be more beneficial to taxable persons than application of the flat rate proposed by the State Secretary.

Rules for private use of company cars

During the financial year, entrepreneurs can deduct all VAT on costs relating to company cars, provided the cars are used for activities that permit deduction of input VAT. At the end of the financial year, they declare VAT relating to the private use of such cars. Up to 1 July 2011 the levy of VAT on the private use was based on the notional addition for income tax, involving an adjustment of the deduction. Since 1 July 2011, VAT is levied based on the system of deemed supplies. Taxable persons that do not have kilometer records must report VAT of the amount of 2.7% of the car's list value (including VAT and private motor vehicle and motorcycle tax) or 1.5% (if no VAT was deducted upon purchase of the car or if the car has already been used for more than five years).

If employees have to pay their own contribution for the private use of a company car, the employer should pay VAT on this contribution received during the year. However, if the own contribution paid is lower than the open market value, entrepreneurs will then have to pay VAT on the open market value. The open market value matches what entrepreneurs would have to pay in the market to make the car available for private use by employees.

In this case, employers may opt not to pay any VAT on the own contribution during the year, to deduct the VAT on costs incurred and to apply the above-mentioned flat rate at the end of the year.

Test cases

Application of the new rules for private use of company cars as from 1 July 2011 has prompted many entrepreneurs to file an objection to their own VAT return, which resulted in four court cases. On 21 April 2017 the Supreme Court ruled in these four test cases.

Sustainability of the new rules

The four cases particularly focused on the sustainability of the new rules. The Supreme Court ruled on all fronts that the rules can be maintained. Especially, the Supreme Court's considerations on the application of the open market value are interesting. The EU Principal VAT Directive provides that the rules can only be applied in cases of tax fraud and tax avoidance. This will not be the case for many entrepreneurs, who do not expressly calculate their own contributions with the objective to pay less VAT. However, the Supreme Court ruled that the rules can be applied in all cases in which less VAT is payable on the own contribution for use of the goods than would normally be paid for similar services to an independent (unaffiliated) entrepreneur.

Use of statistical data

In accordance with its previous ruling in the *Van Laarhoven* case, the Supreme Court also decided that the Netherlands may use a flat rate scheme. The fact that this may in certain cases lead to more VAT payable than for the effective private use, does not mean that in those cases no VAT is to be levied at all on the private use. The VAT payable in such cases only needs to be reduced to an amount that corresponds with the effective private use.

If taxable persons do not have kilometer records, the Supreme Court argues that the extent of the private use can be determined based on a reasonable estimate. Statistical data can be used as a guideline, but use of such data is neither necessary nor decisive. The circumstances to be taken into account for determining whether the private use has reasonably been determined are: the nature of the company, the business purposes for which the car can be used within the company, the position and the activities within the company of the person who uses the car, and what is known about the way in which the car can or has been used for private purposes, such as for commuting. When use is made of statistical data, it should be demonstrated based on these circumstances that those statistical data can be used in the case at hand.

Continuation

Many taxable persons have filed objections to their own VAT returns for the years 2011 up to and including 2016, with a view to these court cases. The State Secretary recently designated these objections as a class action objection, thus enabling the Tax Inspector to deal with the totality of these objections in a single decision. All these objections will probably be rejected shortly.

Given the possibility referred to by the Supreme Court to determine the private use based on a reasonable estimate, it may be relevant for taxable persons to examine whether they qualify for a lower VAT on private use. (Commuting qualifies as private use for VAT purposes.)

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Portugal

VAT regime applicable to professional practice of non-conventional medicine

Following the amendment under which the scope of the VAT exemption was amended to apply also to non-conventional medicines (see the January 2017 edition of GITN), the tax authorities have published Circular Letter no. 30189, dated 2 May 2017.

The Circular Letter clarifies that the VAT exemption only applies if these services are provided for purposes such as to diagnose, mitigate and/or heal diseases, in addition, the professional providing such services must also be entitled to carry out such activity under a professional licence issued by the Central Administration of the Health System (ACSS).

As the changes are effectively backdated to apply as from October 2013, it was also clarified that all professionals providing such non-conventional medicine without a professional license at the time may also apply the VAT exemption (the VAT exemption ceases whenever a decision rejecting the issuance of such licence is obtained).

Finally, the Circular Letter also includes a reminder of the ancillary compliance obligations with which such professionals must comply, namely the need to perform VAT adjustments in favour of the tax authorities where VAT deducted in the past on the acquisition of fixed assets that are still within the respective adjustment period are now to be used in a VAT exempt activity with no credit.

VAT treatment of services performed by students from veterinary teaching hospital belonging to university

The tax authorities have published a binding ruling, dated 30 March 2017, replying to a specific taxpayer request, in which the scope of the VAT exemption is clarified with respect to the application of VAT to the supply of services, and the supply of goods closely linked thereto, and the supply of accommodation and meals, by education establishments. This VAT exemption follows closely Article 132(1)(i) of the EU Principal VAT Directive.

According to the tax authorities' understanding, the VAT exemption does not apply to veterinary services performed by students from a teaching hospital. To support this reasoning, the tax authorities argue that the VAT exemption under the Portuguese VAT Code aims to reduce the VAT burden on research and education services, therefore as the above-mentioned services should be seen as community services or veterinary assistance, the VAT exemption does not apply.

Hence, if the said services are related to animal breeding, the reduced VAT rate is applicable (6% in Portugal Mainland), otherwise the standard VAT rate applies (23% in Portugal Mainland).

VAT rate applicable to popcorn and hot dogs at cinema bar/ticket office

The tax authorities have recently published two binding rulings as a reply to two separate taxpayers' requests aimed to clarify the VAT rate applicable to the supply of food and beverages in certain contexts, namely whether the supply of such products qualifies as the supply of restaurant services (namely, within Article 6 of Council Implementing Regulation no. 282/2011) or takeaway services, in which case the intermediate VAT rate applies (13% in Portugal Mainland).

The tax authorities reasoned that products prepared at the selling point (for example, at a cinema bar/ticket office or at the 'roulotte' (caravan) bar) with the provision of ancillary services might be included in the legal definition of prepared meals (takeaway) and, consequently, benefit from the intermediate VAT rate, as they are included in the definition of 'ready to eat meals'. This should be the case for the supply of hot dogs, grilled chicken and pork strips.

On the other hand, the supply of popcorn and packaged fried potatoes is subject to the standard VAT rate (23% in Portugal Mainland), as these products cannot be included in the definition of 'ready to eat meals' and there are no other services being provided.

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Russia

Ministry of Finance clarifies VAT treatment of access to online hotel booking systems from foreign company

The Ministry of Finance in Letter No. 03-07-08/21329 of 11 April 2017 has clarified that upon acquisition by a Russian company of services related to access to the online system of booking hotels from a foreign company the place of supply of such services is deemed to be Russia.

Therefore, upon acquisition of services related to access to an online hotel booking system the Russian company should act as a tax agent for VAT purpose, apply the reverse charge mechanism, and pay VAT to the tax authorities.

Draft law submitted to State Duma to VAT exempt leasing of medical devices

A draft law has been submitted to the State Duma that would apply VAT exemption to the leasing of medical devices the sale of which in Russia is VAT exempt.

Ministry of Finance clarifies procedure of accounting for VAT on commission fees related to issue of monetary loans

The Ministry of Finance in Letter No. 03-07-11/11467 of 1 March 2017 has clarified that a commission fee paid for the issue of a loan is payment for the services of issuing the loan. Given such services are exempt from VAT, the commission fees are not subject to VAT.

Ministry of Finance clarifies VAT treatment of assignment of claim under bills of credit

The Ministry of Finance in Letter No. 03-07-11/20203 of 5 April 2017 has clarified that operations on assignment of a claim to pay the principal amount under a bill of credit, as well as the execution of the drawer of the bill of its obligations before the new creditor, is considered to be subject to VAT.

Operations of assignment (re-assignment, acquisition) of rights (claims) of a creditor related to obligations under agreements for the provision of monetary loans and/or credit agreements, as well as the execution of the borrower of its obligations before the new creditor under the primary agreement assigned, are exempt from VAT.

Ministry of Finance clarifies procedure for VAT restoration with respect to goods, work, services used in non-VATable operations

The Ministry of Finance in Letter No. 03-07-11/20205 of 5 April 2017 has clarified that the amounts of input VAT claimed for recovery should be restored in case the acquired goods/work/services are further used in non-VATable operations not depending on the share of expenses relating to non-VATable operations.

In accordance with the provisions of the Tax Code a taxpayer has the right to claim the amounts of input VAT in tax periods in which the share of expenses for the acquisition, production and/or sale of goods/work/services and property rights with respect to which sales are not taxable do not account for more than 5 percent of the total amount of aggregate expenses for the acquisition, production and/or sale of goods/work/services and property rights.

Previously the Supreme Court expressed a position similar to that expressed by the Ministry of Finance in the Letter, stating that the rule of the ‘5 percent barrier’ is applied only with respect to goods/work/services that are used in both VATable and non-VATable operations. The amounts of VAT with respect to expenses related solely to non-VATable operations cannot be claimed for recovery even where the share of expenses does not exceed 5 percent.

However, there are court rulings that state a different position. In particular, in the ruling for case No. A27-2109/2016, the court came to the conclusion that the rule of the '5 percent barrier' is established in the tax legislation for the purpose of lowering taxpayers' administrative burden related to maintenance of separate accounting of input VAT with respect to immaterial transactions. Therefore, imposition of the obligation on a taxpayer to restore amounts of VAT with respect to expenses related to non-VATable operations where the share of expenses does not exceed 5 percent contradicts the provisions of the Tax Code.

Considering the above, at present there is no unified approach taken by the state authorities and courts in the application of the '5 percent barrier' rule.

Amendments to list of technological equipment the import of which into the territory of the Russian Federation is not subject to VAT

Russian Federation Government Resolution No. 416 expands the list of technological equipment (including components and spare parts) without an analogue manufactured in the Russian Federation, the import of which into the territory of the Russian Federation is not subject to VAT. Resolution No. 416 came into effect on 19 April 2017.

The following goods have been added to the list: equipment for complete pyrolysis units, methanol plants, paper machines, equipment for the production of polyethylene, equipment factories for the production of magnetoresistive memory, gas calibration stands and particle accelerators.

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South Africa

Tax on 'sweet beverages'

The range of ingredients attracting the proposed levy on 'sugar-sweetened beverages' has been expanded to now include 'any sweetening matter', i.e. both caloric sugar (intrinsic and/or added) and/or non-caloric sweeteners (excluding, for now, those contained in 100% pure fruit juices and milk).

Any reference to this proposed levy, previously referred to as a 'tax on sugar-sweetened beverages', should thus change to a 'tax on sweet beverages'.

Since the initial proposed implementation date of 1 April 2017 has passed, no new implementation date has officially been proposed by Government yet. Affected entities are still awaiting the publication of the critically important governing compliance rules by the Commissioner for the South African Revenue Service.

Awarding of Customs Preferred Trader status

The Customs Preferred Trader Programme was launched by the South African Revenue Service (SARS) on 8 May 2017 and it marked one of SARS' most significant trade facilitation initiatives.

Currently, only 28 applicants have been awarded the Preferred Trader accreditation status and over 250 applications are still being audited by SARS. The outcome of their applications will be known in the coming months.

The programme, modelled after the World Trade Organization's (WTO) Authorized Economic Operator (AEO) programme, followed a lengthy period of extensive audits and customs competency assessments of traders by SARS.

Some of the benefits of being a Preferred Trader are as follows:

- The appointment of a Customs Relationship Manager;
- Reduced security for certain customs procedures;
- Fewer Customs stops (checks);
- Tariff and valuation applications will be prioritized;
- Access to non-intrusive inspection techniques when goods are stopped for inspection purposes by SARS.

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Sweden

New excise duty on chemicals in certain electronic products

Sweden will introduce a new excise duty on chemicals in certain electronic products on 1 July 2017. The main reason is to reduce the occurrence or risk of exposure and spread of hazardous substances from different product groups in people's home environments. The tax is, however, also expected to generate additional tax revenue of c. SEK 1.98 billion per year.

The electronic products that will be subject to the new tax are determined on the product's CN number. The tax is to be paid at SEK 8 per kilo on household appliances and SEK 120 per kilo on other electronic products. The maximum tax payable per product will be capped at an amount of SEK 320. There will be some potential for reduction of the tax provided certain conditions are met.

Companies that produce the electronic products covered by the tax in Sweden, import the products to Sweden, or acquire the products from another EU member state, will be liable for the tax. When producing or acquiring the products there will be a reporting liability.

The tax does not apply to suppliers that are not established in Sweden and that deliver electronic products from outside Sweden directly to consumers in Sweden.

There are no thresholds applicable and the tax should, as a general rule, be reported as gross tax.

The tax will apply on the following CN numbers:

- Household appliances (for example, freezers, refrigerators, dishwashers, washing machines, etc.)
  - 8418 10, 8418 21, 8418 29, 8418 30, 8418 40
  - 8422 11
  - 8450 11, 8450 12, 8450 19
  - 8451 21
  - 8508 11
  - 8516 50, 8516 60

- Other electronic products (for example, computers, tablets, routers, CD and DVD players, phones, TV's, etc.)
  - 8517 11, 8517 12, 8517 18, 8517 62
  - 8519 30, 8519 50, 8519 81 and 8519 89
  - 8521 10 and 8521 90
  - 8527 12, 8527 13, 8527 19, 8527 91, 8527 92 and 8527 99
  - 8528 41, 8528 49, 8528 71, 8528 72, 852873
  - 8528 51, 8528 59
  - 9504 50

While the tax per item will often be quite limited (for instance, the tax on a mobile phone with a weight of 150 grams will be SEK 18), there will be consideration administration involved for companies subject to the tax.

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United Kingdom

CJEU judgment on VAT exemption for College's training restaurant

In *Brockenhurst College*, the Court of Justice of the European Union has ruled that supplies to paying customers in a College training restaurant (or to the audience attending performances in its theatre) were 'closely related' to education and should be exempt from VAT. It considered that the services were essential to the education – the restaurant was tantamount to a classroom for the students. It suggested that the purpose of charging for the meals was not to obtain additional income (in competition with commercial restaurants), as the restaurant was only open to people on a mailing list (generally, friends and family of the students), was entirely organized by students, and ran at a significant loss.

The appeal will now return to the Court of Appeal for determination, and it is possible that further guidance will be issued by the tax authorities (HMRC) following the UK General Election on 8 June 2017 However, it should be noted that HMRC distinguish between education in higher education institutions (which is exempt) and in further education colleges (where it is frequently non-business).

Revised guidance on VAT recovery by holding companies

HMRC have published revised guidance on VAT recovery by holding companies, see HMRC internal manual: VAT Input Tax.

The guidance, in line with expectations, confirms HMRC's position on a number of important issues in this area. Where a holding company receives advisors' services and undertakes (or intends to undertake) an economic activity that supports the taxable trading activities of a business that it plans to acquire, HMRC accept that it should be able to recover VAT on acquisition costs as overhead input tax. Providing management services to the acquired trading entities can be sufficient economic activity to support VAT recovery, provided that the services are 'genuine' and provided in return for consideration which is more than nominal.

The guidance also states that interest earned by a holding company on intra-VAT group loans to the acquired business, which support the making of taxable supplies by the VAT group, will also potentially justify VAT recovery. While the guidance clarifies HMRC's policy on this area, VAT recovery on acquisitions remains a complex area.

Draft legislation on use and enjoyment of telecoms services

Comments on draft legislation concerning VAT on telecommunication services were requested by 19 May, see Draft legislation: VAT use and enjoyment for telecommunication services.

The legislation is intended to remove the 'use and enjoyment' provisions from services to consumers, meaning that UK consumers who use their phones outside the EU will be charged VAT by their UK telecoms provider. According to the explanatory memorandum, HMRC consider that the changes will bring the UK into line with most other EU countries, reduce uncertainty, and prevent some providers from enjoying a VAT reduction that they do not pass to consumers.

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Eurasian Economic Union

All EEU member states sign new Customs Code of the EEU

On 11 April 2017 all EEU member states signed the new Customs Code of the EEU (the 'EEU Code' or the 'Code'), which will replace the current Customs Code of the Customs Union. The EEU Code is to take effect no earlier than 1 July 2017, subject to ratification by all the EEU member states. According to comments of the Eurasian Economic Commission, the EEU code is most likely to take effect from 1 January 2018.

The key changes to the EEU Code include:

- A simplification of customs operations.
- A transition to the electronic document flow. The Code prioritizes the electronic declaration, with hard copy declarations allowed for a limited list of cases only.
- A new approach to regulating Authorized Economic Operators (AEOs), a special category of importers/exporters that enjoy simplified customs clearance operations. According to the Code, AEOs are classified into three groups with different privileges subject to certain criteria.
- Introduction of the concept of preliminary decisions issued by the customs authorities regarding the customs valuation methods to be applied to the imported goods. The procedure for issuing such decisions may be applied in an EEU member state only upon adoption of the respective national regulations.

The new Code should significantly simplify customs formalities and enhance cooperation between the customs authorities of the EEU member states due to the electronic document flow and the implementation of unified customs regulations. At the same time, a closer cooperation between the customs authorities of the EEU member states will allow them to analyze the available information (e.g. on customs values for identical/similar goods imported into different EEU member states) and to increase control over intra-EEU transactions.

The simpler customs operations will enable a reduction in the waiting time for customs formalities, and customs control may shift from the customs clearance process to the post-clearance stage. This will likely require stronger internal controls by businesses over their customs operations to mitigate the potential customs risks.

Amendments to list of goods that may be placed under special customs procedure

The Decision of the Council of Eurasian Economic Commission of 18 October 2016 No. 165 includes in the list of goods that may be placed under the special customs procedure goods intended for organizing and holding the FIFA 2018 World Cup, the FIFA Confederations Cup 2017, and the UEFA European Football Championship 2020. Decision No. 165 came into effect on 20 April 2017.

The special customs procedure provides exemption from payment of customs duties and taxes and non-application of technical regulation measures for goods included in the list of goods for which special customs procedure may be applied.

Zero import customs duty rate for spirits used in tanning and shoe industry

Decision of the Council of Eurasian Economic Commission of 17 March 2017 No. 14 introduces new customs classification code 2909 49 800 1 for spirits used in the tanning and shoe industry. From 13 May 2017 to 31 March 2019, the zero rate of import customs duty will be applied to the said goods. Decision No.14 came into effect on 13 May 2017.

Development of technical regulation on safety of poultry meat and production of its processing

The development of the technical regulation of the Eurasian Economic Union on the safety of poultry meat and production of its processing is now on its final stage.

This technical regulation will establish safety requirements of poultry meat and products of its processing that are released (in particular, imported) in the territory of the Eurasian Economic Union. The technical regulation will also establish requirements for production, storage, transportation, supply and utilization of poultry goods, as well as to marking and packaging of the said goods.

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