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

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

A highlight of this edition is the introduction of the EU Union Customs Code from 1 May, which has led to a number of significant changes, particularly regarding the definition of 'exporter'.

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

David Raistrick

Deloitte Global

Indirect Tax Global Leader

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European Union

From 1 May 2016, the Union Customs Code replaced the Community Customs Code, which has led to a number of changes with an immediate impact on daily business practice in the EU. One change with a significant practical impact regards the definition of 'exporter'.

The European Commission has adopted a new Work Program for the implementation of the Union Customs Code in terms of the development and deployment of the required electronic systems.

Denmark

The tax authorities have issued a binding ruling regarding the sales of goods on consignment in Denmark.

There is news regarding the Customs guarantee scheme.

Following the implementation of the UCC, goods may be declared orally in certain situations.

Finland

Updated guidance has been published about the tax appeal procedure.

A branch did not have the right to deduct VAT on the costs of preparing employees' tax returns.

France

The *Conseil d'Etat* has delivered its judgment in the VAT cases of *Air France-KLM/Brit Air*.

There has been an Administrative Court judgment in a case concerning fixed establishment for VAT.

Greece

The standard VAT rate increased from 23% to 24% on 1 June 2016. There were also changes to the VAT rates applying to the Greek islands.

There are a number of other indirect tax changes.

Israel-South Korea

Korea and Israel have entered a full scale operation of the Mutual Recognition Arrangement for Authorized Economic Operator with effect from 1 April 2016.

Italy

A reverse charge for supplies of game consoles, tablet PCs and laptops, and integrated circuit devices is effective as of 2 May 2016.

Italy has launched a public consultation on the European Commission's VAT Action Plan.

Taxpayers providing certain services in the property sector (subject to the reverse charge from 1 January 2015) are now entitled to 'priority' VAT refunds.

In a recent case, the Supreme Court has ruled that costs related to the hospitality of journalists at fairs are considered to be advertising costs, for which the VAT can be deducted.

The tax authorities have provided official clarifications of Stability Law 2016, including the application of the reduced 4% VAT rate for supplies of newspapers, etc. and the VAT treatment of marina resorts.

The Customs and Monopoly Agency has issued clarifications regarding the implementation of the UCC.

There is an update on the application of the excise duty exemption for energy products.

There is an update on customs penalties.

Netherlands

The CJEU has ruled that school transport was outside the scope of VAT.

Poland

Further clarifications on the JPK (Polish SAF-T) regulations have been published.

There will be changes to the Tax Ordinance and VAT Act following the implementation of a GAAR.

Portugal

Excise duty rates on certain petroleum and energy products have been reduced.

Russia

It is reported that the Government of the Russian Federation has prepared amendments to Draft Law No. 730216-6 to provide that the general procedure for input VAT recovery will also apply to zero-rated supplies.

The State Duma has approved in the first reading an extension of the 0% VAT rate on the railway suburban transport of passengers.

The Ministry of Industry and Trade, the Federal Customs Service and the Federal Tax Service are exploring the possibility of testing a tax-free system in Russia in 2016, which would involve a refund of VAT on purchases by non-Russian citizens.

Prices indicated in risk profiles of customs authorities are not to be the only reason for adjustment of customs value.

South Africa

A seemingly new tire levy was introduced in the 2016 budget speech – the tire levy is not a new concept, but is merely a change to the collection of the tire levy.

Spain

From April 2016, taxpayers can include a European bank account in the VAT return form (Spanish form 303) in order to request a refund of local VAT incurred.

United Kingdom

The Supreme Court has ruled that an independent business review carried out by PwC was supplied to the lenders, and not to Airtours, even though Airtours was liable to pay for the report.

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Eurasian Economic Union

Eurasian Economic Union

A 0% import customs duty rate has been introduced on certain types of wood pulp.

Delayed determination of customs value with regard to exchange goods has been introduced.

The technical regulation on tobacco goods has come into force.

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Americas

Canada

HST rate changes in Newfoundland and Labrador and Prince Edward Island

The Government of Newfoundland and Labrador announced an increase to the provincial component of the Harmonized Sales Tax (HST) of 2 percentage points commencing 1 July 2016, raising the combined GST/HST rate from 13% to 15%. This will affect any GST/HST registrant making supplies into the province of Newfoundland and Labrador.

Furthermore, the Government of Prince Edward Island announced an increase to the provincial component of the HST of 1 percentage point commencing 1 October 2016, raising the combined GST/HST rate from 14% to 15%, affecting any GST/HST registrant making supplies into the province of Prince Edward Island.

Janice Roper, jroper@deloitte.ca, Deloitte Canada

Robert Demers, rdemers@deloitte.ca, Deloitte Canada

United States

South Dakota: Physical presence no longer required for sales tax collection

On 22 March 2016, Governor Dennis Daugaard signed Senate Bill 106 (S.B. 106) amending S.D. Codified Laws § 10-45 and 10-52, effective 1 May 2016, to require the collection of South Dakota sales tax on sales into South Dakota if, in the previous or current calendar year, the seller's sales into South Dakota exceed USD 100,000 or the seller had 200 or more separate transactions into South Dakota.

S.B. 106 expands sales and use tax nexus beyond physical presence and requires the collection of sales taxes on sales of tangible personal property, products transferred electronically, or services for delivery into South Dakota if the seller meets either of the following criteria in the previous calendar year or current calendar year:

- The seller's gross revenue from the sale of tangible personal property, any product transferred electronically, or services delivered into South Dakota exceeds USD 100,000; or
- The seller sold tangible personal property, any product transferred electronically, or services for delivery into South Dakota in 200 or more separate transactions.

The provisions of S.B. 106 become effective on and after 1 May 2016, and may not be applied retroactively.

Brian Ertmer, brertmer@deloitte.com, Deloitte United States

Mark Faulkner, mafaulkner@deloitte.com, Deloitte United States

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Asia Pacific

India

Service tax on services provided by Government or a local authority to a business entity – exemptions, valuation, point of taxation and CENVAT credit

In the Union Budget for 2016, 'all services' rendered by 'Government' to business entities were brought under the 'reverse charge mechanism', with effect from 1 April 2016, requiring recipients of Government services to discharge the tax liability. In response to numerous representations made by business and industry associations, certain services have been exempted, and changes have been made with respect to the taxability, valuation, point of taxation and CENVAT credit in respect of services provided by the Government and local authorities.

The salient features of the notifications issued in this regard are as follows:

- Services which have been exempted are:
 - Services provided by Government or a local authority to another Government or a local authority, except certain services by the department of posts, services in relation to aircraft or a vessel, or transport of goods or passengers;
 - Services by way of the grant of passport, visa, driving license, birth or death certificates;
 - Fines and liquidated damages payable to Government or a local authority for non-performance of a contract entered into with Government or a local authority, etc.
- Relevant provisions of the 'Service Tax (Determination of Value) Rules, 2006' have been amended so as to provide that interest chargeable on deferred payment in case of any service provided by Government or a local authority to a business entity, where

payment for such service is allowed to be deferred on payment of interest, shall be included in the value of the taxable service.

- The CENVAT credit rules have been amended to provide that CENVAT credit of service tax paid on one time charges (whether paid upfront or in installments) paid in a year for the right to use natural resources, may be allowed to be taken evenly over a period of three years. Further, CENVAT credit of service tax paid on spectrum user charges, license fees, transfer fees charged by the Government on the trading of spectrum and royalties in respect of natural resources would be available in the year in which the same is paid. Additionally, CENVAT credit can be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CCR even after the period of one year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource.
- In the case of services provided by the Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which any payment in respect of such service becomes due either in part or full as indicated by issuance of a bill etc. by Government or a local authority demanding such payment or when the payment is made.

Reimbursements to overseas branch office by head office in India not liable to service tax

In a recent case, the Customs Excise and Service Tax Tribunal dealt with the issue of whether reimbursements made to branches were in the nature of taxable services rendered by the branch to the head office.

The appellant was engaged in the business of developing software for overseas customers, particularly mobile operators, and rendered such services through 'on-site' and 'offshore' operations. Engineers were deputed from India for the on-site operations. For rendition of such services, the appellant established a network of branches and subsidiary companies at different locations outside the country. Such establishments acted as salary disbursers of the staff deputed from India to client locations as well as other assigned activities. The

salaries so disbursed, as well as other expenses of running the branch, were met by the appellants. Payments made by customers were also received in branches and transmitted to the appellants after netting the expenses incurred by the branch. No service tax was discharged on reimbursements made towards employees' salary and other expenses to its branches.

Rejecting the contentions of the tax authorities that said payments were in the nature of consideration for taxable services rendered by the branch to head office in India, the Tribunal held that employees of the branch are the employees of the organization itself and there is no independent existence of the overseas branch as a business. Further, the transfer of funds by gross outflow or by netted flow are nothing but reimbursements and taxing of such reimbursement would amount to taxing of transfer of funds which is not contemplated by the service tax law.

The decision of the Tribunal is significant, as establishment of a person in a taxable territory and his other establishment in a non-taxable territory are treated in service tax law as establishments of distinct persons and yet reimbursement for meeting expenses of such other establishment will not be liable to service tax.

Prashant Deshpande, pradeshpande@deloitte.com, Deloitte India

Indonesia

Bonded Logistics Center procedures

The Directorate General of Customs and Excise (DGCE) has issued Regulation No. PER-01/BC/2016 (PER-01) concerning procedures for Bonded Logistics Centers with effect from 29 January 2016.

A Bonded Logistics Center (PLB) is a facility for bonded storage where companies are permitted to conduct value-adding activities intended to make the imported goods ready for the next link in the supply chain, as long as they do not change the original characteristics and function of the goods. Examples of permitted activities include packaging, re-packaging, quality control, adjustments, repairing and consolidation for export. Benefits of utilizing a PLB are as follows:

- Postponement of import duties;
- Non-collection of VAT, sales tax on luxury goods and/or Article 22 income tax on import; and/or
- Exemption from excise duties.

Companies are allowed to store their goods in PLBs for up to three years, whereas goods are only allowed to be stored in a normal Bonded Warehouse for up to one year. Extension of storage time is granted on a case-by-case basis.

The PLB provides flexibility for companies to effectively manage their supplies of raw material and/or intermediate materials for ease of access and cost effectiveness.

Implementation of ASEAN Single Window

The Government announced in March 2016 that it will be integrating import/export data and information among ASEAN Member States through the ASEAN Single Window (ASW). The ASW is a regional initiative connecting National Single Windows (NSWs) of ASEAN Member States enabling the electronic exchange and integration of data and information within the ASEAN region.

Further to the exchange of the intra-ASEAN Certificate of Origin (ATIGA Form D), Indonesia will be participating in the pilot phase of the ASEAN Customs Declaration Document (ACDD) which would cover the exchange of the following trade and shipping information:

- Ocean Booking Confirmation;
- Loading Confirmation;
- Pre-Departure Export Manifest Summary; and
- Quarantine documents such as Sanitary and Phytosanitary (SPS).

Excise tax may be imposed on plastic bottles and packaging

Efforts to manage plastic consumption in Indonesia may see an excise tax in the range of IDR 200 to IDR 500 being imposed on both imported and domestically produced plastic bottles and packaging.

If the House of Representatives (DPR) agrees to the proposal, the introduction of excise tax on plastic bottles and packaging could take effect at the end of 2016.

Port reforms announced as part of economic package to reduce port dwelling times

On 29 March 2016, the Government announced the Indonesia Single Risk Management as part of the Economic Policy Package XI. Under the new policy, port authorities and 18 government agencies will harmonize their criteria for customs checks to result in more streamlined procedures for both exports and imports, in order to reduce port dwelling times. One of the main challenges is to improve the efficiency in the pre-customs clearance process, as it currently involves numerous institutions for licenses and permit issuance.

The Food and Drug Monitoring Agency (BPOM) and Customs and Excise will be the first to integrate their systems under a single platform to effectively assess the import of raw materials into the country. The Government will expand its integrated platform to include the Trade Ministry and Agriculture Ministry in August 2016.

Upon full implementation of the new reforms, the amount of time it takes for goods to clear customs at Indonesian ports is expected to be reduced from 4.7 days to 3.7 days with the harmonized customs clearance procedures.

Turmanto, tturmanto@deloitte.com, Deloitte Indonesia

Singapore

Updated documentation requirements for removal of shut-out goods from Free Trade Zones

With effect from 26 April 2016, traders or their Declaring Agent(s) will have to fulfill revised declaration procedures when removing 'shut-out' goods from Free Trade Zones (FTZs). ('Shut-out goods' refers to goods that are not carried on the intended vessel or aircraft.)

Different customs permits/declaration procedures will need to be satisfied, depending upon whether the goods:

- Are dutiable or non-dutiable;
- Are being removed within, or outside, a 24 hour time period from entry into the FTZ;
- Were previously imported/held under customs controlled regimes e.g. Zero GST Warehouse, Temporary Importation Scheme; or
- Were entered into the FTZ from Singapore Customs territory.

All traders and their Declaring Agent(s) must ensure that the customs permits/declarations, including supporting documents, are produced to the ICA (Immigration & Checkpoints Authority of Singapore) officer for inward cargo clearance of the shut-out goods, to ensure compliance with Singapore Customs' requirements.

Bob Fletcher, bobfletcher@deloitte.com, Deloitte Singapore

Taiwan

New Government may consider raising gift and inheritance taxes and VAT to finance long-term care for elderly

Taiwan's new Government took office on 20 May 2016. The Government plans to prioritize long-term care for the elderly, designating gift, inheritance and VAT as the main source of funding for the initiative. As incoming Premier, Mr Chuan Lin spoke about the potential tax reform in a radio interview in late March, in which he mentioned that the gift and inheritance taxes rate may be raised by 10% to 20%, while the VAT rate may be raised by 0.5% to 5.5%. However, Mr. Lin indicated that this policy is not finalized, and the new Government would accept more public suggestions.

The general VAT rate is regulated by Article 10 of the Value-added and Non-value-added Business Tax Act (VAT Act) within a range of no less than 5% and no more than 10%. Taiwan has applied the lowest general VAT rate of 5% for more than 30 years. In the past decades, the rise of the VAT rate has been discussed several times, but opposing

viewpoints and fear of negative impacts on the economy were reasons behind the halt.

Faced with public criticism, Mr Lin denied that this was a tax raise, but rather a fixture under the Long-Term Care Service Act to provide more funding sources to long-term care.

Unlike the gift and inheritance taxes, whose legal intention is to avoid widening of the wealth gap between rich and poor, the VAT in nature is a consumption tax, and the impact on the rise of the general VAT rate will affect all types of consumers. For this reason, it is expected that the VAT rate increase would engage more discussion among different political parties and it would be open to public comments, taking longer than gift or inheritance taxes. However, as the funding needs of long-term care increase annually, the VAT rate increase may not be the first priority for the new Government but will no doubt be an issue to be considered.

Advance Rulings on origin of goods

The Ministry of Finance (MOF) issued guidelines on 17 December 2015 which allow taxpayers to request an Advance Ruling from the Customs authorities on the origin of imported goods. The newly issued guidelines align with the World Trade Organization's (WTO) Trade Facilitation Agreement (TFA).

An Advance Ruling will only be granted for goods that are not imported under preferential tariff rates (such as rates under a free trade agreement or for lesser-developed countries). The ruling will be binding for three years.

Previous MOF guidance allowed taxpayers to apply for an Advance Ruling relating to tariff codes or adjustments to transaction values according to Article 8 of the WTO's Agreement on Customs Valuation (e.g. commissions and royalties). In 2015, the MOF further relaxed the criteria to allow Advance Classification Rulings on goods that have previously been imported to reduce the number of disputes.

Recent Advance Ruling developments in Taiwan demonstrate a trade facilitative environment and encourage more companies to utilize Advance Rulings to develop efficient supply chains. Taxpayers can now obtain a binding ruling before goods are imported, which can

reduce uncertainty on tariff classification; customs valuation methodologies; applicability of import taxes, duties or other levies; and whether other import/export rules (e.g. license requirements) apply. Nevertheless, importers should carefully evaluate the appropriateness of applying for an Advance Ruling, including whether similar rulings are publicly available and the potential impact of a ruling on importers of other products.

Taxpayers should review declared tariff codes, customs value and origin of imported goods to identify any uncertain factors and/or complexities to determine whether an Advance Ruling would be useful.

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

Vietnam

Export and import duties legislation amended

On 6 April 2016, the National Assembly passed new legislation, Export and Import Duties 2016, to replace the 2005 legislation. The new legislation is to take effect from 1 September 2016.

Notable changes under the new legislation are as follows:

1. Duty exemption for materials and supplies imported to manufacture export products

Currently, enterprises importing materials and supplies to manufacture export goods are subject to import duty deferral of 275 days. If finished products are not exported within 275 days, enterprises are required to pay import duties and subsequently submit a claim for refund after the finished products have been exported.

Under the new legislation, the import duty deferral period of 275 days is removed. This will help enterprises reduce the administrative burden of having to submit claims for refunds and, ultimately, benefit enterprises from a cash flow perspective.

2. New duty payment deadline for AEO enterprises

Typically, importers must pay import duties on goods prior to customs clearance i.e., pre-importation. Under the new legislation, enterprises with AEO status (i.e. enterprises that have good compliance records and satisfy other conditions to be recognized by the customs

authorities as an Authorized Economic Operator – AEO for customs simplification) are allowed to pay import duties post-importation, however on a monthly basis no later than the 10th day of the following month. Enterprises are encouraged to improve their compliance records to achieve AEO status in order to enjoy this benefit.

Bui Ngoc Tuan, tbui@deloitte.com, Deloitte Vietnam

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Trade Preferences

South Korea-Israel

Korea and Israel enter full scale operation of MRA for AEO

After a three month trial operation, Korea and Israel have entered a full scale operation of the Mutual Recognition Arrangement (MRA) for Authorized Economic Operator (AEO) with effect from 1 April 2016.

The total value of exports to Israel over the past three years is currently worth USD 3.9 billion, while the total value of imports from Israel is worth USD 2.5 billion.

The main goods exported from Korea to Israel are machinery, computers, aircrafts and tools, while the main goods imported from Israel into Korea are machinery, computers, plastics and optical instruments.

The exchange of AEO information between the two customs authorities would benefit traders by automatically verifying their AEO status in the process of customs clearance.

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

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EMEA

European Union

Who can be an 'exporter' under the Union Customs Code?

As of 1 May 2016, the Union Customs Code (UCC) replaced the Community Customs Code (CCC). This renewed European customs legislative framework includes several changes with an immediate impact on daily business practice in the EU. One change with a significant practical impact regards the definition of 'exporter'. While there was no doubt under the CCC about the possibility for a non-EU established company to export out of the Union, that is less clear with the introduction of the UCC.

Definition of 'exporter' in the UCC

An 'exporter' is defined in the UCC as:

- The person **established in the customs territory of the Union** who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power to determine that the goods are to be brought to a destination outside the customs territory of the Union;
- The private individual carrying the goods to be exported when these goods are contained in the private individual's personal baggage;
- In other cases, the person **established in the customs territory of the Union** who has the power to determine that the goods are to be brought to a destination outside the customs territory of the Union.

Following the wording of the definition of 'exporter' in the UCC, an establishment in the customs territory of the Union is necessary for a legal person to be able to qualify as an 'exporter' for customs purposes. In the UCC it is stated that a legal person is established in the customs territory of the Union when it has, in that customs territory:

- A registered office;
- Headquarters, or;
- A permanent business establishment, i.e. a fixed place of business, where both the necessary human and technical resources are permanently present and through which a person's customs-related operations are wholly or partly carried out.

The new definition raised many questions for economic operators that were, on the basis of the CCC, allowed to export from the Union while being non-EU established companies (e.g. a Swiss company owning stock in the Netherlands and exporting these goods when required). The European Commission recently published guidance on the definition of 'exporter' in the UCC. Clarifications are provided as to whether it is still possible for non-EU established companies to export goods and act as exporters under the UCC.

Are non-EU established companies totally excluded?

The European Commission's guidance indicates that where the person who disposes of the export goods or otherwise motivates the export does not qualify as an 'exporter', the parties involved in the export transaction should establish other contractual or business arrangements in order to determine the person who is responsible for the export of the goods outside of the customs territory of the Union.

This means that non-EU established companies **are not excluded from exporting** goods from the Union. Non-EU established companies can still exports goods when:

- Such a non-EU established company appoints an indirect customs representative established in the EU who will then have the power to bring the goods out of the Union, or;
- Such a non-EU established company appoints a third party established in the EU to bring the goods out of the Union. The third party will then take full customs responsibility.

VAT consequences

The UCC's new 'exporter' definition raises also a number of concerns with respect to VAT. A supply of goods whereby goods are dispatched or transported outside the EU (1) by or on behalf of a vendor, (2) by or on behalf of a non-EU established customer is a VAT exempt export (also known as a VAT zero-rated export). In order to claim this, the supplier must be able to prove that the goods have left the Union.

Experience indicates that the assessment of the decisive proofs to demonstrate that goods have left the Union can differ between tax authorities in different Member States. The importance of the customs export declaration is, however, self-evident. To prevent avoidable discussions with tax authorities when claiming VAT exemption (zero-rating), it is appropriate to discuss this with the competent authorities.

Implications

For non-EU established companies wishing to export goods from the EU, it will be necessary to appoint an indirect representative or to appoint a third party established in the EU. In addition, special attention should be paid to the content of customs export declarations in view of the new customs rules.

It is recommended that companies claiming a VAT exemption (zero-rating) for export check their proofs to demonstrate that goods have left the EU with the competent tax authorities in the country of export in order to avoid discussions afterwards.

European Commission adopts new Work Program for Union Customs Code

The European Commission has adopted a new **Work Program** for the implementation of the UCC in terms of the development and deployment of the required electronic systems.

The Work Program repeals the previous (April 2014) Work Program to take into account the latest legal, transitional and operational developments for the UCC. The Work Program aims to govern, plan and manage the electronic environment underpinning the UCC, as from the date of application of the Code (1 May 2016) to its full implementation (31 December 2020).

The Work Program is closely related to the Multi-Annual Strategic Plan and will be subject to further revision cycles. National planning information will be shared between Member States and the Commission, and made available to economic operators via the Europa website.

Klaas Winters, KIWinters@deloitte.nl, Deloitte The Netherlands

Denmark

New binding ruling on the sale of goods on consignment

The tax authorities have issued a binding ruling regarding the sale of goods on consignment in Denmark. The tax authorities confirm that local Danish VAT on goods received on consignment can be deducted at the time the invoice is issued or at the time of self-billing, which is the time that the goods are transported to Denmark. If the supplier (consignor) is not VAT registered in Denmark, the Danish company's (consignee) acquisition of goods from other EU countries is subject to VAT at the time the goods arrive in Denmark regardless of the fact that the consignee still has the right to return the goods to the consignor. The consignee can claim the VAT when the invoice (including self-billing) is issued.

Furthermore the tax authorities confirm that the consignee's supply of the right for the consignor to use the consignee's sales and showrooms in a marketplace constitute a supply of an advertising service.

Henrik Pedersen, henpedersen@deloitte.dk, Deloitte Denmark

Customs guarantee scheme

From 1 May 2016, a guarantee to cover actual or potential debts is mandatory in order to use, for example, special procedures and temporary storage.

The customs authorities (SKAT) have launched a general guarantee scheme as an alternative to an individual guarantee. This scheme is voluntary and works like an insurance scheme, where the economic operator pays a contribution to the scheme. If a debtor cannot pay their customs debt, the amount is covered by the guarantee scheme (i.e. the

amount is transferred from the guarantee scheme to the EU own recourses).

For the remainder of the 2016 year, the contribution to the guarantee scheme depends upon whether it is to cover an actual or a potential customs debt. This year the fees are:

- 2.5 permille of the actual debt;
- 0 permille of the potential debt.

The fee is not static and will be recalculated on an on-going basis to better correlate with the actual risk of the scheme. In particular, the fee for potential debts is going to change as from 1 January 2017.

Oral declarations following introduction of UCC

SKAT have made it possible for goods to be declared orally in specific cases as stated in the new legislation (Union Customs Code). Previously, oral declaration was possible only in the red exit at Copenhagen airport. It should now be possible to declare goods orally in customs offices around the country.

The ability to make an oral declaration follows the rules stated in the UCC and applies, for example, in the following situations:

- Oral declaration for release for free circulation:
 - Goods of a non-commercial nature
 - Goods of a commercial nature contained in the travelers' personal baggage under certain circumstances
- Customs declarations for temporary admission may be lodged orally for the following goods:
 - Some personal effects and goods for sports purposes
 - Medical, surgical and laboratory equipment in specific cases
 - Portable musical instruments under certain circumstances
- Customs declarations for export may be made orally for the following goods:
 - Goods of a non-commercial nature.

The specific provisions and conditions have not yet been published.

Winni Nielsen, winielsen@deloitte.dk, Deloitte Denmark

Finland

Updated guidance on tax appeal procedure

On 25 April 2016, the Tax Administration published guidance (No.A50/200/2015) concerning procedural questions related to tax appeals, insofar as they have an impact on the administrative courts as well as the Tax Administration, and the appellant procedures document traffic between the two. The guidance concerns all tax appeals, where the subject of the complaint is a decision made by the Tax Administration.

Branch not able to deduct VAT on costs for preparation of employees' tax returns

On 20 April 2016, the Central Board of Taxes (CBT) issued a ruling KVL 4048/2/14 concerning the VAT treatment of services related to the preparation of employees' tax returns paid by the employer. The question was about expatriates working in a Finnish branch for periods from 6 to 24 months. The branch and the expatriates had agreed to apply salaries based on so-called 'tax equalization' and, related to that, the branch chose an external service provider to prepare the tax returns for the expatriates. The service provider charged a fixed fee for each tax return prepared. The question was whether the branch had the right to deduct the VAT on the costs associated with the preparation of the tax returns. The tax return expenses included VAT.

The Supreme Administrative Court (SAC) stated that the main content of the service was to fulfill the employees' obligations and file their tax returns. Therefore the services were not considered a part of the taxable business of the branch. The branch did not have right to deduct VAT on the said services.

Johanna Oksa, johanna.oksa@deloitte.fi, Deloitte Finland

France

***Conseil d'Etat* judgment on Air France-KLM/Brit Air VAT cases**

The litigation concerned the application of VAT to non-exchangeable airline tickets which had expired by virtue of the non-attendance of the customer at the point of embarkation, as well as to exchangeable tickets which remained unused at the end of their period of validity. Air France did not account for VAT in respect of sales of such tickets.

The *Conseil d'Etat* followed the position of the Court of Justice of the European Union, and reiterated that VAT is due even when the transaction has not yet been performed, if all the elements relevant to the chargeable event (i.e. the future service) are already known and, in particular, that at the time of the advance payment, the goods and services are precisely determined. The *Conseil d'Etat* considered that the chargeable event relating to the service received by the passenger consists of the actual performance of the transport or of the expiration of the air carrier's contractual obligations. As for the tax point, this occurs upon receipt of the payment of the price by the operator in charge of carrying out the transport service.

In respect of the nature of the obligation created by the contract, the *Conseil d'Etat* confirmed that the obligation created by a contract of transport entitles the customer to the right to be transported, exercisable at a time of his choosing for a one year period, and does not constitute a distinct obligation in respect of the reservation of the ticket or the transportation itself.

Finally, in terms of the nature of the payment made by the 'no show' passenger, this is not aimed at compensating a loss. The *Conseil d'Etat* noted that the customer cannot be considered as having cancelled the contract where he had exercised his right to walk away from a refundable transport contract.

Administrative Court judgment in VAT fixed establishment case

A French company was held to be the fixed establishment of a company established outside of France in respect of its international maritime transport activity carried out for French customers. The Administrative Court of Appeal (ACA) considered that this activity was

carried out in France, and that the attribution of this activity to the head office of the company in the UK would have led to an irrational outcome from a tax perspective. Thus, the French company was considered as being a permanent structure able, in light of its personnel and its material and logistical resources, to perform the whole supply of services in an autonomous manner.

The ACA therefore held that the tax authorities were right to have considered that, with respect to the principles governing the place of supply and the scope of VAT, the appellant company had a fixed establishment in France and that the supplies of services in question should be considered to have been made by it.

In this respect, the ACA pointed out that although the appellant company maintained that the assessments which it had received constituted double taxation incompatible with the principle of VAT neutrality, arguing that its French customers would already have self-accounted for VAT under the reverse charge, it had provided no evidence proving that the transactions concerned by the assessments had already been subject to VAT in this manner. **The question remains open as to the nature of the evidence which would have been admitted.**

Michel Guichard, mguichard@taj.fr, Taj

Greece

Standard VAT rate increased from 23% to 24% on 1 June 2016

On 22 June 2016, the Greek Parliament adopted a bill introducing a number of tax amendments, including an increase to the standard VAT rate from 23% to 24% as from 1 June 2016. The reduced and the super-reduced VAT rates for the mainland (namely 13% and 6% respectively) remain the same.

For the islands, the applicable VAT rate changes from 16% to 17% as of 1 June 2016. The other VAT rates that apply to islands (namely 9% and 4%) remain the same.

The application of the reduced VAT rates for the second group of islands (namely Syros, Thasos, Andros, Tinos, Karpathos, Milos, Skyros, Alonisos, Kea, Antiparos and Sifnos) is abolished as from 1 June 2016 and replaced with the rates of 6%, 13% and 24% that apply in the mainland.

Other indirect tax changes

In addition, the following other indirect tax changes were approved by Parliament on 22 May:

- Accommodation tax for hotels and the letting of rooms and apartments is to be implemented as from 1 January 2018;
- Cable TV tax at a rate of 10% calculated on the monthly bill of each cable TV connection is implemented as from 1 June 2016;
- Fixed telephone subscribers tax at a rate of 5% calculated on the monthly bill of fixed telephone connections will be introduced as from 1 January 2017;
- Amendments to the taxation of lotteries: a fixed rate of 35% will be introduced from 1 January 2016;
- Abolition of the beer tax;
- Introduction of excise duty on refill liquids for electronic cigars and on coffee as from 1 January 2017;
- Increase in the tax on cigars from 20% to 26% as from 1 January 2017;
- Increase in excise duty rates on benzene, diesel, biodiesel, LPG and lamp oil (kerosene) for engines, heating purposes and other uses from 1 January 2017;
- Increase in the excise duty rate applicable to diesel (oil of internal combustion used for engines) and lamp oil (kerosene) that are used for heating purposes for the time period as from 15 October to 30 April of each year, with effect from 15 October 2016;
- Reduction by 50% of the excise duty rate that applies to ethyl alcohol used for the production of certain alcoholic beverages from 1 January 2018;

- Increase in the excise duty rates that apply to beer as from 1 June 2016;
- Reclassification of the products that are subject to luxury tax as from 1 June 2016;
- New vehicle registration classification duty rates are introduced and apply as from 1 June 2016;
- Natural gas that is used exclusively for the production of electricity is exempt from excise duty as from 1 June 2016;
- Reduction of the excise duty rate that applies to natural gas that is used for heating purposes and is destined for domestic use as from 1 January 2017;
- Readjustment of the excise duty rate that applies to natural gas that is used for other purposes (besides heating or engines) as from 1 January 2017.

Kyriaki Dafni, kdafni@deloitte.gr, Deloitte Greece

Israel

Korea and Israel have entered a full scale operation of the Mutual Recognition Arrangement for Authorized Economic Operator with effect from 1 April 2016. For details, see [Korea and Israel enter full scale operation of MRA for AEO](#).

Italy

VAT reverse charge for supplies of game consoles, tablet PCs and laptops, and integrated circuit devices

A reverse charge for supplies of game consoles, tablet PCs and laptops, and integrated circuit devices is effective as of 2 May 2016.

This anti-fraud measure, introduced by Legislative Decree n° 24 dated 11 February 2016, which implements article 199a of the EU Principal VAT Directive, will apply until 31 December 2018.

To date, the tax authorities have not clarified whether the new reverse charge shall apply to supplies of game consoles, tablet PCs and laptops, and integrated circuit devices carried out by 'retail traders' (and generally made to final users).

Consultation on European Commission's VAT Action Plan

On 2 May 2016, Italy launched a public consultation on the European Commission's VAT Action Plan.

The aim of this public consultation is to evaluate the proper measures to take in Italy in order to reform the VAT system, which is currently fragmented, complex for the growing number of businesses operating cross-border and open to fraud, as explained by the European Commission in the Action Plan *Towards a single EU VAT area – Time to decide*, dated 7 April 2016.

The public consultation will be open until 15 June 2016.

New 'priority' VAT refunds

According to the Decree dated 29 April 2016 (published in the Official Gazette n° 111 dated 13 May 2016), taxpayers that provide restructuring services in the construction field or cleaning, demolition, equipment installation and completion services related to buildings (subject to the reverse charge as from 1 January 2015) now fall within the class of those VAT claimant subjects with the right to be refunded as a matter of priority, according to Article 38-bis of the DPR 633/1972.

For the purposes of clarity, for 'priority' VAT refunds, the following conditions must be met:

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

The first available deadline for the submission of this new priority VAT refund will be 31 July 2016 (i.e. the deadline for the submission of the 2Q 2016 VAT refund claim).

VAT deduction for costs related to the hospitality of journalists taking part in fairs

According to decision n. 8850 dated 4 May 2016 issued by the Supreme Court, costs related to the hospitality of journalists at fairs are considered to be advertising costs, for which the VAT can be deducted, rather than entertainment costs, for which the relevant VAT cannot be deducted. For completeness, please note that entertainment costs are those related to the activities performed to improve a company's 'image', whilst advertising costs are those related to activities performed to create promotional initiatives for products, brands and services.

With reference to a specific dispute involving a company that organizes fairs and events, the Supreme Court stated that, in this case, the journalists, by taking part in the organized event, are able to positively affect the outcome of the event that will be advertised in their articles. Therefore, the connected costs for the hospitality should be deemed as advertising costs, in the light of the functional link they have with the business aim of the company.

The above conclusions, which are strictly grounded on the type of business of the company involved in the dispute, are not subject to a general application, as a correct VAT analysis of hospitality costs requires a case-by-case analysis.

First official clarifications of Stability Law 2016

In circular letter n° 20/E dated 18 May 2016, the tax authorities have, with reference to the Stability Law 2016, provided an overall picture of the new tax law provisions. In particular, with reference to the most significant VAT changes, the tax authorities clarified that:

- The reduced 4% VAT rate (applicable to supplies of newspapers, daily news bulletins, dispatches of news agencies and periodicals identified via ISBN or ISSN codes and spread through electronic means based on the Stability Law 2016) shall apply also to the 'making available on-line' of the same publishing products for a limited range of time. This is the case with respect to the increasing use of on-line libraries and

specialized web sites, which make journals, e-books and other publishing products available to read, download and share;

- The standing conference of central and regional authorities will be included among the entities that set conditions for the qualification of marina resorts as open-air accommodation facilities. This clarification is fully in line with the recent decision n° 21/2016 of the Constitutional Court, where the new law provision (granting the application of the 10% VAT rate to marina resorts) was declared unconstitutional due to the breach of the principle of 'sincere cooperation' between central and regional authorities.

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

Clarifications issued on UCC

On 19 April 2016, the Customs and Monopoly Agency issued a number of acts regarding the new rules introduced by the Union Customs Code and the relevant Regulations (Implementing and Delegated), also providing clarifications and operative guidelines applicable from 1 May 2016.

In particular, the new definition of exporter is covered. Based on the new rules, an exporter is a legal person who:

- Is established in the EU customs territory; and
- Has the power to determine that the goods shall be transported to a destination outside the EU customs territory.

In this respect, according to Customs, an operator not established in the EU who wants to lodge an export declaration as exporter will have to appoint a customs representative established in the EU, who will act as exporter on the operator's behalf. As such, the customs representative will have to be shown on box 2 of the export declaration.

To date, no further instructions have been released, even after the new guidelines issued by the European Commission on 27 April 2016 on the definition of 'exporter'.

Application of excise duty exemption for energy products

With Circular Letter No 11/D of 29 April 2016 the Customs and Monopoly Agency has provided operative guidelines allowing the application of the excise duty exemption for energy products used as fuel to certain kinds of shipping in EU and Italian waters.

Penalties update

On 6 February 2016, a Legislative Decree has entered into force which, amongst other measures, has reclassified certain criminal penalties for customs violations as administrative penalties. In this respect, on 3 May 2016, the Customs and Monopoly Agency issued Circular letter No 51746, which has provided clarifications regarding this Decree, in particular with reference to its scope.

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

Netherlands

CJEU rules that school transport was outside the scope of VAT

The Court of Justice of the European Union has delivered its judgment in case of *Gemeente Borsele* (the commune of Borsele), which wanted to treat its income from transporting school pupils as subject to VAT – in order to recover the VAT on the (much higher) cost of providing the transport.

The Staatssecretaris van Financiën took the view that the provision of school transport did not amount to an economic activity, so no output tax was due on the charges and, in consequence, the commune could not reclaim input tax on the cost of the transport.

The provision of the school transport was heavily subsidized and the judgment notes that only about 3% of the cost was covered by payments from the parents of pupils involved – the balance of the cost being met from public funds, that the parental contribution was not made by all the parents whose children were transported and that the contribution was based on ability to pay (rather than distance travelled, etc.).

The CJEU agreed with A-G Kokott's opinion that this meant that there was insufficient connection between the payment made and the transportation of the children and hence that the payments made by those parents who contributed were not 'consideration' for supplies. The CJEU decided that "... a regional or local authority which provides a service for the transport of schoolchildren under conditions such as those described in the main proceedings does not carry out an economic activity ...".

Willem Kronjee, wkronjee@deloitte.nl, Deloitte The Netherlands

Poland

Further clarifications on JPK regulations

On 12 May 2016, the Minister of Finance published further explanations of the JPK (Polish SAF-T) regulations. The document addressed the criteria to be used to determine the type of taxpayer in the case of foreign-based, Polish VAT-registered entities without a fixed establishment in Poland. It has been clearly confirmed that **global criteria** are to be taken into account when determining the status of such a taxpayer, as the law does not allow consideration of the operations from the perspective of certain territories in which operations are carried out.

Bearing this in mind, it is clear that all foreign-based taxpayers registered for VAT in Poland that exceed the thresholds mentioned below will be subject to the new regulations as of 1 July 2016. In particular, a large taxpayer is considered to be a taxpayer with more than 250 employees (regardless of the financial conditions) or with more than EUR 50 million of net turnover and EUR 43 million of assets (if employing less than 250 people) in at least one of the previous two fiscal years.

Furthermore, a new law proposal imposing an obligation to transfer VAT registers (in the JPK format) **on a regular, monthly basis along with the VAT return**, was recently introduced to the Polish parliament – until now, all of the files had to be provided only upon request of the authorities. Thus, it is very likely that all large companies will be obliged to report VAT registers (in JPK format) starting from the VAT return for

July 2016 within the deadline of 25 August 2016. Furthermore, a similar obligation is to be implemented with respect to medium-small taxpayers (as of 1 January 2017). Consequently, such entities will be obliged to adjust their systems sooner – the remainder of the data is to be provided to the authorities upon their request as of 1 July 2018.

Changes to Tax Ordinance and VAT Act – GAAR

There are a number of changes to the Tax Ordinance (which provides for the general tax rules in Poland) which may impact the position of taxpayers in Poland, one of them being the general anti-avoidance rule (GAAR) to be implemented in Poland. In brief, after the GAAR comes into force, tax authorities will have the right to assess the tax consequences of an activity/a transaction in such a way that the generated tax optimization is to be offset. Tax proceedings in the case of alleged tax avoidance must be initiated or taken over directly by the Minister of Finance, which will be authorized to apply the tax avoidance clause by issuing a decision.

The GAAR defined in the Tax Ordinance explicitly excludes VAT. However, the draft law assumes the introduction to the VAT Act of a definition of ‘bypassing’ and a clause that will allow tax authorities to assess the tax consequences of an activity/a transaction in such a way that the generated tax optimization is to be offset. ‘Bypassing’ shall be understood as activities performed within VATable transactions which, despite complying with the formal requirements resulting from the VAT law, were aimed at achieving tax optimization, which is against the purpose of the said provisions.

The above regulation will provide tax authorities with a powerful tool allowing them to deny the application of solutions that are considered to have been used only to minimize tax; this may have a significant impact on all types of business.

Michał Klosinski, mklosinski@deloittece.com, Deloitte Poland

Portugal

Excise duty on petroleum and energy products

After a quarterly revision of the excise duty rates applicable to petroleum and energy products, the Ministry of Finance has published Portuguese Official Journal Ordinance nr. 136-A/2016, which reduces the excise duty rate applicable to gasoline and diesel products.

In this context, the excise duty rate applicable to products classified by commodity code 2710 11 41 to 2710 11 49 (gasoline with lead content not exceeding 0.13 g/lt) is reduced to EUR 568.95 per 1,000 liters (the rate previously in force was EUR 578.95 per 1,000 liters). In addition, the excise duty rate applicable to products classified by the commodity code 2710 19 41 to 2710 19 49 (diesel), is reduced to EUR 328.41 per 1,000 liters (the rate previously in force was EUR 338.41 per 1,000 liters). In practice, the excise duty rate applicable to these products was reduced by EUR 0.01/liter.

The excise duty rate applicable to colored and marked diesel (classified by commodity codes 2710 19 41 to 2710 19 49) remains unchanged (the applicable rate is EUR 107.51 per 1,000 liters).

The Ordinance entered into force on 13 May 2016.

Afonso Arnaldo, afarnaldo@deloitte.pt, Deloitte Portugal

Russia

Amendments to Draft Law on changes to procedure for VAT recovery with respect to zero-rated supplies

It is reported that the Government of the Russian Federation has prepared amendments to Draft Law No. 730216-6 to provide that the general procedure for input VAT recovery will also apply to zero-rated supplies. Currently a special procedure for input VAT recovery applies to zero-rated supplies, that is, the respective input VAT can be claimed for recovery only in the period when the documents confirming the application of the 0% VAT rate are provided to the tax authorities.

According to the amendments prepared by the Government, the following changes to the Draft Law are suggested:

- The general procedure for input VAT recovery would apply only with respect to the export of goods (the Draft Law approved in the first reading envisaged the possibility of applying the general procedure of input VAT recovery with respect to all operations subject to the 0% VAT rate);
- The general procedure for input VAT recovery would not apply with respect to the export of raw goods;
- A new procedure for input VAT recovery would apply with respect to goods/work/services booked in accounting records after the Law goes into force (the Draft Law approved in the first reading envisaged the application of the new procedure retrospectively);
- There would be an obligation to issue VAT invoices and maintain sales and purchases ledgers with respect to the sale of goods not subject to VAT in accordance with the Tax Code (art. 149) exported from the territory of Russia to the territory of other Member States of the Eurasian Economic Union.

The Draft Law to which the current amendments have been prepared was approved by the State Duma of the Russian Federation in the first reading on 19 June 2015.

Approval by the State Duma in first reading of extension of 0% VAT on railway suburban transport of passengers

It is reported that the State Duma of the Russian Federation approved in the first reading the Draft Law No.1025699- 6, according to which it is suggested that the period of application of the 0% VAT rate with respect to the services of transportation of passengers by railway suburban transport should be extended until 31 December 2017.

Trial of tax-free system involving VAT refunds on purchases by non-Russian citizens

The Ministry of Industry and Trade, the Federal Customs Service and the Federal Tax Service are exploring the possibility of testing a tax-free system in Russia in 2016, which would involve a refund of VAT on purchases by non-Russian citizens.

The minimum value of purchases of non-food goods from which foreign citizens may receive a VAT refund is RUB 10,000. Plans call for the pilot tax-free project to be launched in certain shops in Moscow (including GUM, Petrovsky Passage and others). It is expected that following the trial period, retailers that have a turnover of no less than RUB 100 million, have no tax debts, and operate retail facilities in cities with an international airport will be able to join the system.

Companies wishing to join the tax-free system also will have to undergo special certification at the Ministry of Industry and Trade.

Deloitte Russia provided support for this initiative through a feasibility study of the implementation of a tax-free system in Russia, analysis of international experience, development of the mechanism for VAT refunds, development of the concept of changes to the tax legislation, and advising Russian governmental authorities (the Federal Tax Service, Federal Customs Service, Ministry of Industry and Trade, etc.) on various implementation issues.

Prices indicated in risk profiles of customs authorities not to be only reason for adjustment of customs value

The Ministry of Finance issued a Letter of 18 April 2016 No. 03-10-11/22119 stating that, according to the effective customs legislation, prices indicated in risk profiles of the Risk Management System of the customs authorities shall not be the only reason for adjustment of customs values. The said prices shall be considered as indicators of possible incorrectness of the declared customs value and shall be only the reason to initiate additional verification of the customs value if the customs value is controlled before the release of goods.

Currently, the customs authorities are very focused on control of the customs value of imported goods. It is recommended that importers analyze the applied methodology and the structure of the customs value and prepare supporting arguments and documents before the import of goods.

Andrey Silantiev, asilantiev@deloitte.ru, Deloitte Russia

South Africa

Planned implementation of a tire tax from 1 October 2016

The Minister of Finance, Mr Pravin Gordhan, introduced a seemingly new tire levy in the 2016 budget speech. The tire levy is not a new concept, but is merely a change to the collection of the tire levy currently managed by the Recycling and Development Initiative of South Africa (REDISA), as appointed by the Department of Environmental Affairs.

Effective as from 1 October 2016, the collection of the tire levy would be conducted by the South African Revenue Service (SARS), implemented through the Customs and Excise Act No, 91 of 1964 (the Customs Act). The Minister's announcement merely changes the collection strategy, i.e. the tire levy will be imposed as an environmental levy under the Customs Act and it will be collected by SARS. This levy would apply in addition to any other customs duties currently applicable to all imported or locally manufactured, new or rethreaded, pneumatic tires.

The tire levy on imported tires will be payable upon clearance for home use, but importers of tires may elect to postpone the customs duty, VAT and tire levy payment for up to two years while storing the tires in a licensed customs and excise warehouse.

The tire industry is currently not covered by the excise function of SARS; the draft amendments to the relevant provisions of the Customs Act have gone through the legislative process to empower SARS to create the capacity to impose and collect the tire levy on both imported and locally-manufactured tires.

SARS has afforded interested and/or affected parties the opportunity to comment on the draft legislation.

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

Spain

Non-resident taxpayers can be refunded Spanish VAT through a European bank account, other than a Spanish one

From April 2016, taxpayers can include a European bank account in the VAT return form (Spanish form 303) in order to request a refund of local VAT incurred. This measure is to comply with payment services throughout the European Union as set forth in EU Directive 2007/64/CE. Companies under a VAT grouping scheme will only be able to apply this option from February 2017.

The European account must be included within the SEPA system (Single Euro Payments Area), in which all the EU Member States, Iceland, Liechtenstein, Monaco, Norway and Switzerland are included.

This amendment will mean that non-resident companies in Spain will not be required to open a Spanish bank account in order to receive Spanish VAT refunds, reducing the administrative burden.

Maria Jose Garcia Vega, mgarciavega@deloitte.es, Deloitte Spain

United Kingdom

Supreme Court judgment on VAT case regarding business review work supplied to lenders

The Supreme Court has dismissed the Airtours Holidays Transport Limited 'person supplied' appeal, by a narrow (3-2) majority.

The majority agreed with the conclusions of the Upper Tribunal and Court of Appeal that the independent business review carried out by PwC was supplied to the lenders, and not to Airtours, even though the company was liable to pay for the report. The Supreme Court focused on the terms of the engagement letter between PwC, the banks, and Airtours and concluded that since it expressly stated that the work was for the sole use of the banks that asked for it, that Airtours was entitled

to no more than a redacted copy of the report and that PwC denied any duty of care towards Airtours, the supplies under it went to the banks. It followed that Airtours did not receive any supply from PwC (despite the fact that the company was the party liable to pay for the work) and hence that it was not entitled to reclaim the VAT charged by PwC.

As is illustrated by the dissenting judgments in the Supreme Court, and the comprehensive dissenting judgment in the Court of Appeal, there remains considerable uncertainty about the VAT treatment of supplies under tripartite arrangements.

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

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Eurasian Economic Union

Introduction of 0% import customs duty rate on certain types of wood pulp

Eurasian Economic Commission Collegium Resolution No. 29 of 5 April 2016 introduces an import customs duty rate of 0% instead of 7.5% in relation to certain types of bleached wood pulp or semi-bleached wood pulp from hardwood classified under classification code 4703 29 000 1. The 0% import customs duty rate is effective from 6 May 2016 to 31 May 2019 inclusive.

The Resolution came into effect on 6 May 2016.

Introduction of delayed determination of customs value with regard to exchange goods

Eurasian Economic Commission Collegium Resolution No. 32 of 12 April 2016 introduces delayed determination of customs value with regard to exchange goods.

The Resolution specifies the cases of application of delayed determination of customs value of exchange goods and peculiarities of application of Method 1 of determination of customs value (Transaction value method) in the considered case. The Resolution also stipulates the procedure of declaration of preliminary and final customs value as

well as the procedure of calculation and payment of customs duties and taxes.

The Resolution came into effect on 15 May 2016.

Technical regulation on tobacco goods comes into force

Eurasian Economic Commission Council Resolution No. 107 of 12 November 2014 introduced the technical regulation on tobacco goods obligatory on the customs territory of the Eurasian Economic Union. The technical regulation establishes the requirements for tobacco goods, the marking of tobacco packaging, as well as schemes and procedures of confirmation of conformity of tobacco goods. The technical regulation is not applied to several types of tobacco goods, e.g. samples and tobacco goods which are not intended for smoking.

The technical regulation came into effect from 15 May 2016.

Andrey Silantiev, asilantiev@deloitte.ru, Deloitte Russia

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Contacts

Deloitte Global & Regional Indirect Tax Contacts

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

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

Jon Graham, Deloitte Global Leader – Indirect Tax Asia Pacific
JonGraham@deloitte.com.au

Rogier Vanhorick, Deloitte Global Leader – Indirect Tax EMEA
rvanhorick@deloitte.nl

Carlos Iannucci, Deloitte Global Leader – Indirect Tax Latin America
ciannucci@deloitte.com

Dwayne Van Wieren, Deloitte Global Leader – Indirect Tax Americas
dvanwieren@deloitte.com

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[Deloitte Touche Tohmatsu Limited](#)

30 Rockefeller Plaza
New York, NY 10112-0015
United States

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