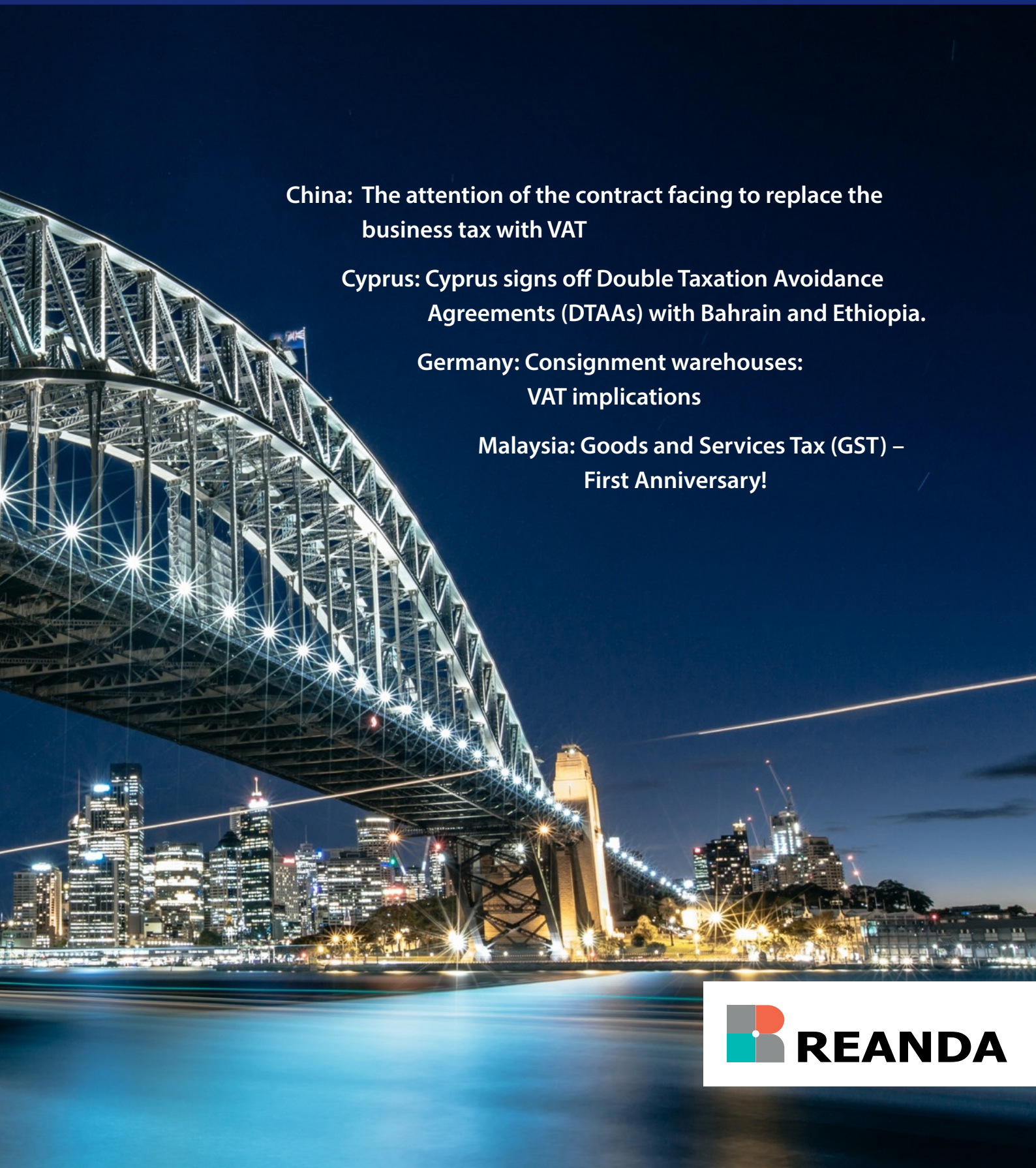
PRISM

Tax Newsletter

2nd Quarter 2016



China: The attention of the contract facing to replace the business tax with VAT

Cyprus: Cyprus signs off Double Taxation Avoidance Agreements (DTAAs) with Bahrain and Ethiopia.

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REANDA

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China

The attention of the contract facing to replace the business tax with VAT

Since 1 May 2016, in accordance with the newly announced policy by Chinese Ministry of Finance and State Taxation Administration, Tax File Number 36[2016], real estate agency, construction and others industries began to implement the replace the business tax with a value-added tax comprehensively. This tax reform will bring enterprises a full range of challenges due to involvement in many industries such as construction, real estate, finance and consumer services. As an important vehicle of enterprise business trade, comprehensive revision of contracts is necessary to prevent legal risks.

根据财政部、国家税务总局财税[2016]36号文件通知，自2016年5月1日起，将全面推开营业税改征增值税（以下简称“营改增”）试点，现行营业税纳税人将全部纳入试点范围,这一税制改革为企业带来全方位的挑战。作为企业商业交易重要载体的合同，亟需作出全面修订，防范涉税法律风险。

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Cyprus

Cyprus signs off Double Taxation Avoidance Agreements (DTAAs) with Bahrain and Ethiopia

Cyprus has concluded Double Taxation Avoidance Agreements (DTAAs) with Bahrain and Ethiopia. The treaty with Bahrain was ratified by Bahrain in March 2016 and entered into force on 26 April 2016. The treaty generally applies from January 2017. The treaty with Ethiopia was signed in Nicosia on 30 December 2015 and was published in the Official Gazette of the Republic of Cyprus on 18 January 2016. The DTAAs,are based on the OECD Model Convention and will come into force as from the 1st January next following the year in which each country completes the ratifications process.

The treaties sign off was well received by the business communities of the above mentioned countries and it further enhances Cyprus' position as an international business center, since some of its provisions are deemed to be significantly favorable. The DTAAs main provisions are analyzed below:

塞浦路斯已和巴林、埃塞俄比亚两个国家签订避免双重征税协定。2016年3月巴林对两国签订的避免双重征税协定予以批准，该协定于2016年4月生效，并于2017年1月普遍适用。塞浦路斯和埃塞俄比亚于2015年12月30日签署避免双重征税协定，该协定于2016年1月18日在塞浦路斯共和国官方公报公布。避免双重征税协定以经济合作和发展组织范本为基础，并在两国政府完成对该协定批准年度的下一年1月1日开始生效。

以上协定签署国的工商界组织对协定的签署表示热烈欢迎。协定中的部分规定被认为是非常优惠的，将进一步加强塞浦路斯作为国际商业中心的地位和作用。以下对协定主要规定进行解析：

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Germany

Consignment warehouses: VAT implications

More and more companies use consignment warehouses to deliver goods to their customers and guarantee the availability of goods. The materials are right there when needed for the production process of the customer. Although consignment warehouses are increasingly used globally and in the European Union, the VAT implications in different countries are still not clear and subject of discussions. That is all the more astonishing as there is a VAT Directive within the EU that should lead to a VAT harmonization. But national rules, sometimes not in line with the aforementioned EU VAT Directive, lead to complicated situations for companies using consignment warehouses in different EU countries. A new decision of the German Financial Court Niedersachsen might be the basis of further chances also in the German treatment of deliveries to EU consignment warehouses.

越来越多的公司使用寄售仓库向他们的客户提供货物，保证货物的可用性。材料是及时的，当客户的需求在产品的生产过程中。虽然货物仓库的使用在全球和欧盟越来越多，但不同国家的增值税含义尚不清楚，也是讨论的话题。令人吃惊的是，在欧盟内有一个可以导致增值税统一的增值税指令。但是依国家的规定，有时不符合上述欧盟的增值税指令，公司的情况导致对不同欧盟国家的公司使用货物仓库也不同。一个新的德国金融法庭下萨克森州决定 ，在基础上将更进一步，在德国也处理递交的欧盟寄售仓库。

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Korea

New withholding tax obligation on foreign secondees in Korea

Under the current Personal Income Tax Law, a foreign secondee to Korea whose employment costs are not borne by a Korean entity is not subject to income tax withholding. A new tax law effective from 1 July 2016 however, will require a domestic company using foreign secondees to withhold payroll income tax when the domestic company pays service fees to the foreign corporation which dispatched the foreign secondees.

现行的个人所得税法规定，到韩国的借调员工中雇佣成本不被韩国法人承担的外国人不是进行所得税代扣代缴的对象。但2016年7月1日新生效的税法规定，如果国内公司给派借调职员的外国公司支付服务费的话，雇佣借调职员的国内公司需对所得税进行代扣代缴。

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Malaysia

Goods and Services Tax (GST) – First anniversary!

Goods and Services Tax has been enforced one year since its implementation on 1 April 2015. In the early stages of the transitional period in implementation of GST, the Royal Malaysian Customs Department (RMCD) encountered many challenges. Nevertheless, GST regime is now smooth and fairly well accepted by businessmen and people. In early May 2016, RMCD with ultimate responsibility for the introduction & enforcement of GST in Malaysia has won the award of Asia Tax Commissioner at International Tax Review's Asia Tax Awards.

马来西亚于2015年4月1日实行消费税。在消费税实行初期，马来西亚关税局面对了许多挑战。无论如何，经过一年的努力，这项消费税新税制已经能够普遍获得商界与人民的接纳。与此同时，马来西亚有力与有效地实施消费税，赢来各方的赞赏，关税局总监更于2016年5月初，在亚洲税务奖中，获颁发“亚洲最佳税务总监”。

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Russia

Doctrine of the actual recipient (beneficial owner)

The Ministry of Finance of the Russian Federation in 2014 has explained that at application of the international agreements regarding granting a right to use privileges (the lowered rates and releases) at the taxation of separate types of income from sources in the Russian Federation it is necessary to make an assessment regarding whether the person applying for use of privileges (the lowered rates and releases) provided by the agreement, is the actual recipient (the beneficial owner) of the corresponding income. This approach have received the name of the doctrine of "the actual recipient of the income (the beneficial owner)". Now fiscal bodies actively put the specified doctrine into practice for the purpose of identification of violations of the current legislation of the Russian Federation and additional accrual of taxes, penalties and penalty fee and successfully prove illegality of application of the privileges provided by the international agreements in courts.

2014年俄罗斯财政部解释说:国际协议中规定的优惠权利，从俄罗斯联邦资源税收的税收利益（降低利率和免税）该如何使用。有些收入种类俄罗斯税收协议明确规定该优惠的人是否是实际上优惠的受益人。 这种方法被称为(实际受益人)规定。

目前,俄罗斯税收机关使用这个规定很积极。他们目的是监督违反俄罗斯法律法规者，补缴税款，扣罚等等。这些措施证明使用的国际协议规定成功性，在法院利益的合法性。

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UAE

The new UAE Commercial Companies Law (CCL)

It is a welcome step that the UAE Government has issued much awaited new UAE Commercial Companies Law (CCL) which shall strengthen the legal and regulatory framework of businesses. The new law has introduced some major changes which is likely to have an immediate impact on the structure of existing and new businesses. All the established companies are required to amend their existing Memorandum and Articles of Association in line with the provisions of the new CCL, any companies that fail to make the necessary amendments to comply with the new CCL by 30-06-2016 will be automatically deemed to be dissolved.

阿联酋政府终于发布了外界期待已久的新的《商业公司法（CCL）》，这是可喜的一步。新的《商业公司法（CCL）》将能够加强企业的法律和监管框架。这部新法律引入了一些重大变化，而这些变化可能会对现有业务以及新业务的结构产生直接影响。所有已经成立的公司均被要求根据新《商业公司法（CCL）》的规定对其现有的《公司章程》进行修改，对于任何未能在2016年6月30日之前对其现有的《公司章程》进行修改从而能够符合新的《商业公司法（CCL）》的公司，其将被视为自动解散。

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China

The attention of the contract facing to replace the business tax with VAT

Part One: Appropriate choice of taxpayer identity

Based on the scale of operation and the sound level of accounting systems of payers, taxpayers are categorised into general VAT taxpayer and small-scale VAT taxpayer. The general taxpayers shall apply general tax law; while the small-scale VAT taxpayer shall apply simple calculation methods. In accordance with the Tax File Number 36 [2016], general taxpayers who fulfilled the conditions may choose simple calculation methods. Due to the difference between taxation method, tax rates and tax burden, the taxpayer should choose the most appropriate status reflecting their actual situation.

Part Two: Obtain legal and effective VAT deduction voucher

The enterprises that choose the general method of tax calculation may reduce their tax burden by the input deduction. Legal and valid VAT deduction vouchers are available for special VAT invoice, customs import VAT payment, purchase invoices and sales invoices for agricultural products, tax payment receipts, etc. The enterprise should focus on the management of special VAT invoices, and strictly control information of qualification of the special VAT invoice.

Part Three: Ensure "third-rate unity"

The so-called "third-rate unity" refers to the cash flow, invoice flow and logistics are consistent. Specifically, not only recipient and sellers of goods or service provider must be the same economic subject, but also the payer, goods or services recipient must be the same economic subject. If during the process of economic transactions, company is unable to ensure the cash flow, invoice flow and logistics (service) flow mutual unification, fare will appear inconsistent, and will be suspicious of falsifying the invoice, defray of virtual by the tax department audit judgment. Consequently, the company will be subject to a certain administrative penalties or even legal risk by criminal punishment.

Part Four: Clear tax related terms and related matters

The transaction should be clear in the contract taxes and related matters. As agreed in the contract: both parties shall be in accordance with the relevant provisions of the state, and bear the burden of taxes and fees. After replacing the business tax with VAT, matters involving the VAT taxpayer identity, method of calculating tax, applicable tax rate (levy rates), the scarlet letter issue special VAT invoices and other issues can be addressed in the tax-related provisions.

Cyprus

Cyprus signs off Double Taxation Avoidance Agreements (DTAAs) with Bahrain and Ethiopia

Permanent Establishment

Bahrain: The definition of "permanent establishment" also includes a building site or construction or installation project or any supervisory activities in connection with such site or project constitutes a permanent establishment only if it lasts more than 12 months (definition in compliance with OECD model).

Ethiopia: The definition of "permanent establishment" also includes a building site or construction or installation project or any supervisory activities in connection with such site or project constitutes a permanent establishment only if it lasts more than 6 months (definition in compliance with OECD model).

Dividends

Bahrain: The withholding tax rate on dividend payments is set at 0%.

Ethiopia: The withholding tax rate on dividend payments is set at 5%.

Interest

Bahrain: The withholding tax rate on interest is set at 0%.

Ethiopia: The withholding tax rate on dividend payments is set at 5%.

Royalties

Bahrain: The withholding tax rate on royalties is set at 0%.

Ethiopia: The withholding tax rate on dividend payments is set at 5%.

Gains

The DTAAs follow the OECD model in relation to gains arising from disposal of shares and other movable or immovable properties. Capital gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State. Other capital gains from the alienation of any other property are taxable only in the residence State.

Additional important notes for tax planning

1. Cyprus unilaterally does not withhold taxes on outbound dividends and interest payments.
2. The continuously expanded network of DTAAs Cyprus has signed off and ratified and the application of the EU Directives (Parent-Subsidiary and Interest – Royalties) increase international investors' options for channeling investments in the most tax efficient way.
3. The Double Tax Avoidance Agreement between Cyprus and Switzerland which was signed on 25 July 2014 was entered into force on 1January 2016 following the ratification of the bilateral agreement by the two countries.
4. Cyprus has concluded and signed Protocol amending the Double Taxation Agreement (DTA) with Ukraine on 11 December 2015 and was published in the Official Gazette of the Republic on 23 December 2015. The provisions of the signed protocol will come into effect as of 1st January 2019 on the date when the existing Convention will expire.

For more information you may contact:

Reanda Cyprus Limited
48 ArchangelouAvenue,
1st Floor,Engomi
CY-2404 Nicosia, Cyprus

Tel.: + 357 22670680
E-mail: info@reandacyprus.com

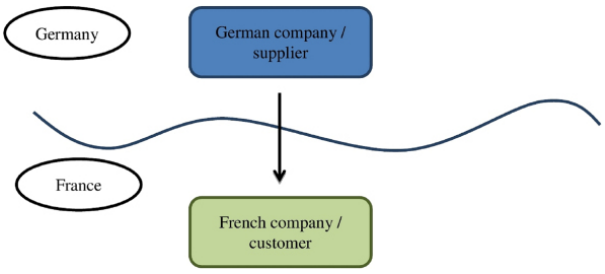
Germany

Consignment warehouses: VAT implications

1. "Normal" deliveries within the European Union

One goal of the European Union is free trade. As VAT could be a barrier, the delivery of goods from one EU company to a company in another EU country is exempted from VAT.

Example 1



To receive an exemption from VAT some regulatory requirements have to be met. Besides other information like the name and address of the customer, the deliverer has to provide a valid VAT ID number of the customer.

Furthermore one of the basic rules to receive a VAT free Intra-Community delivery is, that there is a Intra-Community acquisition, that is subject to VAT in the destination country (although such an Intra-Community acquisition does not lead to VAT payments in the country of destination, as the VAT levied by the Intra-Community acquisition can be claimed back in the same moment as Input VAT).

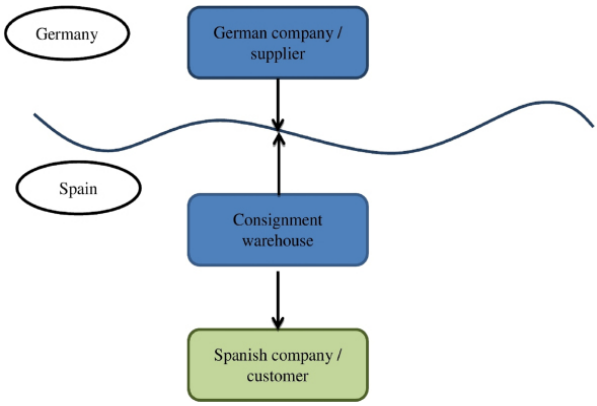
2. EU deliveries to customers within the EU using a consignment warehouse

A consignment warehouse is stock, which is legally owned by the supplier, although it is in the possession of the customer. This means the supplier delivers some of his inventories in the customer´s warehouse and allows his customer to consume directly from this warehouse stock. As long as the inventory is not taken out of the consignment warehouse it is still owned by the supplier. The benefit to the customer is that the raw materials, consumables and supplies required for the purpose of manufacturing are right there, when needed. There is no time lag caused by long supply routes.

2.1. German regulations for consignment warehouses

The German Automotive supplier Heinzelmann sells products to the Spanish Automotive company La cerveza grande using a consignment warehouse.

Example 2



Implications

- The delivery of products from Germany to the consignment warehouse in Spain leads to a VAT-free Intra-Community movement.
- The German company has an Intra-Community acquisition in Spain because of the Intra-Community movement from one EU country to another.

- The German company has to register in Spain for VAT purposes. Goods removals from the warehouse lead to an Intra-Spain delivery and are subject to Spanish VAT.

2.2. Simplification rules of other EU countries

To avoid the registration by just having a consignment stock in another country, some EU countries have some simplification rules. These rules treat the goods removal from the warehouse as a VAT free Intra-Community delivery. The previous Intra-Community movement is simply ignored.

Example 3

Same as in example 2 but now the customer is a company in Belgium. Belgium uses simplification rules.

Implications

- The Belgium Company (and not the German anymore) has an Intra-Community acquisition in Belgium on the date of the removal of goods from the warehouse.
- As the German judgement is different, the delivery is not seen as an Intra-Community delivery to the Belgium Company. Furthermore the regulatory requirements of the German VAT Implementing Regulation cannot be met; with the effect that German VAT might be caused.

As seen in the previous example, the simplification of some EU countries does not really lead to a simplification as long as the rules within the EU are not coordinated. The German tax administration is aware of the negative implications the different treatment of deliveries to consignment warehouses could have and therefore in each individual case, it permits not to declare the Intra-Community movement and no German VAT will be levied.

2.3. New legislation of the Financial Court

Now a new legislation of the Financial Court Niedersachsen (FG 18.6.15, 5 K 335/14), might change the general German treatment of deliveries to consignment warehouses in other EU countries.

To understand this legislation it is important to make a distinction between different types of consignment warehouses:

- General Consignment Warehouse: Several customers are allowed to take inventories from the consignment stock.
- Call-off-Stock: in this case, just one customer has the exclusive right to take inventories from the consignment stock.

The Financial Court stated, that in case of a Call-off-Stock the beneficiary is already clear at the moment the goods are delivered to the consignment stock. Therefore the deliverer has an Intra-Community delivery directly to the customer at the moment the goods are delivered to the foreign Consignment stock and not the moment at which the customer removes the goods from the consignment stock.

The reaction of the German tax administration should be observed. In case the German tax administration wants to levy VAT on a delivery made to a consignment warehouse in another EU country, the new legislation is definitely helpful.

Korea

New withholding tax obligation on foreign secondees in Korea

The Korean tax authorities issued guidance on 17 February 2016 regarding the upcoming requirement for domestic companies to withhold income tax from the salaries of certain foreign employees seconded to a Korean company.

Currently, a foreign secondee to Korea whose employment costs are not borne by a Korean entity is not subject to income tax withholding. Instead, the individual must either file an annual income tax return to report the income and pay the corresponding income tax, or join a taxpayers' association and have the tax withheld on a monthly basis.

According to a new tax law that will apply as from 1 July 2016 (postponed from the originally scheduled effective date of 1 January 2016), where the employment costs of a foreign secondee to a Korean company are not borne directly by the Korean entity, the Korean entity may be required to withhold income tax at a 17% rate (18.7%, including the local income tax surcharge) on a monthly basis when the Korean entity pays the service fee to the foreign company. The amount subject to income tax withholding will be the amount of the service fee that is attributable to the earned income of the foreign secondee.

The February guidance clarifies that a Korean company that satisfies all of the following conditions will be subject to the new withholding income tax obligation:

- The Korean company paid more than KRW 3 billion per year in service fees to the foreign company dispatching the employees to Korea;
- The Korean company's prior year revenue is KRW 150 billion or more, or its prior year total assets are KRW 500 billion or more; and

- The core business of the Korean company is air transport, construction or the provision of professional, scientific or engineering services.

A foreign company seconding employees to Korea will be able to request a refund of any overpaid income tax under the year-end tax settlement procedure for payroll withholding tax, and will be able to delegate the year-end income tax settlement to the Korean company.

Malaysia

Goods and Services Tax (GST) – First anniversary!

Goods and Services Tax has been enforced one year since its implementation on 1 April 2015. In the early stages of the transitional period in implementation of GST, the Royal Malaysian Customs Department (RMCD) encountered many challenges. Nevertheless, GST regime is now smooth and fairly well accepted by businessmen and people. In early May 2016, RMCD with ultimate responsibility for the introduction & enforcement of GST in Malaysia has won the award of Asia Tax Commissioner at International Tax Review's Asia Tax Awards.

The RMCD has successfully achieved the following in the nine months period from 1 April 2015 to 31 December 2015:

1. Approximately 400,000 companies have registered for GST as at end of 2015.
2. GST collection exceeded the initial target of RM27billion.
3. Reduction of complaints from traders and consumers.

As its first anniversary, it is clear that Malaysian government implemented GST in the right time, and it was never meant to burden people but it has saved the Malaysian economy from the plummeting oil prices and shrinking Malaysian currency. With the GST in force, Malaysia is still able to retain all the civil servants and did not terminate the services of any civil servants including those appointed on contract, and still able to retain some subsidies to the civilian. GST is the savior of the Malaysian.

Despite the above mentioned accomplishment GST, both RMCD and businessmen are currently resolving the main challenges in respect of input tax credit refund and business operation model.

Input tax credit refund

Based on the GST Regulations 2014, input tax credit refunds should be made within 14 days after submission of the return by electronic service to RMCD. However, RMCD has managed to refund on average 70% of GST refund on time.

In many refund cases, RMCD requires further information for the verification procedures and it often lengthens the processing time of the GST refund. Companies which are in the refund position for more than 2 conservative taxable periods would have high chances of receiving a verification notice prior to the approval of GST refund. In view of this, RMCD shall expedite the verification process and companies shall provide full co-operation in order to achieve 100% GST refund on time.

Business operation model

General, all GST registered person who makes taxable supply of goods and services is required to issue a tax invoice. Credit notes and debit notes are issued by the supplier when the value for a supply is reduced or increased after a tax invoice has been issued. Supply for GST purposes covers all forms of supply where goods and services are supplied in return for a consideration. This is affecting the companies, which are practicing purchase on behalf, payment on behalf, etc as they now must issue legal documentation to the recipients.

Besides that, GST implementation also affected Multi-National Companies (MNC) who carry out manufacturing and trading in Malaysia. Many MNC are making taxable supply in Malaysia through the agent model and they are required to register and charge GST if the supplies exceed RM500,000. Most MNC are reluctant to register for GST due to the additional compliance and administration cost. Therefore, some MNC attempt to re-structure their operation model to ensure compliance with the Malaysian GST requirement at minimal additional costs.

In Malaysia, GST regime is still at its infant stage. As such, there are rooms for improvement and all Malaysian shall move forward together hand in hand for a better GST regime in the future!

Russia

Doctrine of the actual recipient (beneficial owner)

In the letter of April 09, 2014 No. 03-00-RZ/16236 the Ministry of Finance of the Russian Federation has touched upon a subject of the actual recipient of the

income (the beneficial owner).

The Ministry of Finance, in particular, has specified in this letter that at application of the international agreements regarding granting a right to use privileges (the lowered rates and releases) at the taxation of separate types of income from sources in the Russian Federation it is necessary to make an assessment regarding whether the person applying for use of privileges (the lowered rates and releases) provided by the agreement, the actual recipient (the beneficial owner) of the corresponding income is.

Recognition of the person as the actual recipient of the income (the beneficial owner) requires not only existence of legal grounds for direct obtaining the income, but this person also has to be the direct beneficiary, that is the person who actually receives benefit from the gained income and defines his further economic destiny. When determining the actual recipient (the beneficial owner) of the income it is necessary to consider also carried-out functions and the accepted risks of the foreign organization applying for receiving a privilege in compliance with the international agreements on avoidance of the double taxation.

Now fiscal bodies actively put the specified doctrine into practice for the purpose of identification of violations of the current legislation of the Russian Federation and additional accrual of taxes, penalties and penalty fee.

The decision of Arbitration court of Moscow of March 03, 2016 in the matter of No. A40-241361/15

- The owner of the right for interest income (the person disposing of economic destiny of the interest income, that is the beneficiary) listed by the Russian Bank on loans in favor of Intesa Sanpaolo Holdin S.A. (structure of back to back), the controlling shareholder and ISPY, and the Russian Bank – Intesa Sanpaolo Milan Spa was (the Republic of Italy"
- During tax audit it is established that Intesa Sanpaolo Holdin S.A. isn't a beneficiary drawn interest but only the intermediary used by the shareholder - Intesa Sanpaolo Milan Spa and Bank in the form of abuse of the tax right and obtaining unreasonable tax benefit in the form of decrease in an interest rate to 0% according to Art. 11 of the Agreement on avoidance of the double taxation (the Russian Federation – Luxembourg)
- Restrictive nature of intermediary activity of Intesa Sanpaolo Holdin S.A. and delivery of loans by this holding company at the expense of means of the shareholder, general with the Russian bank, doesn't allow to recognize Intesa Sanpaolo Holdin S.A for application of a preferential rate of 0%. as the beneficiary (the actual owner of percent) who actually acted as the intermediary (fiduciary) for Intesa Sanpaolo Milan Spa.

The resolution of the Ninth Arbitration Appellate court of February 09, 2016 in the matter of No. 09AP-59378/2015

- The privilege (release from the taxation in the Russian Federation) provided by item 1 of Art. 11 of the Agreement on avoidance of the double taxation between the Russian Federation and the Republic of Cyprus taking into account official comments of OECD to the Model convention, is applied only in case the person (the resident of the Republic of Cyprus) to whom percent are transferred is the actual recipient (the beneficial owner) of this income.
- Because final recipients of percent were other persons, but not the Cyprian companies brokers, at payment of disputable percent there were no legal grounds for application a privilege (releases from the taxation in the Russian Federation).
- The bank at payment of the controversial income has been obliged to establish whether the person to whom this income, is paid by the actual recipient of the income that hasn't been made by the taxpayer is.
- In spite of the fact that the Agreement on avoidance of the double taxation between the Russian Federation and the Republic of Cyprus doesn't contain any specially reservation on the person, "having the actual right for percent", and also the terms "actual recipient", "actual right", this agreement should be interpreted taking into account an explanation of Comments of OECD.

The resolution of Arbitration court of the North Western district of March 15, 2016 in the matter of No. A13-5850/2014

- The Russian Federation didn't sign the international treaties containing the provisions concerning the taxation with the British Virgin Islands. Therefore, the taxation of the resident organization of the British Virgin Islands is carried out according to provisions of the Tax code of the Russian Federation.
- The stocks of JSC Sevrestal transferred in authorized capital of the Cyprian companies actually are the income of the foreign companies – the residents of BVO who are shareholders of the companies specified Cyprian. This type of income belongs to a type of income at which payment to the foreign organization the Russian enterprise has duties of the tax agent (subitem 2 and subitem 10 of item 1 of

Art. 309 of the Tax Code of the Russian Federation).

- Interdependence of the Russian organization which has introduced stocks of JSC Severstal in the authorized capital of the Cyprian companies, and the companies registered in Cyprus and on BVO has exerted impact on economic content of the operations on a transfer of stock made by the organization and their tax consequences.
- Transfer of stocks by the Russian organization as a contribution to authorized capital of the Cyprian companies had no character of investment activity as didn't aim receiving profit or achievement of other useful effect.

Letter of the Ministry of Finance of the Russian Federation of January 13, 2016 No. 03-08-05/275

- The privileges provided by the subparagraph "an" of paragraph 2 of article 10 of the Agreement on avoidance of the double taxation between the Russian Federation and the Kingdom Netherlands at payment of the income in a type of dividends from sources in the Russian Federation are applied only in case the recipient of dividends - the resident of the Kingdom of the Netherlands is the actual recipient of such income.
- At application of provisions of the Agreement the Russian company - the tax agent has the right to request from the recipient of dividends - the tax resident of the Netherlands confirmation that he has the actual right for the dividends (item 1 of Art. 312 of the Tax Code of the Russian Federation) paid to him by this Russian company.
- The duty of the tax agent to take measures to definition of foreign contractors as actual recipients of the income can be considered executed if at the time of payment of dividends to the shareholder (to the company, being the tax resident of the Netherlands) at the disposal of the tax agent there are documents confirming presence at the recipient of the income of the right of a discretion concerning the order and use with the received dividends.

UAE

The new UAE Commercial Companies Law (CCL)

A big step towards strengthening the legal and regulatory framework

The UAE government has introduced UAE Federal Law No. 2 of 2015 concerning the Commercial Companies (the new CCL) which was published in the Official Gazette on 31st March 2015 and came into force on 1st July 2015. The time allocated to comply with the new requirements is up to 30th June 2016. The new CCL replaces the Commercial Companies Law issued in 1984, as amended (the previous CCL) which has regulated the corporate environment for decades.

The new CCL is a step forward towards the development of a more sophisticated corporate regulatory environment. The new provisions related to corporate governance, shareholder protection and social responsibility shall raise the level of confidence and faith within the international investors and entrepreneurs. The introduction of a number of strategic amendments and new provisions would be a conducive factor to take the corporate and legal framework to the next level of Global standards.

Some notable features and key changes that have been introduced by the new CCL are as follows:

Registrar of Companies

There will now be a Registrar of Companies to supervise trade name register, hold company documents for a period of time to be determined by the Ministry of Economy and to make available the company records to the relevant authorized parties.

Director's and Manager's Obligations

The Directors' and Managers' obligations were very limited under the previous CCL but under the provisions of the new CCL Directors and Managers must preserve the rights and work for the company and any explicit provision of Memorandum and Articles of association cannot exempt them from their responsibility towards the company.

Maintenance of Accounting Records

Under article 26 of the new CCL every company shall keep accounting records as per the international standards showing its transactions and accurately demonstrating the financial standing of the company as per the provisions of the new CCL. By virtue of Article 348 a fine of at least AED 50,000 but not more than AED 500,000 shall be imposed on a national or a foreign company that fails to keep accounting records stating its business deals and transactions.

Every company shall keep its accounting books in its head office for a period of at least 5 years from the end of the financial year. Under article 349 a fine of at least AED 20,000 but not more than AED 100,000 shall be imposed on a national or a foreign company that fails to keep accounting records for the period determined in this Law.

Maximum Number of Managers

The previous CCL capped the maximum number of

managers to five but as per the new CCL there is no restriction on the maximum number of managers in a company.

Valuation of Non-Cash Consideration

By virtue of Article 118, whenever founders of a company bring in non-cash capital or assets in the company in consideration of their shares, then the company must seek approval from the Department of Economic Development once the valuation is completed by any approved financial advisor/consultant for the non cash consideration.

Share Capital Clause

In pursuance of Article 256 and 193, there is also a change in the share capital clause where the minimum paid up share capital for a Private Joint Stock Company should be AED 5 Million and for a Public Joint Stock Company (PJSC) the minimum issued capital cannot be less than AED 30 Million.

Conclusion

There are several other amendments and new provisions introduced by the new CCL which include rights for the minority protection, pledge of shares by the partners, abolishing distinction between general assembly meetings and extra ordinary general assembly meetings, issuance of bonds, underwriting, book building, lock up period for the PJSC for the share transfer and takeover etc. but some areas still remain ambiguous and need explanation. We expect that subordinate legislations, further guidance and clarification from the relevant authorities will certainly pave the way for effective implementation and enforcement of the new CCL.

International Tax Panel

Malaysia

LL KOONG
Tel: +603 2166 2303

ITP Chairman

China

ZHU YUXIANG
Tel: +86 512 6807 6947

ITP Vice-Chairman

Hong Kong

LORANCE CHAN
Tel: +852 3182 2429

ITP Vice-Chairman

Cambodia

NEOH BOON TOE
Tel: +855 17 363 303

China

LIU JIHONG
Tel: +86 10 8588 6650 8531

Cyprus

ADONIS THEOCHARIDES
Tel: +357 22 670680

Germany

ACHIM SIEGMANN
Tel: +49 7132 968 58

India

HEMANT JOSHI
Tel: +91 22 4221 5362

Indonesia

HERU PRASETYO
Tel: +6221 2305569

Japan

HIROYUKI YAMADA
Tel: +81 3 3519 3970

Kazakhstan

DANIYAR NURSEITOV
Tel: +7 (727) 275-22-39

Korea

JUNG IL CHOI
Tel: +82 2 566 8401

Macau

JACKSON CHAN
Tel: +853 2856 2288

Mauritius

JAMES HO FONG
Tel: +230 210 8588

New Zealand

GEOFF BOWKER
Tel: +649 522 5451

Russia

EKATERINA SHESTAKOVA
Tel: +7 495 231 1059

Singapore

IRENE CHAN
Tel: +65 6323 1613

Taiwan

KEN WU
Tel: +886 2 8772 6262

Vietnam

LIM CHOR CHEE
Tel: +84 8 3999 0091

UAE

MAHAVIR HINGAR
Tel: + 971 4 355 9993