Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include the publication of the revised model GST laws and the application of service tax to cross-border Online Information and Database Access or Retrieval services in India, publication by the European Commission of proposals to amend the VAT rules for cross-border e-commerce, and the introduction of an electronic VAT reporting system in Spain.

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

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Americas

United States

Ohio Supreme Court affirms CAT economic presence nexus standard

On 17 November 2016, the Supreme Court of Ohio (the Court), in a 5-2 opinion, affirmed decisions of the Ohio Board of Tax Appeals (the BTA), consolidated as *Crutchfield Corp. v Testa*, in which assessments had been issued against an online retailer under the bright-line economic nexus provisions of the state's Commercial Activities Tax (CAT). In upholding the BTA decisions, the Court ruled that Ohio's bright-line economic nexus standard is constitutional because:

(1) The U.S. Supreme Court holding in *Quill Corp v. North Dakota*, requiring a physical presence in the taxing jurisdiction in order to impose a sales and use tax obligation, does not extend to a business-privilege tax such as the CAT; and

(2) The USD 500,000 taxable gross receipts threshold of the CAT's economic nexus standard complies with the substantial-nexus requirement of the U.S. Supreme Court's ruling in *Complete Auto v Brady*, is not clearly excessive in relation to Ohio's legitimate interest in imposing the tax, and as a result satisfies the dormant Commerce Clause.

For more information, see the Tax Alert, Ohio Supreme Court affirms CAT economic presence nexus standard, which discusses briefly the background of the subject law and case, summarizes the Ohio Supreme Court's decision, and provides taxpayer considerations.

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Asia Pacific

India

Revised model GST (CGST, SGST, and IGST) laws and draft GST compensation law released in November 2016

Revised model GST laws for Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST) and Integrated Goods and Services Tax (IGST), and the draft GST compensation law were placed in the public domain on 25 November 2016 for the information of trade, industry and other stakeholders.

Numerous changes have been made to the model CGST, SGST and IGST laws released for public comment in June 2016. The revised model GST laws include, *inter alia*, the following changes:

- Amendment to definitions in the earlier version and introduction of new definitions;
- Capping of the maximum rate of CGST, SGST and IGST;
- Amendments in the provisions governing the meaning and scope of supply, and place and time of supply of goods and services;
- Changes in provisions relating to registration, returns, invoicing, etc.;
- Significant changes in input tax credit provisions pertaining to capital goods;
- Introduction of concepts such as first/second stage dealers, mixed supply etc.;
- Insertion of special provisions for payment of tax by suppliers of online information and database access or retrieval services located outside India to specified persons in the taxable territory;
- Insertion of provision for anti-profiteering measures to ensure the passing on of the benefits of a reduction in the tax burden to consumers;

- Changes in transitional provisions to cover more situations;
- Significant changes in the e-commerce provisions.

The draft GST compensation law, termed the 'Goods and Services Tax (Compensation To The States For Loss of Revenue) Bill, 2016', provides for compensation to the States for loss of revenue arising on account of the implementation of GST for a period of five years. The compensation law also provides for the levy and collection of GST Compensation Cess on certain specified supplies.

Amendment to provisions relating to cross border OIDAR services

Previously, the place of provision of Online Information and Database Access or Retrieval (OIDAR) services was the location of the service provider. Therefore, cross-border OIDAR services provided by a person in a non-taxable territory and received by a person in the taxable territory were outside the purview of service tax.

Amendments have been made in the service tax provisions to bring cross-border OIDAR services under the purview of service tax with effect from 1 December 2016. Accordingly, the rule for determining the place of provision of OIDAR services has been amended to prescribe the location of the service receiver as against the location of the service provider.

Further, the definition of OIDAR services has been amended to mean services the delivery of which is mediated by information technology over the internet or an electronic network, the supply of which is essentially automated, involving minimal human intervention and which it is impossible to ensure in the absence of information technology.

An illustrative list of electronic services which will be considered as OIDAR has also been provided as below:

- Advertising on the internet;
- Providing cloud services;
- The provision of e-books, movies, music, software and other intangibles via telecommunication networks or the internet;
- Providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
- Online supplies of digital content (movies, television shows, music, etc.);
- Digital data storage; and
- Online gaming.

Accordingly, OIDAR services provided by service providers located in non-taxable territories to non-assesse online recipients (NAOR), i.e., Government, local authority, governmental authority or an individual located in the taxable territory of India, in relation to purposes other than business or professional are covered under the purview of service tax.

The liability to collect and discharge service tax in respect of cross-border OIDAR services to NAOR lies with the service provider located in the non-taxable territory. Where the service provider located in the non-taxable territory has a representative in India for any purpose, such representative is liable to pay service tax. If the service provider neither has a physical presence nor a representative in India, the service provider must appoint a person in India for discharging service tax.

Where an intermediary, including an electronic platform, a broker or an agent, located in a non-taxable territory, arranges or facilitates the provision of services (but does not provide the main service of cross-border OIDAR services to NAOR, on the intermediary's account), the intermediary will be deemed to be receiving the cross-border OIDAR services, and providing such services to NAOR. An exception to this deeming provision has been provided, requiring fulfilment of conditions with respect to invoicing, collection and processing of payment, authorization of services and general terms and conditions which establish that the intermediary is not involved in the provision of services to NAOR, but is merely an intermediary. In such a case, the provider of OIDAR services in a non-taxable territory is required to discharge the service tax liability.

Special provisions relating to compliance (registration, invoicing, returns) required to be undertaken by the person located in the non-taxable territory with respect to OIDAR have been prescribed.

Benefit of deferred payment of import duty extended to importers certified under AEO

The Central Government has notified that importers certified as Authorized Economic Operators (AEO) (Tier-Two) and AEO (Tier-Three) are able to make deferred payments of import duty.

Such importers are required to indicate their intention of claiming the benefit of deferred payment to the Principal Commissioner/Commissioner of Customs having jurisdiction over the port of clearance.

On being satisfied with the eligibility of the importer, the Principal Commissioner/Commissioner of Customs may allow payment by the following due dates:

Period of Bill of Entry	Due date of payment
1st to 15th of the month	17th of the month
16th to last day of the month	2nd of the next month (except March)
16 to 29 March	31 March
30 and 31 March	2 April

If an importer defaults in making payment of the import duty in full within the due date for more than once in the consecutive period of three months, the importer will not be able to apply the deferment of duty payment. The benefit will be restored upon full payment of duty and the interest.

Levy of entry tax by States upheld as constitutional

The Honorable Supreme Court, by a majority of 7-2, has held that the States are within their right to levy entry tax resulting in no discrimination between goods imported from other States and goods within the State.

This ruling holds that the States are well within their right to design their fiscal legislation to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. However, if held to be discriminatory, such tax laws will be struck down as in violation of Article 304 of the Constitution of India.

In effect, the Court has brought down the test for validity of entry tax levy to a single point, i.e., discrimination as embedded in Article 304(a). The Court negated the contention that Article 304(a) and 304(b) should be read together, and held that they must be read disjunctively. The Court held that entry tax levy cannot be held as invalid for the reason that similar goods are not manufactured within the State.

The Supreme Court also held that any incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a) of the Indian Constitution.

However, the question whether the levies in the case under reference before the Supreme Court are discriminatory was left to be determined by the regular benches hearing the matters.

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Indonesia

Voluntary declaration of customs value for import duty calculation

The Ministry of Finance (MoF) has published Regulation Number 67/PMK.04/2016 (MoF-67) regarding the voluntary declaration of customs value for the calculation of import duty.

MoF-67 was established to accommodate the practice of international trade to provide legal certainty on customs value declarations based on the transaction value of imported goods.

The stated purpose of MoF-67 is to optimally collect the potential state revenue from import duty and taxes on import through the mechanism of voluntary declaration and voluntary payment.

MoF-67 establishes the mechanism for voluntary declaration in the customs declaration and payment of the price that should be paid in future. The Regulation also deals with royalties and proceeds, the imposition of voluntary declaration and voluntary payment, the obligation of voluntary declaration and voluntary payment, and the verification of settlement through customs audit.

U.S. anti-dumping policy may disadvantage Indonesian exporters

The Government of the United States has recently amended the anti-dumping and anti-subsidy rules. The new amended rules give the U.S authorities more discretion to investigate the activity of dumping and subsidies for goods imported into the U.S., which may lead to the domestic selling prices of Indonesian products not being recognized.

The Director of Trade Security in the Ministry of Trade, Pradnyawati, has stated that Indonesia is often the subject of anti-dumping and anti-subsidy activity from the U.S. She requested that Indonesian exporters pay attention to or anticipate the implementation of the amendment. In addition, this amendment should be a major concern for Indonesian exporters, since many Indonesian products have a strong market position in the U.S., such as textiles and textile products, paper products, metal products, as well as fishery products and other products.

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EMEA

European Union

European Commission proposes changes to VAT rules for e-commerce

On 1 December 2016, the European Commission published its legislative proposal to significantly change the VAT rules for online sales of goods and services in Europe, over the 2018-2021 period, see Modernising VAT for cross-border B2C e-commerce. This proposal is part of the Digital Single Market Strategy, one of the pillars of the Juncker Commission policy. It aims to establish a single market wherein e-commerce businesses have easier access to clients on a cross-border basis. One of the key difficulties which such businesses face is the complex VAT legislation for cross-border business activities. Furthermore, monitoring these business flows is not easy for tax authorities due to this complexity.

The proposal is partly based on a study conducted by Deloitte for the European Commission, see Studies made for the Commission. Deloitte first took a snapshot of the economic importance of e-commerce, as well as companies' compliance with legislation and the monitoring by governments. Building on the analysis of the currently successful Mini One Stop Shop (MOSS) for certain online services, Deloitte analyzed which policy options were available to the European Commission to simplify the administrative framework for businesses, while ensuring that governments collect their revenue.

The changes are proposed within the context of an industry that grew by 18% in 2015 and that realized an EU-wide turnover amounting to EUR 540 billion (of which EUR 96 billion are cross-border sales). The Commission's proposals aim to further boost this growth by reducing the administrative and compliance costs for e-commerce businesses, with specific detail for SMEs and micro-businesses.

The proposed rules still have to be adopted by the European Council, which is foreseen in the course of 2017, before they can be implemented at national level.

Simplifications

In practice, the first simplifications will be introduced as of 2018 and will be limited to providers of online electronic services. The changes aim to address certain issues that appeared during the evaluation of the VAT rules for electronically supplied services introduced in 2015.

At that time, all suppliers of online services were obliged to apply the VAT rate of the customer's country when supplying within a B2C context. They could pay over this VAT through a unique portal in their own Member State, called the Mini One Stop Shop or MOSS. The evaluation, which was carried out by Deloitte, in a dialogue with both businesses and national tax authorities, showed that the system and its roll-out on a European level was generally quite successful.

As of 2018, it is foreseen that EU businesses selling cross-border electronic services without exceeding a yearly turnover threshold of EUR 10,000 can opt to apply the rules of their home country, possibly including the exemption for small businesses. This rule brings simplification for a large number of micro-businesses which can remain out of the MOSS regime in this manner.

Another simplification targets small enterprises selling online services (such as video streaming or selling apps) whereby their yearly turnover from cross-border sales remains below a threshold of EUR 100,000. Going forward, these companies will only have to collect one piece of proof to demonstrate the customer's location, which defines the applicable VAT rate. Currently, they require two corresponding indicators (e.g., billing address, IP address, etc.).

As of 2021, these rules and the MOSS portal, currently accessible for online services, will be extended to the online sale of goods. This is a major step towards simplification for a large number of small and large businesses that are currently obliged to have VAT numbers in different EU Member States, meet corresponding reporting obligations and incur administrative costs.

Other changes include the possibility for businesses to apply the invoicing rules as foreseen by their home country, rather than the customer's country. Consequently, a company selling goods or services to consumers in different countries may no longer be obliged to issue invoices. Moreover, the audit on businesses reporting VAT via the MOSS portal will always be undertaken by the tax authorities from the country where the business is established, allowing companies to deal with audits in a familiar environment and in their own language.

Equal treatment for EU businesses

An important change that will come into effect in 2021 is the abolition of different thresholds that exist for (VAT exempt) imports of goods for private consumers in the EU and for sales to consumers across EU borders. This mainly aims to remove the current unfair competition from non-EU businesses that can bring goods free of VAT within the EU. It is estimated that tax authorities are losing, on a yearly basis, up to EUR 4.8 billion in VAT due to businesses not meeting their tax obligations in this field.

Going forward, businesses and tax authorities no longer need to take into account these thresholds, simplifying tax administration. For micro-businesses, the possibility to treat sales with a yearly value threshold of EUR 10,000 as subject to their home country VAT regime will still apply.

Possibility of lowering VAT rate for electronic publications

As part of the changes dealing with cross-border e-commerce, the European Commission also proposes to allow Member States, as of 2018, to tax electronic publications at the same VAT rate (usually a reduced or even zero rate) as the printed equivalent. This removes an existing discrimination suffered by e-books, online journals and periodicals.

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Finland

Amendments to VAT procedures

There will be significant changes affecting especially taxpayers who file and pay VAT or other indirect taxes in Finland, with effect from 1 January 2017.

Electronic filing

- It will become compulsory to file tax returns (such as VAT returns) electronically as of 1 January 2017.

- The new e-service is called 'OmaVero' in Finnish (My Tax in English) and it will replace the Tax Account Online. My Tax has the same functionalities as the Tax Account Online, but in a different form, with new features added. The change will in principle not require action from taxpayers. However, it should be noted that Tax Account statements are not transferred to My Tax. Therefore, taxpayers should print out all the statements before the end of May 2017 when the Tax Account Online will be closed.

- When making payments relating to indirect taxes, the reference code which was related to the Tax Account will be replaced by a new reference code. This new reference code can be obtained from My Tax and it should be used as of 1 January 2017.

Amending VAT returns

- Errors in VAT returns must be corrected by filing new VAT returns for the periods to which the errors relate. Moreover, a reason for the error has to be provided on the return whereby different options can be selected.

- This new rule also concerns VAT recoverability, as input VAT can no longer be included in later VAT returns of the same accounting period.

- In the corrective VAT return, all information has to be reported, not only the corrections. Minor errors will not have to be allocated to the period to which the errors relate, but they can be included in the next VAT return, provided the errors will be corrected without any unfounded delay. The Finnish Tax Administration will determine what is meant by a 'minor error' shortly.

Late filing penalty payments

- Late filing penalties concerning VAT return delays will be differentiated from the corrective VAT return.

- Where a VAT return is submitted on time, the information on the return can be amended within 45 days from the due date without any penalty payments.

- Where a VAT return is not submitted on time, a penalty payment of EUR 3 per day will be imposed for the first 45 days after the due date; the maximum amount is EUR 135. If the return is not filed within 45 days from the due date, a penalty payment of 2% of the amount of VAT payable will be imposed, in addition to EUR 135.

- If a corrective VAT return is submitted after 45 days from the due date, the amount of penalty payment is 2% of the amount of VAT payable, the maximum amount being EUR 15,000 per tax period.

- A punitive tax increase will be imposed for neglecting the duty to file the VAT return or filing it with incomplete or incorrect information. As of 2017, the punitive tax increases will be lower than the tax currently applicable, but will be imposed automatically.

- Default payment for not filing or filing the European Sales List return late or with incorrect information will be a maximum of EUR 15,000, instead of the current maximum of EUR 1,700.

- There will also be a new default payment of maximum EUR 5,000 that can be imposed where registration or deregistration applications are not filed on time, for inadequate sales invoice markings, etc.

Tax periods

- The standard tax period will continue to be a calendar month.

- The threshold for quarterly filing will be raised to EUR 100,000 and for annual filing to EUR 30,000. The thresholds are determined by the annual turnover. However, the extended reporting periods must be applied for separately.

- It will be possible to choose a different period for VAT contributions.

Appeal procedure

- The first instance for appeals will be the Board of Adjustment for all tax types as of 1 January 2017.

- The time for appeal will be harmonized and it will be three years for all tax types from the beginning of the next calendar year following the end of the respective tax period/tax year/accounting period.

- VAT decisions given by the Board of Adjustment can be appealed to the Helsinki Administrative Court within 60 days as of the day the taxpayer received information of the decision issued by the Board of Adjustment.

Other changes

- Free-form VAT refund applications can no longer be filed as of 1 January 2017.

- The administration of Car Tax and Excise Taxes is transferred from Finnish Customs to the Tax Administration.

- There will be a number of amendments to the legislation on the collection of taxes.

- A VAT cash accounting scheme for small businesses established in Finland will be introduced as of January 2017. To qualify as a small enterprise, turnover may not exceed the threshold of EUR 500,000.

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Ghana

VAT and supplies of electronic services

Since 2014, nonresidents supplying e-services and telecommunications services in Ghana, both business to business (B2B) and business to consumer (B2C), have been required to register for VAT where the registration threshold is exceeded (currently GHS 200,000 over a 12 month period), unless operating through a registered local agent.

The types of services covered by this requirement include:

- Website supply;
- Web-hosting;
- Distance maintenance of programs and equipment;
- Images, text and information and making databases available;
- Music and games, games of chance and gambling games;
- Political, cultural artistic, sporting, scientific and entertainment broadcasts and events; and
- Distance teaching.

Although there has been a requirement to register for VAT, in practice there has been no mechanism for a business to actually register unless it had a registered business in Ghana.

In August 2016, the Government issued a new VAT regulation that permitted the Commissioner-General of the Ghana Revenue Authority (GRA) to allow an offshore business to register for VAT, file returns, and account for VAT electronically or through an agent in Ghana.

An agent may be appointed in either of the following two capacities:

1. Agent acting as principal. The nonresident will sell to the agent, which will then make the onward supply in Ghana, and the nonresident will not be required to register separately for VAT; or

2. Agent acting as representative. The nonresident is required to register for VAT, and may appoint the agent to assist with compliance.

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Italy

Implementation of '*Skandia*' principles

A UK company (which is part of a UK VAT Group) operating in the financial services sector and with an Italian branch submitted a ruling request to the tax authorities, relating to the application of the *Skandia* principles in Italy. (*Skandia* is a Court of Justice of the European Union case regarding the application of the VAT grouping rules.)

Under the Italian legislation, the ruling represents only a response to the specific case under analysis, and is only binding for the tax authorities with respect to the taxpayer that filed the ruling request. However, this ruling (which is unpublished) represents the first official position taken by the tax authorities, which confirms the full application of the *Skandia* principles in Italy.

The tax authorities have recognized that the supplies of services performed between a UK head office and its Italian branch constitute taxable transactions if the head office belongs to a VAT group.

Based on the general wording of the CJEU, the tax authorities argued that the principles derived from the *Skandia* case can be applied on all possible transactions. As stated also by the European Commission in its Working Paper No 845, the scope of the *Skandia* case is not restricted to 'head office to branch' supplies, but also *vice versa*, i.e., 'branch to head office' supplies. Furthermore, with this ruling, the tax authorities have confirmed that it is not relevant whether the head office is established outside the EU or in another Member State, and in what direction the services are provided.

Inasmuch as the services provided for consideration by a company in a VAT group in the UK to its Italian branch must be deemed, solely from the point of view of VAT, to have been provided by the VAT group, and inasmuch as that company and that branch cannot be considered to be a single taxable person, it must be concluded that the supply of such services constitutes a taxable transaction.

Furthermore the tax authorities have indicated other practical consequences of the principle that a head office (in a VAT group) and the branch cannot be considered to be a single taxable person, in particular:

- In the case of business to consumer (B2C) supplies of services (place of supply in Italy) supplied by a UK head office to an Italian consumer, the person liable to apply VAT will be the UK VAT group, which will be required to VAT register in Italy for all the VAT obligations arising from this supply; in other words, the Italian branch cannot act as the person liable to apply VAT on behalf of its head office (in the VAT group).

- In the case of business to business (B2B) supplies of services (place of supply in Italy) supplied by a UK head office (with the intervention of its Italian branch) to an Italian business customer, the person liable to apply VAT is the Italian business customer via the reverse charge, and not the Italian branch intervening in the transaction. Where the business customer is not established in Italy, the VAT group must VAT register in Italy, as in the case of the B2C supply of services.

Payment of VAT refunds to third party agents, based on power of attorney for collection purposes

In resolution n°110/E dated 28 November 2016, the tax authorities have provided some significant clarifications regarding the payment procedure to apply for the final execution of VAT refunds claimed back by taxable subjects not established in Italy, according to European Council Directive 2008/9/EC.

The tax authorities have expressly allowed the payment of VAT credits either to the foreign applicants or to third party agents. In the latter case, payments to a third party will be allowed, upon condition that the foreign applicants have appointed a representative duly authorized, based on a special power of attorney for collection purposes.

This special power of attorney must be duly legalized by a public Notary and apostilled according to the 1969 Hague Convention (except for powers of attorney from EU Member States that have ratified the Brussels Convention of 25 May 1987).

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Clarification by Customs and Monopoly Agency on presentation of goods under UCC

With Note No 111079 of 14 November 2016, the Customs and Monopoly Agency issued clarification regarding Article 139 of the Union Customs Code, based on which goods brought into the customs territory of the European Union may be presented to customs at a place designated or approved by the customs authorities instead of ‘at the designated customs office’.

The Note confirmed the Agency’s previously-stated position that the local clearance procedure provided by the Community Customs Code (i.e., in force before the UCC) falls within Article 139 of the UCC, also affirming that the Agency will not accept applications for the approval of places within customs areas for the presentation of goods under the standard procedure.

Excise update

Law Decree No 193/2016, converted by Law No 225/2016, introduced some amendments to the excise law, including the following:

- The ability for an operator managing an excise warehouse for energy products or alcohol and alcoholic beverages, in objective and temporary conditions of economic difficulty, to split the payment of excise duty due (by way of instalments);

- The extension of the procedure applicable to excise duty refunds to applications concerning benefits granted as return (total or partial) of the excise duty paid or with other ways;

- Amendments including the deadline for exercising the right to refunds, excise duty recovery by Customs, the excise duty limitation period, and the assessment of infringements;

- New rules on commercial gas oil used as fuel by some vehicles transporting goods and persons and relevant excise duty refunds, and the provision of a lower excise duty rate for gas oil in some cases;

- New rules on warehouses and the circulation of energy products that are subject to excise duty;

- New rules on the assessment of excise duty on beer;

- A definition of the scope of the benefit relating to the consumption of energy products for producing engine power with fixed engines;

- Allowing Customs to settle certain pending litigation through arrangements.

Furthermore, on 15 November 2016, the Customs and Monopoly Agency issued Circular Letter No 22/D, providing operative guidelines aimed to allow the exclusion of electricity from the excise scope when it accounts for more than 50% of the cost of a product (i.e., according to Directive 2003/96/EC and relevant Italian law) and in particular with reference to the application to be submitted by the operator to Customs for this purpose.

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Malta

Scope of VAT exemption for management of investment schemes expanded

Changes made to Malta's VAT law have significantly expanded the VAT exemption for investment management scheme services. The changes were implemented on 22 November 2016 by the Minister for Finance through the publication of Legal Notice No. 383 of 2016 and came into force immediately.

Previously, the exemption applied only to management services provided to collective investment schemes and retirement schemes, but the exemption now has been extended to encompass services provided to:

- Securitisation vehicles as defined under the Malta Securitisation Act; and

- Authorised reinsurance special purpose vehicles as defined in the Malta Re-Insurance Special Purpose Vehicle Regulations.

The amendment is welcome news to securitisation vehicles and authorised reinsurance special purpose vehicles established in Malta that acquire management services, where previously such services often resulted in an irrecoverable VAT cost.

Managers providing their services to securitisation vehicles or to authorised reinsurance special purpose vehicles likely will be impacted as well. Since their services now will be classified as VAT exempt (without credit), their right to recover VAT incurred on their expenses will be significantly curtailed.

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Portugal

State Budget law for 2017 approved by Parliament

The State Budget law for 2017 was approved by Parliament on 27 November 2016 (it is still to be approved by the President and published in the Official Journal). The main indirect tax changes are set out below.

The proposed amendments will enter into force on 1 January 2017, except where otherwise indicated.

VAT

Tax rate changes

The following products will be subject to the intermediate VAT rate (13% in the Mainland, 12% in Madeira and 9% in Azores) from 1 January 2017:

- Cereal and legume flakes with no sugar added; and
- Canned oysters.

The following products will be subject to the reduced VAT rate (6% in the Mainland, 5% in Madeira and 4% in Azores):

- Oysters; and
- Devices to measure the levels of insulin in the human body.

Also approved was a commitment by the Portuguese Government to review and extend, within the first 120 days of 2017, the list of goods intended for physically or visually disabled people (as per ISO 9999:2007) to which the reduced VAT rate applies.

Other changes

- To comply with the EU Principal VAT Directive, the supply of dental prostheses by dentists and dental technicians will be VAT exempt.

- The mechanism was approved which will allow taxpayers to apply the reverse charge for the VAT due on the import of goods (eliminating the associated financial impact). This amendment will come into effect on 1 September 2017 for the import of goods listed in Annex C of the VAT Code (similar to Annex V of the Principal VAT Directive), except for mineral oils. The VAT reverse charge procedure will be extended to all goods as of 1 March 2018.

- The communication to the tax authorities of the content of invoices issued in a certain month, which is generally undertaken through submission of SAF-T(PT) files at the platform known as *e-fatura*, will be moved to the 20th day of the month following the month in which the invoices have been issued (currently the deadline is the 25th).

- The regime allowing for Private Charitable Non-profit Organizations or the charitable organization Santa Casa da Misericordia de Lisboa to request a VAT refund of 50% of the input VAT amount incurred has been re-enacted for the 2017 year.

- Authorization has been given to allow the Government to legislate in 2017 to extend the intermediate VAT rate to all beverage services provided by restaurants, cafeterias and similar (currently beverage services of alcoholic drinks, soft drinks, juices, nectars and sparkling waters or added with carbon dioxide or other substances are subject to the standard VAT rate).

Excise duties

Tax on alcohol, alcoholic drinks and sugar added drinks

- The tax rate applicable to beers, intermediate products and spirit drinks will rise by about 3%.

- The tax rate on other fermented beverages such as still wine is established at EUR 10.30 per hectolitre (currently zero).

- Drinks, syrup or concentrates in the form of powder, containing added sugar or other sweeteners, wine and other fermented beverages with alcohol content above 0.5% vol. and less than or equal to 1.2% vol., will be subject to the tax amount of EUR 8.22 per hectoliter if the sugar content per liter of those drinks is lower than 80 grams, or of EUR 16.46 per hectoliter if the sugar content is equal to or higher than 80 grams per litre. This taxation enters into force at 1 February 2017.

  Taxpayers are to report to the tax authorities on the quantities of non-alcoholic drinks covered by the tax held at 1 February 2017. Quantities not sold by 31 March 2017 will be subject to the tax.

  Milk, soy or rice based drinks, fruit and vegetable juices and nectars, and cereal, almond, cashew and hazelnut beverages, as well as drinks for special dietary needs and dietary supplements, are exempt from the tax.

Beverages whose final blend results from the dilution and addition of other non-alcoholic products to concentrates in the form of syrup or powder intended for beverages are tax exempt, provided that the taxpayer is able to file proof that tax on those concentrates was already accounted for.

There will be no tax collection when the amount paid is less than EUR 10, or in the case of beverages with no commercial purpose, not exceeding 30 liters per year and per product.

Tobacco tax

- Tax on the nicotine-containing liquid in recipients used to charge and recharge electric cigarettes will be reduced to 50%, from EUR 0.60 to EUR 0.30 per milliliter.

- There will be an increase in the specific component, from EUR 18.50 to EUR 30, for cigarettes produced in the Autonomous Regions of Azores and Madeira by producers whose annual production does not exceed 500 tonnes and consumed in the Autonomous Region of Azores.

- The rate of the specific component regarding cigarettes will increase from EUR 90.85 to EUR 93.58 per 1,000 cigarettes. For smoking tobacco, snuff, chewing tobacco and heated tobacco the tax rate will increase from EUR 0.078 to EUR 0.08 per gram.

- The ad valorem component will be reduced to 16% (currently 17% for cigarettes and 20% for smoking tobacco, snuff, chewing tobacco and heated tobacco).

Tax on petroleum products

- For small farmers using colored diesel fuel and marked with an annual consumption of up to 1,000 liters, there will be an increase of EUR 0.03 per liter in the reduction of excise duty applicable (i.e., a reduction in the final excise duty payable).

- Tax applicable to methane and oil gas used as a propellant will increase from EUR 127.88 to EUR 131.72 per 1,000 kilos, which represents an increase of 3%.

- Tax applicable to natural gas used as a propellant will increase from EUR 2.84 to EUR 2.87 per gigajoule, and when used as fuel, it will increase from EUR 0.30 to EUR 0.303 per gigajoule, which represents, in both cases, a 1% increase.

- The Additional Petroleum and Energy Products tax remains in force for the year of 2017 – EUR 0.007 per liter for gasoline and EUR 0.0035 per liter for colored or marked diesel fuel.

- Although not yet quantified, it is expected that there will be a decrease in the gasoline taxation that will be offset by an increase in taxation on diesel.

Vehicle tax

- With respect to used or secondhand cars, there will be an increase in taxation further to the introduction of new levels for the calculation of the devaluation of these vehicles.

- This tax will increase, with respect to both the cubic cylinder capacity and environmental components, by about 3%.

- There will be an exemption for passenger vehicles intended for rental activity without a driver, when tailored for the access and transportation of disabled persons.

- The incentives for vehicle renovation are to be maintained for 2017, amounting to EUR 562.50 for the acquisition of hybrid plug-in cars only (50% of the amount applicable in 2016), although the incentive for vehicle renovation for the acquisition of electric cars will be eliminated.

Circulation tax

- Passenger and commercial vehicles with a gross weight of up to 2,500 kilograms and CO2 level up to 180 grams per kilometer, intended for rental with a driver or taxi transportation, will be exempt from circulation tax.

- The tax rates for the car circulation tax will increase by about 1%.

- The additional car circulation tax will remain in force in 2017 for diesel vehicles (passenger vehicles with a gross weight of up to 2500 kilograms).

Changes to SAF-T tables

Ordinance No. 302/2016, dated 2 December 2016, creates, for the first time, a referral system that allows the categorization of accounts tables according to the accounting standards used by each taxpayer, which will simplify the completion of Annexes A and I of the (IES) annual return.

This document introduces other specific changes in the remaining tables of SAF-T, including in the Sales Invoices 4.1. Table. The creation of such a categorization system will simplify the completion of Annexes A and I of the annual return.

The new data structure will be operational and effective from 1 July 2017.

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Russia

Amendments to Russian Tax Code aimed at implementation of General Guidelines of Russian Tax Policy for 2017-2019

Federal Law "On Amendments to Part One and Two of the Russian Tax Code and Certain Regulations of the Russian Federation" No. 401-FZ of 30.11.2016 introduces amendments to the Russian Tax Code aimed at implementation of the General Guidelines of the Russian Tax Policy for 2017-2019.

The key amendments with respect to indirect taxes stipulated by the Federal Law are as follows.

Most of the amendments will enter into force with effect from 1 January 2017.

VAT exemption and VAT incentives

- VAT exemption is granted on transactions relating to surety (guarantees) issued by non-bank entities;

- The zero VAT rate will be charged on long-distance passenger and cargo transport by public railways, as well as on commuter rail services;

- VAT exemption is granted on supplies by foreign entities of rights to conduct the 'Formula One' World Championship, including the rights to popularize events and the right to name the Russian stage of this championship 'FIA Formula One World Championship';

- VAT exemption is granted on advertising services supplied by the organization with the rights to run 'Formula 1' in Sochi.

Changes in declarative (accelerated) VAT refund and excise exemption procedures

- The law refines the surety requirements for VAT refund purposes and for exemption from excise duties on exported excisable goods. In particular, the requirement that a surety must be issued by a related party only will be excluded.

Changes in VAT restoration policies

- The new regulation introduces a VAT restoration obligation for taxpayers that received subsidies to reimburse the cost of goods, work, or services purchased, regardless of the budget level such subsidies were paid from. The current version provides for VAT restoration in respect of federal subsidies only.

Change in excise tax rates

- Excise rates on passenger cars with HP from 90 to 150 will be raised from RUB 41 to 43 per liter in 2017, to RUB 45 per liter in 2018, and to RUB 47 per liter in 2019; excise rates on passenger cars and motorcycles with HP above 150 will be increased from RUB 402 to RUB 420 per liter in 2017, to RUB 437 per liter in 2018 and to RUB 454 per liter in 2019;

- The excise rates on Euro-5 gasoline, diesel fuel and medium distillates will be raised, while excise rates on gasoline inconsistent with Euro-5 standards and straight-run gasoline will be preserved;

- The rate of excise duty on sparkling wines with protected geographical indications will increase by RUB 5 (from RUB 14 to RUB 19 per liter), and on other sparkling wines by RUB 9 (from RUB 27 to RUB 36 per liter);

- An ad valorem component of the excise duty on cigarettes will be raised from 13% to 14.5%;

- For the first time, excise tax will be charged on electronic nicotine delivery systems and nicotine-containing liquids.

Calculation of excise tax based on USAIS data

- In instances when the tax base on alcoholic beverages and ethanol-containing products filed by a taxpayer as per subitem 1 of item 2 of Article 187 of the Tax Code is less than the volume of sold excisable goods for a respective tax period as per the Unified State Automated Information System (USAIS), the tax base shall be determined in accordance with the USAIS data.

Other changes

In addition to the above changes, there are two further significant developments for taxpayers next year, namely:

- The introduction of a progressive scale for penalties imposed on legal entities, while preserving the current penalty rate for payments overdue by less than 30 calendar days. In instances, where the overdue period exceeds 30 days, the higher rates (up to 1/150 of the key rate of the Central Bank of Russia) will apply. The measure is meant to counter the 'borrowing' of state funds through tax delinquency;

- Third parties will be entitled to pay taxes on behalf of individuals and legal entities. This is meant to facilitate the execution of tax obligations and improve fiscal performance. In particular, this measure will impact foreign providers of e-services that, by virtue of the provisions of Federal Law No. 244-FZ of 3 July 2016 entering into force on 1 January 2017, will be obliged to register with the tax authorities and pay VAT on such services rendered to individuals, provided that Russia is recognized as the place of supply of such services.

Russia to introduce tax free shopping for foreigners

A new draft law (which is expected to apply in 2017) sets out key parameters for claiming tax refunds, including the following:

- Residents of a foreign non-Eurasian Economic Union (EAEU) state are entitled to a refund of VAT paid on goods they have purchased during their stay in Russia provided the goods are transferred outside the customs territory of the EAEU;

- The refundable VAT amount is calculated by subtracting the refund service fee from the VAT amount paid on goods;

- To claim a refund, a claimant must produce a special tax-free shopping receipt stamped by Russian customs;

- A VAT refund can be claimed on purchases worth RUB 10,000 or more;

- A VAT refund can be claimed within three years from the date of purchase if the purchased goods are moved across the Russian border within three months of the date of purchase;

- Only retail organizations included in the special register will be entitled to issue VAT receipts;

- Businesses eligible to issue VAT receipts will have to comply with the following requirements:

  - They must operate in a location specified by the Russian Government;

  - They must be a VAT payer (in particular, not applying any simplified tax regimes envisaging non-payment of VAT) for at least two years as at the first date of a tax period in which such business applies for inclusion into the special register;

  - They must have no outstanding tax liabilities or unpaid penalties from breaching the Russian tax legislation as at the first date of a tax period in which the business applies for the inclusion into the special register;

- VAT-refund services will be zero-rated;

- Retailers will be entitled to deduct VAT previously accrued on goods sold to individuals if such individuals obtain a VAT refund when leaving the EAEU (the deduction can be obtained within a year following the VAT refund to a visitor on the basis of a VAT-refund receipt stamped by the customs authorities).

Regulations eased on advertising content in printed periodicals for purposes of 10% VAT rate

Federal law "On Amendments to Article 16 of Federal Law 'On Advertising'" No. 413-FZ of 05.12.2016 eases regulations governing advertising content in printed periodicals for the purposes of the 10% VAT rate, i.e., the maximum allowable advertising content in each issue is raised from 40% to 45%.

Interregional Tax Inspectorate No. 7 to control assessment of VAT to foreign e-services sellers

In Order No. AS-7-3/600 of 3 November 2016, the Russian Federal Tax Service authorizes the Interregional Major Taxpayers Tax Inspectorate No. 7 to control the correctness of assessment, the accuracy and timeliness of VAT payments by foreign e-sellers rendering services to individuals (other than individual entrepreneurs) as per Item 1, Article 174.2 of the Russian Tax Code.

National E-Commerce Association calls for sales tax instead of VAT for foreign e-retailers

The National E-Commerce Association has called for the introduction of a sales tax of 8 to 10% for foreign e-retailers as an alternative to the widely discussed VAT initiative.

According to the Association, the imposition of VAT on foreign e-sellers will trigger additional expenses on tax administration, expansion of grey distribution channels, and the possible exit of such e-sellers from the market.

The Association also suggested setting a duty-free import threshold at EUR 200 per parcel (instead of the current EUR 1,000).

Amendment of criteria for industrial products for purposes of attribution to goods without analogues manufactured in Russia

Resolution of Russian Government of 23 November 2016 No. 1230 introduces new criteria for electronics, building materials and furniture and woodworking industry that should be fulfilled in order to attribute these types of goods to goods without analogues manufactured in Russia. In particular, specific requirements for manufacturing equipment, processing operations, etc. are established.

The criteria of attribution of the goods to goods without analogues manufactured in Russia are used, in particular, for the purposes of state procurement, obtaining customs benefits (e.g., exemption from import VAT for certain goods), and state support measures on production of particular types of goods.

The Resolution No. 1230 came into effect on 1 December 2016.

Increased excise rates for excisable goods

Federal Law of 30 November 2016 No. 401-FZ introduces changes to the Russian Tax Code by establishing increased excise rates for 2017-2019 for certain types of diesel fuel and middle distillates, alcoholic beverages, tobacco and tobacco products, and automobiles, which will be applied to specified types of goods upon their importation into Russia.

Federal Law No. 401-FZ comes into effect on 1 January 2017.

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Spain

Anticipated Electronic VAT Reporting System – *Suministro Inmediato de Información* (SII)

On 2 December 2016, the Council of Ministers approved Royal Decree 596/2016, which encompasses a set of measures to prevent tax fraud in VAT, by putting into place the new Anticipated Electronic VAT Reporting System (*Suministro Inmediato de Información* – SII).

The new VAT management system introduced by the SII, based on keeping VAT Registry Books via the tax authorities' online platform, is expected to provide billing registries on an almost real-time basis.

Below is a brief summary of the new VAT management system introduced by the SII.

Entry into force

The new SII will enter into force on 1 July 2017.

Taxpayers applying this new system will be also required to submit the billing registries related to the first half of 2017 (covering the period between 1 January and 30 June). The deadline to file this information will be extended to 1 January 2018.

Application of the SII

The SII will be mandatory for taxpayers that are required to file monthly returns, that is:

a) Taxpayers in the Monthly VAT Refund Registry (REDEME).

b) Large enterprises (with annual turnover over EUR 6 million).

c) Businesses in VAT groups.

In addition, any other business or professional not meeting these criteria may, on a voluntary basis, choose to apply this system.

What is the SII?

The SII involves the electronic supply, through the tax authorities' online platform, of billing registries that form part of the VAT Registry Books (issued invoices, received invoices and some intra-Community transactions).

Billing details will be electronically submitted to the tax authorities so, in practice, the information is effectively populated on a real-time basis.

Deadlines for electronic submission of billing registries

Taxpayers will generally be required to send certain data regarding invoices issued and received within a four day timeframe from when they issue or receive them.

As a temporary measure, for the period between 1 July and 31 December 2017, the deadline will be extended from four to eight days.

In terms of the above timeframe, weekends and national public holidays are excluded.

Content requirements for VAT Ledgers

In general terms, the content requirements for billing registries will be increased for taxpayers applying this new system. New additional information, such as a brief description of transactions, type of invoice, etc., must be filed with the tax authorities.

Deadlines for submitting VAT returns for taxpayers within the SII

Taxpayers that must, or choose to, apply this system will be required to file their corresponding VAT returns (forms 303) within 30 calendar days of the month following the transactions to which they refer.

Therefore, under this new system, the deadline to file these VAT returns (forms 303) will be extended by ten additional days.

Exemptions for taxpayers applying SII

Under this new system, VAT reporting obligations will be simplified. For instance, taxpayers that apply the SII will not have to submit the annual VAT summary return (form 390), the annual informative return containing transactions with third parties (form 347) or the VAT return containing the VAT Books under the special VAT monthly refund regime – REDEME (form 340).

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Ukraine

Vehicle certification procedure simplified

The Ministry of Infrastructure of Ukraine published Order No. 408 dated 18 November 2016 allowing certification of motor vehicles manufactured in or for non-EU countries based on alternative technical regulations.

Certification bodies may now issue certificates of conformity based on EU, U.S. and Japanese technical standards regulating exhaust emissions, safety belts and their fixtures, and window marking.

Consequently, this will allow the importation of U.S.-made motor vehicles into Ukraine, which are non-compliant with EU-standards, without changing the components and parts.

Alternative technical regulations may be applied for individual certification of mass-produced class M1 and N1 motor vehicles (i.e., motor cars with seating capacity of 8+1 passengers and trucks with total gross weight of up to 3.5 tons respectively), which have no motor vehicle type certificate.

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United Kingdom

Consultation on VAT grouping

The tax authorities (HMRC) have issued a consultation on VAT grouping, which will run until 27 February 2017, see Scope of VAT Grouping.

The purpose of the consultation is to inform UK policy following last year's decisions of the Court of Justice of the European Union in *Larentia & Minerva* and *Marenave* and *Skandia America Corporation*.

Following *Larentia*, HMRC will consider how to expand the types of entity which can join VAT groups, beyond the current requirements that they be 'bodies corporate' under 'common control', and is seeking views on how control criteria should be amended if VAT groups can include, for example, partnerships.

Skandia endorsed Swedish rules which treated supplies from a U.S. head office to its Swedish branch (which was part of a Swedish VAT group) as subject to VAT. HMRC is seeking information about how this judgment has impacted businesses, given the UK's different approach to branches and VAT groups.

It is also seeking views on how changes to VAT grouping might affect use of the cost-sharing exemption.

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Eurasian Economic Union

Inclusion of license and other similar payments for use of intellectual property objects in customs value of goods imported into EEU

Recommendation of the Board of the Eurasian Economic Commission of 15 November 2016 No. 20 develops common approaches on the inclusion of license and other similar payments for the use of intellectual property objects in the customs value of goods imported into the customs territory of the EEU. The definition of license payments and other similar payments is specified, and the conditions for including such payments in the customs value are detailed. Relevant examples of particular cases are provided. Recommendation No. 20 came into effect on 17 November 2016.

Although formally recommendations of the Board of the Eurasian Economic Commission are not legally binding documents, in practice, they may change the approach of the customs authorities and the courts. In this regard it is recommended that organizations review whether Recommendation No. 20 may impact their current or planned approach on the inclusion of license and other similar payments in the customs value of imported goods.

Revised technical regulation on the safety of packaging and new rules for labelling of medicine products and veterinary pharmaceutical products

Decision of the Board of the Eurasian Economic Commission of 18 October 2016 No. 96 introduces changes in the technical regulation of the Customs Union "On safety of packaging" (TR TS 005/2011). It is established that the technical regulation does not apply, *inter alia*, to cargo containers and pallets for the carriage of goods by road, rail, sea and air transport. Safety requirements for packaging (closures) and processes of its storage, transportation and disposal are revised. Also, new requirements for organoleptic indicators of packaging (closures), food contact products, including baby food are introduced. Decision No. 96 will come into effect on 21 May 2017.

Decision of the Board of the Eurasian Economic Commission of 3 November 2016 No. 76 regulates the new unified requirements for the EEU for text labels, methods of text label application and a list of excipients to be indicated on the secondary packaging of medicine products and veterinary pharmaceutical products.

The main part of the Decision No. 76 will come into force 10 calendar days after Armenia's accession to the Agreement on Unified Principles and Regulations of Turnover of Pharmaceutical Products in the Eurasian Economic Union from 23 December 2014, but not earlier than 10 calendar days from the date of publication of Decision No. 76. The remainder of the Decision comes into effect after the finalization of intergovernmental procedures.

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