Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

In this edition, it is understood that the six Gulf Cooperation Countries have now all signed the VAT agreement paving the way for VAT introduction across the GCC in 2018. Other features of this edition include official clarification of certain VAT issues in China following the 2016 VAT reform, a further update on GST implementation in India, a European Commission proposal for a VAT generalized reverse charge mechanism, and a decrease in the standard VAT rate in Romania.

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

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Deloitte Global Leader – Indirect Tax

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Country summaries

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EMEA

European Union	The European Commission has published three consultations following last April's 'Action Plan on VAT'. The European Commission has issued a proposal for a generalized reverse charge mechanism.	**Read More**
Denmark	The tax authorities have issued a draft binding instruction regarding the VAT treatment of the private use of business assets. The customs authorities have set the fees for the customs guarantee scheme for 2017.	**Read More**
France	There is an update on the reverse charge mechanism for import VAT. VAT deductibility on fuel purchases by companies will be implemented progressively. The application of the 5.5% reduced VAT rate has been extended.	**Read More**

	From 1 January 2017, there is a new audit procedure for the checking of VAT refund claims. There is an update on third party seizures as part of tax inspections. There are new customs procedures. There is a salary tax exemption regarding salaries paid to expatriates. A credit tax on salary tax has been introduced for certain non-profit organizations. Social Security and Solidarity Contribution (C3S) – a new additional contribution is to be introduced.	
Germany	The Federal Fiscal Court has ruled on the correction of invoices with retroactive effect.	**Read More**
Gulf Cooperation Council	The six GCC countries have now signed the VAT Treaty. The Kingdom of Saudi Arabia has announced the implementation of VAT and excise tax. The KSA has increased customs duty on a wide range of products. The UAE has set up the Federal Tax Authority.	**Read More**
Italy	There is a review of VAT amendments for the 2017 fiscal year. The tax authorities have clarified the VAT treatment of 'bunkering' of petroleum products. There is an update on excise duty.	**Read More**
Luxembourg	There has been an increase in penalty rates, and joint liability has been introduced for persons in charge of management.	**Read More**

	The VAT authorities have published a circular regarding the VAT treatment of directors' services. There has been an increase in the VAT threshold for the small enterprise regime. The obligation to register rental agreements has been abolished. From 1 January 2017, it will be mandatory to use the eCDF platform for filing VAT returns.	
The Netherlands	The Tax Plan 2017 has been adopted by the House of Representatives and the Senate, including three VAT changes regarding: • The VAT exemption for water sports associations; • The definition of 'building land'; • Simplification of the bad debt relief scheme.	**Read More**
Portugal	There has been an amendment to the VAT exemption applicable to non-conventional medicines. The excise duty rates applicable to petroleum and energy products have been amended. There is an update on the excise duty refund scheme for road freight companies. A decree has been published regarding procedures for holding non-alcoholic drinks with sugar added in an excise warehouse.	**Read More**
Romania	The standard VAT rate decreased from 20% to 19% on 1 January 2017. An agricultural flat rate scheme has been introduced. The Register of Intra-Community Operators has been repealed.	**Read More**

	Measures have been introduced regarding VAT deduction when the VAT ID code of a taxable person has been cancelled. Form 088 Affidavit has been repealed. There is a new methodology for the computation of contributions, taxes, penalties and other amounts owed to the environmental fund.	
Russia	There is an update on the VAT regulation on e-services rendered by foreign companies. There have been amendments to the list of goods subject to the reduced VAT rate of 10% and the list of medical goods exempt from VAT. Import licensing has been introduced for macadam, gravel and crush of macadam, gravel and sand imported into Russia from countries that are not members of the Eurasian Economic Union. The Government has put forward an initiative to introduce excise duties on alcohol-containing non-food products, household chemicals and cosmetics.	**Read More**
Serbia	Serbia has adopted several amendments to the VAT law, primarily with the purpose of harmonizing domestic tax legislation with EU legislation. New rules regarding fiscal representatives came into force on 1 January 2017.	**Read More**
South Africa	Draft amendments have been published to the Rules of the Customs and Excise Act 1964. Safeguard measures on frozen bone-in chicken portions originating from the EU have been imposed.	**Read More**
Turkey	There have been customs duty amendments.	**Read More**

Ukraine	Currency restrictions have been extended. Export procedures for services have been simplified.	Read More
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Eurasian Economic Union	The new Customs Code of the Eurasian Economic Union is being finalized. The commodity nomenclature of the Eurasian Economic Union has been updated. There are new requirements on equipping transport vehicles with emergency call devices. The list of goods that may be placed under the special customs procedure has been amended.	Read More

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Americas

Argentina

Law 27346, published in the Official Gazette on 27 December 2016, introduced modifications to VAT, and also created new taxes on speculative derivative instruments, gambling and on-line gambling.

Amendments to application of VAT reverse charge mechanism

For VAT purposes, previously, services rendered abroad and economically used in Argentina were subject to tax under the reverse charge system. However, services rendered locally by non-residents and rentals/leases of goods located in Argentina but owned by non-residents were not strictly under the reverse charge mechanism, and in theory non-residents should have registered for VAT. In practice, some non-residents did not register, and to mitigate the risk, local recipients/lessees applied the reverse charge mechanism, even though this was strictly speaking not applicable.

From 1 January 2017, these situations will also fall within the application of the reverse charge mechanism; the local service recipient or lessee, as well as potential intermediaries or representatives involved in the transaction, acting in their own name and on behalf of the non-resident, must pay the tax, and will receive a tax credit for the paid amounts.

Gambling and online gambling

With respect to gambling, and with effect from 1 January 2017, a 0.75% tax is imposed on each bet, while a 2% tax is imposed on each bet for online gambling. In the former case, the subject of the tax is the casino, while in the latter, the taxpayer is the gambler, but credit card and other payment intermediaries must act as withholding agents.

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Costa Rica

Update of excise taxes applied to carbonated beverages, beers and wines

The Institute for Rural Development has advised the latest update of excise taxes, applied to carbonated beverages, beers and wines, according to articles 6 and 10 of Act No. 5792 – excise taxes on cigarette and beverages consumption.

This update is performed on a quarterly basis, according to the consumer price index, and it entered into force on 1 January 2017, as detailed below:

Type of beverage	Excise tax (CRC per consumption unit)
a. Carbonated beverages and syrup for carbonated beverages type 'post mix'	¢6.348
b. Carbonated beverages and syrup for carbonated beverages type 'post mix' for micro and small enterprises	¢2.604

Type of beverage	Excise tax (CRC per alcohol unit)
a. Beer	¢0.445
b. Grape wine or fermented fruits	¢0.221
c. Fermented fruit wine (except grapes) where the annual marketed production must not exceed fifteen millions of alcohol units	¢0.111

Update on excise tax applied to beer

Through resolution RES-IFAM-028-2016, published in the Official Gazette No. 240 on 14 December 2016, the Institute of Municipal Development and Assistance has provided the latest excise tax update, applied to local production and imports of beer. The new decree entered into force from 1 January 2017.

This update is undertaken on a quarterly basis, according to the consumer price index. Imports and sales are impacted. The changes are as follows:

Type of beverage	Excise tax (CRC colones per alcohol unit)
Beer	¢0.24754

Changes to customs tariff

The customs administration has advised that changes to the national customs tariff entered into force on 1 January 2017. The national tariff schedule extended from 10 to 12 digits, due to changes applied by the Central American Integration System, representing the adjustment of technological programs used for customs purposes and changes in the codes used by importers and exporters.

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Asia Pacific

Cambodia

Customs duty updates

Based on Notification No. 8750 MEF.AKR to the General Department of Taxation and General Customs and Excise Department of Cambodia dated 17 October 2016 issued by the Ministry of Economy and Finance, there has been an amendment to customs duty and VAT rates by way of an incentive on tax state charge, meaning that the customs duty and VAT will be borne by the state. This is in accordance with the ASEAN Harmonized Tariff Nomenclature 2017 (AHTN 2017).

The notification was effective from 1 January 2017.

The goods impacted are as follows:

- Customs duty
    - All kinds of seed and animal species certified by the competent authority.

- VAT on importation
    - All kinds of seed and animal species certified by the competent authority
    - Animal food and material for producing animal food
    - Pharmaceutics certified by the competent authority
    - Agricultural fertilizer certified by the competent authority
    - Pesticides
    - Pumping machines
    - Dried machines for agriculture
    - Equipment for agriculture, horticulture, herbal methods for land preparation and plantation
    - Combine harvester-threshers, straw balers, grass mowers, machinery for sorting or grading eggs, fruit or other agricultural produce
    - Machinery and other equipment using in agriculture, horticultural, forestry, poultry feeding, bee feeding, including growing machines using mechanical means or using heat, poultry incubators and brooders
    - Cleaning machines, sorting seed, seed or dried vegetables; machinery using in agriculture for powder or reaction of seed or dried vegetables besides machines used in farming
    - Tractors and agricultural tractors
    - Other products that have already received exemption.

- VAT on exportation
    - Pellets or wood refraction, sawdust, wood pellets produce or process from local trees such as acacia and eucalyptus trees
    - Fisheries products from aquaculture.

In addition, based on Notification No. 8751 MEF. AKR to the General Customs and Excise Department of Cambodia dated 17 October 2016, the tax authorities have updated Annex 1 of Sub-decree No. 209 dated 31 December 2007 regarding the list of prohibited and restricted goods which are consistent with the AHTN 2007, to be consistent with AHTN 2017. The notification was effective from 1 January 2017.

The Royal Government of Cambodia issued Sub-Decree No. 210 ANKr.BK dated 6 October 2016 on changes to customs duty, specific tax and the VAT rate on exported products, to be consistent with AHTN 2017.

The General Customs and Excise Department of Cambodia issued letter No. 2333 AKR dated 20 December 2016 to stop the importation of petroleum products via a road route. This letter is effective from 1 January 2017.

The Ministry of Economic and Finance issued Notification No. 5479 MEF dated 6 October 2016 on a temporary change to the supervision fees for the machine scan for export rice via containers as follows:

- USD 16 for containers from 40ft in size

- USD 10 for containers below 40ft in size.

This notification is effective from 1 November 2016 to 31 December 2018.

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China

VAT update

On 21 December 2016, China's Ministry of Finance (MOF) and State Administration of Taxation (SAT) issued Caishui [2016] No. 140 (Circular 140) to clarify certain VAT issues resulting from the VAT reform that became effective in 2016. In particular, the tax treatment of industries such as financial services and real estate required additional guidance. On 24 December, SAT issued a supplementary circular (SAT Bulletin [2016] No. 86) that provides additional guidance on the implementation of Circular 140.

Some of the highlights are as follows:

Financial services

- Interest (including income of the same, but called a different name, such as principal-guaranteed return, fund usage fee, etc.) derived from the holding of financial products is subject to VAT under the category 'loan services'.

- Clarification that a redemption of financial products (e.g. bonds) when they mature is not a transfer of a financial product for VAT purposes, although a taxpayer still should be subject to the 6% VAT for any interest income derived from holding the financial product.

- VAT liability will arise when an interest payment becomes due. However, if the interest is overdue for at least 90 days, interest accrued after the 90-day period will be subject to VAT when it is actually received by qualified financial enterprises (e.g. notably banks).

- Circular 140 provides that the asset manager of an asset management product should be considered the VAT payer for the product.

- According to Circular 140, any losses incurred on the trading of financial products during January to April 2016 (in which Business Tax, instead of VAT, still applied) may be carried forward to offset the trading gains derived during the period May to December 2016.

- Circular 140 confirms that finance leasing companies are allowed to deduct certain items from their gross revenue for VAT purposes even though they have not received approval for their establishment.

Real estate sector

- Circular 140 provides that the following new two items are deductible land acquisition costs:
  - Relocation compensation and initial land development fees paid to the Government;
  - Relocation compensation paid to other parties when the developer acquires the land use right.
- After a real estate developer pays the purchase price for a land use right to the Government, the original developer often sets up a new company to assume the future development work. Circular 140 confirms that the new project company may deduct the costs provided that certain conditions are satisfied.
- According to Bulletin 86, if the newly clarified deductible items have not yet been deducted, taxpayers may start taking the deduction as from December 2016.
- Bulletin 86 clarifies that the 'deemed sales' rule should not apply to a rent-free period.

Miscellaneous

- Circular 140 clarifies that the sale of takeaway food by restaurants should be subject to VAT under the category 'catering services' (taxed at a rate of 6%).
- Where a hotel or resort operator provides meeting venues and relevant support services to conference events, Circular 140 clarifies that the operator should be subject to VAT under the category 'convention and exhibition services'.
- Circular 140 provides that a general VAT payer may elect to adopt the simplified taxation method at a 3% VAT collection rate for revenue derived from education assistance services (e.g. services relating to assessment, examination or college admissions).

Comment

The two circulars generally should be welcomed by businesses, as they clarify certain typical industry-specific VAT issues that required clarification. Some clarifications are favorable to taxpayers (e.g. the expansion of deductible land acquisition costs and the inclusion of sales of takeaway food as catering services), while some may increase the VAT compliance burden of certain taxpayers (e.g. asset managers).

With the rollout of VAT to all sectors of the economy, undoubtedly more issues will emerge and require clarification. The MOF and SAT are expected to issue more guidance, therefore, affected companies are advised to continue to monitor developments.

Consumption tax update: 10% imposed on ultra-luxury motor vehicles

On 30 November 2016, China's Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Caishui [2016] No. 129 (Circular 129), which imposes an extra 10% consumption tax on ultra-luxury motor vehicles. Circular 129 took effect on 1 December 2016.

The main features of the Circular are as follows:

- Taxable item and tax rate

  An ultra-luxury motor vehicle is defined as an automobile or a small/medium-sized commercial bus whose VAT-exclusive retail price is CNY 1.3 million (approximately USD 187,000) or more. The new 10% consumption tax is an 'additional' tax, because automobiles and small/medium-sized commercial buses are already subject to a consumption tax ranging from 1% to 40% when the vehicle is sold by a Chinese manufacturer or imported into China.

- Taxpayers

  Automobile retailers (both entities and individuals) that sell ultra-luxury motor vehicles to consumers are liable to pay the 10% consumption tax. Affected retailers must complete the required registration formalities and submit consumption tax returns on a monthly basis as from 1 December 2016.

- Transitional rules

  Sales contracts for ultra-luxury motor vehicles that were signed before 1 December 2016 but where the vehicles were not delivered to the consumer until after 1 December will not attract the extra 10% consumption tax if the contract was filed with the tax authorities on or before 7 December 2016.

Comment

Consumption tax reform is one of the key tax projects in China's 13^{th} five-year plan. Further changes to consumption tax policies can be expected in terms of the scope of taxation, tax point, and tax rates.

The main aim of consumption tax is generally to tax high energy consuming goods, high polluting goods and some luxury goods. The extra 10% consumption tax on ultra-luxury vehicles reflects the Government's intention to guide 'rational purchases', adjust income levels and reduce energy consumption.

The new consumption tax rules became effective the day after the changes were announced, giving taxpayers limited time to prepare for the changes. The extra consumption tax will be an additional cost to automobile retailers, which will be passed to end consumers, thus affecting the cost of vehicles. Affected companies, therefore, should consider taking the following actions:

- Review and adjust their China pricing strategy as soon as possible and make appropriate communications to consumers and dealers; and
- Be prepared to comply with new consumption tax filing and payment obligations. (Previously, consumption tax on cars was collected only at the point of importation and production but, now, automobile retailers will need to register with the tax authorities for consumption tax purposes and submit consumption tax returns on a monthly basis.)

Customs update: Tariff policy for 2017 announced

The Tariff Commission of the State Council issued a Circular (Shuiweihui [2016] No. 31) on 19 December 2016 setting out China's tariff policy for 2017. The Circular, which took effect from 1 January 2017, will bring both opportunities and challenges for affected industries.

Main changes

1. Interim duty rate

The Government sets interim import and export duty rates to encourage imports or restrict exports of certain products. Interim duty announcements are usually made at the end of each year.

a. Interim export duty

For 2017, the export duty applies to 213 export commodities (mainly including high-energy-consuming goods, high pollution goods and resource goods), 50 of which are applicable to interim export duty at the zero rate.

b. Interim import duty

For 2017, the range and rate of most favored nation (MFN) duty rates have been adjusted. In comparison with 2016:

- From 1 January 2017, the interim import duty applies to 822 import commodities. However, as the import duty of IT-related goods is to be removed, the import commodities subject to the interim import duty will be reduced to 805 accordingly from 1 July 2017.
- 32 items are newly added or further decreased for interim import duty, which mainly cover the following three categories of goods:
    - Advanced equipment and key parts (e.g. sorting equipment for integrated circuit devices);
    - Daily necessities and culture consumer goods (e.g. tuna);
    - Bulk pharmaceutical chemicals (e.g. acarbose for curing diabetes).

2. Conventional duty rates

Conventional duty rates, which generally are more favorable than MFN duty rates, apply to commodities originating from countries or regions that have concluded a free trade agreement (FTA) with China. Amongst the 15 FTAs China has in place with 25 countries or regions:

- The conventional duty rates of certain items under 10 FTAs (e.g. Iceland, Korea, Switzerland, CEPA, etc.) will further decrease.
- The conventional duty rates of the items under the other five FTAs (with e.g. Singapore, ASEAN, Chile, ECFA, etc.) will remain the same.

3. Revisions to import and export tariff codes

Several new items are added to the 2017 tariff codes, as a result of which the number of import and export tariff codes for 2017 will increase from 8,294 to 8,547.

Comment

As noted above, interim export duty rates are expected to be future adjusted in 2017 for specific commodities, so companies in affected industries should closely monitor developments and take steps to prepare for potential financial impacts and the need to make changes to pricing/tax-related contractual arrangements.

Certain industries that are encouraged under the national policy may want to consider recommending to the Government that interim rates be applied in their sectors.

Companies engaged in import and export activities should revisit the adopted classification in a timely manner and apply for customs pre-classification, where necessary, to manage the risks of non-compliance with the current classification of import/export commodities.

Companies also should monitor the conventional duty rates under FTAs and review their supply chain to identify opportunities to enjoy more preferential duty rates.

Environmental protection tax

The Environmental Protection Tax Law of the People's Republic of China, which was adopted at the 25th Session of the Standing Committee of the 12th National People's Congress of the People's Republic of China on 25 December 2016, will take effect on 1 January 2018.

The promulgation of the Environmental Protection Tax Law is expected to have a profound and far-reaching effect on environmental protection in the country and the overall tax system in China.

Highlights

- Taxpayers

  Enterprises, entities, other producers and operators that directly emit taxable pollutants into the environment within the territory and other sea areas under the jurisdiction of the People's Republic of China are taxpayers of the environmental protection tax.

- Taxable pollutants

  Taxable pollutants specifically refer to atmospheric and water pollutants, solid waste and noise specified in the Table of Taxable Items and the Rate of the Environmental Protection Tax and the Table of Taxable Pollutants and Equivalent Values attached to the Environmental Protection Tax Law.

- Taxable items and rate

  The Table of Taxable Items and the Rate of the Environmental Protection Tax attached to the law specifies taxable items, as well as the applicable tax rate. There are four categories of taxable items, namely, atmospheric pollutants, water pollutants, solid waste and noise, which will be taxed as follows:

  - Taxable atmospheric pollutants will be taxed at RMB 1.2 to RMB 12 per pollution equivalent;

  - Taxable water pollutants will be taxed at RMB 1.4 to RMB 14 per pollution equivalent;

  - Taxable solid waste will be taxed at RMB 5 to RMB 1,000 per ton by type;

  - Taxable noise will be taxed at RMB 350 to RMB 11,200 per month based on the noise level.

- Tax base and calculation of tax payable

  The Environmental Protection Tax Law clarifies that the tax base of atmospheric and water pollutants will be determined by the pollution equivalent number converted from the pollutant emission amount. The tax base of solid waste will be determined by the solid waste emission amount. The tax base of noise will be determined by the decibels exceeding the limit imposed by the state.

- Tax reduction and exemption

  The Environmental Protection Tax Law stipulates several circumstances that can be temporarily exempt from the tax (e.g. agricultural production, motor vehicles, vessels, aircraft and other mobile pollution sources). In addition, where the concentration value of the taxable atmospheric or water pollutants emitted by taxpayers is lower than the nationally and locally stipulated pollutant emission standards by 30%, only 75% of the environmental protection tax will be payable; and where it is lower than such standards by 50%, only 50% will be payable.

- Tax administration

  Taxpayers will pay environmental protection tax to the competent tax authorities where the taxable pollutants are emitted. Environmental protection tax generally will be calculated on a monthly basis and settled on a quarterly basis. The tax authorities will compare the data in tax returns with data from the competent environmental protection authorities; any inconsistency identified will be submitted to the environmental protection authorities for further review.

Comment

- Pollutant emission costs continue to increase

  Since the issuance of the Administrative Regulations on the Collection and Use of Pollutant Charges promulgated in 2003 and the Administrative Measures for the Pollutant Emission Charge Collection Standards, the pollutant emission charge rates have been significantly increased. The environmental protection tax reflects this trend by setting the upper limits for the tax rates at ten times the lowest charge rates, which are also the lowest tax rates. Therefore, it can be expected that pollutant emission costs likely will continue to increase and polluters will have to pay a higher price.

- Pollution control effects are yet to be seen

  Overall, the full play of the Environmental Protection Tax Law to reduce pollutant emissions will require the joint efforts of tax, environmental protection and other government authorities to establish an effective and more robust monitoring mechanism. There is a one-year gap between the adoption and implementation of the Environmental Protection Tax Law, which will give the authorities time to develop and promulgate detailed rules for pollutant emission monitoring and tax administration. Affected companies should closely monitor future developments.

- Industrial upgrading may be expected

  With the implementation of the environmental protection tax, enterprises' pollutant emission costs are bound to increase as the tax rates may rise and tax administration intensifies, thus inevitably affecting profits. To address these challenges, enterprises may decide to accelerate industrial upgrading and reduce pollutant emissions to boost their reputations and achieve competitive cost advantages. Meanwhile, manufacturers of environment-friendly equipment, providers of environmental protection technologies, and suppliers of online monitoring equipment for environmental protection are expected to benefit from the new law and gain more opportunities for future development.

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India

GST now to be rolled out from 1 July 2017 – Union Finance Minister

Significant progress has been made on the GST front in the meetings of the GST Council held in the months of December and January (held on 2 and 3 December 2016, 11 December 2016, 22 and 23 December 2016, 3 and 4 January 2017, and 16 January 2017).

The GST Council reached consensus on most provisions of the Integrated Goods and Services Tax (IGST), Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) (except for a few open areas) and they have been sent to the Ministry of Law for review. A ‘rates committee’ has also been formed, which will be working concurrently to finalize the rate schedule, which will be considered by the Council. The Council also came to a decision on cross-empowerment and the dual control issue of GST.

A draft compensation law, approved by the GST Council, has been published in the public domain, covering the issue of compensation to states due to the implementation of GST. The Council also discussed various sources to fund the compensation for the states.

However, there was a broad view that 1 July appears to be a more realistic date for the rollout of GST. The drafts of legislation will be taken up for approval in the next GST meeting to be held on 18 February 2017.

Revised enrolment schedule released by GST Network

The Goods and Services Tax Network has released a revised enrolment schedule for enrolment of existing taxpayers registered under VAT, central excise and service tax laws for GST.

Key highlights of the revised schedule are as follows:

- Enrolment of taxpayers registered under the Central Excise Act but not under state VAT began from 7 January 2017.

- Enrolment of taxpayers registered under service tax laws that are not registered under state VAT began from 25 January 2017.

- Enrolment for new registrations under VAT/service tax/excise after January 2016 will begin from 1 February 2017.

Additionally, the Central Board of Excise and Customs has issued a communication including a Step by Step Guide for Assessees for smooth migration from the existing regime to GST.

Issuance of invoice without digital signature for foreign OIDAR service providers

With the recent amendment to the service tax rules for foreign service providers rendering Online Information and Database Access or Retrieval (OIDAR) services to customers in India, in order to facilitate trade, the Government has provided a facility for the issuance of electronic invoices without authentication by such foreign service providers.

In view of the above, a foreign service provider providing OIDAR services on a B2C basis and liable to pay service tax on the supply of such services may issue an electronic invoice without authenticating it by means of a digital signature for a period up to 31 January 2017.

Integration of Indian Customs and Central Excise Tariff with WCO HSN classifications from 1 January 2017

The World Customs Organization (WCO) Harmonized System Nomenclature (HSN) has been amended from the 2012 version to the 2017 version. The 2017 version contains 233 sets of amendments capturing various sectors and is effective from 1 January 2017.

In view of the above, Indian customs tariffs should be integrated with WCO HSN classifications. Accordingly, while filing customs declarations for goods to be imported or exported from 1 January 2017, importers, exporters and customs house agents should ensure that the classification of goods is in accordance with the HSN 2017 version.

Court judgment on application of entry tax in Uttar Pradesh

In a recent judgment of the Allahabad High Court wherein a logistics company (the petitioner) has filed a writ petition challenging the levy of entry tax on e-commerce, the Court has granted interim relief to the petitioner, and held that the levy of entry tax on e-commerce is *prima facie* unconstitutional as the state legislature has no authority to levy such a tax post constitutional amendment.

By virtue of amendment to the Constitution of India, effective from 8 September 2016, the provisions enabling the state to levy tax on the entry of goods into a local area has been removed. Further, the laws that exist prior to the above amendment are saved for a period of one year.

The Court has observed that the amendment introduced by the Uttar Pradesh state on 16 September 2016 in respect of levying tax on the entry of goods purchased via online purchase or e-commerce in the local area is beyond the authority of the state legislature, as it results in the levy of tax *ex facie* which did not exist under the previous Act, and, therefore, could not be introduced by way of amendment.

The Court also held that in order to secure the interest of the state, the petitioner must furnish a bank guarantee to the satisfaction of the authorities concerned.

This is the first significant ruling following the constitutional amendment for GST indicating that no new levy can be imposed by the state/central Government post deletion of taxation powers. The final order of the High Court in this regard is awaited.

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Indonesia

Revision of regulation on exemption from VAT and LGST on imported goods

The Government prohibits any imported goods on which the import duty, VAT and Luxury Goods Sales Tax (LGST) has been exempted from being transferred or used not in accordance with the intended purpose. Based on the parties concerned and the use of the goods, 20 types of goods are now included in the exemption list – two categories of goods were added by regulation with effect from 20 January 2017.

If, within a period of four years from their entry, these goods are used for other than their designated purpose, the Ministry of Finance will impose the applicable customs duty and taxes.

Any subsequent payment of VAT and/or LGST on goods found to have been used not in accordance with the intended purpose will not be creditable as input VAT and will also be subject to an administrative penalty of 2% per month.

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Malaysia

Amendments to GST orders with effect from 1 January 2017

The Ministry of Finance has made some key amendments to the GST and related regulations, which took effect from 1 January 2017.

Some of the most significant amendments which could have an impact on businesses in Malaysia are as follows:

- An important amendment is the deletion of Regulation 42, which deals with input tax in respect of the supply of land for general use. By virtue of this amendment, input tax credit (ITC) is no longer claimable in respect of the supply of land for general use. This could result in an increase in the cost of the supply of land for general use.

  A transitional provision has been introduced with some conditions to be fulfilled for claiming the ITC relating to the exempt supply of land for general use. The ITC in respect of the exempt supply of land for general use was previously allowed by virtue of Regulation 42.

- Regulation 47 is amended to resolve the ambiguity with respect to the availability of Deemed Input Tax Credit (DITC) to insurers on cash payments made by them on any supply where ITC is disallowed. This amendment makes it clear that DITC is not available to insurers on cash payments under a policy that relates to expenses blocked from ITC (e.g. medical expenses).

- Regulations 82 and 84 have been amended to enable tourists to claim a refund of GST paid on liquor, tobacco and tobacco-related products, which was previously not allowed. Also, the Langkawi International Airport has been included as an approved airport for the Tourist Refund Scheme.

- Note: GST is to be levied on the supply of wine, spirits, beer, malt liquor, tobacco and tobacco products within and between free zones.

- Another amendment has been notified with respect to goods sent to designated areas for repairs or reprocessing and subsequently sent back to the customs area without charging GST. There was no time limit prescribed for the return of these goods. However, now the law has been amended to ensure that these goods are returned within six months from the date of sending them to designated areas for repairs or reprocessing, as the case may be.

  In line with the above, a timeframe of six months has been prescribed for re-export of goods from the date of their import.

- Item 33 of the first schedule is amended to enable operators of duty free shops to GST relief on the purchase of alcohol and tobacco products purchased and removed from Free Zones.

- Item 36 of the first schedule is amended to enable operators of public and private warehouses in designated areas to GST relief on alcohol and tobacco products purchased and removed from Free Zones.

- There is an important amendment with respect to the deletion of item 2 of the second schedule which dealt with the supply of land by a developer or land owner to the Government or local authority for the purpose of public amenities/public utilities. By virtue of this deletion, in future, the developer or land owner would not be required to charge GST on such out of scope supplies. However, it would mean ITC in relation to such out of scope supplies would potentially not be claimable.

- A new transitional provision has been introduced under which any input tax incurred by any developer or owner of land in relation to the supply of land to the Federal Government, a state Government, a local authority or any other person after the effective date of this amendment (i.e. on or after 1 January 2017) for the purpose of public amenities/public utilities whether for a nominal consideration or not is claimable subject to the conditions mentioned therein.

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Singapore

Revised changes to Certificate of Non-Manipulation

With effect from 5 January 2017, Customs will implement revised requirements, formats and application procedures for the Certificate of Non-Manipulation (CNM). There will be a transition period (up to March 2017) for companies to adapt to the revised changes.

The key changes are summarized as follows:

- The period of transshipment/storage of consignment must not exceed three months, unless otherwise specified by the respective Free Trade Agreement (FTA).
- An application for CNM must be submitted to Customs before the consignment is exported from Singapore.
- An application for CNM will no longer require a Letter of Appointment (issued by the principal party) and Declaration Letter (issued by the appointed Declaring Agent) as supporting documents.
- All CNM applications must submitted electronically; Customs will no longer accept manual applications (walk-in submissions).

Companies currently utilizing or intending to utilize CNMs in their FTA distribution model(s) should be aware of the revised changes and the transition period.

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EMEA

European Union

European Commission consultations

The European Commission has published three consultations following last April's 'Action Plan on VAT'. Amongst other things, these ask for comments on possible short-term improvements with respect to cross-border B2B supplies, in light of the move from an origin-based to a destination-based VAT system; potential fluctuations in VAT rates as the requirement for rate convergence recedes; and a proposed simplification of special rules for SMEs.

See:

- Public consultation on the reform of VAT rates;
- Public consultation on the Definitive VAT system for Business to Business (B2B) intra-EU transactions on goods;
- Public consultation on the special scheme for small enterprises under the VAT Directive.

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European Commission proposal for a generalized reverse charge mechanism

On 21 December 2016, the European Commission proposed a temporary and optional generalized domestic reverse charge mechanism. The proposal is part of the Commission's fight against VAT fraud, for which it set out measures in its 'Action Plan on VAT' of 7 April 2016. Pending the definitive VAT regime's implementation, this amendment to the EU Principal VAT Directive would allow Member States particularly affected by VAT fraud to take temporary measures whereby VAT on domestic B2B supplies of goods and/or services would be due by the recipient instead of the supplier.

Current VAT regime for supplies of goods and services

VAT law provides that the supplier of goods or services supplied domestically is liable for VAT payment. In other words, when the supplier makes the supply, the supplier must apply VAT to the supply, then charge it to and collect it from the customer. The supplier will include the VAT payable to the supplier in the VAT return, leading to the balance of output VAT minus input VAT being paid to the state.

This general principle that the supplier is liable to VAT payment on domestic supplies of goods or services is subject to some exceptions, most notably, where these supplies are made by a non-established supplier. This option is included in Article 194 of the Principal VAT Directive.

VAT gap caused by carousel fraud

Ill-intended traders can collect VAT from their customers and not pay it to the state. In carrousel fraud, traders make use of the fact that their intra-Community purchase is not subject to VAT (exempt as an intra-Community supply) to on-sell the same goods domestically with VAT.

Optional and temporary generalized reverse charge mechanism

The EU Commission proposal to amend the Principal VAT Directive allows Member States to temporarily (until 30 June 2022) apply a generalized reverse charge mechanism (GRCM) on domestic supplies of goods and services. It constitutes an urgent and specific measure as well as a fundamental exception to the currently applicable system, where a supply in each stage of the supply chain is in principle taxed, and the payment of VAT to the state is thus fractioned.

A generalized reverse charge mechanism removes the VAT payment liability from the supplier and shifts it to the customer. Since the customer is liable to VAT payment, the customer does not need to pay it to the supplier. Consequently, the supplier cannot collect the VAT and disappear without complying with VAT obligations.

However, the Member State needs to meet certain conditions if it wishes to introduce the GRCM. Namely, the territory concerned needs to be confronted with a strong increase in VAT fraud or the absence of an administrative capacity to tackle this fraud.

This is measured by the size of the VAT gap within the Member State, a gap expressed as a percentage of the VAT total tax liability, which should be at least 5 percentage points above the Community median VAT gap. According to the most recent numbers from 2014, the Community median VAT gap is 10.40%.

As such, Member States with a VAT gap exceeding 15.40% would qualify for the GRCM. According to these same figures, 11 Member States would qualify: Bulgaria, the Czech Republic, Greece, Italy, Latvia, Lithuania, Hungary, Malta, Poland, Romania and Slovakia.

Within its total VAT gap, the Member State also needs to have a carousel fraud level of more than 25%. Furthermore, it needs to establish that other control measures are not sufficient to combat carousel fraud on its territory.

The GRCM applies to all supply of goods and services above a threshold of EUR 10,000 per invoice. Specific electronic reporting obligations are then introduced together with the GRCM.

Neighboring Member States are also able to apply the GRCM, as they are exposed to fraud from adjacent territories.

The GRCM’s application would be subject to authorization by the European Commission. The European Commission will decide on the authorization within a maximum three-month period after receiving all information. The Commission can also repeal that authorization.

Although this amendment has not been adopted yet, when it receives unanimous approval from the Council of the European Union, it will enter into force without delay. It will be interesting to see which Member States will be first to adopt the rule and which will follow.

For businesses, there will be additional specific reporting in Member States that have adopted the GRCM, and local adaptations of systems to comply with the GRCM. Since the precise scope and functioning of the GRCM will be defined at national level, this temporary regime may trigger significant costs in monitoring and implementing changes for businesses active in multiple Member States.

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Denmark

VAT treatment of private use of business assets

The tax authorities have, with reference to guidelines from the European Commission, issued a draft binding instruction changing the treatment of VAT on a business's own assets that are used for both business and private purposes.

The tax authorities have stated that, in future, private use is to be considered a VAT taxable supply and the business must account for VAT on the self-supply. A business fully subject to VAT would deduct 100% of the input VAT when purchasing the goods, even though the goods will be used for both business and private purposes. This will apply, for example, to the purchase of mobile phones that employees can also use privately.

If the draft binding instruction is implemented, this change in practice means that businesses will no longer estimate a partial input VAT deduction percentage but instead the business assets will be subject to VAT on self-supply.

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Customs guarantee scheme

The customs authorities (SKAT) have previously launched a general guarantee scheme as an alternative to an individual guarantee. This scheme is voluntary and works like an insurance scheme, whereby the economic operator pays a contribution to the scheme. If payments must subsequently be made to cover a customs debt, the amount is taken from the guarantee scheme.

The fee differs depending on whether it covers an actual or a potential customs debt. The fees concluded by SKAT for 2017 are as follows:

- The fee for an actual customs debt is 3.5% of the actual customs duty amount payable.
- The fee for potential debt is DKK 10 per customs declaration.

The new fees apply from 1 March 2017.

The election to join the scheme has to be made prior to the import/export and is made on an annual basis.

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France

Reverse charge mechanism for import VAT

Under the new regime applicable as from 1 January 2017, a reverse charge mechanism will be in force in respect of import VAT, provided the importer has obtained advance agreement from the customs authorities.

EU-based companies must meet four conditions for such agreement. EU operators benefiting from Authorized Economic Operator (AEO) status are deemed to fulfil these conditions, however they must still file an application.

Companies established outside the EU must appoint a customs representative with AEO status to be eligible for the regime (in practice, all customs representatives will have AEO status).

VAT deductibility on fuel purchases by companies

VAT will become deductible on fuel used for vehicles and machines excluded from the right to deduct and leased vehicles when the lessee cannot deduct the VAT relating to this rental, apart from fuels used for certain testing. This deduction is being progressively implemented up to 10% as of 1 January 2017, 20% as of 1 January 2018, to incrementally reach 80% as of 1 January 2021.

Regarding fuels used for other than the aforementioned vehicles, VAT will be deductible up to 20% as of 1 January 2018 in order to incrementally become entirely deductible as of 1 January 2022.

VAT rates

From 1 January to 31 December, 2017, the 5.5% VAT rate will apply to AIDS self-testing devices.

As of 1 January 2017, the same reduced rate (5.5%) applies to some specific operations relating to social housing.

On-site audit procedure for VAT refund claims

From 1 January 2017 a new audit procedure allows tax inspectors to check material items of VAT refunds and to consult accounting books and documents, including supporting documents relating to VAT refund claims.

The refund or rejection decision should occur within 60 days of the date of the first on-site intervention or no later than four months of the notification of the on-site instruction notice.

The request will be denied within two months of the notice notification if it is impossible to perform the on-site audit.

This new procedure does not technically qualify as a full-fledged tax audit as it lacks habitual taxpayers’ guarantees. At the end, or during, this on-site audit procedure, the tax authorities can launch a regular tax audit procedure – with all attached taxpayers’ guarantees.

Third-party seizures as part of tax inspections

The 2017 Finance Law required customers recovering VAT to report, on-time through electronic filing, all purchases of goods for which the amount exceeded a certain threshold. As they were declared unconstitutional, these provisions were ultimately removed.

However, the Treasury may still carry out a third-party seizure as part of unannounced tax inspections based on breaches to the invoicing regulations (article L 80 F of the French tax procedure code). These provisions apply when:

(i) VAT relating to a supply of goods will have become due before the end of the period corresponding to the obligation to submit the VAT return,

(ii) The amount of VAT due as of the date of the reassessment notice as regards the period comprised in the next VAT return exceeds the output VAT amount reported on the invoices issued in the twelve months prior to delivery, and

(iii) When the circumstances may threaten tax collection.

This measure applies to transactions which will occur on or after 1 January 2018. The original purchases reporting obligation has been removed; this is welcome, as the obligation increased companies' compliance obligations without any certainty as regards the utilization of the information by the tax authorities.

Customs procedures from 1 January 2017

Late interest on import VAT now applies at a rate of 4.8% per year.

Customs procedures used to be subject to very few restrictions. As from 1 January 2017, customs controls will be more in line with tax procedures through the revision of some customs procedure rules. For example, the 'right to be heard' has been extended and a new preliminary appeal procedure before Customs has been introduced.

Salary tax exemption regarding salaries paid to expatriates

Remuneration falling within the scope of the expatriates regime (article 155 B of the French Tax Code) and paid to persons who started working in France as of 6 July 2016, will be salary tax exempt. This exemption applies to the salary tax due based on remunerations paid as of 1 January 2017.

The same conditions will apply to this salary tax exemption as to the expatriates regime regarding tax domicile and duration, that is, it will apply until 31 December of the 8th calendar year following the taking-up of office in France.

Credit tax on salary tax

Following the French CICE (tax credit for competitiveness and employment), a credit tax on salary tax has been introduced for certain non-profit organizations. It is based on remuneration included in the basis for the calculation of the salary tax and not exceeding 2.5 times the amount of the French minimum wage (SMIC). It will apply to the salary tax due based on remunerations paid as from 1 January 2017.

The credit tax rate is 4% and it can be carried over up to three years before being reimbursed to the taxpayer if appropriate.

The following non-profit organizations will benefit from this regime: associations governed by the 1901 Law, foundations recognized as being in the public interest, cancer centers, professional unions and specific health mutuals.

Social Security and Solidarity Contribution (C3S)

The C3S is based on the total revenue of a company of the previous year at a rate of 0.13% + 0.03% (additional contribution).

The Government scheduled its progressive removal over three years, through some deduction measures initiated in 2014. However, the announced removal has been abandoned.

In 2017, a new additional contribution is to be introduced, impacting companies whose total revenue is greater than or equal to EUR 1 billion. The rate amounts to 0.04% of the total revenue of the company and is non-exclusive of the actual additional contribution mentioned above. The new additional contribution follows the same practical conditions as the C3S. However, it is based on the total revenue of the company of the year over which it is due (current year).

A 90% payment must be made on 15 December at the latest, and is imputable to the next C3S due in May of the following year.

In practice, the first payment regarding this new additional contribution will be payable at the latest on 15 December 2017, therefore impacting 2017 cashflow.

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Germany

Court rules on correction of invoices with retroactive effect

In a landmark decision (VR 25/16) issued on 20 October 2016, Germany's Federal Fiscal Court (BFH) followed the reasoning of the Court of Justice of the European Union (CJEU) in its 15 September 2016 decision in the *Senatex* case, and held that the correction of an invoice issued by an entrepreneur for a service rendered has retroactive effect from the point in time when the invoice originally was issued. Additionally, the BFH addressed in detail the minimum requirements that an invoice must meet to be able to be corrected, and the time limit for such corrections.

The taxpayer in the case had deducted input VAT on the basis of invoices that the local tax authorities found to be improper because, in their view, the specifications regarding the relevant services were not in the proper format. Thus, the local tax authorities denied the input VAT deduction. After unsuccessfully appealing the denial in an internal appeals procedure with the tax authorities, the taxpayer presented corrected invoices to the lower fiscal court in the course of subsequent court proceedings. The lower fiscal court disallowed the corrected invoices because the invoices did not have retroactive effect from the date the invoices originally were issued.

On appeal to the BFH, the BFH held that an entrepreneur generally cannot be denied an input VAT deduction, even if an invoice is formally incorrect. Thus, in accordance with the current case law of the CJEU, the existence of a correct invoice is a formal requirement but not a substantive condition for the right to deduct input VAT. The BFH determined that if the relevant invoice is corrected by the end of the trial before the lower fiscal court, the correction will have retroactive effect from the date the invoice originally was issued, and must be taken into account for the purposes of the right to deduct input VAT. However, not all invoices can be corrected, according to the BFH. Invoices that are required to be taken into account for VAT purposes must include information relating to the invoicing party, the invoice recipient, specifications of the services rendered and the payment, and the amount of VAT must be separately stated. To be able to be corrected, an invoice must show sufficient information on these items to be considered not so indeterminate, incomplete or obviously false that the invoice is deemed to be missing information.

Comment

The Court's *dicta* regarding the minimum requirements for an invoice to be able to be corrected and the time limit for correcting an invoice is as important as its determination of the retroactive effect of the invoice correction, which may lead to the remission of interest assessed for the period between the issuance of the original invoice and the date it was corrected.

Companies that have paid interest in similar cases in the past should examine whether they have a claim for reimbursement or whether the assessment of interest still may be challenged. Companies that were denied an input VAT deduction due to purchase invoices that were formally incorrect, that were assessed related interest and that filed a formal appeal against the assessment now may refer to the case law of both the BFH and the CJEU to support their position. It is likely that the tax authorities may place less emphasis on the existence of formally correct invoices when conducting audits in future, since the correction of invoices may have retroactive effect and interest no longer may be levied on subsequent payments merely because an invoice is formally incorrect.

Even though the BFH's decision is favorable for taxpayers and ultimately will support their position in many cases, companies should not fail to examine whether the relevant purchase invoices need to be corrected — the legal requirements with respect to an invoice have not been reduced. Therefore, an input VAT deduction on the basis of an incorrect invoice still may be denied, regardless of the possibility that it may be corrected with retroactive effect.

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Gulf Cooperation Council

The six GCC countries have now signed the VAT Treaty

Following the announcement that Saudi Arabia has provided its final approval on 30 January 2017 with regards to the implementation of VAT in the Gulf Cooperation Council (GCC), the Bahrain Minister of Finance Shaikh Ahmed bin Mohamed Al Khalifa has confirmed that Bahrain also signed the GCC's unified VAT agreement on 1 February 2017.

It is understood that the six GCC countries have now all signed the VAT agreement paving the way for VAT introduction across the GCC in 2018. The next steps are for local implementing laws to be agreed in each country.

Businesses with operations in the GCC countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates will be impacted; this is a fundamental change to business operations in a region with little history of taxation. It is therefore crucial that businesses begin preparations to ensure compliance with the VAT law by 2018 if they have not done so already.

KSA Budget 2020 – VAT and excise tax to be implemented

The implementation of both VAT and excise tax in the Kingdom of Saudi Arabia (KSA) was announced in its Fiscal Balance Program: Budget 2020 publication (Budget 2020), and forms an integral part of the KSA's ongoing effort to increase non-oil revenues. These 'revenue levers' are to be implemented from 2017 onwards.

The six member states of the GCC, which includes KSA, agreed in December 2015 to impose VAT at the rate 5%. The KSA Ministry of Finance subsequently signed the VAT agreement for the GCC on December 2016, although the agreement is yet to be published. As stated in Budget 2020, VAT is expected to be implemented in KSA in the first quarter of 2018. Although likely to be broad based, it is expected that several basic items, such as meat and poultry, are to be exempted.

Excise tax is also expected to be implemented on certain 'harmful products' to disincentivize consumption. In December 2015, the GCC agreed to impose a value based 50% excise tax on soft drinks and a 100% tax on tobacco and energy drinks. Again, the KSA Ministry of Finance signed the excise agreement for the GCC in December 2016, although the agreement is yet to be published. Following Budget 2020, excise tax is expected to be implemented in the second quarter of 2017. Currently the scope of the tax is under review, but may include snacks and drinks with a high sugar content which may contribute to the high prevalence of obesity and diabetes within the KSA.

KSA customs duties

The KSA has increased the customs duty rate applied to a wide range of popular products from between 0% or 5% to rates which may reach 25%.

The KSA issued a resolution in 2008 to reduce the customs duty rates on certain highly consumed products in an effort to reduce the financial burden on the consumer. Duty rates were reduced to 0% or 5%. This resolution was intended to be applied for a limited period of time, although was periodically extended.

It is understood that in an effort to generate non-oil revenue and achieve fiscal balance by 2020, the Government has elected to lift the subsidies which were previously applied to certain products, resulting in the reversion to a higher rate of customs duty which may reach 25%. It is understood that these rates are effective as of 2 January 2017, and impacted businesses are currently requested to pay the increased duty rate prior to clearance of shipments at KSA borders. No formal announcement has been published at this time.

UAE sets up Federal Tax Authority

The United Arab Emirates is now a step closer to the implementation of VAT with the issuance of a decree establishing the UAE's Federal Tax Authority (FTA) by UAE President Sheikh Khalifa Bin Zayed Al Nahyan. The decree comes into effect 90 days from publication in the Official Gazette, which was on 29 September 2016.

The FTA will be responsible for the management, collection and implementation of federal taxes, including the issuance of guidelines to taxpayers. It will also be empowered to undertake tax-related inspections, reviews and audits and will be responsible for implementing mechanisms for settling disputes between taxpayers and the FTA.

The FTA will coordinate with the federal government, UAE governments and taxpayers on all tax matters and will represent the UAE in regional and international meetings and conferences concerning taxation.

The decree also stipulates that federal tax revenues and penalties collected by the FTA will be deposited in an independent account pending their distribution to the federal and local governments, although the mechanism of distribution is yet to be set by a resolution issued by the Cabinet. This will be based on recommendations by the minister and through an agreement between the federal and local governments.

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Italy

Review of VAT amendments for fiscal year 2017

In light of the recent legislative changes that already apply for the fiscal year 2017, below is an update of the new/revoked VAT obligations and relevant deadlines:

- **FY2016 VAT return**: New deadline for final submission to the tax authorities (28 February 2017). The new form available on the official website of the tax authorities includes the new 'VG' section to be filled in, for the offsetting procedure between the VAT credit and debt positions related to single companies of the same group; this new section will replace the previous 'IVA26' form that will no longer be submitted.

- **Quarterly communication of invoices and customs bills**: New reporting obligation from FY2017, on a quarterly basis (within the 2nd month following the last month of each quarter, except for some derogative measures applicable in the start-up period covering only the first six months of 2017).

- **Quarterly communication of VAT calculations**: New reporting obligation from FY2017, on a quarterly basis (within the 2nd month following the last month of each quarter).

- **Letter of intent**: New form approved by the tax authorities on 2 December 2016. The new form will no longer include the field related to the validity time period; with Resolution n° 120/E (dated 22 December 2016), the tax authorities have also clarified that the new form will be mandatory from 1 March 2017, while the previous form will be still available until this date.

- **Removal of Intrastat obligations for EU acquisitions**: As confirmed by the Customs authorities, with note n° 244/RU (dated 10 January 2017), the form for EU acquisitions (INTRA-2 form) has been deleted. EU acquisitions for the December/IV quarter 2016 had to be declared for Intrastat purposes, by 25 January 2017.

- **Removal of annual *Spesometro* communication**: The FY2016 *Spesometro* communication will be the last one to be submitted on a yearly basis, by 10 April 2017 (for monthly taxpayers) and 20 April 2017 (for quarterly taxpayers).

- **Removal of the annual VAT communication** from FY2016.

- **Removal of the annual 'black list'** from FY2016.

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VAT treatment of bunkering of petroleum products

With Ruling No 1/E of 9 January 2017, the tax authorities clarified the VAT treatment of supplies of fuel carried out on board of ships (i.e. so called 'bunkering') in the light of the Union Customs Code in force from 1 May 2016.

The case analyzed by the authorities was (as in the Court of Justice of the European Union case *Fast Bunkering Klaipëda*) of a ship requiring fuel, where:

- Its owner contacts for this purpose an intermediary and indicates to the intermediary the relevant information;
- The intermediary thus chooses a supplier and orders the fuel to be delivered on board of the ship;
- Two transfers of the fuel's ownership take place (i.e. the first one to the intermediary, and the second one to the ship's owner with direct delivery carried out by the petrol company on the ship's tank).

In this respect the authorities outlined that in the light of the UCC, the bunkering will not be considered an export for customs purposes from 1 May 2016, affirming that goods supplied within a bunkering will also not be considered exported for VAT purposes from that date.

Revoking previous clarifications issued with Resolution n. 101/E dated 2002 on the same matter, the authorities concluded that both the above transfers of the fuel's ownership can be treated as zero-rated transactions for VAT purposes, according to art. 8-bis, par. 1, let. d) of the Italian VAT law, which refers to transactions assimilated to exports (rather than according to art. 8, which refers to export transactions, as previously applied).

In the conclusion of the ruling the authorities recognized that, due to the objective uncertainty conditions, no penalties are applicable for the VAT treatment applied in the past according to the abovementioned previous Resolution.

Excise duty update

Annual returns of the consumption of electricity and natural gas for the year 2016 must be electronically submitted to the Customs and Monopoly Agency by 31 March 2017. In this respect, the Agency has published the relevant forms and completion guidelines.

Furthermore, the Agency's Director issued on 27 December 2016 Decision No 125237/RU to postpone to 1 January 2018 the deadlines within which i) electronic documents must be used for moving products subject to excise duty, lubricants and petroleum bitumen, and ii) accounting data must be electronically transmitted to the Agency by some small commercial warehouses.

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Luxembourg

Increase in penalties and joint liability for persons in charge of management

The tax reform (law voted by the Parliament on 14 December 2016) introduces significant increases to penalties applicable for infringements of the VAT law. It also introduces a joint liability for persons in charge of management.

These changes apply from 1 January 2017.

These new measures highlight the reinforcement of the authorities' actions to ensure a proper functioning of the VAT system. This action has been illustrated in recent years by the increased number of VAT audits, and reinforced more recently by the number of electronic audit files (so-called 'FAIA') to be completed by taxpayers.

Accordingly, increasingly, taxpayers should consider carefully their VAT position, implement efficient processes and monitor their VAT obligations to maintain compliance with the VAT law.

Increase in penalties

The first change concerns penalties that may be applied by the VAT authorities for infringement of the VAT law or non-communication of documents or information. Penalties applicable to infringement of the VAT law, such as late filing of VAT returns, filing of incomplete VAT returns or the issuance of non-compliant invoices, are increased to EUR 250 to EUR 10,000 per infraction, instead of EUR 50 to EUR 5,000. For non-communication of information or documents, the penalties are increased to a maximum of EUR 25,000 per day instead of EUR 50 to EUR 1,000.

When the infringements of the VAT law are made with the result or the intention to elude the payment of the VAT or to obtain irregularly a reimbursement of the VAT, a penalty of 10 to 50% of the eluded or reimbursed VAT is applicable.

These infringements are punished as 'aggravated tax fraud' (*fraude fiscale aggravée*) when certain thresholds are exceeded per tax period:

- One-fourth of the VAT due or reimbursed, not being lower than EUR 10,000; or

- EUR 200,000 of the VAT due or reimbursed.

In these cases, the penalties applicable are fines from EUR 25,000 to six times the eluded or irregularly reimbursed tax and an imprisonment of one month to three years.

These harsh sanctions apply even if the infringement is committed without intention to elude the payment of the tax or obtain irregularly a reimbursement of VAT. A good faith taxpayer may thus be subject to these sanctions if these thresholds are exceeded.

Joint liability of persons in charge of management

The tax reform introduces a joint responsibility for persons in charge of the daily management of a taxpayer entity (managers, directors, etc., including *de facto* managers) when these persons commit a fault in the execution of their tasks. These persons are jointly liable for payment of the VAT due by the taxpayer entity because of their fault. In addition, the VAT authorities may also ask for a guarantee (*appel en garantie*) from these persons.

VAT authorities publish Circular on directors' fees

On 30 September 2016, the VAT authorities published Circular n° 781 regarding the VAT treatment of director services, and a comprehensive list of 'frequently asked questions' available, in French, on their website: FAQs.

The Circular confirms that director services constitute an economic activity granting the status of taxable person for VAT purposes.

VAT applies on these services when they are located in Luxembourg by virtue of the place of supply rules. As a consequence, not only are director services rendered by a Luxembourg director subject to VAT (at the normal VAT rate of 17%), but, also, VAT must be self-assessed by each company considered as a taxable person and receiving such services from a non-Luxembourg director, based on the reverse charge mechanism. This could lead to a final cost of 17% for companies that have no VAT deduction right, unless an exemption applies for these director services. In their 'frequently asked questions', the VAT authorities have provided a reminder that the taxable amount for VAT includes any amount paid to directors for their services, including the withholding tax applicable to director fees.

Luxembourg directors will have to be VAT registered as from 1 January 2017 at the latest, and will have to file VAT returns to report their director fee income. This VAT registration obligation does not apply to employees representing their employer as a director of companies. In such cases, the obligation for VAT registration and the filing of VAT returns remains at the level of the employer.

The Circular includes a reminder that services carried out within the framework of an honorific activity can benefit from the exemption in article 44.1. w) of the VAT law if the amounts received by the director qualify as a reimbursement of costs.

The Circular also includes a reminder that directors can opt for the 'small enterprises' regime available for taxable persons with an annual turnover of less than EUR 30,000 per year. In this case, the turnover will be exempt from VAT, and the director will be subject to limited VAT obligations. However, even when this regime is applicable, VAT registration remains mandatory.

Even though it is not mentioned in the Circular, it is commonly understood that the services of directors of investment funds and other entities referred to in article 44.1.d) of the VAT law can be VAT exempt when they qualify as 'specific and essential' for the activity of the fund.

The Circular applies from 1 January 2017.

Increase in VAT threshold for small enterprises

The threshold for the VAT small enterprise regime (individuals or companies) is increased from EUR 25,000 to EUR 30,000 (VAT excluded) turnover per year.

Abolition of obligation to register rental agreements

The obligation to register rental agreements is abolished as from 1 January 2017.

Even though it was not always complied with in practice, Luxembourg law imposed an obligation to register any type of rental. This obligation included rents concluded between individuals for private dwellings. The Luxembourg legislator has recognized the obsolescence of this rule and of its main legal effect, being to provide a 'certain date' (*date certaine*).

It is important to note that when a rent is voluntary registered, the 0.6% registration duty will remain due, and that a rent for which the option for VAT has been exercised is automatically registered at the fixed rate of EUR 12.

Mandatory change of filing platform for VAT returns – eCDF

As from 1 January 2017, the use of the eCDF platform will be mandatory for the filing of periodic and annual VAT returns. The eCDF platform has been accessible for the filing of the VAT returns from the beginning of 2016, and throughout 2016 taxpayers have had the option to file their VAT returns either through the eCDF or through the eTVA platform. This option is not available in respect of EC Sales Lists, however, which can currently only be filed though the eTVA platform.

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Netherlands

Tax Plan 2017 adopted by House of Representatives and Senate – changes in VAT law effective 1 January 2017

The draft bills to amend the VAT law that were announced in the annual budget have been adopted by both the House of Representatives and the Senate. The changes were published in the *Staatsblad* (Bulletin of Acts) and are effective as of 1 January 2017. The changes of law include three VAT changes, as follows.

VAT exemption for water sports associations amended

Following infringement proceedings by the European Commission, the VAT exemption for water sports associations is amended as of 1 January 2017. The legislative text is amended so that application of the exemption will solely be excluded for making available berth and storage locations for vessels that based on objective features are not suited for practicing sports. The interpretation of the sports exemption by the Netherlands was too narrow.

Change to definition of 'building land'

The supply of building land is subject to VAT and in principle exempt from real estate transfer tax in the Netherlands. The Dutch VAT Act has been aligned with Court of Justice of the European Union case law. The definition of 'building land' has been replaced by a broader definition: 'land being intended to build upon'. This must be apparent from an overall assessment of the factual circumstances at the time of transfer, including the intention of the parties as supported by evidence.

This amendment of the law means that parties no longer need to directly invoke the EU Principal VAT Directive to apply the expanded definition. On the other hand, taxpayers will no longer be able to opt for the levy of VAT or real estate transfer tax if a supply turns out to be 'building land' under the VAT Directive but not under Dutch VAT legislation.

Simplification of VAT bad debt relief legislation

Furthermore, a simplification of the VAT bad debt relief legislation has been introduced.

The main purpose of the revisions is to simplify the refund process for VAT in cases of bad debt when the invoice will not be paid, and to enhance legal certainty for taxable persons.

The taxable person is now automatically entitled to bad debt relief one year after an invoice is claimable. The VAT can be recovered via the periodic VAT return, instead of filing a separate request for the refund of VAT. If, at a later stage, it appears that the payment will be made, the taxable person needs to correct this via the periodic VAT return.

This new regime will also apply by law when a debt is transferred. It is then the acquirer that can claim back the refund of VAT. In that case, the acquirer must lodge a request for the refund with the tax authorities.

If VAT is deducted on a debt that is not paid within the one year period, the debtor will have to repay the VAT that the debtor has deducted. If the debtor pays at a later stage the VAT can then be deducted.

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Portugal

VAT exemption applicable to non-conventional medicines

Law no. 1/2017, dated 16 January 2017, has been published approving an interpretative amendment to Law no. 71/2013, dated 2 September 2013, regulating the performance of non-conventional health professions, to apply to activities performed by non-conventional health professions the same VAT exemption regime that applies to paramedical professions.

Excise duty rates applicable to petroleum and energy products

In accordance with the review periodically undertaken by the Government of the excise duty rates applicable to petroleum and energy products, Decree no. 345-C/2016, dated 30 December 2016, has been published by the Ministry of Finance.

In this context, the excise duty rate applicable to gasoline products classified by commodity codes 2710 11 41 to 2710 11 49 is reduced to EUR 548.95 per 1,000 liters (previously, the applicable rate was EUR 568.95 per 1,000 liters). In addition, the excise duty rate applicable to diesel products classified by the commodity codes 2710 19 41 to 2710 19 49 increases to EUR 338.41 per 1,000 liters (previously, the applicable rate was EUR 318.41 per 1,000 litres).

The effects of this change entered into force on 1 January 2017.

Update on new excise duty refund scheme for road freight companies

Systems used for registration and control of fuel supplies

The tax authorities have published Administrative Ruling no. 35.066, dated 30 December 2016, concerning the validation of the systems used for the registration of fuel supplies, to be complied with by fleet card issuers and also gas stations, under the excise refund scheme (briefly described in the September 2016 edition of GITN). The scheme applies to supplies made in gas stations located in all Portuguese territory since 1 January 2017 (until 31 December 2016, the tax authorities were only undertaking a test of their control systems, in selected pilot regions).

In broad terms, under the Administrative Ruling, fleet card issuers must request such validation from the tax authorities. The system used by the fleet card issuers must be able to:

(i) Ensure the accuracy of the information to be communicated to the tax authorities,

(ii) Comply with the technological requirements that allow the communication, and

(iii) Use a unique identifier per acquirer and vehicle (namely, through a fleet card system).

The validation is mandatory; road freight companies using fleet cards in gas stations located in Portugal other than those previously validated by the tax authorities will not be able to request the excise duty refund. The relevant data must be electronically communicated, by the 15th day of the month following the fuel supply, by the entities that issue fuel fleet cards or by their representatives in Portugal, and by the entities that issue other control mechanisms authorized by the tax authorities (including own-consumption facilities). Accordingly, it is important that the request is made in a timely basis, so road freight companies can benefit from the scheme as soon as possible.

Fuel supplies in own consumption facilities

Decree no. 17/2017, dated 30 December 2016, has been published by the Ministry of Finance, approving an addendum to the excise duty refund scheme, stating that the communication of fuel supplies made in own-consumption facilities, in the pilot regions between 15 September and 31 December 2016, should be made monthly by each acquirer.

Additionally, for fuel supplies made in or for own-consumption facilities between 1 January 2017 and 31 December 2018, the following transitional regime applies:

- The fuel deposits located in own-consumption facilities may be used both by vehicles eligible for excise duty refund and non-eligible vehicles;
- The refund scheme is applicable to both marked and unmarked diesel;
- The respective refund is processed by each fuel supply made to vehicles.

Procedures for holding non-alcoholic drinks with sugar added in an excise warehouse

Decree no. 32/2017 was published on 18 January 2017, implementing a special regime that regulates the procedures for the holding of excisable products (in this specific case non-alcoholic drinks with sugar added) in an excise warehouse and the movement of excisable products in and out of the warehouse (i.e. for products in excise duty suspension). The main objective is to simplify the procedures required to receive, store and dispatch excise products under in duty suspension arrangements.

The effects of this Decree enter into force in 1 February 2017.

- Excise warehouse approval and authorized warehousekeeper

  Under the Decree, taxpayers that intend to receive, store and dispatch excise products under duty suspension must obtain an authorization as warehousekeeper and approval for the constitution of either a manufacturing warehouse or a general storage warehouse, by applying to tax and customs authorities, through the filing of an e-form. Approval must be communicated within a ten-day period by the tax and customs authorities.

  When the owner of the excise goods is an authorized warehousekeeper, it is required to comply with the following reporting obligations, which apply for both manufacture and general storage warehouses:

  - To maintain a stock system control and respective accounting; and
  - To cooperate with the customs authorities with any audit or inspection to be performed, namely by giving access to the control systems if required.

With respect to a manufacture warehouse, the authorized warehousekeeper must comply with specific requirements, namely:

- Commercial activity must be linked to the manufacturing of non-alcoholic drinks; and
- The warehousekeeper must present an annual projected production plan of non-alcoholic drinks.

- Excise warehouse operations

  Different obligations are required depending upon whether the authorized warehousekeeper has established a manufacture warehouse or a general storage warehouse. For instance, for a manufacture warehouse, the Decree defined obligations for the warehousekeeper to control the production and storage quantities and update information.

  For an authorized warehousekeeper storing excise products under duty suspension in a general storage warehouse, it is mandatory to provide a bank guarantee to cover the excise products’ movements.

  In addition, the Decree also provides that it is possible to receive and store products that are both subject and not subject to excise duty in the same general storage warehouse, provided the respective systems control is maintained under split accounting.

- Registered consignees

  The Decree also includes the possibility for excise duty products’ owners to apply for the position of registered consignees. Taxpayers operating under this registration must account for excise duty as soon as they receive the excise products, as they are not authorized to store excise products under duty suspension arrangements.

- Movement of excise duty products under suspension arrangements

  According to the Decree, excise products may be dispatched under duty suspension arrangement if the movement of the excise goods occurs in the following situation:

  - From one import warehouse to an excise warehouse, register consignees, to another Member State and to an exportation warehouse; and
  - From one excise warehouse to another excise warehouse, register consignees, to another Member State and to an exportation warehouse.

- Information report

  The tax exempt non-alcoholic drinks must be reported by the commercial operators responsible for the production, importation or entry onto Portuguese territory through the 'consume introduction' declaration. The declaration including the information to be reported regarding the first semester must be filed between 1 July and 15 July of the current year. The declaration including the information to be reported regarding the second semester must be filed between 1 January and 15 January of the following year.

- Transitional provisions

  Economic operators that carry out activities related to the production, storage or commercialization of non-alcoholic drinks must acquire the status of either authorized warehousekeeper or register consignee by 2 February 2017. The customs authorities must communicate the decision and approval within five days of the request.

  Economic operators that carry out activities related to the production, storage or commercialization of non-alcoholic drinks must account for existing stock at 1 February 2017, which are considered as produced, imported or acquired at such date. Excise products released into consumption from 1 February onwards are subject to excise duty.

  All the releases that will occur in February may be declared under a global declaration that can be extended for one month, if duly authorized by the customs authorities.

  After 1 February, all traders of non-alcoholic drinks that sell products directly to end consumers must acquire or receive products further to which excise duty was already duly paid. The traders must report to the local customs office, by 15 April, the quantities of products in storage as at 31 March with unpaid excise duty.

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Romania

Reduction of VAT rate to 19%

From 1 January 2017, the standard VAT rate in Romania decreased from 20% to 19%.

The reduced VAT rates remain unchanged.

Introduction of agricultural flat rate scheme

As of 1 January 2017, Romania transposed into its domestic tax laws the common flat rate scheme for farmers under the EU Principal VAT Directive. Previously, Romania had elected not to transpose this optional scheme.

The compensation percentage for 2017 is 1%.

Repeal of Register of Intra-Community Operators

A taxable person registered for VAT purposes had to register in the Register of Intra-Community Operators (RIO) to access the VIES database and hence be able to use its VAT ID number for intra-Community transactions.

The obligation for taxable persons to register in the RIO has been repealed, with effect from 1 January 2017.

The repeal was based on the fact that there are other, more effective, methods to prevent tax evasion with respect to intra-Community transactions. As such, it could no longer be justified to restrict the access of economic operators to a valid VAT ID code for intra-Community transactions through inclusion in a specific registry.

VAT deduction when VAT ID code of taxable person is cancelled

From 1 January 2017, favorable measures have been established with respect to VAT deduction in situations in which a taxable person has their VAT ID number cancelled by the tax authorities:

- The taxable person will exercise the VAT right of deduction for the goods and/or services purchased in the period in which the VAT ID number was cancelled, by reporting it in the VAT return(s) submitted after registration, even if the invoice does not include the VAT ID number of the taxable person.

- The recipients of the supplies of goods/services made by taxable persons that have had the VAT ID number cancelled when the transactions took place can exercise their right to VAT deduction in respect of those acquisitions after the reactivation of the supplier's VAT ID number.

This measure was taken to ensure the equal tax treatment of taxpayers that regain their VAT ID code, through the reinstatement of their rights, and recipients that purchased goods/services from them during the period when the former did not have a valid VAT ID number.

VAT registration form repealed

The obligation to submit Form 088 Affidavit to assess the intention and capacity to undertake economic activities involving operations for VAT purposes, when registering for VAT or at the request of the tax authorities, has been repealed from 1 January 2017.

This form gave rise to significant issues, especially for taxpayers already carrying out VAT activities. Completing the form involved collecting consideration information from the key people in the organization, a time consuming operation, which generated, in some cases, the cancellation of the VAT ID code for registered persons or a longer process for registering for VAT purposes.

The overall impact of the form was negative, as a number of legitimate taxpayers faced significant difficulties due to the form, while there was no clear, documented evidence regarding its impact in combating tax fraud.

New methodology for computation of contributions, taxes, penalties and other amounts owed to the environmental fund

In June 2016, new contributions and compliance obligations were introduced for operators dealing with Electrical and Electronic Equipment (EEE) and batteries in Romania.

To implement these changes, a new methodology was enacted, which adds to the conditions that must be met individually to fulfil waste packaging recovery targets (using own packaging waste or packaging waste generated by other companies).

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Russia

Update on VAT regulation on e-services rendered by foreign companies

From 1 January 2017, foreign companies rendering e-services on Russian territory are liable to pay VAT. There have been a number of updates in this respect, as follows.

- **Federal Tax Service launches online registration service for foreign companies providing e-services**

  The Federal Tax Service has launched the VAT Office for Online Service Providers, which grants foreign companies the opportunity to take an online test to check whether it is necessary to register with the tax authorities, as well as the ability to submit an application for registration with the tax authorities.

  After registration, foreign companies gain access to an online personal account through which VAT returns can be filed, and documents and letters can be exchanged with the tax authorities.

- **Application for registration with the tax authorities approved for foreign companies rendering e-services**

  Federal Tax Service Order No. MMB-7-14/677@ of 12 December 2016 approved the form for the application for registration for foreign companies rendering e-services, and the procedure for filling it in and the format for its submission to the tax authorities.

- **Clarifications regarding the registration of foreign companies rendering e-services with the tax authorities**

  Ministry of Finance Letter No. 03-02-07/2/78767 of 28 December 2016 clarified that the registration of foreign companies rendering e-services with the Russian tax authorities is made based on the following documents:

  - Application for registration;

  - Extract from the register of foreign legal entities of the relevant country of incorporation or another legal document confirming the legal status of a foreign company along with the translation into Russian (notarization of the translation is not required).

  The date of the registration is the date of entry of the information on the foreign company into the single state register of taxpayers.

- **New VAT declaration approved for foreign companies rendering e-services**

  Federal Tax Service Order No. MMB-7-3/646@ of 30 November 2016 approved the form of the new VAT declaration for foreign companies rendering e-services, and the procedure for filling it in and the format for its submission to the tax authorities.

- **Ministry of Finance clarifies issues related to obligation to pay VAT in the situation where a foreign company renders intermediary services to Russian companies**

  Ministry of Finance Letter No. 03-07-15/68380 of 21 November 2016 clarified that a foreign company rendering e-services to Russian companies that are intermediary services of establishing the contact between partners (drivers) and their clients (passengers) for the purpose of rendering transportation (taxi) services and services on making settlements between Russian companies and their clients is not subject to registration with the tax authorities. In this situation, Russian companies acting as tax agents with respect to e-services rendered by a foreign company should account and pay VAT to the tax authorities starting from 1 January 2017.

Amendment to list of goods subject to reduced VAT rate of 10% and list of medical goods exempt from VAT

Russian Federation Government Resolution No. 1377 of 17 December 2016 amended the list of food products and goods for children subject to the reduced VAT rate of 10%. Russian Federation Government Resolution No. 1581 of 31 December 2016 amended the list of medical goods exempt from VAT. The amendments are mostly of a technical nature and are connected with the expiry of the All-Russian Classifier of products OK 005-93 and transfer to the new version of the All-Russian Classifier of products of economic activity OK 034-2014.

The amendments came into force on 1 January 2017.

Licensing of import of macadam, gravel and crush of macadam, gravel and sand

Resolution of the Russian Government of 24 December 2016 No. 1478 introduced import licensing for macadam, gravel and crush of macadam, gravel and sand imported into Russia from countries that are not members of the Eurasian Economic Union.

The import licensing is applied with regard to macadam, gravel and crush of macadam, gravel and sand classified under classification codes 2517 10 100 0, 2517 10 200 0, 2517 10 800 0, 2517 49 000 0 from countries that are not members of the Eurasian Economic Union, when the said goods are placed under the customs procedure of release for internal consumption.

The import licensing with regard to macadam, gravel and crush of macadam, gravel and sand applies from 1 January 2017 to 30 June 2017 inclusive.

The Resolution was effective from 5 January 2017.

Initiative to introduce excise duty on alcohol-containing non-food products, household chemicals and cosmetics

The Russian Government has put forward an initiative to introduce excise duties on alcohol-based tinctures, household chemicals and cosmetics.

The initiative proposes treating all alcohol-containing non-food products as excisable and repeal the zero percent excise duty rate for certain types of cosmetics and household chemistry.

It is assumed that the excise tax will also apply to all medications containing alcohol, except for the items on the List of Vital and Essential Medical Drugs.

It is also proposed that distribution of ethanol be subject to registration in the Unified State Automated Information System (USAIS) for control of production and sale of alcohol.

The Russian Government has already instructed the Ministry of Finance to prepare respective legislative amendments providing for the imposition of the excise tax on alcohol-containing cosmetics and medications, except for the items on the List of Vital and Essential Medical Drugs.

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Serbia

Harmonization of domestic tax legislation

On 28 December 2016, Serbia adopted several amendments to the VAT law, primarily with the purpose of harmonizing domestic tax legislation with the legislation of the European Union. The most important amendments relate to changes concerning the place of supply of services and the situations in which a foreign person needs to appoint a fiscal representative and register for VAT when performing taxable supplies of goods and services in the Republic of Serbia.

Place of supply of services

The rules regarding the place of supply of services, which will come into force on 1 April 2017, will be aligned with the EU rules, meaning that:

- For **B2B services**, the place of supply will be the place of the recipient's head office or a permanent establishment, and

- For **B2C services**, the place of supply will be the place where the service provider has its head office or a permanent establishment.

There will be certain exceptions to these general rules, namely:

1. **Supply of services related to real estate**, including intermediation services in real estate transactions – the place of supply of services is deemed to be the place where the real property is located, as previously;

2. **Transport of people** – the place of supply is deemed to be the place where transport is carried out; if transport is performed both in the Republic of Serbia and abroad, the VAT law provisions apply only to the part of transport carried out in the Republic of Serbia;

3. **Transport of goods, supplied to a person who is not a taxpayer** – the place of supply is deemed to be the place where the transport is carried out; if transport is performed both in the Republic of Serbia and abroad, the VAT law provisions apply only to the part of the transport carried out in the Republic of Serbia;

4. Supply of certain services regarding which **the place of supply is deemed to be the place where services are actually rendered** (such as, e.g. ancillary services related to transportation, services regarding valuation of movable property, etc.);

5. **Hiring of means of transport for a shorter time period** – the place of supply is the place where a transport vehicle is put at the recipient's disposal;

6. **Hiring of means of transport to a person who is not a taxpayer** – the place of supply is the place of the recipient's head office or permanent address;

7. **Other exceptions:** supply of certain types of services to a person who is not a taxpayer – the place of supply will be the recipient's head office or permanent address.

It has also been announced that the Ministry of Finance will prescribe in detail which services will be deemed to be services related to real estate, services related to the supply of food and drink, hiring of means of transport, and other movable property.

Fiscal representative

The new rules regarding fiscal representatives prescribed by the VAT law came into force on 1 January 2017.

Namely, where a foreign person makes taxable supplies of goods and services in the Republic of Serbia, the person will be obliged to designate a fiscal representative and register for VAT when making taxable supplies to non-VAT payers, regardless of the value of taxable supplies in the previous twelve-month period.

On the other hand, there will be no obligation to appoint a fiscal representative and register for VAT for supplies made to VAT payers and to the Republic of Serbia, its authorities and legal persons established by the Republic of Serbia, considering that the reverse charge mechanism will apply in these cases, or for a supply of passenger transport services by buses, for which the VAT base will be computed as the average fee for an individual transport.

Amendments to the Tax Procedure and Tax Administration Law, which came into force on 1 January 2017, prescribe fines for non-compliance with this provision. The fines amount to:

- Approximately EUR 800 to EUR 16,200 for legal entities; and
- Approximately EUR 40 to EUR 1,200 for taxpayers – natural persons.

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South Africa

Draft Rule amendments – SADC – EU EPA and MERCOSUR

The South African Revenue Service published amendments to the Rules of the Customs and Excise Act No 91 of 1964 for public comment. The amendments were effected as a result of the Economic Partnership Agreement between the SADC EPA states and the European Union as well as the Preferential Trade Agreement between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU) that came into effect in the latter part of 2016.

Comments on the proposed amendments were due to SARS by 20 January 2017.

Safeguard measures on EU bone-in chicken

On 15 December 2016, a provisional payment of 13.9% was imposed in relation to the safeguard duty on frozen bone-in chicken portions originating from the EU. The provisional payment will be imposed until 3 July 2017.

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Turkey

Customs duty amendments

Supplementary Decree numbered 2016/9640 to the Import Regime Decree was published on 31 December 2016.

Additional customs duty will be imposed on the import of goods such as leather, garments and accessories made of fur, garments and accessories made for babies, gloves, shawls, scarves, foulards, neckerchiefs, hats, caps – up to 30% additional customs duty will apply.

Additional customs duty will be imposed if the goods are not from Turkey or the European Union, even if the goods are imported with A.TR Movement Certificate. However, imports from countries with which Turkey has a free trade agreement and which are included in the system of cross cumulation of origin will not be subject to the additional customs duty where the origin can be authenticated.

Finally, additional customs duty has been imposed on goods classified under position 6110.12, and a related provisional clause regarding the collection of additional customs duty on the import of such goods has been added.

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Ukraine

Extension of currency restrictions

On 13 December 2016, the temporary restrictions currently applied on the monetary and foreign exchange markets were extended by the National Bank of Ukraine for an indefinite term due to the existing price and financial stability risks.

In particular, the following restrictions continue to apply from 16 December 2016:

- One-day Ukrainian Hryvnia reservation for the purchase of foreign currency on the interbank currency market
- Ban on the early repayment of loans from non-residents (subject to some exceptions)
- Restriction on the discontinuance of exchange control over export operations on the grounds of documents confirming the discharge of obligations through the offset of similar counterclaims (subject to some exceptions)
- Ban on the purchase/transfer of foreign currency for the purpose of paying back funds to foreign investors abroad following the sale of securities, except the sale of debt securities on stock exchanges
- Ban on the purchase/transfer of foreign currency for the purpose of paying dividends, except for the purchase/transfer of foreign currency to pay dividends for 2014 and 2015

- Ban on the purchase of foreign cash by one individual from one bank/financial institution in the amount that exceeds the equivalent of UAH 12,000 (approximately USD 440) per day, except when foreign currency is purchased and immediately used only for the repayment of debt under a loan agreement

- Foreign cash withdrawals from foreign currency accounts are restricted to UAH 250,000 (approximately UAH 9,260) per day per client, etc.

All restrictions apply for an indefinite term until a special decree issued by the National Bank of Ukraine, except for the following, which will continue to apply over the next six months, i.e. up to 15 June 2017, and may be changed or extended, if necessary:

- The mandatory sale of 65% of foreign currency earnings of legal entities; and

- A 120-day deadline for making payments for exported and imported goods.

The above changes are brought into effect by the Decree of the National Bank of Ukraine "On regulation of the situation on the monetary and foreign exchange markets of Ukraine" No. 410 dated 13 December 2016.

Simplification of the export of services

Law of Ukraine "On amending certain laws of Ukraine regarding the removal of administrative barriers to the export of services" No. 1724-VIII dated 3 November 2016 came into force on 3 January 2017.

The Law simplifies the procedure for concluding foreign economic contracts for the export of services from Ukraine, for currency earnings crediting, as well as accounting and financial reporting procedures.

Amendments introduced by the Law:

- Foreign economic contracts for the export of services (except transport services) may be concluded not only in written form but also in electronic format, as well as by accepting a public offer, by the exchange of electronic notifications or issue of an invoice.

- Documents made in English or in other foreign languages accompanied with English translation are no longer required to be translated into Ukrainian for currency control purposes.

- An invoice is recognized as a source document. It may be signed in person, bear an equivalent of a handwritten signature, electronic signature or electronic digital signature.

- Export of services (except transportation and insurance services), intellectual property rights, copyright and related rights are no longer under bank control with respect to currency proceeds repatriation.

The Law applies to all Ukrainian legal entities and individual entrepreneurs.

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United Kingdom

VAT zero-rating for adult coloring and dot-to-dot books

The tax authorities (HMRC) have updated their policy on adult coloring and dot-to-dot books, see Revenue and Customs Brief 17 (2016): VAT – treatment of coloring and dot-to-dot books.

In HMRC's view, a coloring book or dot-to-dot book does not qualify for zero-rating as a 'book', since it is designed to be completed rather than read or looked at. Nevertheless, HMRC have accepted that zero-rating applies where such publications are 'suitable' for children (as children's coloring books are zero-rated under a different provision).

Therefore, where adult coloring books are held out for sale with books that are clearly for adults, or where they depict (for example) profanity or violence, they will not qualify for zero-rating. However, provided that they are suitable for children (even if they are actually intended for adults), HMRC will accept that zero-rating applies.

Role of courts is not to exercise HMRC's discretion about self-billing for VAT purposes

In *GB Housley*, the Court of Appeal has discharged an assessment raised on a scrap metal dealer. The Court held that HMRC should not have assessed GB Housley simply for failure to formalize self-billing agreements with its suppliers (several of whom should not have been VAT-registered). Instead, HMRC should also have considered whether there was alternative evidence which supported input tax recovery. As it was not completely clear that HMRC would have assessed if they had considered this evidence, the Court discharged the assessment.

Although this is a success for the taxpayer, the judgment shows the need for taxpayers to take care when using self-billing agreements, in order to minimize any risk of challenge.

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Eurasian Economic Union

New Customs Code of Eurasian Economic Union being finalized

Currently the main document regulating customs relations in the Eurasian Economic Union (EAEU) is the Customs Code of the Customs Union effective from 2010. Negotiation of the new Customs Code of the EAEU is currently being finalized. It is planned that the new Customs Code of the EAEU will replace the existing Customs Code of the Customs Union.

The draft of the Customs Code of the EAEU merges various international agreements in the framework of the EAEU. The draft of the Customs Code of the EAEU also provides for, in particular, the following amendments:

- Priority of electronic customs declarations of imported goods and the possibility of customs declarations in writing only in exceptional cases;

- The possibility of automatic performance of certain customs operations by the informational system of the customs authorities without the participation of customs officers;

- Amendment of regulation on authorized economic operators: the introduction of various types of authorized economic operators.

The Customs Code of the EAEU is expected to enter into force not earlier than 1 July 2017.

Introduction of updated commodity nomenclature of EAEU from 2017

The commodity nomenclature of the foreign economic activity of the Eurasian Economic Union (CN FEA of EAEU) is based on the International Convention on the Harmonized System (HS), which is administered by the World Customs Organization. The HS Convention includes commodity nomenclature that is used by almost all of the world for the construction of national tariffs.

Before 1 January 2017, the CN FEA of EAEU was based on the 5th edition of the HS. From 1 January 2017, the 6th edition of the HS is effective, and the CN FEA of EAEU was updated accordingly.

There are 233 amendments introduced in the HS in 2017 (and, accordingly, in the CN FEA of EAEU), including 85 amendments on agricultural goods, 45 amendments on chemical goods, 13 amendments on wood goods, 15 amendments on textile goods, 6 amendments on non-precious metals, 25 amendments on machinery goods, 18 amendments on transport vehicles and 26 amendments on other goods.

It is recommended that companies monitor the updates in the CN FEA of EAEU in order to correctly declare the classification code at the customs declaration of imported goods.

Requirement to equip transport vehicles with emergency call devices

According to the Technical Regulation of the Customs Union "On safety of wheeled vehicles", approved by the Decision of the Commission of the Customs Union of 9 December 2011 No. 877, generally from 1 January 2017 it is required to equip vehicles released into circulation on the customs territory of the Eurasian Economic Union (e.g., imported into Russia) with emergency call devices.

According to the Decree of the Russian Ministry of Internal Affairs, Ministry of Industry and Energy, Ministry of Economic Development of 23 June 2005 № 496/192/134, from 1 January 2017, the information on emergency call devices should also be included in the certificates of safety of transport vehicles which are required for issuance of passport of transport vehicle.

The passport of transport vehicle may still be issued if there is provided a valid certificate of safety issued before 1 January 2017 and containing no information on emergency call devices.

The Technical Regulation entered into force on 30 December 2011 and the relevant version of the Decree entered into force on 25 December 2015.

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

The Decision of the Council of Eurasian Economic Commission of 30 November 2016 No. 124 includes in the list of goods that may be placed under the special customs procedure, goods that are used for the organization and holding of official international exhibitions.

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

Decision No. 124 came into effect on 22 January 2017.

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