

## Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include indirect tax reforms in Colombia and Mexico, increased export VAT refund rates in China and indirect tax measures set out in the UK's Autumn Statement.

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

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## OECD

### OECD

The OECD has launched a business survey on direct and indirect tax certainty.

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# Country summaries

## Americas

### Colombia

The draft tax reform includes a number of changes to indirect taxes, including:

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- Changes to the events that trigger VAT, such as, VAT on real property, intangible goods, lotteries, and services rendered both on Colombian territory and abroad if recipients are located in Colombia.
- A consumption tax on sugary drinks and an increase in consumption tax for cigarettes.
- The creation of a new tax on the sale of gasoline by oil refiners and importers.
- The creation of a new tax on carbon.

### Mexico

Congress has approved the 2017 tax reforms, including VAT changes in the following areas:

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- VAT paid to outsourcing companies.
- VAT paid during preoperational periods.
- VAT on tangible goods when rent is paid abroad.
- New services subject to the 0% VAT rate.

There has been a second amendment to the 2016 Foreign Trade Rules, including in relation to the following issues:

- Provisional customs value.
- QR codes.
- Electronic invoicing for export transactions.
- Sales of imported goods.

## Asia Pacific

### China

Export VAT refund rates have been increased.

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Updated guidance on Customs audits has been issued.

## EMEA

### European Union

The European Commission has published the 2017 Combined Nomenclature.

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The European Commission has implemented a regulation amending the list of procedures for the complete denaturing of alcohol recognized in the EU for excise duty purposes.

### Denmark

The tax authorities have announced that, for now, companies in VAT groups will be able to use their own VAT number when trading in the EU.

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### Germany

The CJEU has ruled that procedural irregularities do not prevent VAT exemption for despatch.

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### Israel

There is a VAT exemption for REIT funds.

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Certain written opinions and positions must be disclosed to the ITA.

### Italy

Law Decree n°193 was converted into law on 24 November 2016, and its final publication in the Official Gazette is expected shortly. The key VAT reforms are as follows.

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The introduction of the quarterly communication of invoices and customs bills.

The introduction of quarterly communication of VAT calculations.

The removal of Intrastat obligations for EU acquisitions as of 1 January 2017.

The removal of 'black lists' for FY2016 onwards.

The updating of deadlines for annual VAT returns.

The introduction of ad hoc provisions for the submission of integrative VAT returns.

An increase in the threshold for VAT refunds without guarantees.

Amendment of the VAT warehouse regime.

The automatic removal of inactive VAT numbers.

## **Netherlands**

The reduced VAT rate applies for toothpaste and sun lotion.

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## **Portugal**

An exceptional regime (amnesty) has been introduced for payment of fiscal and social security debts.

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The VAT Code has been amended to include a VAT exemption for donations to museums, with effect from 1 January 2017.

The Administrative and Fiscal Court has delivered decisions regarding VAT deduction for holding companies.

Excise duty rates on diesel products will be reduced.

## **Russia**

The Federal Tax Service has launched the English version of the portal 'VAT office for online service providers' in test mode.

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The State Duma will consider draft law on including fruit, berries and vineyards into the list of food products subject to the decreased VAT rate of 10%

The Government is to develop a tax mechanism for foreign e-shops by the end of 2016.

The Ministry of Finance has begun development of draft law aimed at extending the applicability of excise duty exemptions and declarative VAT refund procedures for exports of goods without bank guarantees.

The importation of certain types of fish originating from USA, EU and several other countries will no longer be prohibited.

**South Africa** Anti-dumping duties have been imposed on frozen potato chips. [Read More](#)

Safeguard measures are being considered for bone-in chicken from the EU.

The preferential trade agreement between MERCOSUR and SACU was gazetted on 21 October 2016 and implemented with retrospective effect from 1 April 2016.

**Spain** There have been modifications to the Annual VAT Summary return. [Read More](#)

**Switzerland** The Federal Customs Administration has revised and strengthened the description requirements of goods in customs declarations. [Read More](#)

There has been a case regarding rebates in connection with the return of used goods.

**Turkey** Supplementary decrees to the Import Regime Decree have been published regarding additional customs duty on certain goods. [Read More](#)

**Ukraine** There has been an increase in the list of imported medicines exempt from VAT. [Read More](#)

Import duty has been removed on waste products and ferrous scrap.

Import duty rates to be applied in free trading between Ukraine and the EU in 2017 have been published.

**United Kingdom** The Court of Appeal has ruled on the VAT treatment of historical bad debt relief claims. [Read More](#)

The Chancellor of the Exchequer delivered the Autumn Statement 2016 on 23 November 2016. The main indirect tax measures are as follows:

- Insurance Premium Tax is to increase to 12% from 1 June 2017.
- The Government has asked the Office of Tax Simplification to carry out a review of aspects of the VAT system.
- HMRC are proceeding with a consultation on VAT grouping.
- The Government has agreed to provide funding with a view to digitizing the VAT retail export scheme.
- The Government announced amendments to the VAT Flat Rate Scheme to counter 'aggressive abuse'.

## **Eurasian Economic Union**

The existing procedure for delayed determination of customs value has been amended.

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The zero import customs duty rate has been extended to a number of goods.

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## **OECD**

### **OECD business survey on direct and indirect tax certainty**

The OECD has launched a business survey which invites businesses and other stakeholders to contribute their views on tax certainty: [Business survey on taxation](#). The survey is an open and widespread consultation which supports the G20 future tax policy work.

Among other things, the survey offers an opportunity to identify specific tax policy issues for the future G20 tax agenda and to shape practical and concrete solutions for a more certain and predictable tax system. The survey is strictly confidential and anonymous; no individual or organization-specific information will be disclosed. Results will only be made available in aggregated format and presented to the G20 in 2017.

Responses are sought by 16 December 2016.

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# Americas

## Colombia

### Tax reform includes indirect tax changes

The Government recently issued a tax reform draft that is pending approval by the National Congress. The proposed tax reform includes important measures regarding indirect taxes such as VAT and consumption tax.

The tax reform draft is expected to come into force as of 1 January 2017, provided the draft is approved by the Congress (notwithstanding some of the reforms may require further regulation).

The tax reform includes the following indirect tax measures:

- VAT taxation will apply to real property, lotteries and intangible goods.
- The imposition of VAT on services rendered both on Colombian territory and abroad if the recipients are located in Colombia, for example, the supply of webpages, hosting, cloud computing and remote maintenance of programs and equipment; the supply of software and its updates; the electronic supply of images, text, and other types of information, as well as access to digital databases; the supply of audio-visual media services (such as music, videos, movies and games of any kind, as well as the broadcast of any type of event, among others).

When the service provider is a foreign business, the VAT on these types of services is expected to be withheld by the issuers of credit or debit cards, sellers of pre-paid cards, collectors of cash in charge (i.e., cash collectors acting on behalf of third parties, e.g., a cash collector in Colombia acting for a foreign service provider), and others determined by the tax authorities, at the time of the respective payment or deposit to the account of the foreign service provider.

- The imposition of consumption tax on sugary drinks, including energy drinks, flavored drinks, or any drinks that contain sugar or sweeteners.
- A consumption tax increase for cigarettes from COP 570 to 2,100 per 20 unit pack of cigarettes, and proportionally to the content. This amount will increase by a percentage equivalent to the rise in the Consumer Price Index.
- A new tax levied on the sale of gasoline by oil refiners and importers.
- A new tax on carbon that will be levied on the sale and import for sale or own consumption of fossil fuels.

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## **Mexico**

### **2017 tax reforms: VAT amendments**

Congress approved the 2017 tax reforms related to VAT in October, which include the following changes:

- VAT paid to outsourcing companies: In an effort to enhance controls over outsourcing companies and activities rendered by them, clients must now secure a copy of the periodic tax receipts to ensure that the outsourcing company rendering the service is in compliance with its current tax obligations, such as social security, income tax and others.
- VAT paid during preoperational period: From 1 January 2017, companies that are in the preoperational stage will not be able to credit or compensate any VAT paid during such stage. VAT paid amounts will be subject to credit or compensation once the company becomes fully operational and begins generating revenues for its activities.
- VAT on tangible goods when rent is paid abroad: VAT law has been clarified regarding temporary imports of tangible goods when a Mexican entity rents such goods to a foreign entity and the goods are brought into Mexico with a VAT tax credit (VAT certified companies). VAT must be paid on the rental amount determined for each transaction, even when the goods are imported on a temporary basis with a VAT tax credit, under VAT certification.
- New services subject to the 0% VAT rate: 'Technological services' have been included in the short list of services deemed exported and, consequently, subject to the 0% VAT rate. 'Technological services' include development, processing, storage, modernization, optimization and administration of information technology applications and computer systems. All resources used for the development of such activities must reside on Mexican territory.

### **Second amendment to 2016 Foreign Trade Rules**

There were approximately 71 modifications, additions and eliminations in the second modification of the Foreign Trade Rules for 2016, mostly focused on maintaining legislative coherence between laws, treaties and legal references.

The relevant changes including the following:

- Provisional customs value: Historically, temporary importing companies working under the IMMEX program have been allowed to declare 'provisional value' as one of the valuation methods used for declaring customs value, but as of October 2016 that no longer applies, which means that the customs value is now more likely to be subject to queries from the customs authorities. In future, companies will have to reinforce their support for declaring customs values.

- QR Code: As part of the customs modernization initiative, specified customs operations will no longer require printed documents for presenting shipments before the clearance process, and customs clearance processing may be electronic; the result will also be displayed electronically using a QR code, and may be seen on the tax authorities' webpage.
- Electronic invoicing for export transactions: Under the general rule, all export transactions with *pedimento* code A1 (definitive export) must be undertaken using an electronic invoice, and the export transaction linked to such invoice, which will be read as income by the tax authorities. In this second amendment, the tax authorities clarify that the only export transactions that will be subject to such requirements are those resulting from the sale of goods in terms of the tax code, which indicates the transfer of goods. The foreign trade section of the electronic invoices will apply from 1 January 2017.
- Sales of imported goods: VAT will not be charged to an importing company that purchases goods located in Mexico that were originally imported on a temporary basis under an IMMEX program and afterwards sold by the parent company to the same IMMEX that undertook the original import. Normally sales transactions from a foreign resident to Mexican entities operating under IMMEX programs are subject to VAT, but this is the only case that is exempt from VAT.

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## Asia Pacific

### China

#### Increase to export VAT refund rates

On 4 November 2016, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Caishui [2016] No. 113 (Notice 113) announcing an increase to the VAT refund rates for mechanical and electronic products and refined oil products. Notice 113 takes retrospective effect from 1 November 2016.

418 codes are covered and the products included are diverse. They include photographic cameras, cinematographic cameras, combustion piston engines, motor gasoline, aviation kerosene, and diesel oils. The full refund is now available at a rate of 17% (compared to the previous rates of rates of 0%, 5%, 13% and 15%). Below is a list of examples illustrating the increase of export VAT refund rates:

Changes of export VAT refund rates	Examples	
	Goods	Description
<b>From zero to 17%</b>	Petroleum products	Motor gasoline, aviation gasoline; Aviation kerosene; Diesel oils
<b>From 5% to 17%</b>	Plates, sheets and strips of agglomerated or reconstituted mica	
<b>From 13% to 17%</b>	Liquid crystal plate glass	Liquid crystal plate glass, of square >1850mmx1500mm; Liquid crystal plate glass of square of 1850mmx1500mm or less
<b>From 15% to 17%</b>	Photographic cameras	Other cameras of a kind used for preparing printing plates or cylinders; Cameras specially designed; Cameras with a through-the-lens viewfinder; Cameras of a kind used for recording documents on microfilm
	Cinematographic cameras	High speed camera; Other camera
	Internal combustion piston engines	Push-button aircraft of an output exceeding 298kw; Reciprocating piston engines of a kind used for the propulsion of vehicles

The export VAT refund is a mechanism used to encourage/discourage the export of certain products. The export VAT rates are adjusted on an occasional basis, but the last major adjustment was made in 2008 where the refund rates were upwardly adjusted as a response to the financial crisis.

Generally, goods exported from China are not subject to VAT, but exporters need to apply for a refund of the VAT incurred in relation to the goods exported. The amount of the refund which can be applied for is determined by the export VAT refund rate, which is driven by the HS code of the goods exported. A refund rate below 17% usually leads to a cost to the exporter.

### **Comment**

Changes to the export VAT refund rates will affect the cost and profit level of exporters. Affected exporters may wish to consider the following actions:

- Review export products and assess the possible impact due to the change in export VAT refund rates;
- Review the pricing policy and initiate discussions with overseas buyers to adjust the export price where possible and necessary;
- Review the adopted tariff codes of the export products and explore options to change the applicable codes where appropriate in order to obtain a higher export refund rate (which is determined by the tariff code of the export products); and
- Seek consultation from professionals as needed.

## Updated guidance on Customs audits

Guidance that became effective on 1 November 2016 updates implementation measures relating to the rules governing customs audits (GAC Order [2016] No.230). The previous version of the implementation measures dating from 2000 was repealed on the same date.

Echoing the amended Customs audit regulations (State Council Order No.670) which took effect on 1 October 2016, the new implementation measures provide additional clarifications on the revised regulations.

The new measures consist of 34 articles in five chapters, including a new chapter entitled 'Voluntary Disclosure Program' and updated chapters (relating to actions Customs can take where noncompliance is identified during an audit) that are consolidated into other chapters. The new measures also refine certain terminology to clarify outstanding issues.

Highlights are as follows:

- The Customs authorities may engage accounting or tax firms to issue professional opinions to support investigations of the facts of a case. The audited party also can engage a firm whose opinion may be accepted as reference material by the Customs authorities.
- Under the new voluntary disclosure program (VDP) in the Customs audit regulations, an enterprise may voluntarily report its noncompliance to the Customs authorities in exchange for a reduction or waiver of penalties. The new measures clarify that an enterprise that applied for the VDP must submit supporting documentation (e.g., financial books or trading documents relating to the noncompliance activities) to the Customs authorities and is responsible for proving the authenticity, accuracy and completeness of such documents. The Customs authorities must verify the information provided by the enterprise and may request additional information if necessary.
- Enterprises that successfully apply for the VDP may be exempt from penalties if the noncompliance was insignificant and remedial actions were taken in a timely manner, and no harmful consequences arise from the noncompliance. If the enterprise voluntarily pays the underpaid tax under the VDP, the Customs authorities may waive late payment surcharges.
- Previously, an audited party could refuse to receive a Customs notification in an audit. The new measures provide that a notification will be deemed to be received if the delivery of a notification to the main business premises of the audited party was witnessed and signed by other persons or the entire process was recorded and is evidenced by photos and/or videos.

## **Comment**

The issuance of the new measures is further evidence that Chinese Customs is focusing on the administration of imported/exported goods, as well as the importers/exporters themselves. Customs audits in the post-import/export stage clearly will be an important component of the new administrative policy. The measures should be welcomed by potentially affected business since they provide guidance to local Customs offices to standardize the audit practice, and the formal introduction of VDP, and allowing professional firms to issue opinions should encourage compliance, and improve the fairness and efficiency of Customs audits. The Chinese Customs authorities are expected to continue to work to further improve and develop internal guidance relating to Customs audits.

Taking into account the new Customs regulations and clarifying measures, enterprises should take the following actions:

- Improve the compliance management of the supply chain with a view to upgrading the Customs compliance rating to enjoy a speedier Customs clearance procedure;
- Strengthen the internal management of documents and data, perform regular assessments to identify any potential areas of noncompliance in a timely manner and leverage the VDP to mitigate risk; and
- Deal with Customs audits or self-examinations appropriately and seek professional advice where necessary.

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## **EMEA**

### **European Union**

#### **Customs Duty: 2017 Combined Nomenclature published by European Commission**

The European Commission has published the latest version of the Combined Nomenclature, which applies from 1 January 2017. The Combined Nomenclature forms the basis for the declaration of goods at importation or exportation or when they are subject to intra-EU trade statistics. This determines which rate of customs duty applies and how the goods are treated for statistical purposes. The latest version is now available as: [Commission Implementing Regulation \(EU\) No 2016/1821](#).

#### **Common denaturing procedure**

On 20 October 2016, the European Commission implemented a regulation amending the list of procedures for the complete denaturing of alcohol recognized in the EU for excise duty purposes (Regulation 2016/1867 of 20 October 2016).

The new regulation introduces changes in the common denaturing procedure employed in all Member States for completely denatured alcohol and removes all national denaturing procedures.

These changes enter into force on 1 August 2017.

The currently binding regulations enable Member States to apply 20 different denaturing procedures for the purposes of excise duty exemption of completely denatured alcohol. Businesses in each Member State may use either so-called national denaturing procedures or the common procedure employed in all Member States to ensure that the alcohol is considered completely denatured and exempt from excise duty.

According to the Commission, such variety of denaturing procedures available currently weakens effective supervision over denatured alcohol and offers opportunities for fraud. Consequently, the Commission has decided to remove the national denaturing procedures from EU regulations. Also, the common procedure has been reformulated to make it cheaper and more available for businesses in the EU. The new common procedure will require the addition per hectoliter of absolute ethanol of 1 liter of isopropyl alcohol, 1 liter methyl ethyl ketone and 1 gram of denatonium benzoate (currently the binding regulations require a proportion of 3:3:1, which makes the formula more expensive).

### ***Implications***

The changes are likely to have a considerable impact on industries that use completely denatured alcohol either as an ingredient in manufactured products or as a cleaning agent, e.g., to clean the production lines. This, in particular, relates to the cosmetics and chemical industries. Businesses that are currently using alcohol completely denatured according to national procedures may have to change the formula of their products or substances used in the production process to comply with the amended regulations from 1 August 2017.

### ***Recommended actions***

Businesses using completely denatured alcohol should analyze the denaturing methods currently used and the impact of these changes on their manufacturing process. Although the changes enter into force on 1 August 2017, it is recommended that analysis starts as soon as possible, given the implementation of the necessary changes to the manufacturing process may require a considerable amount of time.

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## **Denmark**

### **Use of VAT number when trading in the EU for VAT groups**

The tax authorities have stated that they still allow companies in VAT groups to use the individual participants' VAT numbers on invoices (for intra-Community supplies) and when filing EC Sales Lists instead of the VAT group representative's VAT number.

It is expected that the tax authorities will, in the near future, require that all the participants in a VAT group use the VAT group's name, address and VAT number as the representative of the group. However, due to technical issues with the VIES database, this is not currently possible.

The Tax Ministry has advised the European Commission of this continuation of practice, and that the new practice will be implemented when the necessary changes to VIES are executed.

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## **Germany**

### **Procedural irregularities do not prevent VAT exemption for despatch**

The Court of Justice of the European Union has delivered its judgment in the case of *Josef Plöckl*, about an intra-Community movement of goods (a car) where Mr Plöckl did not comply with the formalities of evidencing the intra-Community movement of own goods. Irrespective of the fact that the car was already in Spain, Mr Plöckl seems to have treated the transaction as a direct intra-Community sale of the car when it was bought by a Spanish business (whose VAT number was cited on the sale invoice), rather than as an intra-Community movement of his own goods (which would have led to a Spanish VAT registration and acquisition VAT there), followed by a domestic sale in Spain.

The CJEU has followed the Advocate General's opinion and concluded that the procedural irregularities in the case did not justify the refusal of VAT exemption for the movement of the own goods out of Germany where there is no specific evidence of tax evasion, the goods have been moved to another Member State and the other conditions of exemption from tax are also met.

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## **Israel**

### **VAT exemption for REIT funds**

The 54 amendment to the Value Added Tax Law was a completion to the amendment of the Income Tax Ordinance (No. 218) 2016 within the framework of a reform that deals with the taxation of real estate investments foundations (REIT funds).

Under the amendment, which applies from 7 June 2016, a sale of a residential apartment to a REIT fund by a person not liable to VAT and the sale of the residential apartment by the aforesaid REIT fund will be exempt from VAT.

### **Disclosure of a written opinion to the ITA**

A person who has received a written opinion that enables a tax advantage must report to the Israel Tax Authority (ITA) in a designated form within 60 days of the end of the tax year in which the advantage was received.

This amendment is relevant to opinions the consideration for which is at least NIS 100,000 and to opinions that are deemed as 'off the shelf planning'.

Further, a person who takes a position that contradicts a published position of the ITA and where the tax advantage resulting from the position exceeds NIS 2 million per annum or NIS 5 million within four years, must report the position in a designated form within 60 days of the end of the tax year in which that person took this position.

The reports must be submitted online.

The above does not apply to a dealer whose annual turnover is less than NIS 3 million.

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## **Italy**

Law Decree n°193 dated 22 October 2016 has been converted into law on 24 November 2016, and its final publication in the Official Gazette is expected shortly. The key reforms affecting the VAT framework are set out below.

### **Introduction of quarterly communication of invoices and customs bills**

From FY2017, taxpayers will be required to e-submit to the tax authorities a new quarterly communication including the data of all the invoices issued in the relevant quarter, as well as the data of all the invoices received and accounted for, including customs bills, in the relevant quarter.

The deadlines for each quarter are set out below. For the first six months of 2017, derogative measures will apply on an exceptional basis – the communication will refer to the first two quarters of 2017 and the deadline will differ.

<b>Period</b>	<b>Deadline FY2017</b>	<b>Deadline following FYs</b>
First quarter	25 July 2017	31 May same FY
Second quarter		16 September same FY
Third quarter	30 November 2017	30 November same FY
Fourth quarter	February 2018	February following FY

For omitted or incorrect communications, administrative penalties will be due, ranging from EUR 2 per invoice to EUR 1,000 per quarter. Penalties will be reduced by half (not higher than EUR 500), where e-submission is made within 15 days of the deadline.

### **Introduction of quarterly communication of VAT calculations**

From FY2017, taxpayers must e-submit to the tax authorities a new quarterly communication including the VAT calculations of the relevant quarter, based on the same deadlines provided for the quarterly communication of invoices. For omitted or incorrect communications, administrative penalties will be due, ranging from EUR 500 to EUR 2,000, reduced by half where e-submission is made within 15 days of the deadline.

## **Removal of Intrastat obligations for EU acquisitions as of 1 January 2017**

### **Removal of 'black lists' for FY2016 onwards**

#### **Updating of deadlines for annual VAT returns:**

- For FY2016, February 2017;
- From FY2017 onwards, from 1 February to 30 April.

#### **Introduction of ad hoc provisions for the submission of integrative VAT returns**

For VAT returns with errors or omitted data, an integrative VAT return must be filed within the ordinary statute of limitations.

In any event, the integrative VAT return must be filed:

- Within the deadline for the submission of the VAT return for the following year, in order to offset or to request a refund of the VAT credit reported in the integrative VAT return;
- Also, later than the deadline for the submission of the VAT return for the following year. However, in this case, the taxpayer can request that the VAT credit emerging from the integrative VAT return be refunded (subject to certain conditions) or offset against other taxes starting from the fiscal year following the one in which the integrative VAT return has been filed. By way of example, in the case of submission of an integrative VAT return related to FY2014 in November 2016 (i.e., after the deadline for the submission of the FY2015 VAT return), the FY2014 VAT credit can be offset against other taxes starting from FY2017.

#### **Increase in threshold for VAT refunds without guarantee**

Taxpayers will not be required to submit a guarantee for a VAT refund of an amount not higher than EUR 30,000.

#### **Amendment of VAT warehouse regime**

From 1 April 2017, the following changes will be introduced:

- Changes to the list of supplies that can be made through introduction into the VAT warehouse;
- Removal of the subjective requirements for withdrawal purposes: the withdrawal can be made by VAT taxable subjects without meeting any further requirements;
- A 'dual' VAT payment procedure:
  1. In the case of the withdrawal of goods originally imported, VAT must be paid by the VAT subject withdrawing the goods, via the reverse charge mechanism, upon submission of a guarantee complying with the content, procedure and scenarios defined by a Ministerial Decree issued by the Ministry of Economy and Finance (the reverse charge mechanism will also apply to the withdrawal of goods previously purchased from EU suppliers);

2. In all other cases of withdrawal, but also in cases under point 1 until the issuance of the Ministerial Decree, the VAT must be paid by the VAT warehouse keeper in the name and on behalf of the VAT subject withdrawing the goods. The VAT warehouse keeper will be jointly liable for the payment of VAT;
- VAT relief will only be available for frequent exporters, upon submission of letters of intent by electronic means;
  - 30% penalties for omitted VAT payments;
  - Joint liability for the VAT warehouse keeper for the payment of penalties equal to 30% of the VAT not paid;
  - Further obligations for the VAT warehouse keeper (e.g., amongst others, the communication to the Customs office of the data related to the withdrawal of goods from the VAT warehouse for the redemption of the guarantee due at the time of the import of goods introduced into the VAT warehouse);
  - Revocation of the authorization to manage a VAT warehouse for warehouse keepers that fail to meet the new obligations; and also revocation of the licence to manage as VAT warehouses, customs warehouses (including all types of private customs warehouses (i.e., Type C; D and E )) and excise duties warehouses.

### **Automatic removal of inactive VAT numbers**

The tax authorities are to proceed with the automatic removal of the VAT numbers of taxpayers that, based on the available data, have been inactive during the previous three years. An act of the Director of the Revenue Agency will regulate the implementing measures of this rule, and the procedure for prior notice to taxpayers.

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### **Netherlands**

#### **Reduced VAT rate for toothpaste and sun lotion**

On 11 November 2016, the Supreme Court ruled that the reduced VAT rate for medicines applies to toothpaste and sun lotion. The reduced rate applies when the therapeutic or preventive effect is explicitly used to recommend the product, e.g., on the label or instruction leaflet. It applies to products that are presented as being suitable or helpful for the prevention of disease, ailment, wound or pain.

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## **Portugal**

### **Exceptional regime for payment of fiscal and social security debts**

Decree Law no. 67/2016, dated 3 November 2016, has been published, approving an exceptional regime allowing taxpayers to proceed with the payment of their tax and social security debts through instalments or full payment schemes (with interest wavering or reduction and penalty reductions) – a tax amnesty. This regime is known as *PERES*. It is applicable both to legal entities and private individuals.

The regime entered into force on 4 November 2016.

Included in the regime are tax debts in respect of which the taxable event occurred prior to 31 December 2015 and for which the payment deadline expired before 31 May 2016, which have been assessed by the tax authorities prior to the entry into force of this exceptional regime, or which are under a foreclosure procedure. Non-fiscal debts and other special contributions (namely special contributions by the pharmaceutical and energy sector) are excluded from this regime.

To benefit from this regime, taxpayers must apply by 20 December 2016 through the tax authorities' website or directly at their local tax office. Within the same deadline, the eligible debts must be paid or the respective monthly installments agreed (up to 150 installments, with at least 8% of the debt to be paid by 20 December 2016).

If the eligible debts are paid by 20 December 2016, no compensatory interest, addition of interest or administrative costs will be due, and the penalty applicable for the late payment of taxes may be reduced.

If payment by installments is requested, the following reductions for compensatory interest, late payment interest and administrative costs are available:

- 80%, if the debt is paid up to 36 installments;
- 50%, if the debt is paid between 37 and 72 installments;
- 10%, if the debt is paid between 73 and 150 installments.

### **VAT exemption for donations to museums**

Law nr. 36/2016, of 21 November has been published, approving an amendment to the VAT Code in order to include a VAT exemption with credit for donations in kind made by taxpayers to the Portuguese Museums Network. This amendment to the VAT Code enters into force on 1 January 2017.

This change arises from a wish to favor investment in culture and encourage the participation of a wider group in cultural activities, by allowing contributions to be made without VAT costs.

## **Administrative and Fiscal Court's decisions regarding VAT deduction of holding companies**

The Administrative and Fiscal Court has recently delivered two judgments regarding VAT assessments raised by the tax authorities to the same holding company for different periods.

The decisions are in line with various decisions of the Court of Justice of the European Union, including the decision in the case involving a Portuguese holding company (*Portugal Telecom*), and may have further impact on how Portuguese holding companies determine the amount of recoverable input VAT, namely by leading to an increase in the capacity to recover the VAT incurred, provided that it is proved that there is a direct and immediate link between the input services acquired with the output economic transactions (such as taxable management and support services provided to subsidiaries).

## **Excise duty rates on diesel products to be reduced**

After a quarterly revision of the excise duty rates applicable to petroleum and energy products, the Ministry of Finance has announced a decrease of EUR 0.01/liter in the excise duty rate applicable to diesel products as of 17 November 2016.

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## **Russia**

### **Federal Tax Service launches English version of portal 'VAT office for online service providers' in test mode**

The Federal Tax Service launched the English version of the portal '[VAT office for online service providers](#)' in test mode. The service 'Online personal account' was also launched, but only in Russian.

In particular, the English version of the portal allows foreign e-services suppliers to go through the online test where a foreign company can check whether it is obliged to register with the tax authorities. Further, the section on general information on ESS rules is also available in English.

The service 'Online personal account' will allow taxpayers to deal directly with the tax authorities, i.e. to submit VAT returns, inform the tax authorities of any changes in the information of a foreign company submitted upon registration, and check the status of tax payments.

### **Draft law on inclusion of fruit, berries and vineyards into list of food products subject to 10% VAT rate**

The State Duma of the Russian Federation will consider draft law for inclusion of fruit, berries and vineyards into the list of food products the supply of which is subject to VAT at the reduced rate of 10%.

### **Government to develop tax mechanism for foreign e-shops by end of 2016**

The Russian Government plans to develop a tax mechanism for foreign e-shops by the end of 2016.

A proposal to introduce VAT for foreign e-shops selling physical products to Russian citizens from 2018-2019 has already been included in the draft concept of key areas for the fiscal policy prepared by the Ministry of Finance.

The initiative has also been incorporated into the draft e-commerce roadmap that was earlier discussed by the officials of the Russian Ministry of Telecoms and Mass Communications, the Ministry of Economic Development, the Ministry of Industry and Trade and the Federal Tax Service at a meeting held by the Federation Council.

The imposition of VAT on foreign e-sellers is supported by the Association of Internet Trade Companies, which wrote a letter to Minister of Economic Development in early October suggesting that foreign online stores be put on a par with their Russian peers.

### **Ministry of Finance begins development of draft law to extend applicability of excise duty exemptions and declarative VAT refund procedures for export of goods without bank guarantees**

The Ministry of Finance announced the development of a draft federal law aimed at expanding the applicability of excise duty exemptions and declarative VAT refund procedures upon the export of goods without bank guarantees.

The draft law also suggests simplifying the existing approach to granting excise duty exemptions and the application of a declarative VAT refund procedure.

The draft law has not yet been officially published.

### **Importation of certain types of fish originating from certain countries no longer prohibited**

Resolution of Russian Government No. 1086 of 22 October 2016 abolishes the prohibition of certain types of fish originating from the USA, the EU and several other countries, which have been subject to a prohibition on the import of certain kinds of foods into Russia since August 2014. The prohibition is now not applied with regard to live fish (classification code 0301 with several exceptions); fish, shellfish, mollusks and other backboneless (classification codes 0302, 0303, 0304, 0305, 0306, 0307 and 0308 with several exceptions).

The Resolution came into effect on 2 November 2016.

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## South Africa

### Imposition of anti-dumping duties on frozen potato chips

Anti-dumping duties ranging between 5.81% and 30.77% have been imposed under item 204.00 on frozen potato chips originating in or imported from Belgium and The Netherlands as from 21 October 2016. The measures have been implemented as follows:

Country	Producer	Anti-dumping duty
Belgium	Clarebout Potatoes N.V	6.19%
	Mydibel Foods S.A	9.71%
	PinguinLutosa Foods B.V	5.81%
	Agristo N.V Harelbeke	No duty
	All other producers/exporters (excluding Agristo N.V Harelbeke)	30.77%
The Netherlands	Agristo N.V Tilburg	12.52%
	Lamb Weston/Meijer V.O.F	No duty
	All other producers/exporters (excluding Agristo N.V Tilburg and Lamb Weston/Meijer V.O.F )	16.42%

### Safeguard measures on bone-in chicken from EU

A notice was published in a Government Gazette dated 28 October 2016 which served to inform interested parties of the conclusion of the investigation into the imposition of safeguard measures on imports of bone-in chicken portions from the EU.

Recommendations have been forwarded to the Minister of Trade and Industry for consideration. The Minister will now decide if the issue warrants being raised in the Cooperation Council.

### MERCOSUR – SACU preferential trade agreement

The preferential trade agreement between MERCOSUR (Common Market of the South – comprising of Argentina, Brazil, Paraguay and Uruguay) and SACU (South African Customs Union – comprising of Botswana, Lesotho, Namibia, Swaziland and South Africa) was gazetted on 21 October 2016 and implemented with retrospective effect from 1 April 2016.

The following aspects of the Schedules to the Customs and Excise Act No.91 of 1964 were amended to give effect to the implementation of the MERCOSUR – SACU agreement:

- General Notes to Schedule No.1;
- Part 1 of Schedule No.1; and
- Amendment of Schedule No.10 by inserting Part 7.

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## Spain

### Modifications to Annual VAT Summary return

On 6 October 2016, the Ministry of Finance and Public Administrations issued a Ministerial decree (Orden HAP/1626/2016), enacting modifications to the Annual VAT Summary return (Spanish Form 390).

The relevant amendments are as follows:

- There is no obligation to file the Annual VAT Summary for taxable persons that (i) submit VAT returns on a quarterly basis and (ii) undertake exclusively the following activities:
  - Economic activities that are subject to the Simplified VAT System.
  - Economic activities that consist of renting immovable property.
- Taxable persons excluded from the obligation to submit the Annual VAT Summary should complete the specific section reserved for that purpose in the VAT return corresponding to the last tax period of the year.
- The Order entered into force on 12 October 2016, so will apply for the 2016 Annual VAT Summary (Spanish Form 390), to be filed between 1 and 30 January 2017.

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## Switzerland

### Federal Customs Administration revises and strengthens description requirements of goods in customs declarations

In recent years, the Federal Customs Administration (FCA) has noted that the quality of the description of goods in import and export declarations has steadily declined. Consequently, it has become more difficult for the authorities to undertake certain activities, such as correct risk assessments, verification of the TARES classification, and application of non-fiscal measures.

To address this issue and ensure that goods are described by economic operators in a sufficiently clear manner, the FCA has recently announced a phased action plan ([French version](#)/[German version](#)/[Italian version](#)) to challenge the insufficient description of goods in customs declarations.

#### ***Requirements for description of goods? What is considered as non-compliant?***

Based on the current legislation, customs declarations should contain a technical or commercial designation (i.e., the common name) of the goods as accurate as possible, in French, German or Italian (and English in the near future). In the case of multiple goods falling under the same tariff number and aggregated under one line in the declaration, a generic term is tolerated (e.g., 'dishes' instead of 'cups and plates').

Furthermore, economic operators often forget that the reference to OGAs (Other Governmental Agencies' requirements, so-called 'ALAD' or 'NZE'), the end-use (if a relief is applied for), and any export refunds should also be explicitly indicated in the description under certain circumstances. For example:

- Volatile Organic Compounds (VOC): The percentage of VOC (e.g., Lighter with fuel – VOC 93%);
- Convention on International Trade in Endangered Species (CITES): The scientific species name next to the customs description for items that are CITES relevant (e.g., Belt in leather skin – *Crocodylus niloticus*);
- Alcohol: The percentage of alcohol, as a license is required above 80%.

Finally, companies should refrain from:

- Reproducing the literal description of the Harmonized System when the chosen description is not meaningful/not precise enough (e.g. "*other medicaments containing vitamins or other products of heading 2936*");
- Using abbreviations (e-Dec allows a maximum character length of 280, which is more than sufficient);
- Automatically generated texts (e.g., the Internal Article Reference or description from an ERP system when it provides the commercial 'brand' model name of the goods).

### ***Timeline***

1 January 2017 will mark the start of a transitional period during which the customs offices will require declarants (e.g., customs agency, freight forwarder, or exporter) whose import and/or export declarations do not meet the aforementioned criteria to enhance the quality of their master data. To avoid having their declarations continuously and systematically challenged, declarants will be required to submit a written and binding commitment to the FCA, confirming that the necessary IT changes will be implemented by a date no later than 31 December 2017.

From 1 January 2018 onwards, customs offices will challenge any description of goods that is not compliant. In practice, this could lead to declarations being 'blocked' in e-Dec until a corrective declaration is submitted with a 'sufficient' description.

### ***Implications***

Companies that do not have their master data under control could face the risk of seeing their shipments blocked at Customs with the consequence of higher lead times and delivery delays. Moreover, companies cannot expect their third party declarants to submit a correct and compliant declaration to Customs if the quality of the data they provide them with is not sufficient.

Stricter audits by the FCA will require that companies perform an analysis of the quality of master data used for customs purposes, and apply corrective measures where necessary.

## **Recommended action**

IT processes (and/or systems) must be adapted to ensure that the data transmitted to Customs is compliant and remains so for future products. In this respect, official documentation published by international bodies (e.g. EU [Guidance on acceptable and unacceptable terms for the description of goods](#)) could be of assistance.

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## **Rebate on return of used goods**

A retail company offered their customers a rebate if selected used products were returned to the company. According to the retailer, the returned used products were of no use and were disposed of either directly by him or by his supplier. The retailer saw the price reduction as a diminution of consideration and declared accordingly only the amount received as turnover in the VAT declaration. In the case at hand the price reduction was calculated individually for each customer, depending on new goods ordered and used goods returned.

In the opinion of the Swiss Federal Tax Administration (SFTA) however, the return of the product was deemed to be part of the consideration. The full price (not considering the rebate) should therefore have been reported as turnover. Hence, the rebate formed a compensation element for returned used products and as such a cost element. The retailer appealed before the Swiss Federal Administrative Court and finally with the Swiss Supreme Court (BGer 2C\_100/2016).

Both courts decided in favor of the SFTA, holding that it is the view of the customer which is decisive for VAT qualification purposes, not the view of the retailers. According to the Supreme Court, considering that the customers were unaware that all returned goods were to be disposed of, the latter would have assumed that the returned goods were part of a separate consideration. They thus would have understood that they had sold their used goods to the retail company, meaning that there was no diminution of the retailer's sales price.

It is recommended that affected businesses undertake further analysis where they consider offering discounts in connection with the return of goods.

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## Turkey

### **Supplementary decrees to Import Regime Decree regarding additional customs duty on certain goods**

Supplementary decrees to the Import Regime Decree (numbered 2016/9391 and 2016/9422) regarding additional customs duty on certain goods were published in the Official Gazette on 11 November 2016.

According to Decree 2016/9391, additional customs duty has been levied on certain goods made from materials such as plastic, wood, paper, paperboard, porcelain and china, ceramic, glass, iron, steel, copper, aluminum, base metal and on watches, collages, decorative plaques. Duty has been applied between the rates 6% and 25%.

According to Decree 2016/9422, additional customs duty has been levied on certain paint, glue and adhesives; films used in photography; certain goods made from plastic, envelopes and letter cards; certain goods made from paper or paperboard (boxes, notebooks, labels, other goods); certain cards, calendars, catalogs; certain goods made from base metals; certain pencils, writing and drawing boards; hand tools for stamps, cachets, numerators, franking stamps, bands of printing machines with pads. Duty has been applied between the rates 11% and 25%.

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## Ukraine

### **Increase in list of imported medicines exempt from VAT**

On 26 October 2016, the Government amended the list of imported medicines and medical products exempt from 7% VAT.

In particular, the Government decided to increase the volumes of VAT-exempt foreign medicines and delist some items.

The decision is aimed at building up an additional 30,000 all-service personal first aid kits for the Ukrainian military and the exemption will only apply for a limited period.

### **Waste products and ferrous scrap import duty removed**

On 4 November 2016, the President of Ukraine signed Law No. 1645-VIII which amends the customs tariff and replaces the current 5% import duty on waste products and ferrous scrap (commodity heading 7204) with a zero rate.

The Law is intended to help reduce the shortage of ferrous scrap in the domestic market, meet the demands of the defense industry, recover infrastructure facilities, and ensure development of the domestic iron and steel industry.

The Law became effective on 10 November 2016.

## **Import duty rates to be applied in free trading between Ukraine and the EU in 2017**

The Ministry of Economic Development and Trade of Ukraine published the import duty rates to be applied in 2017 to goods originating from the EU and imported into Ukraine as part of free trading between Ukraine and the EU. More details are available at: <http://bit.ly/2chfJdj>.

Furthermore, the preferential tariff treatment under the GSP will continue to apply to a number of Ukrainian commodities imported into the EU during 2017. The Ministry of Economic Development and Trade of Ukraine prepared a list of commodities falling within the CN codes that would be imported at lower import rates under the GSP than if imported under the free trade regime in 2017. More details are available at: <http://bit.ly/2ccJwT0>.

Customs clearance of goods under the free trade regime requires a EUR1 Movement Certificate, and customs clearance of goods under the GSP requires a Form A Certificate.

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## **United Kingdom**

### **Court of Appeal judgment on VAT treatment of historical bad debt relief claims**

The Court of Appeal has delivered its judgment in the case of *GMAC (UK) plc* concerning the UK's pre-1997 VAT bad debt relief (BDR) regime. The Court has endorsed the judgment that it delivered in *British Telecommunications plc (BT)*, that the pre-1997 BDR regime was defective as it did not comply with EU law, as it required that title to goods should have passed and that the debtor was formally insolvent.

However, as in *BT*, GMAC's claim was held to be out of time insofar as it related to periods covering 1978-89 – the transitional withdrawal of the 'old' BDR regime that applied in that period was acceptable.

Claims for periods post-1990 (to 1997) are likely to be subject to ongoing negotiation and/or litigation.

## **Autumn Statement 2016**

The Chancellor of the Exchequer delivered the Autumn Statement 2016 on 23 November 2016. The main indirect tax measures are set out below. For further details on the tax announcements, see: <http://www.ukbudget.com>.

## ***Insurance Premium Tax rate increased to 12% from 1 June 2017***

The standard rate of Insurance Premium Tax, which is payable on most 'non-life' insurance (e.g., car insurance, buildings and contents cover, pet insurance, etc.) is to be increased by 2%, to 12%. The new rate comes into effect from 1 June 2017.

The increase is expected to raise GBP 680 million in 2017/18 and GBP 840 million in 2018/19, the first full year in which the change will have effect.

## ***Simplification of VAT?***

The Government has asked the Office of Tax Simplification to carry out a review of aspects of the VAT system. It remains to be seen which parts of the UK system will be considered and what, if any, simplifications emerge from the work. The OTS has indicated that the terms of reference will be published shortly and that it is interested in hearing from businesses, advisers and others who deal with VAT about the issues they find most complex and any ideas they might have to simplify the system.

## ***VAT grouping consultation***

The tax authorities (HMRC) are proceeding with a consultation on VAT grouping. HMRC Brief 3(2016) outlined plans for a consultation on VAT grouping in the wake of the CJEU judgments in the case of *Skandia America Corporation* and in the joined cases of *Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG* and *Marenave Schiffahrt AG*.

Whilst there are no details of the consultation yet, it seems probable that it will reflect the outcome of the discussions that took place following the issue of the Brief, which referred to the prospect of extending VAT grouping to non-corporate bodies and identifying new rules to determine 'close economic, financial and organizational' links for corporate and non-corporate bodies, replacing the current 'control' test based on a company law definition of a subsidiary.

## ***VAT digital retail export scheme***

The possibility of digitizing the VAT retail export scheme, which allows travellers from non-EU countries visiting the UK to reclaim the VAT paid on goods bought in the UK and taken back to their home country, was raised in a consultation in 2013. The Government has now agreed to provide funding with a view to digitizing fully the Retail Export Scheme to reduce the administrative burden to travellers.

## ***VAT Flat Rate Scheme revisions***

In order to counter 'aggressive abuse' of the VAT Flat Rate Scheme, which simplifies VAT accounting for many small businesses, the Government will introduce a new 16.5% rate from 1 April 2017 for businesses with limited costs (such as many labor-only businesses).

According to the announcement, “[t]his will help level the playing field, while maintaining the accounting simplification for the small businesses that use the scheme as intended. A revised version of the Flat Rate Scheme Notice ([VAT Notice 733: Flat Rate Scheme for small businesses](#)) and a separate technical note ([Tackling aggressive abuse of the VAT Flat Rate Scheme](#)), have been published and introduce anti-forestalling provisions.

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## **Eurasian Economic Union**

### **Amendments to procedure for delayed determination of customs value**

Decision of the Board of the Eurasian Economic Commission of 1 November 2016 No. 133 amends the existing procedure of delayed determination of customs value.

Currently determination of customs value may be delayed for exchange goods.

The Decision introduces delayed determination of customs value also for 1) goods with regard to which the importer will make payments for the use of objects of intellectual property (e.g., royalties) which are calculated based on data not known at the time of customs declaration and 2) goods part of the proceeds for which refer to the seller and which are calculated based on data not known at the time of customs declaration. Final determination of customs value must be executed no later than 15 months from the date of registration of the customs declaration.

Decision No. 133 comes into effect on 2 December 2016.

### **Application of zero import customs duty rate to certain types of goods**

Decision of the Board of the Eurasian Economic Commission of 1 November 2016 No. 128 extends application of the zero import customs duty rate from 1 January 2017 to 31 December 2019 inclusive with regard to waste and scrap of precious metals (classification codes 7112 30, 7112 91, 7112 92, 7112 99).

Decision of the Board of the Eurasian Economic Commission of 25 October 2016 No. 116 introduces a zero import customs duty rate from 2 January 2017 to 31 December 2017 inclusive with regard to oranges (from classification code 0805 10), certain types of seeds (from classification codes 0909 31, 0909 32, 0909 61, 0909 62) and certain types of leather (classification code 4105 10).

Decision of the Board of the Eurasian Economic Commission of 25 October 2016 No. 117 introduces a zero import customs duty rate from 2 January 2017 to 31 December 2017 inclusive with regard to raw materials containing precious metals (from classification codes 2616 10, 2616 90, 7106 10, 7106 91, 7108 11, 7108 12, 7110 11, 7110 21, 7110 31 and 7110 41).

Decision No. 128 comes into effect on 1 January 2017 and Decisions No. 116 and No. 117 on 02 January 2017.

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