

Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include the new VAT law in Egypt and an update on the upcoming changes to the place of supply rules for digital services in Japan.

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

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Tariff quota have been introduced on rice originating from Vietnam and certain agricultural goods.

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There have been amendments to the list and procedure for the import and export of certain pharmaceutical goods in the Eurasian Economic Union.

Americas

Colombia

Moves towards compliance with new customs code standards

The Tax and Customs Authority recently announced the implementation of scanners for non-intrusive inspections, to comply with new customs code standards.

The main purpose of this move is to avoid causing damage to the goods being inspected, in addition to achieving an agile customs process.

The implementation of scanners will make customs control processes easier and faster, to reduce the time merchandise must be in port.

The first scanners were implemented in the port of Buenaventura (one of the most important in the country). However the Government announced that scanners will be implemented in other ports as soon as possible.

As the new customs code constitutes a challenge for both industry and the Government, the implementation of the scanners is a significant step.

The new code was developed under the risk management system, which is based on users' profiles to facilitate procedures, with the objective of improving logistic and customs procedures to achieve a nationalization-clearance process in 48 hours. The implementation of scanners is clearly aimed at achieving this objective.

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Asia Pacific

India

Constitution Bill, 2014 for GST approved by President

After receiving the President's assent, the Constitution (One Hundred and One Amendment) Bill, 2014 has been enacted into the Constitution (One Hundred and First Amendment) Act, 2016. The amendments to the Constitution of India have come into force from 12 and 16 September.

A GST Council also has been formed. It will be responsible for various functions, including recommending the rates of GST, exemptions, etc.

The next steps towards introduction of GST include legislating Central GST (CGST), State GST (SGST) and Integrated GST (IGST) Acts; CGST and IGST Acts in the Parliament and by the respective States.

As the GST developments are taking place at a rapid pace, it is expected that the implementation of GST may take effect from 1 April 2017. Accordingly, it is imperative for businesses across all industries to start preparing for the biggest indirect tax reform of the country at the earliest.

Clarification on service tax liability in case of hiring of goods without transfer of right to use goods

The Central Board of Excise and Customs (CBEC) has issued a circular regarding the applicability of service tax in cases involving hiring, leasing or licensing of goods.

In the circular, reference was drawn to the Supreme Court decision in the case of *BSNL* wherein criteria have been laid down to determine whether a transaction involves the transfer of a right to use goods.

The CBECE clarified that the criteria mentioned in the *BSNL* decision must be invariably followed and applied in cases involving hiring, leasing or licensing of goods. Further, the terms of the contract must be studied carefully vis-à-vis the criteria laid down by the Supreme Court.

Applicability of VAT or service tax on transfer of right to use intellectual property

Permitting the use of intellectual property rights (IPR) is subject to service tax, whereas transfer of a right to use the technology is liable to VAT.

The Bombay High Court had an occasion to deal with the applicability of VAT/service tax in two distinct cases involving IPR.

In the first case, the technology was sub-licensed to various seed companies on a non-exclusive and non-transferable basis. In return, the assessee had received a one time fixed fee and consideration.

The assessee contended that technology was not transferred exclusively in favor of one company and the assessee had sub-licensed it to many companies. Therefore, it was a case of mere permission to use, and should not be subjected to VAT as contended by the tax authorities.

In the second case, the assessee had entered into a franchisee agreement whereby franchisees had the right to display intellectual property belonging to the assessee in the form of logos and the right to use confidential information. The agreement provided for very limited representational or display rights and the franchisee could not transfer or assign these exclusive rights to any third person. The tax authorities demanded VAT on the consideration received by the assessee from the franchisee.

In the first case, the High Court held that technology was being transferred to the seed companies on a non-returnable basis, and hence the said transaction resulted in the transfer of the right to use and would attract VAT.

In the second case, the High Court observed that there was no passage of any kind of control or exclusivity to the franchisees and the agreement permitted the use of the brand for a limited period. Thus the transaction was to be treated as the provision of service, and liable to service tax.

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Japan

Modification to place of supply rules for digital services

As reported in an earlier edition of this newsletter, under the 2015 tax reform, the place of supply of digital services for Japanese Consumption Tax (JCT) purposes (e.g., supplies of e-books, access to online databases, cloud computing services, etc.) has changed from the office of the supplier to the head office or residence/domicile of the recipient.

Effective from 1 January 2017, this place of supply rule will be modified in respect of B2B digital services supplied to branches, etc., to take into account where the services are actually consumed.

To assess the possible impact of this change, it is important to note that 'B2B digital services' under JCT law has a particular meaning: i.e., digital services provided by a foreign supplier to Japanese business customers, where an individual agreement is entered into between the supplier and a business customer (as opposed to terms and conditions generally available on a website).

The table below sets out the affected transactions and an overview of the changes to be implemented from January 2017.

Transaction	Current		1 January 2017 –		
	Place of supply	JCT implications	Place of supply		JCT implications
B2B digital service provided to a Japan branch of foreign business	Overseas (location of the headquarters of the recipient)	Out of scope of JCT	Recipient uses all or part of the services for supplies in Japan	Japan	Subject to JCT*
			Recipient uses the services only for supplies outside Japan	Overseas	Out of scope of JCT
B2B digital service provided to an overseas branch of Japanese business	Japan (location of the headquarters of the recipient)	Subject to JCT*	Recipient uses all or part of the services for supplies in Japan	Japan	Subject to JCT*
			Recipient uses the services only for supplies outside Japan	Overseas	Out of scope of JCT

*Reverse-charge mechanism applies, and the recipient is liable to account for both input JCT and output JCT. Under a transitional measure, a recipient with a taxable sales ratio (basically the percentage of JCT taxable sales to total sales) of 95% or more is exempt from the reverse-charge.

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EMEA

Denmark

Reorganization of the tax authorities

The Danish Ministry of Taxation has announced an upcoming reorganization of the tax authorities. The tax authorities cover a number of different areas, e.g. Danish Customs, Danish Revenue and the debt collection of public revenues.

For several reasons, the Ministry of Taxation have announced that the organizations will now go through a reorganization. The reasons having led to the conclusion that a reorganization is necessary include the following:

- A non-functional debt collection system
- A non-functional system for valuation of properties
- Extensive challenges in the implementation of the Union Customs Code (UCC).

The UCC was, and will be further, implemented by the tax authorities (SKAT) in close cooperation with Deloitte Denmark. During an analysis of the customs functions, organization, processes and IT of the customs functions and organization, it became clear that a reorganization was needed for efficiency, and to ensure future compliance with the UCC and the Multi-Annual Strategic Plan that is behind it to ensure system support.

The final form of the reorganization has not yet been announced, but it includes actions such as dividing SKAT and its functions into smaller units to specialize within their different responsibilities. The new entities will need to recruit new personnel and invest in IT, e.g. the new customs agency will need more staff to ensure compliance with, among others, the UCC, and major investments in IT to satisfy the requirements of the EU MASP plan that supports the new legislation.

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Egypt

New VAT law applies from 8 September 2016

The President of Egypt signed the new VAT law, which had been already approved by the Egyptian Parliament, in August 2016. The new VAT law replaces the existing sales tax law and came into effect from 8 September 2016.

Discussions around the law took place over a long period amidst budgetary pressures on the Government and public concern regarding the potential inflationary impact of the new law. The Government expects additional revenues of EGP 25-30 billion (USD 2.8-3.3 billion) from the application of the new law.

- **Effective date:** The law is effective from 8 September 2016.
- **Rate:** The general rate is 13% until 30 June 2017, increasing to 14% from 1 July 2017. Goods or services that are exported outside Egypt or supplied to Egyptian Free Zones Entities are zero-rated.

- **VAT mechanism:** Input VAT can be offset against output VAT for all items under the general rate. However for most services and goods included in 'tabled items' input VAT may not be offset against output VAT, except for construction contracts, tobacco, and edible oils. The law allows exporters a potential refund of input VAT paid for all items subject to general rate and only for some tabled items.
- **Scope:** All goods and services will be subject to VAT. Services are broadly defined in the law as anything that is not classified as 'goods', which means that intellectual property, consultations and management services, etc. will be subject to VAT.
- **Exempted items:** The list of exempted items covers 57 categories of goods and services. These include basic food products; provision of natural gas; production, transmittal and distribution of electricity; banking and other regulated non-banking financial and insurance services; rental of residential and non-residential property; and health and education services. In addition, certain Egyptian state bodies and entities will be exempt from VAT, as will entities exempted by virtue of an international agreement or special law.
- **Special rate 'table' items:** Certain goods and services specified in 'tables' attached to the law are subject to special rates, and for these items, input VAT cannot be offset against output VAT. These goods and services include construction contracts (5%), professional services (10%), petroleum products (from EGP 0.30 to EGP 1.30 per liter), etc.
- **Double taxed items:** Certain specified goods and services will be subject to the general rate as well as the 'table' rate. These include cars, household appliances, air conditioning equipment and mobile telecommunication services.
- **Non-resident** suppliers of taxable goods and services to non-VAT registered resident consumers must register in Egypt via a VAT representative/agent and collect VAT from end users.
- **Reverse charge** will also be applied by VAT-registered business consumers on buying taxable services from a non-resident supplier who has not elected to appoint a local agent.
- **Registration:** Resident providers of goods or services that are subject only to the general VAT rate must register for VAT purposes only if their revenues are equal to or higher than EGP 500,000 (approx. USD 56,000 and EUR 50,000). Voluntary registration is possible below this limit. Suppliers of all goods and services subject to other than the general rate ('table' items and double taxed items) are required to register irrespective of their revenues.
- **VAT returns** are prepared on monthly basis and filled within two months of each month end.
- **Statute of Limitation** The law specifies five years to be increased to six years in case of tax evasion cases.

- **Delay fines** (additional tax): 1.5% per month or portion thereof.
- **Tax refund timing:** Limited to 45 days from the date of filing of the request (assuming that all the relevant supporting documents and data required are complete).
- **Related parties:** An arm's length basis should apply to all related party transactions.
- **Anti-abuse provisions:** Any transaction that is deemed by the tax authorities to be intended mainly to avoid or postpone the tax will be subject to reclassification and re-pricing by the tax authorities, with the burden of proof on the taxpayer.
- **Transitional period:** Three months from the date of implementation of the law; where no delay fines will apply to taxpayers with regards to mistakes, errors or delays to moving from the GST system to the VAT system. However, the tax itself must be paid.
- **Change to existing contracts:** Existing contracts at the date of issuing the law will be amended by force of law to apply the VAT provisions and rates. Executive regulations to be issued will determine how such contracts are to be amended.

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France

Publication of guidelines for certified cash register system and accounting/management software

As from 1 January 2018, VAT payers must use only secure and certified software and cash register systems.

The law requires taxpayers that record payments from their customers by means of accounting or management software or a cash register system to use software that fulfills conditions of immutability, security, storage and archiving of data.

VAT payers can demonstrate fulfillment of these conditions in two ways:

- The software or cash register system is certified by an accredited organization; or
- The VAT payer has an individual certificate from the publisher of the software or cash system certifying compliance.

Failure to establish that the software or the cash register meets the conditions set by law, by the production of a certificate or an individual certificate, can result in a fine for the VAT payer of EUR 7,500.

In August 2016, the tax authorities published guidelines detailing the taxpayers affected, as well as the modalities to implement this new obligation.

Some technical issues are still to be specified. However, VAT payers should be considering this issue as soon as possible in order to be ready on 1 January 2018.

Paperless invoicing for public sector suppliers

As from 2020, all invoices between the public sector and their suppliers must be 'dematerialized'.

The French State has made the transition to paperless processes a priority of its 'program of modernization'. AIFE (*Agence pour l'Informatique Financière de l'État* – the Agency for State Financial Information Technology) launched *Chorus Factures* on 1 January 2012 to allow suppliers to submit their invoices electronically on a voluntary basis. This free online platform will be updated for 2017 and will be named *Chorus Pro 2017*.

All French public sector organizations will be required to make the transition to paperless billing and processing by 2020.

A gradual national e-invoicing roll-out in the public sector is expected from 1 January 2017 to 1 January 2020, with the following deadlines:

- By 1 January 2017 for large groups (more than 5,000 employees) and all contracting authorities
- By 1 January 2018 for intermediate size enterprises (250 to 5,000 employees)
- By 1 January 2019 for medium size enterprises (10 to 250 employees)
- By 1 January 2020 for small enterprises (less than 10 employees).

The tax authorities are now communicating regarding this obligation to inform companies that may be impacted. A specific online Community *Chorus Pro* has been created to provide information on how it will work and to enable companies to choose the most convenient modalities to connect: <https://communaute-chorus-pro.finances.gouv.fr/>.

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Italy

Pescara VAT office becomes competent for MOSS matters

From 1 October 2016, Pescara VAT office (COP) becomes responsible for the processing of MOSS VAT registrations and returns; previously Venice Office (COV) was the competent office.

This is provided for in Act n° 118987, dated 26 July 2016, issued by the Director of the tax authorities, which has also provided some further guidelines regarding the online MOSS procedures to follow for e-services providers subject to EU and non-EU regimes.

Bitcoin transactions exempt from VAT

Implementing the principles stated by the Court of Justice of the European Union (*Hedqvist*, dated 22 October 2015), the tax authorities, in a similar case, have clarified that Bitcoin transactions are exempt from VAT under the provision concerning transactions relating to currency (art. 10(1)(3) of Presidential Decree n° 633/1972).

This is specifically stated by Resolution n° 72/E dated 2 September 2016, published to reply to a ruling petition submitted by a company wishing to provide in Italy services related to Bitcoin virtual currency.

Recovery procedure for VAT paid following tax assessment for split payment transactions

Where a supplier has charged VAT at a reduced rate to a customer in a split payment transaction and the tax authorities have assessed the supplier at the standard rate, the supplier is able to recover the additional VAT from the customer, upon condition that the supplier has already paid the VAT assessed, penalties and interests due to the tax authorities.

In Resolution n° 75/E dated 14 September 2016, the tax authorities have clarified that the supplier is able to recover the assessed VAT (paid to the tax authorities) according to the ordinary rules, thus by issuing an invoice charging VAT, and is not subject to the split payment mechanism. This means that the customer will pay the VAT to the supplier, in derogation of the split payment mechanism (under which the customer pays the VAT to the tax authorities directly).

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Interest for deferment account

Based on Italian law, Customs can allow operators to defer customs duties payments for 30 days (until 90 days for import VAT) and if the payment is made from the 31st day, interest is due. In this respect, with a decree published in August 2016, the Minister of Economy and Finance has established an annual interest rate of 0.213% for the period between 13 July 2016 and 12 January 2017.

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Ivory Coast

2016 Financial Law

The 2016 Financial Law from the Ministry of Budget concerning the Government budget for the year 2016 came into force on 4 January 2016.

The Law has introduced a number of reforms, particularly with regard to indirect taxes. These reforms will impact all types of enterprises, to support companies in their development and the economic growth of the state.

According to the Financial Law:

- Companies allowed to invoice VAT must have annual turnover exceeding XOF 50 million, including taxes.
- There has been removal of the VAT exemption process by certificate for oil or mining companies. At present, they must produce to their suppliers an annual exemption certificate issued by the tax administration.
- The operations of money transfer made by companies other than banks are no longer subject to the Tax on Banking Operations but rather to VAT.
- The establishment of a three year period of limitation for the reimbursement of VAT credits.

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Netherlands

Supreme Court seeks clarification of VAT treatment of guided tour of stadium and museum visit

On 12 August 2016, the Supreme Court referred a case to the Court of Justice of the European Union asking for clarification regarding whether a guided tour of a stadium and museum visit are considered as a single supply for VAT purposes, and whether it is possible to apply a different (reduced) VAT rate on a 'concrete and specific element' of the combined supply.

Announcement of annual Budget and presentation of Tax Plan 2017

The announcement of the annual Dutch Budget took place on 20 September 2016. The 2017 Tax Plan was presented to the House of Representatives. The Plan includes three changes in the field of indirect tax.

VAT exemption for water sports associations amended

Following infringement proceedings, the VAT exemption for water sports associations will be amended as of 1 January 2017.

The legislative text will be 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. Currently, the interpretation of the sports exemption by the Netherlands is too narrow; therefore taxpayers will still be able to directly invoke the European VAT Directive until the implementation of the amended law on 1 January 2017.

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 Ministry of Finance has proposed to align the Dutch VAT Act with CJEU case law and to replace the current definition of building land with 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 parties no longer need to directly invoke the European 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 proposed

The Ministry of Finance has also proposed a simplification of the VAT bad debt relief legislation.

The main purpose of the proposed 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.

Currently, the VAT can only be reclaimed if it is clear that no full or partial payment is or will be received. In the proposed revisions, the taxable person will automatically be entitled to bad debt relief one year after the invoice is claimable. Another simplification is that the VAT can be recovered via the periodic VAT returns, instead of filing a separate request for the refund of VAT.

If, at a later stage, it appears that the payment will be made after all, the taxable person must correct this via the periodic VAT returns.

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 deducted. If the debtor makes payment at a later stage, the VAT can then be deducted.

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Poland

Plans for abolition of quarterly VAT return filing

Recently, the Government has published a draft of a bill to amend the VAT provisions. One of the most significant changes with respect to the VAT Act is the abolition of quarterly VAT returns. Currently the majority of taxpayers (excluding taxpayers making supplies of some sensitive goods such as electronic devices) have the option to file quarterly VAT returns (in some cases this is subject to the condition that they settle advance VAT payments on a monthly basis).

Further to the bill, the possibility of filing VAT returns quarterly will be limited to small taxpayers only (taxable sales on a yearly basis below the threshold of EUR 1.2m), except for the period of 12 months following registration and cases where supplies of sensitive goods made within a given period exceed the level of PLN 50,000. Other entities will be required to file monthly VAT returns.

The proposal may result in a considerable increase in the administrative burden and potential cashflow issues for taxpayers currently settling VAT on quarterly basis. On the other hand, this will be more compatible with the obligation to file JPK VAT evidence on a monthly basis, which for quarterly VAT payers may make it necessary to correct JPK VAT evidence files submitted over the quarter.

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Portugal

New excise duty refund scheme for road freight companies

Further to the publication of Law nr. 24/2016, dated 22 August 2016 (reported in the [August 2016](#) edition of this newsletter), which implemented a new petrol excise duty refund scheme for road freight companies, Ordinance nr. 246-A/2016, dated 8 September 2016, has established specific details related to the scheme.

According to the Ordinance, the amount to be refunded, with reference to diesel for road use (Combined nomenclature codes of 2710 19 41 to 2710 19 49), shall correspond to the difference computed between the minimum levels of taxation applicable to motor fuels set out in Annex I Table A, as per Article 7 of Directive 2003/96/EC – i.e EUR 330 per 1,000 liters – and the total amount of indirect taxation charged (excluding VAT), computed directly or indirectly based on the quantity of petroleum products – namely excise duties on energy products, additional CO2 emissions taxation and special contribution for the road service – amounting to EUR 465.92 per 1,000 liters of diesel for road use.

Considering the above, the tax authorities will reimburse EUR 0.126 per liter of diesel for road within three months counted from the time of the communication to the tax authorities. Entities issuing fuel fleet cards need to communicate to the tax authorities the date of the refuelling up to the 15th day of the month following the month in which the refuelling took place.

Only vehicles weighing more than 2,500kg and used for the transport of goods (or rented for this purposes) that fuel their tanks through fuel fleet cards issued by Portuguese fuel companies or issued abroad but accepted within Portuguese territory can benefit from this scheme. Taxpayers benefiting from this scheme must be duly licensed freight companies, with headquarters or a permanent establishment in an EU Member State, and must have ownership or renting contracts of the said vehicles.

The maximum amount eligible to be refunded is 30,000 liters per freight vehicles and per civil year.

This Ordinance will take effect on 1 January 2017. However, in order to test the control mechanism for the purposes of this scheme, the practical effect of this regime applies as of 15 September 2016 in the following pilot regions near the border with Spain:

- Vilar Formoso region – Municipalities of Almeida and Guarda;
- Caia region – Municipalities of Elvas and Estremoz;
- Vila Verde de Ficalho region – Municipalities of Serpa and Beja;
- Quintanilha region – Municipalities of Bragança and Macedo de Cavaleiros.

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Russia

Development of draft law on introduction of 'tax free'

It is reported that the Ministry of Finance has started working on the draft law that will make amendments to Chapter 21 'Value Added Tax' of the Tax Code. In particular, it will establish the ability to apply a 0% VAT rate with respect to the supply of goods by retailers where the purchased goods are exported by individuals that have the right to a VAT refund outside the customs territory of the Eurasian Economic Union.

The text of the draft law has not yet been officially published.

Draft law on amending application of VAT to export operations

It is reported that the Ministry of Finance has developed the draft law that will allow taxpayers supplying goods for export and rendering services/performing work in connection with the transportation of such goods not to apply the 0% VAT rate based on an application submitted to the tax authorities. In particular:

- The application should be submitted to the tax authorities no later than the 1st day of the tax period starting from which the taxpayer intends not to apply the 0% VAT rate;
- Suspension of the application of the 0% VAT rate is possible only with respect to all operations performed by the taxpayer;

- The application of different VAT rates cannot be based on the identity of the buyer of the supplied goods/work/services;
- Application of the 0% VAT rate cannot be suspended for a period of less than one year.

Development of draft law on right for taxpayers applying special tax regime of single agricultural tax to voluntarily pay VAT

It is reported that the Ministry of Agriculture has started working on the draft law that will provide taxpayers applying the special tax regime of the single agricultural tax with the right to voluntarily pay VAT. In particular:

- Transfer to the payment of single agricultural tax simultaneously with execution of the obligations of the VAT payer will be made on the basis of notification submitted to the tax authorities not later than 31 December of the calendar year preceding the year in which the transfer will take place;
- Companies will have to submit an application for the continuation of this tax regime for the next tax period on a yearly basis;
- There will be rules regulating transfer from the single agricultural tax to the single agricultural tax with execution of the obligations of the VAT payer and *vice versa*;
- Regional laws may establish differentiated tax rates between 0% and 3% for payers of single agricultural tax with execution of the obligations of the VAT payer.

If approved, the law will enter into force on 1 January 2019.

Inclusion of crude lead into list of goods for which temporary restrictions or prohibitions of export may be introduced

Resolution of the Russian Government No. 826 of 20 August 2016 included crude lead classified under the classification code 7801 according to the Unified Commodity Nomenclature of the Foreign Economic Activity of the Eurasian Economic Union into the list of goods for which temporary restrictions or prohibitions of export may be introduced.

The Resolution came into effect on 31 August 2016.

Inclusion of salt, sodium chloride and sea water into list of goods prohibited for import into Russia

Resolution of the Russian Government No. 897 of 10 September 2016 included salt, sodium chloride and sea water classified under the classification code 2501 00 according to the Unified Commodity Nomenclature of the Foreign Economic Activity of the Eurasian Economic Union into the list of goods for which import into Russia is prohibited if they originate from particular countries.

Since August 2014, certain goods originating from the European Union, the USA, Canada, Australia, Norway, Ukraine, Albania, Montenegro, Iceland and Liechtenstein were prohibited for import into Russia. The Russian President Decree of 29 June 2016 No. 305 and the Russian Government Resolution of 30 June 2016 No. 608 extended the said prohibition of import of certain types of goods into Russia until 31 December 2017.

Resolution No. 897 comes into effect on 1 November 2016.

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Spain

Requirements on VAT e-invoicing

The General Tax Directorate has recently issued a further tax binding rule in which they maintain the criteria previously stated related to the requirements for VAT e-invoicing.

In particular, this ruling reiterates that both paper and electronic invoices should guarantee the authenticity of origin, the integrity of content and legibility and, therefore, according to EU Directive 2010/45/EU, there should be no additional requirements for electronic invoices than for paper invoices.

Regarding the possibility of storing paper invoices in a digital format (i.e. digitalization procedure), the tax authorities consider that such procedure must also ensure that (i) the authenticity of the documents' origin, (ii) the integrity of their content, and (iii) their legibility is guaranteed. Previously, the tax authorities requested that digitalization software be specifically validated by the tax authorities for these purposes. However, the General Tax Directorate has confirmed a more flexible criteria by which taxpayers could use digitalization procedures not previously validated, provided the requirements are guaranteed.

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HMRC guidance on domestic reverse charge for telecoms services

The tax authorities (HMRC) have published a guide that explains the rules that apply to wholesale electronic communications supplies providing speech and associated services: [VAT: reverse domestic charge for telecommunications services](#). It explains how VAT invoices will be affected by the reverse charge and sets out information about supplies covered by the reverse charge rules.

The reverse charge rules for relevant wholesale supplies of telecoms services were introduced to counter the threat of 'MTIC' frauds based on such supplies and have been in force since 1 February 2016. Whilst HMRC applied a 'light touch' over penalties for failure to apply the provisions correctly during the first six months that the provisions were in force (recognizing that they were introduced very soon after they were announced), that 'grace period' has now ended, which means that errors in the operation of the rules are now more likely to attract penalties.

VAT recovery on pension fund management costs – transitional period extended

HMRC have announced a further extension of the transitional period (during which employers and pension funds can continue to apply the 'old' rules for recovering VAT on pensions-related services, as set out in [VAT Notice 700/17](#)). HMRC's latest Brief – 14(2016) – follows HMRC Briefs [43 \(2014\)](#), [8 \(2015\)](#) and [17 \(2015\)](#) about changes to HMRC's policy on the recovery of VAT on pension fund management costs in response to the Court of Justice of the European Union judgment in the case of *PPG Holdings BV*.

In October 2015, in Brief [17 \(2015\)](#) HMRC confirmed that, if they wished, taxpayers would be permitted to apply the 'old' rules until 31 December 2016. HMRC Brief [14 \(2016\)](#) confirms that, due to difficulties over reconciling the *PPG* judgment with "pension and financial service regulations, accounting rules and emerging case law", the transitional period is being further extended, to 31 December 2017. Brief 14 (2016) also confirms that employers and pension funds can agree to revert to using the 'old' rules set out in [VAT Notice 700/17](#), even if they have already revised their structures in anticipation of those rules being withdrawn on 31 December 2016, should they wish to do that. The Brief also indicates that HMRC may consider a further extension of the transitional regime following a review of the position that is to take place towards the end of 2017.

Court of Appeal rules that charity conducted economic activity for VAT purposes

The Court of Appeal has allowed HMRC's appeal in the case of *Longridge on the Thames*.

The Court held that Longridge conducted an economic activity for VAT purposes, and accordingly, could not obtain zero-rating on the construction costs of its new building. Longridge is a charity that provides boating and other water based activities to young people at its premises on the banks of the River Thames. HMRC took the view that the fees charged by the charity (which were often below cost) had a direct link to the service the recipients received and that it was carrying out an economic activity.

The First-tier Tribunal disagreed with HMRC. The First-tier Tribunal considered the activities of Longridge as a whole and concluded that its predominant concern is not to make supplies for a consideration, but to carry out activities in a manner which furthers its charitable objectives. The First-tier Tribunal noted that there are features which are not consistent with sound business principles (most obviously the charity's use of volunteers and reliance on donations to meet its costs). The Upper Tribunal decided that "... the First-tier Tribunal applied the correct test in evaluating the facts as it found them. There are no grounds for disturbing its conclusion that Longridge does not carry on an economic activity at the site."

The Court of Appeal has now allowed HMRC's appeal. Mr Justice Morgan stated "I consider that it should now be recognized that the test of 'predominant concern' is unhelpful and may be misleading."

Another 'payment handling' VAT exemption case being referred to the CJEU

In November 2013, the First-tier Tribunal decided that a reorganization of its affairs resulted in DPAS Limited making VAT exempt supplies to the patients, rather than standard-rated supplies to the dentists, when it arranged the payment of charges for dental treatment, and insurance premiums (and its own fees).

However, in November 2015, the Upper Tribunal decided that inaction on the part of the patients when they were invited to confirm their acceptance of the revised contractual structure was insufficient to effect the change, leaving the 70% or so of patients who did not respond to the invitation on the 'old' structure – where standard-rated supplies were made to the dentists. The Upper Tribunal allowed HMRC's appeal to that extent but decided to await the outcome of the references to the CJEU in the cases of *Bookit Limited* and *National Exhibition Centre Limited* before reaching a final conclusion on the VAT treatment of the supplies to the patients.

Following the CJEU decisions in the *Bookit* and *NEC* cases, the case returned to the Upper Tribunal for further consideration, based on written representations. The Upper Tribunal concluded that the answer to the question of whether DPAS was making a potentially exempt supply of 'payment handling' services to the patients is not *acte clair* and that the question of whether the services amounted to 'debt collection' (despite the fact that the services were being supplied to the debtor, not the creditor) was one that only the CJEU could answer. Accordingly, they decided to refer questions to the CJEU on both points.

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Eurasian Economic Union

Tariff quota on rice originating from Vietnam and certain agricultural goods

Decision of the Board of the Eurasian Economic Commission No. 98 of 30 August 2016 introduces tariff quota on certain types of rice originating from Vietnam classified under the classification code 1006 30 according to the Unified Commodity Nomenclature of the Foreign Economic Activity of the Eurasian Economic Union and imported into the Eurasian Economic Union in 2017. Tariff quota are established only for Russia and Belarus.

Decision No. 98 comes into effect 30 calendar days after official publication but not earlier than the date of effectiveness of the Free Trade Agreement between the Eurasian Economic Union and Vietnam. It is expected that the FTA between the Eurasian Economic Union and Vietnam will come into effect on 5 October 2016.

Decision of the Board of the Eurasian Economic Commission No. 97 of 30 August 2016 introduces tariff quota on certain types of agricultural goods (i.e. certain types of meat and milk products) imported into the Eurasian Economic Union in 2017.

Decision No. 97 came into effect on 30 September 2016.

Amendments to list and procedure for import and export of certain pharmaceutical goods in Eurasian Economic Union

Decision of the Board of the Eurasian Economic Commission No. 99 of 30 August 2016 introduces amendments to, in particular, the list and procedure for the import and export of certain pharmaceutical goods, including pharmaceutical substances.

Certain pharmaceutical goods containing vitamins and/or mineral substances and used for medical purposes are included in the list.

The requirements and the procedure for obtaining permissive documents for the import and export of pharmaceutical goods included in the relevant list are amended and detailed.

Decision No. 99 came into force on 30 September 2016.

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