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Global Indirect Tax News

Your reference for indirect tax and global trade matters

Welcome to the November 2018 edition of GITN, covering updates from the Americas, Asia Pacific and EMEA regions.

Features of this edition include the expansion of the Customs Union in Central America, the entry into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership in a number of countries, the conclusion of free trade agreement negotiations between Australia and Hong Kong, Maltese guidelines on the VAT treatment of distributed ledger technology assets, and an announcement on Making Tax Digital for VAT from the UK.

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Eurasian Economic Union

	Rates of import customs duty have been established on motor vehicles for industrial assembly. A Technical Regulation establishes rules for the safety of children's playground equipment. Decisions of the Eurasian Economic Commission have explained the classification of certain products. Commodity codes have been extended for certain types of organic chemical compounds. The list of goods to which temporary prohibition or export restrictions may be imposed has been extended. A list of products has been established for which certain documentation is required for customs clearance.	**Read more**

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Americas

Central America

Customs Union expands in Central America

On 1 March 2018, the Customs Union between the Republics of Guatemala and Honduras mandatorily went into effect. This means that, as of that date, operations for the export and import of goods between both countries fall outside of the customs realm and now constitute operations for the transfer and acquisition of goods that are documented through the FYDUCA (Central American Invoice and Single Declaration). As a result, the territories of Guatemala and Honduras now constitute a single national territory for customs purposes.

This process has led to an increase in commercial activity between the two countries, and the Customs Union has allowed for the streamlining of the movement of goods at the national borders.

On 20 August 2018, El Salvador officially joined the Central American Customs Union first executed by Guatemala and Honduras. With this addition, 70% of Central American trade will move through a common customs territory, with GDP growth expected in the three countries, in addition to the benefits from the facilitation of trade.

El Salvador is currently performing technical work in order to start the operational phase of its addition to the Customs Union, which will include the mandatory use of the FYDUCA for documenting transfers and acquisitions of goods among the three countries. It is expected that this process will conclude in January 2019, and thus it is also a challenge for companies, which must work to integrate their international trade processes with the new procedures and practices resulting from the Customs Union.

The execution of the Central American Customs Union is a gradual process, and thus, in the short term, it is expected that the rest of the Central American countries will join.

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Asia Pacific

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

TPP-11 to take effect

On 31 October 2018, Australia ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11).

As Australia is the sixth signatory to ratify the TPP-11, following Canada, Japan, Mexico, New Zealand and Singapore, the agreement will enter into force for these countries on 30 December 2018.

This start date means that the first two rounds of customs tariff reductions will occur in quick succession for goods traded between the above countries: the first on 30 December 2018 and the second on 1 January 2019.

On 12 November 2018, Vietnam's National Assembly ratified the TPP-11. The TPP-11 will enter into force for Vietnam 60 days after it provides notification of its ratification, making a start date in early 2019 likely.

As at 19 November 2018, four signatories had yet to ratify the TPP-11: Brunei, Chile, Malaysia and Peru. The agreement will enter into force for each of these countries 60 days after they ratify.

Tariff cuts under a free trade agreement (FTA) are not applied automatically to imported goods. Businesses trading with customers/suppliers from another TPP-11 country that has also ratified should be using the time leading up to the start date to:

- Identify goods that will potentially benefit from tariff reductions under the TPP-11;
- Check whether those goods will meet relevant rules of origin (ROO) requirements, including any product-specific rules of origin for goods imported from a TPP-11 country which contain inputs or components sourced from outside the TPP-11; and
- Clarify which party (i.e., producer, exporter or importer) will complete and provide the certificate of origin in respect of goods for which preferential treatment will be claimed and ensure that the certification documentation includes all required information.

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Australia-Hong Kong

Australia and Hong Kong conclude negotiations for a free trade agreement

On 15 November 2018, Australia announced that it had concluded negotiations with Hong Kong for the Australia-Hong Kong Free Trade Agreement (A-HKFTA).

The key outcome announced in relation to trade in goods between Australia and Hong Kong is the agreement to fix all customs tariffs at zero from the date of the A-HKFTA's entry into force.

Although Hong Kong currently provides tariff-free entry for goods from Australia, the benefit for Australian exporters lies in the certainty that Hong Kong will not apply customs tariffs in the future. As things presently stand, Hong Kong has the ability to increase tariffs to any level on a wide range of goods without breaching the World Trade Organization (WTO) rules.

The A-HKFTA is also expected to include non-tariff measures and streamlined customs procedures to provide improved outcomes for two-way trade in goods.

The A-HKFTA will also provide many benefits in relation to trade in services and improved conditions for investment between Australia and Hong Kong.

The text of the A-HKFTA awaits finalization, ahead of its formal signing and publication. A proposed timetable for signing, ratification, and entry into force has not been announced.

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EMEA

Czech Republic

Amendment to VAT Act postponed

A not-yet-approved amendment to the VAT Act with proposed effect from January 2019 will be definitively postponed by several months. The changes (such as VAT treatment of vouchers, bad debt relief rules, a new definition of leasing agreement which is considered a supply of goods, etc.) can thus be expected to apply no sooner than 1 April 2019. It has been newly proposed, furthermore, that the supply of organic/bio food should be subject to the 10% reduced VAT rate, instead of the currently applicable 15%.

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Denmark

VAT deduction by holding companies

On 16 October 2018, the tax authorities published updated instructions on the deduction of VAT by holding companies, which expand the possibilities for holding companies to deduct VAT on expenses incurred in connection with the acquisition and ownership of subsidiaries.

The instructions reflect the 5 July 2018 decision of the Court of Justice of the European Union (CJEU) in *Marle Participations SARL*, in which the CJEU held that a holding company's acquisition of a subsidiary and subsequent rental of real estate to the subsidiary constitutes involvement in the management of the subsidiary, such that the rental should be regarded as an economic activity on which the holding company is entitled to deduct input VAT.

The instructions represent guidance to tax officials on applying the relevant legislation and also may be used by taxpayers.

One of the major differences between the new instructions and those dating from 2015 is that, in general, the right of deduction cannot be limited because the holding company only performs certain types of transactions (e.g. a deduction for input VAT cannot be disallowed if the sole activity consists of the rental of real estate.)

This reflects the CJEU decision in *Marle Participations* and overrules the former practice of the tax authorities, as set out in the 2015 instructions, that the rental of real estate to a subsidiary cannot, by definition, be considered involvement in the direct or indirect management of the subsidiary.

There are two key requirements that must be met for the holding of shares to be regarded as an economic activity and, as a result, for the holding company to be entitled to a deduction for VAT incurred on expenses in connection with the acquisition and ownership of subsidiaries:

- The holding company must be involved in the management/administration of the subsidiary; and

- The transactions must be subject to VAT.

The instructions contain an example of a Danish company that sells its goods via a third-party distribution company. The Danish company acquires the majority of the shares in the distribution company and subsequently replaces the entire board of directors and management team.

The tax authorities are of the opinion that the equity investment is acquired with the intention of the Danish company becoming involved in the management and administration of the company and potentially make further VATable deliveries to the company.

The acquisition and ownership of the distribution company is an indication of economic activity and, therefore, means the Danish company meets the above requirements.

Potentially affected holding companies should assess whether they have engaged in activities that may give rise to a right to deduct input VAT. Such companies may request a repayment of VAT incurred as from 1 January 2009, in line with the CJEU decision in the *Marle Participations* case, and refund applications must be submitted to the tax authorities by 16 April 2019.

Some uncertainty remains regarding a number of additional conditions that may need to be fulfilled, but this is expected to be settled as the tax authorities begin to process specific cases.

Possible VAT deduction for sale of shares in subsidiaries

The CJEU judgment *C&D Foods Acquisition ApS* concerns a Danish entity. In brief, the CJEU agreed with the tax authorities that C&D Foods Acquisition ApS was not entitled to deduct the VAT for advisory costs directly related to the disposal of shares. The purpose of the sale of shares was clearly to settle a debt to a bank and the activity was found not to be related to the taxable activities of C&D Foods Acquisition ApS. This conclusion is in line with the Danish administrative practice.

What could turn out to be of more interest is what the CJEU mentions in premise 38 of the ruling. It is stated in general that in order to deduct VAT related to a sale of share transaction, the transaction must constitute the direct, permanent, and necessary extension of the economic activity.

This statement could be interpreted in different ways and it will be interesting to hear the opinion of the Danish tax authorities, as they in general do not allow deduction of VAT in such situations. In particular, whether the statement will broaden the tax authorities' view in order for holding companies more generally to be allowed the right to deduct the VAT related to the sale of shares if the transaction is in direct, permanent, and necessary extension of the economic activity.

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Germany

Reference for preliminary ruling from Federal Tax Court concerning VAT rate reduction for rental of moorings for boats

In a resolution dated 2 August 2018 (and published on 14 November 2018) Germany's Federal Tax Court (BFH) referred a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling on whether the VAT rate reduction applicable under VAT law for the short-term rental of camping areas also applies to the rental of boat moorings. In its decision of 2 August 2018 the Federal Tax Court therefore asked the CJEU to clarify whether a port should be treated in the same way as a campsite, while retaining the same function.

Facts of the case

The plaintiff, a registered association whose purpose is the promotion of sailing and motor water sports, let boat moorings in its harbor for a so-called harbor fee to water sportsmen who could anchor and stay overnight there with their boat. The harbor dues also included the use of similar (sanitary) facilities as on campsites and in so-called mobile home harbors.

The plaintiff applied the reduced VAT rate to the fees from the transfer of the berths. In the course of a special audit, the tax office subjected the disputed revenues to the standard VAT rate.

The Lower Court dismissed the complaint on the grounds that the short-term provision of boat berths did not fall under the legal formulation 'short-term rental of camping areas' (according to section 12 para. 2 no. 11 sentence 1 German VAT Act), as a boat is primarily a means of transport.

Reference for a preliminary ruling from the BFH

By contrast, the Federal Tax Court considers it possible that the principle of fiscal neutrality requires that the tax rate reduction for campsites and thus for so-called motorhome ports also apply to the provision of boat moorings in so far as these carry out similar transactions. The Federal Tax Court refers the following question to the CJEU for a preliminary ruling:

> Does the reduction in the tax rate for the rental of camping sites and caravan parks under Article 98(2) of the VAT Directive in conjunction with Annex III No 12 to the VAT Directive also cover the rental of moorings for boats?

Legal framework:

Art. 98 (2) of the EU Principal VAT Directive in conjunction with Annex III No 12 VAT Directive; sect. 12 para 2 no. 11 sentence 1 German VAT Act.

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Greece

Notification of law regarding accelerated processing of VAT refunds

By virtue of Circular Pol. 1202/2018, the provisions of article 36 of Law 4569/2018 have been notified. Article 36 provides for the processing of pending VAT refund claims of up to EUR 10,000 (per beneficiary) in audit cases pending on 11 October 2018 to be accelerated (see the October 2018 edition of this newsletter for further information). It was also clarified that the effective date of the law is 11 October 2018.

Announcement on mandatory e-invoicing and e-bookkeeping

With respect to the introduction of mandatory e-invoicing and e-bookkeeping, the Secretary-General of the Independent Authority of Public Revenues (Mr. Pitsilis), during his speech at the 10th Tax Forum, announced that electronic books (for accounting purposes) have taken a specific format and are designed to receive information through e-invoicing, either through a recording method, a mass data transfer, or the separate cash register channel.

Moreover, until e-invoicing is fully implemented, in which case the completion of e-books will be made automatically through e-invoices, an innovation is currently processed, namely, invoices will be recorded in the systems of the Independent Authority of Public Revenues only by the issuer. The said recording/entry will automatically update both the recipient's books and account. As a result, progressively, e-invoicing and e-bookkeeping will reduce the bookkeeping work in total, whereas the filing of summary lists of customers and suppliers will not be required.

Furthermore, as the Secretary-General indicated, at this stage, several solutions are being examined to enable recipients to complete accounting books where the issuer/supplier has omitted to record the relevant invoice, as well as where there are mismatches.

In light of the above, the Secretary-General concluded that within a tight timeline, the competent working groups have managed to substantiate the project of designing the e-bookkeeping option. Therefore, provided the required storage and calculating capacity of the system is secured, e-invoicing and e-bookkeeping will become operational in 2019.

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Ireland

Finance Bill 2018

In addition to the recent indirect tax changes in this year's budget, the Finance Bill 2018 published by the Minister for Finance Paschal Donohoe on 18 October 2018 included some unexpected changes, which can be summarized under the following four headings:

Extension of the sugar sweetened drink tax

The sugar sweetened drink tax was introduced in May 2018 and applied to water-based and juice-based drinks with 5g or more of added sugar per 100ml. Dairy products were initially exempt from the tax, however, on the basis of the commitment made to the European Commission that the drinks exempted from such tax should have certain nutritional value, the Finance Bill 2018 extended the tax to include milk substitute or milk fat based drinks containing added sugar whose calcium content is below 119mg per 100ml.

Withdrawal of vehicle registration tax (VRT) relief for leased or hired cars

In the past, cars leased or hired in another EU Member State that were temporarily used in Ireland for a term of lease or hire could not avail of any VRT relief on the basis of temporary use in Ireland and were liable to the full rate of VRT. The Finance Bill 2018 grants VRT relief on such temporary use on a pro-rata basis, subject to certain conditions being met. This change is in line with a recent Court of Justice of the European Union judgment against Ireland for imposing a full VRT charge where the vehicle was only being used for a short period in Ireland.

Closure of a loophole on the sale of residential properties by receivers/mortgagees in possession

Currently the sale of residential properties by receivers or mortgagees in possession is only subject to VAT if the owner was entitled to VAT input deduction in the course of a property development business. To close a loophole, in which someone other than the owner developed the property and claimed the VAT input deduction, the Finance Bill removes the requirement that deduction was claimed by the owner, and instead the property will be liable to VAT if anybody developed it and received a VAT input deduction.

This amendment comes into effect from 1 January 2019 and will only apply to receiver/mortgagee in possession sales of the specific residential properties in question from thereon.

Changes to VAT deduction rules for providers of pre-paid phone cards

The final change introduced by the Finance Bill 2018 was removal of the provisions allowing for the adjustment of VAT liability for telephone cards sold in Ireland but used outside of the EU. The ability to make such VAT adjustments has now been removed with effect from 1 January 2019.

VAT recovery on deal fees

The Court of Justice of the European Union judgment in the case *Ryanair* was released on 17 October 2018. The case relates to VAT recovery entitlement on professional fees incurred in the process of an unsuccessful bid by Ryanair to acquire shares in a rival airline with an intent to take it over and provide management services to the target company following acquisition.

The CJEU held that full VAT recovery on such costs should be available on the basis of Ryanair's intent to make taxable supplies of management services, despite the fact that the acquisition did not go through and the intended management services did not materialise.

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Italy

E-invoicing

On 16 November, the tax authorities released the following significant clarifications in a 'video forum' with the Italian specialized press:

- The introduction of mandatory e-invoicing does not affect the provisions in place for Intrastat obligations.

- Taxpayers are not required to adopt separated sectional VAT ledgers (and therefore different sequential numberings) depending on different archiving methods (e.g. traditional for paper invoices and e-storage for e-invoices) provided that: (i) the numbering of the invoices ensures the unicity of each invoice; (ii) the e-invoices are e-stored.

- The storage service provided by the tax authorities allows storage of e-invoices for 15 years, even in the case of revocation or expiry of the agreement with the taxpayer. The agreement with the tax authorities covers a period of three years and must be renewed at the time of expiry according to the instructions released by the tax authorities.

- Input VAT related to a purchase e-invoice dated 30 January 2019 and received on 1 February 2019 can be deducted with reference to the month of January (by 15 February).

- As a result of the grace period for the first semester of 2019, no penalties will apply where: (i) payment is received from a customer on a given date (e.g. 20 March 2019); and (ii) an invoice with the same date (i.e. 20 March 2019) is sent through SDI by the 15th of the following month (i.e. 15 April). On the purchase side, VAT may be deducted with reference to the month of March; on the output side, the VAT must be paid by 16 April.

- With respect to transactions with non-established operators, from 1 January 2019, Italian-established companies will be required to issue e-invoices to non-residents VAT registered in Italy. To transmit e-invoices to these recipients, the supplier must enter the value '0000000' in the field dedicated to the recipient code (unless the recipient has already sent to the supplier the telematics code PEC or recipient code). A pdf copy of the e-invoices will be available for the recipient in the dedicated Web Area. It would be advisable to provide the recipient with the pdf copy of the invoice sent through SDI, informing the recipient that the e-invoice (the original document) is available on the dedicated section in the SDI. In this respect, the tax authorities refer to the e-invoice as the 'original document'; even if not expressly clarified, this could suggest that the e-invoice (and not the paper one) is the document legitimating/giving rise to the VAT deduction, even for non-established subjects VAT registered in Italy.

- Foreign subjects VAT registered in Italy will not be required to issue e-invoices for outbound transactions.

- With respect to the provision of services, the 'proforma invoice' can be deemed useful to ground the issuance of a deferred e-invoice (by 15 days after the payment of the consideration), provided it contains: (i) the description of the service provided; (ii) the tax point (date of payment of the consideration); (iii) the identification of the parties.

- Reverse charge on intra-Community acquisitions and the extra-EU acquisition of services: Transactions will have to be declared in the Cross Border Report. The tax authorities confirmed that for the reverse charge on domestic transactions traced by e-invoices with code N6, the purchaser should integrate the invoice but will be allowed also to issue a self-invoice; in this case, the self-invoice could (but should not) be sent through SDI.

- The Italian Data Protection Authority, based on the corrective power granted by the GDPR EU Regulation, has issued a warning to the tax authorities that the e-invoicing implementing rules are likely to infringe provisions of the Regulation. The Authority has asked the tax authorities for information on the initiatives taken to comply with the provisions of the Regulation. Given this, it is likely that the tax authorities will need to add some further technicalities to the e-invoicing implementing rules.

VAT grouping

With Circular Letter n° 19/E of 31 October 2018, the tax authorities provided some significant clarifications regarding the new VAT grouping rules, effective (for the first time) from January 2019, where an option has been exercised by 15 November 2018. The main points are as follows:

- Pure holding companies are not eligible, being non-taxable persons for VAT purposes; however, the requisite financial link is deemed to be met by all subsidiaries directly or indirectly controlled by non-operative holdings (in other words, the pure holding companies will be considered for the purposes of verifying the existence of the financial link).

- The financial link is deemed to be met by all subsidiaries directly controlled by foreign companies established in a country with a bilateral tax information exchange agreement in place with Italy.

- To avoid the potential negative impact for VAT deduction arising from the application of the pro-rata method, a VAT group may opt for the so-called 'separation of activities' (with direct imputation to each of the activities of the specific costs and allocation of the mixed costs based on objective criteria) even when the activities, substantially different from each other, are under the same statistical classification of economic activities (ATECO code).

- Internal transactions will be disregarded for VAT purposes and thus no 'internal invoices will need to be raised; on the other hand, where the 'separation of activities' is in place, invoices will have to be raised for internal transfers of goods or services from the activity carrying out taxable transactions (with full right of VAT deduction) to the activity carrying out exempt transactions (without full right of VAT deduction).

VAT treatment of transfer pricing adjustments

With Ruling n° 60 of 2 November 2018, the tax authorities, in line with the principles stated by the European Commission in Working Paper n° 923 of 28 February 2017, clarified that transfer pricing (TP) adjustments are relevant for VAT purposes, thus affecting the determination of the VAT taxable base by increasing or decreasing the consideration for the supply of goods/services only when: (i) there is a consideration; (ii) the supply of goods/services to which the consideration relates is identified; (iii) there is a direct link between the supply of goods/services and the consideration.

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New parameters for training activities to achieve qualification for Authorized Economic Operator

With the Customs Authorities Directorial Act no. 99766/RU of 25 October 2018, the customs authorities have reformulated the regulation of training activities, concerning customs legislation, aimed at achieving the requirement of 'professional qualification' for Authorized Economic Operator (AEO) purposes.

Clarifications on amendments to Regulation (EU) no. 2246/2015

With Customs Note no. 112029/RU issued on 15 October 2018 and Note no. 100970/RU issued on 2 November 2018, the customs authorities provided some clarification with reference to the implication of the changes introduced by Delegated Regulation (EU) no. 1063/2018 to Regulation (EU) no. 2246/2015 (concerning certain provisions of the Union Customs Code (UCC)). In particular, the former document focused on customs procedures and the latter on origin.

Customs facilitation agreement for assessment procedure

With the Customs Agency Directorial Act No 298724/2018, issued on 12 November 2018, the customs authorities have defined the methods and terms of payment for resolution of the assessment procedure. In particular, it will be possible to resolve assessment notices through the payment of only the tax net of penalties and interest.

Tax treatment of fuels used in the combined generation of electricity and heat

Article 19 of the Decree-Law of 23 October 2018 regulates the taxation of energy products used for the combined production of electricity and heat. This provision has effect from 1 December 2018.

Note of the customs authorities no. 116558 of 24 October 2018 specifies that until 30 November 2017 the coefficients that must be used are those identified by the authorities for electricity and gas in resolution no. 16/98 of 11 March 1998, published in the Official Gazette no. 82 of 8 April 1998, reduced by 12%.

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Malta

Malta issues guidelines on VAT treatment of DLT assets

On 1 November 2018, the VAT authorities issued guidelines setting out the position of the Commissioner for Revenue on the VAT treatment of transactions concerning activities involving distributed ledger technology (DLT) assets (DLT Guidelines). The DLT Guidelines cover transactions in relation to DLT assets that fall within the ambit of the categories of 'Coins' or 'Tokens'. However, transactions concerning electronic money that is representative of fiat currency are explicitly excluded from the scope of the DLT Guidelines.

The general thrust of the DLT Guidelines is that the Malta VAT treatment of any transaction involving DLT assets is to be analyzed and determined in the same way as any other transaction, i.e., by applying the rules and principles applicable in terms of the VAT Act (Chapter 406, Laws of Malta), the EU Principal VAT Directive and pertinent implementing regulations, and any relevant case law of the Court of Justice of the European Union (CJEU) to the specific facts and circumstances of the particular case.

Definitions

For the purposes of the DLT Guidelines:

- 'Coins' refers to DLT assets that are designed to function solely as a means of payment, a medium of exchange, or a store of value (i.e. cryptocurrencies).

- The category of 'tokens' refers to other DLT assets such as financial tokens and utility tokens.

VAT treatment of coins

In analyzing the VAT treatment of transactions in relation to coins, the DLT Guidelines make express reference to the CJEU judgment in *Hedqvist*. On that basis, for Malta VAT purposes transactions consisting in the exchange of cryptocurrency for other cryptocurrency or for fiat money against consideration would be covered by the exemption from VAT provided for "*transactions, including negotiation, in currency, bank notes and coins normally used as legal tender*".

VAT treatment of tokens

Financial tokens

The Malta VAT treatment of financial (aka security) tokens, i.e., tokens the supply of which gives rights to dividends, interest payments, or similar rights, will be dependent upon whether such instruments would fall within the scope of VAT and, that being the case, on whether they could qualify as VAT exempt (without credit) *"transactions, including negotiation, excluding management and safekeeping in shares, interest in companies or associations, debentures and other securities".*

The issuance of financial tokens for the sole purpose of raising capital would not give rise to any VAT implications at the level of the issuer, as the raising of finance falls outside the scope of VAT.

Utility tokens

When the tokens issued for consideration carry an obligation to be accepted as consideration or part consideration for a supply of goods or services, and where the goods or services to be supplied or the identity of the supplier is known, these qualify as vouchers for Malta VAT purposes. Accordingly, the VAT treatment thereof will be determined based on whether they qualify as single purpose vouchers (SPV) or multi-purpose vouchers (MPV) for VAT purposes.

Digital wallets

Activities of digital wallet providers fall to be classified as VAT exempt without credit transactions in currency, to the extent that they allow coins users to hold and operate cryptocurrency and create rights and obligations in relation therewith. Activities which do not exhibit these characteristics may be classified as VAT exempt (without credit) *"transactions concerning payments or transfers*", unless they are mere technical services, in which case they would be classified as fully taxable supplies.

Mining

Mining activities carried out in return for newly minted coins typically fall outside the scope of VAT, whereas activities of miners consisting in the verification of specific transactions against consideration are generally classified as taxable supplies.

Exchange platforms

The provision of an electronic facility whereby holders of DLT assets can trade/exchange (i.e. a technology service) constitutes a taxable supply. However, services which go beyond the mere provision of a trading facility may, depending on the nature of the DLT, fall within the scope of an exemption from VAT provided for:

- Transactions concerning currency;
- Transactions concerning securities;
- Negotiation in currency or securities, provided the activity meets the criteria set out in the CJEU's case law relating to 'negotiation'.

VAT treatment of initial offerings

In analyzing the VAT treatment of initial coin offerings (ICOs), the DLT Guidelines make the following distinction:

1) ICOs that are issued as means for collecting funds for the development of a future project, and which do not give rise to an identifiable supply of goods or services or otherwise give rise to an acquisition of a security (equity, debenture, etc.) of the issuer;

2) ICOs that give rights to identified goods or services for a specified consideration.

Pursuant to the DLT Guidelines, transactions concerning the ICOs referred to in point 1) are considered to fall outside the scope of VAT, whereas the VAT classification of transactions concerning the ICOs referred to in point 2) will be determined according to the nature of the coins offered (e.g. utility tokens).

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Netherlands

2019 Tax Plan approved by House of Representatives

After some minor adjustments to the relevant VAT-related legislative proposals, Parliament agreed the 2018 Tax Plan on 15 November 2018. The Bill will now have to be approved by the Senate, which will most likely take place on 18 December. The Tax Plan includes important changes in the field of indirect tax.

Increase of reduced VAT rate

The Bill on the increase of the reduced VAT rate from 6% to 9% has been adopted unchanged. The application of the increased reduced VAT rate will take effect from 1 January 2019. One of the consequences is an increase of the cost of daily necessities, refreshments, medicines, and books. The Government stated it will not include any additional legislation for transitional situations. Services to be performed in 2019 do not require a correction to the new 9% VAT rate if they have been paid before 1 January 2019.

Revision of the VAT scheme for small business

The Bill on the modernization of the scheme for small businesses has also been adopted. The Bill provides for replacement of the current scheme with an optional revenue-related VAT exemption scheme. The maximum revenue threshold is EUR 20,000 per calendar year. The purpose of the modernization is to create a scheme fit for purpose: a simplified exemption scheme for small businesses, irrespective of their legal form, in order to alleviate their administrative burden. Some minor textual changes in the Bill were made.

The new scheme will enter into force on 1 January 2020. Starting 1 June 2019, businesses will be given the opportunity to report application of the new scheme as from 1 January 2020.

Extension of VAT sports exemption

The Bill on the extension of the VAT sports exemption to include sports services provided to non-members as well as members of sports clubs was adopted with minor changes. As from 2019, the exemption will apply to non-commercial operators of sports accommodation as well. Such operators will not, or no longer, be entitled to deduct input VAT as from 1 January 2019. Combined with the Government policy to encourage construction, maintenance, and conservation of sports accommodation, these operators may be adversely affected. Hence, a compensation scheme was introduced. The compensation scheme distinguishes between municipalities and amateur sports organisations. Amateur sports organisations are compensated through the 'subsidy scheme for stimulation of construction and maintenance of sports accommodation', while municipalities are compensated through the 'Regulation on payment of specific stimulation'.

The Government also introduced transitional provisions relating to: (i) application of the usual adjustment schemes to remaining construction periods of sports accommodation intended for VAT taxable use which must be paid in 2019; (ii) for the first use of new sports accommodation intended for VAT taxable use after 31 December 2018; and (iii) for adjusted use of movable and immovable property, for which VAT taxable use had been foreseen. Minor changes were made to these transitional provisions, replacing 1 January 2019 with 31 December 2018.

Implementation of VAT e-Commerce Directive

Furthermore, the Bill regarding the partial implementation of the EU Directive on electronic services and distance sales was adopted. From 1 January 2019, smaller entrepreneurs established in a single EU Member State that offer private customers in other Member States online digital services, must pay VAT in their own Member State at the rate applicable there.

This simplification can only be applied if an entrepreneur does not exceed the total EUR 10,000 cross-border revenue threshold.

Entrepreneurs performing digital services for individuals in other Member States can apply the invoicing rules of their own Member State. Entrepreneurs established outside the EU but with a VAT registration within the EU can use the Mini One-Stop Shop System (MOSS) as from 1 January 2019.

Only one piece of evidence is necessary to determine where the consumer of the electronic service is established provided that an entrepreneur does not exceed the total of EUR 100,000 revenue threshold.

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Poland

New draft bill introduces new VAT rates and classifications and Binding Rates Information

On 9 November 2018, the Ministry of Finance published a draft bill which introduces a new classification of VAT rates. The draft bill provides that goods and services will be identified for VAT purposes by the Combined Nomenclature (CN) with respect to goods (instead of the previous Polish Classification of Goods and Services 2008) and current Polish Classification of Products and Services 2015 (PKWiU) with respect to services.

The proposed regulations also present a new matrix of VAT rates for goods and services. The VAT rates would be comparable for similar types of products (e.g. the same VAT rate for bakery products, irrespective of their expiry date). Furthermore, the current 23% VAT rate for e-books will be limited to 5%, while the VAT rate for supplies of newspapers/journals/periodicals not marked with ISSN symbols and e-magazines will be reduced from 23% to 8%.

Additionally, the draft bill plans to introduce Binding Rates Information (WIS). Taxpayers with a tax identification number (NIP) who make (or plan to) or deliver goods, import goods, or make intra-Community acquisitions of goods will be able to apply for WIS. This would be an instrument providing taxpayers with certainty as regards the classification of the goods (based on the CN), and consequently the correctness of the VAT rates applied. It would provide taxpayers with far broader protection than the current statistical rulings issued based on PKWiU classification by the Central Statistical Office ('GUS' by its Polish acronym), which are not viewed as binding by the tax authorities (which can question the PKWiU classification and hence the VAT rate applied).

According to the current wording of the draft, the new regulations will come into force in general on 1 January 2020, with the exception of the provisions on delivery rates for books/e-books, magazines/e-magazines and selected regulations regarding WIS institutions, which will apply from 1 April 2019.

Electronic monitoring of certain excise goods to be introduced

As of 1 January 2019, there will be a new requirement in respect of documenting transportation on the territory of Poland of particular excise goods with excise preferences. The changes relate to delivery documents accompanying the movement of excise goods exempt from excise duty due to their intended use and harmonized excise goods subject to the zero excise duty rate.

The paper delivery document currently attached to the abovementioned excise goods' movement will be replaced by an electronic document called e-DD, which will be generated in the EMCS PL2 system. This means that the abovementioned excise goods must be moved within the territory of Poland with notification in the EMCS PL2 system.

Using electronic monitoring will be one of the conditions for exemption from excise duty and the application of the zero excise duty rate, so companies must register in the EMCS PL2 system and be able to use it properly to enable them to continue to apply excise preferences after 1 January 2019.

The only exception to this 'transformation' among the products currently covered by the obligation to attach paper delivery documents is coal, which from 1 January 2019 will be covered by the system of declarations of purpose instead of the electronic e-DD document.

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Portugal

Annual tax return to be pre-filled based on accounting SAF-T(PT)

On 31 October 2018, Decree-Law no. 87/2018 was published, determining that the annual tax return (IES/DA), namely Annex A, will have to be pre-filled based on the accounting SAF-T(PT) file, to be submitted on an yearly basis to the tax authorities (specific regulation in this respect is yet to be published).

Entities established in Portugal are required to generate a SAF-T(PT) file containing the relevant information from an accounting standpoint (this does not apply to non-resident entities merely registered for VAT purposes in Portugal).

That part of the annual tax return which is to be pre-filled with SAF-T(PT) information relates to accounting information, however it is expected that in a later stage additional annexes of the annual tax return will also be pre-filled based on such accounting SAF-T(PT) file.

The Decree-Law also states that if taxpayers are not able to submit the accounting SAF-T(PT) file, they will not be able to submit their annual tax returns (IES/DA). As such, it is important that established taxpayers are (or will be) able to submit the accounting SAF-T file to the tax authorities with no errors in order to be able to submit their annual tax returns (IES/DA).

This is applicable to annual tax returns (IES/DA) to be filed from November 2018 onwards, although it would be recommended that taxpayers aim to have in-scope the annual tax return (IES/DA) of 2018 which is to be filed during 2019 (up to the 15th day of the seventh month following the end of the year to which it relates).

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Russia

Storage services of aviation fuel rendered outside airport area not exempt from VAT

The Ministry of Finance of the Russian Federation in Letter No. SD-4-3/19233@ of 3 October 2018 clarified that in accordance with the Russian Tax Code, art. 149, point 21, sub-point 22, operations related to services rendered directly at airports of the Russian Federation and in the airspace of the Russian Federation involving the servicing of aircraft, including air navigation services, according to the list approved by the Government of the Russian Federation, are exempt from VAT.

The list of such services is established by the Resolution of the Government of the Russian Federation No. 588 of 23 May 2018 and the list includes storage services of aviation fuel.

If the aircraft fueling complex is located outside of the airport area, the exemption should not be applied.

From 1 January 2019 Russian buyers of e-services rendered by foreign legal entities should not act as tax agents

In accordance with the Letter of the Ministry of Finance of the Russian Federation No. 03-07-08/76139 of 24 October 2018, foreign legal entities, which render e-services deemed to be supplied in the territory of Russia, will be obliged to account for and pay Russian VAT on such supplies themselves where they render such service in favor of a Russian legal entity or an individual entrepreneur, starting from 1 January 2019.

Thereby, from 1 January 2019, Russian customers acquiring e-services deemed to be supplied in the territory of Russia and rendered by a foreign legal entity should not act as tax agents.

If a foreign legal entity has not registered for VAT purposes or does not plan to, such foreign legal entity will be responsible for non-accounting and non-payment of VAT rather than the Russian customer acquiring e-services.

The Ministry of Finance considers that if a Russian customer acts as tax agent, withholds, and pays the amount of VAT upon acquired e-services, such a customer will not have a right to claim the relevant amount of reverse charged VAT for recovery.

Supply of goods between two foreign entities not subject to registration with tax authorities not subject to VAT

The Ministry of Finance of the Russian Federation in Letter No. 03-07-15/64209 of 7 September 2018 stated that if goods are located in the territory of the Russian Federation at the time of the commencement of shipment and transportation, the territory of Russia should be deemed as the place of supply of such goods for VAT purposes.

At the same time, the tax legislation does not provide for any mechanism of VAT payment applicable to situations where VAT-able supplies are performed between two foreign entities not subject to registration with the Russian tax authorities.

Foreign legal entities registered with tax authorities should account for and pay VAT for rendered services (performed work) subject to Russian VAT based on place of supply rules

The Ministry of Finance of the Russian Federation in Letter No. 03-07-08/66314 of 17 September 2018 clarified that foreign legal entities registered with the Russian tax authorities, including due to opening a bank account in Russia, should account for and pay VAT themselves with respect to rendered services (performed work) subject to Russian VAT based on the place of supply rules.

Moreover, in such a case Russian customers should not act as tax agents.

Application of 20% VAT rate for supplies after 1 January 2019 of goods acquired before 1 January 2019

The Ministry of Finance of the Russian Federation in Letter No. 03-07-11/64577 of 10 September 2018 clarified that due to the increase of the VAT rate starting from 1 January 2019, where a taxpayer supplies goods after 1 January 2019 (including goods acquired before 1 January 2019) the 20% VAT rate should be applied.

Federal Tax Service plans to amend VAT return form

The Federal Tax Service of the Russian Federation released the draft order aimed at updating the VAT return form.

In particular, implementation of the following legislative amendments is planned:

- The increase of the VAT rate from 18% to 20% that will apply with respect to goods (work and services) supplied (performed, rendered) from 1 January 2019.
- Termination of the obligation to account for and pay VAT by tax agents acquiring electronically-supplied services from foreign e-services providers from 1 January 2019.
- Obligation to account for VAT by a tax agent acquiring scrap from 1 January 2018.
- Introduction of the tax-free system.
- Amendments to the list of VAT-exempt operations.

Import of biomedical cellulated products regulated

From 1 November 2018 to 30 April 2019, the import of biomedical cellulated products *Audencel*, *Eltrapuldencel*, and *Spanlekorteemlotcel* into Russia must be carried out according to the rules for importing biomedical cellulated products (BCP) into Russia, established by the Decree of the Government of the Russian Federation of 16 October 2018 No. 1229, which came into effect on 1 November 2018.

The Decree specifies who can import into Russia the BCP indicated above, including a specific party of unregistered products.

Registered BCP may only be imported where they are included in the State Register of BCP. Import of a specific batch of unregistered BCPs intended for state registration (including for biomedical examination, preclinical studies, and clinical studies) or for providing medical care to a specific patient for health reasons must be carried out with an import permit issued by the Ministry of Health of Russia. There is no fee for issuing a permit.

The procedure for obtaining the specified permit is regulated, and the grounds for refusal to issue a permit are provided. Information on issued permits is posted on the official website of the Ministry of Health.

The placement of registered BCP under customs procedures is carried out by way of submission to the customs authorities of the Russian Federation of information advising of the inclusion of such BCP in the State Register of BCP. The placement of a specific batch of unregistered BCP under customs procedures is carried out by way of submission to the customs authorities of import permission issued by the Ministry of Health.

Placement of BCP under the customs procedure of duty-free trade is not allowed.

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Slovakia

Amendment to application of reduced VAT rate

An amendment to the VAT Act drafted by Parliament was signed by the President and is effective from 1 January 2019. Under the amendment, the reduced VAT of 10% will apply to the following accommodation services with the code 55 of the statistical classification of products by activity (CPA):

- Hotel and similar accommodation services;
- Holiday and other short stay accommodation services;
- Camping ground, recreational and vacation camp services; and
- Other accommodation services.

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South Africa

Update on phased roll-out of new Customs Act

On 20 April 2018, the South African Revenue Services (SARS) implemented the first phase of the Reporting of Conveyances and Goods (RCG) project. The RCG project is one of three major projects, the other two are the Registration, Licensing and Accreditation (RLA) and the Declaration Processing System (DPS). RCG is aimed at operationalizing the Customs Control Act, 2014 (the CCA) and the Customs Duty Act, 2014 (the CDA).

The CCA and the CDA have not yet come into effect. The Customs and Excise Act, 1964 (the Customs Act) still applies. Section 8 of the Customs Act requires various 'cargo reporters' to submit numerous 'reports of cargo'.

Rule 8.01 to the Customs Act defines a 'cargo reporter' as any person who in terms of a contract of carriage is responsible for delivery of cargo. This includes, but is not limited to, shipping lines, airlines, rail carriers, road carriers, road hauliers, freight forwarders, seaport and airport operators, wharf operators, terminal operators, container depot operators, transit shed operators, de-group depot operators and registered agents. All cargo reporters must register with SARS as 'cargo reporters' and Electronic Data Interchange (EDI) users for purposes of submitting, receiving and processing cargo reports electronically on the SARS Cargo Processing System (CPS).

The term 'reports of cargo' is not defined in the Customs Act or the Rules, however the meaning thereto is found in the definition of 'reporting document' under Rule 8.01 of the Customs Act. A 'reporting document' is any advance notice, arrival or departure notice, manifest or outturn report, or any amendment and replacement of such document as referred to in the Rules. Every cargo reporter required to submit a reporting document is required to submit such a document within a specified time frame, for example:

Report name	Mode	Import / Export	Cargo	House / Master	WHO – message sender	Voyage duration	Submission time	Legal reference	Systems number
Advance arrival notice	Air	IMP		Master	Air Carrier / Agent	More than six (6) hours	Two (2) hours before arrival at the first customs and excise airport	Section 8, Rule 8.19 (1)	CUSCAR_FWB
Advance arrival notice	Air	IMP		Master	Air Carrier / Agent	Between six (6) and two (2) hours	One (1) hour before arrival	Section 8, Rule 8.19 (1)	CUSCAR_FWB

Effective from 19 October 2018, any cargo reporter who fails to submit a report (reporting document) for which s/he is responsible will become liable to a fine of ZAR 5,000 in respect of such non-compliance.

The RCG compliments the World Customs Organization (WCO) SAFE Framework Standards (Framework). The Framework is the minimum international standards for supply chain security and global trade facilitation through the management of end-to-end cross-border movements of goods and customs-to-business partnerships. RCG will facilitate the collection of data collection throughout the supply chain in compliance with the United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT). The UN/EDIFACT is the internationally agreed standards, directories, and guidelines for electronic interchange of structured data between independent computers.

The SARS Customs is progressively modernizing to international standards.

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Spain

Preliminary draft law on measures for preventing and combating tax fraud, transposition of certain EU Directives, and amendments of certain tax regulations

On 23 October, the preliminary draft law on measures for preventing and combating tax fraud, transposition of Directives (EU) 2016/1164 and 2017/1852, and amending various tax regulations was published. The text may undergo modifications during the legal process.

The draft law contains a number of changes to the tax system, including the following in relation to VAT and excise duties:

VAT

- The assumption of subsidiary liability for payment of tax is to be updated; it will now apply to persons or entities acting in the name and on behalf of the importer.

- In order to establish the scope of joint and several or subsidiary liability deriving from customs liquidations, the term 'customs area' is replaced to clarify that this responsibility extends to the procedures for declaring and verifying data from customs declarations regardless of whether they occur outside or inside the customs area.

- For the special regime for groups of entities ('REGE', by its Spanish acronym), the dominant entity will be subject to infraction of the following breaches of obligations:

  i) Payment of the tax debt;

  ii) Request for compensation or refund resulting from the aggregated declaration-settlement;

  iii) Veracity and accuracy of the amounts and ratings recorded by the dependent entities included in the aggregate liquidation declaration.

- The assumption of subsidiary responsibility of the payment of the tax debt, corresponding to the exit or abandonment of goods subject to excise duties that have been linked to a deposit other than customs, is extended to the holders of these deposits.

Excise duties

- The definition of tax warehouses is amended, indicating that in order for the holder of a tax warehouse to obtain the corresponding authorization that enables it to operate as such. It is necessary that effective storage operations are carried out in the establishment for products subject to manufacturing excise duties.

- The existence of differences in raw materials, products in the course of manufacture or finished products in factories and tax warehouses, that exceed the percentages authorized by the regulations, will imply a pecuniary fine of 50% of the excise duties to be paid on the differences detected.

- When the use or intended purpose of products for which an exemption or reduced rate has been applied is not justified, it will be considered a serious infringement and a penalty of 50% will apply.

Measures for energy transition and consumer protection

On 5 October 2018, Royal Decree-Law 15/2018 was approved by the Government. This rule includes a number of tax measures, with the main objective of moderating price, developments in the wholesale electricity market, and favoring the transition to a decarbonized economy.

- **Tax on the value of the production of electrical energy**: The retributions corresponding to the electricity incorporated into the system during the last natural quarter of 2018 and during the first quarter of 2019 are exempt from taxation.

- **Tax on hydrocarbons**: An exemption is introduced for energy products intended for the production of electricity in power stations or the generation/cogeneration of electricity and heat in combined heat and power stations. This exemption mainly affects the consumption of natural gas in these types of generation plants.

  The Royal Decree-Law establishes that this exemption can only apply if previously requested from the tax authorities.

  The measures came into force on 7 October 2018.

Draft law on Budget of Canary Islands for 2019

The Counselor of Finance of the Government of the Canary Islands, delivered on 31 October 2018, to the Canary Islands Parliament, the draft law of General Budgets of the Autonomous Community for 2019, for parliamentary processing.

The Canary Islands are out of the scope of application for Spanish VAT, due to the fact that in that territory the General Indirect Canary Islands Tax (IGIC) applies.) The main measures proposed in the draft law in relation to the IGIC are the following:

- A proposal for a half-point reduction in the general rate from 7% to 6.5%.

- Inclusion of the IGIC exemption on the electricity bill (currently taxed at 3%).

- Inclusion of the 'social IGIC' exemption, which applies to social and social health care services, home help, tele-assistance, day and night centers, residential care, and promotion of personal autonomy (currently taxed at 3%).

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Switzerland

New rules on distance sales of low value goods effective from January 2019

As from 1 January 2019, foreign mail order companies generating an annual turnover from low value goods (LVG) shipments of at least CHF 100,000 per year will be required to VAT register in Switzerland. This new requirement was announced with the partial amendment of the Swiss VAT Law at the beginning of 2018.

Currently, the Swiss Federal Customs Administration waives the levy of import tax on consignment with a tax amount of CHF 5 or less (so-called low value goods). This tax amount corresponds to goods of a value of CHF 65 at the normal VAT rate of 7.7% and CHF 200 at the reduced VAT rate of 2.5% (consignment costs included). These amounts have to be considered per import document.

Such consignment of LVG will be considered, as from 1 January 2019, as domestic deliveries as soon as the foreign mail order company generates a yearly turnover of a minimum of CHF 100,000 from these supplies. Hence, as from this date, foreign companies active in this sector should VAT register in Switzerland and charge VAT to their Swiss clients.

As a result of the VAT registration, mail order companies should act as importer of record in Switzerland and VAT will become due on all importations they perform within the country (not only on consignment of LVG). If a (domestic or foreign) company is already VAT registered in Switzerland due to other supplies inland and such company also supplies LVG from abroad into Switzerland, the LVG supplies are still considered as turnover generated abroad as long as the annual threshold of CHF 100,000 from such supplies is not reached.

It is recommended that foreign mail order companies:

- Assess the amount of their LVG consignment in the last 12 months and make projections for the next 12 months;
- Appoint a fiscal representative in Switzerland and VAT register within the country when the threshold is reached;
- Review the mapping of Swiss transactions and set-up their ERP system.

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United Kingdom

CJEU rejects 'cost component' approach to VAT partial exemption

In *Volkswagen Financial Services Ltd*, the Court of Justice of the European Union has ruled that taxable sales of vehicles by a finance house in hire purchase deals should not be disregarded for partial exemption purposes. The tax authorities (HMRC) have long argued that, as finance houses buy and sell cars at the same price and earn their profit from interest, their overheads cannot be 'cost components' of their car sales and the VAT partly recoverable. In the Court's judgment, the overheads were still residual and this would restrict input tax recovery by reference to the outcome of an economic activity (i.e. whether it made a profit on the cars) which was incorrect. It was also satisfied that the UK could identify the interest element of HP as separate from the car sale and therefore exempt, applying the normal tests on single/multiple supplies (a point which Advocate General Szpunar had considered the 'elephant in the room').

The judgment does not establish a universal standard for residual input tax recovery by finance houses, but it should mean that negotiations over the level of VAT recovery (both for asset finance and other sectors) should no longer stall over HMRC's cost component argument.

Finance Bill

VAT measures included in the recently introduced Finance (No. 3) Bill include the anticipated rule changes for vouchers (from 1 January 2019) and the inclusion of individuals and partnerships in VAT groups (from a day to be appointed). Responses to two consultations affecting online marketplaces have also been published. HMRC have recognised the difficulties that will arise from a split payment system. However, they are continuing to investigate the possibilities that it offers to combat non-compliance (especially by overseas online traders) and are creating an Industry Working Group to take this forward. A response has also been published on the role of online marketplaces in encouraging user compliance. The UK has co-sponsored an OECD report into improving compliance in the gig and sharing economy (with an emphasis on trader education and data gathering by tax authorities) which is expected early in 2019.

Additionally, the statutory instrument for the construction industry reverse charge scheme (which will come into effect on 1 October 2019) has been published, together with guidance on how it will operate. This confirms that (following consultation with industry) the reverse charge will apply to services to contractors that fall under the Construction Industry Scheme. Supplies to end users will continue to be subject to VAT, but the scheme has been designed to function without the need for formal certification. The publication of the rules should allow businesses and their software providers to start planning how to implement the required systems changes.

Making Tax Digital for VAT update

HMRC have announced that the pilot of Making Tax Digital for VAT (MTDfV) is now open to around 500,000 businesses, see Making Tax Digital for VAT pilot open for business. To start with, the pilot is restricted to straightforward single company and sole trader VAT registrations, but it will be extended to partnerships and those trading with the EU in late 2018 or early 2019.

MTDfV has been deferred by six months for 'more complex' taxpayers, which include VAT groups, some public sector entities, and traders based overseas. However, many large corporate groups operate single company registrations alongside their main VAT groups, and for them MTDfV will become mandatory for part of their business in April 2019, and the rest in October 2019.

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Eurasian Economic Union

Rates of import customs duty on motor vehicles for industrial assembly

Decision of the Eurasian Economic Commission No. 73 'On introduction of the rates of import customs duties in respect of certain types of goods in accordance with the obligations of the Russian Federation under the WTO' established the rates of import customs duties in respect of motor vehicles for 'industrial assembly' under commodity positions 8701-8705, in the amount of 3% to 15% of the customs value. The Decision came into effect on 9 November 2018.

Technical Regulation for safety of children's playground equipment

Technical Regulation of the EEU 'On the safety of equipment for children's playgrounds' (EEU TR 042/2017) establishes the requirements for the safety of the equipment and/or surface of children's playgrounds, and for the associated processes of design, production, installation, operation, storage, transportation, and utilization.

Annex No. 1 to the Regulation establishes a list of goods to which the requirements of the Regulation apply. The Regulation will not apply to equipment and/or coverage for children's playgrounds that are manufactured and put into operation prior to the entry into force of the Regulation; to equipment and products intended for training and physical education, sport, and tourism; to attractions that are subject to the technical regulation of the EEU 'On safety of attractions' (EEU TR 038/2016); and to toys.

Decision of the Council of the Eurasian Economic Commission No. 21 of 17 May 2018 'On the technical regulation of the Eurasian Economic Union 'On the safety of equipment for children's playgrounds'' came into effect on 17 November 2018.

Decisions of the Eurasian Economic Commission explaining classification of iron-containing preparation, fish oil, recycler

Decision of the Eurasian Economic Commission No. 161 of 16 October 2018 explains that iron-containing preparation, which contains iron sulfate as an active ingredient, ascorbic acid or other vitamins (to improve iron absorption) and excipients, packaged in the dosage form or in the packages for retail sale and intended for treatment and prevention of various types of anemia, is classified under the commodity subheadings 3004 50 000 of the Unified Commodity Nomenclature of the Foreign Economic Activity of the EEU (CN of the EEU).

Decision of the Eurasian Economic Commission No. 162 of 16 October 2018 explains that fish oil in gelatin capsules, obtained from the body of fish, unrefined or refined, without changing the chemical composition, with the addition of vitamins and used for a balanced addition to human nutrition as a source of polyunsaturated fatty acids and vitamins, is classified under the commodity position 1504 of the CN of the EEU.

Decision of the Eurasian Economic Commission No. 165 of 16 October 2018 explains that a recycler, which is a self-propelled road-building machine, equipped with a milling and mixing drum with cutters and distribution ramps for spraying the binder component and water and intended for cutting (milling) the road surface (for example, asphalt, asphalt concrete pavement, ground layer, etc.), its grinding, mixing with the binder component and water, the subsequent laying and leveling of the mixture in the form of a new road base, is classified under the commodity code 8479 10 000 0 of the CN of the EEU.

Decisions of the Council of the Eurasian Economic Commission No. 161, No. 162, and No. 165 of 16 October 2018 came into effect on 18 November 2018.

Extension of EEU CN codes for certain types of organic chemical compounds

Decision of the Eurasian Economic Commission No. 163 of 16 October 2018 explains that imported mancozeb for the production of chemical plant protection products into the EEU is classified under the new commodity code 3824 99 930 2; the previous code was 3824 99 930 9.

The rate of customs duty for mancozeb is 5% of the customs value, but from 18 November 2018 to 31 December 2020, the zero customs duty rate is applied in respect of this commodity.

Decision of the Board of the Eurasian Economic Commission No. 163 came into effect on 18 November 2018.

Extension of goods to which temporary prohibition or export restrictions may be imposed

In accordance with Decision of the Eurasian Economic Commission No. 164 of 16 October 2018, in exceptional cases, temporary prohibition or export quantitative restrictions may be imposed in respect of the following goods, which are significant for the domestic market of the EEU:

- Code 4401 CN FEA of EEU – Fuel wood, in logs, billets, twigs, faggots or similar forms; wood in chip or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms;

- Code 4403 CN FEA of EEU – Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared;

- Code 4404 CN FEA of EEU – Hoopwood; split poles; piles, pickets, stakes of wood, pointed, not sawn lengthwise; wooden sticks, roughly trimmed, not turned, bent, etc., suitable for walking sticks, umbrellas, tool handles, etc.;

- Code 4406 CN FEA of EEU – Railway or tramway sleepers (cross-ties) of wood;

- Code 4407 CN FEA of EEU – Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6mm.

Decision No. 164 came into effect on 18 November 2018.

List of products for which certain documentation required for customs clearance

Decision of the Board of the Eurasian Economic Commission of 16 October 2018 No. 167 establishes the list of products, in respect of which the filing of the customs declaration must be accompanied by the provision of a document on the assessment of its compliance with Technical Regulation 'On restriction of the use of hazardous substances in electrical engineering and radio electronics' (EEU TR 037/2016). The list includes, among other products, electrical appliances and appliances for household use, electronic computers and devices connected to them, telecommunications facilities, photocopiers and other electrical office equipment (office) equipment, electrified tools, light sources, and lighting equipment.

Decision No. 167 came into effect on 18 November 2018.

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