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Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include an update on GST for foreign vendors selling to customers in Australia and the introduction of a voluntary VAT reverse charge for telecommunications services in the Netherlands. Also, Deloitte Middle East has developed the 'VAT in the GCC' mobile app for businesses and individuals to understand VAT and its impact in the region; for more information, see VAT in the GCC guide mobile app.

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In this edition of GITN:

Back to top

Country summaries

Asia Pacific

Australia	There is an update on GST liabilities for foreign vendors selling to consumers in Australia. The recent federal Budget included a number of key GST measures.	**Read More**
Indonesia	Import duty rates have been amended in the context of the economic partnership agreement between Indonesia and Japan. The regulation regarding import duty borne by the Government for certain industrial sectors in the 2017 financial year has been amended. A regulation has been introduced regarding the importation of certain horticultural products.	**Read More**
Kazakhstan	A new draft of the Tax Code is being developed, under which the VAT 'place of realization' rule could be significantly changed.	**Read More**
Malaysia	The Royal Malaysian Customs Department (RMCD) has updated the GST guides on Islamic banking and the Tourist Refund Scheme. The RMCD has made a number of announcements regarding the administration of GST. The RMCD recently clarified matters concerning payment of GST and when it is considered effective, particularly with respect to payment by cheque. The Ministry of Finance has imposed definitive safeguard duties on certain steel products imported from specific countries for a period of three years.	**Read More**

Singapore	The Inland Revenue Authority of Singapore has issued several consultations relating to base erosion and profit shifting (BEPS) and the indirect tax implications of the digital economy. Customs has released a circular announcing the introduction of the new End-User Statement formats for Strategic Trade Scheme Bulk and Individual Permits.	**Read More**
Sri Lanka-EU	Sri Lanka has regained 'Generalized System of Preference +' status.	**Read More**

EMEA

EU-Sri Lanka	Sri Lanka has regained 'Generalized System of Preference +' status.	**Read More**
Belgium	Stricter rules are to apply regarding VAT deduction for gifts. The VAT exemption for insurance claims handling will be narrowed with effect from 1 January 2018.	**Read More**
Italy	Guidelines have been released on penalties for the incorrect application of the reverse charge mechanism. A resolution has been published regarding the sale of VAT credit as warranty. There has been a decision of the Council of the European Union regarding the split payment mechanism. There have been CEJU judgments regarding the legislation providing for administrative penalties and criminal penalties for same offences, relating to omitted VAT payments. A resolution has been published on the e-storage of invoices for VAT purposes. The tax authorities have published FAQs regarding the quarterly e-communication of VAT calculations.	**Read More**

	Criteria have been defined for VAT deregistration and exclusion from the VIES database. There is confirmation regarding the limitation period for customs debt. Criteria for obtaining 'authorized consignee' status for excise purposes have been issued. A ruling has been issued regarding the customs and VAT treatment of the bunkering of energy products.	
Ireland	Updated guidance has been published on the VAT exemption for educational and vocational training. A case has been referred to the Court of Justice of the European Union on VAT deductibility related to share transactions. The Irish Revenue has updated the 'Revenue's On-Line Service' regarding administrator registration.	**Read More**
Latvia	There have been changes to VAT returns.	**Read More**
Netherlands	The VAT reverse charge mechanism may be applied to telecommunications services from 2 June 2017. Proposed rules have been published for VAT adjustments for 'expensive services'. The Tax Administration has issued the processing method for objections relating to the VAT treatment of the private use of cars.	**Read More**
Portugal	An Ordinance has been published regarding the new system for the VAT exemption for the export of goods by a traveller who is non-resident in the EU (tax free).	**Read More**

	A Circular Letter has been published regarding the place of supply of services connected to immovable property for VAT purposes.	
Russia	Credit institutions or mobile network operators may be required to collect VAT from foreign e-service providers. Clarification has been issued for foreign organizations providing e-services. The Ministry of Finance has clarified the VAT treatment of updating and extracting materials from a database. The prohibition on the importation of certain goods from Turkey into Russia has been abolished.	**Read More**
South Africa	The International Trade Administration Commission of South Africa is currently reviewing responses to an application for the creation of a temporary rebate facility for certain structural steel.	**Read More**
United Kingdom	A tribunal has rejected the tax authorities' argument for the VAT exemption to apply to payment processing.	**Read More**
Eurasian Economic Union	There has been a decrease in the rates of import customs duty for certain goods due to Russia's WTO obligations. Preliminary anti-dumping duty has been introduced on hot-rolled steel corners originating from Ukraine. Anti-dumping measures have been extended on rolled metal products with polymer coating originating from China. Technical regulation on the safety of equipment for children's playgrounds has been introduced.	**Read More**

Back to top

Asia Pacific

Australia

Update on GST liabilities for foreign vendors selling to consumers in Australia

The imposition of GST on low value goods supplied to consumers in Australia has been delayed by 12 months until 1 July 2018. This delay does not alter the 1 July 2017 commencement of rules imposing GST on offshore supplies of digital products and other intangibles (intangibles) to Australian customers. Affected foreign businesses supplying intangibles need to determine whether they should be registered for GST and recovering 10% GST from Australian customers for remittance to the Australian revenue authority.

Supplies of low value goods to consumers in Australia

Last minute changes to the legislation imposing GST on low value goods supplied to consumers in Australia have resulted in a 12 month delay to the start of this measure. Apart from changing the start date until 1 July 2018, the changes also require the Government to initiate an independent review of the effectiveness of the vendor registration model and other alternative models, with a report and recommendations to the Government by 31 October 2017. The legislation (as amended) was finally passed by both houses of Parliament on 21 June 2017.

If the vendor registration model is retained after the independent review, affected foreign vendors will have until 1 July 2018 before being required to register for and remit 10% GST on 'low value goods' (i.e. AUD 1,000 or less in value) sold to consumers in Australia.

This measure is to ensure that low value goods imported by consumers face the same GST treatment as goods that are sourced from within Australia.

Under the vendor registration model introduced by the new legislation:

- Where a supply of low value goods is made through an online market place (electronic distribution platform/EDP) or the consumer in Australia uses a mailbox/redelivery service provider (redeliverer) to facilitate the purchase and/or shipment of the goods to Australia, the GST liability may shift to the EDP operator or the redeliverer.

- Foreign vendors, EDP operators and redeliverers with supplies to Australian customers exceeding AUD 75,000 will be required to register and remit GST on supplies of low value goods for which they are liable. GST registration can be on a full or limited basis.

- Affected foreign businesses will need to apply complex rules to determine whether each supply to an Australian customer involves 'low value goods' or not, and to address circumstances of potential and actual double GST taxation of imports. For example, consideration must be given to how low value goods will be consigned. Where the goods are reasonably anticipated to be part of a larger consignment with a total value in excess of AUD 1,000, a 'taxable importation' exception applies and no GST liability arises.

- Detailed information for both GST and customs clearance purposes is required to be given to customers at the point of sale, and to other entities involved in getting the low value goods to Australia.

Inbound supplies of digital products and other intangibles to Australian consumers

From 1 July 2017, the GST law requires foreign vendors to remit 10% GST on digital products, rights and services supplied to Australian consumers. This change is directed at ensuring that supplies of digital products (for example, streaming/downloading of movies, music, apps, games and e-books) and other intangibles receive comparable treatment regardless of whether they are supplied by an Australian or foreign vendor.

In circumstances where affected inbound supplies occur through an EDP, responsibility for the GST liability on those supplies may shift from the foreign vendor to the EDP operator. Broadly, this occurs if the EDP operator controls any of the key elements of the supply (for example, price, terms and conditions, delivery arrangements, etc.).

GST registration is mandatory for suppliers selling more than AUD 75,000 of supplies annually to Australian customers. Foreign suppliers and EDP operators affected by the new rules have the option of registering for GST on a full or limited basis.

2017-18 Budget: Key GST measures

The most recent federal Budget includes measures to address GST integrity problems in the property development and precious metals sectors, and to change the GST treatment of digital currencies.

The federal Budget for 2017-18 was announced on 9 May 2017. Several significant GST measures were included:

- From 1 July 2018, purchasers of newly constructed residential properties or land in new subdivisions will be required to remit the GST included in the purchase price directly to the Australian Taxation Office (ATO) as part of contract completion. This measure is intended to deal with developers that are failing to remit GST on their sales to the ATO (i.e., via a GST return, generally due some weeks after completion), despite having claimed GST credits on construction costs incurred. Amending legislation is being developed in consultation with industry.

- Confirmation that the GST law will be amended, with effect from 1 April 2017, to deal with fraud occurring in the gold, silver and platinum (valuable metals) industry. The amending legislation, passed by Parliament on 20 June 2017, introduces mandatory reverse charging for taxable business-to-business (B2B) transactions between suppliers and purchasers of valuable metals (unless an exemption is available). It also amends the law to prevent entities that trade in goods made from valuable metals from exploiting the special GST treatment given to 'second hand goods' in order to claim GST credits by, among other things, altering the 'form' of the goods.

- From 1 July 2017, the GST treatment of digital currency (such as Bitcoin) will be aligned with the treatment of money under the GST law. This measure is intended to ensure that purchases of digital currency will cease being subject to GST. Amending legislation is awaited.

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Indonesia

Import duty rates amended in context of economic partnership agreement between Indonesia and Japan

Regulation of the Minister of Finance Number 63/PMK.010/2017 amends Regulation of the Minister of Finance Number 30/PMK.010/2017 regarding the stipulation of import duty rates in the context of the agreement between the Republic of Indonesia and Japan regarding an economic partnership.

The amendments set out in this regulation include the amendment of import duty rates for iron and steel products under HS codes 7208.39.10 and 7208.39.90 as well as the Description of Goods as set out in the Attachment to Regulation of the Minister of Finance Number 30/PMK. 010/2017, so as to become as set out in the attachment to this regulation.

Import duty on imported goods based on the new rates of import duty will apply for the imports of goods the import declarations of which have been assigned registration numbers and dates by the Customs Office at the port of importation as of 22 May 2017.

Amendment to regulation regarding import duty borne by Government for certain industrial sectors in the 2017 financial year

Regulation of the Minister of Finance Number 64/PMK.010/2017 amends Regulation of the Minister of Finance Number 255/PMK.010/2016 regarding import duty borne by the Government for certain industrial sectors in the 2017 financial year.

The amendments set out in this regulation include the amendment of attachments to the regulation, one of which changes the HS Codes into new 8-digit codes. The amendment to this regulation is based on the stipulation of classification of goods and the imposition of import duty on imported goods as regulated by Regulation of the Minister of Finance Number 6/PMK.010/2017, which may affect the value of import duties/export duties, customs value, taxes, rules of origin, identification and monitoring of prohibited and restricted commodities, and other matters.

At the time this regulation comes into force, industrial verification certificates (SKVI), goods import plans (RIB) and the decision of the Minister of Finance concerning import duty borne by the Government for certain industrial sectors that have been issued using HS 2012 shall remain valid for a period of three months from the enactment of this Ministerial Regulation on 17 May 2017.

Regulation on import of certain horticultural products

Regulation of the Minister of Trade Number 30/M-DAG/PER/5/2017 regarding provisions on the import of horticultural products sets out import limitation on horticultural products as listed in the attachment to the regulation. These horticultural products may only be imported by companies that have an importer identification number (API) and State-Owned Enterprises obtaining special assignment from the Minister of State-Owned Enterprises in order to ensure the existence of supplies and price stabilization, after obtaining import approval from the Minister of Trade. In this matter, the Minister of Trade authorizes the Executive Coordinator of Integrated Trade Service Unit (UPTP) I to issue such import approvals. The regulation also sets out detailed provisions regarding the procedures and requirements for obtaining such import approvals.

Furthermore, this regulation specifies that prior verification and technical tracking at the loading port in the country of origin must be conducted in the implementation of imports of horticultural products, which shall be conducted by Surveyors that have been designated by the Minister of Trade. However, the provisions in this regulation are not applicable for the import of horticultural products under HS Codes 0703.20.90, 0712.90.10, 0804.50.30, ex. 0807.19.00 especially for Watermelons, 0810.90.92, 0813.40.10, 0904.21.10, 0904.22.10, 2009.11.00, 2009.12.00, 2009.61.00, 2009.69.00 as set out in the attachment to this regulation, that arrive at the ports of destination prior to 1 July 2017. The imports of those horticultural products can be proved by a customs document in the form of Manifest (B.0 1.1).

This regulation was stipulated on 17 May 2017 and revokes Regulation of the Minister of Trade Number 71/M-DAG/PER/9/2015.

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Kazakhstan

Potential VAT changes

The tax authorities recently announced that a new draft of the Tax Code is currently being developed. No implementation date has been established, however, it is anticipated that the changes may become effective from 1 January 2018.

According to the new draft Tax Code (available for public discussion purposes), the VAT 'place of realization' rule could be significantly changed.

Under the current rules, depending on the type of services, the place of realization for VAT purposes is either the place of registration of the buyer or the place of registration of the service provider, regardless of actual service provision.

In contrast, under the new draft rules, the main criteria for determining the place of realization will be the physical location from where services are provided; the location of employees, machines or equipment, material objects transferred for temporary use or leased to provide services; or the location of actual transportation routes for goods, mail, passengers or baggage.

As indicated, these changes are currently in draft form and may be amended after further public discussion.

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Malaysia

RMCD guides

The Royal Malaysian Customs Department (RMCD) has updated the following GST guides:

- **Islamic banking**, as at 26 April 2017: *Tawarruq*, also known as tripartite agreements, have been explained in greater detail, suggesting that the RMCD may be imposing additional requirements for transactions to qualify for a certain GST treatment.

- **Tourist Refund Scheme**, as at 8 May 2017: In line with recent amendments to allow GST refunds on liquor, tobacco and tobacco products under the Tourist Refund Scheme (TRS). Such products were not eligible for refund before 1 January 2017

For further details, and Deloitte Malaysia comment, see GST Chat: May 2017.

RMCD announcements

The RMCD has issued on their website the following announcements pertaining to the administration of GST:

- **GST refund audits**, 3 March 2017: GST refunds will now be immediate, and refund applications are unlikely to be subject to an audit unless randomly selected.

- **Amendments to registration details on Taxpayer Access Point (TAP)**, 12 April 2017: The RMCD has updated their system and has allowed certain registration details to be amended through TAP accounts without a written application. So far the details to be amended in this manner are:

    - Business name
    - Business address
    - Commencement date
    - Filing frequency
    - Financial year end
    - Percentage of supply.

- **Remission of penalty under section 62(2) GST Act 2014**, 9 May 2017: Registered persons that have had a late payment penalty imposed may now submit an appeal to the RMCD for remission to the controlling station. The application should be supported by the proof of payment (i.e., the original payment slip for manual transactions or receipt of payment for online transactions). The remission of penalty is subject to the approval of the Director General.

For further information, including Deloitte Malaysia comment, see GST Chat: May 2017.

Payment of GST by cheque near GST due date

The RMCD recently held a briefing at their offices to clarify matters concerning payment of GST and when it is considered effective. This briefing has come after many taxpayers received notification of imposition of a late payment penalty although they had believed that payment had already been made.

The effective date of the GST payment via cheque differs between the channels used. Payments via cheque made over the counter, cheque deposit machine or other cheque-related transactions through agent banks would follow the transaction date, which is when the cheque is presented to the bank. This would mean that the payment would be considered effective on the same transaction date.

For cheque payments made through RHB drop boxes located at the RMCD's headquarters or at the GST Processing Centre (GPC), the payment would be considered to be effective one day after the cheque is presented due to time allocated for collection.

Comment

Paying GST near the due date of a particular taxable period via cheque poses several risks. Effective 1 January 2017, the RMCD is taking a strict position regarding the issue of late payments and the RMCD system will automatically generate a penalty if the payment is not reflected in the system immediately after the due date lapses. This has resulted in many taxpayers receiving notification of a penalty for payment made on or one day after the payment due date. To avoid this, the RMCD strongly encourages taxpayers to make payments online via the TAP and internet banking, as it is known to be a faster and more convenient method compared to payment by traditional physical cheque.

It is advisable for businesses and taxpayers to avoid late payment penalties by making payment earlier, at the very latest, three days before the payment due date.

Amendments to customs orders

The Ministry of Finance has imposed definitive safeguard duties on certain steel products imported from specific countries for a period of three years.

For details, see GST Chat: May 2017.

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Singapore

Consultations on BEPS and the indirect tax implications of the digital economy

The Inland Revenue Authority of Singapore (IRAS) has launched several consultations relating to base erosion and profit shifting (BEPS) and the indirect tax implications of the digital economy.

The first focuses on customer accounting for supplies of prescribed goods, specifically mobile phones, memory cards and off-the-shelf software.

The second addresses cross-border services supplied to a business recipient in Singapore (i.e., B2B services), where IRAS is seeking feedback on the possibility to move to a reverse charge where the recipient is partly exempt, or has non-business activities (for example, a charity or philanthropic body).

The third is seeking comment on the possibility of introducing an overseas vendor registration scheme for supplies of digital services and low value goods by overseas suppliers to consumers in Singapore (i.e., B2C transactions).

The last two consultations will likely have a significant impact on businesses unable to recover all of their input tax and on mail order and digital services companies located outside Singapore.

The consultations are ongoing, so please contact your local Deloitte contact to contribute or seek more information on the proposed changes.

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New End-User Statement formats for Strategic Trade Scheme Bulk and Individual Permits

On 14 June 2017, Customs released a circular that announced the introduction of the new End-User Statement (EUS) formats for Strategic Trade Scheme (STS) Bulk Permits and Individual Permits.

For **STS Bulk Permits**, the new EUS format:

- No longer requires an indication of the quantity and value of goods to be exported to the end-user; and
- Includes additional text to specify the EUS validity period, i.e., either:
  - Up to three years after it is signed; or
  - Up to the validity period specified by Customs in the STS Bulk Permit approval.

For **STS Individual Permits**, the new EUS format:

- No longer requires an indication of the value of the goods to be exported to the end-user; and
- Clearly stipulates that the EUS is only to support STS Individual Permit applications.

The new EUS formats, which supersede the general EUS format that was previously used for both STS Bulk and Individual Permits, are implemented to accommodate the diverse business models adopted by companies.

Of particular note, the new EUS format for STS Bulk Permits will supersede any EUS facilitations granted to Bulk Permit holders before 1 January 2015.

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Back to top

EMEA

EU – Sri Lanka

Sri Lanka regains EU's GSP+ status

The EU is Sri Lanka's biggest export market, accounting for about one-third of its total exports. As of 19 May 2017, Sri Lanka regained 'Generalized System of Preference +' (GSP+) status, with the entry into force of EU Delegated Regulation 2017/836 of 11 January 2017.

The EU initially decided to suspend Sri Lanka's GSP+ status on 15 August 2010, having identified a lack of commitment on reform of and progress in the fields of sustainable development, human rights and good governance, factors relevant for gaining and maintaining GSP+ status. The renewed GSP+ status will again provide Sri Lanka with better market access, including the abolition of customs duties in return for improvements in the abovementioned commitments.

Implications

The EU's 'Generalized Scheme of Preferences' (GSP) allows importers to pay less or no duties on the import of goods from developing countries into the EU. This gives developing countries vital access to EU markets and contributes to their economic growth.

In addition, countries can gain enhanced preferences by opting for the GSP+ status. The GSP+ status will result in full removal of duties on 66% of tariff lines, covering a wide array of products including textiles and fisheries. These benefits are granted to countries upon request subject to ratification and implementation of core international conventions relating to human and labor rights, environment and good governance. The exact criteria to apply for the GSP+ status are laid down in Regulation (EU) No 978/2012 of 25 October 2012.

Economic operators engaged in business between Sri Lanka and the EU can benefit from the removal of duties as mentioned above for various goods with Sri Lankan origin as of 19 May 2017. The GSP+ status will in principle be in place until 2021.

Next steps

Economic operators are already able to benefit from Sri Lanka's GSP+ status.

For businesses involved in business between Sri Lanka and the EU, the following steps are suggested to utilize the benefits of Sri Lanka's GSP+ status:

- Assess whether the relevant goods have Sri Lankan preferential origin (in case of import into EU) and all origin requirements are met;
- Assess whether the relevant goods could benefit from the GSP+ status of Sri Lanka;
- Assess whether a valid proof of origin is available;
- Update systems and trade flows to the renewed GSP+ status of Sri Lanka.

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Belgium

Stricter rules for VAT deduction for gifts

On 29 May 2017, the VAT authorities published a Circular Letter on the VAT deduction rules for a number of situations where gifts are provided for free. The distribution of free commercial gifts is strongly impacted. This stricter approach will also affect gifts offered within the framework of certain customer loyalty programs and employee rewards.

Impact

The new Circular Letter significantly impacts the VAT deduction for products distributed for free as commercial gifts. Until the Circular Letter was published, VAT was deductible and there was no requirement to pay VAT by way of a self-supply for gifts with a cost of less than EUR 50 (excluding VAT). The Circular Letter stipulates that the EUR 50 (excluding VAT) can now be applied to only one gift per commercial relationship per calendar year.

Consequently, if several gifts are provided to the same person during a calendar year, then the EUR 50 (excluding VAT) threshold can only be applied to one gift. For additional gifts, the VAT on the purchase or production cost can no longer be deducted or should be paid through a self-supply in the taxpayer's VAT return, even if those gifts have a cost below EUR 50 (excluding VAT).

This restriction will also impact certain loyalty programs organized by companies for their customers, whereby customers can receive a 'free' item after redeeming a number of points accumulated through previous purchases.

Another change relates to the VAT deduction on employee gifts, whereby in future, the EUR 50 (excluding VAT) threshold will also be applied per calendar year per employee. Only one gift is eligible for VAT deduction.

According to the Circular Letter, the EUR 50 (excluding VAT) threshold which would in principle concern free goods should also be applied to Single Purpose Vouchers, which are subject to VAT as they are deemed to represent goods or services. When such vouchers are given for free to a commercial relation or an employee (for example, a gift voucher for a wellness treatment), the same rules as for goods should be applied.

The Circular Letter also deals with a number of smaller changes and clarifications for samples, advertising materials and goods donated to disaster victims.

Deloitte Belgium has prepared a freely available 'impact assessment' to assess this Circular Letter's impact, see Impact new Circular letter on commercial gifts, samples, advertising goods, gifts and other goods supplied for free.

Timing

No specific date is mentioned in the Circular Letter, meaning that in principle the new rules apply as from the publication date (i.e., 29 May 2017).

Since no specific rules are foreseen for calendar year 2017, it is possible that VAT can no longer be deducted on gifts to a beneficiary for whom the threshold has been exceeded before the publication date.

Next steps

Companies are strongly advised to assess and calculate the impact of this new Circular Letter, and, if required, to revise their current process for the distribution of samples, commercial gifts, loyalty schemes and employee benefits.

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VAT exemption for insurance claims handling to be narrowed from 2018

On 12 June 2017, the VAT authorities published a Circular Letter narrowing the current scope of the VAT exemption for insurance claims handling, with effect from 1 January 2018.

Currently, administrative guidance allows a broad application of the exemption even when insurance claims are handled by a party that is not involved in finding and introducing the prospect to the insurer.

As a result of the CJEU case *Aspiro* (March 2016), the VAT authorities will limit this exemption to insurance claims handling provided by a supplier involved in intermediating the conclusion of or change to the underlying insurance policy.

The Circular Letter will apply to all insurance claims handling assigned from 1 January 2018. A separate publication was announced for the VAT treatment of activities performed by underwriting agents.

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Italy

Guidelines released on penalties for incorrect application of reverse charge mechanism

In Circular Letter n°16/E, dated 11 May 2017, with reference to the changes to VAT penalties introduced by Legislative Decree n° 158 dated 24 September 2015, the tax authorities have released official guidelines regarding the administrative penalties applicable for the incorrect application of the reverse charge mechanism.

The tax authorities clarified the rationale of the recent law changes which, in compliance with the general proportionality principle, are aimed at dealing more seriously with VAT violations committed with the purpose of evasion or fraud and, on the other hand, in a more lenient manner with irregularities where the VAT is still levied. As clarified by the tax authorities, the new provisions are valid as from January 2016 and they will be applied also to violations committed before January 2016 (*favor rei principle*), under certain conditions.

Resolution published regarding sale of VAT credit as warranty

In Resolution n° 39/E, dated 28 March 2017, the tax authorities have provided clarifications with respect to sales of VAT credit as warranty for the repayment of a loan. This is a typical bank practice, which entitles the lender (purchaser of the VAT credit) to obtain the refund of the VAT credit from the tax authorities, in the case of non-repayment of the loan by the borrower (seller of the VAT credit).

The tax authorities have qualified the sale of VAT credit as ancillary to the loan agreement, and clarified the practical steps to follow in case of full repayment of the loan by the borrower.

Council Implementing Decision on split payment derogating measures

The Council of the European Union, with Implementing Decision (EU) 2017/784 of 25 April 2017, has authorized Italy to continue derogating from Articles 206 and 226 of the EU Principal VAT Directive (2006/112). In particular, Italy is authorized to:

- Ensure that the VAT due on supplies of goods and services to the specified entities must be paid directly by the customer/recipient into a separate and blocked bank account of the tax authorities; and

- Require that the invoice issued for such supplies specifically mentions that the VAT must be paid to the separate and blocked bank account of the tax authorities.

This Decision will apply from 1 July 2017 until 30 June 2020.

CJEU judgments on legislation providing for administrative penalty and criminal penalty for same offences, relating to omitted VAT payment

In the joined cases of *Orsi* (C-217/15) and *Baldetti* (C 350/15), dated 5 April 2017, the Court of Justice of the European Union responded to two requests for preliminary rulings, made in the context of Italian criminal proceedings related to VAT violations. Specifically, the requests refer to the interpretation of article 50 of the Charter of Fundamental Rights of the European Union.

Based on the CJEU judgment, article 50 must be interpreted as not precluding the Italian legislation, which allows for criminal proceedings to be brought for omitted VAT payments after the imposition of a definitive tax penalty with respect to the same act or omission, where that penalty was imposed on a company with legal personality, while the criminal proceedings were brought against a natural person.

Resolution published on e-storage of invoices for VAT purposes

In Resolution n° 46/E, dated 10 April 2017, the tax authorities have focused on the procedure for e-storage of paper and digital invoices and documents relevant for VAT purposes. In particular, the tax authorities have clarified the practical steps to follow in order to proceed with the e-storage of import bills and purchases invoices (also intra-Community acquisitions) received in paper format or digital format.

FAQ available on tax authorities' website regarding quarterly e-communication of VAT calculations

On 26 May, the tax authorities published online the answers to frequent questions from taxpayers regarding the preparation of the new quarterly communication to be e-submitted with the data related to the periodical VAT calculations. As previously announced, the first deadline expired on 31 May 2017, although this was extended to 12 June 2017 for the first quarter of 2017 only (based on the Decree of the President of the Council of Ministers of 22 May 2017, published in the Official Gazette n.124 dated 30 May 2017).

The most significant clarifications include the following:

- **Nil position (period/quarter without relevant transactions)**: The e-submission of the quarterly communication is not mandatory in the case of no transactions, unless there is a VAT credit to be carried forward from the previous period;

- **Invoices issued under the 'split payment' regime**: The supplier must report only the taxable base of these output transactions in box VP2. The public bodies receiving the input invoices are not requested to declare this type of transaction (no taxable base nor VAT);

- **E-submission of corrective communications after the deadline**: The telematics system accepts the submission of a corrective communication even if e-submitted after the mandatory deadline, when the amended communication has been filed in time. The tax authorities will consider only the last communication e-submitted by taxpayers.

Criteria defined for VAT deregistration and exclusion from VIES database

Based on the Act of the Director of the Tax Authorities n° 110418 dated 12 June 2017, the tax authorities will undertake (and repeat periodically under certain circumstances) a risk analysis, in order to verify the correctness, accuracy and completeness of the data provided at the time of a VAT registration request.

Depending on the outcome of the checks:

- The VAT number may be closed and thus excluded from the VIES database;

- The VAT number may remain valid, but excluded from the VIES database (this is the case of taxpayers carrying out irregular intra-Community transactions through VAT frauds); in this case, under certain conditions, taxpayers could request at a later stage the (re)inclusion of the VAT number in the VIES database.

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Limitation period for customs debt

The Union Customs Code (UCC), in force from 1 May 2016, states the following rules:

a) No customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred;

b) Where the customs debt is incurred as the result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the above three-year period shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law, which period is five years in Italy.

The rule in b) is a new rule (prior to the UCC, a three-year period applied in these cases) and implies that when the five-year period has expired, customs offices cannot notify or request a debtor to pay any customs debt incurred due to criminal facts.

On this premise, for cases covered under b), the Customs and Monopoly Agency have clarified with Note No 51424/RU issued in June that:

- The previous three-year period will apply to customs debts incurred before 1 May 2016;

- The new five-year period will apply to customs debts incurred after 1 May 2016.

With respect to customs debts incurred before 1 May 2016, the Agency has also confirmed that, if before taking a customs decision adversely affecting an operator, that operator argues that the three-year period has expired (i.e., during the period allowed by art. 22, par. 6, of the UCC), the customs office must dismiss any payment request.

Authorized consignee for excise purposes

Based on the Italian excise law, a person can be authorized by Customs to receive under excise suspension products subjected to excise, coming from Italy or from another EU country. Such authorized person is an 'authorized consignee'.

Circular letter No 8/D, issued in June by the Customs and Monopoly Agency, listed the criteria required for obtaining the relevant authorization.

Bunkering of energy products

In June, the Customs and Monopoly and Agency, together with the Tax Agency, issued a ruling on bunkering activities which has:

- Clarified the customs formalities that must be met for supplies of energy products destined for ships;

- Extended the VAT treatment of supplies of fuel carried out on board of the ships, as already clarified by the Tax Agency in January 2017 in other cases (see the January 2017 edition of GITN), specifying that VAT also does not apply if the fuel is supplied directly on board the ship through the intervention of two traders.

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Ireland

VAT exemption for educational and vocational training

The Finance Act 2015 made a number of amendments to the application of the VAT exemption that applies to certain educational services and vocational training.

The Irish Revenue have published updated guidance that details explanations of relevant technical terms, criteria to be met to be a qualifying training activity, and relevant examples in relation to qualifying training bodies and the application of the VAT exemption to training activities in various scenarios.

Taxpayers providing services that could fall within the remit of education and vocational training should consider whether they are impacted by the changes.

Case referred to CJEU on VAT deductibility related to share transactions

The case of *Ryanair Limited v Irish Revenue Commissioners* concerns the VAT deductibility of professional fees paid by Ryanair in relation to the failed takeover bid of Aer Lingus in 2006. Ryanair sought to claim the VAT paid on professional fees on advice sought in relation to the takeover bid as an input deduction.

There was a finding of fact in the Irish courts that Ryanair's intention was to be an active participant in Aer Lingus and it intended to provide taxable management services to Aer Lingus if its bid was successful. The High Court held that input deduction was not available on the basis that the bid was unsuccessful and no taxable supplies were made by Ryanair. The Irish Supreme Court is now referring the case to the Court of Justice of the European Union to resolve the matter.

It is expected that the CJEU may allow an input deduction, on the grounds that granting an input deduction should not depend on whether a particular venture is successful or not.

Revenue to update 'Revenue's On-Line Service' regarding administrator registration

With effect from 18 June 2017, the Irish Revenue has implemented increased security measures when customers are registering for the 'Revenue's On-Line Service' (ROS). The new security measures affect both existing and new ROS customers.

The new measures require both existing and new ROS customers to set up five additional security questions on their ROS account. These measures will streamline and speed up the process for retrieving lost and expired ROS certificates, and also forgotten passwords.

For further information on the changes, see the ROS Help Centre.

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Latvia

Changes to VAT returns

There are some changes and proposed changes to the regulations on the preparation of VAT returns as follows:

- With effect from 1 April 2017, amendments to the regulations have been introduced under which an additional transaction code 'C' has been included in VAT return appendix PVN1-I (input VAT on local acquisition). This transaction code must be used when reporting local acquisitions, intra-Community acquisitions from non-taxable persons and imports of category N1 and M1 vehicles.

- At present, the regulations provide that each invoice exceeding EUR 1,430 (excluding VAT) must be disclosed separately in the VAT return appendices PVN1-I (input VAT on local acquisition) and PVN1-III (output VAT on supplies). Under draft amendments to the regulations, the threshold will be reduced to EUR 150. It is planned that the amendments to regulations will be effective as of 1 June 2017 (applicable for the preparation of VAT returns from June 2017).

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Netherlands

VAT reverse charge mechanism may be applied to telecommunications services

The State Secretary of Finance published a decree on 1 June 2017 to allow taxable persons to immediately apply a VAT reverse charge mechanism to business-to-business (B2B) supplies of telecommunications services in the Netherlands between taxable persons carrying out such services. The decree, which applies as from 2 June 2017, was issued in anticipation of a change in legislation expected later in 2017 that would introduce a mandatory reverse charge on certain domestic supplies of telecommunications services in response to recently discovered VAT 'carousel fraud'.

Background

The decree follows an announcement by the Secretary on 29 May 2017, in which he informed the parliament of his intention to introduce a mandatory VAT reverse charge mechanism for telecommunications services.

A tax inspector may deny a taxpayer the right to deduct input VAT where the inspector determines, based on objective factors, that the taxable person knew or should have known that, by its purchase, it was participating in a transaction connected with VAT carousel fraud. This has led to uncertainty among taxable persons that purchase telecommunications services regarding their right to deduct the input VAT charged to them, which could seriously impede the conduct of regular transactions in these services.

New decree

To reduce uncertainties for taxable persons that purchase telecommunications services, the decree provides that certain taxable persons may immediately apply the VAT reverse charge to domestic telecommunications services. Under the reverse charge, liability for the payment of VAT will shift from the supplier to the purchaser, eliminating the payment of VAT from the purchaser to the supplier that a fraudulent supplier could fail to remit to the government.

Under the decree, the VAT reverse charge mechanism is applicable only to transactions between taxable persons that supply telecommunications services. The supply of services to end-users falls outside the scope of the arrangement. In this context, end-users are understood to include not only private individuals, but also entrepreneurs that purchase such services to use them within their own organization.

The reverse charge can be applied to invoices, or to payments prior to issuing an invoice, as from 2 June 2017, as well as to telecommunications services supplied before 2 June 2017, but for which invoicing will take place after that date.

Proposed VAT adjustment rules for 'expensive services'

On 18 May 2017, the State Secretary of Finance published a proposal to revise the VAT adjustment rules, specifically to extend the rules to apply to 'expensive services' (i.e., certain purchased services and intangible assets that are used over a longer period of time and normally are capitalized on a company's balance sheet). The VAT adjustment rules currently apply only to capital goods. The intended effective date of the proposal is 1 January 2018. The proposal is subject to a consultation period that ended on 15 June 2017.

Overview of proposal

Under the proposal, 'expensive services', being services subject to depreciation for income or company tax purposes (for example, the purchase of certain brand names, computer software licenses and patents and certain investments in immovable property), would become subject to the VAT adjustment rules. The proposal aims to equalize the rules for deducting input VAT incurred on expensive services with those applicable to capital goods (capitalized movable and immovable property), which are subject to a VAT adjustment period, and to discourage perceived tax planning around purchases of expensive services, which currently are not.

As a general rule, the deduction for input VAT incurred on purchased services is claimed for the first year in which the services are used, and must be reduced in proportion to the VAT exempt activities of the taxpayer in which the services are used during that year. The VAT adjustment rules would require the amount of the VAT deducted in the first year of use to be further adjusted in cases where there is a subsequent 'change in use' (i.e., a change in the proportionate use of the services in a taxable activity versus an exempt activity) during an adjustment period, which would result in an additional VAT payment or an additional VAT deduction.

The adjustment period would be 10 years for expensive services relating to immovable property (for example, a refurbishment) and five years for other types of expensive services.

Comments

The extension of the VAT adjustment rules to expensive services would have a major impact on taxpayers, since changes to current accounting and VAT administration systems and procedures would be required to accurately calculate and report VAT adjustments on expensive services.

The proposal states that there will be no transitional rules. Therefore, the extent to which the new rules would apply to expensive services purchased before their effective date, but prior to the expiration of the adjustment period, would need to be addressed by the tax authorities.

Tax administration issues processing method for objections relating to VAT treatment of private use of cars

In April 2017, the Supreme Court ruled in the test cases on the private use of company cars. On 1 June 2017, the collective decision on the objection was published in the Government Gazette and a notification was published on the Tax Administration's website as to how objections relating to private use of cars are to be processed.

Supreme Court rulings

On 21 April 2017, the Supreme Court ruled in four cases regarding VAT for private use of company cars. The cases show that the Dutch rules can be maintained. However, if taxable persons do not have kilometer records, the cases provide opportunities for establishing the private use in other ways, for instance based on statistical data.

Use of statistical data

In accordance with its previous ruling in the *Van Laarhoven* case, the Supreme Court also decided that the Netherlands may use a flat-rate scheme. The fact that this may in certain cases lead to more VAT payable than for the effective private use, does not mean that in those cases no VAT on the private use is to be levied at all. The VAT payable in such cases only needs to be reduced to an amount that corresponds with the effective private use.

If taxable persons do not have kilometer records, the Supreme Court argues that the extent of the private use can be determined based on a reasonable estimate. Statistical data can be used as a guideline, but use of such data is neither necessary nor decisive. The circumstances to be taken in to account for determining whether the private use has reasonably been determined are:

- The nature of the company;
- The business purposes for which the car can be used within the company;
- The position and the activities within the company of the person who uses the car; and
- What is known about how the car can or has been used for private purposes, such as for commuting.

When statistical data is used, it should be demonstrated based on these circumstances that those statistical data can be used in the case at hand.

Processing method for notices of objection

Following the procedures, many taxpayers objected to their own VAT returns for the years 2011 up to and including 2016. The State Secretary has designated these objections as a collective objection. This means that the Tax Inspector can process the objections in a single collective decision.

On 1 June 2017, the collective decision on the objection was published in the Government Gazette. In this collective decision, the Tax Inspector declares the objections to be unfounded. However, if a notice of objection (implicitly) argues that the flat-rate scheme leads to excessive VAT on the private use, the objection is considered to be well-founded on this point. Entrepreneurs then have until 15 July 2017 to supply data that enable determining which part of the company car-related expenditure can be attributed to private use. For VAT purposes, commuting qualifies as private use.

Next steps

If entrepreneurs argue in their notice of objection that more VAT has been charged than would be due based on private use of the company car, they can substantiate and supplement their objection. The Tax Administration’s website provides a form that can be used.

Completing the form will not in itself suffice. The Tax Administration requires entrepreneurs to provide a complete substantiation and evidence. The notification by the Tax Administration shows that it will not be easy to demonstrate vis-à-vis the Tax Administration that too much VAT is paid due to application of the flat-rate. If statistical data is used, it should be demonstrated for each individual car why the data are useful in the case of the respective entrepreneur.

Entrepreneurs have until 15 July 2017 to substantiate their notice of objection by completing the form and providing evidence. If they fail to do so, their objection will also be rejected on this point. Entrepreneurs can, of course, contact their advisor to check whether it would be useful for them to provide additional information and to demonstrate that the flat-rate resulted in them paying too much VAT.

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Portugal

VAT exemption for acquisitions by non-EU-residents – tax free

On 1 June 2017 Ordinance nr. 185/2017 was published, providing the regulation of Decree-Law 19/2017, of 14 February 2017, for the implementation of the new system aimed at modernizing the procedures to control and validate the requirements for the VAT exemption for the export of goods by a traveller who is non-resident in the EU (tax free). (For further detail on the Decree-Law 19/2017, see the March 2017 edition of GITN.)

Ordinance nr. 185/2017, which entered into force on 1 July 2017, specifies the requirements and conditions of electronic communications and the documents that should be presented by travellers to benefit from the VAT exemption.

In broad terms, according to the new system for the VAT exemption validation, suppliers communicate to the Portuguese Tax and Customs Authority, electronically and in real time, the information necessary to certify the assumptions for the VAT exemption, namely the traveller's information, invoice data, quantity and nature of the goods to be classified according to the codes defined in the Ordinance's Annex I, VAT value that would be due if the transaction did not benefit from the VAT exemption, security deposit for the VAT amount eventually due, and identification of the financial intermediary company that will refund the VAT (if applicable).

The Portuguese Tax and Customs Authority will confirm the VAT exemption assumptions through an electronic certification and control system, and will provide to the supplier, in real time, a decision on whether it has authorized the application of the VAT exemption to the supply in question.

The supplier must then provide the traveller with the electronic proof of registration of such supply, proving that the electronic communication for certification to the Portuguese Tax and Customs Authority was made, containing a registration code granted by the Portuguese Tax and Customs Authority (or a unique identifier code to be issued by the supplier if the electronic communication system is unavailable).

Electronic certification terminals will be made available for travellers, which will scan the traveller's registration document and boarding pass, and will also validate the conditions for VAT exemption and verify the certified export or, alternatively, will advise the traveller to go to the counter of the Portuguese Tax and Customs Authority for an in-person validation.

Ordinance nr. 185/2017 determines that the Portuguese Tax and Customs Authority will make available on its website the instructions and technical specifications for compliance with the provisions of the Ordinance, which as of 21 June 2017 had not yet occurred.

Supply of services connected to immovable property for VAT purposes

The Portuguese Tax and Customs Authority has published Circular Letter no. 30191, dated 8 June 2017, concerning European Council Implementing Regulation no. 1042/2013, dated 7 October 2013, amending Council Implementing Regulation no. 282/2011, dated 15 March 2011, regarding the place of supply of services connected to immovable property for VAT purposes.

The purpose of the Circular Letter is to remind taxpayers of the new VAT rules applicable to services connected to immovable property which have become mandatory since 1 January 2017. As such, it includes a breakdown of the services that are to be regarded as having a sufficiently direct connection with immovable property, as laid down in Article 31 of Council Implementing Regulation no. 282/2011 after the abovementioned amendment.

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Russia

Credit institutions or mobile network operators may be tasked with collecting VAT from foreign electronic-service providers

The Federal Tax Service is considering requiring banks to act as withholding agents with respect to VAT on e-services rendered by foreign providers in Russia.

This initiative was discussed with major banks at a meeting held by the Association of Russian Banks.

Another option under consideration is to delegate the same functions to mobile network operators.

Foreign organizations providing e-services

In its Letter No. CD-3-3/3117@ of 3 May 2017, the Federal Tax Service has clarified that when foreign organizations provide e-services, the place of supply of which is deemed as the territory of the Russian Federation, to foreign organizations that are registered in accordance with clause 4.6 of Article 83 of the Tax Code (i.e., in connection with the payment of VAT from the electronic services it provides), the latter do not perform the functions of a tax agent for the calculation and payment of VAT.

Ministry of Finance clarifies VAT treatment of updating and extracting materials from database

The Ministry of Finance in its Letter No. 03-03-06/1/25101 of 26 April 2017 considers the following case. An organization has created an e-service, in which the client does not receive the database itself (located on the servers of the organization), but is given the right to remotely search the entire contents of the database, extract the materials necessary for the client from it, and use them.

The Ministry of Finance has clarified that in this situation the object of exclusive right is the way of systematizing materials in the database and not its content. In this regard, expenses related to updating information in the database can be accounted simultaneously and the expenses related to update in the form of finalizing the ways of systematizing the data, taking into account their capital nature, should be recognized during the remaining useful life of such a database.

With respect to the application of VAT, the Ministry of Finance concludes that since the right to extract materials from the database and their later use can be treated as the rights to use the database, when transferring such rights on the basis of a license agreement VAT exemption should be applied, stipulated in subclause 26 of clause 2 of Article 149 of the Tax Code.

Abolition of prohibition on importation of certain goods from Turkey into Russia

Resolution of the Government of the Russian Federation of 2 June 2017 No. 672 cancels the prohibition on the importation of the following goods from Turkey into Russia:

- Frozen parts of carcasses, chicken and turkey offal;
- Fresh or chilled cucumbers and pickling cucumbers;
- Fresh apples, pears, grapes, strawberries and wild strawberries.

The importation of fresh and chilled tomatoes from Turkey is still prohibited.

The embargo on the importation of certain Turkish goods into Russia was introduced in January 2016. The list of banned products was reduced as the Russian Government gradually excluded goods from it.

Resolution No. 672 came into effect on 10 June 2017.

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South Africa

Temporary rebate provision for structural steel

The International Trade Administration Commission of South Africa (ITAC) is currently reviewing responses to an application for the creation of a temporary rebate facility for 'Structural Steel in the Form of U, I, H and L sections, of Other Alloy Steel, Not Further Worked than Hot-Rolled, Hot-Drawn or Extruded, of a height of 80mm or more', classifiable under TSH 7228.70 and 7216.40.

The applicant cited that the only manufacturer in the Southern African Customs Union (SACU) has temporarily ceased production, due to being under business rescue, and is therefore unable to meet local demand.

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United Kingdom

Tribunal rejects tax authorities' argument for payment processing VAT exemption

PayPoint operates a system that enables customers of utility companies, mobile phone companies, and the like to pay bills over the counter at shops using a PayPoint terminal. The tax authorities argued that these 'post-payment' services should be treated as exempt from VAT.

The First-tier Tribunal has rejected this argument and allowed PayPoint's appeal. The Tribunal reviewed the relevant contracts in detail, and concluded that the payments received at the shop were received on behalf of the utility company, and the polling of terminals and the transmission of information by PayPoint did not effect a change in the legal and financial position between the utility company and the customer. Therefore, PayPoint should charge VAT on invoices to the utility companies for its services.

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Back to top

Eurasian Economic Union

Decrease in rates of import customs duty for certain goods due to Russia's WTO obligations

The Decision of the Board of the Eurasian Economic Commission of 11 May 2017 No. 44 introduces decreased import customs duty rates for certain goods due to Russia's obligations to the World Trade Organization (WTO). In particular, the import customs duty rates will be decreased for certain types of fish, vegetables, machinery, etc.

Decision No. 44 will come into effect on 1 September 2017.

Preliminary anti-dumping duty introduced on hot-rolled steel corners from Ukraine

The Decision of the Board of the Eurasian Economic Commission of 11 May 2017 No. 53 introduces preliminary anti-dumping duty with regard to certain types of hot-rolled steel corners originating from Ukraine and classified under the classification codes 7216 and 7228.

The anti-dumping measure is introduced for four months from 11 June 2017. The rate of the preliminary anti-dumping duty is 37.89% of the customs value of imported goods.

Decision No. 53 came into effect on 11 June 2017.

Extension of anti-dumping measure on rolled metal products with polymer coating from China

The Decision of the Board of the Eurasian Economic Commission of 11 May 2017 No. 45 extends anti-dumping duty with regards to certain types of rolled metal products with polymer coating originating from China and classified by the classification codes 7210, 7212 and 7225.

The anti-dumping measure was extended to 27 February 2018 inclusive.

Decision No.45 will come into effect on 1 July 2017.

Introduction of technical regulation on safety of equipment for children's playgrounds

Decision of the Council of the Eurasian Economic Commission of 17 May 2017 No. 21 introduces technical regulation on the safety of equipment and coverage for children's playgrounds and related processes of design, production, installation, operation, storage, transportation, and utilization.

This technical regulation will come into effect on 17 November 2018.

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Back to top

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