

VAT UPDATE 2016/17
INDEX

Covering quarterly update
April 2016

VAT Update April 2016 Index

INTRODUCTION

This index arranges the material in the update according to type of source (CJEU decision, High Court, Tribunal, new law etc.). If you are looking for a particular word or name, use the “find” function to find it.

This is a cumulative for the year to date. Each January’s index will be the final index for the calendar year to 31 December.

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1 HMRC’s publications of their views

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<i>Revenue & Customs Brief 01/2016</i>	Explanation of new reverse charge on electronic communications	Apr 16 2.12.3
<i>Revenue & Customs Brief 03/2016</i>	HMRC announce review of grouping rules	Apr 16 6.1.1
<i>Revenue & Customs Brief 04/2016</i>	Relaxation of rules on MOSS for micro traders	Apr 16 4.1.1
<i>Revenue & Customs Brief 07/2016</i>	HMRC comment on requests to not collect VAT not collected from customers by unregistered traders – will not be routinely considered	Apr 16 6.2.2
<i>VAT Information Sheet 1/2016</i>	Table of exchange rates for use by those registered under MOSS	Apr 16 4.1.2
www.gov.uk/government/collections/customs-information-papers--2	HMRC explain significant changes to customs procedure codes from 1 May 2016	Apr 16 4.3.6
www.gov.uk/government/consultations/fulfilment-house-due-diligence-scheme	Consultation on fit and proper standards for fulfilment houses for online marketplace sales	Apr 16 6.9.4
www.gov.uk/government/publications/draft-legislation-vat-use-and-enjoyment-provisions-for-insurance-repair-services	Consultation on changing place of supply of indemnity repairs	Apr 16 4.2.1
www.gov.uk/government/publications/hmrc-single-departmental-plan-2015-to-2020	Single departmental plan sets out HMRC policy objectives for 5 years to 2020	Apr 16 6.9.6
www.gov.uk/government/publications/vat-information-sheet-0116-vat-moss-exchange-rates-for-period-ending-december-2015	Table of exchange rates for use by those registered under MOSS	Apr 16 4.1.2
www.gov.uk/government/publications/vat-overseas-businesses-and-joint-and-several-liability-for-online-marketplaces	Measures to strengthen powers to require foreign traders to appoint fiscal representatives in the UK	Apr 16 6.9.4
www.gov.uk/government/publications/vat-refunds-for-museums-and-galleries	VAT refund scheme for museums etc. extended more generally	Apr 16 5.8.3

www.gov.uk/government/publications/vat-reverse-charge-for-electronic-communications-services	Tax Impact and Information Note on new reverse charge on electronic communications	Apr 16 2.12.3
www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers	Updated <i>Guide to VAT on supplies of digital services to private consumers: Register and use the VAT Mini one-stop-shop for digital supplies</i>	Apr 16 4.1.1

2 Statute and other Parliamentary material

<i>OOTLAR Budget 2016</i>	Charity reliefs extended to Isle of Man charities	Apr 16 2.11.2
<i>OOTLAR Budget 2016</i>	Treasury power to add bodies to s.33 claimants introduced	Apr 16 5.8.3
<i>OOTLAR March 2016</i>	Proposed clarification of “reasonable care” for penalty cases	Apr 16 6.8.3
<i>OOTLAR March 2016</i>	Consultation on new penalty for participating in VAT fraud	Apr 16 6.8.3
<i>OOTLAR March 2016</i>	Proposed extension of VAT Disclosure Regime to align more closely with direct tax version	Apr 16 6.9.3
<i>OOTLAR March 2016</i>	Measures to increase consequences for promoters and enablers of avoidance schemes if their schemes fail	Apr 16 6.9.3
<i>OOTLAR March 2016</i>	Measures to strengthen powers to require foreign traders to appoint fiscal representatives in the UK	Apr 16 6.9.4
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<i>Red Book 2.151</i>	VAT refund scheme for museums etc. extended more generally	Apr 16 5.8.3
<i>Red Book 2.152</i>	Treasury power to add bodies to s.33 claimants introduced	Apr 16 5.8.3
<i>Red Book 2.153</i>	Charity reliefs extended to Isle of Man charities	Apr 16 2.11.2
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<i>SI 2016/235</i>	VAT refund scheme for museums etc. extended to several specific bodies	Apr 16 5.8.3
<i>SI 2016/307</i>	New s.33 body added to list	Apr 16 5.8.3
<i>SI 2016/333</i>	HMRC change rules on fees for paying tax by credit card	Apr 16 6.3.3
<i>SI 2016/365</i>	Registration thresholds increased from	Apr 16 6.2.3

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3 Other UK official material

www.gov.uk/government/publications/vat-in-the-digital-single-market-eu-consultation-response	UK government asks Commission to relax MOSS rules with threshold	Apr 16 4.1.1
www.gov.uk/government/publications/your-charter	HMRC revises “Your Charter”	Apr 16 6.9.2
www.gov.uk/government/uploads/system/uploads/attachment_data/file/486536/further-fees-proposals-gov-response-consultation.pdf	Proposed action to introduce fees for taking appeals to Tribunal	Apr 16 6.9.1
www.gov.uk/government/uploads/system/uploads/attachment_data/file/504850/small_company_taxation_review_final_03032016.pdf#page=26	Office of Tax Simplification recommendations including two VAT measures	Apr 16 6.9.5

4 Case law: Court of Justice of the European Union

CJEU (Case C-334/14): <i>Les Jardins de Jouvence SCRL v Belgian State</i>	Supply of supported independent living for older people could constitute welfare	Apr 16 2.3.6
CJEU (Case C-38/16): <i>Compass Contract Services Ltd v HMRC</i>	Questions referred to CJ on whether different dates for input tax and output tax Fleming claims is contrary to EU legal principles	Apr 16 6.4.5
CJEU (Case C-40/15): <i>Minister Finansów v Aspiro SA, formerly BRE Ubezpieczenia sp. z o.o.</i>	Supply of claims handling did not qualify for exemption because supplier was not insurance agent	Apr 16 2.3.1
CJEU (A-G) (Case C-11/15): <i>Odvolačí finanční ředitelství v Český Rozhlas</i>	Public body funded by statutory licence fee was not receiving business income, but might not be able to claim related VAT on expenses	Apr 16 4.4.7
CJEU (A-G) (Case C-18/15): <i>Brisal — Auto Estradas do Litoral S.A., KBC Finance Ireland v Fazenda Pública</i>	Corporation tax case considers VAT precedent in finding that indirect discrimination against non-resident businesses is not allowed	Apr 16 4.4.9
CJEU (A-G) (Case C-516/14): <i>Barlis 06 — Investimentos Imobiliários e Turísticos SA v Autoridade Tributária e Aduaneira</i>	Vague descriptions of services on invoices were inadequate because authorities need to be able to see that the proper treatment has been applied	Apr 16 4.4.5
CJEU (A-G) (Case C-518/14): <i>Senatex GmbH v Finanzamt Hannover-Nord</i>	Trader should be allowed to obtain corrected invoices and deduct input tax in period in which transaction took place	Apr 16 4.4.4
CJEU (A-G) (Case C-543/14): <i>Ordre des barreaux francophones et germanophone and Others v Conseil</i>	Transitional exemption once abolished could not be reinstated	Apr 16 4.4.8

<i>des ministres</i>		
CJEU (A-G) (Case C-546/15): <i>Degano Trasporti S.a.s. di Ferruccio Degano & C., in liquidazione</i>	Compromise in which tax authority accepted less than full amount of VAT could be lawful if alternative would produce no greater amount	Apr 16 4.4.6
CJEU (Reference) (Case 624/15): <i>Litdana UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos</i>	Questions about operation of margin scheme	Apr 16 4.4.13
CJEU (Reference) (Case C-453/15): <i>Criminal proceedings against A, B</i>	Questions about place of supply of emissions trading in fraud context	Apr 16 4.4.12
CJEU (Reference) (Case C-524/15): <i>Criminal proceedings against Luca Menci</i>	Questions about possible double jeopardy in relation to civil penalties and criminal prosecution	Apr 16 4.4.10
CJEU (Reference) (Case C-555/15): <i>Bernard Jean Marie Gabarel v Fazenda Pública</i>	Questions about extent of medical profession	Apr 16 4.4.11
CJEU (Reference) (Case C-564/15): <i>Tibor Farkas v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Adó Főigazgatósága</i>	Questions about lawfulness of penalty for incorrect accounting where no loss of revenue and no allegation of abuse	Apr 16 4.4.17
CJEU (Reference) (Case C-573/15): <i>État belge v Oxycure Belgium SA</i>	Questions about applying different rates to oxygen in cylinders and oxygen supplied by compressor	Apr 16 4.4.16
CJEU (Reference) (Case C-574/15): <i>Criminal proceedings against Mauro Scialdone</i>	Questions about lawfulness of Italian relaxation of deterrents against criminal evasion	Apr 16 4.4.14
CJEU (Reference) (Case C-576/14): <i>ET 'Maya Marinova' v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Veliko Tarnovo pri Tsentralno upravlenie na natsionalnata agentsia za prihodite</i>	Questions about determination of taxable amounts in possibly fraudulent transactions	Apr 16 4.4.15
CJEU (Reference) (Case C-592/14): <i>HMRC v British Film Institute</i>	Questions referred on scope of cultural services exemption	Apr 16 2.3.9
CJEU (Reference) (Case C-633/15): <i>London Borough of Ealing v HMRC</i>	Questions referred about possible discrimination in treating local authority leisure services as taxable while non-profit bodies are exempt	Apr 16 2.3.8
CJEU (Reference) (Case C-699/15): <i>HMRC v Brockenhurst College</i>	Questions referred about supplies in course of education received by persons other than students	Apr 16 2.3.4

5 Other European material

http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/traders/vat_community/vat_in_ec_annexi	List of VAT registration thresholds applied by EU Member States updated	Apr 16 4.4.2
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<i>pdf</i>	to January 2016	
http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015XC1126(01)&from=EN	List of gold coins eligible for VAT exemption in 2016	Apr 16 4.4.3
http://europa.eu/rapid/press-release_MEX-16-398_en.htm	Commission “orientation debate” on the future for VAT in the EU	Apr 16 4.4.1

6 Case law: Supreme Court

Supreme Court: <i>Shop Direct Group v HMRC</i>	Confirmation that VAT repayments were subject to corporation tax as trading receipts, even if received by company other than the one carrying on the trade	Apr 16 6.4.3
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7 Case law: Court of Appeal/Court of Session

Court of Appeal: <i>BPP Holdings v HMRC</i>	Court restores FTT decision that HMRC’s failure to comply with Tribunal directions warranted barring them from the proceedings	Apr 16 6.8.4
Court of Appeal: <i>Davis & Dann Ltd and another v HMRC</i>	HMRC overturn UT decision in favour of MTIC appellant: FTT was entitled to come to <i>Kittel</i> conclusion on overall weight of evidence	Apr 16 5.8.5
Court of Appeal: <i>Finance & Business Training Ltd v HMRC</i>	College could not use fiscal neutrality argument to give it the same treatment as a college of a university	Apr 16 2.3.3
Court of Appeal: <i>HMRC v Open University</i>	BBC was a body with educational aims so could make exempt supplies to Open University	Apr 16 2.3.5

8 Case law: High Court/Upper Tribunal

Upper Tribunal: <i>Boxmoor Construction Ltd v HMRC</i>	Understanding that facade would be retained was not enough: had to be condition of planning consent	Apr 16 3.3.3
Upper Tribunal: <i>E Buyer UK Ltd v HMRC; HMRC v Citibank NA</i>	HMRC should plead dishonesty explicitly, or disclaim it explicitly, in MTIC cases	Apr 16 5.8.5
Upper Tribunal: <i>Findmypast Ltd v HMRC</i>	Company sold “vouchers” for online downloading, no output tax on unredeemed amounts	Apr 16 2.12.1
Upper Tribunal: <i>HMRC v Bratt Auto Contracts Ltd and another</i>	Claim was not valid for time limit purposes under s.80 and reg.37 if it did not specify the period for which the alleged overpayment had been made	Apr 16 6.4.2
Upper Tribunal: <i>HMRC v Frank A Smart & Son Ltd</i>	Input tax incurred on purchase of Single Farm Entitlements was	Apr 16 5.1.2

	connected to the business and deductible as overhead	
Upper Tribunal: <i>HMRC v Richard Burton</i>	Occupancy condition relating to neighbouring business did prohibit separate use or disposal	Apr 16 3.4.1
Upper Tribunal: <i>HMRC v Vodafone Group Services Ltd</i>	Company could not substitute the reasons for an in-time claim in order to bring in a different out-of-time claim	Apr 16 6.4.1
Upper Tribunal: <i>HMRC v Wakefield College</i>	Fees charged to students without remission based on income were received in course of business: relevant charitable purpose condition failed	Apr 16 2.11.1
Upper Tribunal: <i>Marsdens Caterers of Sheffield v HMRC</i>	Payment on account trader failed to convince Upper Tribunal that POA rules were unfair or not applicable: surcharges confirmed	Apr 16 6.8.1
Upper Tribunal: <i>Marshall & Co v HMRC</i>	FTT had been wrong in one technical aspect of reasons for not awarding costs, but overall decision could not be faulted	Apr 16 6.8.10
Upper Tribunal: <i>Norseman Gold plc v HMRC</i>	Lack of link between management services supplied to subsidiary and any consideration meant that holding company was not making taxable supplies	Apr 16 5.1.1

9 Case law: First Tier Tribunal

First-Tier Tribunal (TC04770): <i>Electrade 247 Ltd</i>	MTIC appeal allowed in part: some deals were actual purchase and sale transactions under director's own control	Apr 16 5.8.5
First-Tier Tribunal (TC04795): <i>Gaysha Ltd</i>	Bank's failure to process payments over a weekend was not a reasonable excuse: surcharge confirmed	Apr 16 6.8.1
First-Tier Tribunal (TC04800): <i>B Bowley</i>	DIY claim for garage succeeded even though project had taken 20 years	Apr 16 3.4.1
First-Tier Tribunal (TC04803): <i>Cleckheaton Holdings Ltd</i>	Demonstrator cars were not capital assets for reg.101 calculation: input tax had to be restricted in <i>Fleming</i> claim for exempt sales	Apr 16 5.3.1
First-Tier Tribunal (TC04806): <i>Brian Hughes</i>	Import duty relief should be allowed to traveller in unfortunate circumstances	Apr 16 4.3.1
First-Tier Tribunal (TC04808): <i>KDT Management Ltd</i>	Company had used the wrong FRS category – HMRC were wrong to	Apr 16 6.3.1

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First-Tier Tribunal (TC04814): <i>Ryefell Ltd t/a Hambledon Haulage</i>	Withdrawal of connected company from cash accounting, causing cash flow difficulties, was not a reasonable excuse: surcharge confirmed	Apr 16 6.8.1
First-Tier Tribunal (TC04815): <i>Geoffrey Lane</i>	Trader was too late to claim exception from registration retrospectively	Apr 16 6.2.1
First-Tier Tribunal (TC04819): <i>The Frozen Fruit Company Ltd</i>	Product was similar to water ice so excluded from zero rate	Apr 16 2.4.1
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First-Tier Tribunal (TC04830): <i>Spyshoponline.co.uk Ltd</i>	No excuse for surcharge	Apr 16 6.8.1
First-Tier Tribunal (TC04833): <i>Travel Incentives Meetings Exhibitions Ltd</i>	Supplies were eligible for TOMS even though sold to businesses for resale	Apr 16 2.9.1
First-Tier Tribunal (TC04835): <i>Telematique Ltd and another</i>	Penalties for income tax and VAT matters considered and confirmed	Apr 16 6.7.1
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First-Tier Tribunal (TC04839): <i>GSM Inter Trade Ltd</i>	Director must have known, or should have known, transactions were connected with fraud: MTIC appeal dismissed	Apr 16 5.8.5
First-Tier Tribunal (TC04840): <i>Temple Finance Ltd and another</i>	Sch.6 para.1 direction was not appropriate: supplies between connected persons were not below MV	Apr 16 2.6.1
First-Tier Tribunal (TC04841): <i>Blue Ocean Associates Ltd</i>	Surcharge of £277,185 for one day late payment on account confirmed	Apr 16 6.8.1
First-Tier Tribunal (TC04845): <i>Half</i>	HMRC review decision to require deposit of security was unreasonably	Apr 16 6.9.7

<i>Penny Accountants Ltd</i>	made	
First-Tier Tribunal (TC04846): <i>PGPH Ltd</i>	Tribunal refused to bar HMRC from the proceedings but issued directions	Apr 16 6.8.5
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First-Tier Tribunal (TC04851): <i>TGH (Commercial) Ltd</i>	Ancillary buildings constructed with RRP building qualified for zero rate	Apr 16 3.3.2
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First-Tier Tribunal (TC04892): <i>Luxur</i>	Company failed to produce convincing evidence of hardship:	Apr 16 6.8.8

<i>plc</i>	application rejected by Tribunal	
First-Tier Tribunal (TC04900): <i>Roberto Pia</i>	Reliance on accountant to register the business was not a reasonable excuse for penalty – failure to register had gone on too long	Apr 16 6.8.2
First-Tier Tribunal (TC04910): <i>Enviroengineering Ltd</i>	Costs charged by director’s accountancy practice in taking company’s appeal were “external” and claimable, but HMRC had not acted unreasonably	Apr 16 6.8.10
First-Tier Tribunal (TC04917): <i>Languard New Homes Ltd</i>	Zero rate allowed to “vertical conversion” of part commercial, part residential property	Apr 16 3.3.1
First-Tier Tribunal (TC04918): <i>S K and J Creations Ltd</i>	No excuse for late payments, surcharges confirmed	Apr 16 6.8.1
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First-Tier Tribunal (TC04923): <i>Shanklin Conservative and Unionist Club</i>	Club’s main aims were social, not political, so subscriptions were not exempt	Apr 16 2.3.7
First-Tier Tribunal (TC04925): <i>K J Services Ltd</i>	Company failed to satisfy conditions for zero-rating as export or despatch	Apr 16 4.3.2
First-Tier Tribunal (TC04928): <i>M P Burke Transport Ltd</i>	Failure of bank to make payments over weekend was not a reasonable excuse: surcharges confirmed	Apr 16 6.8.1
First-Tier Tribunal (TC04929): <i>Lepton Service Station Ltd</i>	HMRC’s forms and guidance did not apply the law on voluntary registration: trader could insist on an earlier date rather than a later date	Apr 16 5.8.2
First-Tier Tribunal (TC04931): <i>Mannor Construction Ltd</i>	Failure of bank to make payments over weekend was not a reasonable excuse: surcharges confirmed	Apr 16 6.8.1
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First-Tier Tribunal (TC04937): <i>Bindery Machinery Services</i>	Combination of different problems still did not amount to reasonable excuse: surcharge confirmed	Apr 16 6.8.1
First-Tier Tribunal (TC04938): <i>Abbott International Trading Ltd and another</i>	Director must have known, or should have known, transactions were connected with fraud: MTIC appeal dismissed	Apr 16 5.8.5
First-Tier Tribunal (TC04944): <i>Nestlé UK Ltd</i>	Powders for making fruit-flavoured milk were standard rated as “for preparation of beverages”	Apr 16 2.4.2

First-Tier Tribunal (TC04945): <i>Grade One Trading Ltd</i>	Director must have known, or should have known, transactions were connected with fraud: MTIC appeal dismissed	Apr 16 5.8.5
First-Tier Tribunal (TC04946): <i>Walmley Ash Ltd</i>	Director must have known, or should have known, transactions were connected with fraud: MTIC appeal dismissed	Apr 16 5.8.5
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First-Tier Tribunal (TC04951): <i>Hospital Telecommunications Services Ltd</i>	HMRC wrongly telling trader he could not use cash accounting was a reasonable excuse: surcharges cancelled	Apr 16 6.8.1
First-Tier Tribunal (TC04952): <i>Colin Thompson t/a CC Tiles</i>	Appeal struck out for lack of appealable decision, no prospect of success and out of time	Apr 16 6.8.6
First-Tier Tribunal (TC04953): <i>JSM Construction Ltd</i>	Dispute over reliability of witness evidence based on statement in a document; Tribunal declined to strike out appeal but issued directions	Apr 16 6.8.6
First-Tier Tribunal (TC04954): <i>George Akay</i>	HMRC reasonably refused to restore diamond after attempted smuggling	Apr 16 4.3.1
First-Tier Tribunal (TC04963): <i>Gryson Air Conditioning Equipment Ltd</i>	Deliberate conduct penalties considered – too large for directors to have been unaware	Apr 16 6.8.2
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First-Tier Tribunal (TC04966): <i>Shaun David Corrigan</i>	"Inquiry" for repayment supplement purposes had to include a question – only the day of the visit could be left out by HMRC, so RS was due	Apr 16 6.4.6
First-Tier Tribunal (TC04970): <i>Baljit Singh</i>	Accountant appeared to have given trader bad advice about appeal, but that was insufficient reason to allow a late appeal to proceed: struck out	Apr 16 6.8.7
First-Tier Tribunal (TC04973): <i>Scott Kernohan</i>	Retrospective planning consent could not validate DIY claim	Apr 16 3.4.1
First-Tier Tribunal (TC04976): <i>Elbrook Cash & Carry Ltd</i>	Hardship application not just a delaying tactic: accepted by Tribunal	Apr 16 6.8.8

First-Tier Tribunal (TC04980): <i>Andrew David Reeves</i>	Retention of gable on plans was “required”, but was not a “facade” – not new construction after demolition	Apr 16 3.4.1
First-Tier Tribunal (TC04986): <i>Group One (Arshad Mehmood)</i>	Clawback of input tax confirmed, penalty mitigated from 70% to 60% to reflect some cooperation	Apr 16 6.7.3
First-Tier Tribunal (TC04987): <i>G Siddons Ltd</i>	Belief that direct debit was in place was not reasonable: no excuse, surcharges confirmed	Apr 16 6.8.1

10 Other material

<i>Independent, 18 March 2016</i>	Negotiations to apply zero rate to sanitary products	Apr 16 2.4.4
<i>Taxation, 4 February 2016</i>	Article about best judgement assessments and need for good records	Apr 16 6.7.4
<i>Taxation, 25 February 2016</i>	Article about tax issues arising in the holiday industry	Apr 16 2.9.3
<i>Taxation, 3 March 2016</i>	Article reviews cases in which HMRC have tried to impose FRS categories and generally lost	Apr 16 6.3.2
<i>Taxation, 10 March 2016</i>	Article about policy requiring pre-registration VAT on fixed assets to be depreciated before reg.111 claim	Apr 16 5.8.2

11 Lectures

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2.2 Disbursements

2.3 Exemptions

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2.7 Discounts, rebates and gifts

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3.2 Option to tax

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5.6 Non-business use of supplies

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6.2 Other registration issues

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