# Global Indirect Tax News

Your reference for indirect tax and global trade matters

Welcome to the February 2019 edition of GITN, covering updates from the Americas and EMEA.

Features of this edition include a planned consultation in the Netherlands on applying the reduced VAT rate to e-publications, the potential introduction of a VAT split payment mechanism in Poland, and a post-Brexit trade agreement between Switzerland and the UK.

**David Raistrick**
Deloitte Global Leader – Indirect Tax

In this edition of GITN:



**Back to top**

# Country summaries

## Americas

| | | |
|---|---|---|
| **Colombia** | The VAT return form for non-resident service providers is now available in English and Spanish.<br><br>The VAT exemption for exported services only applies to services exclusively utilized abroad.<br><br>The tax authorities have established the rules and validations for electronic invoicing. | **Read more** |

## EMEA

| | | |
|---|---|---|
| **Angola** | VAT will come into force on 1 July 2019, with a phased implementation. | **Read more** |
| **Finland** | The Finnish Tax Administration has updated guidance regarding radio and television broadcasting services, electronic services, and telecommunications services, and the VAT special scheme (the Mini One Stop Shop). | **Read more** |
| **France** | There is a new form to VAT register foreign entities not established in France.<br><br>New information must be reported on VAT returns for VAT registered entities. | **Read more** |
| **Germany** | The Annual Tax Act 2018, includes measures that implement the first part of the EU VAT e-commerce package into domestic law. | **Read more** |
| **Greece** | There are changes to the VAT treatment of telecommunications, broadcasting, and electronically-supplied services.<br><br>There is a draft bill on B2G e-invoicing. | **Read more** |

| | | |
|---|---|---|
| | A circular has been issued on the VAT treatment of rebates paid by pharmaceutical companies to social insurance organizations. | |
| **Hungary** | The tax authorities' audits will focus on companies that are subject to the obligation to provide real-time invoice data but which have not fulfilled their liabilities. | **Read more** |
| **Iceland** | There are a number of VAT amendments. | **Read more** |
| **Ireland** | Taxpayers should monitor rulings issued to them by Revenue in light of the five year validity period.<br><br>There is an update to the Vehicle Registrations Tax (VRT) Manual.<br><br>The Minister of Finance has announced an intention to implement a postponement scheme for import VAT. | **Read more** |
| **Italy** | The tax authorities have clarified the VAT treatment of the "portfolio management of investment in real estate".<br><br>The procedures and terms to benefit from the "facilitated definition" for import VAT have been published.<br><br>There are operative instructions concerning the application of the EU-Japan Economic Partnership Agreement.<br><br>There will be a review of authorizations released under the Community Customs Code.<br><br>There have been clarifications regarding the excise duty return. | **Read more** |
| **The Netherlands** | The Government plans to launch an internet consultation on new legislation on reduced VAT rates for e-publications. | **Read more** |

| | | |
|---|---|---|
| **Poland** | The European Commission has approved the mandatory split payment mechanism for Poland. | **Read more** |
| **Portugal** | A decision has been published by the arbitration court on the VAT treatment of early contract termination payments.<br><br>There are new requirements for the filing of annual statements and the SAFT-T (PT) file.<br><br>There are new rules for invoicing, software certification, maintaining accounting elements, and the storage of invoices. | **Read more** |
| **South Africa** | A bill includes provisions for administration of carbon tax. | **Read more** |
| **Switzerland** | The tax authorities have recently amended administrative guidance on a number of VAT issues.<br><br>Switzerland and the UK have signed a post-Brexit trade agreement. | **Read more** |
| **Tunisia** | Certain tax incentives for exporters will no longer apply from 1 January 2021. | **Read more** |
| **Ukraine** | The VAT and customs duty exemptions for space industry enterprises have been extended until 1 January 2023. | **Read more** |
| **United Kingdom** | A case has considered the VAT treatment of loyalty schemes.<br><br>The Making Tax Digital pilot opens to VAT groups. | **Read more** |

**Back to top**

# Americas

## Colombia

### VAT return form for non-resident service providers now available in English and Spanish

Article 437 of the tax code enables the tax authorities to establish the procedure for non-resident service providers to fulfill their VAT liabilities, such as filing and paying VAT. Under this article, the tax authorities issued Resolution No. 69/2018 to regulate the procedure for non-resident service providers to declare VAT due on services provided from abroad to Colombian customers in business-to-consumer (B2C) transactions.

In accordance with this resolution, the tax authorities have published form 325 in English and Spanish versions, which must be used only by non-resident service providers to file the VAT.

Non-resident service providers must submit the VAT return through the tax authorities' web portal designed for that purpose, by using form 325 and the electronic signature mechanism. The tax authorities will not accept VAT returns filed by other means.

### VAT exemption for export of services only applies to services exclusively utilized abroad

The tax authorities have released an official opinion with a reminder that the VAT exemption for services provided to non-residents only applies when the service provided is exclusively utilized abroad (and other requirements are met).

### Tax authorities establish rules and validations for electronic invoicing

Under Article 616-1 of the tax code, the tax authorities have determined that the tax authorities or authorized technological providers must validate all electronic invoices prior to their expedition, in order for these documents to be recognized for tax purposes. This disposition will operate when the provision for electronic invoicing with prior validation, as established in article 616-1, comes into force.

**Tomás Barreto, jbarreto@deloitte.com, Deloitte Colombia**

Back to top

# EMEA

## Angola

### VAT implementation

The National Parliament approved the VAT Code on 21 February 2019, which is still to be published in the Official Journal.

VAT will come into force on 1 July 2019, with a phased implementation; the first stage will apply to taxpayers registered at the Large Taxpayers Office (and to other large taxpayers that qualify for the VAT regime and voluntarily opt to be included), and from 1 January 2021 VAT will be extended to all other taxpayers.

There will be a single VAT rate of 14%, with VAT exemptions for certain goods and services.

**Joana Nunes dos Reis, joreis@deloitte.pt, Deloitte Portugal**

## Finland

### Detailed guidance updated by tax authorities

The Finnish Tax Administration has updated the detailed guidance regarding radio and television broadcasting services, electronic services, and telecommunications services, and the detailed guidance regarding the VAT special scheme (the Mini One Stop Shop (MOSS)).

The updates were made due to the amended regulation which came into force as of 1 January 2019.

**Kati Heino, kati.heino@deloitte.fi, Deloitte Finland**

**Kaisa Loimu, kaisa.loimu@deloitte.fi, Deloitte Finland**

## France

### New form to VAT register non-established foreign entities

To apply for a VAT registration for EU entities or non-EU entities established in certain countries (which have signed a treaty for assistance in the recovery of tax debts with France), there is a new form that must be sent to the non-resident tax center (DINR).

The new form is called Form 'EE0' (cerfa n°15928*01). This form should be completed and signed by a person duly entitled to bind the company.

The form includes a requirement to provide new information, such as confirmation of whether withholding tax for income tax on salaries paid in France must be paid.

### New information to be reported on VAT returns for VAT registered entities

On line 24 of the monthly or quarterly VAT return (form 3310-CA3-SD, cerfa 10963*24), it is now necessary to report separately import input VAT.

This line was used in the past by entities with a permanent establishment in the overseas departments of France (*Département d'outre-mer*) and benefiting from a specific regime to report the corresponding input VAT. This regime no longer applies as from 2019.

**William Stemmer, wstemmer@taj.fr, Taj**

**Marie Manuelli, mmanuelli@taj.fr, Taj**

## Germany

### First phase of EU VAT e-commerce package implemented into domestic law

The Annual Tax Act 2018, which was passed by Parliament on 28 November 2018 and applies from 1 January 2019, includes measures that implement the first part of the EU e-commerce VAT package into domestic law. The Act includes new rules relating to the liability and recording obligations for electronic marketplaces, rules relating to the taxation of vouchers, and a new registration threshold for electronic, telephone, and television services. Moreover, there are new rules regarding the invoicing requirements for electronic, telephone, and television services, and an extension of the Mini One Stop Shop (MOSS/VOES) system for such services. The below covers the new rules regarding electronic, telephone and television services.

***Previous rules in Germany***

Until 1 January 2019, the place of supply of electronically provided telecommunications, radio and television services, and other services provided to non-entrepreneurs (i.e. business-to-consumer (B2C) supplies) was the place where the recipient of the service was located (destination principle), regardless of the value of the supply. The supplier was not required to register in the country of destination if it provided the services via the EU MOSS procedure (under which a supplier can avoid having to register and account for VAT in each EU Member State in which it makes supplies; instead it can fulfill its VAT obligations via a single online portal). However, the service provider had to produce two types of evidence (e.g. billing address, the International Bank Account Number (IBAN), the internet protocol address of the device of the recipient, etc.) that proved where the service recipient was located.

***New rules and administrative instructions***

The Annual Tax Act introduces several simplification measures relating to the electronic supply of telecommunications, radio, television, and other services provided to non-entrepreneurs:

- A small entrepreneur threshold of EUR 10,000 is introduced so that if the total value of the services supplied does not exceed EUR 10,000 in the previous or current calendar year, the entrepreneur can continue to apply the VAT rules in its country of origin. Otherwise, the services will be taxed at the place where the customer is resident. In determining the EUR 10,000 threshold, all B2C sales transactions in other EU Member States must be taken into account. A supplier can opt to waive the application of the simplification rule. A waiver can be declared to the tax office until the tax assessment is incontestable. A waiver is binding on the supplier for at least two years, after which it can revoke the waiver.

- Where the supplier's annual turnover does not exceed EUR 100,000, only one piece of evidence will be needed to prove the location of the recipient of the services, provided the evidence does not originate from the recipient. In determining the EUR 100,000 threshold, the supplier must take into account all turnover derived from supplies to non-business customers, i.e. including customers from third countries. If the EUR 100,000 threshold is exceeded, the service provider will be required to submit two evidentiary documents. The service provider will be able to issue invoices in accordance with the regulations of its country of residence. For non-EU companies that report turnover via the MOSS/VOES procedure, the rules of the state in which the company has registered for the MOSS/VOES procedure apply.

- Non-EU-established entrepreneurs now can benefit from special taxation procedures (e.g. 'VAT on eServices', the VOES procedure, 'eCommerce', ECOM procedure, MOSS procedure). As a result, non-EU entrepreneurs can report electronically-supplied services even if they already have an EU VAT registration and can submit their VAT returns and foreign sales to the Federal Central Tax Office. If a non-EU resident entrepreneur registers for the VOES procedure and reports its sales, the rules in the Member State in which the entrepreneur registered for the procedure will apply.

***Comment***

Germany's implementation of the first part of the EU e-commerce package through the Annual Tax Act for 2018, as well as the associated rapid enactment of the administrative instructions of the Federal Ministry of Finance, will reduce costs and administrative burdens, particularly for small and medium-sized enterprises. A further positive change is the standardization of invoicing for telecommunications, radio, television, and other electronic services provided to private consumers. Entrepreneurs that use the MOSS procedure will be able to issue invoices in accordance with the law of the Member State of registration, which will eliminate the obligation to issue invoices in accordance with the law of the destination state. Another milestone is the extension of the special taxation procedures for non-resident suppliers, which also will mitigate administrative burdens by allowing registration and use of the VOES scheme. However, businesses supplying services will need to be aware of and understand the different ways in which the EUR 10,000 and EUR 100,000 thresholds are calculated, for example, while the EUR 10,000 threshold only considers transactions with non-entrepreneurs in EU Member States, the threshold for proving the origin of the service recipient (EUR 100,000) must take into account all transactions with non-business recipients.

**Ulrich Gruenwald, ugruenwald@deloitte.de, Deloitte Germany**

**Diana-Catharina Kurtz, dkurtz@deloitte.de, Deloitte Germany**

## Greece

### Changes to VAT treatment of telecommunications, broadcasting, and electronically-supplied services

The below amendments apply from 1 January 2019. As the changes have just been voted into law by Parliament, official guidelines have not yet been released by Ministry of Finance.

***Small enterprises***

Under a new law, Greece is to be regarded as the place of supply of telecommunications, broadcasting, and electronically-supplied services to non-taxable persons.

The current rule, that the place of taxation of the above services provided to a non-taxable recipient (on a business-to-consumer (B2C) basis) is where the latter is established or has their habitual or usual residence, remains the same. Namely, telecommunications, broadcasting, and electronically-supplied services provided to private customers in Greece are subject to VAT in Greece. The place of taxation is outside Greece if the private customer is established outside Greece. If the place of supply of such services is outside the EU, namely when provided to non-EU non-VATable persons (by Greek or non-Greek VATable persons), Greek VAT should be charged when the said services are used and enjoyed in Greece.

However, under the new provisions for small enterprises that are established in Greece, and not in another EU Member State, and are engaged in the supply of telecommunications, broadcasting, and electronically-supplied services to private customers (on a B2C basis) established in any other EU Member State, the said services are subject to VAT in Greece and not in the place of establishment of the private customer if the total value of the services provided does not exceed EUR 10,000. Greek businesses can opt to be taxed in the EU Member State where their private customers are established. The option is binding for at least two calendar years.

The above also applies *vice versa* to small enterprises that are established in another EU Member State and not in Greece, and are engaged in the supply of telecommunications, broadcasting, and electronically-supplied services to private customers (on a B2C basis) established in Greece.

***Mini One Stop Shop (MOSS) scheme***

The limitation on the ability for taxable persons not established within the European Union but with a tax/VAT registration in another EU Member State to be registered under the non-Union MOSS no longer applies. Under the amended provision of the VAT law, non-EU based entities can be registered under the non-Union MOSS scheme, even if they already have a tax/VAT registration number in another EU Member State.

The amended law also provides that foreign entities registered under the non-Union and Union MOSS schemes are subject to the Greek invoicing rules.

**Draft bill on business-to-government (B2G) e-invoicing**

A draft bill incorporating the provisions of EU Directive 2014/55 on the issuance of e-invoices for public procurement is currently under discussion by the Government and is expected to be released shortly. A brief summary of its content is as follows:

- The law establishes rules for the issuance of electronic invoices covering in its scope: (a) conventions in the areas of defense and security; (b) conventions for the public sector, as well as contractor agreements and agreements for the supply of studies and technical or other related services, supplies and general services; (c) concession agreements for projects and services, the estimated value of which is equal to or exceeding EUR 5,225,000.

- Some conventions are not included in the scope of the new law, as they are confidential or linked to special security measures.

- The contracting authorities and contracting entities will receive and process electronic invoices which are in compliance with the European standard on electronic invoicing.

- The basic content of the e-invoice is further defined.

- The time limit for the implementation of processes for the receipt, processing, and payment of e-invoices will not be later than 18 April 2019 for central governmental authorities and central market authorities, and 18 April 2020 for non-central contracting authorities and contracting bodies.

- The new law will become effective as from the date of its publication in the Government's Gazette.

The draft law has been voted on by Parliament, but as the final text of the law is not yet available on Parliament's website, no further details are available.

**VAT treatment of rebates granted to social insurance organizations from pharmaceutical companies**

The Ministry of Finance accepts the issuance of credit notes and thus the deduction of VAT for rebates granted from pharmaceutical companies to social insurance organizations. This position is set out in a new Circular A  1035/2019. The new Circular amends an older Circular (Pol. 1115/2016) that applied to claw-backs (the mandatory rebates on prices granted by pharmaceutical companies to social insurance organizations for the sale of medicines), so that the policy now also applies to rebates under article 35 par. 3 of Law 3918/2011 under which, as amended, the system of calculation of pharmaceutical company rebates has been simplified into one single equation of the basic rebate percentages (the 'unified rebate').

**Kyriaki Dafni, kdafni@deloitte.gr, Deloitte Greece**

**Iliana Bourli, ibourli@deloitte.gr, Deloitte Greece**

## Hungary

**Potential audits for real-time invoice data provision**

The tax authorities' audits will focus on companies that are subject to the obligation to provide real-time invoice data but which have not fulfilled their liabilities.

The tax authorities will undertake special risk analysis to select the companies for audit purposes. The tax authorities expect to carry out approximately 1,500 audits in this respect.

At first instance these companies are most likely to be audited where there has been no reporting but, based on the data received from sellers or buyers, there should have been. There will also be a focus on companies buying mainly from local sellers under liquidation processes.

**Zoltan Tancsa, ztancsa@deloittece.com, Deloitte Hungary**

## Iceland

**Sales at lower VAT rate**

Electronic sales and subscriptions of magazines, newspapers, and rural and district news booklets, as well as subscription fees for radio and TV stations, are now subject to the lower VAT rate of 11%. The amendment took effect on 1 July 2018.

### VAT input tax on vehicles

Tourism licensees that operate vehicles for five persons are now able to treat VAT on the purchase and operation of the vehicle as input tax provided they have a licence for transportation for tourist services. The amendment took effect on 1 July 2018.

### VAT on cross-border services

An amendment was made to the VAT Act to adopt the destination principle where services are supplied to a non-resident business by an Icelandic business. The services in these cases are considered to be provided and utilized where the non-resident business is located, and is therefore taxable in that jurisdiction and not in Iceland. The rule applies to sales to non-resident businesses if they are not domiciled nor have a permanent establishment through which they operate their business in Iceland. The rule also applies to certain types of sales of services to non-businesses if they are not domiciled in Iceland or have a legal residency in Iceland, permanent residency, or stay on a regular basis in Iceland. The amendment took effect on 1 January 2019.

The destination principle will also apply to purchases of services from non-resident businesses. Under the amendment, the reverse charge mechanism was also adopted where non-resident businesses are selling services to Icelandic customers. The destination principle therefore applies, and Icelandic businesses are required under the reverse charge mechanism to pay the VAT on any purchase of services from a non-resident business. The reverse charge applies equally to Icelandic businesses that are registered for VAT purposes in Iceland and businesses that are exempt from VAT, provided they have some economic activity. If an Icelandic business, which is registered for VAT purposes, can treat the VAT on the purchase as input tax then it will not need to pay the VAT. The reverse charge will also apply to non-businesses, but only for certain types of services. If electronic services, telecommunications services, and broadcasting and television services are provided to a non-business, the service provider will need to register for VAT purposes in Iceland, provided they reach the threshold of ISK 2 million turnover in a 12 month period. The proposed amendment further defines what constitutes electronic services, telecommunications services, and broadcasting and television services. The amendment took effect on 1 January 2019.

### Subscriptions of hardcopy papers and magazines

Non-resident businesses selling paper and magazine subscriptions in hardcopy will need to register for VAT purposes if they reach the threshold of ISK 2 million turnover in a 12 month period. This amendment took effect on 1 January 2019.

### Airport operators

An amendment was made to the VAT Act to clarify that services provided by airport operators to international aircraft and their passengers are subject to VAT. Use of structures, air navigation services, and security services concerning the international flights and their passengers will however be exempt from VAT. This amendment took effect on 1 January 2019.

### VAT reimbursement for non-resident entities

Non-resident entities can apply for VAT reimbursements on goods they import to Iceland if certain conditions are met. Under an amendment to the VAT Act, the article allowing for the VAT reimbursement was amended so that it is now clear that VAT reimbursements will not be granted if the goods are to be sold in Iceland or if their final consumption/usage is to be in Iceland. This amendment took effect on 1 January 2019.

### VAT registration through simplified registration scheme without fiscal representation

An amendment to the VAT Act will allow non-resident businesses to register for VAT purposes in Iceland either through the general registration scheme or through a new simplified registration scheme without a fiscal representative when selling services subject to VAT in Iceland to non-businesses (B2C). The general and simplified registration scheme will only be available for non-resident businesses selling electronic services, telecommunications services, and broadcasting and television services to non-businesses in Iceland, and for non-resident businesses selling magazine and newspaper subscriptions in hardcopy, and non-resident tourism businesses selling services subject to VAT in Iceland. The amendment will take effect on 1 July 2019.

**Bjarni Thor Bjarnason, bjarni.thor.bjarnason@deloitte.is, Deloitte Iceland**

**Sandra Lind Valsdóttir, svalsdottir@deloitte.is, Deloitte Iceland**

## Ireland

### Review of Revenue opinions/confirmations

On 25 January 2019, Irish Revenue issued eBrief No. 012/19 on tax rulings issued to taxpayers, which updates their Tax and Duty Manual Part 37-00-41. The eBrief reminds taxpayers that rulings issued during 2013 need to be renewed by Revenue to remain valid.

Revenue rulings are issued to taxpayers on matters that are complex in nature and on which guidance is not readily available or where there is uncertainty about the tax rules. Rulings essentially deliver Revenue’s interpretation of the tax law in the context of a particular situation or transaction, e.g. the determination of the correct VAT rate for a food product based on its specific ingredients.

Under Revenue’s current policy, all rulings are valid for five years, or for a shorter period if specified in the ruling. As such, all rulings must be reviewed by Revenue every five years (or specified shorter period), and no longer may be relied upon in the absence of such a review. It is the taxpayer’s responsibility to monitor rulings issued to it and to approach Revenue for the renewal.

EBrief No. 012/19 reminds taxpayers that wish to continue to rely on an opinion or confirmation in a ruling issued between 1 January and 31 December 2013 to renew the ruling by applying to Revenue before 29 March 2019.

**Update on Vehicle Registrations Tax**

Revenue eBrief No. 019/19 issued on 31 January 2019 updates the registration procedures and processes section of the Vehicle Registrations Tax (VRT) Manual.

The changes are reflected in sections 1.2.3 and 1.6.1 of the VRT Manual. These incorporate insertion of a table displaying the revised Category A rates of VRT for diesel fuelled vehicles as introduced by Budget 2019 (see the October 2018 edition of Global Indirect Tax News for more details) and revision of the definition of CO2 emissions in light of the replacement of New European Drive Cycle (NEDC) measurement by the World Harmonized Light Vehicle Testing Procedure (WLTP) and introduction of a conversion tool known as C02MPAS to aid in deriving an NEDC figure from a WLTP figure in the transition period.

In addition, in the online notice dated 6 February 2019, Revenue also acknowledged the withdrawal of the Certificate of Permanent Export (CPE) from circulation by the UK authorities. The CPE was used as proof of foreign registration when presenting a used vehicle imported from the UK for registration in Ireland, and will continue to be accepted where it is presented. However, a standard V5 registration certificate will be used going forward, which can only be obtained by persons resident in the UK.

**Update on accounting for VAT post-Brexit**

The 95-page General Scheme of the Miscellaneous Provisions (Withdrawal of the United Kingdom from the European Union on 29 March 2019) Omnibus Bill published by the Irish government on 24 January 2019 does not address VAT postponement measures on the importation of goods from the UK following the UK's exit from the EU on 29 March 2019.

Following complaints by various business groups, in early February, the Minister of Finance announced Ireland's intention to implement a VAT postponement scheme that would allow businesses to account for VAT due on imports from the UK at the time they complete their periodic VAT returns. It is expected that this measure would eliminate the requirement to pay VAT on imports, and the VAT instead would be accounted for under the reverse charge.

Although only at the announcement stage and possibly of a temporary nature, this measure is a welcome development for Irish businesses as it should result in cash flow savings in the event of a 'no deal' Brexit.

**Pascal Brennan, pabrennan@deloitte.ie, Deloitte Ireland**

**Sandija Veigule, sveigule@deloitte.ie, Deloitte Ireland**

## Italy

### Clarifications regarding VAT treatment of "portfolio management of investment in real estate"

In a published reply to a ruling petition released on 20 February 2019, the tax authorities analyzed the VAT treatment of a series of asset management services to be performed by an Italian taxpayer in favor of a closed-end real estate property mutual investment fund (the Fund), with immovable property located in Italy, managed by management company, established in a third EU Member State but identified for VAT purposes in Italy.

The services to be provided can be summarized as follows:

1. To assist the management company with reference to the acquisition/sale of real estate;

2. To assist the management company in drafting and implementing the business plan;

3. To assist the management company in the management of litigation and pre-litigation;

4. To coordinate the periodic evaluation of the portfolio;

5. To provide assistance in relation to the current management of the portfolio.

Services under point 1 are autonomously remunerated by a percentage of the value of the immovable property, as resulting from an *ad hoc* independent third party's appraisal, in compliance with the Italian regulatory provisions. The other services are remunerated by a whole and forfeit amount determined as a percentage of the rental fees collected by the management funds on the immovable property composing the portfolio.

With reference to the above background, the tax authorities are of the view that not all the above listed services realize the specific and essential function of the fund management. In particular,

- Only the services under point 1 can be considered as "portfolio management of investment in real estate", being "functional to the investment process in real estate by the management company of the fund". As a consequence, they would not be relevant for VAT purposes in Italy based on the general business-to-business (B2B) rule, as they are performed by an Italian taxpayer to a management company established in a third EU Member State;

- All the other services (points 2 to 5) can be considered as "property management", being "independent from the portfolio management of investment in real estate, by pursuing an objective different from that specifically related to the activity of a management fund". As a consequence, the supply of these services will be subject to local VAT based on Article 47 of the EU Principal VAT Directive, as they are linked to the immovable properties located in Italy.

**Antonio Piciocchi, apiciocchi@sts.deloitte.it, Deloitte Italy**

**Report of verification concerning import VAT: Facilitated definition**

Provision n. 17776 dated 23 January 2019, published on 24 January, defines procedures and terms in order to benefit from the “facilitated definition” for reports of verification concerning import VAT notified by 24 October 2018.

The “facilitated definition” consists of the full payment of amounts due as import VAT, with the exclusion of administrative penalties and interest.

Taxpayers that intend to apply for the facilitated definition must submit the request, by 31 May 2019, to the competent customs office by post or by certified e-mail. Payment (by a single instalment) must be made by 31 May 2019 through the usual payment mechanisms, and the customs office must provide a specific receipt.

**Operative instructions concerning EU-Japan Economic Partnership Agreement**

Circular 1/D dated 22 January 2019 deals with various operative aspects concerning the application of the EU-Japan Economic Partnership Agreement (EPA). In addition to information on topics such as bilateral cumulation and the tolerance rule, the Circular provides instructions on the codes that must be used in certain fields of the import declaration. For example, it is provided that, in order to benefit from tariff reductions, field 44 of the import declaration must include different codes according to the proof of origin used.

The Circular also notes that EU economic operators intending to export goods the value of which exceeds EUR 6,000 must be registered in the Registered Export system (REX) to issue documents that attest the preferential originating status of the goods.

Note n. 12142 issued by the customs authority provides the format to be used by economic operators for the issue of the statement of origin within the EPA.

**Review of authorizations released under Community Customs Code**

In Note n. 3676 of 11 January 2019, published on 13 February, the Customs and Monopoly Agency specifies that from May 2019 EU Member States must review the authorizations granted to them on the basis of the Community Customs Code and the Directive on Administrative Cooperation in the Field of Taxation (DAC).

Therefore, the authorizations will be reviewed in the light of the new rules provided for by the Union Customs Code (UCC) and by the Delegated Regulations (DR) and Executive Regulations (ER).
In particular, the review process will entail the revocation of existing authorizations by the customs authority and the decision whether or not to issue a new authorization, without the operator being required to submit a specific request.

**Excise duty return**

In Note n. 11145 of 7 February 2019, the Customs and Monopolies Agency reported some critical issues related to the amendments introduced in the declaration forms regarding natural gas and electricity for the tax year 2018, in relation to which it provided some clarifications useful for ongoing compilation activities.

**Alessandra Di Salvo, adisalvo@sts.deloitte.it, Deloitte Italy**

## The Netherlands

### Government plans new legislation on reduced VAT rates for e-publications for 1 January 2020

Recently, the State Secretary provided an update on the application of a reduced VAT rate for electronic publications.

***Background***

Since December 2018, the EU Principal VAT Directive offers EU Member States the ability to apply reduced VAT rates on digital books, newspapers, and magazines. Under the new VAT rules, electronic publications may be taxed at the same VAT rate (often a reduced rate or in some EU Member States even a super-reduced rate or a zero-rate) as their printed equivalents.

***Next steps***

In the Netherlands the reduced rate currently applies to printed books, newspapers, and periodicals. The Secretary of Finance has always been in favor of introducing a reduced VAT rate for e-publications. Therefore, after the adoption of the EU Directive it was expected that the Secretary would soon publish new legislation. This was based on his previous remarks.

The Secretary, however, has now announced that he first plans to publish a proposal for new legislation to which stakeholders will be able to respond via internet consultation. According to the Secretary it is necessary to have an adequate definition for books, newspapers, and magazines that are supplied electronically that both the sector and the tax authorities can rely upon. This definition must be relevant both now and in the future. The search for a practical definition and the demarcation of its scope is complex, given the wide variety of electronic publications and similar products. Therefore, the Secretary is currently working with different stakeholders to develop this definition.

***The internet consultation***

The proposal for the new legislation will be published in the first half of 2019, after which the internet consultation will be opened. The aimed date of entry into force is 1 January 2020. The consultation will be open to the public and will seek the views of business, the public, and representative organizations.

**John Gruson, JGruson@deloitte.nl, Deloitte Netherlands**

## Poland

### European Commission approves mandatory split payment for Poland

On 20 February 2019, the Council of the European Union approved the EU Commission motion for a decision authorizing Poland to introduce a mandatory split payment mechanism. The decision is to apply for a three-year period, from 1 March 2019 to 28 February 2022, and after 18 months the Polish Government must report on the effects of the mandatory split payment mechanism.

The compulsory split payment mechanism is to apply to taxpayers operating in the sectors most exposed to VAT fraud. It will concern business-to-business (B2B) relations only, where the settlement for the goods/services is made via bank transfer.

The Ministry of Finance is planning to abolish the reverse charge mechanism for B2B local sales (for example, supplies of electronics valued over PLN 20,000, scrap deliveries, supplies of construction services under subcontractor arrangements) as the mechanism was not effective.

Following the changes, such sales will be taxed at the standard VAT rate. However purchasers will have to settle the amounts due via the split payment mechanism (VAT to be paid to a special VAT account).

Moreover, some new categories of goods, currently not subject to the reverse charge, are to be included in the mandatory split payment mechanism, *inter alia*, accessories and parts for cars and motorcycles, coal, certain types of fuels, cameras, and computers.

At this stage, the draft bill introducing the mandatory split payment into Polish VAT legislation is awaited. It is expected that the mandatory mechanism will not apply before mid-2019.

**Agnieszka Lukasik, aglukasik@deloittece.com, Deloitte Poland**

## Portugal

### VAT treatment of payments for early termination of telecommunications contracts

In January 2019, a decision was published by the Tax Arbitration Court (CAAD) following the Court of Justice of the European Union (CJEU) judgment in the *MEO* case concerning the VAT treatment applicable to early termination of the provision of telecommunications, internet access, television, and multimedia services.

This case has been submitted to CJEU analysis and deals with the VAT treatment of amounts charged under certain commercial conditions, particularly in the form of a lower basic monthly amount, linked to a minimum contract period, for telecommunications services. If a customer terminates a contract before the agreed time, the taxpayer ceases to provide its services but still requires the customer to pay an amount equivalent to the sum of the amounts due for the remainder minimum period. The CJEU stated that the payment received by the taxpayer in the case of early termination of the contract by its customer corresponds to the amount of remuneration for the telecommunications services subject to VAT. From an economic perspective, the relationship between the telecommunications operator and its customer is the same and, consequently, the VAT outcome should be the same.

Considering the above, the CAAD ruled that, in view of the CJEU's judgment in *MEO*, the early termination payments charged by the taxpayer to its customers are an integral part of the total price paid for the services, which qualify as remuneration for the supplies of services and are subject to VAT.

Also, despite the CJEU opinion "that, where necessary, it will be for the competent national authorities to carry out, under the conditions determined by national law, an adjustment of the corresponding VAT, as provided for in Article 90 of the VAT Directive, so that the VAT is deducted from the amount actually received by the service provider from his customer", the CAAD considered that the VAT assessments were to be paid in full by the taxpayer, allowing for the possibility of future VAT recovery by the taxpayer of unpaid amounts under the bad debt relief provisions.

This decision will have a significant impact for telecommunications operators in Portugal, if this interpretation by the tax authorities and the CJEU is adopted across the economic sector. The judgment may also be applied in other businesses where there are similar contractual terms.

**New requirements for submitting and filing IES and SAF-T (PT)**

On 24 January 2019, Order no. 31/2019 was published, which approved new requirements for the filing of the Annual Tax and Accounting Information Statement (IES) and for communication of the accounting SAF-T (PT) file to the tax authorities which ultimately will allow pre-filing of the IES.

New requirements apply from 2019 regarding the information that must be delivered to the tax authorities with the IES. Also, different deadlines to proceed with the filing of the accounting SAF-T (PT) file have been established, depending upon the date on which taxpayers approve their accounting for the financial/fiscal year or the cessation of their activities.

For most taxpayers, accounting SAF-T (PT) must be filed with the tax authorities by 30 April of the year following that to which the accounting data relates. The tax authorities then have 10 days to proceed with the accounting SAF-T (PT) validation.

The Order entered into force on the day after publication and applies only to periods from 2019 onwards, meaning that in practical terms this will generally only apply in 2020 when the 2019 IES return is due, although there are specific deadlines for entities ending their activities or with a fiscal year ending before 31 July 2019.

**New rules for invoicing, software certification, maintaining accounting elements, and storage of invoices**

On 15 February 2019, Decree Law no. 28/2019 was published, mainly concerning electronic invoicing, SAF-T (PT) invoicing communication, and storage of both paper and electronic invoices.

Although the new regime's main objective is to harmonize rules applicable to the abovementioned topics, which were until now dispersed throughout the legislation, it also finally establishes a goal to which the Government committed itself in the recent past under the *Simplex+ 2018* program, to promote paperless invoices by foreseeing the possibility to dismiss taxpayers from the obligation to maintain paper invoices in storage, and to avoid the need to print and deliver paper invoices for supplies to non-taxpayers.

The abovementioned regime has established that taxpayers may be dismissed from such obligations (that is, printing paper invoices) in business-to-consumer (B2C) transactions provided certain conditions are met, namely opting to proceed with the communication of invoices in real time to the tax authorities, which can then be accessed by customers on the tax authorities' website.

In contrast to the past, this new regime also allows taxpayers to store incoming paper invoices electronically (prior to this Decree Law, only outgoing electronic invoices were allowed to be stored as such); they may be scanned and electronically archived (provided certain conditions are met by taxpayers).

The Decree Law entered in force on 16 February 2019, although some rules will enter into force in a later stage (namely on 1 January 2020) to allow taxpayers to adapt to the required transitions. The main deadlines are as follows:

- Throughout 2019, the monthly communication to the tax authorities of the data from invoices and other relevant documents, namely through the SAF-T (PT) file, must be made by the 15$^{th}$ day of the month following their respective issuance (in practice, as from the February 2019 invoicing data, which will have to be reported to the tax authorities by 15 March 2019); and from 2020, the deadline will be shortened to the 10$^{th}$ day of the month following the issuance of such documents.

- By 18 March 2019, taxpayers must communicate to the tax authorities the establishments in which the files and records are stored, and the location of electronic archive systems.

- By 30 June 2019, taxpayers already active and those who commence their activities before 31 May 2019 must notify the tax authorities of the establishments of the company where invoices and tax documents are issued, the equipment used for the processing of such documents, the certification number (issued by the tax authorities) of the invoicing software used in each equipment, and the identification of the software houses that have marketed and/or installed the invoicing software used.

Based on a literal interpretation of this new regime, it seems that non-established entities registered for VAT purposes are also obliged to have the invoicing software they use certified by the tax authorities, although they can use an invoicing application to be made available by the tax authorities free of charge. This is still subject to clarification from the tax authorities, as several aspects of the new regime are subject to regulation and related administrative rulings from the tax authorities, which are still awaited, but the wording of the new law indicates this obligation applies (from 16 February 2019).

**Afonso Arnaldo, afarnaldo@deloitte.pt, Deloitte Portugal**

## South Africa

### Customs and Excise Amendment Bill presented to National Assembly

The Customs and Excise Amendment Bill, introduced in the National Assembly on 6 February 2019, would amend the Customs and Excise Act No 91 of 1964 by inserting provisions for the administration of carbon tax in line with the Carbon Tax Bill. The Commissioner of the South African Revenue Service (SARS) is responsible for administration of the carbon tax as an environmental levy. The tax is expected to apply as from 1 June 2019.

The amendments require a “tax payer” of carbon tax to license their premises with SARS. The Commissioner will regulate the submissions and verifications of carbon tax accounts. SARS also is empowered to collect payments of carbon tax and issue the rules necessary to regulate duties, powers and rights not addressed by the bill.

The Carbon Tax Bill defines a tax payer as a person liable to pay an amount of carbon tax determined when that person conducts an activity resulting in greenhouse gas emissions above the permitted threshold. Carbon tax must be paid through six-monthly environmental levy accounts for periods commencing on 1 January and 1 July each year.

The Carbon Tax Bill, which was tabled by the Minister of Finance on 20 November 2018, was adopted by the National Assembly on 19 February and has been transmitted to the National Council of Provinces. It is expected to come into effect from 1 June 2019.

**Wian de Bruyn, wdebruyn@deloitte.co.za, Deloitte South Africa**

**Zweli Makhubo, zmakhubo@deloitte.co.za, Deloitte South Africa**

## Switzerland

### VAT administrative guidance amended

In December 2018, the Swiss tax authorities issued amended administrative guidance on a number of VAT issues, as follows:

#### *Reporting simplification for banks and insurance companies*

Banks and insurance companies should report their turnover resulting from transactions exempt from VAT without credit in boxes 200 and 230 of their VAT returns. New administrative guidelines issued on 13 December 2018 and applicable as from 1 January 2019 simplify the process, allowing such companies either to:

- Report the out-of-scope turnover in their final VAT return for the year, or via a corrective VAT return to be filed (where necessary) as part of the reconciliation of the company's VAT returns and audited financial statements (due six months, plus 60 days following the end of the fiscal year); or

- Not report turnover exempt from VAT without credit provided they opt to pay the highest radio and television fee (CHF 35,590) on the AFC SuisseTax portal prior to 15 January of the reporting year.

#### *Place of supply for assembly and installation*

The administrative guidelines on the place of supply were finalized on 13 December 2018 and apply as from 1 January 2019, with a specific focus on composite supplies with installation services.

The general rule is that the place of supply of goods transported or shipped by suppliers in Switzerland is where the transport begins. The general rule also applies to composite supplies with installation services, provided the installation work qualifies as a service ancillary to the supply, irrespective of whether the installation service is billed separately. Where the installation is not ancillary, the composite supply should be treated as a work contract. The guidelines provide some examples of where the installation service is and is not deemed to be ancillary.

#### *VAT refund claim for foreign entrepreneurs*

As from 1 January 2019, non-established entrepreneurs (those without a legal seat or fixed establishment in Switzerland) required to register for Swiss VAT purposes during the year may make a VAT refund claim (equivalent to an EU 13$^{th}$ Directive refund claim), to recover input VAT incurred prior to their VAT registration, provided the general conditions for a refund claim are met. The claim must be based on the calendar year and filed with the company's first Swiss VAT return.

### Switzerland and UK sign post-Brexit trade agreement

On 11 February 2019, Switzerland and the UK signed a new trade agreement to ensure the continuation of the economic and commercial rights and obligations arising from the agreements between Switzerland and the EU following Brexit. The agreement will come into force as soon as the Swiss-EU agreements cease to apply to relations between Switzerland and the UK.

According to the communication of the Swiss Federal Council "Switzerland wishes to ensure that the existing mutual rights and obligations in its relationship with the UK will continue to apply as far as possible after the UK leaves the EU, and to expand them in certain areas."

Specific agreements between Switzerland and the UK on road and air transport, and insurance already have been signed. In addition, in December 2018, the Federal Council adopted an agreement safeguarding post-Brexit the rights of Swiss and UK nationals acquired under the EU-Switzerland agreement on the free movement of persons.

**Constant Dimitriou, cdimitriou@deloitte.ch, Deloitte Switzerland**

**Coralie Dumoulin, cdumoulin@deloitte.ch, Deloitte Switzerland**

## Tunisia

### Export regime

The current export regime, which provides for corporate income tax (CIT) exemption and the application of a reduced CIT rate of 10% (where applicable), will no longer apply from 1 January 2021.

Export incentives will continue to apply for other taxes, such as exemption from the profession training tax (TFP), exemption from the contribution to the social housing fund (FOPROLOS), and VAT suspension.

**Sonia Louzir, slouzir@deloitte.tn, Deloitte Tunisia**

## Ukraine

### VAT and customs duty exemption for space industry enterprises

The Cabinet of Ministers of Ukraine, under a Resolution dated 13 February 2019, has prolonged until 1 January 2023 the term for the VAT and customs duty exemption for space industry enterprises. The exemption applies to goods imported into the customs territory of Ukraine by residents of Ukraine under Ukrainian-ratified international treaties (agreements) on space activities.

**Natalia Rudenko, nrudenko@deloitte.ua, Deloitte Ukraine**

**Valeriya Vdovychenko, vvdovychenko@deloitte.ua, Deliotte Ukraine**

## United Kingdom

### VAT treatment of loyalty schemes

Under the Tesco Clubcard scheme, customers can exchange points into vouchers, and vouchers into tokens that can be redeemed with a range of Reward Partners (such as restaurants). When a customer redeems a token, the Reward Partner receives a proportion of its face value from Tesco Freetime (the scheme administrator).

The Upper Tribunal has ruled that Freetime should be able to recover input tax on these payments, which were not third party consideration for the reward. The tax authorities (HMRC) emphasised the issue of 'economic reality', but this depends on the perspective from which it is viewed. In the Upper Tribunal's judgment, economic reality was not better reflected by 'pulling the camera back' to focus on the supply between Reward Partner and customer – it was rationally explained in the context of the agreement between Freetime and its partners.

Furthermore, if a broader perspective was required, then the amounts paid to partners formed part of the costs of Tesco's wider business. Neither the *Baxi* nor *LMUK* cases supported HMRC's approach, and their appeal was dismissed.

### Making Tax Digital pilot opens to VAT groups

HMRC have updated their guidance relating to Making Tax Digital (MTD), confirming that the pilot is now open to VAT groups (although not to other categories of complex taxpayers, including overseas businesses), see Use software to submit your VAT Returns. Taxpayers have started to receive letters confirming if their MTD joining date has been deferred to October. Those who believe a deferral should apply but have not received a letter should follow up with HMRC as deferral may not apply to all companies within a corporate group (e.g. where a company in the corporate group has a standalone VAT registration).

A new version of Notice 700/22: Making Tax Digital for VAT has also been published, and HMRC have confirmed that the 'soft landing period' for digital links will run for 12 months from mandation – i.e. taxpayers who are permitted to defer submitting returns through software like Deloitte's VAT Return Filer will have a full 12 months to address digital links.

**Donna Huggard, dohuggard@deloitte.co.uk, Deloitte United Kingdom**

**Back to top**

# Contacts

### Deloitte Global & Regional Indirect Tax Contacts

David Raistrick, Deloitte Global Leader – Indirect Tax
**daraistrick@deloitte.ca**

Fernand Rutten, Deloitte Global Leader –Global Trade Advisory
**frutten@deloitte.com**

Ronnie Dassen, Deloitte Global Leader – Indirect Tax Americas
**ronniedassen@deloitte.com**

Sarah Chin, Deloitte Global Leader – Indirect Tax Asia Pacific
**sachin@deloitte.com.hk**

Darren Stephens, Deloitte Global Leader – Indirect Tax EMEA
**darrenstephens@deloitte.co.uk**





30 Rockefeller Plaza
New York, NY 10112-0015
United States