

## **Global Indirect Tax News**

Your reference for indirect tax and global trade matters

Welcome to the January 2019 edition of GITN, covering updates from the Asia Pacific and EMEA regions.

Features of this edition include updates on GST in India and VAT in the Gulf Cooperation Council, the introduction of a reduced VAT rate on electronic publications in Malta, and a number of updates on the implementation of the EU vouchers Directive.

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# Country summaries

## Asia Pacific

### India

The 31<sup>st</sup> GST Council meeting on 22 December 2018 proposed a reduction in rates for certain goods and services, various relief measures, and certain other amendments to the GST law.

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The online processing of AEO T1 applications is to commence when the website has been developed.

The Delhi High Court has decided a services tax case regarding what qualifies as immovable property.

The Madhya Pradesh High Court has decided a GST case regarding sales to duty-free shops.

There has been an anti-profiteering ruling concerning Hindustan Unilever Limited.

## EMEA

### Gulf Cooperation Council

There are updates from the United Arab Emirates, the Kingdom of Saudi Arabia, Bahrain, and Qatar.

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### Angola

A decree has been published approving the legal regime for electronic submission of taxpayers' accounting elements.

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In light of the expected implementation of VAT in July 2019, there are a number of upcoming deadlines.

### Czech Republic

There are a number of proposed amendments to the VAT Act, subject to the legislative process.

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### Denmark

The tax authorities have issued a draft for binding instruction on the VAT treatment of sales promotional schemes.

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The tax authorities have issued a draft for binding instruction on the VAT treatment of transactions without consideration.

**Finland**

There is a Government proposal to introduce VAT on performance fees.

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**France**

The EU vouchers Directive has been transposed into French law.

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The EU Directive regarding telecommunications, radio broadcasting, television, and electronically-supplied services supplied to non-VAT taxable persons has been transposed into French law.

The tax authorities may grant a total or partial waiver of VAT reassessments resulting from the characterization of a permanent establishment of a foreign company in France.

**Greece**

The application of special VAT rates for certain islands has been extended.

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There have been changes to the application of the reduced VAT rates.

The VAT refund application form for taxable persons not established in an EU Member State has been amended.

**Hungary**

From 1 January 2019, leased cars will be subject to a limited VAT deduction rate of 50 percent if they are used for both business and private purposes.

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The VAT treatment of vouchers has been amended from 1 January 2019, in accordance with the EU vouchers Directive.

From 1 January 2019, Hungarian companies must register for the 'Company Gateway' electronic platform.

<b>Ireland</b>	There have been updates to the VAT Tax and Duty Manual.	<a href="#">Read more</a>
<b>Italy</b>	Official forms for the annual VAT return for the 2018 reporting period have been published.	<a href="#">Read more</a>
	There are new procedures for the payment of stamp duty related to e-invoices.	
<b>Malta</b>	A reduced VAT rate will apply to electronic publications.	<a href="#">Read more</a>
<b>The Netherlands</b>	The Supreme Court has referred questions for preliminary ruling to the CJEU on the Dutch VAT revision rules.	<a href="#">Read more</a>
<b>Poland</b>	The provisions of the VAT law providing bad debt relief have been amended with effect from 1 January 2019.	<a href="#">Read more</a>
<b>Portugal</b>	The tax authorities have defined the procedures to be followed for non-alcoholic beverages on movements under excise duty suspension.	<a href="#">Read more</a>
<b>South Africa</b>	The legislation that will significantly impact the VAT treatment of electronic services in South Africa has now been finalised.	<a href="#">Read more</a>
	There is an update on the implementation and phase down of customs duty rates for 2019 under the EU-SADC Economic Partnership Agreement.	
<b>Switzerland</b>	The list of medicines subject to the reduced VAT rate will change following the revision of the Law on Therapeutic Products.	<a href="#">Read more</a>
	Import VAT-related documentation is available on the Swiss Customs Authorities webpage.	
<b>Ukraine</b>	There have been changes in the application of the VAT exemption, for certain types of transactions.	<a href="#">Read more</a>

## United Kingdom

A Tribunal has ruled that special investment funds managed with the help of a software system may qualify for VAT exemption.

[Read more](#)

A VAT statutory instrument has been made to counter offshore 'loops'.

The tax authorities have published their policy on VAT on retained payments and deposits.

There are a number of updates on Brexit and indirect tax.

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## Asia Pacific

### India

#### GST updates

The 31<sup>st</sup> GST Council meeting held on 22 December 2018 proposed reduction in rates for certain goods and services; various relief measures, including relaxation of compliance requirements; and certain other amendments to the GST law. The Government issued various notifications applicable from 1 January 2019 to give effect to most of the recommendations made by the GST Council.

Highlights from the meeting are as follows.

#### ***Reduction in rates for certain goods and services/ rationalization of certain services***

Certain goods/services for which the rates are proposed to be reduced are:

- i) Monitors and televisions of screen size of up to 32 inches, power banks of lithium ion batteries, digital cameras and video camera recorders, re-treaded or used pneumatic tyres of rubber, video game consoles and certain other games, and sports requisite (from 28% to 18%)
- ii) Musical books (from 12% to nil)
- iii) Specified types of vegetables (from 5% to nil)
- iv) Cinema tickets above INR 100 (from 28% to 18%) and up to INR 100 (from 18% to 12%)
- v) Third party insurance premia for goods carrying vehicles (from 18% to 12%)

- vi) Rate of 5% prescribed for renewable energy devices and parts for their manufacture

There will be no GST under the reverse charge mechanism on services provided by goods transport agencies to government departments/local authorities that have obtained registration solely for the purpose of deducting tax deducted at source. The said service will be exempt.

Security services (the supply of security personnel) provided to a registered person will be taxable under the reverse charge mechanism.

Services provided by an unregistered business facilitator to a bank and by an agent of a business correspondent to a business correspondent will be taxable under the reverse charge mechanism.

### ***Clarifications***

It has been clarified that:

- i) With respect to engineering, procurement and construction (EPC) services contracts involving goods and construction services for solar power plants, 70% of the gross value of the contract will be the deemed value of goods supplied, while the balance will be the deemed value of services supplied.
- ii) The movement of rigs, tools, and spares, and all goods on wheels on their own account where movement is not intended for the further supply of such goods but intended for the provision of services, will not qualify as a supply for GST purposes.
- iii) The scope of entry for multi-modal transport with the GST rate of 12% is only with respect to domestic multi-modal transport.
- iv) Appropriate GST rates would apply to any debit/credit note issued in the GST regime for adjustments pertaining to the erstwhile indirect tax regime.

### ***Amendments to GST law***

The creation of a centralized Appellate Authority for Advance Ruling has been proposed to deal with cases of conflicting decisions by two or more State Appellate Advance Ruling Authorities on the same issue.

It has been proposed to levy interest only on the net tax liability of the taxpayer, post adjustment of the available input tax credit.

### ***GST return and audit report***

Changes have been introduced to the formats of the GST annual return and the GST audit report.

The due date for furnishing the annual return and the GST audit report for the period July 2017 to March 2018 has been extended from 31 December 2018 to 30 June 2019.

The late fee has been waived for GST returns for July 2017 to September 2018 filed between 22 December 2018 and 31 March 2019.

### **Customs update**

The online processing of AEO T1 applications will commence as soon as the online AEO (Authorized Economic Operator) website has been developed for online filing and the processing of AEO T1 applications.

AEO program digitization will ease the process of doing business. To ensure a seamless transition to the online web application, it has been decided to concurrently continue with the manual filing and processing of AEO T1 applications until 31 March 2019.

### **Service tax decision on immovable property**

The appellants are cellular telecom operators and passive infrastructure providers. They availed the Central Value Added Tax (CENVAT) credit of excise duty paid on the purchase of towers and shelters/pre-fabricated structures, which was denied by the tax authorities. The larger bench of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) had earlier decided the matter against the appellants. Consequently, an appeal was filed in the High Court.

The Delhi High Court decided the matter in favour of the appellants.

The following are the major observations in the decision, which related to whether such pre-fabricated towers, structures, etc., qualify as immovable property:

- 1) The towers are merely fastened to the civil foundation to make them wobble free and ensure stability. Further, such towers can be unbolted and reassembled without any damage in a new location. Accordingly, the towers cannot be considered as permanently attached to the earth, and therefore, immovable property.
- 2) The towers, shelters, etc., qualify as capital goods, as a part/component or alternatively, as accessories to the transmission apparatus. Further, the towers etc. also qualify as inputs, as they are used for providing services.
- 3) The contention that the appellants have received mild steel angles/channels, which are not eligible for credit, does not seem to be correct, as these towers are supplied in completely knocked down form, which are used for providing services.
- 4) The entitlement of CENVAT credit is to be determined at the time of receipt of goods and the fact that towers are later fixed to the earth for use would not make them non-excisable commodities.
- 5) The emergence of an immovable structure at an intermediate stage is of no consequence and the credit can be claimed even in such cases.

This decision being contrary to a Bombay High Court ruling, it is likely that the tax authorities will litigate the matter in the Supreme Court. The industry awaits the final ruling from the Supreme Court, which will finally settle the issue.

### **GST decision on supply to duty-free shops**

The petitioner, a manufacturer and exporter of garments in India, specializing in the manufacturing of high-quality products, with a customer base in the Middle East, South Africa, and the USA, intends to supply goods to duty-free shops (DFS) situated in the duty-free area at international airports. The petitioner claimed that the benefit available under the erstwhile central excise regime of removing goods from the factory to DFS located in the international airports without payment of duty is not available under the GST regime.

The bench of Madhya Pradesh High Court observed that under the GST Act, a DFS situated at the airport cannot be treated as territory outside of India. The petitioner is not exporting the goods out of India. The petitioner is selling to a supplier, who is within India, and the point of sale is also in India. The bench noted that for the purpose of the GST Act, India extends up to the Exclusive Economic Zone (EEZ) up to 200 nautical miles from the baseline. It was held that the location of the DFS, whether within the customs frontier or beyond, shall be within India as long as it is not beyond EEZ (200 nautical miles). Therefore, the DFS cannot be said to be located outside India. As the supply to a DFS by an Indian supplier is not to 'a place outside India', such supplies do not qualify as the 'export of goods' under GST. Consequently, such supplies cannot be made without payment of duty.

### **Anti-profiteering ruling in *Hindustan Unilever Limited***

Under the anti-profiteering provisions, if a taxpayer benefits either by way of (a) a reduction in the tax rate, or (b) increased input tax credit, the benefit is required to be passed on to customers. The National Anti-profiteering Authority (NAA) constituted by the Government examines profiteering by suppliers.

Effective 15 November 2017, the tax rate of the majority of products supplied by Hindustan Unilever Limited (HUL) was reduced from 28% to 18%. However, the Maximum Retail Price (MRP), inclusive of taxes, of such products remained unchanged. Applications were filed by consumers alleging an increase in the base price of the products despite the reduction in tax rates.

HUL claimed that it was not practically possible to pass on the benefits to each consumer immediately upon a reduction in GST rates, given the time constraints and the scale at which it operates. Accordingly, it *suo motu* deposited INR 160 crores on account of profiteering during 15 November 2017 to 28 February 2018. In addition, HUL claimed that the incremental costs incurred by them on account of the rate change (such as changes in packing materials etc.) due to the rate change should be deducted when computing the amount 'profiteered' by the company. Various other deductions on account of costs incurred, *viz.* area-based exemptions, an increase in grammage of the product, etc. were also claimed by HUL while depositing the 'profiteered' amount with the tax authorities.

In NAA Order No. 20, the NAA observed that notwithstanding the reduction in the tax rates, the base prices of the products were not reduced, and hence the commensurate benefit of the reduction in the GST rate was not passed on to consumers.

The NAA computed INR 535 crores as the total profiteered amount for the period up to 28 February 2018, and allowed one-off deductions in relation to the increase in grammage of the product and on certain supplies to the Central Police Force (CPF) and Central Railway Police Force (CRPF) while computing the profiteered amount.

Rejecting the HUL contention that the amount of profiteering was to be calculated at entity level, the NAA directed HUL to appropriately reduce the price of products commensurate to the reduction in the tax rate and deposit the profiteered amount in the consumer welfare fund. The tax authorities were also directed to raise a penalty demand separately for non-compliance of the provisions under the GST law.

The Delhi High Court, however, has granted a stay on the demand raised in the NAA order subject to HUL depositing INR 90 crores. The investigation in the matter may continue until the matter is posted for a hearing.

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## EMEA

### Gulf Cooperation Council

#### ***United Arab Emirates – new rules and clarifications***

Following the implementation of VAT in the United Arab Emirates, the Federal Tax Authority (FTA) has released further important guides and public clarifications to help businesses better understand the application of the VAT legislation. Since the previous update in the [December 2018](#) edition of this newsletter, the following have been published:

- [Input Tax Apportionment: Special Methods Guide](#): The guide sets out that any taxable person making a mixture of taxable and exempt supplies is required to apportion their input tax. However, as the standard method is not appropriate for every business, the FTA has introduced several special methods, in accordance with which certain methods are only available to businesses in specific industries. The new guide describes each special method and the types of businesses it is available to, as well as guidance on the process of applying for a specific input tax apportionment method.
- [VAT Public Clarification on Date of Supply for Independent Directors \(VAT009\)](#): The public clarification addresses the issue of determining the date of supply for board fees paid to independent directors.

- [Decision No. \(4\) of 2018 on Tax Invoices](#): The decision sets out that a registrant making a supply of goods or services through a vending machine is not required to issue a tax invoice for the supply, subject to certain conditions. The decision applies retroactively from 1 January 2018.
- [VAT Refunds for Business Visitors User Guide](#): Businesses resident in any GCC state that is not considered an implementing state may submit a VAT refund application to reclaim VAT incurred in the UAE under this scheme. The period of each refund claim will be a calendar year. For claims in respect to the 2018 calendar year, refund applications can be made from 1 April 2019. For subsequent years, refund applications can be made from 1 March of the following year. The guide further states that the minimum claim amount for each VAT claim is AED 2,000, and that the FTA will issue more detailed guidance about the application process in the future.

### ***United Arab Emirates – excise tax – digital tax stamp regime***

The FTA has added a section to its website on the digital tax stamp regime for tobacco products, see [Digital Tax Stamp](#). Further, the registration forms for [manufacturers](#) and [importers](#) have also been published. The FTA has also specified who is required to register.

### ***United Arab Emirates – Customs – new inventory systems requirements for free zone companies***

The UAE Government has announced new inventory system requirements for free zone companies, see [Announcement to FZ companies holding Customs business code to use inventory management system compatible with Dubai Customs requirements effective 1/1/2019](#).

Commercial and industrial companies that operate under a free zone license and have a Dubai Customs code must implement a new inventory system as of 1 January 2019. The purpose of the new inventory system is the assessment of the free zone company's inventory data to generate an audit report for customs purposes. This report will be based on the records of the inbound and outbound movement of individual goods. Found discrepancies during a customs audit may subsequently lead to the payment of additional customs duties and/or fines.

### ***United Arab Emirates – Customs duties – duty rate increase on certain rebar and steel coils***

Dubai Customs has announced an increase in customs duty on imports of certain rebar and steel coils from 5 percent to 10 percent effective as of 17 January 2019. The increase in duty rates may have a significant impact on costs within sectors that use these products intensely, such as construction and the energy sector.

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***Kingdom of Saudi Arabia – guidelines translated into English***

The Kingdom of Saudi Arabia General Authority of Zakat and Tax (GAZT) has published the English translations of several guidelines, which were originally published only in Arabic.

- **Capital Assets Guidelines:** This guideline provides additional clarity to taxpayers with respect to the treatment of capital assets from a VAT perspective. It addresses the definition of capital assets, the deduction of input tax on purchases of capital assets, adjustments to VAT recoverability arising from a change of use of the assets, as well as the deduction of input tax on capital asset purchases made before a taxpayer's VAT registration in KSA comes into effect.
- **Electricity and Utilities Guideline:** This guideline includes VAT details relevant to suppliers in the electricity and utilities industry. It includes sections on place of supply rules for supplies of electricity, gas, oil, or water through a pipeline distribution system; imports and exports via a distribution system; VAT treatment for the local electricity generation sector; and common issues in distribution and retail utility contracts (such as discounts, adjustments security deposits, and bad debts).
- **Examination, Assessment, Correction and Objection on GAZT Decisions Guideline:** The guideline includes technical and procedural means to engage with GAZT in the case of examinations, tax assessments, filed corrections, and objections to GAZT decisions.

The following guides are currently published in Arabic only:

- **Telecommunications Guideline:** This guideline provides further clarity to suppliers of telecommunications services. It provides further detail and examples on the definition of telecommunications and electronic services, along with discussing other practical implications around place of supply rules.
- **Recreation and Entertainment Guideline:** This guideline addresses topics relevant to suppliers of recreation and entertainment services, including place of supply rules, the treatment of entry and attendance fees, special cases (e.g., for sports clubs, sponsorship and advertising, donations, among other cases), and the treatment for certain services provided by hotels, restaurants and catering services.

While guides issued by tax authorities are helpful, they cannot be used as a substitute for the law and regulations, and do not cover all potential scenarios, and as such businesses may still need to seek further guidance or support.

## ***Kingdom of Saudi Arabia – Customs – draft zakat regulations***

The draft zakat regulations have been released on the GAZT website for public comments to be submitted by 28 January 2019. The final zakat regulations should replace the existing zakat regulations that were issued in early 2017.

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## ***Bahrain – VAT implementation as of 1 January 2019***

Following the implementation of VAT in the Kingdom of Bahrain, the National Bureau of Taxation (NBT) has released further important guidance and clarifications to help businesses better understand the application of the VAT legislation. Since the previous update in the [December 2018](#) edition of this newsletter, the following have been published:

- [List of basic food items that are not subject to VAT at 5%](#) (in Arabic only): This list lists the food items that will be subject to VAT at zero-rate. It includes vegetable and fruits, coffee and tea, bread, eggs, among others.
- [VAT General Guide](#): The guide sets out the general principles of VAT in Bahrain, providing an overview of the VAT rules and procedures as per the Bahrain VAT legislation, and guidance on determining the VAT treatment of supplies.
- [VAT Registration Guide](#): The guide addresses the definition of a taxable person, and provides criteria for determining if an entity meets the definition. Further, it provides guidance on the conditions for mandatory and voluntary VAT registration, with the staggered deadlines for businesses obligated to register based on the value of their annual supplies.
- [VAT Technical FAQs](#): The FAQ contains detailed guidance on topics including VAT registration, tax return procedures, invoicing obligations, VAT recoverability, imports and exports, discounts, penalties, and sector specific issues.
- [VAT treatment for key industries](#): The list covers the food, education, healthcare, financial services, construction, real estate, transportation services, and telecommunications services industries. According to the list, the specific medicines and health products which are to be zero-rated will be disclosed by the National Health Regulatory Authority.
- [Personal imports/gifts exemption threshold](#): Bahrain Customs Affairs, which is coordinating with the NBT, has announced that personal imports and gifts for individuals with a value of less than BHD 300 will be exempt from VAT.

Also, the Legislation & Legal Opinion Commission has published the list of [newly exempt government services](#). This follows the Cabinet previously approving a memorandum submitted by the Ministry of Finance and National Economy (MoFNE) exempting 1,400 government services from VAT. The list is currently only available in Arabic.

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### ***Qatar – announcement to establish General Tax Authority***

The Ministry of Finance (MoF) has stated in a press release that a decision has been issued to establish the General Tax Authority (GTA). The GTA has been established as a separate entity under the supervision of the MoF, and will be responsible for implementing tax laws, reviewing and assessing tax returns, and collecting taxes from liable entities.

The press release further stated that VAT will not be implemented in the country in 2019.

### **Up-to-date GCC VAT information available on Deloitte Middle East's mobile app**

Deloitte Middle East's [VAT in the GCC mobile app](#) is free of charge, and is designed to help businesses to better understand VAT and its impact, whether they have already undergone implementation in the UAE, KSA or Bahrain, or are preparing for the introduction of VAT in the three remaining GCC countries.

The app contains Deloitte Middle East's weekly digest reporting news of important indirect tax developments in the Middle East region as soon as they happen, in addition to a series of learning materials. It is available for iOS and Android devices and has a number of different sections that are easy to navigate.

## **Angola**

### **Software systems certification and SAF-T (AO) files**

Following the publication of the Presidential Decree approving the new legal regime governing invoices and equivalent documents (see the [December 2018](#) edition of this newsletter), and within the context of a broader VAT package implementation, on 21 December 2018 Presidential Decree no. 312/18 was published in the Official Journal, approving the legal regime for electronic submission of taxpayers' accounting elements.

Two SAF-T files will have to be submitted: invoices (output flows) and acquisitions (input flows). Additionally, and with an annual reference, taxpayers will have to produce the accounting SAF-T file.

The filing of monthly SAF-T files to the tax authorities will be mandatory from 1 July 2019 for all taxpayers registered as large taxpayers with the tax authorities. The SAF-T files (invoices and acquisitions) must be communicated to the tax authorities by the last day of the month following that in which the transactions took place.

Remaining taxpayers with an annual turnover of more than AKZ 50 million may voluntarily proceed with the filing of the SAF-T file from July 2019, however they will only be required to do so from 2020.

### **Time for VAT implementation**

In light of the expected implementation of VAT in July 2019, the following deadlines apply in relation to invoicing software, SAF-T file, and invoicing rules:

- Invoicing software systems compliant with the requirements of the new legal system governing invoices and equivalent documents, which sets out the formalities for the issuance of invoices, must be ready for use by 2 April 2019 (except where the applicable regime provides for the possibility to issue pre-printed invoices by certified printing companies);
- Invoicing software systems must be duly certified by the tax authorities by 30 June 2019, to be used by taxpayers with annual turnover exceeding USD 250,000 (or taxpayers voluntarily opting to adhere to the Angolan VAT regime);
- As covered above, from 1 July 2019 it will be mandatory to produce monthly SAF-T files to be reported to the tax authorities by the last day of the subsequent month (the first submissions are due by 31 August 2019);
- From 1 January 2020, all taxpayers with an annual turnover of more than AKZ 50,000,000 will be required to produce the above referred SAF-T files and use certified software.

The proposals for the Angolan VAT code and the Angolan excise duty code are yet to be approved by the National Assembly. It is estimated that this will take place in February.

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### **Czech Republic**

#### **Amendment to the VAT Act**

As part of the tax package, a technical amendment to the VAT Act, including a series of amending motions, was approved by the Chamber of Deputies at the end of 2018.

The tax package is still to be approved and signed off by the President. The changes will generally, with the exceptions noted below, occur on the first day of the month following the month in which the amendment is published in the Collection of Laws.

If no additional changes are made to the wording of the amendment in the follow-up legislative process, the key changes in the VAT Act are expected to affect the following areas:

- Guidance on taxing vouchers (single purpose and multi-purpose vouchers);
- Provisions on the date of taxable supply (ancillary supplies to leases, long-term supplies);

- The taxation of a supply of goods with assembly if the supplier is established outside the Czech Republic and registered for Czech VAT;
- Rules for delivering tax documents;
- The definition of 'finance lease' (effective from 2020);
- The lease of real estate and restriction of the taxation option (effective from 2021);
- Guidance on VAT deduction in respect of real estate repairs;
- VAT deduction claims upon registration;
- Determination of the place of supply of electronically-supplied services; and
- A decrease in the VAT rate on heat delivery.

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## **Denmark**

### **Draft for binding instruction on VAT treatment of 'buy 9 and get one free'**

The tax authorities have issued a draft for binding instruction regarding VAT and sales promotional schemes. An example of a sale promotional scheme is a coffee card with the text 'buy 9 cups of coffee and get the 10<sup>th</sup> cup of coffee for free'.

Is a voucher and the sales promotional scheme two sides of the same coin? The immediate answer is: no. This is based on the new voucher rules and the draft for binding instruction regarding sales promotional schemes. The tax authorities specify that if a customer purchases 9 cups of coffee and receives the 10<sup>th</sup> cup of coffee for free, the payment for the last cup must be seen as a part of the consideration for the previous 9 cups of coffee, which the customer has purchased.

The 10<sup>th</sup> cup of coffee is therefore not given without a consideration and the VAT rules regarding extraction are not applicable. The VAT treatment of sales promotional schemes is especially relevant for coffee bars, gas stations, kiosks, and other companies that undertake this type of sales promotional schemes.

### **Draft for binding instruction on VAT treatment of transactions without a consideration**

A transaction without a consideration is as a general rule not considered to be an economic activity for VAT purposes, unless the purpose of the transaction is to receive revenue of a lasting permanence. A recently issued draft for binding instruction specifies that if transactions without consideration have a connection to one activity or multiple activities, which are seen as economic activities, the transactions without a consideration could be a part of the economic activity.

The important aspect is whether the transactions without consideration are completed for the sake of the economic activity, which generates revenue with the purpose of lasting permanence.

The tax authorities provide an example of an internet newspaper that is issued without consideration. The purpose of the internet newspaper is not to issue it for free, but to perform an economic activity by selling commercial advertising, which is issued in the newspaper. The tax authorities conclude that the transactions without consideration are performed with the purpose of receiving revenue of a lasting permanence. Additionally, the tax authorities state that the transactions without consideration and the economic activities must be seen as one economic activity, and the internet newspaper can deduct the VAT in full.

The tax authorities have another example, of a humanitarian organization with the purpose of assisting people in developing countries. This organization has some taxable revenue from commercials and advertising. The tax authorities conclude that the purpose of the organization is to help people and not to gain revenue and perform economic activities based on commercials and advertising. Therefore, the organization does not perform economic activities from a VAT perspective.

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## **Finland**

### **Government proposal to introduce VAT on performance fees**

On 8 January 2019, Parliament approved Government proposal 258/2018 on amending the VAT Act so that performing artists, sportspeople, and other public performers and their agents would be able to voluntarily apply for a VAT liability on their performance fees, as well as their sales of the performances to event organizers. Becoming VAT liable would also allow the performers and agents the possibility to recover the VAT included in their related acquisitions.

According to the proposal, these supplies would be taxable at a reduced VAT rate of 10 percent. Before implementation, the proposal will still be subject to second parliamentary proceedings. The legislative changes are to take effect as of 1 April 2019.

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## **France**

### **Transposition of EU vouchers Directive**

Council Directive (EU) 2016/1065 amending the EU Principal VAT Directive regarding the VAT treatment of vouchers (the vouchers Directive) has been strictly transposed into the French tax code. As a consequence, all vouchers issued from 1 January 2019 are subject to these new rules.

Means of payment should not be considered as vouchers. Therefore, the line between these two notions may remain unclear in some practical cases. Comments from the tax authorities on this matter are awaited.

### **Transposition of EU Directive on telecommunications, radio broadcasting, television, and electronically-supplied services supplied to non-VAT taxable persons**

Council Directive (EU) 2017/2455 amending the EU Principal VAT Directive regarding telecommunications, radio broadcasting, television, and electronically-supplied services supplied to non-VAT taxable persons has been transposed into the French tax code. Three new rules have been introduced:

- First, a threshold of EUR 10,000, exclusive of VAT, under which taxpayers have to collect the VAT of their Member State of establishment has been introduced (except in the case of election to apply the VAT of the customer's country);
- Secondly, taxpayers must now apply the invoicing rules of the Member State where they are registered for the Mini One-Stop Shop (MOSS);
- Finally, taxpayers established outside the EU and already VAT registered in another EU Member State for another purpose can now benefit from the MOSS for non-EU suppliers.

### **Possibility to avoid double taxation following characterization of a permanent establishment**

As from 1 January 2019, the tax authorities may grant a total or partial waiver of VAT reassessments resulting from the characterization of a permanent establishment (PE) of a foreign company in France (Finance Law for 2019, art. 132).

When the tax authorities characterize a PE of a foreign company in France, it generally leads to consequences for both corporate income tax (CIT) and VAT.

VAT reassessments often lead to double taxation when customers have already self-assessed VAT on services referred to in Article 259 (1) of the General Tax Code (CGI) (B2B main rule services) and on sales of goods located in France.

In these cases, for reassessments issued from 1 January 2019, the tax authorities may grant a total or partial waiver of VAT reassessments if it is demonstrated that customers have paid the corresponding VAT and have not contested it within the time limit set for filing a complaint (i.e. 31 December of the second year following the reverse charge of VAT by the customer).

No time limit has been set for requesting a waiver.

This measure, although subject to a decision from the tax authorities, should be positive as regards VAT consequences for foreign companies.

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## **Greece**

### **Extension of special VAT rates for certain islands**

By virtue of a Ministerial Decision, which was published on 31 December 2018, implementing an Act of Legislative Content issued by the Greek Government, the application of the special VAT rates (i.e. the Mainland rates reduced by 30%, namely 17%, 9% and 4%) for the islands of Chios, Kos, Leros, Lesbos, and Samos is extended for a period of six months, namely from 1 January 2019 until 30 June 2019 for the supply of goods and services, provided that the necessary criteria are met. For the Greek Mainland and all other islands (with the exception of the above-mentioned five islands), the VAT rates are 24%, 13% and 6% respectively.

Pursuant to the Act of Legislative Content, the reduction by 30% of the VAT rates for the five above-mentioned islands is granted through the issuance of a Ministerial Decision, upon conditions.

In this context, a new extension may be granted through the issuance of a Ministerial Decision every six-month period of each year (namely, in June and December), based on the average annual number of guests (refugees hospitalized on the said islands), subject to conditions.

### **Changes to application of reduced VAT rates**

By virtue of article 58 of Law 4583/2018, white walking sticks (canes) of tariff class code C.N. EX 6602 and typewriters with Braille types of tariff class code C.N. EX 8472, for people with vision (eyesight) disabilities, are reclassified from the reduced VAT rate (13%) to the super reduced VAT rate (6%). The change is effective as from 18 December 2018.

Also, by virtue of article 58 of Law 4587/2018, concert tickets are subject to the super reduced VAT rate (6%) from 1 January 2019. This amendment is in line with the provisions of the EU Principal VAT Directive and covers exclusively concert tickets which do not include any other supply to the audience, except for musical spectacle.

### **VAT refund application form**

By virtue of Circular POL. 1230/2018, the format and content of the 'VAT refund application by a taxable person not established in an EU Member-State' (Application Form 015 – VAT) is amended. The new application form is written both in the Greek and English languages, and all sections are clearly stated, so that claimants do not omit to complete any of the required fields, facilitating in such way the processing (of VAT refund claims) by the competent authorities.

It has also been clarified that the process for submission of VAT refund claims under Circular POL. 1390/2001 remains in force and applicable.

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## **Hungary**

### **50 percent VAT deduction limit on leased cars**

As of 1 January 2019, leased cars will be subject to a limited VAT deduction rate of 50 percent if they are used for both business and private purposes. According to the current legislation, taxpayers retain the right to opt for proportional VAT deduction based on a mileage log.

This legislation may require clarification. The tax authorities have issued public guidance regarding the application of the two methods.

### **Modified VAT treatment of vouchers**

As of 1 January 2019, in accordance with the EU vouchers Directive, the VAT treatment of vouchers has been modified significantly.

Considering the complexity of the legislation and the lack of clarity, the tax authorities have issued public guidance on the correct VAT treatment and invoicing of transactions connected to vouchers.

### **Company Gateway registration**

As of 1 January 2019, the transitional period for the Company Gateway expired. As a result, tax-related communication can no longer be carried out through the client portal access of companies' representatives.

Under the new legislation, every Hungarian company is required to register for official electronic communication through 'Company Gateway', a free, mandatory state-run electronic platform to be able to communicate with the Hungarian authorities electronically, see <https://cegkapu.gov.hu/>.

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## **Ireland**

### **Updates to VAT Tax and Duty Manual**

At the end of December 2018, Irish Revenue issued [eBrief No. 218/18](#), to announce updates to the VAT Tax and Duty Manual. The updates can be classified into three distinctive categories (new guidance, reintroduced guidance, and updated guidance), and include the following.

## ***New guidance***

- **The VAT treatment of rollators** – the guidance provides an explanation of what a rollator is and clarifies the VAT rate applicable to the device itself and to the parts or accessories for the same. In short, although not explicitly listed as a medical appliance liable to the zero rate of VAT under paragraph 11 of Schedule 2 VAT Consolidation Act 2010, Revenue have clarified that from 1 March 2019 they will accept application of the zero rate to rollators. Furthermore, parts or accessories for use solely or principally with rollators can also avail of the same VAT treatment.
- **The VAT treatment of food supplements and certain other substances for human consumption** – the guidance sets out various groups of substances that are not considered conventional food or are not considered food for VAT purposes, and clarifies the VAT treatment of same. It also distinguishes specific licenced products and foods for specific groups which attract a different VAT rate from so called 'non-food substances'. In general, the standard rate of VAT at 23% applies to food supplements, sports nutrition, slimming aids, and similar products with certain products licenced by the Health Products Regulatory Association (HPRA) as well as foods especially formulated for use by certain specific groups being able to apply the zero rate of VAT. Revenue have also highlighted that a concession that previously allowed zero-rating of certain types of vitamins, minerals, and fish oils will no longer apply with effect from 1 March 2019 and they will be VATable at 23%, unless specifically licenced/authorized by the HPRA.
- **The VAT treatment of single purpose and multi-purpose vouchers** – the guidance sets out the new rules applicable to certain types of vouchers arising from the EU vouchers Directive. It provides an explanation of what is (and is not) considered to be a voucher under the new rules, distinguishes between two separate categories of vouchers (i.e. single purpose or 'SP' and multi-purpose or 'MP'), and the VAT treatment applicable to same, and addresses the circumstances where vouchers are sold at a discount. In summary, vouchers are considered SP if at the time of issue the place of supply and the VAT due on the supply of the goods/services to which the voucher relates are known and where the underlying supply/supplies attract the same rate of VAT. Any other vouchers (as defined) that do not fall within the category of SP voucher are automatically considered MP. In general terms, the difference in the VAT treatment of the two distinct categories of vouchers is as follows:
  - VAT on SP vouchers is due on issue on the sum actually received (regardless of the face value) and no VAT is due on the actual redemption;
  - VAT on MP vouchers is only chargeable on redemption of the underlying goods/services.

The new guidance came into effect from 1 January 2019 and applies to vouchers issued on or after that date.

## ***Reintroduced guidance***

- **The pharmacists scheme for VAT, the VAT treatment of staff canteen services, and the VAT treatment of opticians** – the existing guidance on the VAT treatment applicable to these three separate areas has been incorporated within the VAT Tax and Duty Manual to make same easily accessible at a single location.

## ***Updated guidance***

- **The VAT treatment of Personal Contract Plans (PCP)** – the updated guidance inserts an additional paragraph to assist PCP providers with the determination of whether the PCP should be treated as a supply of goods or a supply of services at the outset of the agreement. This is done by predicting the economically rational choice that would be made by the consumer at the term-end (i.e. to purchase or not to purchase the vehicle) with reference to a guaranteed minimum future value (GMFV) and the predicted market value of the vehicle at the end of the term. The guidance suggests that, when it comes to a PCP scenario, where the GMFV is clearly lower than the predicted market value, the economically rational choice will be for the consumer to either take title or trade-in. While if the GMFV is clearly in excess of the predicted market value then the economically rational choice for the consumer may be to return the vehicle.
- **VAT on food and drink** – the updated guidance removes reference to food supplements in light of the introduction of a separate section into the VAT Tax and Duty Manual that deals specifically with supplements and certain other substances for human consumption. It also removes reference to cold food supplied in a take-away scenario and an option to apply to Revenue to have such take-away sales treated, by concession, as a separate activity to the catering business liable to zero-rate of VAT.

## **Charities VAT compensation scheme guidelines**

Revenue also issued [eBrief No. 219/18](#) on 27 December 2018, which further updates the VAT Tax and Duty Manual by including a manual for charities on a VAT compensation scheme in respect of VAT paid on qualifying expenditure on or after 1 January 2018. The claims for compensation under this scheme can be submitted to Revenue from 1 January 2019, and the new manual provides important guidance on the fundamentals of the scheme, such as eligibility criteria and the application process.

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## Italy

### Official forms for annual VAT return for 2018 reporting period

The official forms for the annual VAT returns (*IVA/2019* and *IVA Base/2019*), for the 2018 reporting period, have been published by the tax authorities, with the related instructions.

The following boxes have been introduced, among others:

- Box VA16 for taxpayers that, as of 1 January 2019, are part of a VAT group (according to art. 70-bis and following of the VAT law);
- Box VX2 (field 2) to be completed only by taxpayers that are part of a VAT group as from 1 January 2019, in order to indicate the deductible VAT (related to VAT payments made for the 2018 reporting period) that will be transferred to the VAT group in 2019.

### Payment of stamp duty related to e-invoices

Ministerial Decree dated 28 December 2018 (published in the Official Journal on 7 January 2019) introduced new procedures for the payment of virtual stamp duty related to e-invoices issued from 1 January 2019.

According to the new procedure, stamp duty on e-invoices will be due on a quarterly basis. In particular, payment relating to stamp duty on e-invoices issued in each quarter must be made by the 20<sup>th</sup> day of the month following the reference quarter (by way of example, payment of the stamp duty on e-invoices issued in the first quarter 2019 must be made by 20 April 2019).

From a practical point of view, at the end of each quarter, the tax authorities will calculate the amount of stamp duty due on the basis of data from the e-invoices transmitted through the SDI. The resulting amount due will then be notified to the taxpayer in its private area in the web portal *Fatture e Corrispettivi* (the access would be available only by *Entratel* or *Fisconline*).

Furthermore, stamp duty can be paid to the tax authorities through a dedicated bank/postal account or by e-filing a specific F24 form, filled in and made available directly by the tax authorities.

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## Malta

### Introduction of a reduced VAT rate on electronic publications

On 14 December 2018, regulations introducing a reduced VAT rate for certain electronic publications were published in the form of Legal Notice 434 of 2018 – Value Added Tax Act (Eighth Schedule Amendment) Regulations, 2018, which entered into force as of 1 January 2019.

As of the effective date of entry, audio books, books, and similar printed material supplied electronically (e.g. e-books downloaded from the Internet) will be subject to a reduced VAT rate of 5%. However, this reduced rate will not apply to publications wholly or predominantly devoted to advertising and to publications wholly or predominantly of video content or audible music.

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## **The Netherlands**

### **Supreme Court refers questions for preliminary ruling to CJEU on Dutch VAT revision rules**

On 14 December 2018, the Supreme Court referred questions for a preliminary ruling to the Court of Justice of the European Union (CJEU) relating to the question of whether it is contrary to EU law that the total amount of an originally applied VAT deduction is revised in one payment at the time of taking (part of) an immovable property into use. Under this approach, a taxable person initially expected to exploit an immovable property subject to VAT (and deducted all input tax on construction costs), but ultimately leased the property exempt from VAT.

Dutch law requires that the entire amount of the initially deducted input tax is revised when the property is taken into use. The taxable person in this case, on the other hand, is of the opinion that revision should take place in ten installments, at the end of each financial year. According to this taxable person, the Dutch revision method as a one-off payment is not compatible with EU law.

The Supreme Court doubts whether the revision of the entire amount of the initially deducted input tax on construction costs at one time in the first year of the revision period at the time of taking a property into use is in accordance with EU law and has referred questions to the CJEU.

The Dutch revision system differs from the system laid down in the EU Principal VAT Directive, irrespective of the above issue. The answers of the CJEU will conclude whether this deviation is permitted.

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## **Poland**

### **Changes in VAT bad debt relief from 1 January 2019**

The provisions of the VAT law providing bad debt relief (the right to reduce output VAT resulting from a sales invoice if the customer does not pay for goods or services purchased) have been amended. As of 1 January 2019, the right to apply bad debt relief was shortened to 90 days as of the payment deadline set on the invoice or contract (till 31 December 2018 there was 150 day period). The other requirements remain unchanged. Under the law, the new provisions can be applied in relation to receivables which arose before 1 January 2019 but for which the amended conditions for bad debt relief were met after 1 January 2019.

According to the Ministry of Finance, the reduced period for bad debt relief will improve issues with the timely payment of liabilities.

Bad debt relief is voluntary for sellers, however it remains obligatory for purchasers (i.e. as of 1 January 2019 the mandatory input VAT adjustment would need to be made after 90 days).

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## **Portugal**

### **Procedures to be followed for non-alcoholic beverages on movement under excise duty suspension**

The tax authorities published Circular Letter no. 35094/2018 which defines the procedures to be adopted for non-alcoholic beverages (subject to excise tax) movements under duty suspension arrangements from and to a tax warehouse.

From 1 March 2019, either authorized warehousekeepers or registered consignees will be required to file an electronic document (designated as DRE – *Declaração de Regularização de Existência*) whenever non-alcoholic beverages subject to excise duty are produced, received, or held, under duty suspension arrangements in a tax warehouse.

Each DRE must be submitted electronically through the tax authorities' website (*Portal das Finanças*) within five week days after the excise goods abovementioned are moved to or from the tax warehouse.

Additionally, the tax authorities published a document including guidelines concerning the movement of said products under duty suspension arrangements in order to duly clarify any doubts from economic operators covered by the above mandatory reporting obligations.

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## **South Africa**

### **Amendments to VAT eServices legislation**

The legislation, previously issued in draft, that will significantly impact the VAT treatment of electronic services in South Africa has now been finalised.

The most significant change from the first draft regulation is the exclusion of certain supplies made between companies within the same 'group of companies'.

Below are the key changes to the finalised amendments, which will come into effect on 1 April 2019.

#### ***Update***

##### *One overarching definition of electronic services*

Electronic services are now defined in one overarching definition, replacing the previous list of specific services (Regulation 3 to 7). In essence, all services supplied by means of an electronic agent, electronic communication, or the internet for consideration will qualify as electronic services. The policy intention is to subject to VAT the electronic services that are provided using minimal human intervention. The Explanatory Memorandum states that if, for example, a legal opinion is prepared by a non-resident outside South Africa and sent to a person in South Africa via email, that supply will fall outside the ambit of the regulation.

Non-resident electronic services suppliers previously excluded from the regulation on the basis that their services fell outside the listed specific electronic services, or, for example, on the basis that a 'subscription' was not charged, will have to re-evaluate their position.

##### *Exclusions from the regulation*

Educational services provided by a person that is regulated by an educational authority and telecommunications services are specifically excluded from the regulation and are not considered to be electronic services. Telecommunications services are now defined in the regulation.

In addition, certain supplies within a group of companies are excluded from the regulation, provided that the services are supplied in specific circumstances and exclusively for the purposes of consumption by the resident company. The term 'group of companies' is defined in the regulation.

##### *'Intermediaries' will be required to account for VAT on behalf of the electronic services suppliers*

Where suppliers provide electronic services using the platform of another person, that person (i.e. the platform provider/intermediary) will be deemed to be the supplier for VAT purposes where that person:

- Facilitates the supply of the electronic services; and
- Is responsible for (amongst other things), the issuing of invoices and the collection of payments.

Pure payment platforms are specifically excluded from this provision.

#### *Effective date extended*

The proposed effective date of 1 October 2018 has been extended to 1 April 2019 to allow vendors time to make the necessary changes required as a result of the significant changes in the legislation.

#### *VAT registration threshold will be increased*

The current VAT registration threshold for electronic services providers will be increased from ZAR 50,000 to ZAR 1 million in a 12 month period to align with the domestic compulsory VAT registration threshold.

### ***Compliance related matters for electronic services suppliers***

#### *Simplified VAT registration process*

The South African Revenue Service (SARS) has a simplified VAT registration process in place for electronic services suppliers. Pure electronic services suppliers are not required to open a local bank account or to appoint a local representative.

#### *Approval required to store documentation offshore*

Section 30 of the Tax Administration Act, 28 of 2011, read with Regulation 787 (Government Notice 35733) requires a vendor to submit a request for approval to SARS to store records (electronic as well as hardcopy documents) on a server or at a location located outside of South Africa. Electronic services suppliers generally require this approval.

#### *Tax invoice requirements*

Binding General Ruling 28 Issue 2 (BGR28(2)) lists the requirements which tax invoices and credit and debit notes issued by electronic services suppliers must comply with. In many instances, electronic services suppliers are unable to meet these requirements, in which case specific concessions need to be applied for.

Where an invoice is issued in a currency other than ZAR, BGR28(2) requires conversion to ZAR by using the South African Reserve Bank, Bloomberg, or European Central Bank published exchange rate to determine the tax charged. Approval should be obtained for the use of an alternative exchange rate.

*Rulings previously obtained from SARS may now be void*

As per SARS standard conditions for issuing rulings, a VAT ruling will cease to be effective where the provisions of the tax laws that are the subject of the VAT ruling are repealed or amended. If a non-resident has thus in the past obtained a ruling from SARS with regard to electronic services, it must consider whether this ruling needs to be re-applied for.

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### **Implementation and phase down of customs duty rates for 2019 under EU-SADC Economic Partnership Agreement**

The EU-SADC (Southern African Development Community) Economic Partnership Agreement (EPA) is a trade agreement between the EU Member States and the SADC EPA Member States. The SADC EPA Member States are: Botswana, Eswatini (former Swaziland), Lesotho, Mozambique, Namibia, and South Africa; Angola is also a member of the group but has not acceded to the EPA. Also, following its decision to leave the EU (Brexit), the United Kingdom has not ratified or signed the agreement.

The EU-SADC EPA came into force in 2016. The agreement aims to establish, amongst others, a free trade area between the EU and the SADC EPA Member States. Under the agreement, with the exception of arms and ammunition, the EU offered nearly 100% customs duty removal or reduction and free market access (full tariff liberalisation) to the SADC EPA group. Botswana, Eswatini, Lesotho, Namibia and South Africa in return offered full tariff liberalisation on 85% of imports from the EU and the balance partially liberalized and/or excluded from liberalization. Mozambique applied full tariff liberalization on 74% of EU imports, with customs duty remaining on the rest.

In terms of the agreement, South Africa has an obligation to amend the rates of customs duty on goods originating from the EU on an annual basis, effective from 1 January of every year. The 2019 amendments come two years after the day the agreement came into force. The 2019 changes relate to certain staging categories 'B' and 'C' of Annex II of the agreement. Effective from 1 January 2019, EU-originating goods listed under the staging category 'B' and 'C' have been reduced by 33% and 60% of the most favorable rate of customs duty applicable as at 31 December 2018 respectively.

Botswana, Eswatini, Lesotho, Namibia and South Africa are also parties to the Southern African Customs Union (SACU) agreement of 1910. In terms of the SACU agreement, the five parties share a Common Customs Tariff. Therefore, the phase-down of the customs duty rates on EU-originating imports also applies to all SACU Member States.

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## **Switzerland**

### **VAT transitional regulations with respect to the revision of Law on Therapeutic Products**

The list of medicines subject to the reduced VAT rate in Switzerland (2.5%) is set out in article 49 of the Swiss VAT ordinance, which primarily refers to article 9 of the Law on Therapeutic Products (LPT<sub>h</sub>).

Article 9 of the LPT<sub>h</sub> defines medicines subject or exempt from marketing authorization in Switzerland. A revised version of this article came into force on 1 January 2019: new medicines exempt from marketing authorization are included and the possibility to obtain temporary marketing authorizations has been removed.

With the entry into force of the revised article on therapeutic products on 1 January 2019, a revision of article 49 of the Swiss VAT ordinance would be necessary. It is foreseen that this revision will be implemented by 1 April 2019, at the latest.

Meanwhile, whilst awaiting the entry into force of the revised VAT ordinance, the Swiss Tax Administration has indicated that new medicines exempt from marketing authorization referred to in the revised version of the LPT<sub>h</sub> must be subject to the reduced VAT rate as from 1 January 2019, irrespective of the publication date of the revised Swiss VAT ordinance. No transitional measures have however been foreseen for medicines benefitting from a temporary marketing authorization, and no information has been published to confirm the cut-off date when these medicines will no longer benefit from the reduced VAT rate.

### **Publication of all import VAT-related documentation on Swiss Customs Authorities webpage**

Import VAT-related provisions are now available to the public as from beginning of January 2019. The documentation is valid from 1 January 2019 and contains the implementing provisions of the Federal Customs Administration relating to Art. 50 to 64 of the Swiss VAT Law and the corresponding articles of the Swiss VAT ordinance.

The documentation is available in French, German and Italian.

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## Ukraine

### Changes in VAT exemption for specific types of transactions

Changes to the Tax Code of Ukraine that became effective on 1 January 2019 include the following measures regarding VAT exemption:

- The VAT exemption for the following transactions is extended until 1 January 2022:
  - The import of vehicles equipped exclusively with electric motors;
  - The import of equipment for solar and wind power plants;
  - The supply, including import, of waste and scrap of ferrous and non-ferrous metals, as well as paper and cardboard for recycling;
  - The supply of coal and/or products for its enrichment in the customs territory of Ukraine.
- The VAT exemption for the import of medicines based on agreements with international institutions is extended until 1 January 2021.
- The VAT-exempt limit for the import of goods by individuals has been decreased. In particular, the import of goods by one recipient, an individual in one dispatch or in one cargo of an express carrier from one sender in international postal/ express shipment, is exempt from VAT if the total invoice amount do not exceed:
  - EUR 150, if importation takes place between 1 January 2019 and 30 June 2019; and
  - EUR 100, if importation takes place between 1 July 2019 and 31 December 2020.

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## United Kingdom

### Automated portfolio management is VAT exempt

Special investment funds (SIFs) are often managed with the help of sophisticated software systems such as Blackrock's 'Aladdin'. The Upper Tribunal has now ruled that such systems can qualify for VAT exemption. Aladdin provided a coherent solution for portfolio management, not blurred by the fact that human managers retained ultimate control over their portfolios. Aladdin was intrinsically connected to the funds' activities, and was specific and essential to their management. The First-tier Tribunal had therefore been correct to rule that VAT exemption applied in principle.

The Upper Tribunal has, however, referred questions to the Court of Justice of the European Union over whether the charges for Aladdin could be apportioned between SIFs (exempt) and other funds (whose management is subject to VAT). *EC v Luxembourg* (on the cost-sharing exemption) suggests that an apportionment might be required in order to satisfy the exemption.

### **VAT amendment to prevent offshore looping**

Further to the announcement in the UK Budget 2018, a statutory instrument has been made to counter offshore 'loops'. It seeks to prevent VAT input tax recovery by UK insurance intermediaries who support non-EU insurers, to the extent that the insured parties belong in the UK. The final statutory instrument differs significantly from the consultation draft: it no longer affects the exemption for financial services intermediaries and is restricted to the insurance of UK (rather than EU) consumers. The measure will come into effect on 1 March 2019, a month earlier than suggested in the Budget.

### **VAT on retained payments and deposits**

The tax authorities (HMRC) have published a Revenue and Customs Brief explaining that from 1 March 2019 they will view any retained deposits as consideration for a supply, and will resist any attempt to reclassify such payments as outside the scope of VAT (for example as compensation). This is in line with the Budget 2018 announcement, which itself followed discussions earlier in the year between HMRC and affected industries.

There is little technical detail in the Brief, which is essentially a statement that any money retained by suppliers can never be reclassified. Although each case will depend on its facts, any taxpayers who currently treat retained deposits as outside the scope of VAT should review their position, and be prepared for a challenge from HMRC if they maintain it after 1 March 2019.

### **Brexit and indirect tax**

The Government has issued the third edition of the [Partnership pack: preparing for changes at the UK border after a 'no deal' EU exit](#), which includes further detail on obtaining Economic Operator Registration and Identification (EORI) numbers, classifying goods, customs procedures, and more.

In the event of a 'no deal' Brexit, a new regulation will make overseas suppliers liable for import VAT on any consignment of goods worth up to GBP 135 sent into the UK in a postal packet. The regulation creates a registration and accounting scheme for suppliers, and provides for others to be jointly and severally liable for that import VAT in certain circumstances. It also removes Low Value Consignment Relief for commercial imports of goods valued at GBP 15 or less.

Another statutory instrument will ensure that the VAT exemption for managing defined contribution pension schemes continues even if, following Brexit, managers are no longer able to rely on the direct effect of EU law.

Other statutory instruments relating to VAT have been laid before Parliament with a view to preparing the UK for a potential 'no deal' Brexit as follows:

- To allow businesses to account for import VAT on their VAT returns;
- To introduce a UK version of the Tour Operators' Margin Scheme;
- To amend secondary legislation (for example, to remove terms such as 'acquisitions', and replace references to the EU with references to the UK); and
- To extend import reliefs for overseas diplomats and armed forces.

Statutory instruments have also been laid that are intended to ensure that the UK continues to have a fully functioning and legally operable excise duty regime. They will come into effect in the event of a 'no deal' Brexit.

See Deloitte UK's [Indirect Tax Brexit Portal](#) for more information.

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