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Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include the decision in Malaysia to reduce the VAT rate to 0% with effect from 1 June 2018, updates from the Gulf Cooperation Council, and the approaching deadline in Hungary for the real-time data provision obligation.

David Raistrick
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Global

WTO rules that Russian anti-dumping duties on vans from Germany and Italy are illegal

On 9 April 2018, the World Trade Organization's (WTO) dispute settlement body formally adopted a ruling that found that Russian anti-dumping duties that are being levied against European light commercial vehicles (LCVs) are inconsistent with global trade rules.

Background

Anti-dumping duties ranging from 23% to nearly 30% were introduced by the Russian Federation under Decision No. 113 issued on 14 May 2013 by the College of the Eurasian Economic Commission. Such anti-dumping duties targeted imports from Germany, Italy, and Turkey of LCVs between 2.8 and 3.5 tonnes, with van-type bodies and diesel engines with a cylinder capacity not exceeding 3,000 cm3, designed for the transport of cargo of up to two tonnes, or for the combined transport of cargo and passengers.

The EU triggered the dispute settlement process with the WTO based on impacted imports from Germany and Italy. On 27 January 2017, the panel report found that the Russian Federation acted inconsistently with WTO rules. On 22 March 2018, the WTO Appellate Body dismissed Russia's appeal and upheld the EU's arguments in the dispute.

Implications for EU exporters of LCVs

Before the measures were imposed, exports of LCVs from Germany and Italy to the Eurasian Economic Union were worth approximately EUR 120 million according to Eurostat, the European Commission's Directorate in charge of computing external trade statistics.

The European Union will expect Russia to comply with the panel report and Appellate Body ruling by removing its anti-dumping duties on LCVs. However, since the original measure is due to expire on 14 June 2018, it remains possible that Russian trade authorities will simply let the measure expire.

Repayment of duties illegally collected is subject to annulment with retroactive effect pursuant to Article 48 of the Treaty on the Eurasian Economic Union, which is not an observed practice in Russia. For example, an appeal for annulment and repayment of duties brought by a German manufacturer against Russia in 2014 did not succeed. However, given the new circumstances of the WTO ruling, the legal opportunity for new cases should not be overlooked.

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EU imports of e-bikes originating in China subject to Customs registration

On 3 May 2018, the European Commission published a regulation making imports of electric bicycles originating in China subject to registration.

Registration has been requested by European e-bike manufacturers in the context of the dual anti-dumping and anti-subsidy investigations initiated on 20 October 2017 and 21 December 2017 respectively.

Beginning on 4 May 2018, import transactions involving the product under investigation must be registered with the competent customs authorities. At present, there is no direct impact other than this administrative requirement. However, depending on the outcome of the investigations, registration ultimately could lead to the retroactive collection of anti-dumping duties on registered imports.

Provisional anti-dumping and anti-subsidy measures are expected in July and September 2018, respectively.

The allegations of the complainant requesting the imposition of anti-dumping measures estimate that dumping margins on e-bikes will range from 193% to 430%, although it is not yet possible to estimate the amount of subsidization.

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Americas

Colombia

VAT tax base for goods imported from free trade zones

On the basis of article 112 of Decree 2147/2016 and other tax and customs dispositions, the tax authorities released an official opinion whereby it is established that the VAT tax base for the import of goods from free trade zones does not include foreign materials meeting the origin criteria under Free Trade Agreements with Colombia.

Industry and commerce tax to be paid in municipality where subscriber located

According to the Ministry of Finance and Public Credit, when cable, internet, and fixed telephony services are provided, the industry and commerce tax (ICA) must be paid in the municipality where the subscriber of the service is located, as per the respective contract.

Likewise, for mobile internet and mobile telephony services, the subscriber's main domicile reported in the contract must be taken into account to determine the municipality where the ICA must be paid.

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Asia Pacific

Australia

2018-19 federal Budget includes new GST measure on certain offshore sales

The federal Budget for 2018-19 was announced on 8 May 2018, see Budget Paper No. 2. The Budget contained a number of indirect tax changes, including a GST change that will affect offshore entities selling Australian hotel accommodation online.

GST for offshore providers of online hotel bookings

From 1 July 2019, offshore businesses selling hotel accommodation in Australia will be required to calculate their GST turnover in the same way as Australian-based suppliers. Currently, offshore sellers of Australian hotel accommodation are exempt from including those sales in their GST turnover, with the result that they may not be required to register for and charge GST on their mark-up over the wholesale price of the accommodation.

The measure will apply to sales made on or after 1 July 2019. Sales occurring before that date will not be affected even if the booking is for accommodation on or after 1 July 2018.

Further details about the practical application of the measure, including in circumstances where more than one platform/seller is involved in a sale of accommodation, are awaited. Draft legislation is likely to be released for consultation later in 2018.

Removal of the exemption is in response to the increasing trend for Australian and foreign consumers to book Australian hotel accommodation through online booking services based offshore. This measure is intended to ensure the same GST treatment of Australian hotel accommodation, regardless of whether the booking is made via a domestic or offshore service.

Customs duty and GST change for imported tobacco

From 1 July 2019, entities importing tobacco and tobacco products (tobacco) will be required to pay customs duty and GST at the time of importation. This is a change to current arrangements, which permit imported tobacco to be stored in a licensed warehouse, with duty and tax liabilities delayed until the tobacco is removed from the warehouse and enters the Australian market. Transitional treatment is proposed for tobacco held in a licensed warehouse on 1 July 2019, allowing eligible affected entities to pay the liability on the warehoused stock within 12 months.

Also from 1 July 2019, a permit will be required to import tobacco into Australia.

These measures are also being accompanied by substantial additional funding to bolster detection of illegal domestic tobacco production and trading of tobacco on the black market.

Duty free treatment for placebos and clinical trial kits

From 1 July 2018, imports of placebos and clinical trial kits will cease to be subject to customs duty. Imported medicines are already duty free, so this change is expected to simplify the importation of placebos and clinical trial kits by removing the need to differentiate between them and medicines.

Alcohol excise measures

From 1 July 2019, the Alcohol Excise Refund Scheme cap will be increased to AUD 100,000 per financial year. The cap is currently set at AUD 30,000. The scheme provides eligible domestic alcohol producers a refund of 60% of excise paid, up to the cap.

From 1 July 2019, the concessional draught beer excise rates that are currently applicable only to beer in kegs exceeding 48 liters will be extended to beer in kegs of 8 liters or more. This change is expected to benefit craft beer brewers, putting them on a more even footing with large brewers.

Additional benefit for Australian AEO-equivalents

Entities with 'Australian Trusted Trader' accreditation (i.e. effectively, Authorized Economic Operators) can be given access to additional benefits in relation to imports under Free Trade Agreements (FTAs). The Budget announced that trusted traders will be given access to an additional benefit in the form of not being required to produce country of origin documentation when claiming preferential duty treatment under certain FTAs. Details about the commencement date for this benefit, and the FTAs it will apply to, have yet to be announced.

Removal of luxury car tax for cars refurbished outside Australia

From 1 January 2019, luxury car tax (LCT) will no longer apply to cars being re-imported into Australia after refurbishment overseas (i.e. where the car's value exceeds the relevant LCT threshold). The refurbishment of a car in Australia cannot result in a LCT liability, and this measure is designed to remove the inconsistency in tax treatment for cars sent overseas for refurbishment.

Extension of the Director Penalty Regime to cover indirect tax debts

As part of a package of measures to tackle illegal phoenix activity, the Government will extend the Director Penalty Regime to GST, luxury car tax, and wine equalisation tax in order to make directors personally liable for their company's indirect tax debts. This change will take effect when the implementing legislation receives Royal assent.

Extension of the Indirect Tax Concession Scheme

Access to refunds of indirect tax, including GST, luxury car tax, fuel and alcohol taxes, under the Indirect Tax Concession Scheme, has been granted or extended to diplomatic and consular representations of Costa Rica, Cote d'Ivoire, Guatemala, and Kazakhstan in Australia. The date of effect of these access changes has yet to be announced.

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Victoria announces new point of consumption wagering tax

On 14 May 2018, the Victorian Government announced that it will introduce an 8% point of consumption wagering and betting tax (POC tax) from 1 January 2019. Broadly, the POC tax will apply to operators, wherever located, deriving revenue from wagering and betting activity by customers in Victoria. Operators will be required to register for, report, and pay the POC tax once their actual or anticipated net wagering revenue for the year ending 30 June exceeds the tax-free threshold. The threshold for the financial year ending 30 June 2018 will be AUD 500,000, and AUD 1 million for later financial years. Affected operators will be required to report and pay the POC monthly.

Several other states also have taken steps towards introducing POC wagering taxes:

- South Australia introduced a POC wagering tax (Betting Operations Tax) on 1 July 2017, at a rate of 15% with a AUD 150,000 tax-free threshold;

- Western Australia announced in the 2017-18 state Budget that it would introduce a 15% POC wagering tax, with a target start date of 1 January 2019;

- Queensland appears likely to introduce a 15% POC wagering tax, pursuant to an election campaign commitment made by the state Government in November 2017;

- New South Wales issued a discussion paper in March 2018, to facilitate consultation on the merits of a POC wagering tax, as well as the design and operational features of such a tax if it were to be introduced.

The introduction of POC wagering taxes will directly impact wagering and betting operators with customers located in affected Australian states, regardless of whether the operator is based in Australia or is based offshore. As these taxes are state-based, multiple registration, reporting, and payment obligations could arise with the introduction of each jurisdiction's POC wagering tax.

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Malaysia

Abolition of GST

Malaysia's recent general elections resulted in a change in the Federal Government. Pakatan Harapan, the coalition forming the new Government, campaigned on a comprehensive reform agenda which included replacement of Goods and Services Tax (GST) with a Sales and Services Tax (SST).

On 17 May, the Government issued a number of orders, the impact of which are that with effect from 1 June 2018, all goods and services that were subject to GST at 6% will now be subject to GST at the rate of 0%.

The change will remain in effect until further notice from the Ministry of Finance.

For transitional purposes, businesses must take into account section 66 and 67 of the GST Act and the time when the change will take effect, i.e., 1 June 2018.

In summary, section 66 provides that GST will be charged at 6% on the higher of the following amounts:

- Full or part payment received before the effective date; or
- The value of the supply of the goods or services supplied before the effective date.

  The value of the supply will be determined based on the extent to which the goods are removed or made available, or the services performed.

The new 0% rate will be charged on the difference, if any, between the amounts determined above and the total value of the supply.

In addition, for contracts that have been entered into but were not executed by 31 May 2018, section 67 of the GST Act allows the supplier to deduct from the agreed GST inclusive price, the amount of GST due to the reduction in rate on 1 June 2018.

In view of the short time frame to the change of rate, it is critical that businesses immediately focus on the following areas:

- Review status of on-going supplies and the applicable billing and payment arrangements to ensure that GST is accounted for at the correct rate.
- Ensure that the GST 03 return captures standard rated supplies (at 0%), exempt supplies, disregarded and other supplies correctly.
- As exempt supplies are still in place, mixed suppliers still need to undertake partial exemption calculations for any input tax captured after 1 June 2018.
- Pricing strategies and considerations for post-1 June 2018, including price displays, to reflect the Government's stated intentions for the removal of GST.

On 22 May 2018, the Royal Malaysian Customs Department (RMCD) issued an updated FAQ on the transition from 6% to 0% of the standard rated supplies, see FAQ Transitional 6% – 0%. (The FAQ issued on 17 May 2018 was cancelled.) The FAQ covers several topics including tax invoices, GST returns, the interpretation of section 66, and the impact of schemes.

It is expected that the effective removal of GST is a prelude to the introduction of the new SST regime in the coming months. In addressing the transitional issues for 1 June 2018, it is also therefore important that business start looking ahead to prepare for the impending SST.

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New Zealand

Discussion Document released on GST on imported low value goods

Non-resident retailers selling to New Zealand consumers will be required to register for and charge New Zealand GST.

Following the introduction of an offshore vendor registration for non-resident suppliers of 'remote' services in 2016, it is now proposed to have a similar system for suppliers of low value goods to consumers in New Zealand from 1 October 2019. The new rules would apply to offshore suppliers that make supplies (or expect to make supplies) of goods to New Zealand end consumers of NZD 60,000 or more in a 12-month period. Electronic marketplaces and re-deliverers will also have a requirement to register and comply with the new rules.

Low value goods will be defined as imports with a customs value of NZD 400 or less (excluding GST). Tariffs and cost recovery charges will no longer apply to supplies covered by the new rules (alcohol and tobacco are excluded from these rules).

Under the current GST rules, all sales by non-residents of goods on which the total amount of GST and duty is less than NZD 60 per shipment are not subject to GST at the border and no GST is due on the sale. Due to varying rates of duty on goods, there is no single value on which GST does not apply, in some cases it is under NZD 400, and in other cases only goods under around NZD 230 are not subject to GST currently. The new rules will remove this distinction and simply focus on whether the value of goods purchased is NZD 400 or less.

A Government Discussion Document has been issued calling for submissions on the proposed rules, primarily focused on ensuring the proposals are workable and do not cause excessive compliance costs, see GST on imported low-value goods proposals launched. Submissions on the discussion document can be made until 29 June 2018.

How will a supplier know if a customer is a New Zealand consumer?

Suppliers will need to charge GST if the destination of the goods is a delivery address in New Zealand.

Offshore suppliers will not be required to return GST on supplies to New Zealand GST registered businesses, nor will they be required to provide tax invoices. There will be an optional rule allowing offshore suppliers to zero-rate supplies to New Zealand GST registered businesses. This approach would allow any GST incurred by the offshore supplier to be claimed back (for example costs of attending trade fairs in New Zealand).

Offshore suppliers will be able to presume that a New Zealand resident customer is not a GST registered business unless the customer has provided their GST registration number, New Zealand Business Number, or otherwise notified the supplier of their GST registered status.

If offshore suppliers are making supplies of types of goods that are typically consumed only by businesses, it may be possible to seek agreement from the tax authorities (Inland Revenue) that it can be presumed all customers are GST registered businesses. This rule already exists for the existing remote services rules.

Non-resident marketplaces

When certain conditions are satisfied, an operator of an online marketplace may be required to register and return GST on supplies made through the marketplace, instead of the underlying supplier.

It is proposed that a marketplace would be required to register when customers would normally consider the marketplace to be the supplier, and this is reflected in the contractual arrangements between the parties; for example, if the marketplace authorizes the charge to the customer, authorizes delivery to the customer, or sets any of the terms and conditions of the transaction.

Re-deliverers

Catering to the needs of New Zealand consumers who want to purchase from retailers who will not ship to New Zealand, there are now a range of businesses that create local delivery addresses and then ship the goods to New Zealand. There are also personal shopping services available.

These businesses will be liable to register for GST and will need to collect the 15% GST on the value of the goods as well as their services (regardless of whether this includes international transport).

Customers using re-delivery services could be double taxed, with New Zealand GST being added to a supply that may have also had a domestic sales tax applied due to the local delivery address being supplied to the supplier.

Supplies above NZD 400

Where the value of individual goods exceeds NZD 400, the current rules will continue to apply, and rather than the supplier charging GST, GST (and any applicable duty) will be collected at the New Zealand border, with the purchaser unable to collect their goods until the tax is paid.

If multiple goods are purchased in one transaction, with the total transaction value exceeding NZD 400, then GST should be charged on all individual goods costing less than NZD 400. For example, if six items costing NZD 200 each are purchased (NZD 1200 total), GST of NZD 180 should be charged by the offshore supplier. The purchaser will likely need to show evidence to New Zealand Customs that GST had already been charged on the consignment.

Compliance requirements

Offshore suppliers required to register under these rules will be able to apply for a simplified 'pay-only' registration basis, or alternatively may undertake a full registration allowing them to claim back any New Zealand GST incurred in making New Zealand sales.

Offshore suppliers who are already GST registered under the remote services rules do not need to separately re-register for these new proposed rules.

GST returns will be due in quarterly instalments (March, June, September, and December).

Key issues for suppliers

Suppliers who sell low value goods to consumers in New Zealand should start thinking about how the new rules could impact their business.

A range of issues will need to be considered and addressed before the rules take effect including:

- Can total sales be easily tracked by jurisdiction?
- Will the level of supplies to New Zealand end consumers exceed the registration threshold?
- What type of supplier is the supplier and what specific rules will apply: actual supplier, online marketplace operator, or re-delivery service?
- What modifications would be necessary to websites and/or business processes to determine whether New Zealand GST should apply?
    - Determining the delivery address of the customer
    - Determining whether a customer is an end consumer or a GST registered business
    - Determining the NZD value of the transaction
    - Being able to remove any local sales tax and replacing it with 15% GST

    - Including freight charges when calculating GST
    - Dealing with returned or replaced goods for GST purposes
    - Invoicing processes
- Based on the level of expected supplies, what reporting period and compliance obligations will apply?
- Does the business wish to continue shipping to New Zealand or effectively outsource the compliance to a marketplace or re-delivery businesses?

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EMEA

Gulf Cooperation Council

VAT update

In the Kingdom of Saudi Arabia ((KSA) and the United Arab Emirates (UAE), the VAT system is now fully operational and most businesses have filed their first VAT returns. However there have been no further firm announcements on the VAT implementation plans of the other GCC Member States, although there have been a few comments and press releases that suggest that those states are proceeding through their internal processes. In Bahrain, the Finance Minister, Sheikh Ahmed bin Mohammed al-Khalifa, stated that Bahrain would go ahead with the implementation of VAT by the end of 2018. In Qatar, a newspaper announced that VAT will be implemented by 1 January 2019. The Kuwaiti Parliament Budget Committee has confirmed that the introduction of VAT will not take place until 2021. In Oman there have been no formal statements made on internal preparations for the implementation of VAT for some time.

KSA – VAT

The KSA General Authority of Zakat and Taxes (GAZT) has published several important guidelines on VAT in recent months:

- VAT recovery – Currently only available in Arabic, clarifies points on certain input tax recovery issues including Arabic invoicing and import VAT.
- Import and export guideline – Currently only available in Arabic, provides guidance on the transitional treatment of goods and services imported between GCC countries, goods supplied prior to customs clearance, how to complete the customs declaration when goods are imported into KSA, and tax-exempt imports, including zero-rated goods such as eligible medications and medical equipment.

- Financial services sector industry guideline – Provides the treatment of financial services and insurance including single supply and multiple supplies, VAT recovery, application of VAT exemption, and place of supply rules.

- Digital economy – Published recently in English, clarifies pertinent definitions (such as 'digital economy') and discusses various issues regarding electronic services, including registration, place of residence of supplier and customer, place of supply (covering use and enjoyment rules), importing goods in the digital economy), and transitional rules applicable to the digital economy.

Further, GAZT has now linked direct and indirect tax compliance. In order to obtain the zakat/tax certificate in a timely manner, zakat/taxpayers should ensure that they are compliant with the VAT regulations and should have no pending direct or indirect tax matters with the GAZT.

KSA – excise tax

GAZT has also released the excise tax guidelines, which cover topics such as registration, payment, returns, refunds, and movement of goods. The publishing of comprehensive guidelines suggests that the KSA tax authorities are now comfortable with their understanding of the practicalities of excise tax compliance. As such, the possibility of GAZT commencing more widespread audits has increased.

UAE – VAT

In UAE, the temporary waiver granted by the Federal Tax Authority (FTA) on late registration penalties came to an end on 30 April. From 1 May, any business that is obliged to have become VAT registered but fails to do so at the correct time will be liable to pay AED 20,000 for late registration and potential further penalties for late payment of tax due, failure to submit tax returns, and even tax evasion.

The FTA has released several important guidelines on VAT in recent months:

- VAT refund for business visitors user guide summary – Provides guidance to foreign businesses on how to claim VAT refunds in the UAE as per Article 67 of the UAE VAT Executive Regulations. Each refund claim shall cover a period of 12 calendar months and the minimum amount to be claimed shall be AED 2,000.

- Payment user guide – Provides a step-by-step procedure to businesses on how to make payments of VAT and excise tax via e-Dirham or credit card and also through a newly released method of payment called GIBAN which allows taxable persons to make a direct fund transfer to the FTA through online banking channels or a bank teller.

- VAT guide on director's services – Provides some clarification on the VAT treatment of director's services including liability to register for VAT, place of supply, the imposition of VAT, the recovery of input tax, and the treatment of directors' fees in special scenarios.

- Clarifications user guide – Discusses what clarifications are (ruling requests from the FTA on specific VAT issues), including how to apply and who can submit a clarification request. It should however be noted that the responses do not have the force of 'rulings' as may be understood in other countries.

- VAT refund for building new residences by UAE nationals guide – Explains how UAE nationals can claim a refund of VAT incurred on the construction of a new residence for own use.

The FTA recently issued Cabinet Decision No. (55) of 2017 on charities that may recover input tax. The Decision, which has retrospective effect from 1 January 2018, confirms that certain charities (as specified in an annex) will be able to recover all the VAT input tax they incur, with the exception of tax excluded from recovery by virtue of the UAE Executive Regulations on VAT and tax paid for goods and services used for making exempt supplies.

The FTA released a statement clarifying the treatment on UAE transitional contracts, see Federal Tax Authority Clarifies Liability for VAT in Active Contracts Signed Prior to January 1, 2018. For contracts entered into prior to 2018 that state that the consideration is exclusive of VAT, the supplier may be able to charge VAT on top of the contract price, however if the contract states that it is inclusive of VAT then the supplier will be unable to increase the cost to reflect the VAT. For silent contracts, the transitional rules should have been observed (checking with customer if they are registered for VAT and can recover that VAT, prior to 1 January 2018), and where the rules have not been observed and the registered customer has not been contacted prior to the VAT implementation date, then the contract value will have to be treated as VAT inclusive. Generally commercial relationships play an important role in this regard and it has been observed that the contracting parties may still agree to account for VAT in addition to the contract value if they can reach an agreement as such between themselves.

The FTA Board of Directors has formally approved the implementation of the Tourists Refund Scheme, see Federal Tax Authority's Board of Directors approves Implementation Plan for Tourists Refund Scheme, which should enable tourists to recover VAT charged to them in UAE. It is intended to include outlets and points of sale across UAE within the refund system. However, there have been no details published yet on when this scheme will come into force or how it will be operated in the UAE.

UAE – excise tax

The FTA has announced the launch of a digital tax stamp system on tobacco products, see Federal Tax Authority Launches Digital Tax Stamp System to Verify Payment of Excise Tax on Tobacco Products. A digital stamp containing tax-related data will be applied to the packaging of certain excisable goods to ensure excise tax has been paid and to facilitate the monitoring and inspection of the goods by the FTA. This system is expected to come into effect early 2019, initially for cigarettes and then for all tobacco products.

Deloitte's activities

Deloitte Middle East has been conducting a series of information sessions and round table conferences across the GCC, bringing businesses together from specific sectors (VAT return filing, the interaction of customs and VAT, financial services, construction, etc.) to discuss the interpretation and application of VAT regulations across these sectors and provide these businesses with a platform to discuss pertinent VAT related issues that need further clarification from the FTA. Additional round table events are also planned post the Ramadan and holiday season in the UAE and wider GCC.

The doing business guide in Kuwait was also released by Deloitte Middle East recently. The guide addresses the key tax considerations for doing business in Kuwait, alongside key legal, economic and market drivers, which affect businesses that are looking to invest in the country, or those who have been present there for some time, but are looking to undertake a review of their tax exposures, which may include remedial or long-term solutions.

Deloitte has recently published a report, VAT in Oman, to assist businesses on the introduction of VAT in the country. The guide covers various aspects of the forthcoming implementation including the most impacted industries, application of the tax, and suggested pre-implementation actions.

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Austria

CJEU judgment on linear triangulation

In *Firma Hans Buhler*, the Court of Justice of the European Union has ruled that companies with multiple VAT registrations may be able to use triangulation more widely than previously thought.

The taxpayer (FHB) purchased goods from a supplier in Germany and resold them to a customer in the Czech Republic. FHB was registered in Germany, but had also registered for VAT in Austria, and used its Austrian VAT registration number (VRN) to invoice its customer. The supplier was responsible for moving the goods to the Czech Republic, and FHB applied the triangulation simplification.

The CJEU has ruled that, in this case, only the VAT identification number quoted in relation to the intra-Community acquisition must be taken into account. The benefit of triangulation cannot be denied to FHB in Austria just because it was also registered in Germany. Once FHB decided to use its Austrian VRN, it had to be consistent and ignore its own German VRN.

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Finland

Government proposal on implementing the EU Voucher Directive

On 28 March 2018, the Government released the legislative proposal on implementing the EU VAT Directive regarding the VAT treatment of vouchers into the Finnish VAT Act.

According to the proposal, new articles including the definition of vouchers as well as the distinction between a single-purpose voucher and a multi-purpose voucher will be added to the VAT Act.

The legislative changes are to take effect as of 1 January 2019.

New SAC ruling regarding deductibility of VAT on costs related to sale of immovable property

The Supreme Administrative Court (SAC) issued a ruling on 4 May 2018 (SAC 2018:68) regarding the deductibility of VAT included in costs related to the sale of immovable property.

A Oy owned immovable property which it let out. The lease agreements were subject to VAT, as A Oy has opted to tax with respect to the lease of these premises. The company had entered into, first, a preliminary agreement and, subsequently, a sales agreement, on the sale of this immovable property, according to which it was obligated to cleanse the soil and demolish the existing buildings prior to the sale.

The question was whether A Oy was allowed to deduct the VAT included in the soil cleansing and the demolishing costs.

The SAC stated that the circumstances in which the costs have incurred are to be taken into consideration. In the case at hand, the costs had only been incurred after entering into the preliminary agreement and mostly also after entering into the sales agreement on the sale of the immovable property. Hence, according to the SAC, the costs were not related to the value-added taxable letting of premises, but to the VAT exempt sale of immovable property. Consequently, the SAC ruled that the VAT included in the soil cleansing and the demolishing costs was non-deductible.

In a wider context, according to this ruling it now seems that the current legal praxis confirms a stricter approach to deducting VAT included in costs related to the sale of immovable property. Previously, it has, on the basis of earlier SAC rulings, been possible to deduct such costs as overhead costs relating to the taxpayer’s taxable business in general. However, the tax authorities have questioned this approach during recent years, and now SAC has confirmed the amended interpretation. Accordingly, such costs are now easily linked directly with the VAT exempt sale of real estate and, hence, no VAT deduction right exists.

Customs' comparison data on imports of goods now available in MyTax

The Finnish Tax Administration has published a bulletin according to which the Customs' comparison data on imports of goods is now visible in MyTax, the electronic portal of the Finnish Tax Administration. The comparison data can be found under the box for 'Import of goods from outside the EU: Customs' comparison data on imports of goods'.

The comparison data will be available in the beginning of the month following the tax period in question; the comparison data for the import VAT to be reported on the VAT return of March was visible in MyTax in the beginning of April.

The comparison data is provided by Customs and is based on the Customs clearance decision including the Customs value and the other charges levied by Customs. The taxpayer is obliged to calculate both the tax basis of the imported goods and the import VAT to be reported on the VAT return. The taxable amount reported on the VAT return will generally differ from the Customs' comparison data. Any possible substantial differences should, however, be taken into consideration.

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France

Court cases on qualification of permanent establishment

Two recent decisions have been published relating to VAT permanent establishment (PE) exposure in France.

In a decision by the Administrative Court of Appeal, the Court considered that the criteria were not met, whereas the Supreme Court in another case ruled that a VAT PE was characterized.

It is always useful to review court cases, as the existence of a PE (service provider) should be characterized with multiple evidence to prove the cumulative presence of human and technical means.

Intra group supplies of services

In *Valueclick International* the Administrative Court of Appeal of Paris held that a French company was not a PE of an Irish company for marketing representation, management, back office, and administrative assistance services.

With regard to human means: the employees of the French company could not decide on their own about the online publication of advertising spots. Indeed, campaigns could not commence without the upfront approval and signature of the contracts by the management of the Irish company, even though the signature was automated and consisted of a simple validation and cross check of the contracts negotiated and elaborated by the employees of the French company.

With regard to the technical means: even if the French equipment enabled the French company to access the digital resources of the group, the necessary infrastructures for rendering the services were located abroad.

Accordingly, the existence of human and technical means did not exist in the case at hand.

This decision (in favor of the taxpayer) will be of interest, even if it is not upheld by the Supreme Court.

Transport commissionaire activity

In *Société PetO Ferrymasters* a British sea carriage commissionaire had signed a client assignment contract with a French company carrying out the same activity. They also signed a contract for providing transport services and their organization.

The tax authorities considered that the British company had a VAT PE through the French company, and therefore the supply of transport services should be tied to this PE.

The British company had to give approval for any new clients and suppliers, managed the systems for the reservations, and followed up the transport, as well as the insurance linked to the business, whereas the French company ensured the business development, by looking for new clients as well as physically organizing the transport.

The French entity had the power to negotiate (including prices) with the clients and suppliers on its behalf. For this purpose, the company had three offices in France, with customer service ensuring the reception of the orders, a specific service for the organization of the transport, and a sales department.

Therefore, the French entity should be seen as a structure having sufficient human and technical means to perform the transport services. Accordingly, the Supreme Court held that the British company had a PE in France through the French company.

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Hungary

Deadline approaching for real-time invoice data provision obligation

There is now only a month left for taxpayers to comply with the legal requirements for real-time invoice data provision, which enter into force in Hungary on 1 July 2018. In order to support the preparation for the obligation, the tax authorities are publishing, on an ongoing basis, information and documentation regarding the real-time invoice data provision obligation. The latest updates are available on the website of the tax authorities, including in English: https://onlineszamla-test.nav.gov.hu/home.

Recent CJEU judgment on whether it is possible to reduce VAT base on bad debts

It is recently become an issue of interest as to whether taxpayers are entitled to VAT bad debt relief, following the November 2017 Court of Justice of the European Union judgment of *Enzo Di Maura*, which confirmed that EU Member States are not allowed to take disproportionate measures that effectively preclude taxpayers' rights regarding VAT bad debt relief. In February 2018, the CJEU issued another judgment in *T-2* in which it referred back to the findings made in *Enzo Di Maura*.

Taking into account the fact that Hungary did not opt for bad debt relief in the case of total or partial non-payment, the Hungarian legislation does not include any provision on the right to adjust previously paid VAT with respect to bad debts. However, bearing in mind the abovementioned CJEU decisions, the applicability of the national provisions currently in force may become questionable, which could allow Hungarian taxpayers that have suffered bad debts to make an adjustment of the previously paid VAT.

However, there is no official statement or court decision issued by the Hungarian authorities or courts so far in this respect. Accordingly, the potential application of the judgments remains uncertain.

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Iceland

VAT on sales of cross-border services

A Bill amending Act no. 50/1988 on Value Added Tax has been submitted before Parliament whereby changes are being proposed on VAT on sales of cross-border services. Under the amendment, the destination principle will be adopted, which means that if services are supplied to a foreign party then the services are to be considered as used outside of Iceland and not subject to VAT in Iceland. The rule applies to sales to foreign 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 sales 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.

According to the proposed amendment, the destination principle will also apply to purchases of services from foreign businesses. Icelandic businesses will pay the VAT on any purchase of services from a foreign business (reverse charge mechanism) and this will apply equally to businesses that are registered for VAT purposes in Iceland and businesses that are exempt from VAT, as long as they have some economic activity. The reverse charge mechanism will also apply to non-businesses, but only for certain types of services. If electronic services, telecommunication services, and broadcasting and television services are provided to non-businesses then the service provider will need to register for VAT purposes in Iceland if they reach ISK 2 million turnover in a 12 month period. The proposed amendment further defines what constitutes electronic services, telecommunication services, and broadcasting and television services.

Sales at lower VAT rate

Also, under proposed amendments in the Bill, electronic sales and subscriptions of magazines, newspapers, and countryside- and district-news booklets, as well as subscription fees for radio and TV stations, which currently are subject to the standard VAT rate of 24%, will be subject to the lower VAT rate of 11%.

VAT input tax on vehicles

It is also proposed in the Bill that tourism licensees that operate passenger vehicles which are vehicles for eight or fewer passengers will be able to deduct VAT on the purchase and operation of the vehicles as VAT input tax, provided they have a licence for transportation as tourist services.

Paper and magazine subscriptions in hardcopy

Further, it is proposed that foreign businesses selling paper and magazine subscriptions in hardcopy will need to register for VAT purposes if they reach a ISK 2 million turnover in a 12 month period. It is now the obligation of the purchaser of the subscriptions to pay the VAT and not the seller of the subscriptions.

VAT registration through a simplified registration scheme

Another Bill amending Act no. 50/1988 on Value Added Tax has been submitted before Parliament, where it has been proposed that foreign businesses will be able register for VAT purposes in Iceland through a simplified registration scheme when selling VAT-subject services to non-businesses in Iceland. The simplified registration scheme will only be available for foreign businesses selling electronic services, telecommunication services, and broadcasting and television services to non-businesses in Iceland, as well as to foreign businesses selling magazine and newspaper subscriptions in hardcopy, and tourism businesses selling VAT-subject services in Iceland.

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Ireland

CJEU AGO on VAT recovery on costs incurred in unsuccessful takeover

The Advocate General of the Court of Justice of the European Union has issued an Opinion that VAT is recoverable on costs incurred by Ryanair in its unsuccessful takeover of Aer Lingus by way of the purchase of its shares in 2006.

In the course of its takeover bid, Ryanair incurred VAT of EUR 770,000 on professional costs and sought to recover that VAT from Revenue. Ryanair argued that it should be entitled to recover the VAT on the basis the costs were related to the activity of managing Aer Lingus, which it planned to do after the takeover.

Revenue disallowed the recovery of the VAT on the basis that the takeover did not proceed and that the costs were essentially related to the holding of shares. (In broad terms, VAT on costs related to the purchase of shares, which is regarded as a non-business activity for VAT purposes, is not recoverable.)

Ryanair took a case to the Appeal Commissioners, the Circuit Court and the High Court, all of whom held in favor of Revenue. In March 2017 the Supreme Court took the view that the resolution of matters involved questions of EU law and sought clarification of the law from the CJEU.

While the Advocate General's opinion favors Ryanair, the company will still have to wait for the CJEU to issue its ruling, which will likely take about six months. Following this, the Supreme Court will need to issue its final ruling, which may take another eighteen months.

Deloitte Ireland notes that assuming that ultimate judgment goes in Ryanair's favor, it will bring certainty to the VAT recovery position for all businesses that have incurred costs on the acquisition of other companies that ultimately did not proceed. In the meantime, given the timelines involved in this case, those businesses that have incurred VAT in a similar way, should now consider claiming a refund of that VAT. This is particularly important where the costs were incurred within the last four years as there is a four year time limit for claiming refunds of VAT.

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Italy

Technical rules on e-invoicing published

On 30 April 2018, the Director of the Italian Tax Authorities published Act n° 89757/2018 on the new e-invoicing obligation, providing new rules for generation, transmission, receipt, and storage of electronic invoices and related credit/debit notes.

As previously announced, the e-invoicing obligation (introduced by the 2018 Budget Law) will be effective from 1 July 2018 for sales of fuel and for subcontractors of the public administration only, and will apply to all transactions (B2C and B2B) from 1 January 2019.

The following technical specifications were released:

- The technical specifications for the generation of e-invoices (arising from the technical specifications for the *Fattura PA* e-invoice for invoices to public administrations);

- The technical specifications for the new 'reporting of data on cross-border transactions', which will also be effective as of January 2019 (i.e. a communication similar to the 'communication of invoices data' but limited to non-resident counterparties, as all the invoices between Italian established/VAT registered subjects are already traced by e-invoicing);

- Circular n° 8/2018, providing preliminary clarifications on e-invoicing and means of payment for the supply of fuels (for which e-invoices are mandatory from July 2018) and on the scope of application of the new rules on e-invoicing for subcontractors to public administrations.

Furthermore, there are a number of new simplifications affecting the new invoicing process for operators, including the following:

- The Italian Tax Authorities (ITA) will store e-invoices on behalf of taxpayers that have applied for a specific e-archiving service agreement via the ITA web at the time of the registration at the Interchange System (SDI);

- A new web service, made available by ITA for free, will allow the registration of the telematic address (recipient code or certified e-mail address) chosen by the taxpayer to receive e-invoices;

- E-invoice delivery via the SDI will be made alternatively by certified e-mail (PEC), electronic services made available by the ITA (web or app), or further instruments managed by SDI which require a specific application at the time of registration with the SDI;

- For any e-invoice without the mandatory elements or with errors in the mandatory data, the SDI will discard the invoice, which will be considered as not issued (there is no need to issue a credit note for fiscal purposes, only an internal accounting credit note if the invoice has been already accounted in the VAT ledger);

- If an invoice is valid from a technical point of view (the elements required by the technical specifications are met), but the system cannot deliver electronically the XML file (for example because the PEC address of the recipient is full), the invoice is considered as issued for tax purposes and it will be made available to the customer at the ITA website (the supplier must notify this to the customer).

Clarification of application of split payment mechanism

In Circular Letter n°9/E dated 7 May 2018, the tax authorities provided official clarifications of the application of the split payment mechanism (under Art. 17-ter, Presidential Decree n°633/1972) as recently modified by the Legislative Decree n°148/2017.

In particular, from 1 January 2018, the scope of application of the split payment mechanism is extended to:

1. National, Regional and Local Economic Public Bodies, including so-called 'special companies' (i.e., bodies separate from the municipality or the province from which they functionally depend) and public companies for care service to individuals (ASP);

2. Foundations held by the public administration, for which control is not less than 70% of the endowment fund. In this respect, it is not yet fully clarified as to whether foundations controlled by public entities through the appointment of the management body of the foundation may fall within the scope of the split payment mechanism;

3. Companies directly or indirectly controlled by the subjects described in points 1 and 2, as well as by companies subject to the split payment mechanism according to the new provisions;

4. Companies held at least 70% by public administrations or by companies subject to the split payment mechanism.

The above 'new' subjects are added to those already subject to split payment.

The new split payment mechanism provisions apply to transactions carried out from 1 January 2018, for which the invoice has been issued or the VAT has become due by that date. Due to the uncertainty regarding the revised scope of the split payment mechanism from 1 January 2018, the tax authorities clarified that no penalties will apply to any inaccurate application of the split payment mechanism that occurred in this initial period of the new provisions, provided that:

- The violation occurred before the issuing of Circular Letter n°9/E (7 May 2018); and

- There was no 'damage' to the Treasury for the 'non-payment' of the VAT.

VAT refund procedure

Under the European Law 2017 (Provisions for the fulfilment of obligations deriving from Italy being a member of the European Union), Italy introduced the following new rules on VAT, to close the infringement procedures commenced against Italy by the European Commission (concerning the EU Pilot 9164/17/TAXU case and the 2013/4080 case):

- A right to compensation equal to 0.15% of the value of the guarantees submitted by taxpayers for final execution of a VAT refund under article 38-bis, paragraph 4 of Presidential Decree No. 633/1972. In particular, the 0.15% compensation is calculated on the guaranteed amount, for each year of validity of the guarantee; moreover this is due only on the expiration of the statute of limitation or when it is definitively ascertained that the VAT refund is due. The new rule will apply as of 2018, starting from the guarantees that will be required for the execution of 2017 annual VAT credits (requested via the filing of the annual VAT return, April 2018) and quarterly VAT credits from the first quarter of 2018. The fact that the 0.15% compensation rule will apply for future guarantees is confirmation that the repayment of costs borne for the issuance of a past guarantee is due in its integrity.

- A refund of VAT that is not due (under Article 30-ter of Presidential Decree No. 633/1972) within two years from the date of payment of VAT or, if subsequent, from the day on which the condition for the refund of VAT takes place. For VAT not due on supplies of goods or services, based on the assessment of the tax authorities, the two years for refunds runs from the repayment of VAT to the customer of goods or services.

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New excise duty provisions

The Ministry of Finance issued a Decree on 12 April 2018, published in the Official Journal on 21 April 2018, detailing the implementing procedures of Italian Budget Law 2018, no. 205 of 27 December 2017, in relation to the activity of storing energy products in a tax warehouse managed by a third party. In particular, the subject who intends to store its own energy products in a tax warehouse of a third party should be previously authorized by the Customs Agency to carry out such activity, upon presentation of a specific application. According to art. 11 of the above mentioned Decree, this provision will apply from the first day of the third month following the publication of the Decree in the Official Journal.

Measurement system for supplying diesel fuel or fuel oil for maritime navigation

Decision no. 30354 of 4 May 2018, issued by the Customs Agency, provides that from 1 April 2019, tanker trucks and wherries used for supplying diesel fuel or fuel oil for maritime navigation must be equipped with a specific measurement system.

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Malta

European Commission issues letter of formal notice regarding yacht leasing

On 8 March 2018, the European Commission issued a letter of formal notice to Cyprus, Greece, and Malta, in relation to the VAT treatment of yacht leasing services.

The leasing of pleasure boats in principle constitutes a VAT taxable supply of services for Malta VAT purposes, insofar as the use of the boat takes place within the territorial waters of the European Union. Hence, where the lessor is a company established in Malta, Malta VAT at the standard rate of 18% is chargeable on the value of such services which is attributable to the use of the boat within the EU territory.

For the purposes of calculating the portion of the lease attributable to the use of the boat within the EU territory, in principle it is the responsibility of the lessor to ascertain and prove the time that the leased boat spends in the territorial waters of the EU and outside the EU respectively. However, it is recognized that rental companies may in practice have difficulty in carrying out this assessment *a priori*. Accordingly, the Commissioner for Revenue, following a written request, may accept that the time a boat spends within European waters can be estimated using a pre-determined percentage based on the length and means of propulsion of the vessel. The European Commission considers that the application of this method is incompatible with the use and enjoyment provisions of the EU VAT Directive.

Court of Appeal adjudicates on right to claim input VAT on capital expenditure after change of intentions

In *Cove Limited vs Direttur Generali (Taxxa Fuq il-Valur Mizjud),* the Court Of Appeal adjudicated on the existence of the right of recovery of input VAT which arose following a change of intentions.

The facts of the case revolved around a taxpayer who had incurred costs of a capital nature pertaining to the construction of five villas. Initially, the taxpayer's intention was to rent three of the villas and to sell the other two. Given that for Malta VAT purposes the transfer of immovable property constitutes a VAT exempt (without credit) supply, the taxpayer claimed input VAT on capital expenditure only insofar as this was attributable to its VAT taxable leasing activity.

However, the taxpayer subsequently decided not to sell any villas and to lease them all, and thus made a claim of the amount of input VAT corresponding to the capital expenditure incurred for the construction of the villas that were initially intended to be sold. The VAT authorities rejected the taxpayer's claim, on the basis of previous jurisprudence of the Court of Appeal. The taxpayer lodged an appeal against this decision to the Administrative Review Tribunal (ART), which upheld the taxpayer's claim. The VAT Department subsequently lodged an appeal against this decision before the Court of Appeal.

The Court of Appeal concurred with the ART. On the basis of, *inter alia*, the Court of Justice of the European Union's judgments in *Uudenkaupungin kaupunki* and *Gmina Międzyzdroje*, the Court of Appeal confirmed that a taxable person is entitled to input VAT recovery claims in respect of capital expenditure following such a change of intentions regarding its economic activities.

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Netherlands

No possibility to commence tax proceedings against cancellation of a VAT identification number

The Netherlands has a closed system of legal protection. This means that objections and appeals can only be filed against tax assessments or decisions that are open to objections, such as a decision on imposing a fine. The Supreme Court was asked to rule on the question as to whether the cancellation of a VAT identification number is likewise open to commencing tax proceedings.

The inspector in specific case had informed the entrepreneur about cancellation of the VAT identification number. Responding to the entrepreneur's notice of objection, the inspector stated there was no possibility to commence tax proceedings. The entrepreneur argued that the absence of a possibility to appeal against cancellation of the VAT identification number is contrary to EU law.

On 13 April 2018, the Supreme Court ruled that cancellation of the VAT identification number which is not based on a decision that is open to objection means there is no possibility to commence tax proceedings. The Supreme Court stated that the VAT identification system primarily serves to enforce the rules governing the levy of VAT in respect of intra-Community transactions. National tax authorities need VAT identification numbers for audit purposes. The problem is the lack of legal provisions on assigning the power to issue or cancel such numbers. Considering the relationship with the levy of VAT, the Supreme Court ruled that it should be assumed that the inspector is the competent administrative body. Hence, cancellation would constitute a decision taken in accordance with tax law. Nevertheless, according to the Supreme Court, it does not involve a decision that is open to objection, or a similar decision.

However, the Supreme Court also mentioned that even without a VAT identification number a VAT refund claim can be submitted. Based on the VAT Act, an inspector has the obligation to 'invite' anyone to file VAT returns if they make this request. Furthermore, the Supreme Court refers to an alternative way to commence tax proceedings against cancellation of a VAT identification number: the entrepreneur is able to turn to the civil courts.

Final Supreme Court decision in *Stadion Amsterdam*: one VAT rate applicable to single supply of services comprised of two distinct elements

On 18 January 2018, the Court of Justice of the European Union ruled that only one VAT rate applies to the so-called 'World of Ajax' tour through a football stadium offered by Stadion Amsterdam. The tour offered consists of a guided tour of the stadium and a visit, without a guide, to the AFC Ajax museum. The fee must be paid for both elements and it is not possible to visit the museum without participating in the guided tour of the stadium.

With reference to the judgment of the CJEU, the Supreme Court has ruled in its final decision that a single supply, which includes two individually priced elements, is taxable at the VAT rate of the principle supply, even if the price of each element could be easily identified.

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Portugal

Right to deduct input VAT incurred with a ceased supplier

A recent decision from the Administrative Court (*Tribunal Central Administrativo e Norte*) has been released concerning the analysis of whether a taxpayer was entitled to deduct the input VAT (Article 19 (1) (a) of the Portuguese VAT Code, which follows Article 168 of EU Principal VAT Directive) included in invoices issued by a specific taxpayer which, at the time of respective issuance, had already ended its activities.

After a tax audit performed by the Portuguese Tax Authorities (PTA), additional VAT assessments were issued on the grounds that the taxpayer was not entitled to deduct the input VAT disclosed on invoices issued by a supplier involved in tax fraud and which had already filed a declaration of ending of activities. On the other hand, the claimant taxpayer argued it had no knowledge that its supplier was committing fraud when issuing its invoices.

The Court considered that, although Article 19 (1) (a) of the VAT Code requires the service provider to be a taxpayer in order to admit the right of VAT deduction, it does not consider that this status is only defined by a declaration of start and termination of activity. On the contrary, the Court considered that the status of taxable person can be defined in the function of each taxable operation performed.

In addition, the Court held that the claimant taxpayer was not obliged to validate whether the supplier has already ended its activities and that such transactions were intended to defraud the Portuguese State.

As such, the Court concluded that notwithstanding the declaration of termination of activity, the service and goods provider is defined as a taxable person in so far as an invoice with VAT for the service provided was issued.

Given the legal background, the Court decided that the right of VAT deduction should not be restricted on situations such as the above.

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South Africa

Termination of anti-dumping duty on fully threaded screws with hexagon heads from China

The International Trade Administration Commission of South Africa (ITAC) has terminated anti-dumping duties applicable to fully threaded screws with hexagon heads originating in or imported from the People's Republic of China due to failure by South African Customs Union (SACU) manufacturers of the commodity to provide the ITAC with information to justify the initiation of a sunset review investigation.

The termination was made with retrospective effect from 15 November 2017.

Increase in the Dollar-Based Reference Price for sugar

The ITAC invites interested parties to comment on an application for an increase in the Dollar-Based Reference Price (DBRP) for sugar, classifiable under tariff heading 17.01 from USD 566/ton to USD 856.32/ton.

The applicant cites the current price as being below the cost of production and aims to leverage the higher price to mitigate against the Health Promotion Levy (HPL) that came into effect on 1 April 2018.

Comments should reach ITAC by 1 June 2018.

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Spain

General State Budget 2018 Draft Law

The General State Budget 2018 Draft Law has recently passed its first stage in the Congress of Deputies, and will run the course of the parliamentary procedure, with final approval expected at the end of June. The Law includes a number of indirect tax measures, and although its content is only preliminary at this stage, major changes are not expected.

The main VAT proposals are as follows:

- The application of the reduced VAT rate (10%) to cinema tickets, instead of the currently applicable standard rate (21%). The aim of this amendment is to reduce the VAT rate for cultural events, as it was increased at the beginning of the economic crisis.

- Following the latest Court of Justice of the European Union judgments concerning the applicability of the VAT exemption to the supply of services rendered by an economic interest group (AEI) to its members (including *DNB Banka*), from 1 January 2019, VAT exemption would apply only to the provision of such services if the corresponding members carry on an activity in the public interest (i.e. education, healthcare, etc.), other than financial, insurance transactions, among others. The aim of this amendment is to make the content of the Spanish VAT Law consistent with the recent CJEU judgments on this topic.

- With effect from 1 January 2019, the location rules for services rendered by electronic means would be updated, under a scenario in which such services are rendered by small entrepreneurs established in only one EU Member State to final consumers located in a different EU Member State. The aim of this amendment is to simplify the administrative procedures for suppliers of these types of services, which are currently taxable in the EU Member State where the recipient (final consumer) is established. Thus, consistent with the EU, a EUR 10,000 annual threshold has been introduced which, if not exceeded, will allow for the provision of services to be taxable where the small-/medium-sized firm supplier is established, instead of being taxable in the recipient's EU Member State.

- Further, the VAT rules will be amended where the provision of such services are rendered by companies or entrepreneurs that are not established within the EU. In this case, the aim of this amendment is both to promote the use of the one-stop shop simplification schemes and to incentivize the voluntary fulfilment of the tax compliance obligations of these suppliers. Therefore, the obligation to be registered for VAT purposes in an EU Member State for these entities would be removed, in order to be entitled to apply this special regime.

The main excise duty proposals are as follows:

- The rates of Tax on Fluorinated Greenhouse Gases will be reduced. In addition, the potential liabilities for global warming caused by these gases will be updated, according to the latest EU guidelines.

- With respect to the Hydrocarbons Tax, among other measures, the regional tax rates (as the Autonomous Regions are entitled to regulate in this area) have been adapted to the state tax rate, in order to guarantee market unity within Spain. Furthermore, an exemption for this tax will be introduced when producing or importing biogas, to be employed in facilities in which electricity or heat will be produced. In addition, this exemption will also apply to self-consumption in those installations where the electricity or heat have been produced.

- An amendment has been introduced to the Electricity Tax to promote the use of electric power, with the aim of reducing the pollution caused by means of transport in cities. Also, the legislation has been updated in order to standardize the minimum tax rates, as well as to clarify that the tax exemption should apply to the owners of the facilities in which the energy is produced.

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United Kingdom

Offshore advertising structure remitted to First-tier Tribunal

The Court of Appeal has ruled that the case *Paul Newey (t/a Ocean Finance)* should be remitted to the First-tier Tribunal.

The case relates to Mr Newey's restructuring of Ocean Finance, so that UK loan broking services were provided by an entity in Jersey. The structure sought to minimize irrecoverable VAT input tax on UK advertising costs. In the Court's judgment, the First-tier Tribunal had lost sight of the fact that the Jersey entity was providing loan broking services in the UK, and this was a material error of law. Applying the guidance from the Court of Justice of the European Union, there was a clear possibility that Ocean Finance's structure was an abuse of law. The structure related to broking for UK lenders, so the EU VAT Directives were arguably engaged, and structures designed to avoid irrecoverable input tax could be abusive.

In principle, Mr Newey was entitled to establish his business in Jersey. However, a detailed evaluation of the commercial and economic reality of the arrangements was required. If the use of a Jersey company was just an 'elaborate machinery' to implement Mr Newey's wishes, then it would perhaps be an abuse of law.

No third party consideration in loyalty points scheme for VAT purposes

The Upper Tribunal has upheld the First-tier Tribunal's decision in *Marriott Rewards LLC & Whitbread Group plc*.

This concerns the operation of a points reward scheme run by Marriott whereby members of the loyalty scheme redeemed points in exchange for a 'free' stay in a hotel, the redeeming hotel (in this case Whitbread) subsequently charging Marriott, the scheme operator.

The Upper Tribunal has ruled that payments by Marriott to Whitbread (as a redeemer) were not third party consideration for supplies of hotel rooms to customers. The reward scheme might have moved money between hotels which issued points and those which accepted them as payment, but did not generate additional consideration which should be subject to VAT.

The decision is consistent with the Supreme Court's conclusion on the Nectar points scheme in the case of *LMUK*, although the taxpayers' appeals were dismissed in relation to an issue on place of supply.

Supply of booklets, not services

Paragon printed and delivered booklets (terms & conditions, and appraisal documents with policy details) to Direct Line's insurance customers. The First-tier Tribunal has ruled that this was a supply of zero-rated booklets.

The tax authorities (HMRC) argued that Paragon was providing a complex print management service, but based their argument on a framework agreement which described what Paragon could do, not on the statement of works which showed what it did (i.e. printed and delivered the booklets). In the First-tier Tribunal's view, the delivery of the booklets was not a separate service (Paragon provided delivered goods, not goods and a separate delivery service).

The First-tier Tribunal also rejected an argument that the documents could not be booklets because nobody would actually read them (Direct Line genuinely wanted customers to read the documents).

The decision shows limits to the approach adopted by HMRC to printed matter: sometimes, a supply of printed matter is just that, and should be zero-rated.

Loan administration services subject to VAT

Many challenger banks focus on making new loans to customers, and outsource the management of the loans to companies like Target Group. The First-tier Tribunal has now ruled that the services provided by Target to Shawbrook Bank did not qualify for VAT exemption. Distinguishing the *EDS* case, it held that the absence of any involvement in originating the loan meant that Target's services, although they might be "transactions concerning payments" (despite the recent Advocate General Opinion in *DPAS*), should be characterized as taxable debt collection services.

The First-tier Tribunal has therefore endorsed the approach adopted in HMRC's guidance, where it is accepted that "loan arrangement and execution services where the payment or transfer of funds is central to the supply are exempt." The fact that an outsourcer may devote little resource to advancing the loans is not a significant factor: involvement is essential to exemption.

The First-tier Tribunal also rejected an argument that Target's services amounted to the operation of a current account.

HMRC publish co-operation agreement for online marketplaces

HMRC have asked online marketplaces operating in the UK to sign an agreement to help tackle online VAT fraud on their platforms, see the agreement. Under this, a marketplace would agree to provide HMRC with data about online traders in bulk, and not just on a case-by-case basis.

There seems to be an expectation that data will be provided voluntarily, without HMRC having to resort to formal information notices. However, there is no guidance on how to resolve issues between the marketplaces and their customers that might arise as a consequence.

Under the agreement, marketplaces will also help online traders understand their UK VAT registration obligations. They will also 'respond expeditiously' when notified by HMRC of potential non-compliant traders. Names of those marketplaces who comply with the agreement will be published by HMRC.

It is recognized that the agreement is not legally binding, and will operate alongside HMRC's existing powers to counter fraud by online traders (for example, the issue of joint and several liability notices).
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