

Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include the release by the OECD of new guidance on mechanisms for the effective collection of VAT/GST, the publication by the European Commission of proposals for reforming the EU VAT system, three Court of Justice of the European Union decisions on the application of the VAT cost sharing exemption, and state budgets in Ireland, the Netherlands, and Portugal.

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Country summaries

OECD

The OECD has released new guidance to support the consistent implementation of internationally agreed standards for the VAT/GST treatment of cross-border trade, in light of the rapid and ongoing digitalization of the economy.

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Americas

Colombia

According to the tax and customs authority, when a service is provided from abroad and the beneficiary is a Colombian tax resident, a sales tax will be imposed and, therefore, there will be a tax withholding of 100% of the tax.

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The tax and customs authority has clarified certain aspects regarding cloud computing services related to the VAT exclusion.

The Energy Mining Planning Unit announced the regulation of the procedure to access the VAT exclusion for projects that generate energy efficiency.

The Ministry of Commerce, Industry and Commerce has defined the requirements to be met by micro-, small- and medium-sized enterprises that aspire to commercialize goods abroad.

Asia Pacific

Indonesia

In the context of bilateral cooperation, Indonesia and Australia will impose the rate of import duty of 0% for three flagship commodities of each country.

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Malaysia

A number of Royal Malaysian Customs Department GST guides have been amended.

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With effect from 1 September 2017, certain healthcare services will be treated as an exempt supply for GST purposes.

The National Essential Medicines List (Suffix N and Suffix X) and the Control Drug List have been expanded and accordingly the list of eligible zero-rated items for GST purposes has equally expanded.

There is an update from the recent GST Technical Committee meeting.

There is an update from the recent Customs-Private Sector Consultative Panel meeting.

Singapore

The Inland Revenue Authority of Singapore has updated and revised its GST-related e-Tax guides and website contents.

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EMEA

European Union

The European Commission has published proposals for reforming the EU VAT system (specifically cross-border supplies of goods).

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The Court of Justice of the European Union has issued three judgments concerning the cost sharing exemption.

The Court of Justice of the European Union issued a judgment relating to customs duty adjustments on defective goods, creating an opportunity for affected companies to reclaim overpaid customs duties.

Estonia

There is a new threshold for mandatory registration as a VAT taxable person.

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Finland

The Central Tax Board has issued an advance ruling on the implications of the *Skandia* case in Finland.

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The Tax Administration has provided new guidance on the VAT treatment of providing physical exercise services.

France

Questions have been referred to the Court of Justice of the European Union in two cases regarding the right to deduct VAT.

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The decree implementing the 'tax on the physical and on-line video broadcasting of audio-visual' contents was released on 21 September 2017.

There have been changes in the compliance for the Corporate Vehicle Tax.

Ireland

Budget 2018, delivered on 10 October 2017, included a number of indirect tax measures.

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The Revenue have published changes to the existing VAT return filing process on the Revenue Online System (ROS).

The Revenue have introduced the Customs Decision System (CDS) system.

Italy

A recent decree provides for an extension to the split payment regime and future VAT increases.

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There are simplifications to Intrastat reporting from FY2018.

The Customs Agency has issued guidelines and operating instructions allowing operators to use the EU Customs Decision System.

The Customs Agency provided a list of sellers of alcoholic beverages that are not required to communicate the commencement of their activity for excise duty purposes.

Latvia

The Ministry of Finance has published draft amendments to the VAT law to introduce a reduced rate of 5%.

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Netherlands

The 2018 Tax Plan has been presented to Parliament and includes important changes in the field of indirect tax.

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There is a proposal to increase the reduced VAT rate from 6% to 9%.

According to the Supreme Court, recharging costs as an economic activity is not necessarily subject to VAT.

The Supreme Court has referred questions for a preliminary ruling to the Court of Justice of the European Union regarding the VAT treatment of webcasts.

Poland

The Ministry of Finance has issued a warning regarding bundled supplies for VAT purposes.

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There are planned changes to the VAT law regarding cash registers and the register of active VAT payers.

The issue of the fixed establishment for VAT purposes in Poland is still on the radar of the tax authorities.

Portugal

The 2018 Budget law proposal has been announced and submitted by the Government to Parliament. There are a number of indirect tax proposals.

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Russia

Ministry of Finance has clarified that payment of dividends by own products is treated as a supply for VAT and profit tax purposes.

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The Ministry of Finance has clarified the VAT recovery procedure for imported goods in the absence of a hardcopy of the declaration for goods filed in electronic form.

The Federal Tax Service has clarified the application of VAT recovery by a principal purchasing goods (work, services) through a chain of agents.

The Supreme Court of the Russian Federation has clarified that the purchase of goods at an overestimated price is not reason for rejection of VAT recovery related to imported goods.

A zero export customs duty rate has been introduced for tungsten ore and its concentrates.

An export ban has been introduced on leather semi-finished goods.

South Africa Anti-dumping duty on solar glass from Indonesia has been terminated. [Read More](#)

An investigation into safeguarding duties against imports of cold-rolled steel products has been concluded.

Spain A new draft regulation would introduce certain modifications to the invoicing regulation in connection with the issuance of amending invoices as a consequence of discounts. [Read More](#)

The first binding tax ruling regarding the application of the new Immediate Information Supply (SII) has been published.

The instructions regarding the fulfilment of the single administrative document (SAD) for Customs purposes has been amended.

Switzerland VAT rate reductions are effective from 1 January 2018. [Read More](#)

United Kingdom There has been a CJEU judgment on the VAT treatment of a finance agreement. [Read More](#)

The tax authorities have changed the policy on the VAT treatment of pension fund management by insurers.

There is a consultation and draft legislation on Making Tax Digital.

The Government has published a Customs Bill White Paper.

New offences have come into force on the failure to prevent tax evasion.

Eurasian Economic Union

There has been an import customs duty rate decrease for certain types of fibers from anides, polyvinyl chloride and acrylic polymers.

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OECD

New guidance on cross-border VAT collections

The OECD has released new guidance to support the consistent implementation of internationally agreed standards for the VAT/GST treatment of cross-border trade, in light of the rapid and ongoing digitalization of the economy. The boom in e-commerce and its impact on the collection of VAT on business to consumer (B2C) supplies was identified as a key tax challenge in the context of the OECD/G20 BEPS project. The new guidance [Mechanisms for the Effective Collection of VAT/GST: Where the supplier is not located in the jurisdiction of taxation](#) builds on good practice approaches deployed by jurisdictions when they require foreign suppliers to register and collect VAT on cross-border B2C sales, as recommended in the 2015 [BEPS Action 1 report](#).

The new guidance will support enhanced compliance levels while limiting compliance costs for digital suppliers, by promoting the consistent and coherent implementation of collection mechanisms across jurisdictions.

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Americas

Colombia

Service provided from abroad subject to VAT where beneficiary is resident

According to the tax and customs authority (DIAN), when a service is provided from abroad and the beneficiary is a Colombian tax resident, a sales tax will be imposed and, therefore, there will be a tax withholding of 100% of the tax.

In addition, regardless of the name given to the agent abroad, if the agent is an economic partner, the transaction must be made at market prices and subject to the transfer pricing regime.

Services rendered in the cloud are VAT excluded

DIAN has clarified the definitions of the services regarding 'cloud computing', which have been developed according to the guidelines of the Ministry of Information Technologies.

It also clarified that software services (SAAS for its initials in Spanish), interactive platform services (PAAS for its initials in Spanish), and infrastructure as a service (IASS for its initials in Spanish) will be subject to the same tax treatment as cloud storage services, namely, VAT excluded.

Energy efficiency projects excluded from VAT

The Energy Mining Planning Unit (UPME for its initials in Spanish) announced the regulation of the procedure to access the VAT exclusion for projects that generate energy efficiency, specifically for transport, industry, tertiary and residential sector projects.

The regulation also promotes using vehicles with zero and low emissions, improvement of industrial combustion, energy management systems, energy efficient buildings, lighting LED for homes, among others.

New decree to prompt small- and medium-sized companies to export products

The Ministry of Commerce, Industry and Commerce has defined the requirements to be met by micro-, small- and medium-sized enterprises that aspire to commercialize goods abroad.

This new category of 'International Distributor' will not require liquid assets, in addition, the guarantee to be made in favor of DIAN shall correspond to 1% of the value of exports made during the 12 months immediately preceding the filing of the application. It will have the same benefits as 'International Trading Companies' that currently operate.

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Asia Pacific

Indonesia

Exemption from import duty in context of bilateral cooperation

In the context of bilateral cooperation, Indonesia and Australia will impose the rate of import duty of 0% for three flagship commodities of each country. The policy is adopted to encourage the industrial growth of both countries by expanding the export market.

Australia asks Indonesia to provide the exemption from import duty for its three main commodities, namely milk, copper cathode, and steel. In return, Australia offers the exemption from import duty for three Indonesian commodities, namely textile, footwear, and clothes.

The exemption from import duty provides an opportunity for Indonesia's industrial growth and development, especially in the textile and textile product sector. Indonesia textile and textile product export to the United States and Europe is currently subject to import duty of 5-20%.

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Malaysia

GST Guides updated

The following Royal Malaysian Customs Department (RMCD) guides have been amended. For further information and Deloitte Malaysia's comment, see [GST Chat: September 2017](#) and [GST Chat: October 2017](#).

- Guide on Insurance and Takaful as at 18 August 2017.
- General guide as at 24 August 2017.
- Guide on Event Management Services as at 13 September 2017.
- Guide on Lodging or Holiday Accommodation Services as at 20 September 2017.
- Guide on Pawnbroking as at 27 September 2017.

Amendment to Goods and Services (Exempt Supply) Order 2017

With effect from 1 September 2017, healthcare services provided by any facility managed by any university established under the Universities and University Colleges Act 1971 or the University Teknologi MARA Act 1976 would be treated as an exempt supply, as amended in the Second Schedule of the GST (Exempt Supply) (Amendment) Order 2017.

Furthermore, the words "by the registered or licensed healthcare facilities" have been removed from the items describing provision of food services to patients and any mortuary services.

The amendment will affect universities that provide healthcare services as these services are now considered as exempt supplies and as such GST would no longer be charged on these services.

On the other hand, the removal of the words "by the registered or licensed healthcare facilities" from the prescribed items is a mere deletion of repetitive words and does not affect the GST treatment for the parties involved.

GST zero-rating: update to National Essential Medicines and Drug Control lists

The National Essential Medicines List (NEML) (Suffix N and Suffix X) and the Control Drug List have been expanded and as a flow-on consequence, the list of eligible zero-rated items has equally expanded.

For the updated lists, see:

- [The National Essential Medicines List \(Suffix N\)](#)
- [The National Essential Medicines List \(Suffix X\)](#)
- [The Control Drug List \(Suffix A\)](#)

The changes in the list warrant a review of the products and their GST treatment by impacted businesses in the pharmaceutical and medical industry. The imposition of GST on zero-rated items can result in penalties being imposed, so it is critical that action is taken.

GST Technical Committee meeting update

The GST Technical Committee was formed to resolve and bring clarity to various technical issues faced by businesses. The Committee comprises various industry associations, professional bodies, and senior officers of the RMCD, and convened its meeting on 30 March 2017 to deal with several technical issues where clarification was needed. The meeting minutes were circulated on 12 July 2017.

Issues raised include the below. For details, RMCD's responses, and Deloitte Malaysia's comment, see [GST Chat: September 2017](#).

- Item 1 – GST return:
 - Disclosure under field 11 (zero-rated export supplies) of the GST-03 return.
 - Disclosure under field 16 (value of capital goods acquired) of the GST-03 return.
- Item 2 – Value of digital products in tangible mediums.
- Item 3 – New reverse charge rule effective 1 January 2017.
- Item 3 – Interpretation of 'consumed in Malaysia'.
- Item 6 – Tax invoice received by recipient.
- Item 8 – Input tax credit.
- Item 9 – Directors.
- Item 11 – Recovery and penalty.
- Item 12 – Transfer of going concern (TOGC).
- Item 13 – Leasing of an orchard.

- Item 14 – Approved toll manufacturer scheme (ATMS).
- Item 15 – Approved trader scheme (ATS).
- Item 16 – Import.
- Item 17 – Credit note/debit note.
- Item 19 – Licensed manufacturing warehouse (LMW).
- Item 24 – Tax invoice.
- Item 25 – Rebate.

Customs-Private Sector Consultative Panel meeting update

The Customs-Private Sector Consultative Panel (CPSCP) was formed to resolve and bring clarity to various technical issues faced by businesses. The CPSCP comprises various industry associations, professional bodies, and senior officers of the RMCD, and convened its meeting on 5 May 2017. The meeting minutes were circulated on 14 August 2017.

Issues raised include the below. For details, RMCD's responses, and Deloitte Malaysia's comment, see [GST Chat: October 2017](#).

- Self-certification regime.
- New policy for Demerit Point System for Customs agents.
- Different RMCD procedures adopted by Free Zones in different states.
- Compounds for minor errors.
- Amendments to Customs forms No. 1 and No. 2.
- Direct Trader Payment Scheme.
- Declaration of Inward Manifest (Customs Form no. 4 (K4)) indicating consignee as 'to order'.

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Singapore

Inland Revenue Authority of Singapore updates GST-related e-Tax guides and website contents

The Inland Revenue Authority of Singapore (IRAS) has updated and revised its GST-related e-Tax guides and website contents. Below are some of the amendments made.

Insurance industry

On 8 February 2017, there were changes made to the e-Tax guide to clarify the GST treatment of introductory services provided by insurance intermediaries.

Insurance intermediaries (for example, agents, brokers, and financial advisors) are engaged by insurance companies to solicit, sell, and arrange for insurance contracts with policyholders.

A GST-registered insurance intermediary may apply zero-rating on commissions and fees received for introducing and arranging direct general (including profit commission, overriding commission, or other product-related payments) or life insurance policies if the recipient of the services belongs outside Singapore (depending on whom the insurance intermediary has a contract with).

Otherwise, standard-rated supply treatment must be adopted.

Insurance intermediaries that have obtained the Monetary Authority of Singapore's (MAS) approval have an exception for such introductory services to be zero-rated if all conditions under section 21(3)(j) of GST Act are satisfied regardless of whether the policyholder may belong in Singapore.

As regards to the time of supply for commissions and fees, it is based on the earlier of the following:

- When an invoice is issued by the GST-registered insurance intermediary or the insurance company under a self-billing arrangement; or
- When payment is received.

Insurance companies are now allowed to use self-billing arrangements to cover transactions with GST-registered insurance, such as cash and credit agents and brokers with principal accounts.

For more details, see the IRAS [GST: Guide for the Insurance Industry \(Fourth Edition\)](#).

Aerospace industry

The following are the types of work that qualify as repair and maintenance activities, updated by IRAS on 19 June 2017:

Type of work	Description
Repair	Work to restore the aircraft or aircraft part to a serviceable condition
Modification, overhaul, improvement and upgrading	Work to improve the reliability of the aircraft or aircraft part but does not alter the nature and form of the original aircraft or aircraft part
Evaluation and recertification	Work that is performed to assess whether the aircraft part is repairable or airworthy
Maintenance	Work that includes testing of the aircraft part, cleaning and fumigation

Essentially, an Authorised Release Certificate or a Certificate of Conformity is required to prove that the aircraft part remains airworthy after the above mentioned type of work is performed to qualify for zero-rating under section 21(3)(p) of the GST Act.

For more details, see the IRAS [GST Guide for the Aerospace Industry \(Fourth Edition\)](#).

Withdrawal of Tourist Refund Scheme from cruise terminals

Effective from 1 September 2017, the below e-Tax guides have been updated to reflect the withdrawal of the Tourist Refund Scheme from the cruise terminals (Marina Bay Cruise Centre Singapore and the International Passenger Terminal at Harbourfront Centre):

- [GST Guide for Visitors on Tourist Refund Scheme \(Fifth edition\)](#)
- [GST: For Retailers participating in Tourist Refund Scheme \(Sixth edition\)](#)
- [GST: The Electronic Tourist Refund Scheme \(eTRS\) \(Eleventh edition\)](#)
- [GST: Guide on Exports \(Fourth Edition\)](#)

Tourists departing from Singapore by international cruise with purchases made on and after 1 July 2017 will no longer qualify for a GST refund under the scheme.

Import GST Deferment Scheme (IGDS)

This e-Tax guide reflects the new IGDS renewal validity period, which is revised to up to five years from the current three years. The renewal is subject to the performance of the ASK annual review/Post ACAP Review (PAR) certified by an Accredited Tax Practitioner (GST)/Accredited Tax Advisor (GST).

For more details, see the IRAS guide [GST: Import GST Deferment Scheme \(Fifth edition\)](#).

Administrative concessions for common errors

Using the cumulated data collected from the disclosure of errors made by taxpayers who have undertaken ASK annual reviews and ACAP reviews (including ACAP Renewal and PAR), the IRAS has compiled a list of administrative concessions for common errors in the ASK annual reviews guide on 5 September 2017, and the same may soon apply to ACAP reviews.

Taxpayers who adopt any of the administrative concessions are required to complete the 'ASK: Declaration Form on ASK Administrative Concessions' and submit it to the IRAS.

No approval will be separately issued for the administrative concessions and such declaration must be retained for at least five years.

For more details, see the IRAS [GST: Assisted Self-Help Kit \(ASK\) Annual Review Guide](#).

Customer Accounting for Prescribed Goods

The IRAS has finalised the guide 'GST: Customer Accounting for Prescribed Goods' on 15 September 2017.

The application of this guide is subject to the passing of the amended GST Bill 2017 by Parliament and the assent of the President.

For more details, see the IRAS guide: [GST: Customer Accounting for Prescribed Goods](#).

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EMEA

European Union

European Commission proposals for EU VAT reform

The European Commission has published [proposals for reforming the EU VAT system](#) (specifically cross-border supplies of goods).

The proposals set out some fundamental principles or 'cornerstones' for a definitive VAT regime:

- 1) Taxation at destination for intra-EU cross-border supplies of goods between businesses;
- 2) Vendors to be liable for charging and collecting VAT on intra-EU supplies of goods, unless the customer is a 'certified taxable person' (CTP); and
- 3) An extension to the One Stop Shop (OSS), with Member States paying VAT to each other directly (as is already the case for e-services).

The Commission has also presented several 'quick fixes' to be implemented by 2019. As well as prescribing the use of VIES, these will simplify call-off stock arrangements, chain transactions, and proof of transport rules, but only for CTPs.

The proposals will be forwarded to the European Parliament and the European Economic and Social Committee for consultation, and to the Council for their agreement on the principle. They will require unanimous agreement from all Member States in the Council before they can enter into force.

A second set of proposals, which will contain more detail on the suggested reforms, is expected in Spring 2018.

There was a recent Dbriefs webcast on this topic, presented by Charlotte Degadt, Donato Raponi, and Johan Van der Paal. The recording of the webcast is now available and can be accessed from this link: [European Commission's Proposed VAT Reform](#).

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CJEU limits scope of VAT cost sharing exemption

The Court of Justice of the European Union has issued three judgments concerning the VAT cost sharing exemption (CSE).

In *Aviva* and *DNB Banka*, Advocate General Julianne Kokott had proposed that the CSE should not apply to cross-border supplies, and also considered potential distortions of competition, the nature of a cost sharing group, and whether a group can make a mark-up on its activities. In both cases, however, the CJEU has endorsed a more fundamental objection to the exemption, and has declined to rule on such details. In the CJEU's judgment, the CSE only applies to activities that are exempt under Article 132 of the EU Principal VAT Directive (PVD) as being in the public interest, and not to other activities that are exempt under Article 135 of the PVD. The CSE therefore simply cannot apply to banks and insurance companies.

In *EC v Germany*, the CJEU determined that the CSE could not be restricted just to doctors, but should extend to all activities which are exempt under Article 135.

On the basis of these judgments, therefore, the CSE remains available to the healthcare and education sectors, but Member States should no longer permit it to be applied by the financial services sector. The judgments are of particular significance in jurisdictions that do not permit VAT grouping, and certain Member States have applied the CSE in the financial services sector for many years. A number of questions therefore arise from the judgments about potential changes to national rules in light of these judgments, and what action affected businesses may now have to take.

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Customs duty reclaims on defective goods

The Court of Justice of the European Union issued a judgment on 12 October 2017 (*X BV v Staatssecretaris van Financiën*) relating to customs duty adjustments on defective goods (cars in this case). Given the CJEU's position, the resulting case law creates a major opportunity for affected companies to reclaim overpaid customs duties.

X BV purchased cars from a manufacturer in Japan and imported them into the EU, paying the required customs duties. X BV then sold these vehicles to dealerships, which in turn placed them for sale to consumers.

After their import, the cars were found to have various latent (potential) defects. Consequently, the local dealers repaired the defects in the country of import. X BV then reimbursed the dealers, and the manufacturer reimbursed X BV. X BV then sought to adjust the customs duties on the basis that the manufacturer's payment was an adjustment on the purchase price used for calculating the customs value at import.

Upon its assessment of the case, the CJEU ruled that although the goods were only 'potentially' defective upon import, conditions for a refund under the Union Customs Code (UCC) provisions in this respect are deemed to have been met. The CJEU also ruled that the UCC's twelve-month time limit for adjusting the price (i.e., after the original importation) is invalid, and the general three-year limitation period for refund requests should apply.

Implications

Two important conclusions can be drawn from the case to assess future duty reclaims:

1. The CJEU ruled that it is not necessary for the claimant to demonstrate that the goods were actually defective upon import. The existence of a manufacture-related risk that the goods may become defective during use is sufficient.
2. Article 145(3) of the Consolidated Implementing Provisions (CCIP) (currently Article 132 of the UCC Implementing Act) is invalid, to the extent that it sets out a time limit of twelve months for a price adjustment to take place. Instead, the time limit for adjustments should be three years.

The one-year period for adjustments under Article 238(4) of the Community Customs Code (CCC), currently Article 121(b) of the UCC, does not apply here, as this last period is only applicable to situations where the importer refuses the goods because they are defective, or differ from what was contractually agreed upon.

Next steps

This judgment is relevant to businesses (such as those active in the automotive and electronic sectors) that import goods that are under warranty and are subsequently identified as having a (potential) defect or manufacture-related risk.

If a company had any product recalls under warranty over the past three years, it is advisable to check if this could serve as basis for a duty refund claim.

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Estonia

VAT Act sets new threshold for mandatory registration as VAT taxable person

As of year 2018, the obligation to register as a VAT taxable person will arise when taxable supplies made by a person exceed EUR 40,000 (until the end of 2017, the threshold is EUR 16,000), as calculated from the beginning of a calendar year. Also, there have been specifications regarding what is considered to be a taxable supply.

The main reason for the change is to support the business activities of the relatively high number of small businesses in Estonia by reducing the administrative burden of preparing and submitting VAT returns. Taxpayers may still voluntarily register for VAT whilst under the threshold.

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Finland

Central Tax Board advance ruling on *Skandia* implications in Finland

The Central Tax Board (CTB) issued advance ruling 46/2017 on 25 August 2017, which relates to the implications of the Court of Justice of the European Union's *Skandia* judgment.

Company A is established in the UK where it is engaged in the provision of financial services and the provision of certain services to other group companies. A is registered for VAT in the UK as the reporting liable member of a VAT group. A has a branch in Finland which provides sales and marketing services to A and is registered for VAT in Finland.

The CTB concluded, based on the reasoning of the CJEU in *Skandia* and on the VAT Committee of the European Commission's Working Paper No. 886, that the services supplied by the Finnish branch of A to A in the UK are considered to be supplied to the VAT group. The supplies are, therefore, deemed to constitute a taxable supply between two tax liable entities, and the input VAT included in acquisitions that relate to these sales is, as a rule, deductible.

According to the Finnish Tax Administration's (FTA) website, the CTB decision is not yet final but it is not known yet whether it has been appealed to the Supreme Administrative Court. In any case, this decision is significant, as it is the first public decision concerning the applicability of the *Skandia* principles in Finland. The tax authorities have still not published any guidance regarding the *Skandia* judgment and, as a rule, the judgment has until now affected neither tax practice nor the VAT treatment applied by businesses.

Finnish Tax Administration gives new official guidance on VAT treatment of providing physical exercise services

The FTA issued new official guidance on 14 September 2017 clarifying the VAT treatment of providing physical exercise services in Finland. In general, physical exercise services are in the scope of the reduced 10% VAT rate in Finland, however, if the service is not considered to be the providing of physical exercise but merely, for example, an instructional/educational service, the general VAT rate of 24% should be applied.

The guidance clarifies the determination of the applicable VAT rate in general and confirms the VAT rate applicable to some specific types of sports.

The guidance is available in Finnish and Swedish.

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France

SGI and Valériane cases – Right to deduct VAT and qualification as fraud

On 21 July 2017, two preliminary questions of the French Supreme Court to the Court of Justice of the European Union involving two businesses established in La Réunion, *SGI* and *Valériane*, were released. These businesses perform transactions consisting of the acquisition and subsequent renting of capital goods to local companies. In accordance with article 199 undecies B of the French Tax Code, these activities benefit from a specific tax regime providing an income tax advantage.

In the course of a tax audit, the French Tax Authorities (FTA) questioned the companies' right to deduct part of their input VAT because of the fictitious nature of the transactions performed. They noted that the goods had never been delivered to the renters' premises.

Valériane and *SGI* argued that their right to deduct the input VAT could not be questioned on the grounds that the FTA did not prove the fact that the companies were actually involved in a fraud.

In this respect, the French Supreme Court decided to refer the following question to the CJEU :

Must the provisions of Article 17 of the Sixth VAT Directive of 17 May 1977, which have, in essence, been reproduced in Article 168 of Directive [2006/112/EC] of 28 November 2006 on the common system of value added tax, be interpreted as meaning that, in order to refuse a taxable person the right to deduct, from the value added tax that he is liable to pay by reason of his own transactions, tax levied on invoices corresponding to goods or services that the tax authorities establish have not actually been supplied to the taxable person, it is necessary, in all cases, to examine whether it has been established that that taxable person knew, or ought to have known, that the transaction was connected with value-added-tax fraud, regardless of whether that fraud was committed on the initiative of the issuer of the invoice, its recipient or a third party?

Publication of implementing decree for tax on physical and on-line video broadcasting of audio-visual contents

The decree implementing the 'tax on the physical and on-line video broadcasting of audio-visual contents' (*Taxe sur la diffusion en vidéo physique et en ligne de contenus audiovisuels*) was released on 21 September 2017, following the approval given by the European Commission, which confirmed the absence of state aid. The new regulation applies as from 22 September 2017 (even though included in the amending finance bills for 2013 and 2016). The decree is made under article 1609 sexdecies B of the French Tax Code. The FTA have not yet published guidance on the new regime.

The tax is levied on the sale and leasing of physical and on-line videos to private consumers domiciled or habitually residing in France, as well as on the chargeable and non-chargeable supply of access services to audio-visual or cinematographic contents through electronic communication means.

Consequently, video-on-demand platforms will be liable to pay this tax on their advertising activities.

The scope of this tax, initially targeting the sale and leasing of videos to private consumers in France, was therefore successively extended to providers established abroad and to the amounts paid by advertisers and sponsors directly to the providers as part of the free of charge video-on-demand services.

Changes in compliance for Corporate Vehicle Tax (*Taxe sur les Véhicules de Sociétés*)

As from January 2018, the modalities for the submission of the return and payment of the Corporate Vehicle Tax (CVT) will be modified. Some exemptions are introduced. In addition, the taxable period is aligned with the civil year (i.e., from 1 January to 31 December, instead of from 1 October to 30 September as previously).

In particular, the following will apply :

- **For VAT-liable companies subject to the normal regime and non VAT-liable companies:** The tax must be filed electronically in the appendix of the VAT return (in boxes 117 and 118) during the month of January following the taxable period for which the tax is due, and also paid electronically.
- **For VAT-liable companies subject to the simplified regime:** The tax must be accounted for on a specific paper form (n°1855-SD) and paid on 15 January at the latest, following the taxable period for which the tax is due.

The tax due for the period October 2016-September 2017 must be paid in accordance with the abovementioned modalities.

As regards Q4 2017, an 'exceptional tax' will be applied under the same computation modalities as the current CVT. However, this amount will have to be accounted and paid for according to the new modalities.

As a consequence :

- No return and payment will have to be made in November 2017;
- Returns and the corresponding payments must be made in January 2018 for the periods October 2016-September 2017 and for Q4 2017.

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Ireland

Budget 2018

Budget 2018, delivered on 10 October 2017, included the following indirect tax measures.

Increases in property-related taxes

The stamp duty rate on commercial property was increased from 2% to 6% with effect from midnight on 10 October 2017. This will be followed by the introduction of a 'vacant site' levy of 3% which is due to take effect in 2019 and set to rise to 7% in 2020. The vacant site levy is intended to discourage 'land hoarding' as property prices are rising rapidly due to undersupply in the Irish market.

Higher VAT rate introduced on sunbed services

Due to the evidence showing a direct link between the use of sunbeds and skin cancer, the VAT rate on sunbed services was increased from the reduced rate of 13.5% to the higher rate of 23%, effective 1 January 2018.

Increase to excise duty on cigarettes

Budget 2018 saw the excise duty on tobacco products rise by a further 50 cents from midnight on 10 October 2017, increasing the average cost of a pack of 20 cigarettes to around EUR 12 and a 30-gram pouch of tobacco to in excess of EUR 15.

Introduction of tax on sugar sweetened drinks

A 'sugar tax' will take effect from April 2018. A tax of 30 cents per liter will be applied on non-alcoholic sugar sweetened drinks with added sugar content of at least 8g per 100ml, with a lower tax of 20 cent per liter applicable on drinks with added sugar content of between 5g and 8g per 100ml.

Enhancements to VAT return filing process on Revenue Online System

On 28 September 2017, the Revenue issued an eBrief detailing changes to the existing VAT return filing process on the Revenue Online System (ROS), see [Revenue eBrief No. 085/17: Enhancements to the VAT 3 filing process in ROS](#).

This introduces two new functions that have been added to the current filing process and that will apply to filings made on or after 10 September 2017: an optional facility allowing a taxpayer to flag any exceptional/unusual expenditure forming part of the VAT return and a mandatory confirmation window summarizing the return details prior to submission of the VAT return.

Launch of Customs Decision System

One of the main requirements of the Union Customs Code (UCC) which came into force across the EU with effect from 1 May 2016 is that all communication with the Revenue for Customs purposes must be done electronically. As a means of complying with this requirement, the Revenue have introduced the Customs Decision System (CDS) system (a centrally developed EU system), with effect from 2 October 2017.

From the traders' perspective, the system will provide access to the EU trader portal which can be used when applying for or managing Customs decisions. It will also allow electronic processing and storage of applications/authorizations.

As for the EU customs authorities, the system will allow the exchange of information in relation to 22 specific customs decisions through the granting of multi-system access to the authorization data.

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Italy

Split payment extension and future VAT increases

Law Decree n° 148/2017 was published in the Official Gazette on 16 October 2017 and provides, among others, the following VAT measures. The Decree must be converted into law by the Parliament within 60 days in order to enter in force definitively.

- **Split payment extension:** From 1 January 2018, the split payment regime will be extended to supplies of goods and services rendered to additional categories of public bodies (such as public economic bodies, special companies, foundations, etc.) and their subsidiaries. The Decree clarifies that non-Italian corporations listed on the FTSE MIB Italian Stock Exchange are subject to the split payment regime only if registered for Italian VAT purposes. An implementing decree shall be enacted by the end of November (within 45 days from the publication of the law Decree in the Official Gazette);
- **Future VAT increases:** The 10% reduced VAT rate will increase to 11.14% from 1 January 2018 and to 12% from 1 January 2019. The standard VAT rate will increase to 25% as of 1 January 2018 (as already provided for). However, as clarified by the Government via two press releases, the application of both the new VAT rates could be postponed. This derogation is subject to approval with the Financial Bill for FY2018.

Reduced VAT rate for pasta prepared with grain legumes

In Resolution n° 130/2017, the tax authorities have clarified that a type of pasta prepared with 'grain legumes' is subject to the same super-reduced VAT rate of 4% that is provided for pasta prepared with 'durum wheat semolina'.

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Intrastat reporting simplifications from FY2018

The Customs Authorities, via note n° 110586/RU dated 9 October 2017, have clarified the Intrastat reporting simplifications from FY2018 (no changes apply for the Intrastat obligations related to FY2017).

The below chart summarizes the Intrastat reporting simplifications from FY2018:

		Fiscal	Statistical
Goods	Supplies	Yes	Mandatory only where transactions exceed EUR 100,000 during at least one of the four previous quarters
	Purchases	No	Mandatory only where transactions exceed EUR 200,000 during at least one of the four previous quarters
Services	Supplies	Yes	Yes
	Purchases	No	Mandatory only where transactions exceed EUR 100,000 during at least one of the four previous quarters

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Customs Decision System

In September and October the Customs Agency issued guidelines and operating instructions allowing operators to use the EU Customs Decision System.

Excise duties: sellers of alcoholic beverages

Based on the excise duty law, certain sellers of alcoholic beverages are not required to communicate to the Customs Agency the commencement of their activity. In this respect, the Agency has issued Note no. 113015 in October, providing a list of such facilitated operators.

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Latvia

Reduced VAT rate proposed

The Ministry of Finance has published draft amendments to the VAT law. The proposed amendments would introduce a reduced rate of 5%, applicable to certain fresh berries, fruit, and vegetables characteristic to Latvia, including those that have been washed, peeled, and packaged, but not thermally treated.

According to the draft, the amendments will apply from 1 January 2018 to 31 December 2020. However, the draft amendments have not yet been adopted, and accordingly may be amended during the discussion process.

If the new reduced VAT rate is adopted, there will also be amendments to VAT return forms.

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Netherlands

Announcement of annual Budget and presentation of 2018 Tax Plan

On Budget Day (*Prinsjesdag*) the Government presents its proposed tax package for the coming year. The proposals presented on Budget Day (19 September 2017) can be found on the [Deloitte the Netherlands website](#).

The 2018 Tax Plan proposals concerning indirect tax are set out below.

Refinement of definition of 'medicine' for VAT purposes

From 17 July through 14 August 2017, the Ministry of Finance organized an internet consultation on a proposed stricter definition of medicine for the application of the reduced VAT rate. The 2018 Tax Plan includes this stricter definition of medicine without any noteworthy changes.

Under the stricter rules, as from 1 January 2018, the reduced VAT rate of 6% will only apply to products for which a (parallel) trade license has been issued as referred to in the Dutch Medicines Act or which are explicitly exempt from such a license. As from this date, the reduced VAT rate will no longer apply to products that may evidently not be traded as medicines under the Dutch Medicines Act and EU regulations for cosmetics, medicines, and medical appliances.

Change in scope of reduced VAT rate for seagoing vessels

The EU Principal VAT Directive requires EU Member States to apply the VAT zero rate on the supply and provisioning of, as well as services to, vessels that are used on the open seas for passenger transport against payment, freight transport, fisheries etc. The European Commission argues that application of the VAT zero rate in the Netherlands is too broad, since the current formulation links the VAT zero rate to seagoing vessels as such, without requiring them to be effectively used for navigation on the open seas.

As infringement proceedings by the European Commission would otherwise be inevitable, the Government proposes to further streamline the wording of the Dutch VAT rules to that of the Principal VAT Directive, thus further reducing application of the VAT zero rate. The limitation implies that the VAT zero rate only applies if such vessels are actually used at least 90 percent for navigation on the high seas.

Abolition of flat rate scheme for farmers

As announced on 2016 Budget Day, the VAT flat rate scheme for farmers will be abolished as of 1 January 2018. This scheme exempts farmers and other agriculturalists from VAT, while they are not allowed to deduct VAT charged on costs they have incurred. Entrepreneurs can opt to apply the regular VAT rules.

Since a decreasing number of companies use the flat rate scheme, it will now be cancelled. Following cancellation of the flat rate scheme, application of the reduced rate to certain goods and services supplied specifically to those agriculturalists will also be abolished.

Agriculturalists who currently use the agricultural scheme will be faced with a transition, as a result of which they will have to revise the VAT on investments made prior to 1 January 2018. This will lead to a refund of a part of the VAT that was not deducted before 1 January 2018. This revision normally takes place over a number of years (depending on the date when they first entered into service), but transitional provisions now permit this revision to be effected all at once. For investments acquired but not yet entered into service before 1 January 2018, an input tax credit arises for the full VAT amount in the first tax period of 2018.

Adjustment for services

The 2018 Tax Plan and related bills do not discuss the introduction of VAT deduction adjustment rules for services. This is not required since introduction of an adjustment involves an amendment to a ministerial regulation. Yet, from the bill on cancellation of the agricultural scheme it is expected that an adjustment for services is still intended to be introduced as of 1 January 2018.

Joint and several liability for pledgees, mortgage holders, and executors

When holders of a pledge or a mortgage or executors sell goods on behalf of the owners, they can also recover the VAT proceeds. This means the tax authorities do not collect the VAT. It is now proposed to introduce joint and several liability for pledgees, mortgage holders, and executors to secure VAT collection.

A reverse charge mechanism already applies to guarantee collection of VAT on sales of immovable property in such cases. The liability applies in those cases where the reverse charge mechanism does not apply, for instance when the purchaser is not an entrepreneur for VAT purposes or when the sale involves an item of movable property.

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Government proposes temporary increase in energy taxes

There are plans to increase energy tax duties for 2018 and 2019.

In 2013 the Government and several organizations concluded an energy agreement. This agreement is targeted at achieving a healthier environment and economy. To achieve these goals it was concluded that energy taxes rates would be raised in 2018, but the agreement did not mention any exact rates. On Budget Day these rates were announced to the public. The proposed changes for the 2018 calendar year are listed below, all amounts are in Euro.

Rates for gas

Gas	2017	Increase 2018	2018
Scale 1 0 – 170,000 M3	0.25244	0.00555	0.25799
Scale 2 170,000 – 1 mln. M3	0.06215	0.00199	0.06414
Scale 3 1 mln. – 10 mln. M3	0.02265	0.00072	0.02337
Scale 4 Above 10 mln. M3	0.01216	0.00039	0.01255

Rates for gas for horticultural purposes

Gas Reduced (Horticultural)	2017	Increase 2018	2018
Scale 1 0 – 170,000 M3	0.04054	0.00089	0.04143
Scale 2 170,000 – 1 mln. M3	0.02346	0.00075	0.02421
Scale 3 1 mln. – 10 mln. M3	0.02265	0.00072	0.02337
Scale 4 Above 10 mln. M3	0.01216	0.00039	0.01255

According to the proposed tax package, the increase will (probably) be reversed in 2020. The rates for 2019 will, according to the proposed tax package, be decreased as of 1 January 2020 to the following amounts, in Euro:

Rates for gas

Gas	Decrease 2020
Scale 1 0 – 170,000 M3	0.00531
Scale 2 170,000 – 1 mln. M3	0.00199
Scale 3 1 mln. – 10 mln. M3	0.00072
Scale 4 Above 10 mln. M3	0.00039

Rates for gas for horticultural purposes

Gas Reduced (Horticultural)	Decrease 2020
Scale 1 0 – 170,000 M3	0.00085
Scale 2 170,000 – 1 mln. M3	0.00075
Scale 3 1 mln. - 10 mln. M3	0.00072
Scale 4 Above 10 mln. M3	0.00039

If the proposal is accepted, the higher rates will apply from 1 January 2018 for gas supplied in the Netherlands.

The Government proposes to postpone an increase in the incremental renewable energy on gas as compensation for the abovementioned higher rates of energy tax.

Gas companies should be aware of the proposed increase to energy taxes in the Netherlands for the year 2018, and it would be advisable for gas companies to advise their clients on the proposed changes. As the final energy tax rates are often published quite late in the year, it is strongly recommended that gas companies regularly check the official website of the [Government](#), where the latest adjustments to regulations are announced. Changes are often published in late December, however the final rates for 2017 were only published in January 2017.

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Reduced VAT rate set to increase from 6% to 9%

On 10 October 2017, the incoming coalition government presented its tax proposals, including its intention to increase the current reduced VAT rate of 6% to 9%. The estimated revenues that this measure will generate will be used, amongst other things, to finance the proposed reduction of the income tax.

The announced increase of the VAT reduced rate may impact the pricing level of a wide range of goods and services in the Netherlands, for example:

- Food and drinks
- Medicines, bandages and other items intended for medical use
- Objects of art
- Books
- Flowers, plants and arboricultural products
- Services of organizations whose object is the practice of sports
- The repair of bicycles, footwear and clothing as well as the services of hairdressers
- The painting and plastering of dwellings as well as the installation of insulation material designed to conserve energy to floors, walls and roofs of residences. For both categories the reduced rate only applies if these activities are conducted two years after the residences were first taken into use
- The transport of people
- The provision of accommodation in hotels and campsites
- Provision of food and drinks in restaurants
- The admission to circuses, zoos, public museums, musical performances, theatres, cinemas, sports events and amusement parks
- The cleaning of residences.

As a practical consequence of this increase entrepreneurs will have to adapt their pricing levels and implement the increase in the reduced rate and the correct transitional scheme in their ERP-systems, presumably from 1 January 2019.

The tax proposals presented by the incoming government do not provide detailed guidance as to the exact legislative implementation. The increase of the reduced VAT rate must be translated into a proposal and submitted to the Parliament before it enters into force in 2019. No further details are available at this stage.

Recharging costs as an economic activity not necessarily subject to VAT according to Supreme Court

On 29 September 2017, the Supreme Court gave its judgment in a case in which costs were recharged to another company. In its judgment, the Supreme Court held that, for a transaction to be subject to VAT, payment of a consideration is not the only requirement, the payment must be paid in return for an (identifiable) act (or for refraining from an act) as performed by the recharging entity in its capacity as a taxable person. The fact that a legal agreement exists between the parties involved that is the basis for recharging the relevant costs is not in itself sufficient for the recharges to be subject to VAT. The burden of proof that an act is performed, lies on the person claiming the right to deduct the VAT incurred on the costs that are recharged.

With its judgment the Supreme Court seems to have set stricter requirements for recharging costs as a transaction to be subject to VAT. The response of the tax authorities remains to be seen.

Supreme Court refers questions for a preliminary ruling to the Court of Justice of the European Union regarding the VAT treatment of webcasts

On 22 September 2017, the Supreme Court referred questions for a preliminary ruling to the Court of Justice of the European Union relating to the question of whether providing live interactive webcasts in return for a consideration qualify as entertainment activities or electronically supplied services. If they qualify as entertainment services a further question is asked about the place of supply of these services.

The case concerns the question of whether the consideration for live interactive webcasts from the Netherlands, for which models are used in the Philippines, is subject to VAT in the Netherlands. The Inspector believes that these services for VAT should be deemed to take place in the Netherlands. The inspector argues that entertainment activities, such as these, actually take place at the place where the visitors have their presence when they participate in webcasts.

The Court of Appeal previously ruled that the services are subject to VAT at the place where the entertainment activities actually take place, namely in the Philippines. That is where physical activity takes place for which visitors are paying.

According to the Supreme Court, both views are justifiable on the basis of the settled case law of the CJEU. This is the reason why the Supreme Court has asked preliminary questions.

The decision of the CJEU will not only be important for the VAT treatment of these webcam services, but also, for example for distance learning. The question is whether and under which circumstances these services qualify as an electronic service.

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Poland

Ministry of Finance warning regarding bundled supplies for VAT purposes

Since May 2017, the Ministry of Finance has started issuing special warnings, addressed to taxpayers, with respect to aggressive tax optimization (so far in the corporate income tax area). On 29 September 2017, the Ministry of Finance issued a special warning with respect to the incorrect calculation of the VAT tax base for goods and services sold in sets or bundles in which goods or services are subject to different VAT rates (basic and reduced).

The Ministry warns that in the case of goods and services sold in sets or bundles, a disproportionate reduction of the tax base covered by a basic VAT rate (23%) in relation to the tax base covered by a reduced VAT rate (for example, 8%), exposes the taxpayer to the risk of disputes with the tax authorities, as this may be viewed by the authorities as a tax abusive practice, aimed solely at obtaining tax benefits.

In such a case the Polish VAT general anti-abuse rule (GAAR) clause would apply, and the VAT consequences of such a transaction would be determined as if the abusive practice was not applied – in particular, this could lead to the necessity of settling VAT arrears and penalty interest, as well as other penalties to be applied.

Consequently, the Ministry encourages taxpayers to review pricing methodology and correct VAT settlements if necessary. At the same time, the Ministry does not provide any guidelines as to the methodology for a split calculation, stating that valuation should be subject to review by the auditor upon statutory audit.

Planned changes to VAT law regarding cash registers and register of active VAT payers

The Ministry of Finance announced in draft legislation published on 28 September 2017 its intention to implement a Central Register Repository (to be maintained by the Head of the National Revenue Administration (KAS)). The repository would be supplied in real time with data concerning each transaction registered on a cash register (*inter alia*, the type of goods/services supplied, gross and VAT amounts, the VAT rate, transaction date, place of fiscalization).

Information is to be delivered automatically via the internet in the determined structure, and thus the draft assumes that taxpayers will need to replace their current cash registers with cash registers with online access. In the case of a loss of connection to the internet, companies will be required to cease any further selling until the connection is re-established.

The online cash registers at first will be mandatory for taxpayers providing following sensitive services as follows:

- Automotive and retreading (as well as fuel retailers) – as of 1 January 2019;
- Gastronomy, construction – as of 1 July 2019;
- Cosmetic and cosmetology, hairdressers, short-term rental of premises and fitness – as of 1 January 2020.

Taxpayers currently using cash registers with paper cash receipts would be allowed to use these (except for the above industries) until the fiscal memory of the register is filled. Moreover, the draft assumes that paper cash receipts could be exchanged into invoices only if they contain tax identification numbers.

On 20 September 2017 the Ministry of Finance published a draft bill that provides for changes in the register of active VAT payers. It is expected that the register (available on the Ministry of Finance website and currently confirming only whether a given VAT number is assigned to an active VAT payer or not) would additionally provide for the following data: name, address, bank account of the taxpayer, date of registration and deregistration. The Ministry of Finance and each company could check if its contractor is register for VAT purposes, using the correct name, address, bank account, date of registration and deregistration. The data will be updated on a daily basis.

The bill also states that if the payment for the goods is not made to the bank account revealed in the registration documents and visible in the VAT active payers register, the purchaser can be held jointly liable for the VAT arrears of the seller which occurred on this transaction.

Fixed establishment for VAT purposes

As mentioned in previous editions of this newsletter, the issue of the fixed establishment for VAT purposes in Poland is still on the radar of the tax authorities. The tax authorities have recently tended to take the view that a fixed establishment also arises where the resources required for its creation are outsourced. Accordingly, a review of Polish structures is recommended.

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Portugal

State Budget proposal 2018

The 2018 Budget law proposal has been announced and submitted by the Government to Parliament; parliamentary approval is still required.

Below are the main measures that the Government has proposed in relation to VAT and other indirect taxes. All the listed proposed amendments will enter into force on 1 January 2018, except where indicated, provided that the 2018 Budget law proposal is approved by Parliament and published in the Official Journal, after being promulgated by the President of the Portuguese Republic.

VAT

Changes in tax rates proposed

- Musical instruments will benefit from the intermediate VAT rate – 13% in Portugal Mainland (12% in Madeira, and 9% in Azores).
- Construction works for the National Fund for the rehabilitation of buildings that have been entered into directly by the respective managing/undertaking entity will benefit from the reduced VAT rate – 6% in Portugal Mainland (5% in Madeira, and 4% in Azores).

Other legislative changes proposed

- The requirements that must be met by a taxpayer to be able to recover the VAT included in bad debts will be amended and clarified. For example, a taxpayer will be able to recover the VAT if a debtors' insolvency procedure is closed due to insufficient assets or following assessment and distribution of the debtor's assets in accordance with each creditor's ratio (whereby creditors have definitely not been repaid the amount due). On the other hand, it is clarified that under a special procedure for revitalization of companies or insolvency processes, the taxpayer may recover the VAT after the recovery or insolvency plans are decided and approved by the court in case such decisions foresee the definitive non-payment of the debt.
- Further to the new reverse charge mechanism for the VAT due on the import of goods (eliminating the associated financial impact) which will come into effect on 1 March 2018 for all goods (it has applied from 1 September 2017 to goods listed in Annex V of the VAT Directive), a taxpayer may opt for the reverse charge procedure even when still benefiting from the payment deferral regime for previous imports.
- The threshold to apply the VAT exemption to the export of goods by a traveler who is a non-resident in the EU (tax free) decreases from EUR 75 to EUR 50; and there is a possibility that the transition period will be extended (currently to 31 December 2017), which waives the obligation for electronic communication of the supplies of goods performed under such regime.
- It will be possible for taxpayers established in another EU Member State to correct certain items of the VAT refund request, for example, taxable and VAT amount or nature of the goods acquired, until the end of the following civil year to which the refund respects.

- An authorization has been proposed so the Government may extend the intermediate VAT rate to all beverage services provided by restaurants (currently beverage services of alcoholic drinks, soft drinks, juices, nectars, and sparkling waters and those to which carbon dioxide or other substances are added are subject to the standard VAT rate – 23% in Portugal Mainland).
- An authorization has been proposed for the Government to include in the VAT reverse charge mechanism the acquisition of cork, wood, pine nut cones and pine nuts with shell.

Excise duties

Tax on alcohol, alcoholic drinks, and sugar-added drinks

- The tax rate applicable to beers, intermediate products, spirit drinks, and other fermented beverages will rise by about 1.4%.
- The tax rate application to non-alcoholic drinks, with added sugar or other sweeteners, will rise by about 1.4%.
- The excise duty rates applicable to syrups will be EUR 50.01 or EUR 100.14 per hectoliter, according to whether the correspondent sugar content is lower or greater than 80gr per liter. The new tax rate for sugar content lower than 80gr per litre will only enter into force on 1 July 2018.
- For concentrates in the form of powder, containing added sugar or other sweeteners, the applicable excise duty rates are, respectively, EUR 83.35 and EUR 166.90 by 100 kg of weight which may vary according to the amount of sugar contained (whether is lower/higher than 80gr per liter).

Tobacco tax

- The excise duty levied on the specific component regarding cigarettes will increase from EUR 93.58 to EUR 94.89 per 1,000 cigarettes.
- Nonetheless, the correspondent ad valorem component will be reduced to 15% (currently 16% for cigarettes, smoking tobacco, snuff, chewing tobacco, and heated tobacco).
- For cigars and cigarillos, there is an increase of about 1.4% in the minimum limit of duty, resulting from the application of the ad valorem component, which will be EUR 405.60 per 1,000 cigars and EUR 60.84 per 1,000 cigarillos.
- The duty related to smoking tobacco, snuff, chewing tobacco, and heated tobacco may not be lower than EUR 0.171/gr (currently EUR 0.169/gr).

Tax on products with high salt content

- A new excise duty is levied on pre-packaged biscuits and cookies, all foods that are in the composition of cereal flakes, and pre-packaged pressed cereals, and also on pre-packaged fried and dehydrated potatoes that are suitable for immediate consumption.
- This tax corresponds to EUR 0.8 per kg of finished/end product.
- Products containing less than 1gr of salt per 100gr of product are duty exempted.
- Production, warehousing, and circulation on duty suspension, as well as introduction to consumption, duty refund, and guarantees, will follow the existing rules for excise duties.
- These changes will be effective from 1 February 2018.

Tax on petroleum products

- The tax applicable to methane and oil gas used as a propellant will increase by about 1.4%.
- Tax applicable to natural gas:
 - (i) When used as a propellant, decreases from EUR 2.87 to EUR 1.15 per gigajoule; and
 - (ii) When used as fuel, increases from EUR 0.303 to EUR 0.307 per gigajoule.
- The duty exemption applicable to products with Nomenclature Codes 2701 (briquettes, ovoids, and similar solid fuels manufactured from coal), 2702 (lignite, whether or not agglomerated (excl. jet)), 2704 (coke and semi-coke of coal, of lignite, or of peat, whether or not agglomerated) will no longer apply. Under a transitional provision, such products will be subject to 10% of both of the applicable tax and the CO2 special contribution rate, progressively increasing until 2022 (the year in which these products will be fully taxed).
- The additional petroleum and energy products tax remains in force for the 2018 year: EUR 0.007/liter for gasoline and EUR 0.0035/liter for road, colored, and marked diesel fuel.

Vehicle tax

- The vehicle tax will increase by about 1.4%.
- The amount of tax to be paid will be settled by electronic means through the tax authorities' website.

Circulation tax

- The circulation tax rates will generally increase by about 1.4%.
- However, in the specific case of passenger and commercial vehicles with a gross weight of up to 2,500 kilograms and CO2 level between 180gr and 250gr per km the circulation tax will decrease from EUR 38.08 to EUR 28.92 (which corresponds to a 24% decrease). If the CO2 level is higher than 250gr per km the respective tax rate will decrease 11%, i.e., from EUR 65.24 to EUR 58.04.
- The additional car circulation tax will remain in force in 2018 for diesel vehicles (passenger vehicles with a gross weight of up to 2500 kilograms).

Update to periodic VAT return form

By way of correction to the [July 2017 edition](#) of this newsletter, the column added to the Annex to the periodic VAT return related to field 40 (VAT adjustment in favor of the taxpayer) is to insert the date (year/month) of the document that was rectified (and not the year/month of the document supporting the VAT adjustments in favor of the taxpayer).

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Russia

Ministry of Finance clarifies that payment of dividends by own products treated as supply for VAT and profit tax purposes

The Ministry of Finance has clarified that the transfer of property by a company as payment of dividends to owners is treated as a supply and is subject to VAT and profit tax.

Ministry of Finance clarifies VAT recovery procedure for imported goods in absence of hardcopy of declaration for goods filed in electronic form

The Ministry of Finance has clarified that the absence of the hardcopy of the declaration for goods filed in electronic form that confirms the import of goods does not have an impact on the right of VAT recovery with respect to imported goods.

Federal Tax Service clarifies application of VAT recovery by principal purchasing goods (work, services) through chain of agents

The Federal Tax Service reported that where a principal purchases goods (work, services) through a chain of agents, VAT invoices that were issued by the agent on the basis of VAT invoices issued by sellers of goods (work, services) to the agent should be used for VAT recovery purpose subject to compliance with other conditions of VAT recovery specified by art. 171 and 171 of the Tax Code.

The principal has the right of VAT recovery also when the principal does not have copies of VAT invoices issued by the seller to the agent.

Supreme Court of the Russian Federation clarifies that purchase of goods at overestimated price is not reason for rejection of VAT recovery related to imported goods

The tax authorities concluded that a taxpayer purchased goods from foreign related companies which did not produce goods and acted only as agents. The foreign agents' markup was more than 100 %.

The tax authorities came to the conclusion, supported by the courts, that the taxpayer was not entitled to VAT recovery related to the imported goods.

The taxpayer argued that the overestimation of the price of the imported goods in comparison with the market price is not a reason for rejection of VAT recovery because the VAT claimed for recovery was the amount actually paid to the customs authorities upon import of the goods.

The Supreme Court of the Russian Federation ruled in favor of the taxpayer based on the following arguments:

- The amount of VAT claimed for recovery should not be more than input VAT;
- Under the Tax Code of the Russian Federation, the import VAT can be claimed for recovery in the amount actually paid to the budget;
- The amount of VAT claimed for recovery was equal to the amount of import VAT paid to the budget.

The Supreme Court of the Russian Federation clarified that the purchase of goods at an overestimated price does not impact on the amount of VAT paid to the budget and, thus, does not result in any unjustified tax benefit and cannot be the reason for rejection of VAT recovery.

Zero export customs duty for tungsten ore and its concentrates

Resolution of the Russian Government of 5 September 2017 N 1069 introduces a 0% export customs duty rate instead of 10% export customs duty rate for tungsten ore and its concentrates classified under customs classification code 2611 00 000 0.

Resolution N 1069 came into effect on 8 October 2017.

Introduction of export ban on leather semi-finished goods

Resolution of the Russian Government of 20 September 2017 N 1130 introduces a ban on the export from Russia of leather semi-finished goods classified under customs codes 4104 11 and 4104 19 from 5 October 2017 to 5 April 2018.

Resolution N 1130 came into effect on 3 October 2017.

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South Africa

Termination of anti-dumping duty on solar glass from Indonesia

The International Trade Administration Commission (ITAC) has terminated anti-dumping duties applicable to solar glass originating in or exported from Indonesia due to failure by the sole South African manufacturer 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 26 July 2017.

Safeguarding duties against increased imports of cold-rolled steel products

The ITAC concluded an investigation into safeguarding duties against imports of cold-rolled steel products, which were found to be causing material injury to the domestic market.

The final determination is as follows:

- Safeguarding duties to be levied on imports of specific cold-rolled steel products classifiable within tariff headings 7208, 7211, 7225 and 7226.
- No additional protection will be applied in respect of tariff sub-headings 7209.15, 7209.16, 7209.17, 7209.18, 7225.50 and 7226.92, as no price suppression was identified by the ITAC when comparing the domestic price for the affected commodities with the landed price of the imported products.

The safeguard duties will initially be levied at 12% and will be reduced by 2% annually over the next two years.

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Spain

Draft VAT invoicing regulation

Article 5 of a new draft regulation would introduce certain modifications to the invoicing regulation in connection with the issuance of amending invoices as a consequence of discounts. In particular, it would not be necessary to make reference to the period of the invoice that is amended in the rectifying invoice.

Binding ruling issued on application of SII

On 30 June 2017, the General Directorate of Taxes published the first binding tax ruling regarding the application of the new Immediate Information Supply (SII). Among others, the General Directorate of Taxes stated that an entity performing exclusively exempt transactions would be required to comply with the SII, even though it is not required to file periodical VAT returns, whenever its turnover exceeds EUR 6 million.

Single Administrative Document

On 1 September 2017, a resolution came into force that amends the previous rule from 11 July 2014 regarding the instructions to fulfil the single administrative document (SAD) for customs purposes. The resolution is in accordance with the Union Customs Code (UCC).

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Switzerland

VAT rate reductions effective from 2018

On 24 September 2017, the Swiss population rejected the 2020 Old-Age and Survivors Insurance reform. As a result, the additional funding of disability insurance (DI) by 0.4 points of VAT will expire at the end of 2017. However, the standard and special VAT rates will increase by 0.1 point as from 1 January 2018 due to the draft measures to finance and develop railway infrastructure.

Switzerland's current VAT rates will decrease from 8% to 7.7% (standard rate) and from 3.8% to 3.7% (special rate) on 1 January 2018. The reduced rate of 2.5% will remain unchanged.

The Federal Tax Administration has already published practical guidelines regarding the reductions (for example. invoicing, down payments, leasing contracts, new net tax debt rates and flat rates). The guidelines also include the new VAT return forms that take both the current and new rates into account.

Implications

Any change in the VAT rates will require adaptation of invoicing and ERP systems, in particular:

- **Invoices, contracts, etc.** will need to be amended to reflect the new rates as from 1 January 2018.
- **Additional tax codes** will have to be created in the ERP system to manage transactions under the current VAT rates and the new rates.
- The **tax point of transactions** (i.e., the date of supply) will need to be carefully considered to determine the applicable VAT rate. This is especially important for continuous services, down payments, and price adjustments/credit notes.

- Account will need to be taken of **specific rules that apply to certain sectors**. For example, for hotels, the current special VAT rate will be applicable to accommodation and catering services provided on New Year's Eve, but a pro rata rate will have to be used for arrangements concluded for the period straddling 2017 and 2018.
- The **new VAT return form** may require internal compliance teams to adapt their VAT compliance processes.

Businesses should review their positions as soon as possible to ensure they are prepared for the new rules.

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United Kingdom

CJEU judgment on VAT treatment of finance agreement

In *Mercedes-Benz Financial Services*, the Court of Justice of the European Union has confirmed that certain contract purchase agreements should be classified as services rather than goods. MBFS's Agility contracts had a similar payment profile to many personal contract purchase deals (regular monthly payments with a balloon payment at the end). However, with Agility the balloon payment (over 40% of the price of the car) was the option payment. The CJEU considered whether this was a "contract for hire ... which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment".

In its judgment, an ownership transfer clause could indicate that Agility was a supply of goods. However, that could change if there was a genuine economic alternative to the option being exercised. Unlike a traditional HP contract where paying a nominal option fee would be the 'only economically rational choice', the financial terms of Agility suggested that not exercising the option was a genuine alternative. On that basis, Agility should be treated as a supply of services, meaning that VAT need not be accounted for in full at the outset of a deal.

Tax authorities' policy change on VAT treatment of pension fund management by insurers

To date, the tax authorities' (HMRC) policy has been to treat all pension fund management services provided by regulated insurance companies as exempt from UK VAT, irrespective of whether the fund being managed is the fund of a defined benefit, defined contribution, or hybrid scheme. This has created a discrepancy between the VAT treatment of pension fund management services supplied by insurers and non-insurers.

HMRC have announced that they are withdrawing this policy from 1 January 2018. Thereafter, insurers will only be able to exempt their pension fund management if they meet the conditions set out in *ATP Pension Services*. Consequently, insurers will need to review the funds that they manage and may need to start charging VAT on some of their services, which in many cases will increase the cost of those services to schemes and employers.

New offences come into force on failure to prevent tax evasion

On 30 September 2017, the new offence of failure to prevent the facilitation of tax evasion (under the Criminal Finances Act 2017) came into force. Under the new rules, a business can be guilty of an offence if an associated person (such as an employee) has deliberately facilitated tax evasion. According to the guidance issued, there are six guiding principles that may provide a defence. Action is required by any businesses that have not already conducted a risk assessment, and they should at least have a reasonable plan for conducting one in the near future. The risk assessment should identify actions that will target prevention of VAT evasion. Businesses are expected to monitor and review their preventative procedures and make any necessary improvements. Therefore, it is important that any measures that have just been put in place are accompanied by a programme for periodic review.

Consultation and draft legislation on Making Tax Digital

HMRC have published a consultation and further draft legislation on Making Tax Digital, see: [Making Tax Digital reforms affecting businesses](#). Specific VAT regulations will be published by April 2018, allowing 12 months to ensure that 'functional compatible software' can work as expected. There is still relatively little detail on how it will need to operate, but HMRC's guidance outlines that software will need to keep records and create returns as required by existing regulations, and be able to receive information from HMRC systems. There will also be a facility to provide HMRC with additional information on a voluntary basis. Error corrections will continue to be made through existing processes.

Government publishes Customs Bill White Paper

The Government has published a Trade White Paper establishing principles that will guide future UK trade policy and a Customs Bill White Paper ([Customs Bill: legislating for the UK's future customs, VAT and excise regimes](#)), which sets out plans to legislate for the standalone customs, VAT and excise regimes the UK will need once it leaves the EU. It has confirmed that the UK's new legislation will, as far as possible, replicate the effect of existing EU customs laws. However, while the Government remains confident that a positive deal can be reached with the EU, it is preparing for the possibility that there will be no deal and suggests that businesses need to do the same. Therefore, the paper covers provisions for the implementation of customs, VAT and excise regimes, and sets out the steps the Government would take to minimize disruption for businesses and travellers.

The proposed Bill will give the UK power to charge customs duty, classify goods, and set rates and quotas. It will amend the VAT and excise regimes so that they can function post-exit, set out rules governing how HMRC will collect and enforce taxes and duties, and implement tax-related elements of the UK's future trade policy. Feedback on the Customs White Paper has been requested by 3 November.

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Eurasian Economic Union

Decrease in import customs duty rate on certain types of fibers from anides, polyvinyl chloride and acrylic polymers

Decision of the Council of the Eurasian Economic Commission of 22 August 2017 N 47 introduces zero import customs duty from 14 October 2017 to 31 July 2019 with regard to certain types of fibers from anides classified under customs code 5402 19 000 1.

Decision of the Council of the Eurasian Economic Commission of 22 August 2017 N 48 introduces zero import customs duty from 14 October 2017 to 31 August with regard to certain types of polyvinyl chloride and acrylic polymers classified under customs codes 3904 22 000 1 and 3906 90 900 4.

Decisions N 47 and N 48 came into effect on 14 October 2017.

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