Belgium | GTCE - Knowledge Management | 29 June 2016

Global Tax Center (Europe)

Pan-EU VAT compliance Newsletter

June 2016

We are pleased to provide you with the latest edition of our Newsletter, drafted by the Global Tax Center (Europe) group, in close cooperation with the Deloitte local offices.

Our organization established the Global Tax Center (Europe) as a result of working with many large international companies to find and implement Pan European compliance solutions that is the best fit for their needs, both at the level of Tax (VAT, IPT, corporate tax and other local taxes) as well as of Statutory Accounting. Acting as a valid partner (through outsourcings, co-sourcing and assistance in-sourcing assignments) for these organizations moving towards centralization of accounting functions through shared service centres, and seeking best practices in compliance, the GTC group has developed a thorough know-how of European tax and statutory accounting compliance along with the skills required to make the companies' systems compliant to mandatory reporting requirements. In case of questions, please contact one of the experts mentioned in the enclosed directory.

Contents
In this edition you will find

In the spotlight

Country VAT news

In the spotlight

Poland

Monthly reporting of VAT ledgers in SAF-T format as from July 2016

Further to our May 2016 Newsletter, the law introducing the monthly VAT ledgers (in SAF-T standard) reporting obligation has finally been approved.

According to this law, the so-called **large companies** will be required to submit the VAT ledgers in the SAF-T standard (i.e. the VAT ledgers part of the SAF-T package) on a monthly basis as from **1 July 2016**. This means that the first VAT ledgers in SAF-T standard should be submitted on **25 August 2016**. The filing of the full SAF-T package would only be required "on-demand", i.e. upon request of the authorities during an audit.

The new requirements would apply to companies regardless their establishment in Poland.

Large companies are those with more than 250 employees (regardless of the financial conditions) or with more than EUR 50 million of net turnover and EUR 43 million of assets (if employing less than 250 people) in at least one of the previous two fiscal years. The company should check whether it meets the criteria using a "global" approach, meaning that the whole operation of the company should be taken into account, rather than only regarding its activities in Poland.

For small and medium companies (SME), the new monthly reporting obligation will become mandatory as from **1 January 2017** and for micro companies as from **1 January 2018**. The full SAF-T package might be requested from micro, small and medium companies only as from **1 July 2018.**

The non-compliance with the new monthly obligation may result in following fines imposed by the Polish authorities:

- Non-delivery of SAF-T files within the deadline may trigger a fine up to PLN 2,800 (EUR 650)
- Non-submission of the SAF-T files may result in fine up to PLN 5,000 (EUR 1,200). This fine might be imposed multiple times.
- The maximum fine imposed by the authorities on the person responsible for tax matters (of the company) may amount to PLN 3,000,000 (EUR 690,000) in case of non-delivery of the SAF-T files.

SAF-T template

Companies may use the SAF-T templates published by the Polish authorities as a reference while reviewing its systems and reports in light of the new requirements.

The SAF-T template, both in PDF and XSD format, has been published on the Polish Ministry of Finance website. The monthly reporting obligation involves only the fourth file, i.e. the file named "*Ewidencje zakupu i sprzedaży VAT*".

Way of submission

The Polish authorities intend to build a tool via which the data may be uploaded by the companies (if not provided in other formats, e.g. on a CD). There is however no clarity yet when the tool will be available, but once the tool is operational, its use would become mandatory.

Top | **Contents**

EU

CJEU: VAT liability does not always arise from the incurrence of a customs debt

The CJEU has issued its decision in the joined cases of *Eurogate Distribution GmbH* (case C-228/14, hereafter '*Eurogate*') and *DHL Hub Leipzig GmbH* (C-228/14, hereafter '*DHL*'). CJEU found that no import VAT was due on goods which had remained under customs arrangements but had incurred a customs debt as a result of a delay in fulfilling customs obligations.

The cases concerned claims by the German tax authority that "technical" failures to comply with customs formalities resulted in a VAT liability as well as a customs debt.

Eurogate

The CJEU stated that since the goods had not yet left customs warehouse arrangements at the date they were re-exported, they cannot have been 'imported'. Consequently, these goods were not subject to VAT. The CJEU concluded that neither a warehouse keeper nor an owner of the goods was liable to VAT where the goods have not been released into free circulation but were re-exported from the customs warehouse.

DHL

The goods were placed under the external transit procedure (T1) and then re-exported. The obligation to complete the external transit procedure by presenting the goods to the relevant customs office before re-exporting was not met, which led to the incurrence of a customs debt. The CJEU found that since those goods remained under the external transit procedure until they were re-exported, they were not imported. The CJEU concluded that nobody is then liable for payment of the VAT.

Practical implications of the joined cases of *Eurogate* and *DHL*

Businesses involved in the international trade should be aware that VAT is not always due where a customs debt arises. Namely, it is not due when the customs debt incurs because of a failure to fulfil obligations and the conditions connected with different customs procedures.

Top | **Contents**

United Kingdom
Brexit: Indirect tax implications?

In the short term, the recent vote in favour of leaving the EU will have little, if any, immediate impact on indirect taxes. Until agreement on secession is reached (or possibly after two years in the absence of agreement or longer if there is an agreement with the other 27 EU Member States to extend the period for negotiation), EU laws, treaty obligations and access to the Court of Justice of the European Union (CJEU) continue to have effect.

Here is a preliminary high level overview of the potential indirect tax impacts:

- Trade with EU Member States would no longer involve intra-EU dispatches and acquisitions but would become exports and imports.
- For VAT refunds from EU Member States, the 13th Directive refund process should be used rather than the electronic intra-EU refund scheme.
- UK taxpayers would no longer be able to rely on the "direct effect" of EU laws. The UK courts and Tribunals may revert to interpreting the UK provisions and might have less regard to decisions emerging from the CJEU (albeit the fact that, for the foreseeable future, the courts and tribunals may consider existing and future CJEU case law when applying UK provisions).
- The fact that the UK would no longer have to comply with EU VAT law (on rates of VAT, scope of exemptions, zero-rating, and so forth) means that, following secession, the UK could have more flexibility in those areas.
- In respect of day-to-day VAT matters for businesses, the practicalities of cross-border transactions may change following secession. For example, invoicing and reporting protocols could be revised in respect of cross-border supplies.
- Certain sectors will potentially see wholesale changes in respect of how they account for VAT. For example, businesses in the travel sector may no longer be required to account for VAT under the Tour Operators Margin Scheme ("TOMS").
- Suppliers of B2C e-services to the remaining EU countries would have to consider the impact on VAT accounting under the EU's Mini One Stop Shop.
- EU distance sales' scheme would in principle no longer apply to sales to EU individuals.

As this matter may evolve rapidly (or not), triggering quite some potential changes for companies doing business in/with the UK, we intend to allocate a specific section of this Pan EU VAT compliance newsletter to the most recent Indirect Tax Brexit news.

Top | **Contents**

India

Model GST law and GST Constitutional Amendment Bill

On 14 June 2016, the Indian government released a Model GST law. The GST Constitutional Amendment Bill awaits approval from the Upper House of Parliament. If passed, it will lay a concrete roadmap for GST implementation as from 1 April 2017.

Currently, India has multiple indirect taxes. Expectations are high that the GST will simplify doing business in India, allowing supply chains to be integrated and aligned, as well as allowing for greater transparency.

Top | **Contents**

Country VAT news

France

Reverse-charge mechanism for import VAT - Simplifications for EU businesses are applicable as from 22 June 2016 – Immediate action required to benefit from this measure

A new Bill has just released the conditions to benefit from the reverse-charge mechanism for import VAT (for EU businesses).

As a consequence, companies established in the EU could account for VAT under the reverse-charge mechanism by way of making a simple option for this regime (without the need to meet any particular conditions beyond the option itself).

The French Government has however recently proposed, in a second (new) Bill, the re-establishment of a prior approval by customs to benefit from the optional regime (unless the business has AEO status). This bill is currently being debated by the French Parliament and the final version may contain different provisions. At this stage, we have no information on the date of implementation of the new potential measures but we understand that they may be applicable by the end of July.

Action

EU businesses that want to benefit from this measure should immediately opt for it, as this new measure simplifies their compliance burden. Moreover, any option made is said to be automatically accepted by customs for 3 years, leaving enough time enough to qualify for the renewal of the option under authorization process.

Top | **Contents**

Greece

New deadlines for ASPL and practical implications of the VAT rate increase

New deadlines for Greek annual sales and purchase listing (ASPL)

The Greek tax authorities announced changes regarding the deadline to file the Annual Sales and Purchase Listing in Greece. Going forward, the ASPL return needs to be submitted by the end of February of the year following the reporting period. In case corrections would need to be performed, the amendments can be submitted until the end of April of the year following the reporting period. Regarding the 2015 ASPL, the authorities have granted a filing extension until 30 September 2016, while a corrective 2015 ASPL can be submitted until 30 November 2016.

Practical implications of the VAT rate increase

As mentioned in our May 2016 Newsletter, the standard VAT rate in Greece recently rose from 23% to 24% (mainland) and from 16% to 17% (Aegean islands).

In this respect, the minister has issued a Circular POL. 1061/2016 including practical implications resulting from the VAT rate increase:

- VAT will be calculated applying the new VAT rates for the following: *a) Tax records issued as from 1 June 2016, regardless of whether the relevant transactions were carried out before that date; b) Credit invoices issued as from 1 June 2016 relating to transactions carried out before that date.*
- If a tax record is issued to waive a transaction (e.g. an accounting 'credit' note, etc.), the VAT rate of the original transaction will apply, since the original transaction is cancelled entirely.

Top | **Contents**

Hungary

New VAT rates; decreased thresholds for DSPL and electronic reporting for invoices as of 1 July 2017

New VAT rates introduced for internet access, certain essential food items and restaurant services

The Parliament recently adopted an Act ("Act") that modifies the application of certain VAT rates.

The Act introduces an 18% VAT rate for internet access services as of 1 January 2017.

In addition to the above, based on the Act, a 5% VAT rate will apply to certain essential food items (milk, egg, and poultry) and an 18% VAT rate to restaurant services as of 1 January 2017. The VAT rate of restaurant services will be further reduced to 5% as of 1 January 2018.

Decrease of the reporting thresholds for the Domestic Sales and Purchase Listing ("DSPL") and electronic reporting obligation for invoices as of 1 July 2017

The Act also introduces a new threshold for the purposes of reporting invoices in the Domestic Sales and Purchase Listing (DSPL). As of 1 July 2017, domestic invoices where the VAT charged exceeds HUF 100,000 (approx. EUR 320) will be required to be included in the DSPL. The current threshold is HUF 1,000,000 (approx. EUR 3,200).

As of 1 July 2017, **a new electronic real-time data reporting obligation is foreseen for invoices exceeding the same threshold**. The exact rules of this electronic reporting are yet to be made public. As an additional change and as from 1 January 2017, invoices exceeding this threshold should mention the VAT number of the customer.

Action

Businesses with activities in Hungary should take into account that the threshold for the purposes of reporting invoices in the DSPL is considerably decreased as of 1 July 2017. Additionally, as from 1 January 2017, invoices exceeding this threshold should indicate the VAT number of the customer.

Another important change involves a new electronic real-time data reporting obligation for invoices as of 1 July 2017. Businesses should check whether the obligation will apply to them and whether their implemented accounting/ERP systems will allow to quickly retrieve the data in the format required by the Hungarian tax authorities.

Top | **Contents**

Iceland

Various amendments to the VAT legislation

The following changes to VAT turnover thresholds will be introduced as from 1 January 2017:

- The turnover threshold of taxable sales increases from one million to two million.
- The turnover threshold for a settlement period longer than two months is increased from three million to four million.

On 25 May 2016, the following change regarding VAT was proposed but not yet approved:

- Extension of the statute of limitations from six to ten years to impose penalties on persons for incorrect or misleading information on any significant issues relating to VAT or withholding tax regarding assets in low-tax jurisdictions.

Top | **Contents**

Ireland

Recent enhancements to the VAT Return of Trading Details (RTD) in ROS

In April 2016, a package of enhancements were implemented to further optimize the VAT RTD functionality into the ROS system. This new development does not touch any of the existing arrangements for processing RTDs, but adds the following improvements to the user experience in ROS:

- The facility to amend an annual VAT RTD already filed via the ROS system, making the previous filed return inactive;
- A validation check is performed against VAT 3 forms submitted during the period of the RTD where a nil RTD is entered. In case there are positive values in the VAT 3 returns for the respective period, the RTD will be rejected with a message notifying the filer of same;
- Inclusion of the VAT RTD return in the list of outstanding returns for Agent/User. Previously, this return was not visible on the list when it was outstanding;
- Update of the "ROS Returns" screen to display the correct dates for the VAT RTD period.

Top | **Contents**

Italy

Clarifications on the new reverse charge mechanism on supplies of game consoles, tablet PCs and laptops

Further to the recently introduced application of the reverse charge regime to supplies of game consoles, tablet PCs and laptops, the Italian tax authorities have issued a Circular letter n° 21/E dated 25/05/2016 including the following clarifications:

- Regarding the **suppliers**, the regime does not apply to the supplies of game consoles, tablet PCs, laptops and integrated circuit devices carried out by "retailers" (and generally made to final users);
- For the **customers**, in case of local Italian supplies to foreign companies (not established in Italy), these customers would then need to apply for the VAT registration in Italy;
- In respect to the goods, the specific commodity codes (9504 50 50 for game consoles and 8471 30 00 for tablet PCs and laptops) together with the technical features and commercial quality are taken into account for a proper identification of the goods subject to reverse charge.

Top | **Contents**

Latvia

Introduction of the reverse charge mechanism on supplies of cereals, industrial crops and oil seeds

As of 1 July 2016, the reverse charge is applicable to cereals and industrial crops and oil seeds that are not typically used in the unaltered state for final consumption. This reverse charge mechanism applies if both suppliers and customers are taxable persons.

Additionally, the threshold to claim an input VAT refund on a monthly basis with regard to a taxable activity which is subject to the reverse charge mechanism is raised from EUR 1,422.87 to EUR 1,500.

Top | **Contents**

Poland

General anti-avoidance rule signed into law by President

On 7 June 2016, the President signed a bill introducing amendments to the Tax Code (*Ordynacja Podatkowa*) and a few other laws. Similar to the general anti-avoidance rule (GAAR) implemented into the Tax Code and applicable to income and other taxes, an anti-avoidance clause has also been incorporated into the VAT Law (*Ustawa o Podatku od Towarów i Usług*). The amendments will (subject to some exceptions) enter into force 30 days from their publication in the Official Journal. We refer to our May 2016 Newsletter for more information.

Lower limit on cash transactions

On 30 May 2016, the President also signed a bill which lowers the limit on cash transactions from the current EUR 15,000 to PLN 15,000. The law will come into force on 1 January 2017.

Intrastat filing changes

As of 1 June 2016, the Polish Intrastat returns can no longer be filed via the Celina website. Instead, a new filing platform, i.e. **PUESC**, is to be used for the submission of the Intrastat returns as from the May 2016 reporting period.

Top | **Contents**

Portugal

Simplified measures announced with impact on tax matters

On 19 May 2016, the Government has presented the SIMPLEX+2016 program that provides 255 measures intending to simplify administrative procedures, reduce bureaucracy, and make life easier for businesses.

Below you find a summary of the main **proposed** measures related to the indirect tax legislation as well as the possible implementation date:

Expected implementation date	Proposed measures	Objectives
Q2 2016	Permanent inventory system	Replaces the obligation of permanent inventory by the permanent provision of accounting documentation which support stocks (such as invoices, credit and debit notes relating to purchases, sales, consignments and others).
Q4 2016	Online scheduling of meetings with PTA	Online scheduling of in-person meetings with the Portuguese Tax Authorities ("PTA"), avoiding the need to wait on the local tax offices and allowing for a more specialized assistance.
	Tax Payments	Intends to implement the direct debit mechanism for the payment of taxes.
	Tax e-password on real time	The password to access the PTA's website shall be generated/provided when the tax number is created.
	Online Approved Exporter status	Creates an electronic form with the application intended to be filled by companies wishing to apply for the status of Approved Exporter for the issuance of proofs of origin, replacing the current paper form.
	Debt certificates	Simplifies the process of obtaining the tax status certificates for companies that have debts which have been guaranteed.
	Tax Free	Creates a simplified certification system for tax free goods that are carried by travellers who will apply for a VAT refund.
Q1 2017	Electronic tax notifications for non-residents	Creates a system of electronic notifications for non-resident taxpayers, through the PTA's website, eliminating the requirement to appoint a fiscal representative.
	Current account offsets	Possible offset between taxpayers and the State, where the State is a debtor. At first, only to situations related to judicial processes in which the State has been sentenced to pay certain amounts and which do not permit any(more) appeals.
Q2 2017	Annual Tax return ("IES")	Simplifies the filling of Annexes A and I of the Annual Tax return ("IES"), by eliminating about half of the boxes to fill and pre-filling a significant part of the remaining boxes with information extracted from the SAF-T PT (Standard Audit File for Tax Purposes) previously communicated to the PTA. In a second phase, the remaining Annexes would be simplified.
	VAT refunds for taxable persons established outside the territory of the Community	Enables the electronic submission of VAT refund requests and implements automatic control validation procedures.
Q4 2017	Online tax – audit procedures	Introduces the de-materialization of audit procedures. Taxpayers subject to tax audits will have access on the PTA's website to *i)* the information of all phases of audit procedures that they may be subject, *ii)* the history of past audit procedures, as well as, *(iii)* to the relevant documentation related to these procedures.
	Customs' payments	Implementation of the payment system (Single Document Collection for tax) in the customs area.

	Limit the foreclosure of bank account balances	Limit the foreclosure of bank account balances to the amount actually due, creating an electronic mechanism that prevents the foreclosure of the full bank account balance.

Clarifications on the scope of the intermediate VAT rate applicable to certain meals, and restaurant / catering services

As of 1 July 2016, the intermediate VAT rate (13% in the Mainland, 12% in Madeira and 9% in Azores) applies to:

- meals ready to eat, take away with or without home delivery; and
- supplies of services of meals and certain non-alcoholic beverages.

The Portuguese tax authorities have issued a ruling explaining which goods/services may benefit from this intermediate rate. The following summarizes the main instructions that were published:

- Meals ready to eat and take away (with or without home delivery)

  The meals ready to eat should consist of recently prepared dishes, ready for immediate consumption, with or without home delivery (take away, drive in or similar).

  The food products sold in supermarkets, grocery stores and similar which are sold canned or frozen are not considered ready to eat and as such, are not covered by the intermediate VAT rate. Furthermore, deliveries of food through vending machines are not benefiting from the intermediate VAT rate.

  Finally, beverages (e.g. water, juice and wine) are not within the scope, meaning that they are subject to the VAT rate applicable to those goods (mineral water and wine are subject to the intermediate VAT rate, other alcoholic drinks are subject to the standard VAT rate).

- Restaurant / Catering services

  The authorities consider that the concept of services of meals and beverages should be interpreted based on the EU Regulation nr. 282/2011.

Top | **Contents**

Serbia 

Explanation regarding foreign businesses’ fiscal representation and VAT registration

The VAT Law prescribes the obligation for foreign persons performing supplies in Serbia to register for VAT and to appoint a fiscal representative in Serbia. The VAT Law does not impose sanctions for not registering for VAT. If the foreign business does not register for VAT purposes and appoint a fiscal representative, the local customer becomes liable for the VAT.

The Ministry of Finance provided further clarifications in its ruling stating that a foreign person does not have to appoint a fiscal representative when performing supplies subject to VAT in Serbia, as the foreign person has the opportunity (not an obligation) to register for VAT.

A foreign person that performs supplies of goods or services in Serbia is not subject to penalties (sanctions) for not appointing a fiscal representative and for not registering for VAT. If the foreign business does not register for VAT purposes and appoint a fiscal representative, then the local customer becomes liable for the VAT.

It is therefore recommended that buyers verify the VAT status of any foreign vendors in Serbian transactions, in order to check whether reverse charge should apply.

Top | **Contents**

Slovakia

Practical implications of the reverse-charge extension as from January 2016

The reverse-charge mechanism is applicable to the domestic supply of services and goods (except for distance sales) by non-established entities (even though registered for VAT purposes in Slovakia) to the Slovak established entity as from 1 January 2016. As mentioned in the December 2015 Newsletter, such VAT treatment may affect the right to deduct Slovak input VAT through the VAT return.

If a non-established company does not perform export of goods, intra-Community supply of goods, or domestic supply of goods to a non-established entity at least once a year in Slovakia, it is not entitled to claim the input Slovak VAT back through the VAT return.

Should none of the aforementioned transactions be performed, only the VAT on intra-Community acquisition is allowed to be deducted through the periodical VAT returns and input VAT from local purchases and import of goods can only be claimed through the VAT refund procedure.

It is possible to check whether the customer is considered to be a non-established entity in Slovakia (and thus the supply of goods should be subject to 20% Slovak VAT) via this link on the website of the Slovak tax authorities. On this webpage, the indication of '§4' in the last column of the list refers to established taxpayers while '§5' concerns non-established taxpayers.

Top | **Contents**

Spain
New electronic certificates and other issues

New electronic certificates for Spanish tax purposes

As of 6 June 2016, the Spanish Royal Mint (i.e. "*Fábrica Nacional de Moneda y Timbre*") has started to issue new electronic certificates in line with the EU regulation. Those certificates will be applicable as of July 2016 onwards. However, businesses will still be able to use the "old" user certificates until their expiration date or revocation.

Once a business has to renew its current user certificate, it should get a new one from Spanish Royal Mint with the new specifications. It will no longer be possible to renew the certificate automatically via electronic means (which was the practice so far).

Spanish tax authorities plan to allow VAT payments to be performed from a non-Spanish SEPA bank account

With reference to our May 2016 Newsletter, it is now possible to indicate a non-Spanish SEPA bank account in the VAT return to request a VAT refund. However, the Spanish tax authorities do not allow the same for VAT payments which should continue to be paid from a Spanish bank account.

However, the tax authorities plan to allow the VAT payments to be performed via a credit card in the near future. This would entitle taxpayers to get the relevant NRC (for making the payment) through a foreign credit card.

Top | **Contents**

Sweden
The reduced VAT rate applicable to cinema tickets will be abolished and other issues

The reduced VAT rate applicable to cinema tickets will be abolished

The reduced VAT rate of 6% which currently applies to cinema tickets, will be abolished as from 1 January 2017. As from that date onwards, cinema tickets will be subject to the standard VAT rate of 25%.

Delay penalties for VAT returns and ESL returns increased

The penalties for late filing of VAT returns and ESL returns have been increased. If a VAT return is not timely submitted, a penalty applies of SEK 625 (previously SEK 500). In case of a late submission of an ESL return, there is a delay charge of SEK 1,250 (previously SEK 1,000). These charges apply to VAT returns and ESL returns submitted as of 1 January 2016.

Further specification to determine the VAT on imported goods

The Swedish tax authorities issued the Regulation 131 185777-16 / 111 providing specifications on how the VAT amount is determined for imported goods in Sweden under the Union Customs Code (in force since 1 May 2016). The VAT amount on imports generally includes:

- The customs value established by the Customs Department
- Customs and other governmental taxes or charges other than VAT
- Incidental expenses such as commission, packing, transport and insurance until the known destination where the goods are transported

Moreover, the Regulation includes further details applicable to certain specific situations, e.g. goods imported back into the EU after processing in third countries.

Top | **Contents**

United Kingdom

Forthcoming changes to Customs guarantees

The Union Customs Code will lead to many practical changes for importers, particularly for the approximately 10,000 UK holders of Customs approvals. One major change is around the need for additional guarantees and the possibility of reducing some existing ones. Holders of approvals such as Simplified Import VAT Accounting, inward processing and Customs warehousing will face increased scrutiny and guarantees in order to retain approvals. Guarantee levels will depend upon processes and procedures in place, as well as levels of technical competence in Customs matters. Authorized Economic Operators will qualify for reduced amounts of guarantees and can now apply to HMRC for a reduced deferment.

Top | **Contents**

EU

CJEU decision in partial exemption case

The CJEU has issued its decision in the partial exemption case of *Wolfgang und Dr Wilfried Rey Grundstücksgemeinschaft GbR*, which concerned the calculation of deductible input tax incurred in relation to a 'mixed use' building that was the subject of taxable and exempt supplies. The taxpayer sought to use a values based apportionment while the tax authorities argued that an apportionment based on the areas of the building that were the subject of taxable and exempt letting produced a more accurate attribution.

The CJEU confirmed that Member States are not required to impose a 'direct attribution' step in a partial exemption calculation where it would be 'difficult' perform such an attribution, albeit the Court seemed to think that it would often be fairly easy to attribute costs to the taxable and exempt use parts of a building.

It went on to confirm that, if the calculation method changes during the period that the initial input tax deduction is open for adjustment (e.g. in the context of an annual or capital goods scheme adjustment), the substitute method (and not the one used to calculate the initial deduction) should be used to compute the adjustment. It also confirmed that changes in calculation methods of the sort at the heart of the case do not contravene the EU law principles of legal certainty and legitimate expectation.

“Not for profit” companies were carrying on an economic activity – CJEU decision

The CJEU has gone straight to issuing a final decision in the Hungarian case of *Lajvér Meliorációs Nonprofit Kft.* and Lajvér *Csapadékvízrendezési Nonprofit Kft.*, which concerned the recovery of VAT on the cost of the construction and operation of a water disposal system. The project was largely funded by national and EU aid and the two "not for profit" companies involved planned to charge only "modest" fees for the use of the system. The Hungarian tax authority decided that the companies were not carrying on an "economic activity" and rejected the VAT claims made by them. The CJEU disagreed. It decided that the construction and operation of the works amounted to "economic activity”. It also commented that *"... the fact that the price paid for an economic transaction is higher or lower than the cost price, and, therefore, higher or lower than the open market value, is irrelevant for the purpose of establishing whether it was a transaction effected for consideration ...*".

It then left to the Kúria (the Supreme Court in Hungary) to determine whether there were any factors that broke the link between the charges made and the use of the system, and whether the transaction at issue in the case is a wholly artificial arrangement which does not reflect economic reality and was set up with the sole aim of obtaining a tax advantage.

CJEU confirms that reverse charge VAT accounting applies to gold bearing scrap

The Court of Justice of the European Union has issued its decision in the case of *Envirotec Denmark ApS*. The case arose from an attempt by Envirotec to reclaim input VAT on the purchase of ingots made up of a fusion of scrap gold and other materials. It appears that Envirotec paid VAT to the supplier when it bought the material, but that the supplier went into liquidation before accounting for output tax on the supply. The Danish tax authority took the view that Envirotec should not have paid the VAT to the supplier but was liable to account for the output tax on the transaction under the reverse charge rules. The Østre Landsret (Eastern Regional Court) referred questions to the CJEU to see if EU law permitted the application of the reverse charge to materials of the type involved in the case.

Advocate General Juliane Kokott suggested that the CJEU should find that EU law allows Member States to apply the reverse charge to scrap of the type involved in the case and this view has been followed by the Court. Accordingly, Envirotec was liable for output VAT under the Danish reverse charge rules, despite having paid the tax (wrongly) to its supplier.

CJEU decision regarding business assets transferred to private inventory as a result of liquidation

The CJEU has recently issued a ruling in the Polish case C-229/15 Jan Mateusiak concerning taxation of goods used for the purpose of a business activity which as a result of liquidation of the taxpayer's business activity were transferred into private inventory. Further to the Polish VAT law, such transfer requires that all goods, being part of the enterprise with respect to which input VAT has been recovered, are subject to taxation upon liquidation. Some doubts arose as whether such taxation is correct even if the deadline for any adjustments of input VAT (5 years) has already lapsed. The CJEU concluded that the provisions imposing said taxation are correct and the fact that corrections of input VAT can no longer be made does not affect the conclusion.

ECOFIN conclusions and VEG opinion on the EU Commission's VAT Action Plan

At its 25 May 2016 meeting, the EU's Council of Finance Ministers (ECOFIN) adopted conclusions on measures to reduce VAT fraud and to reduce compliance burdens for micro-SMEs. It also supported the proposed change from the origin principle to the destination principle and the intention of the Commission to present a proposal for increased flexibility for Member States, so that they could benefit from the existing reduced and zero rates in other Member States; see Council conclusions on the VAT action plan and on VAT fraud.

Separately, the Commission's VAT Expert Group has adopted an Opinion on the VAT Action Plan. Among other things, the Opinion calls on Member States, the Commission and businesses to make effective use of existing measures to tackle VAT fraud in the short term, and to work together in order to create a robust, fair and efficient destination based definitive system for the Single European VAT Area.

The Voucher Directive has been adopted by the European Council

The European Council has adopted the Voucher Directive, see at data.consilium.europa.eu/doc/document/ST-8741-2016-INIT/en/pdf.

Top | **Contents**

Our knowledge at your service

For any question regarding any information published in our GTC Newsletter, also for any comment, remark, suggestion and request, please contact us directly through the specific e-mail address (becompliant@deloitte.com). We indeed offer a range of knowledge and compliance related services provided in close cooperation with the Deloitte network.

You can also get instant information on VAT developments in Europe through our Twitter account! We regularly publish VAT news in a relaxed format of less than 140 characters. If you have a twitter account or if you are planning to create one, do not hesitate to follow us @GTC_Deloitte

Top | **Contents**

Directory
Deloitte is ready to assist your business

In the below directory, we provide you with the contact details for each of the Deloitte offices participating this month and the Global Tax Center (Europe) contact persons.

Contact Details – May 2016 GTC Newsletter

	Name *Title*	Email *Direct*
Global Tax Center (Europe)		
	Olivier Hody *Partner - VAT*	ohody@deloitte.com *+ 32 2 600 66 49*
	Lode Gos *Partner – Accounting*	lgos@deloitte.com *+ 32 2 800 25 75*
	Christophe de Waele *Partner - VAT*	cdewaele@deloitte.com *+ 32 2 600 65 62*
	Andre Claes *Partner – TMC*	aclaes@deloitte.com *+ 32 2 600 66 70*
	Lina Capiau *Newsletter Coordinator*	lcapiau@deloitte.com *+ 32 2 600 65 53*
	Aiki Kuldkepp *Senior Manager, Knowledge*	akuldkepp@deloitte.com *+ 32 2 600 66 34*
VAT Country contacts		
Denmark	Palle Kauffmann *Partner*	pkauffmann@deloitte.dk *+ 45 36102509*
France	Michel Guichard *Partner*	mguichard@taj.fr *+33155616672*
	Marie Manuelli *Director*	mmanuelli@taj.fr *+33155616420*
Germany	Marcus Sauer *Director*	msauer@deloitte.de *+ 4921187723934*
Greece	Kyriaki Dafni *Senior Manager*	kdafni@deloitte.gr *+ 30 210 678110*
Hungary	Dorottya Fabian *Manager*	dofabian@deloittece.com *+ 36 (1) 428 6641*
Iceland	Pall Johannesson *Partner*	pjohannesson@deloitte.is *+354 580 3115*
	Vala Valtysdottir *Partner*	*vvaltysdottir@deloitte.is* *+354 860 3036*
Ireland	John Stewart *Director*	jostewart@deloitte.ie *+35314172479*
Italy	Barbara Rossi *Partner*	brossi@deloitte.it *+ 39 0115542925*
Latvia	Janis Cupans *Partner*	jcupans@deloitteCE.com *+371 (6) 7074171*
Poland	Michał Kłosiński *Partner*	mklosinski@deloittece.com *+ 48 22 5110716*
Portugal	Afonso Machado Arnaldo *Partner*	afarnaldo@deloitte.pt *+351 210427528*
Serbia	Filip Kovacevic *Manager*	fkovacevic@deloittece.com *+381 11 3812 164*
Slovakia	Jan Skorka *Senior Manager*	jskorka@deloittece.com *+421 (2) 582 49 351*
Spain	Marie Jose Garcia Vega *Senior Manager*	mgarciavega@deloitte.es *+34 914381325*
Sweden	Emil Frennberg *Director*	efrennberg@deloitte.se *+46 75 246 31 12*
United Kingdom	Jeffrie Mann *Senior Manager*	jefmann@deloitte.co.uk *+44 20 7007 6975*
	Alison Zaremba *Senior Manager*	*azaremba*@deloitte.co.uk *+44 20 7007 9929*
EU	Aili Nurk *Senior Manager*	anurk@deloitte.co.uk *+44 (0)20 7007 8392*
EMEA Indirect tax	Kathleen Soors *EMEA Coordinator*	ksoors@deloitte.com *+ 32 3 800 86 06*

Top | **Contents**

Deloitte Tax Resources

Belgian Tax Alerts

International Tax Alerts

Global Tax Resources

Taxation & Investment Guides

Berkenlaan 8b
1831 Diegem
Belgium