

## **Global Indirect Tax News**

Your reference for indirect tax and global trade matters

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

Features of this edition include VAT rate reductions in China, news on the introduction of VAT in Oman, and the imminent introduction of real-time invoice reporting in Hungary.

### **David Raistrick**

Deloitte Global Leader – Indirect Tax

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# Country summaries

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### Latvia

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**Netherlands** The Supreme Court has ruled on whether municipalities act as VAT entrepreneurs with respect to parking on the street. [Read More](#)

A court of appeal has ruled that a municipality acts as a public authority for VAT purposes in operating cemeteries.

There has been a change to the legislation regarding VAT cost sharing groups.

A solution is being sought for the VAT exemption of 'mind sports'.

A proposal for a new scheme for small enterprises has been published.

A simplification is being proposed for the VAT treatment of examinations in professional education

**Poland** The Ministry of Finance published a draft bill to amend the VAT law. [Read More](#)

**Portugal** The CJEU has ruled on VAT adjustments for vacant properties where input tax had been recovered. [Read More](#)

The CJEU has ruled on the statute of limitation for the deduction of input VAT following a tax inspection.

The tax authorities have issued guidance on the application of the bad debt regime.

The tax authorities have released a binding ruling on the right to deduct VAT incurred in the acquisition, maintenance, and use of passenger vehicles.

The implementation of the accounting SAF-T file report for the purposes of automatic pre-filling of certain annexes and fields of the annual return (IES) has been postponed.

**Russia**

The Ministry for Industry and Trade of the Russian Federation has approved a procedure for the review of applications from retail trading organizations to participate in the tax-free system implementation pilot project.

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The Ministry of Finance of the Russian Federation has clarified the application of VAT with respect to services rendered by one foreign company to another foreign company.

The Ministry of Finance has clarified the VAT treatment of the services of organizing conferences, etc. supplied by a foreign company to a Russian company.

The Ministry of Finance has clarified the application of VAT on services related to the organization of participation in congress events.

The Ministry of Finance has clarified the application of VAT with respect to goods sold to foreign purchasers.

The Ministry of Finance has clarified the application of VAT with respect to the transfer of exclusive rights to use film.

The Federal Tax Service has clarified the application of VAT with respect to the return of payments by a foreign entity to individuals for the early cancellation of a subscription for e-services.

**Slovakia**

Deloitte Slovakia is holding a VAT Academy in 2018.

[Read More](#)**South Africa**

The International Trade Administration Commission of South Africa has received a number of applications.

[Read More](#)**United Kingdom**

The Court of Appeal has considered VAT input tax recovery on charges for investment management.

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The CJEU Advocate General has opined that arranging dental payment plans is not VAT exempt.

A Tribunal has ruled that digital newspapers are not VAT zero-rated.

New guidance has been issued on the VAT cost sharing exemption.

Infraction proceedings have been issued by the European Commission against the UK regarding the Terminal Markets Order.

## **Eurasian Economic Union**

### **Eurasian Economic Union**

There has been a decrease in certain import customs duty rates due to Russia's obligations to the World Trade Organization

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There has been an increase in anti-dumping duty on rolled steel wheels originating from Ukraine.

There are unified requirements on the use of hazardous substances in electronic products.

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## **Americas**

### **Canada**

#### **Quebec Sales Tax and e-commerce**

Quebec's Minister of Finance, Mr Carlos Leitão, has announced in the 2018-2019 Quebec Budget that the Quebec Sales Tax (QST) regime will be amended to introduce a mandatory registration system for suppliers without physical or significant presence in Quebec (non-resident suppliers). As such, non-resident suppliers will be required to collect and remit QST with respect to taxable incorporeal movable property and services supplied in Quebec to 'specified Quebec consumers'. In addition, non-resident suppliers located in Canada will be required to collect and remit QST on corporeal movable property supplied in Quebec to 'specified Quebec consumers'. Mandatory registration will apply to a non-resident supplier, to the extent that the value of the consideration on all taxable supplies made in Quebec to consumers exceeds the threshold of CAD 30,000.

This registration requirement will also apply to digital property and services distribution platforms (digital platforms) in respect of taxable supplies of incorporeal movable property or services received by Quebec consumers, provided that these digital platforms control the key elements of transactions with the Quebec consumers, such as billing, transaction terms and conditions, and delivery terms. Generally speaking, a digital platform refers to a platform that offers a service, through electronic communication (for example, an application store or website), to non-resident suppliers, allowing them to make taxable supplies of incorporeal movable property or services in Quebec to Quebec consumers. This measure will apply to digital platforms controlling the key elements of transactions with Quebec consumers, where the value of the consideration for all taxable supplies that a digital platform enables non-resident suppliers to make in Quebec to consumers exceeds a threshold of CAD 30,000.

A 'specified Quebec consumer' will mean a person not registered for the QST and whose usual place of residence is located in Quebec.

The measures stemming from the implementation of the new mandatory registration system will apply as of:

- 1 January 2019 for non-resident suppliers located outside Canada, and for digital platforms allowing such suppliers to make taxable supplies of incorporeal movable property or services in Quebec to Quebec consumers;
- 1 September 2019 for non-resident suppliers located in Canada, and for digital platforms allowing such suppliers to make taxable supplies of incorporeal movable property or services in Quebec to Quebec consumers.

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## **Colombia**

### **VAT exemption for vendors of computer services, servers, web pages, and maintenance**

According to the tax authorities, and in application of the principle of legality that governs tax exemptions, the VAT exemption for the services of providing web pages, servers (hosting), cloud computing, and remote maintenance of programs and equipment applies even if the end user contracts with the vendor and not with the provider directly.

### **VAT applies when temporary importation of heavy machinery for basic industry modified to ordinary importation**

The tax authorities have clarified that VAT on the long-term temporary importation of heavy machinery for basic industries only applies when the temporary import is modified to an ordinary import, even when the tax authorities order the modification when the terms for ending the temporary importation expire.

## **Certificate of origin not required for short-term temporary importation**

Importers cannot be required by the tax authorities to certify origin for temporary importation, as no customs duties are payable. A certificate must be presented when the temporary regime is modified to an ordinary import and such taxes are triggered.

## **Sanction of 200% for not making seized merchandise available**

The Council of State has established that where merchandise subject to seizure cannot be made available to the customs authorities, a fine of 200% of the value of the merchandise may apply to the participants in the foreign trade operation. The sanction may fall on one or all of the parties individually, including the importer and concurrently with the customs agent, according to the case.

## **Measures for prevention and control of customs fraud in imports of fibers, yarns, fabrics, clothing, and shoes**

The thresholds of FOB prices and the tariff items for yarns, fibers, fabrics, footwear, and clothing have been modified to prevent and control customs fraud.

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## **US-China**

### **Trade discussion between China and US**

On 3 April 2018, the Office of the US Trade Representative (USTR) published a proposed list of products imported from China that could be subject to an additional 25% tariff. In response to the USTR's list, on 4 April 2018, China's Ministry of Commerce (MOFCOM) published Bulletin [2018] No. 34, which proposed a list of products imported from the US with an additional 25% tariff increase.

See [China-US](#) for more details.

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## **Asia Pacific**

### **China-US**

#### **Trade discussion between China and US**

On 3 April 2018, the Office of the US Trade Representative (USTR) published a proposed list of products imported from China that could be subject to an additional 25% tariff. The proposed list covers approximately 1,300 separate tariff lines.



In response to the USTR's list, on 4 April 2018, China's Ministry of Commerce (MOFCOM) published Bulletin [2018] No. 34, which proposed a list of products imported from the US with an additional 25% tariff increase. China's list includes products with 106 HS (Harmonized System) codes, including soya beans, automotive, chemical products, and aircraft exported from the US worth approximately USD 50 billion based on the trade statistics in 2017. The effective date of the tariff increase was not mentioned in Bulletin 34.

Separately, on 1 April 2018, China announced that, in order to balance the potential losses of Chinese companies due to the tariff increase of aluminum and steel products imported into the US (Section 232 Safeguard Tariffs), China has decided to terminate the tariff reduction of seven categories of products of US origin and increase the tariff accordingly. This change took effect from 2 April 2018. In the first part of the list, the tariff increase is 15% covering 120 HS codes, including fresh and dried fruit, dried nuts, wine of fresh grapes, denatured ethyl alcohol, American ginseng, and seamless tubes of iron or steel. In the second part of the list, the tariff increase is 25%, covering 8 HS codes, including pork, aluminum waste, and scrap.

### ***Comment***

The imposition of these new tariffs creates uncertainty, and companies may suffer with higher trade costs from duty increases, especially companies in those industries covered by the new tariffs announced by the US and China. It is possible that the dispute could be further upgraded and affect more products and industries. It is suggested that companies operating in China analyze their global supply chain and take actions to mitigate the risks caused by the US and China trade dispute.

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## **China**

### **VAT rate reductions**

On 4 April 2018, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued Caishui [2018] No. 32, according to which, the VAT rates for taxable supplies that are currently subject to 17% and 11% will be reduced to 16% and 10% respectively. Caishui 32 comes into effect from 1 May 2018. Consequently, the export VAT refund rates for goods that are currently subject to 17% and 11% will also be adjusted to 16% and 10% accordingly. Caishui 32 also provided transitional rules for exports of affected supplies until 31 July 2018.

After the reduction of the VAT rates, the applicable VAT rates in China will be as follows.

Taxable activities	Applicable VAT rate	
	Before 1 May 2018	From 1 May 2018
Sales and importation of general goods; provision of processing, repair and replacement services; and provision of leasing services of tangible and moveable assets	17%	16%
Sales and importation of specified goods*; provision of transportation, postal, basic telecom services, construction services and leasing services of immovable property; and sales of land use rights or immovable property	11%	10%

\* Specified goods include agricultural products (including grains), tap water, heat, liquefied petroleum gas, natural gas, edible vegetable oil, air conditioning, hot water, coal gas, coal products for residential use, edible salt, agricultural machinery, feed, pesticide, agricultural film, fertilizer, methane, dimethyl ether, books, newspapers, magazines, audio and visual products, and electronic publications.

### **Change to annual sales thresholds for small-scale VAT payers**

On 4 April 2018, the MOF and the SAT jointly issued Caishui [2018] No. 33 to change the annual sales thresholds for small-scale VAT payers. Caishui 33 will apply from 1 May 2018.

There are currently three thresholds for different groups of small-scale VAT payers in China: (i) RMB 500,000 for manufacturing enterprises; (ii) RMB 800,000 for trading enterprises; and (iii) RMB 5 million for taxpayers under the VAT reform program whose business would have been subject to Business Tax rather than VAT before the reform.

As from 1 May 2018, the annual sales threshold will be unified to RMB 5 million for all small-scale VAT payers.

Moreover, a manufacturing or trading enterprise whose sales reached the threshold (i.e. RMB 500,000/800,000) may convert to small-scale VAT payer status by 31 December 2018 if the annual sales of the enterprise has not reached the new threshold of RMB 5 million when the enterprise applies for the conversion.

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## Malaysia

### Update from National GST Conference 2018

The National GST Conference was held on 27 and 28 February 2018. There was a significant amount of dialogue and content covered at the two-day conference, including the following issues:

- Malaysia GST Compliance Assurance Program (MyGCAP)
- Collaboration between the Inland Revenue Board of Malaysia (IRBM) and RMCD
- GST audits
- GST refunds
- Issuance of public rulings
- Developments in the GST Tribunal
- Application of GST on digital businesses

For details and Deloitte Malaysia's comments, see [GST Chat: March 2018](#).

### Customs Appeal Tribunal decision regarding fraud

Deloitte Malaysia recently represented appellant-importers in two recent cases of the Customs Appeal Tribunal.

The appeals to the Tribunal were against decisions of the Director General of Customs that affirmed bills of demand (BODs) issued by a State Customs Director to the appellants for short-paid customs duties/sales tax. The short-paid duties/tax arose due to fraud suspected to have been committed by persons other than the appellants.

The appellants had basically paid the correct amount of duties/tax to their forwarding agents for onward payment to Customs. The fraud involved *inter alia* forged Customs Official Receipts (CORs) being furnished to the appellants, showing the correct amount of duties/taxes purportedly paid in full to Customs. However, the duties/tax were actually not paid in full (Customs *Sistem Maklumat Kastam* or SMK system showed a lesser amount actually paid).

Based on the Tribunal's oral decisions delivered on 7 March 2018, the Tribunal essentially held as follows:

- 1) The defaulting customs/forwarding agents were carrying out roles in the customs clearance/import declaration process which brought them within the meaning of 'importer' (person liable to pay the duties/tax), i.e., as persons in possession of the goods at and from the time of importation until the goods are removed from customs control.

- 2) Based on the judicial precedent of the Court of Appeal in the judicial review case of *Minister of Finance & Anor v Wincor Nixdorf (M) Sdn Bhd*, Customs should not have demanded the defrauded duties/tax from the victims of the fraud such as the appellants, who had paid the correct duties/tax. This is principally because Customs had the responsibility under the customs laws to control customs agents and had not fulfilled this responsibility, since Customs had not taken action (to issue BODs) to the defaulting customs agents involved who had committed the fraud and who were liable for the import declarations.

For further information, including Deloitte Malaysia's comments, see [GST Chat: March 2018](#).

### **Amendments to GST legislation**

There have been amendments to the Finance (No.2) Act 2017 and the Goods and Services Tax (Relief) Order 2014. For details, including Deloitte Malaysia's comments, see [GST Chat: March 2018](#).

### **Revised guides**

The following RMCD guides have been amended. For details, including Deloitte Malaysia's comments, see [GST Chat: March 2018](#).

- Guide on Tourist Refund Scheme (TRS) as at 21 December 2017.
- Revised Guide on Lodging or Holiday Accommodation Services as at 23 January 2018.

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## **EMEA**

### **European Union**

#### **Draft agreement on UK's withdrawal from EU**

The European Commission has published the draft legal text of a withdrawal agreement, which if agreed and ratified in its current form provides for a transitional period for the UK's withdrawal from the EU to 31 December 2020, see [Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#).

Article 43 of the draft agreement onwards sets out ongoing customs procedures which have been agreed at negotiators' level. Article 47 (on VAT) will preserve rights arising under the EU Principal VAT Directive for five years after the end of the transitional period (but this may be subject to drafting changes).

The Commission has also proposed (Article 82 onwards) the ongoing jurisdiction of the Court of Justice of the European Union over matters referred to it before the end of the transitional period.

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## **Gulf Cooperation Council**

### **VAT to be introduced in OMAN, but timing uncertain**

Following the introduction of VAT in the Kingdom of Saudi Arabia (KSA) and United Arab Emirates (UAE) on 1 January 2018, there has recently been debate and speculation regarding when the other four Gulf States will also implement VAT. The commonly held view is that the other four Member States of the GCC must implement by 1 January 2019 at the latest. However, to date none of the four Member States has announced a date officially. From unofficial comments made in Kuwait it seems that date is unlikely.

In Oman there again has been no official announcement. However, an article in the *Oman Daily Observer* on 9 April 2018 noted that the Ministry of Finance has announced a decision to amend categories in the budget to include revenue from two new taxes: excise duty and VAT.

Although excise duty is expected to be implemented in Summer 2018 (and the expected date is June), the timing for VAT is less clear. It is anticipated that VAT would be introduced in 2019, but it is uncertain whether that would be January or later in the year, either at the end of quarter 2 or early in quarter 3.

From experience with the implementation of VAT in the UAE and KSA, it is hoped that the relevant law and regulations would be issued at least six months prior to any implementation date, to ensure businesses can plan for a smooth and successful transition to VAT.

It is clear that there is an intention for Oman to introduce VAT in line with the GCC VAT Framework treaty, although there remains uncertainty regarding the implementation date.

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## **Belgium**

### **Government approves option to tax B2B immovable letting**

As part of the 23 March 2018 budgetary control meeting, the Government approved the long-awaited VAT reform that will introduce the possibility for landlords to opt for the application of VAT to immovable letting agreements concluded with professional tenants. The new regulation's entry into force is planned for 1 October 2018.

## **Background**

Immovable letting is currently exempt from VAT in Belgium, apart from several specific exceptions. This VAT exemption blocks any upstream VAT incurred on the property at owner level.

As part of the 'Summer Agreement', the Government announced in July 2017 that it planned to introduce a new optional scheme applying VAT to immovable letting between businesses. However, this plan was unexpectedly abandoned after Government meetings in October 2017.

During the budgetary control process for 2018, the measure was eventually approved. The new regulation will only apply for newly constructed buildings (including substantially renovated existing buildings).

### **Option for B2B immovable letting**

The new regulation will allow the landlord and tenant to jointly opt to subject to VAT rental payments. This option is only possible to the extent that the leased building is used by the tenant for business operations, for which said tenant qualifies as a VAT taxable person.

Where the tenant is a non-taxable person (e.g. a public body without any economic activities, private individual, etc.), the option will not be available.

### **Only for new buildings**

The option to apply VAT will only be possible for newly constructed buildings from 1 October 2018. In practice, this would mean that only buildings (projects) for which no VAT has become due on construction or planning activities before 1 October 2018 would be eligible for the option. Existing properties (or buildings where work or planning has started before 1 October 2018) will be excluded. Hence, immovable letting agreements on such buildings cannot be subject to VAT under the newly created optional regime.

An option to apply VAT to immovable letting will also be possible for buildings that will be significantly renovated to a point where a property will have become a new building again, for VAT purposes, upon completion of renovation works.

### **Longer VAT recapture period**

If the parties opt to apply VAT to immovable letting, the VAT recapture period for the building will be extended from 15 years to 25 years. This means that where a building would not be let with an option for VAT for a certain period during this 25 year period, a partial VAT recapture will have to be carried out.

### **Short term rent**

In addition to the optional regime for B2B letting, the new rules will also include a mandatory application of VAT for short-term rent. This measure aims to reduce the complexity of *ad hoc* arrangements which are currently often put into place to set aside the general VAT exemption for immovable letting.

This mandatory application of VAT does not apply where the property is used as a dwelling or for social or cultural activities.

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### **Constitutional Court annuls VAT for online games and online gambling**

On 22 March 2018, the Constitutional Court annulled 2016 legislation that removed the VAT exemption for online games and online gambling. The annulment will not have retroactive effect but will only be applicable upon its publication in the Belgian Official Journal.

#### ***Background***

The Program Law of 1 July 2016 abolished the VAT exemption for online games and online gambling. Since 1 August 2016, a different VAT regime has therefore been applicable to online games and gambling, with their offline equivalents (i.e. land-based casinos or paper lotteries) remaining VAT exempt.

Several operators of online gambling platforms, as well as the Walloon Region, had filed a recourse in annulment before the Constitutional Court against this 2016 legislation. The arguments on the one hand related to the conflict of interest between federal and regional competencies in this field, as the regions already levy a tax on betting and games of chance. On the other hand, the applicants argued that the distinction between the online and offline forms of games, gambling, and lotteries is discriminatory in nature.

#### ***Constitutional Court ruling***

On 22 March 2018, the Constitutional Court annulled the articles in the 1 July 2016 program law that abolished the VAT exemption for online games and online gambling.

The Court held that federal legislation infringed on the regions' competences, as the application of VAT on online games and online gambling renders them more expensive, hence less attractive. In applying VAT on those activities, federal legislation thus reduced the regional taxes' taxable base. The legislation should therefore have been adopted with a qualified majority, which is the applicable procedure in cases of potential conflict of interest.

As this argument leads to the legislation's complete annulment, there was no need for the Constitutional Court to evaluate the other arguments raised by the applicants, such as the potential discriminatory nature of taxation of online games and online gambling.

## **Next steps**

In its judgment, the Constitutional Court limited the annulment's effects for budgetary and practical reasons. Consequently, the VAT exemption for online games and online gambling is not restored with retroactive effect, but will only apply as soon as the judgment is published in the Belgian Official Journal (*Belgisch Staatsblad/Moniteur Belge*). It is uncertain when this publication will occur, which will likely take several weeks or even months.

Following the court's judgment, attention will turn to what the legislative response will be at federal and regional level.

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## **Finland**

### **Proposal for compensation of VAT costs to regions**

In relation to a proposed regional administration and healthcare reform in Finland, a Government proposal regarding the compensation of VAT costs to the regions has recently been published.

According to the proposal, the regions would receive compensation for VAT costs arising from buying taxable services for which no VAT deduction right would exist because the acquisitions have been made for VAT exempt purposes (i.e. the provision of healthcare and social welfare services).

In addition, where a region buys VAT exempt healthcare and social welfare services, it would receive a 5% computational compensation for the 'hidden' VAT.

The proposed compensation method is, in principle, similar to the compensation system currently available for municipalities, although its practical implementation is likely to be different.

The reason for implementing the compensation system is to ensure that it would not be more beneficial for the regions to produce the services themselves compared with buying them.

A similar compensation model for private companies providing healthcare and social welfare services has been proposed, but further information on this is not yet available.

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## Hungary

### **Deadline approaching for real-time invoice data provision obligation**

The real-time invoice data provision obligation enters into force on 1 July 2018. In order to support preparation for this obligation, the tax authorities are publishing information and documentation on an ongoing basis. The latest updates are available on the website of the tax authorities, see: <https://onlineszamla-test.nav.gov.hu/home>.

### **Deadline approaching for food chain supervision fee reporting obligation for VAT-registered foreign businesses**

The deadline for the food chain supervision fee (FCSF) reporting obligation is 31 May 2018.

By way of background, VAT-registered foreign businesses in Hungary that are carrying out trade activities that are subject to FCSF will be obliged to pay FCSF, due to a law change in Hungary effective as of 16 June 2017. Previously only Hungarian companies were required to pay FCSF.

Among others, the following activities are subject to FCSF: distribution of food; supply of food or fodder crops; seeds; plant products; transport of live animals; and supply of veterinary medicines.

For non-compliance with FCSF reporting obligation, the amount of the default penalty may be between HUF 10,000 (approx. EUR 33) and HUF 500,000,000 (approx. EUR 1,613,000), but a maximum of 10% of the net sales revenue from the previous financial year, which serves as a tax base for the FCSF.

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## Italy

### **Implementing provisions for VAT grouping**

On 6 April 2018, the implementing decree for VAT grouping was issued by the Ministry of Finance. The most significant provisions are as follows:

- By way of exception for the first year of implementation only, it will be possible to opt for VAT grouping (effective from 2019) by November 2018 (the standard deadline for the option will be 30 September of the previous year);
- The financial, economic, and organizational links between the taxable subjects joining a VAT group must exist at the time of the option and, in any case, they must be in place from 1 July of the year preceding the year in which the VAT group will be effective (from 1 July 2018 for VAT grouping effective from 2019);

- Any subject in the VAT group must maintain its own VAT number, and an additional and separate VAT number will be attributed to the VAT group; therefore any supply made by a subject in the VAT group to a company outside the VAT group shall be traced by an invoice reporting the Italian VAT number of the subject in the VAT group together with the new Italian VAT number of the VAT group.

### **Recovery of input VAT on purchases of fuel, oil, and other transport-related services.**

On 4 April 2018, the tax authorities released guidelines (Implementing Measure No. 73203/2018) on the means of payment that will allow taxpayers to recover input VAT on purchases of fuel, oil, and other transport-related services, starting from 1 July 2018. According to the tax authorities, the following means of payment will be deemed as appropriate for VAT recovery purposes:

- Bank cheque or postal cheque;
- Bank transfer and direct debit from the bank account;
- Credit card, debit card, prepaid card, or other electronic means of payment.

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## **Latvia**

### **Changes to penalties legislation**

Legislative changes are planned to the Latvian Administrative Violations Code, which if implemented would, *inter alia*, amend the penalties for late VAT return filing. A new Administrative Violation Process Law is also currently being developed, which is planned to substitute the current Latvian Administrative Violations Code from 1 January 2020. In conjunction with the development of the new law, amendments to the Law on Taxes and Duties are being drafted, setting out applicable penalties regarding administrative violations connected to tax compliance, which will not be covered by the new Administrative Violation Process Law.

### ***Latvian Administrative Violations Code***

The draft amendments to the Latvian Administrative Violations Code set out the following penalties for the late filing of tax returns (including the VAT return):

- Submission delay of up to 10 days – Penalty from EUR 25 to EUR 70 (currently up to EUR 70 for a delay of up to 15 days);
- Submission delay from 11 to 20 days – Penalty from EUR 71 to EUR 150 (currently from EUR 71 to EUR 280 for a submission delay from 16 to 30 days);
- Submission delay from 21 to 30 days – Penalty from EUR 151 to EUR 280 (currently from EUR 71 to EUR 280 for a submission delay from 16 to 30 days);

- Submission delay of more than 30 days or non-submission – Penalty from EUR 281 to EUR 700 (no change from the current penalty).

If adopted, the planned changes would enter into force as of 1 January 2019.

### ***Law on Taxes and Duties***

In conjunction with the development of the new Administrative Violation Process Law, which would replace the current Latvian Administrative Violations Code, a new chapter is to be added to the Law on Taxes and Duties setting out applicable penalties for administrative violations in the field of taxation which would not be covered by the Administrative Violation Process Law.

The penalties applicable for specific violations set out in the new chapter of the Law on Taxes and Duties are valued in 'penalty units'. One 'penalty unit' is set to be EUR 5 under the new Administrative Violation Process Law. This means that any changes in the value of the penalty unit set out by the Administrative Violations Process Law would affect the total monetary penalty amount determined by the Law on Taxes and Duties, even if no amendments to the Law on Taxes and Duties are announced.

The following penalties for administrative violations which are connected to a taxpayer's VAT reporting obligations in Latvia are to be set by the new chapter of the Law on Taxes and Duties:

- For the evasion of payment of taxes and duties – Application of a penalty ranging from 28 to 400 penalty units (i.e. EUR 140 to EUR 2,000).
- For avoidance or delay registering as a taxpayer in Latvia – A warning or application of a penalty ranging from 10 to 42 penalty units (i.e. EUR 50 to EUR 210).
- For the late submission of tax returns:
  - Delay of up to 10 days – Penalty ranging from 5 to 14 penalty units (EUR 25 – EUR 70);
  - Delay from 11 to 20 days – Penalty ranging from 15 to 30 penalty units (EUR 75 – EUR 150);
  - Delay from 21 to 30 days – Penalty ranging from 31 to 56 penalty units (EUR 155 – EUR 280);
  - Delay of more than 30 days or failure to submit the tax return – Penalty ranging from 57 to 140 penalty units (EUR 285 – EUR 700).
- For the late submission of informative tax returns/reports (for example Intrastat reports) not including the informative returns/reports related to employees – Application of a penalty ranging from 3 to 30 penalty units (EUR 15 to EUR 150).

If adopted, the planned changes would enter into force simultaneously with the new Administrative Violation Process Law, which is currently planned to be 1 January 2020.

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## **Netherlands**

### **Municipalities do not act as VAT entrepreneur for parking on the street**

On 23 March 2018, the Supreme Court ruled in two cases, in which the question was raised as to whether a municipality acts as a VAT entrepreneur with respect to parking on public roads (parking on the street) and as a consequence had to charge VAT.

According to current policy, parking on the street is not subject to VAT, because the municipality is deemed to act as the government and not to compete with other parking operators.

This current policy was debated in these two cases. The Court decided the municipalities did not need to charge VAT and issue an invoice including VAT, and did not answer the question as to whether there is a distortion of competition.

Based on the decisions of the Supreme Court, it is not yet necessary to adjust the existing policy regarding parking on the street.

### **Municipality acts as public authority for VAT purposes in operating cemeteries**

On 16 March 2018, a court of appeal ruled that a municipality engaged in the construction, maintenance, expansion, and structuring of cemeteries and, in particular, the issue of grave rights for valuable consideration acts in its capacity as a public authority.

The court of appeal ruled that having regard to the duties and obligations assigned to the municipality by the national legislator and public law, the municipality acts under a legal regime specifically applying to it. This means that the municipality is acting as government in operating cemeteries, and must therefore be treated as a non-entrepreneur for VAT purposes.

According to the court of appeal, this treatment does not lead to a distortion of competition with commercial parties.

### **Change of legislation regarding VAT cost sharing groups**

On 29 March 2018, the State Secretary of Finance announced a change of legislation concerning VAT cost sharing groups. Existing cost sharing groups in mainly the insurance, banking, and social housing sector, as well cost sharing groups operating for pension funds no longer qualify to use the cost sharing exemption. The envisaged change in legislation is the result of the State Secretary's analysis of the recent Court of Justice of the European Union cases concerning the VAT cost sharing exemption: *Commission v. Luxembourg* (C-274/15), *Aviva* (C-605/15), *DNB Banka* (C-326/15), and *Commission v Germany* (C-616/15).

The current VAT legislation does not comply with the CJEU judgments concerning the application of the cost sharing exemption. Therefore, the State Secretary has announced a change to the VAT legislation as from 1 January 2019. Until that date, (existing) cost sharing groups are able to apply the current legislation.

### **Solution sought for VAT exemption of 'mind sports'**

On 27 March 2018, the State Secretary of Finance answered questions asked by Parliament regarding the VAT treatment of 'mind sports'. The State Secretary indicated that the outcome of the CJEU case *The English Bridge Union* also applies to chess and draughts, as well as bridge.

In that case, the CJEU decided that mind sports, which are characterized by a physical element that appears to be negligible, are not covered by the concept of 'sport' in the VAT exemption for sports. As a result, supplies of goods and services by mind games associations are no longer VAT exempt but will be subject to 21% VAT. This applies, for example, to contributions and for granting access to mind sports events. On the other hand, mind sports associations will be entitled to deduct VAT input tax.

Due to these changes, the increase in the burden per association can amount to hundreds of euros. This means an increase of about EUR 5 to EUR 10 per year for each association member.

This also means that mind sports associations can no longer make use of the VAT exemption for fundraising activities and the reduced rate for the provision of sports facilities.

The State Secretary is now exploring the possibility of applying another VAT exemption to mind sports – the exemption for supplies of goods and services of a social or cultural nature. In this way, mind sports would continue to be subject to VAT exemption, involving as little administrative burden as possible for the sports associations involved.

The State Secretary will report on his research by summer 2018.

### **Proposal for new scheme for small enterprises**

The Government proposes to modernize the current small business scheme by introducing a turnover-related exemption which will take effect from 1 January 2020. The Ministry of Finance has released the draft legislative proposal for internet consultation. The turnover-related exemption should make VAT for entrepreneurs with a low turnover much easier. Manual (re)calculations, which are necessary for application of the degressive reduction, are to be cancelled.

The new regulation differs from the current regulation on a number of points. First, the new regulation will be extended to other than natural persons. This means that the new regulation will become legally neutral and can also be applied by legal entities, such as private limited companies, associations, and foundations. Thresholds are not based on VAT that must be paid to the tax authorities, but on turnover.

The essence of the new scheme is that an entrepreneur who remains below the turnover threshold and chooses to apply the new scheme, does not charge VAT to customers. The entrepreneur cannot deduct the VAT that other entrepreneurs charge. Entrepreneurs under the new scheme are relieved from submitting VAT returns and the related administrative obligations. If desired they can opt out of the scheme and apply the regular VAT rules.

### **Simplification of VAT treatment for examinations in professional education**

On 5 April 2018, the State Secretary of Finance informed the Parliament of pending VAT issues. One of the issues regards the VAT treatment of examinations in professional education. The State Secretary welcomes the idea of exempting entrance examinations that give access to VAT exempt education and intermediate examinations as part of VAT exempt education in the same way, and under the same conditions, as final examinations that complete VAT exempt professional education. This envisaged change in legislation will enter into force as from 1 January 2019.

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### **Poland**

#### **Amendments to VAT law**

The Ministry of Finance published a draft bill amending the VAT law. The bill provides for the following changes:

- Unjust enrichment – Refunds and carry forwards of excess input VAT will be restricted, so as not to apply if the tax authorities prove that the burden of tax was passed onto a buyer of goods, a recipient of services, or a third party, and the refund would result in the taxpayer's unjust enrichment.
- 'First settlement' – The definition will be changed to reflect the Court of Justice of the European Union judgment in *Kozuba Premium Selection*, i.e. 'first settlement' would occur regardless of whether a building was used for the purpose of taxable transactions. The change would set out the precise rules, as the practice of the tax authorities is currently in compliance with the CJEU judgment.
- Invoicing – Exchange of a cash receipt into an invoice would be allowed only where the receipt includes the buyer's VAT ID number. Not complying with this restriction will have significant consequences for both parties to the transaction, as the authorities would be able to impose VAT sanction of 100% of the VAT on the invoice.
- Restoration of a VAT payer that was removed from the register by the tax authorities could only take place within two months of the removal. Re-registration beyond this time would still be possible, but would require the filing of a complete set of VAT registration documents.

- VAT exemption for small entities – Under the draft, small entities (whose sales in the current or preceding year did not exceed PLN 200,000) conducting distance sales of sensitive goods (i.e. computers and electronic and optical devices) or debt collection services will not be allowed to use the small entities VAT exemption. The small entities exemption will continue not to apply at all to foreign-based entities.

The draft also provides for a number of other minor changes to the VAT Act.

It is planned that the amendments will enter into force as of 1 July 2018. However the bill is still at the consulting stage, and the final version of the bill may therefore vary from the current draft under discussion.

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## **Portugal**

### **CJEU rules on VAT adjustments for vacant properties where input tax had been recovered**

The Court of Justice of the European Union has released its decision in the *Imofloresmira* case, ruling against the Portuguese Tax Authority (PTA) and in favor of the taxpayer. The CJEU determined that Articles 167, 168, 184, 185, and 187 of the EU Principal VAT Directive must be interpreted as precluding national legislation that provides for the adjustment of the VAT initially deducted on the grounds that a property, for which the right to opt for taxation was exercised, is unoccupied for two years or more (on the basis that it was no longer being used by the taxable person for the purposes of its own taxed transactions), where, during that period, the taxpayer always had the intention of letting such properties and undertook the necessary steps to that end.

The CJEU based its decision on the basis that, under Article 167 of the Principal VAT Directive, a right of VAT deduction arises at the time the deductible tax becomes chargeable. As such, the existence of the right to deduct can only be determined at that time, and such right is retained even if that taxable person could not, for reasons beyond its control, use the goods or services giving rise to the deduction in the context of taxed transactions.

According to the CJEU, the right to deduct may only be challenged in circumstances of demonstrable fraud or abuse, for example where the person concerned, on the pretext of intending to pursue a particular economic activity, in fact sought to acquire as private assets goods in respect of which a deduction was made, in which case the tax authorities could claim, with retroactive effect, the repayment of the VAT deducted, on the grounds that the deduction was made on the basis of false declarations, and not in good faith.

This decision of the CJEU is in line with the neutrality principle, and gives taxpayers the necessary legal grounds to initiate formal repayment processes against the PTA of VAT wrongly paid previously based on the existing Portuguese VAT rules, which have now been found not to be in line with the Principal VAT Directive.

### **CJEU rules on statute of limitation for deduction of input VAT following tax inspection**

The CJEU has released its judgment in the case *Biosafe v Flexipiso*. The case relates to a dispute between two parties; following a tax adjustment a number of years after the initial supply, the supplier (Biosafe) paid additional VAT to the tax authorities and documents rectifying the initial invoices were issued by Biosafe to Flexipiso. The national legislation contains a general statute of limitation rule determining that the right of deduction may be exercised for a period of four years only, from the date on which the right of deduction has arisen, which had expired. The CJEU determined that the provisions of the national legislation (in circumstances such as those at issue in the main proceedings in which, following a tax adjustment, additional VAT was paid to the State and was the subject of documents rectifying the initial invoices several years after the supply of the goods in question) were precluded by Articles 63, 167, 168, 178 to 180, 182, and 219 of the EU Principal VAT Directive. According to the CJEU, although the right to deduct VAT arises on the date on which the tax becomes chargeable, it should also be noted that, in principle, it can be exercised only when the taxable person holds an invoice, and Member States must not go further than is necessary for the correct collection of VAT and for the prevention of evasion.

In this case, the taxpayer Flexipiso was only entitled to exercise its right to deduct VAT after receiving the documents issued by Biosafe rectifying its initial invoices, when the substantive and formal conditions giving rise to a right to deduct VAT were met.

As such, the CJEU ruled that a period which started to run from the date of issue of the initial invoices and which expired before the VAT adjustment could not validly be used to deny Flexipiso the exercise of the right to deduct the additional VAT incurred.

This decision of the CJEU will give taxpayers the necessary legal grounds to review recent cases where the tax authorities have refused the right to deduct input VAT from rectified transactions due to statute of limitation reasons.

### **Sale of receivables and the application of the VAT bad debt regime**

The PTA have recently published a binding information that covers matters related to the adjustment of VAT recovered under the applicable bad debt regime, in cases where the taxpayer has sold receivables for a price lower than their respective face value.

With respect to receivables due before 31 December 2012, where a taxpayer has recovered the VAT on bad debts, the VAT Code provides that where the bad debt is subsequently paid, totally or partially, the taxpayer must repay to the PTA the VAT previously recovered.



For receivables due from 1 January 2013, the VAT Code provides that where a taxpayer has recovered VAT under the applicable bad debt regime and the bad debt is subsequently repaid, the taxpayer must only repay to the PTA the exact VAT amount previously recovered.

The PTA has concluded the following regarding receivables due prior to 31 December 2012:

- A sale of receivables is not subject to VAT. Therefore an acquirer of such receivables is not able to recover the VAT under the bad debt regime.
- The full VAT amount recovered under the bad debt regime before a sale of receivables must be repaid to the PTA by the seller, even though the sale of the receivables is at a price lower than their face value (rather than repayment of just the VAT amount that relates to the proportion of the amount actually received from the acquirer of the receivables).

### **Date by which invoice considered due for purpose of VAT bad debt regime**

The PTA has recently published a binding ruling in response to a specific request by a taxpayer related to the VAT regime regarding VAT recovery on bad debts as stated in Article 90 of the EU Principal VAT Directive.

Under the bad debt regime in the Portuguese VAT Code, a taxpayer can recover the VAT related to amounts unpaid within a certain time period, by way of a request to the PTA. The request must be made within six months of the end of the 24 month period from the date when payment was due (only for amounts due from 1 January 2013).

Given the importance of the due date to determine the time period in which the taxpayer is entitled to request the recovery of the VAT, there was some uncertainty when a creditor and debtor agreed to a new payment plan/schedule for the unpaid amounts, under which a new due date was established.

In this regard, the PTA concluded that the credit due date to be considered for the purposes of the application of the bad debt regime is the date disclosed on the invoice, regardless of the new due dates established under a new payment plan/schedule.

Although this conclusion of the PTA could be debatable under the rules in the Civil and Commercial Codes, according to the PTA, the new payment plan should be seen as relevant only to justify the risk of non-payment by the debtor (which constitutes another requirement level to allow the recoverability of the VAT under the bad debt regime).

Previously, some taxpayers may have waited to recover the VAT based on the due date established in the new payment plan/schedule. However, this conclusion from the PTA clarifies this aspect of the bad debt regime applicable to amounts due from 1 January 2013, by providing a clear understanding as to which due date must be considered by taxpayers in order to proceed with the request for the recovery of VAT in due time.

## **Right to deduct input VAT incurred on vehicles used for purposes of taxpayer's activity**

The PTA have recently released binding ruling no. 12730 in reply to a request from a specific taxpayer regarding the right to deduct VAT incurred in the acquisition, maintenance, and use of passenger vehicles.

By way of context, the taxpayer renders transportation services using an electronic platform serving as a network for both passengers and drivers.

In Article 21 of the Portuguese VAT Code (following guidelines defined in Article 176 of the EU Principal VAT Directive), number (1) (a) provides that the input VAT related to expenses incurred on the acquisition, manufacture or import, leasing, use, modification, and repair of passenger vehicles is not eligible for deduction, to prevent fraudulent behavior. Also, Article 21 (1) (b) of the VAT Code provides that VAT incurred on expenses related to fuels normally used in vehicles is not eligible for deduction, unless it refers to acquisitions of diesel, liquid petroleum gases (LPG), natural gas, and bio fuels, which are always deductible in the proportion of 50%, or such fuels used in vehicles licensed for public transportation or heavy vehicles (passenger vehicles over 2,500 kg, buses, trucks, or vehicles over 3,500 kg used in the transport of goods).

Given this legal background, the PTA concluded that the VAT incurred by the taxpayer in relation to such passenger vehicles is deductible, as it relates to expenses incurred with respect to the vehicle used for the purposes of its activity. This decision is in line with "the exception to the non-eligibility for VAT deduction" foreseen in Article (21) (2) (a) of the VAT Code, which states that the input VAT related to expenses such as the abovementioned are deductible if concerning the activity carried out by the taxpayer.

Although this decision is in line with the Portuguese VAT legislation, the PTA has previously refused to allow VAT recovery on expenses related to passenger vehicles. Also, there has been considerable discussion as to whether Article 21, which blocks the VAT recovery on these expenses, is fully compliant with the EU Principal VAT Directive under the standstill clause in Article 176 (2) of the Directive.

## **Annual return (IES) based on accounting SAF-T file report postponed**

According to an Order published by Cabinet of the State's Secretary for the Tax Affairs, the implementation of the accounting SAF-T file report for the purposes of automatic pre-filling of certain annexes and fields of the annual return (IES) has been postponed until 2019, and will apply to accounting data related to 2018 (annual return).

The implementation (part of the SIMPLEX+ program, which provided measures intended to simplify administrative procedures and reduce bureaucracy) was initially intended to be fully implemented for the purposes of the 2017 IES, which is due on 15 July 2018.

The postponement will allow time for the tax authorities and taxpayers to prepare for the changes arising from the implementation of the accounting SAF-T file report.

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## **Russia**

### **Implementation pilot project for tax-free system**

The Ministry for Industry and Trade of the Russian Federation has approved a procedure for the review of applications from retail trading organizations to participate in the tax-free system implementation pilot project and started to collect these applications from 26 March 2018.

To be included in the list of pilot project participants, retail trading organizations need to provide the following documents:

- Application for inclusion in the list;
- Certificate from the tax authorities that confirms the absence of outstanding taxes, duties, insurance payments, penalty fees, fines.

The form of application is established in the addendum to the Order of the Ministry for Industry and Trade of the Russian Federation No. 416 of 12 February 2018.

The first step of the project will be implemented in the Krasnodar region, the Moscow region, Moscow city, and Saint Petersburg city.

It is planned to add to these territories the FIFA World Cup 2018 host cities, such as Volgograd, Saransk, Rostov-on-Don, Kaliningrad, Kazan, Samara, Nizhny Novgorod, and Yekaterinburg.

The Ministry also approved the brand name of the tax-free pilot project in the territory of the Russian Federation, to place on shop windows, brochures, and in airports.

### **Clarification of VAT treatment of services provided by and to foreign companies**

The Ministry of Finance of the Russian Federation has clarified the application of VAT with respect to services rendered by one foreign company to another foreign company which has a permanent establishment on the territory of the Russian Federation.

The Ministry clarified that the territory of the Russian Federation will not be the place of supply of services and the services will not be subject to VAT, when the purchaser of the services is the foreign company itself but not its permanent establishment on the territory of the Russian Federation.

## **VAT treatment of services of organizing conferences, etc. rendered by foreign company to Russian company**

The Ministry of Finance has clarified that the services of organizing conferences, forums, and other events rendered by a foreign company to a Russian company are not subject to Russian VAT because the place of supply of the services is determined at the seller's place of registration according to sub-item 5 para. 1 art. 148 of the Tax Code of the Russian Federation.

In the reverse situation, when the services of organizing conferences, forums, and other events are rendered by a Russian company to a foreign company, the place of supply of the services will be the territory of the Russian Federation and these services will be subject to Russian VAT.

## **VAT treatment of services related to organization of participation in congress events**

The Ministry of Finance has clarified the application of VAT with respect to services rendered under a contract between two Russian companies related to the organization of participation in a congress event on the territory of a foreign country.

The Ministry of Finance clarified that the services related to the organization of participation in congress events could be classified as advertising services for VAT purposes.

The place of supply of advertising services is determined as the buyer's place of business according to sub-item 4 para. 1 and sub-item 4 para. 1.1 art. 148 of the Tax Code of the Russian Federation. Thus, the place of supply of advertising services will be the territory of the Russian Federation and the services will be subject to VAT when rendered to Russian companies.

## **VAT treatment of goods sold to foreign purchaser**

The Ministry of Finance has clarified that when goods are sold by a Russian company to a foreign purchaser, the title of ownership to which is transferred to the purchaser on the territory of the Russian Federation and goods are stored in the Russian company warehouse until export from the territory of the Russian Federation, the VAT base is defined on the last date of the quarter, when all documents confirming the application of 0% VAT rate are collected, i.e. after the goods are already exported outside Russia.

Further, it was clarified that VAT is not applied to the prepayment received by the Russian company from the foreign purchaser.

## **VAT treatment of rights to use film**

The Ministry of Finance has clarified the application of VAT with respect to the transfer of exclusive rights of using film created on the territory of the Russian Federation and transferred from a foreign entity to a Russian private entrepreneur

The Ministry of Finance has clarified that the place of supply for the transfer of such exclusive rights is deemed to be the buyer's place of business and in this situation the transfer of rights will be subject to Russian VAT.

Where the main service rendered was the service of the creation of the film, whereas the transfer of exclusive rights of using the film could be treated as auxiliary services, the place of supply of such auxiliary services is determined as the place of supply of the main services and the transfer of rights would still be subject to Russian VAT.

### **VAT treatment of early cancellation payments for e-services subscription**

The Federal Tax Service has clarified the application of VAT with respect to the return of payments by a foreign entity to individuals for early cancellation of a subscription for e-services.

The Federal Tax Service has clarified that the return of payments by a foreign entity to individuals that were previously included in the VAT base is accounted for by the foreign entity in the VAT base in the period of the actual return of payments to the Russian individuals who cancel their subscriptions for e-services. Further, the foreign provider of e-services should not submit to the tax authorities an amended VAT return for the tax period when the payment received from the Russian individuals was included in the VAT base.

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### **Slovakia**

#### **VAT Academy**

Deloitte Slovakia is holding a VAT Academy in 2018. The VAT Academy is divided into five modules and provides a general overview of the Slovak VAT legislation.

For further information, see [VAT Academy](#).

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### **South Africa**

#### **ITAC applications**

The International Trade Administration Commission of South Africa (ITAC) has received applications for:

- The exemption of safeguard duties applicable on hot-rolled steel products imported under rebate item 470.03 and drawback item 521.00, for the use in the manufacture, processing finishing, equipping, or packing of goods exclusively for export;

- A reduction in the rate of customs duty on ethylene-alpha-olefin copolymers, having a specific gravity of less than 0.94 (known as Linear Low Density Polyethylene (LLDPE)), classifiable under tariff subheading 3901.40 from a 10% rate of customs duty to a free rate of customs duty, with retrospective effect from the date of the submission, i.e. 6 December 2017;
- An increase in the rate of customs duty on coated paper and paper board classifiable under tariff subheading 4810.92.90, from free of duty to 5%; and
- The creation of a temporary rebate provision for "Other paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, multiply paper and paper board classifiable in tariff subheading 4810.92.90, containing less than 50 per cent by mass of pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material classifiable in tariff heading 47.06, in such quantities at such times and subject to such conditions as the International Trade Administration Commission may allow by specific permit provided the Commission is satisfied that the products are not available in the SACU [Southern African Customs Union] region".

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## **United Kingdom**

### **VAT recovery on investment management**

In *Cambridge University*, the Court of Appeal has considered VAT input tax recovery on charges for the management of the University's GBP 1 billion endowment fund.

The University argued that the income produced by the fund was used to support the activity of the University as a whole, and therefore it should recover some of the VAT on the management charges as input tax.

Conversely, in the view of the tax authorities (HMRC), the fund was effectively a private investor; there was a non-business activity which broke the link between the fund management and the University's taxable activity.

The Court reviewed recent Court of Justice of the European Union judgments concerning input tax recovery, including *Iberdrola* and *Sveda*, but concluded that their application to the University's situation was unclear. A non-business activity could, in principle, break the link that is necessary for input tax recovery. However, was ownership of the fund the relevant sort of non-business activity?

The Court will seek the CJEU's guidance on whether it should look through the passive receipt of fund management services to the ultimate purpose of the services in supporting the University's activity.

### **CJEU Advocate General opinion that arranging dental payment plans is not VAT exempt**

In 2010, the Court of Justice of the European Union held that AXA-Denplan's operation of dental plans amounted to payment handling, but was excluded from VAT exemption as a form of debt collection.

DPAS, which operated similar plans, adjusted its arrangements so that instead of charging dentists for operating the plan, it charged the customers. However, in the Opinion of Advocate General Henrik Saugmangaard Øe, this did not qualify for VAT exemption either. The Advocate General considered that the conclusion in AXA had been incorrect. The administration of dental plans by DPAS (and, earlier, AXA) involved asking financial institutions to set up direct debits; and that request would have been essential to a financial transaction taking place. However, DPAS's involvement was a preliminary administrative step which did not, itself, result in the legal and financial changes which are an essential characteristic of exempt financial supplies.

Even if this was wrong, the Advocate General was not persuaded that DPAS's decision to contract with the customers rather than with the dentists was relevant. The economic reality, that DPAS was ensuring that the debts due to the dentists were paid, remained unchanged. Therefore DPAS's supply should be considered as a taxable supply of debt collection even if it was payment handling.

### **Tribunal rules that digital newspapers are not VAT zero-rated**

When the zero VAT rate for newspapers was introduced in 1973, it was not predicted that they would, one day, be available on an iPad. Should digital versions of newspapers be zero-rated in the same way as printed newspapers? In *News Corp UK & Ireland Ltd*, the First-tier Tribunal agreed that the digital edition of *The Times* newspaper is substantially the same as the print edition. It features the same articles and the same advertisements and, like the print edition, is released at set times each day. Customers see digital and print editions as being the same thing, in a different format. Some features (such as videos and interactive puzzles) are not found in the print version, but these are used relatively infrequently.

However, despite these findings, the Tribunal could not look past the fact that the zero-rating provisions for printed matter refer to goods, not services. This was fatal to News Corp's appeal, as the principle that VAT Act 1994 should be construed in a way that maintains its relevance (always speaking) could not extend zero-rating to services. Parliament's purpose in zero-rating newspapers might have been to promote literacy and inform public debate, but purposive construction could not give effect to a policy that was wider than what Parliament had written.

For similar reasons, arguments on fiscal neutrality were also rejected; the digital version of the newspaper (services) was different to the print version (goods) and therefore fiscal neutrality did not apply.

### **New guidance on VAT cost sharing exemption**

HMRC have confirmed that the CJEU judgments in *Aviva* and *DNB Banka* will restrict the cost sharing exemption (CSE) to certain sectors in the UK, such as education and health and welfare.

Housing associations (which technically do not qualify) can continue to apply the exemption pending further guidance.

However, financial services businesses and organizations in other sectors that do not qualify for exemption as public interest activities will need to stop applying the CSE by 31 May 2018. An apportionment will be required for supplies which straddle this deadline, and businesses struggling to comply should contact HMRC before 1 May 2018.

In addition, HMRC will no longer accept cross-border cost sharing groups, and groups will need to be able to evidence 'exact reimbursement of costs'. The threshold for ignoring taxable supplies (see *EC v Luxembourg*) remains under review.

### **Terminal Markets Order: Infraction proceedings against the UK**

Under the Terminal Markets Order 1973 (TMO), certain options and futures transactions in commodities (and some transactions where the commodities are actually delivered) qualify for zero-rating. The TMO has been extended on a number of occasions, for example to include the London Meat Futures Market in 1984, and the Platinum and Palladium Market in 1987.

For some time the European Commission has had concerns about the scope of the TMO. It has now sent a [letter of formal notice](#) to the UK asking for an explanation of why a zero rate that is subject to 'stand-still' conditions has been extended.

HM Treasury has issued a [press release](#) reassuring businesses that, for the time being, UK rules apply as they always have done. Further correspondence between the UK and the Commission will take place before full infraction proceedings, although it is unclear how much of the process will be completed before Brexit.

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# Eurasian Economic Union

## **Decrease of import customs duty rates due to Russia's obligations to the World Trade Organization**

Decision of the Council of Eurasian Economic Commission No. 13 of 26 January 2018 decreases import customs duty rates with regard to some goods due to Russia's obligations to the World Trade Organization.

In particular, from 24 March 2018, there is a decrease in import customs duty rates for some types of linoleum, household freezers, and semitrailers.

Decision No. 13 came into effect on 24 March 2018.

## **Increase in anti-dumping duty on rolled steel wheels originating from Ukraine**

Anti-dumping duty for the period from 22 January 2016 to 21 January 2021 was previously introduced on certain types of rolled steel wheels originating from Ukraine and imported into the Eurasian Economic Union. The classification code for the wheels is 8607 19 100 9.

Decision of the Board of the Eurasian Economic Commission No. 34 of 28 February 2018 increases the anti-dumping duty from 4.75% to 34.22% of the customs value.

Decision No.34 came into effect on 5 April 2018.

## **Unified requirements on use of hazardous substances in electronic products**

Technical regulation No. 037/2016 of 18 October 2016 restricts the use of hazardous substances in electronic products, including electronic products imported into Eurasian Economic Union.

Imported goods must be manufactured without lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls, and polybrominated biphenyl. Otherwise, the concentration of these substances must not exceed 0.1% in weight.

A transition period to 1 March 2020 is provided to allow companies to ensure their manufacturing process complies with the technical regulation.

The technical regulation came into effect on 1 March 2018.

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