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Global Indirect Tax News

Your reference for indirect tax and global trade matters

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

Features of this edition include an update on VAT implementation in the Gulf Cooperation Council, updates on the application of the VAT split payment mechanism in Italy and Romania, and a number of VAT changes taking effect from 1 January 2018.

David Raistrick
Deloitte Global Leader – Indirect Tax

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Finland	Official guidance has been published on procedures relating to changes in import VAT reporting and collection. The Central Tax Board has published a ruling on the VAT treatment of storage services.	**Read More**
France	The French Administrative Supreme Court (*Conseil d'Etat*) has issued a decision concluding that the tax authorities may not reject a VAT refund claim submitted after 30 September of the calendar year following the refund period. The tax authorities recently published a FAQ specifying the scope of the anti-fraud legislation requiring a certification for cash-register software, applicable as from 1 January 2018. The taxable basis for reduced VAT rates for certain goods has been specified.	**Read More**

	The highest rate of payroll tax has been removed. The late interest rate has been reduced. VAT recovery rates on fuel and gas oil have been increased. Non-EU companies will have to appoint only one VAT representative competent for VAT and other taxes, as from 1 January 2019, with some exceptions.	
Germany	There has been a CJEU judgment on output tax adjustments for rebates paid to insurers.	**Read More**
Greece	The application of the special VAT rates (reduced by 30%) has been extended for the islands of Leros, Lesvos, Kos, Samos and Chios until 30 June 2018. A new category of services will be subject to the reduced 13% VAT rate.	**Read More**
Hungary	The environmental product fee legislation has been amended. As of 1 January 2018 every Hungarian company is required to register for official electronic communications through the 'Company/Business Gateway' to communicate with the authorities electronically. Hungarian-established companies must disclose to the tax authorities information regarding bank accounts held in foreign banks. A food chain supervision fee applies to VAT-registered foreign businesses.	**Read More**
Ireland	The Irish Revenue has updated the guidance on the submission of payment notifications in relation to closed contracts.	**Read More**
Israel	The VAT law has been amended with respect to assessments.	**Read More**

Italy	The Law Decree of 16 October 2017 n° 148 has been definitively approved and converted into Law n. 172 dated 4 December 2017, including a number of VAT measures. The 2018 Budget Law included a number of VAT measures. There are updates on the split payment regime. The tax authorities have provided official clarifications concerning VAT deduction. The tax authorities have published a press release to announce 'simplifications' regarding the data to be reported in the communication of the invoices issued and received. Guidance has been issued regarding the Registered Exporter system, excise duties warehouses, and the Excise Movement and Control System. Certain excise duty obligations have been postponed. There has been clarification regarding the end use procedure. Budget Law 2018 includes a number of excise duty provisions.	**Read More**
Luxembourg	The VAT law has been modified to expand the list of funds that benefit from the VAT exemption applicable to management services of investment funds. The decree related to the VAT exemption for independent groups of persons has been repealed. A draft law has been introduced to implement the EU vouchers Directive.	**Read More**

	The draft law would also amend the VAT law to provide for the taxation of goods retained after the termination of an economic activity.	
Malta	The tax authorities have published guidelines regarding which gambling supplies qualify for VAT exemption in terms of the VAT Act, in line with the EU Principal VAT Directive.	**Read More**
Netherlands	The State Secretary of Finance has answered questions raised by the Parliament on the bill to implement the voucher Directive.	**Read More**
Norway	SAF-T will be voluntary until 1 January 2020, at which time it will become mandatory.	**Read More**
Poland	The CJEU has ruled that the Polish definition of 'first settlement' was not compliant with the EU Principal VAT Directive. The CJEU is to decide on the VAT tax point for construction services. The CJEU is to decide on the VAT treatment of fuel card schemes. The transitional period implemented into the Polish VAT law on 1 January 2017 has expired and thus as of 1 January 2018 all Polish VAT-related returns must be submitted only in electronic form. As of 1 January 2018, the third version of SAFT file will be applied. The application of the split payment mechanism has been postponed to 1 July 2018.	**Read More**
Portugal	On 29 December 2017, the Budget Law for 2018 was published in the Official Journal, including a number of indirect tax changes, which entered into force on 1 January 2018. The excise duty rate on petroleum products has increased.	**Read More**

	The tax authorities have issue a binding ruling on the application of the VAT exemption for operations related to the suspension arrangement, in customs warehouses, regarding non-alcoholic beverages with added sugar.	
Romania	There is an update on the split payment provisions.	**See More**
Russia	Unified agricultural taxpayers will become VAT payers. There have been amendments to the law regarding the allocation of input VAT between taxable and exempt supplies. The rules for VAT deductions on purchases using subsidies and/or budget investment have been clarified. VAT exemption for sales of non-ferrous and ferrous metals scrap has been removed and the reverse charge mechanism for VAT payment introduced for sales of this scrap and for sales of waste, secondary aluminium alloys and raw animal skin. The VAT place of supply for certain services has been refined. The list of data necessary for purchases from foreign online stores delivered by express carriers has been expanded. Temporary import restrictions have been introduced on live animals and birds from Malaysia. There have been amendments to the lists of goods subject to export control. Export customs duty have been introduced on tungsten and cermet waste and scrap.	**Read More**

Serbia	The National Assembly of the Republic of Serbia has adopted a number of changes to the VAT law, primarily with the aim of harmonizing the rules with EU rules.	**Read More**
Slovakia	A number of changes to the VAT law came into effect on 1 January 2018.	**Read More**
South Africa	Customs duty rates have been amended for certain commodities.	**Read More**
Spain	On 1 January 2018, Royal Decree 1075/2017 entered into force, modifying a number of indirect tax rules, including the application of the SII (Immediate Information Supply) and the VAT invoicing rules.	**Read More**
Turkey	From January 2018, nonresident electronic service providers are obliged to register for VAT due for electronic services sold to real person end customers in Turkey.	**Read More**
United Kingdom	A court has held that a bank cannot recover VAT incurred in operating deposit accounts, for which it did not charge customers. There has been a court ruling regarding VAT input tax on single farm payments. New anti-avoidance disclosure rules have come into effect.	**Read More**

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Americas

Colombia

Government regulations on VAT exclusion for tablets and cell phones

The Ministry of Finance and Public Credit issued Decree 1515 of 15 September 2017 to regulate and set the conditions for the VAT exclusion for mobile devices, such as cell phones, smartphones and tablets, which is established in Paragraph 6, Article 424 of the Current Tax Code.

Under these conditions, only mobile devices (cellphones and tablets) with a value at the time of sale lower than 22 Tax Value Units shall be VAT excluded (each Tax Value Unit is equal to approx. USD 10.60).

VAT exclusion for projects from non-conventional sources of energy

The tax authorities have issued Concept 28724 of October 2017, which established that it is possible to apply the VAT exemption on the acquisition of equipment, elements and services (national or imported) that are destined for investment in non-conventional sources of energy when those are acquired under a financial leasing contract.

Considering VAT is triggered on the purchase of the equipment, the issuance of the invoice must be made in the name of the person that will buy the equipment for the recipient of the investment, given that in this form the requirements are executed to be outside of the said tax.

Payments for services provided abroad should be supported by evidence that demonstrates execution

The tax authorities have clarified through a press release that persons that perform the operation of services for foreign exchange should maintain the evidence of the provision of services contracted abroad.

According to the tax authorities, the actual evidence of the provision of services contracted abroad may be questioned by the authorities within five years after the payment or reimbursement of the currency corresponding to the service operation, otherwise, the penalties for this violation to the Exchange Regime will be 100% of the value paid or received.

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Asia Pacific

China

China Tariff for 2018

On 14 December 2017, the Tariff Commission of the State Council issued the Circular on the China Tariff for 2018 (Shuiweihui [2017] No. 27). After the recent reduction of import duty rates on some consumer goods from 1 December 2017, China further has adjusted the import and export tariffs via more interim duty rates and preferential duty rates, import and export tariff codes. The recent changes cover sectors such as energy, pharmaceutical, manufacturing, information technology and heavy industry. The Circular became effective on 1 January 2018.

Highlights of the Circular

- **Overall duty change**
    - Import duty rates remain relatively stable with no significant changes and only a few Most Favored Nation (MFN) duty rates are adjusted slightly.
    - Export duty rates are removed or reduced for certain commodities. For example, the export duty of steel and chlorite are removed; the export duty of three-nutrient compound fertilizers, apatite, coal tar, wood chips, silicon ferrochrome and billet are reduced.
- **Interim duty**
    - Interim export duty is applicable to 170 export commodities, including benzene, copper zinc alloy silk and zinc alloy. The interim export duty of those commodities would be applied, instead of the normal export duty.
    - Import interim duty rate would be applicable to 948 commodities compared to 822 commodities in 2017, such as flat detector with digital X-ray photographic systems and running machines.
    - Interim duty rates of certain waste commodities are removed and replaced by MFN duty rates, such as waste magnesium brick, scrap steel slag and waste slag.
    - Interim import duty rates of some information technology products will be adjusted according to the third-round tax reduction on information technology products, which will be launched on 1 July 2018.
- **Preferential duty rates**
    - China has signed bilateral or multilateral Free Trade Agreements (FTA) with 26 countries and regions.
    - The China and Georgia FTA is newly implemented.
    - The scope of commodities that are applicable to the zero rate is expanded under the China CEPA (Closer Economic Partnership Arrangement) with Hong Kong S.A.R. and Macao S.A.R..
- **Revisions to import and export tariff codes**
    - The number of import and export tariff codes increased from 8,547 in 2017 to 8,549, with 9 items removed and 11 items newly added.

Comment

The Customs import and export tariffs have only been slightly adjusted in 2018. However, considering that Harmonized System (HS) classification is the basis to determine the import and export duty rates, enterprises are recommended to review internal operational mechanisms on the management of HS classification, review existing classifications, and utilize the pre-classification process to effectively reduce the compliance risk in HS classification.

With the continuous development of 'One Belt One Road', China is actively concluding and negotiating bilateral and multilateral FTAs with more country and region coverage. Enterprises are recommended to make full use of China's existing FTA networks by reviewing the supply chain and logistics to make appropriate arrangements. At the same time, enterprises should pay attention to FTAs under negotiation and prepare accordingly to ensure that the duty benefits can be enjoyed when those FTAs come into force.

Customs Advanced Decision now introduced in China

On 26 December 2017, the General Administration of Customs (GAC) announced Order No. 236 regarding the Provisional Administration Measure on Customs Advanced Decision, which will take effect from 1 February 2018. This is a breakthrough rule formally introducing a pre-ruling mechanism for valuation, classification, and origin matters.

Highlights of Order 236

- Importer/exporters can apply for an Advanced Decision on classification, origin and valuation matters.

- The application should be made with the Customs office directly under the GAC where the applicant is registered, usually, three months prior to the physical importation/exportation.

- Customs must confirm the acceptance or refusal of the application within 10 days, and should issue the Advanced Decision within 60 days unless there are exceptional conditions.

- The Advanced Decision is binding. The Advanced Decision is commonly valid for three years from the delivered date and it does not take retrospective effect.

- Customs can publish the Advanced Decision.

Comment

Valuation classification and origin issues have been a focus area for Customs and are most challenging for taxpayers. With the national reform of Customs clearance in mid-2017, while goods could be cleared faster at the border, Customs has strengthened the monitoring through post-clearance audit and investigation. Customs Advanced Decision mechanism is expected to provide some certainty to businesses.

The formal introduction of Customs Advanced Decision demonstrates China's effort to improve the business environment and its commitment to the World Customs Organization (WCO) Trade Facilitation Agreement.

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New EU anti-dumping rules

For more information, see New EU anti-dumping rules in force: Implications for China.

Indonesia

Increase in value of import duty exemption

The Directorate General of Customs and Excise (DGCE) has issued MoF Regulation No. 203/PMK.04/2017 regarding Provisions on the Export and Import of Goods Carried by Passengers and Transportation Crews.

Based on the regulation, the DGCE has increased the value of the import duty exemption for a passenger's personal goods from USD 250 per person to USD 500 per person. In addition, the DGCE has abolished the import duty exemption for the family category. Indonesia was the only country that applied an import duty exemption with a family category of USD 1,000 per family.

The DGCE also sets the rate of import duty at 10% of the excess value over the import duty exemption. Previously, the rate of import duty was calculated per item.

Amendment to regulation on temporary import

The Minister of Finance has issued Regulation Number 178-PMK.04-2017 concerning temporary import. Imported goods that meet the requirements provided in this Regulation may be approved for release as temporary imported goods. Temporary imported goods may be granted import duty exemption and incentive.

To obtain the temporary import permit, an importer must submit an application to the head of Customs, attaching supporting documents. The head of the Customs office will conduct an examination on fulfilment of requirements, purpose of use, and the enclosed documents.

Customs obligations for temporary imported goods will be fulfilled by submitting an import declaration and guarantee. The import declaration must be conveyed to the head of the Customs office within three months from the date of the decision of the Minister of Finance regarding the temporary import permit for all goods mentioned in the decision. Meanwhile, the amount of guarantee for temporary import goods will depend on the import duty exemption and incentive.

This regulation is effective from 28 January 2018.

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Japan

EU-Japan Economic Partnership Agreement

For more information, see EU and Japan finalize negotiations on Economic Partnership Agreement.

Malaysia

GST technical committee meeting update

The GST technical committee was formed to resolve and bring clarity to various technical issues faced by businesses. The committee comprises various industry associations, professional bodies and senior officers of the Royal Malaysian Customs Department (RMCD) and convened its meetings on 13 October and 30 October 2017 to deal with several technical issues where clarification was necessary. The meeting minutes were circulated in recent months.

Issues raised include the below. For details and Deloitte Malaysia's comments, see GST Chat: December 2017.

- Input tax claims on simplified tax invoices
- GST implications of transfer of property by a deceased GST-registered property investor
- Disposal of capital assets subject to GST
- Payment of tax
- GST implications arising from salary deduction from foreign workers, specifically for accommodation costs and immigration levy under the minimum wage policy
- Reverse charge
- Return of exported goods to overseas
- 'Tax invoice' stated on simplified tax invoice
- Validity of tax invoice
- Issuance of tax invoice
- Transactions of members within group
- Relief supplies.

GST Tribunal cases

There have been Tribunal cases on the following GST issues. For further details, see GST Chat: December 2017.

- Late registration penalty
- Margin scheme
- De-registration of GST account.

GST bi-monthly filing frequency

The RMCD has announced that it is now possible for GST registrants to file every two months, as opposed to the current monthly or quarterly filing of returns.

This is a major change and will ease some of the administrative burden and cashflow constraints that businesses have faced since the implementation of GST.

Conditions and requirements to apply

As of now, the RMCD has provided the following criteria:

1) Applicable only for registrants with a monthly taxable period;
2) Registrants in cash basis industries such as retailing are not able to apply;
3) All applications will be subject to the Director General (DG)'s conditions and approval.

As it is unclear yet whether the DG will be approving all applications or if there are any other considerations involved in processing such applications, applicants should not assume that their application will be approved. It is also uncertain whether the RMCD will impose any conditions on the registrant upon granting the approval for bi-monthly filing.

Implications of the change of filing frequency

Each taxpayer should assess based on their own individual circumstances whether bi-monthly filing is appropriate for them. Taxpayers with small or large tax payable positions should consider the administrative cost savings from switching from monthly filing in addition to the cash flow benefits in making the GST payable on a bi-monthly basis.

However, a taxpayer who is constantly in a GST claimable position (such as exporters) may wish to continue to remain on a monthly filing basis to ensure refunds are processed monthly.

It has yet to be seen whether the RMCD will allow GST registrants the flexibility to switch the filing period from monthly to bi-monthly or *vice versa*.

How to apply for a change in GST filing frequency

All applications relating to changes in GST filing frequency must be made via the Taxpayers Access Point (TAP). The RMCD will not process any application via letter to the GST Division, Putrajaya or ADM21 form to GST Processing Centre, Kelana Jaya.

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EMEA

European Union

CJEU judgment on using transfer prices for customs valuation

On 20 December 2017, the Court of Justice of the European Union (CJEU) issued its judgment in the *Hamamatsu Photonics Deutschland* with respect to customs valuation in relation to transfer pricing adjustments.

Hamamatsu is part of a group of companies that have concluded an advance pricing agreement. Hamamatsu purchased imported goods from its parent company in accordance with said advance pricing agreement. Based on the transfer pricing method (Residual Profit Split Method), each company within the concern was allocated a profit to generate a minimum rate of return. Depending on whether the actual profit falls outside of the anticipated margin, the result is adjusted to the margin's upper and/or lower limit, resulting in subsequent credit or debit notes (so-called transfer pricing adjustments).

The customs value of imported goods for Hamamatsu was based on the transfer price. Ultimately, Hamamatsu's actual profit fell below the margin range. The transfer prices were therefore adjusted, which in turn resulted in a credit for Hamamatsu. The customs declarations for the goods imported during this period were based on the initial allocated profit. As a result of the retroactive transfer pricing adjustment, the declared transaction value was too high, according to Hamamatsu. The question raised before the CJEU was whether retroactive price adjustments were to be included in the goods' customs value. In this particular case, this would lead to repayment of customs duties for the imported goods. German customs authorities and the German national court rejected this argument, as the retroactive price adjustments did not relate to individual goods but to Hamamatsu's consolidated result. The adjustments did not reflect the goods' real value or the price payable for the imported goods, but were instead considered to be fictitiously priced.

The CJEU issued a judgment which does not provide clear guidance as to how to deal with similar cases. The Court concluded that the Customs Code does not impose the obligation for importers to apply the transaction value's adjustment where it is adjusted upwards, nor does it require the customs authorities to anticipate the risk of downward adjustments. However, it is still unclear whether this relates to the fact that the adjustment was consolidated and not allocated to individual goods, or whether the price adjustment system is not accepted at all. In short, it is still unclear whether the judgment entails either of the following :

- The reported customs value can be considered as the 'transaction value', and can be used for customs valuation purposes without subsequent TP adjustments being allowed

- The reported customs value based on the transfer price should be regarded as fictitious and therefore cannot be used as the transaction value for customs valuation purposes, leading to the use of customs valuation methods other than that of transaction value.

Implications

This decision creates challenges for both companies as well as customs authorities on how to deal with intercompany transactions related to inbound shipments into the EU's customs territory, whereby transfer pricing adjustments are applied, regardless of how these adjustments are completed.

If a company's import transactions are valued using a transfer price, and in order to assess the impact of this CJEU judgment, Deloitte recommends to review and assess the current transfer pricing and TP adjustment policies.

From a VAT perspective, this CJEU judgment is relevant, as the VAT taxable base upon import is generally derived from the imported goods' customs value.

Any required actions will depend on how national and EU customs authorities will further interpret this judgment and /or on whether the referring national German Court will request additional clarification from the CJEU.

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New EU anti-dumping rules in force: Implications for China

On 19 December 2017, an important change to EU anti-dumping rules was published in the Official Journal of the European Union. The new rules will have significant consequences for dumping determination and resulting anti-dumping duties in future cases targeting imports from China.

Before these new rules' publication, EU authorities considered China as a non-market economy country, for which the prices and costs of a product under investigation were deemed as unreliable. (See Article 2, subparagraph 7(b) of Regulation EU 2016/1036. The rule for China is the same as the one reserved for non-market economy countries unless investigated producers prove that they operate under market-economy conditions.) The normal value in China was determined by analogy with a third market-economy country, a so-called 'analogue country', often resulting in higher dumping margins.

From December 2016, this methodology is in breach of World Trade Organization (WTO) rules, under which China as a WTO member should no longer be considered a non-market economy country. (China accessed the WTO in 2001 with a 15-year transition period ending in December 2016.)

What the new methodology will change

Under the new methodology, the normal value in China will normally be based, as for any other WTO member, on domestic prices of the like product or on a constructed normal value based on domestic costs.

In some circumstances however, the European Commission may consider that domestic prices and costs do not provide a reasonable basis to determine the normal value, because they are affected by significant distortions.

In such circumstances, the normal value will be established based on undistorted international prices, costs, benchmarks or corresponding costs of production and sale in an appropriate representative country with a similar level of economic development.

What are the significant distortions?

Significant distortions are those which occur when reported prices or costs are not the result of free market forces, because they are affected by substantial government intervention.

Various criteria must be examined to arrive at such conclusion, i.e.:

- The market in question being served, to a significant extent, by enterprises that operate under the ownership, control, policy supervision or guidance of the exporting country's authorities
- State presence in firms allowing the state to interfere with prices or costs
- Public policies or measures favouring domestic suppliers, or otherwise influencing free market forces
- The lack of bankruptcy, corporate or property laws, or the discriminatory application or inadequate enforcement thereof
- Wage costs being distorted

- Access to finance granted by institutions that implement public policy objectives or otherwise not acting independently of the state.

What does it mean in practice?

In practice, the Commission will produce, publish and regularly update reports on significant distortions describing the market circumstances in a certain country or sector. These reports will mostly concern China and may conclude at significant distortions. Complainants will be able to rely on these reports to substantiate dumping calculations based on international benchmarks, or prices and costs in a third country.

Thus, the use of an 'analogue country' is no longer the rule for determining dumping margin in China. However, the risks of relying on international benchmarks or third country prices and costs to establish high dumping margin still exist, resulting in a continued issue for Chinese exporters and EU importers of Chinese goods.

Interested parties should closely follow future anti-dumping investigations involving China, thereby making sure that the Commission does not rely excessively on international or third countries prices and costs to determine dumping margins, which results in high anti-dumping duties.

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EU and Japan finalize negotiations on Economic Partnership Agreement

On 8 December 2017, EU Trade Commissioner Cecilia Malmström and Japanese Foreign Minister Taro Kono announced the successful conclusion of the remaining negotiations for the EU-Japan Economic Partnership Agreement (EPA).

As covered in the July 2017 edition of GITN, the EU and Japan had reached an overall political agreement, but some issues remained to be clarified.

Now negotiations have been concluded and the main parts of the text have been published on the EU trade website, (see EU-Japan: Economic Partnership Agreement), both parties can start their internal ratification procedures. The agreement text will first undergo legal verification and will then be translated from English into all official EU languages and Japanese. Subsequently, the agreement will require formal approval by both the Council of the EU and the Japanese government, followed by ratification in the European and Japanese parliaments, and finally, Member State approval.

Ratification will establish the biggest bilateral trade agreement ever negotiated by the EU, with a planned entry into force before 2019.

What is in the agreement?

The EPA will ensure and regulate the following points between the EU and Japan:

- Market access for goods, services and investments in respective territories
- Breaking down non-tariff measures
- Promoting sustainable development
- Harmonizing rules on intellectual property rights
- Protection of Geographical Indications (GIs).

Outstanding issues in July's political agreement were commitments on services, final provisions on the protection of EU and Japanese GIs, chapters on regulatory cooperation/practices and transparency, and the inclusion of commitments from the Paris agreement in the trade and sustainable development chapter. Negotiators on both sides required clarifications on several minor elements in the agreement before signing off on them.

Consequently, the below commitments have been made.

Goods

The EU-Japan EPA removes almost all customs duties for imports on both sides. This will especially benefit European producers of food products, as Japan currently imposes import duties of nearly 40% on beef, up to 30% on chocolate, 15% on wine, and up to 30% on cheese. Japan benefits from the elimination of high EU tariffs on vehicles (10%), electrical machinery (up to 14%), and agricultural products such as rice and sugar.

However, some of these reductions and eliminations will only take place gradually in accordance with the schedules that both parties have set out in the annexes to the agreement (these annexes are not publicly available yet). For the automotive sector, for example, the EU negotiated a transitional period before effectively opening up its market to Japanese producers.

An importer claiming preferential treatment under the EU-Japan EPA can prove the preferential origin of goods either through a statement of origin, made by and under the responsibility of the exporter, or through any other piece of information clearly demonstrating that the goods have preferential origin. In both cases, proof must be included in the customs import declaration.

Services

Both parties have agreed to liberalize progressively services markets to service providers of the other party. Annex I to the services chapter will list existing nonconforming measures of both parties, which may continue to exist. In Annex II of the parties' schedules, they will list the sectors for which they maintain the right to adopt protectionist measures. All other sectors will become (more) accessible.

Although the annexes have not been published yet, the EU and Japan have already disclosed that the financial services, telecommunications, e-commerce, distribution, and transport markets will be liberalized. At the same time, parties retain the ability to regulate markets to achieve legitimate policy objectives, such as the protection of public health, safety, consumer protection, etc. Public services such as healthcare and state-funded education remain completely unaffected.

Non-tariff barriers

Both European and Japanese economic operators suffer from non-tariff barriers to trade in each other's markets. The main examples are national legislation imposing specific technical requirements for products, and unpredictable or arbitrary regulations in the automotive, chemical and food processing sectors. Both parties also maintain lengthy and non-transparent access procedures, making it difficult for foreign traders to do business.

The transparency chapter in the agreement obliges both parties to be predictable, impartial and transparent in the requirements they impose on economic operators. This chapter applies to all other chapters in the agreement.

The chapter on good regulatory practices and regulatory cooperation contains provisions that aim to promote transparent, compatible and predictable regulatory measures among both parties, but without affecting their right to define their own levels of protection or to adopt measures in accordance with their legal framework.

The agreement also reaffirms the commitments undertaken by both parties in the WTO Agreement on Technical Barriers to Trade and the WTO Agreement on Sanitary and Phytosanitary measures. These agreements ensure the safety of products and foodstuffs, while ensuring that Member States do not use these rules to affect trade arbitrarily.

Furthermore, the agreement between the EU and Japan does not affect internal levels of protection for foods and products, which are very high for both parties.

Trade and sustainable development

The chapter on trade and sustainable development sets high standards for labour conditions (based on the International Labour Organization (ILO)), recognises the importance of environmental protection in its many forms, and reaffirms the parties' commitments to the applicable multilateral agreements; the Paris Agreement amongst others. The EU and Japan also undertake to take action and implement additional measures on sustainable development and climate change. The commitments are limited by both parties' rights to determine their own sustainable development policies and establish their own levels of protection, as long as these measures are not used in a manner that would arbitrarily or unjustifiably discriminate against the other party, or serve as a restriction on international trade.

When it comes to intellectual property protection, both the EU and Japan already have well-established rules. The agreement recognises both protection systems, but brings them together in the agreement under one set of provisions. This chapter also ensures the protection of both EU and Japanese GIs in the other party's market.

Investment dispute settlement

The investment dispute mechanism for the agreement has been excluded to ease the ratification process. The EU wishes to include its own model with the Investment Court System (ICS), while Japan prefers to adhere to the Investor-state Dispute Settlement (ISDS) model. In September 2017, Belgium submitted a request to the Court of Justice of the European Union (CJEU) to issue an Opinion on the compatibility of the ICS with the CJEU's exclusive competence to provide a final interpretation of EU law to receive further clarification on the matter.

Implications

Economic operators in the EU that do business in Japan, or see opportunities to do so, and *vice versa*, will be given a tool to optimize their supply chains and increase business opportunities between the two parties. EPA benefits now extend far beyond the traditional lowering of duties, and create a level playing field for companies operating in different markets. The benefits are a combination of financial savings, increased competitiveness, and ease of doing business.

Next steps

Companies can prepare with a Free Trade Agreement review. Deloitte's Global Trade Advisory team can (re)assess the usage of trade preference schemes, determine where the new EPA can add value to a company's trade processes, and address potential supply chain optimisations.

When the EU-Japan EPA enters into force, EU companies aiming to benefit from this agreement and issue preferential statements of origin for their export transactions to Japan will have to be registered under the new Registered Exporter (REX) system.

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Gulf Cooperation Council

VAT came into force in the United Arab Emirates (UAE) and Kingdom of Saudi Arabia (KSA) on 1 January 2018 as scheduled. Earlier in 2017, the six GCC Member States signed the Unified VAT Agreement of the States of the Gulf Cooperation Council, which provides the framework for the implementation of VAT across the Member States of the GCC, while allowing each Member State some flexibility in implementing their own local VAT law. In what was expected to be a staggered implementation across the GCC, the UAE and KSA were the first to implement VAT on 1 January 2018, with the other four Member States expected to follow suit later in 2018 and early 2019. It is understood that Bahrain has taken a decision to implement VAT with effect from 1 October 2018.

UAE

Tax registrations

The deadline for submission of VAT registration applications in UAE was 4 December 2017. All businesses that submitted their applications accurately, within the specified deadline, have now been allocated their Tax Registration Numbers (TRN) by the Federal Tax Authority (FTA). Late filing of applications are subject to administrative penalties under the Federal Law No. (7) of 2017 for Tax Procedures, and the subsequently issued Cabinet Resolution No. 40 on Administrative Penalties for Violations Of Tax Laws in UAE provides the list of violations and applicable penalty amounts for non-compliance.

An online verification tool for business to confirm the registration status of their vendors and customers has also now been made available by the FTA on its website, see TRN Verification.

Updates on legislation

The much-awaited Cabinet Decision No. (56) of 2017, on Medicines and Medical Equipment that will be zero-rated for VAT purposes in UAE, and Cabinet Decision No. (59) of 2017, specifying the Designated Zones in UAE subject to special rules for the purpose of the UAE VAT Laws, were recently published and apply retrospectively from 1 January 2018.

The cabinet decision on medicines and medical equipment confirms that the supply of all medications and medical equipment registered with the Ministry of Health and Prevention or imported with its permission or approval will be zero-rated in UAE. Essentially it appears that the intention is to cover medicines used in the diagnosing, treating, preventing, or healing of diseases and, similarly, medical equipment used for those purposes. This is in contrast with the list of specified zero-rated items in KSA, which is somewhat more restrictive.

The cabinet decision on Designated Zones notified a total of 20 Designated Zones in the seven Emirates of UAE and more are expected to be identified in the future as there were some unexpected exclusions from the list. All transactions with and by the Designated Zones shall be governed by the provisions of Article 51 of the UAE VAT Executive Regulations.

Financial sector

The Central Bank in the UAE confirmed, in a notice dated 28 December 2017, that banks and finance companies in compliance with the Central Bank Regulations 29/2011, governing the sector, will not be permitted to exceed or increase their existing fees structure due to VAT. This rule applies regardless of the VAT status of the bank's customer (i.e. individual or business). The notice states that banks and finance companies must treat the prescribed fee as VAT-inclusive and absorb the VAT on their charges until they receive further instructions from the Central Bank.

Changes to VAT reporting timetable for certain businesses

The FTA has delayed the submission date of some taxpayers' first VAT returns by extending the initial VAT period. As an example, a VAT return on stagger 1 with a first VAT period ending on 31 January may now have a first period ending 30 April instead, which would be due for submission on or before 28 May. All subsequent filings would then be due to be made on a quarterly basis. The reporting periods for some other taxpayers have been changed from monthly VAT return filing to quarterly VAT return filing. Taxpayers have been strongly recommended to check their particulars on the FTA portal to determine whether there has been any change to their reporting timelines.

This change will provide businesses, especially small- and medium-sized enterprises (SMEs), with the needed time to ensure full compliance and reporting of their VAT obligations to the authorities.

KSA

The General Authority of Zakat and Tax (GAZT) issued a series of amendments to the KSA VAT Implementing Regulations (specifically to Articles 8, 53 and 63 of the KSA VAT Implementing Regulations).

VAT refund mechanism

GAZT sent an email to taxpayers clarifying the mechanism to claim refunds of input tax credit where the amounts claimable exceeded the net VAT liability. The option to carry forward the excess credit or claim it as refund will be available to taxpayers at the last step of the return filing process. GAZT would also conduct an audit of the refund request made before granting it. Clearly the intention is that any refunds will only be paid out providing certain conditions, such as maintenance of proper records, compliant documentation, etc. are met.

GAZT launch VAT app

GAZT has launched a VAT app. The app contains important information on KSA VAT and enables consumers to find out if the business they are dealing with is registered for VAT. The app also contains a 'calculator' function to compute the correct VAT amount due on invoices, a 'report' function to flag businesses that are in violation of the VAT laws, and a 'lookup' function that allows the consumers to see whether a business is registered for VAT.

GAZT issues penalties to non-compliant businesses

GAZT issued 120 violations to businesses across KSA for failing to comply with the VAT Law and the Implementing Regulations on the first day of VAT coming into effect. The type of violations included non-registration where required to obtain registration, charging VAT before the date of implementation, and issuance of non-compliant VAT invoices. GAZT has also advised consumers to use the dedicated VAT app to report any infractions directly to the GAZT. At present GAZT's approach to taxpayer compliance remains uncertain; these penalties may have been instigated by reports from the public or to allow GAZT to issue a general warning to business, and the KSA tax authorities may yet take a lenient approach based on whether the taxpayer had taken 'reasonable care' to comply.

GAZT confirms VAT rates on certain supplies

GAZT has published a list similar to the one issued by the UAE government confirming the VAT treatment of different types of supplies, see Goods and services subject to VAT. Specifically, it contains the lists of zero-rated medicine and medical equipment. There are also 'VAT readiness materials' available on the website relating to industries including transportation, real estate, healthcare, and financial services.

The Saudi Arabian Monetary Agency (SAMA) list of financial services and the VAT treatment of specific supplies has now been published (see Financial Services Providers – Products and Services List), and gives a comprehensive overview for the financial services sector. Broadly, financial services qualify as exempt supplies (margin-based products, interest charges, etc.) unless there is an explicit fee, discount, commission, rebate, or similar type of charge, which would then be subject to 5% VAT.

GAZT clarifies levy of VAT on e-commerce supplies

GAZT has clarified that all electronic sales and purchases will be subject to VAT at 5%. For goods, the VAT due will be collected by the Customs authority at the port of entry. Electronic services may be subject to 'use and enjoyment rules' which mean that the place of supply may be within KSA to the extent that the services are used there. In this situation, where the supply is received by a registered recipient from a person outside KSA, the recipient must apply the reverse charge. Where the recipient is unregistered, the supplier must register for VAT in KSA, regardless of the value of the supply. All nonresident taxable persons must have one tax representative, who will be jointly liable for payment of tax due by the nonresident taxable person. The GAZT has not yet published the list of persons who are authorized to act as tax agents or representatives. However they have confirmed that the position will only be open to Saudi residents.

Deloitte contributions and events

Tax governance and strategy

Even with the increased tax transparency and higher standards of tax governance and risk management, many businesses in the Middle East still do not have dedicated in-house tax teams that develop, monitor, and enforce tax strategies that provide additional detail, supplementing their overall tax strategy. Publishing a tax strategy is therefore essential for businesses in the Middle East, especially for those that conduct business activities in other jurisdictions (whether within the Middle East region or further beyond). To guide these businesses through their tax governance journey, Deloitte Middle East has developed a document highlighting what a tax strategy is and why businesses need to have one (see Tax governance in the Middle East), and business are advised to develop a suitable strategy for the new VAT in particular.

Deloitte's Tax Compliance Centre

To ensure that businesses are well-equipped for compliance, Deloitte Middle East has developed a GCC VAT Compliance Centre under its Business Process Solutions (BPS) service line, dedicated to guide businesses throughout their VAT compliance journey. The GCC VAT Compliance Centre is equipped with a dedicated team of tax specialists responsible solely for compliance needs and can help businesses manage the VAT compliance burden.

The VAT compliance services include registration, filling and submission, additional VAT review and queries support, and support with VAT refund and tax audits.

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Croatia

Amendments to VAT law from January 2018

Amendments to the VAT legislation entered into force on 1 January 2018, including:

- Partial deduction of input VAT upon purchase and lease of personal means of transport. Taxpayers are allowed to deduct 50% of input VAT charged on purchase and lease of passenger cars and other means of personal transport including the purchase of any goods or services relating to those. VAT relating to the purchase of passenger cars will be deductible only when charged to the purchase value of up to HRK 400,000 per car.

  As an exemption, VAT on the purchase of means of transport is 100% deductible when relating to:

  - Vessels and aircraft used for the transport of goods and passengers, intended for rent or subsequent sale; passenger cars and other means of personal transport that are used for driver training, vehicle testing, customer service, transport of goods and passengers, transportation of the deceased, or intended for rent or resale; and

  - N1 motor vehicles classified under Combined Nomenclature (CN) 8703 of the Customs Tariff which are not taxed under the special tax on motor vehicles regulations.

- The VAT registration threshold for resident taxpayers was increased to HRK 300,000.

- Payment of import VAT by reporting the liability through the VAT return is allowed for imports of machinery and equipment of a value exceeding HRK 1,000,000 (per one customs declarations), under certain conditions. This must be approved by the Customs authorities, and applies only to imports of machines and equipment falling under CN chapters 84 and 85 or CN codes 8608, 8802, 8805, 8905 and 8907. Taxpayers that do not meet these criteria must still pay import VAT to the State Budget account.

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Finland

Official guidance on procedures relating to changes in import VAT reporting and collection

As of 1 January 2018, VAT registered entities have been liable to self-assess import VAT following the transfer of value-added taxation on imports of goods from Finnish Customs to the Tax Administration. The Finnish Tax Administration published its official guidance on 28 November 2017 regarding the changes in the reporting and collection procedures. In practice, the most important change is that, as a rule, a taxpayer registered for VAT in Finland now reports input and output VAT relating to imports in the same month, and, thus, there is no longer a cash flow impact (provided that the acquisition has been made for taxable business purposes and the VAT is, hence, deductible).

The guidance serves as a general guidance and explains the new rules and procedures regarding the value-added taxation of imported goods. The guidance includes comments on, for example, the competent authority in different import situations, the taxable base, timely allocation, and reporting and payment of import VAT. A more detailed guidance on the determination of the taxable base is to be published at a later date.

The changes in import VAT reporting and collection concern also supplies of goods between mainland Finland and the Åland Islands. The Åland Islands belong in the customs area but not in the VAT area of the EU, resulting in a tax border between the Islands and EU Member States. The Tax Administration has updated also the official guidance related to the VAT position of the Åland Islands from the perspective of the recent changes.

Preliminary ruling on the VAT treatment of storage services

The Central Tax Board has published a ruling (KVL:2017/38) concerning the VAT treatment of storage services, i.e., whether the service in question should be deemed as a VAT exempt lease of real estate or a taxable service supply.

The applicant, Company A Oy, offered two kinds of service concepts to its clients. Within the scope of the comprehensive service concept, A Oy picked up the goods from a customer and transported them to the self-storage facility to be stored. Afterwards, A Oy arranged the transport of the goods from the storage back to the customer. In addition to the comprehensive service concept, A Oy offered a self-service concept within the scope of which a customer received access to the storage facility, and arranged the transport of the goods to and from the storage themselves. A Oy had the right to move the goods around in the premises, and the customer did not receive a right to control any exact part of the premises. The consideration paid by the customer was based on the rented cubic meters.

The Central Tax Board concluded that since the customers did not have the right to any specific part of the storage premises, neither of the service concepts should be deemed as VAT exempt leases of real estate, but as taxable supplies of services. The ruling is final, i.e. no appeal process is pending.

In addition, the Tax Administration has updated its guidance on the voluntary VAT registration for the lease of real estate (A126/200/2016). The amendments include an update with respect to the VAT treatment of storage services which is in line with the preliminary ruling as explained above.

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France

VAT refund procedure for EU nonresident taxable persons in France

On 4 December 2017, the French Administrative Supreme Court (*Conseil d'Etat*) issued a decision concluding that the French tax authorities (FTA) may not reject a VAT refund claim submitted after 30 September of the calendar year following the refund period (Case No. 392575).

The Court based its decision on the fact that the deadline provided by Article 15 of EU VAT Directive 2008/9 has not been transposed into the French Tax Code (Article 242-0 R of Annex II of the Tax Code does not provide a time limit for submitting a refund claim).

The case before the Administrative Supreme Court involved an Italian company that submitted a VAT refund claim on 1 October 2012 (via the Italian electronic portal) for calendar year 2011. The FTA rejected the claim because it was submitted after the 30 September 2012 deadline. The taxpayer appealed the denial of its claim.

The Administrative Supreme Court first confirmed that it is up to the EU Member State receiving a VAT refund claim to determine whether the deadline was complied with under its domestic law.

The Court held that since France has not transposed Article 15 of the VAT Directive into the French Tax Code, an EU taxable person not established in France is not required to submit its VAT refund claim before 30 September of the calendar year following the refund period. Thus, the VAT refund claim for 2011 submitted by an EU-resident taxpayer on 1 October 2012 may not be considered to be untimely filed.

As a result of the Administrative Supreme Court decision, EU companies established outside France should ascertain whether they have incurred input VAT losses in France and are in a position to introduce a claim.

Mandatory certification of cash-register software

The FTA recently published a FAQ specifying the scope of the anti-fraud legislation requiring a certification for cash-register software, applicable as from 1 January 2018 (see the September 2017 edition of GITN).

This mandatory certification initially targeted all accounting, management and cash-register software in order to fulfill conditions of immutability, security, storage and of archiving data. The legislation now applies to cash-register systems only. Thus, accounting and management software, such as ERPs, fall outside the scope of the certification requirement, as well as payment terminals. As regards multi-function software, only the cash-register features they include are subject to this requirement.

Businesses benefitting from the VAT exemption regime due to their low turnover as well as businesses performing only VAT-exempt activities fall outside the scope of the certification requirement.

The Finance Bill for 2018 has amended the Tax Code accordingly.

Taxable basis for reduced VAT rates for certain goods

The Finance Bill for 2018 specifies how the taxable basis for the reduced VAT rates (2.1% and 10%) is computed for online press services and television services included in an aggregate offer for a global price. The same principles apply in both situations, and the changes apply from 1 March 2018.

Removal of highest rate of payroll tax of 20%

Salaries paid from 1 January 2018 are subject to the rates of 8.5% (for the amount of annual salaries from EUR 7,799 to EUR 15,572) and 13.6% (for the amount of annual salaries exceeding EUR 15,572). These changes derive from the Finance Bill for 2018.

Late interest

The rate of late interest (for late payment) paid by a taxpayer or by the FTA to a taxpayer is reduced from 0.4% to 0.2 % per month. Therefore, the annual rate is reduced to 2.4%, instead of 4.8%. This reduction applies for the interest computed for the period from 1 January 2018 to 31 December 2020. This change results from the second amended Finance Bill for 2017.

VAT recovery on fuel and gas oil

As from 1 January 2018, taxpayer may recover 20% of the VAT incurred on petrol fuel for most cars used for passenger transport (vehicles excluded from the right to deduct VAT and leased vehicles where the lessee cannot deduct the VAT), instead of 10% for the year 2017 (the 80% deduction for diesel being still applicable). The non-deductible proportion of the VAT on petrol fuel will be progressively reduced so as to reach 20% in 2021. The VAT on petrol fuel will be 100% deductible in 2022.

VAT representative for non-EU companies

According to the second amended Finance Bill for 2017, to simplify compliance, non-EU companies will have to appoint only one VAT representative competent for VAT and other taxes, as from 1 January 2019. However, this new regulation will not apply in some specific cases, notably to VAT representatives appointed according to Article 277, I, 2°, of the French Tax Code (tax warehouse).

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Germany

CJEU judgment on output tax adjustment for rebates paid to insurers

Under German law, drug manufacturers must pay rebates to public health insurance funds or private health insurance companies. Compared to the supply chain in the case of public health insurance funds, private health funds are not directly involved in the supply chain of the sale of drugs. Contract parties are the drug manufacturers selling the drugs to the pharmacies which in turn sell the drugs to the insured persons, who only have their costs reimbursed from the private health insurance funds in Germany. The tax authorities considered that the private health insurance funds were not part of the supply chain, and therefore Boehringer Ingelheim should not adjust VAT when it paid rebates to them.

The Court of Justice of the European Union (CJEU) has now confirmed, in the case of *Boehringer Ingelheim Pharma*, that the two types of rebate should be treated in the same way. The rebate was set by statute, and Boehringer Ingelheim was not free to dispose of the full amount it received. The *Elida Gibbs* judgment applies and Boehringer Ingelheim should not be taxed on more consideration than it actually received.

Businesses that pay rebates to third parties which may not obviously be part of their supply chain should consider whether an output tax adjustment is possible.

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Greece

Extension of the application of the special VAT rates in certain islands

The application of the special VAT rates (reduced by 30%) has been extended for the islands of Leros, Lesvos, Kos, Samos and Chios until 30 June 2018.

The special rates ceased to apply on 31 December 2017 for the remaining islands.

For the mainland and the islands of the first and second group, for which the application of the special reduced VAT rates had already been abolished, the standard VAT rates apply.

In light of the above, the VAT rates from 1 January 2018 will be as follows:

Area	Standard rate	Reduced rate	Super-reduced rate
Leros, Lesvos, Kos, Samos and Chios	17%	9%	4%
Mainland and all islands (except the above-mentioned)	24%	13%	6%

New category of services subject to reduced 13% VAT rate

The supply of services by nursing homes and of care facilities for the elderly that operate as private businesses for the supply of accommodation and hospitality will be subject to the reduced VAT rate of 13% from 1 January 2018.

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Hungary

Environmental product fee rules changed from 1 January 2018

The legislation imposes a special tax on certain product categories that have or may have an impact on the environment. This tax is called 'environmental product fee'. This legislation has been amended as of 1 January 2018.

Amendments to the environmental product fee in 2018 were primarily justified by the changes to the EU Waste Electrical and Electronic Equipment (WEEE) Directive. The amendments provide that the determination of the Combined Nomenclature codes (tariff headings) will be simplified; the Combined Nomenclature in force on 1 January 2018 will apply instead of the classification rules in force on 1 January 2010. Nevertheless, due to the differences between the 2010 and 2018 classifications, some products will be included in the product fee regulation, others may be excluded from it.

Company/Business Gateway registration

As of 1 January 2018 all Hungarian-established companies are required to register for official electronic communications through the 'Company/Business Gateway', a free, mandatory state-run electronic platform (https://cegkapu.gov.hu/) to be able to communicate with the authorities electronically.

The purpose of such registration is to establish guaranteed electronic communication between companies and various authorities, governmental organizations, public administration bodies, local governments, judicial executors, and even public utility providers.

The legal regulation provides a transitional period, solely for the communication with the tax authorities, i.e. tax-related communication can be still carried out through the companies' representatives' client portal access.

Disclosure of foreign bank accounts

From 1 January 2018, all Hungarian-established companies are required to disclose to the tax authorities information regarding bank accounts held in foreign (i.e. non-Hungarian) banks (such as the name of the foreign bank and the date of opening/closing of the account). The due date to disclose such information was 31 January 2018.

If a new bank account is opened with a foreign bank or an existing foreign bank account is closed, the taxpayer must inform the tax authorities within 15 days of the effective date of opening/closing of the bank account.

Food chain supervision fee for VAT-registered foreign businesses

Foreign businesses registered in Hungary for VAT purposes and carrying out trade activities, with a FELIR identification number, must pay the food chain supervision fee (FCSF), due to a law change in Hungary, effective as of 16 June 2017. The annual FCSF is 0.1% of the net sales revenue (excluding excise duty and public health product tax) derived in the preceding year from the activities that are subject to 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; supply of veterinary medicines.

VAT-registered taxpayers within the scope of FCSF must meet the following requirements:

- Registration in the registry of the National Food Chain Safety Office; and
- E-reporting by 31 May 2018 regarding the FCSF liability.

FCSF is payable in two equal instalments: the first instalment by 31 July, and the second by 31 January of the following year, i.e. for the first payments by 31 July 2018 and 31 January 2019.

A default penalty may be imposed for non-compliance. The amount of the default penalty may be between HUF 10,000 and HUF 500,000,000 or a maximum 10% of the abovementioned net sales revenue.

The above described change in the legislation raises several questions for businesses:

- Are the activities of the business covered by the FCSF legislation?
- How should foreign businesses determine the sales revenue and the base of FCSF?
- How should the requirements be fulfilled if the business year of a VAT-registered business does not correspond to the calendar year?

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Ireland

Updated RCT guidance – submission of payment notifications in relation to closed contracts

On 4 January 2018 Irish Revenue issued an eBrief on eRCT (Relevant Contract Tax) System which updates their Tax and Duty Manual, see eRCT System - Input of Payment Notifications where the contract is closed.

RCT is a withholding tax that applies to certain payments in the construction, forestry, and meat-processing industries, whereby a principal contractor is obliged to withhold a relevant proportion of the payment to subcontractors with the aim of discouraging tax fraud in the relevant industries. From 2012 the withholding system is entirely electronic (i.e. eRCT) and involves principal contractors reporting all of the relevant contracts entered into and informing Revenue before making any payments under such contract. Should the principal contractor make a payment without first obtaining a 'payment authorisation' from Revenue, they will be obliged to submit an unreported post-payment notification which will automatically attract a penalty which is calculated with reference to the subcontractor's RCT status.

Despite the existing obligation to report all payments made under the relevant contract, to date there has been very little guidance on submission of payment/post-payment notifications in cases where such payments are made subsequent to the relevant contract already being closed. In the light of this, the addition to the manual sets out Revenue's position on how payments made on closed contracts should be reported, with reference to the length of the period that has passed since the closure has occurred.

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Israel

VAT law amended with respect to assessments

The VAT law has been amended as follows:

- Sub-section (d) was added to section 77, which refers to assessments, enabling the tax authorities to issue a partial assessment on one or several issues that were included or should have been included in the periodic report.
- A partial assessment may be determined only once for that tax year.
- A partial assessment must not be taxed more than three times during a period of five tax years.
- Before deciding on a partial assessment, the Director of the Israel Taxes Authority must notify the taxpayer on the subject or subjects that he intends to examine in writing.
- A partial assessment may be in agreement with the taxpayer.
- Where an assessment and a partial assessment were made with respect to the same period, the Director shall determine their implications on each other and make the necessary adjustments.

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Italy

Law Decree n° 148/2017 converted into law

The Law Decree of 16 October 2017 n° 148 was definitively approved and converted into Law n. 172 dated 4 December 2017 (published in the Official Gazette n°284).

As already announced, the following VAT measures were confirmed:

- **Extension of the split payment regime** from 1 January 2018
- **Future VAT increases** from FY2019.

In the frame of the conversion into law, the following provisions were also introduced.

- **Communication of invoice data**
  - No penalties will be due for the incorrect transmission of data related to the communication for first semester 2017 where the correct data is e-filed by 28 February 2018; and
  - Simplifications for the communication of the data of invoices issued and received for FY2018.

Via an official press release, on 5 February 2018, the tax authorities announced the issuance of the implementing Act related to the simplifications for the communication of the data of the invoices issued and received; the deadline for the submission of the communication for the second semester 2017 (from July to December 2017), previously 28 February 2018, has been postponed to 6 April 2018 (i.e. 60 days after the release of the implementing Act).

- **VAT ledgers kept on electronic systems**

  A derogation to the standard procedure allows a taxpayer to keep input/output VAT ledgers on electronic systems, provided that in the case of a tax audit, the VAT ledger result can be updated as well as printed in the presence of the authorities if requested.

VAT measures introduced by 2018 Budget Law

The 2018 Budget Law (Law no. 205 of 27 December 2017, published in the Official Gazette no. 302 of 29 December 2017) included the following VAT measures:

E-invoices as from 1 January 2019

There is a new obligation to raise e-invoices for supplies of goods and services between subjects located or established in Italy, under B2B and B2C schemes. Nonresident subjects, only VAT 'identified' in Italy, would also be obliged, however this is a debated point to be clarified, due to some inconsistencies in the wording of the new law provisions.

VAT group changes

The '*Skandia*' principles will apply in Italy from 1 January 2018. Transactions between a permanent establishment and a parent company, when only one of which joins the VAT group, are now considered to take place between the VAT group (a new single taxable person for VAT purposes) and a separate entity outside the VAT group, and therefore they become relevant for VAT purposes.

Penalties for deduction of VAT wrongly charged

Fixed penalties (from EUR 250 to EUR 10,000) will apply to a purchaser that deducts input VAT wrongly charged by the supplier (these fixed penalties replace the former proportional penalties equal to 90% of VAT). The purchaser still has the right to deduct the VAT when the VAT, although wrongly charged, was paid by the supplier. No further penalties for inaccurate VAT return submission will apply in this case (as was previously the case).

Other VAT news

- Future VAT rates increases were postponed to 2019.

- The deadline for submission of the e-communication of data of invoices issued and received for the second quarter (or for the first semester), was postponed to 30 September (rather than 16 September, as was previously the case).

Split payment

List of companies subject to split payment published

On 19 December 2017, the Department of Finance of the Ministry of Economy and Finance published on their website the definitive list of companies that will be subject to the split payment mechanism for FY2018

Clarifications on VAT advance payment for split payment regime

In light of the then-approaching deadline for the 2017 advance payment on 27 December 2017, the tax authorities provided some significant clarifications (in Circular Letter n° 28/E dated 12 December 2017) regarding the methods to determine the VAT advance payments due by public bodies and companies subject to the split payment regime.

Clarification of VAT deduction

Via Circular letter n°1/E, issued on 17 January 2018, the tax authorities provided official clarifications concerning VAT deduction, in accordance with the law provisions as recently introduced by Legislative Decree n°50/2017.

In compliance with EU principles (the Court of Justice of the European Union case of *Terra Baubedarf-Handel*), the tax authorities confirmed that in order to exercise the right of VAT deduction, the taxable event must occur (substantial condition) and the taxable person must hold a valid purchase invoice (formal condition). Consequently, the time from which the deadline for VAT deduction begins is set in the fiscal year when both of the above conditions are jointly met, and therefore the taxpayer is entitled to exercise the right of VAT deduction starting from that time, i.e. the *dies a quo*, until the deadline for filing the annual VAT return relating to the year in which the right of deduction arose (meaning, again, the year when both the formal and substantial conditions are jointly met).

Given the above, beside the taxable event, it becomes crucial to consider the time of receiving of a valid VAT invoice to account for, before exercising the right of VAT deduction.

In order to solve doubts about the time limit for VAT deductions (and prior VAT accounting) concerning input transactions carried out in FY2017 (the year during which the VAT law provisions concerning the term of VAT deduction were changed), the tax authorities confirmed that purchase invoices received in FY2017 must be accounted for by 30 April 2018 (the deadline for filing the FY2017 VAT return), while purchase invoices received in FY2018 must be accounted for by 30 April 2019 (the deadline for filing the FY2018 VAT return). Some further technical aspects have been analyzed in detail; amongst other, the time of receiving invoices (if they are not sent by certified email or by other means of communication that can confirm the actual receipt), credit notes, the right of VAT deduction in the case of transactions subject to split payment, and exercise of the right of VAT deduction through the submission of an integrative VAT return.

The tax authorities also clarified that since the circular letter was released after the end of FY2017, no penalties will apply to taxpayers that considered the invoices received by 16 January 2018 in the monthly VAT calculation of December 2017. It is also confirmed that the new rules regarding VAT deduction apply to invoices and import bills issued from 1 January 2017, provided they concern transactions for which the tax point occurred from the same date. Whereas the previous provisions still apply to imports and purchases of goods and services for which the tax point occurs before 1 January 2017; in this case, the right of VAT deduction must be exercised within the deadline for filing the VAT return relating to the second year following the one in which the right of VAT deduction arose.

Communication of invoices issued and received

Further to the recent changes foreseen by the 2018 Budget Law, on 19 January 2018, the tax authorities published a press release to announce that some 'simplifications' regarding the data to be reported in the communication of the invoices issued and received are going to be introduced.

Based on the draft act *Provvedimento*:

- The data to be mandatorily reported have been reduced (e.g. VAT number/fiscal code of the counterparts, invoice date and number, type of transaction, taxable base, VAT rate and amount, nature of transaction);
- In the case of invoices issued and/or received for an amount less than EUR 300 for which only a single document was booked on the VAT ledger (*documento riepilogativo*), the taxpayer can report only the data of the *documento riepilogativo*;
- Software for the generation and another one for the 'check' of the xml file will be released;
- The statutory due date for the submission of the communication of the invoices issued and received for the second half-year of 2017, i.e. 28 February, has been postponed to 60 days after the release of the final/official *Provvedimento*;
- The periodicity is generally quarterly; however, the taxpayer can chose to submit the communication on a half-year basis.

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REX system

Since 1 January 2017, the Registered Exporter system (the 'REX system') has been in place, being the EU system of certification of the origin of goods applying in the Generalised System of Preference (GSP) of the European Union as well as within bilateral commercial agreements just involving the EU.

In this respect, the Customs agency issued on 16 November 2017 Circular letter no 13/D and Note no 61168/RU, listing the requirements and fulfilments for interested exporters and providing guidelines about the registration in REX of Italian exporters and the necessary indications required for origin purposes.

Excise duties warehouse

With Circular letter no 14/D of 4 December 2017, the Customs agency provided guidelines regarding the authorization process and the operative procedures to be met by operators in order to manage excise duties warehouses according to the Italian excise duty code.

EMCS system

With Note no 139762/RU of 5 December 2017, the Customs agency provided some guidelines for economic operators and customs offices in the light of new controls required by the EU Commission within the Excise Movement and Control System (EMCS).

Postponement of certain excise duties obligations

With the Decision no 139996 of 18 December, the Customs Agency postponed to 1 January 2020, instead of 2018:

- The adoption of the electronic accompanying document for the circulation of:
    - Excise duty paid products;
    - Goods subject to other indirect taxes provided for by Legislative Decree no. 504/1995;
- The exclusive electronic filing of the data relating to accounting of the subjects operating as excise commercial warehouses with reduced organization capabilities, as defined by Decision no 86767 of 20 July 2009.

End use procedure

With Note no 141816/RU of 13 December, published on 19 December, the Customs Agency provided some procedural clarification, in light of the Union Customs Code (UCC), regarding the transfer of rights and obligations (TORO) within the end use procedure.

New excise duties provisions

Budget Law 2018, no. 205 of 27 December 2017, published in the Official Gazette no. 302 of 29 December 2017, has introduced, among others, new provisions with reference to excise duties. In particular:

- The release for consumption of fuel from a fiscal warehouse and the extraction of fuel from a warehouse of a registered consignee are allowed only after the payment of the VAT through an F24 Form, without possibility of offsetting.

- New rules are set out related to the need to obtain specific authorizations from the Customs authorities to stock energy products in a third party's fiscal warehouse or in a registered consignee's warehouse.

- With respect to smoking substitution products, it is set out that the Customs authorities will issue a decree to provide procedures and requirements regarding the licenses for sale and purchase of inhalation free-combustion products consisting in liquid products, containing or not nicotine. Furthermore, some procedures and penalties (for example, in case of smuggling and sales without license) already provided for tobacco products are now applicable also for the abovementioned products.

- For beer, the new excise duty rate of EUR 3 per electrolyte and per degrees Plato will apply from 1 January 2019.

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Luxembourg

VAT exemption for collective insurance funds

The 2018 Budget law modifies the VAT law to expand the list of funds that benefit from the VAT exemption applicable to management services of investment funds to include collective internal insurance funds whose investment risks are borne by policyholders and that are subject to the supervision of the Luxembourg Insurance Commission and equivalent insurance funds established in other EU Member States subject to similar supervision. These insurance products are aimed to offer an alternative to investment and pension funds.

This modification applies from 1 January 2018. It will benefit Luxembourg insurance companies acquiring asset management services for their collective insurance life products. This modification will also affect the VAT deduction right of their service providers when based in Luxembourg.

Repeal of decree related to VAT exemption for independent groups of persons

A Grand Ducal decree to repeal the Grand Ducal decree of 21 January 2004 related to the VAT exemption for services rendered by independent groups of persons (IGPs) to their members with effect as from 31 December 2017 was enacted on 23 November 2017 by the Government, as a response to the decision issued by the Court of Justice of the European Union (CJEU) on 4 May 2017 (*European Commission* v *Grand Duchy of Luxembourg* (C-274/15)), in which the CJEU held that certain provisions of the existing decree were incompatible with the EU Principal VAT Directive.

Moreover, it is worth noting that, on 21 September 2017, the Court issued two decisions, *DNB Banka* and *Aviva*, limiting the benefit of the VAT exemption for IGPs, to apply the exemption only to activities carried out in the public interest, thus excluding the banking, financial and insurance sectors from the regime.

These changes will affect banking, financial, and insurance businesses, which will have to review the manner in which they share services.

The Ministry of Finance announced on 23 November 2017 that the authorities are working on the implementation of the VAT unity regime (article 11 of the EU Principal VAT Directive) as an alternative.

Draft law implementing voucher Directive

In addition to the VAT measures in the 2018 Budget law, on 9 August 2017, the Government presented a draft law that would implement the EC Directive 2016/1065 of 27 June 2016 related to the VAT treatment of vouchers. The law should thus be voted in 2018 in order to comply with the Directive's deadline of 1 January 2019.

The changes will clarify the rules applicable to vouchers, although the principles of the Directive are quite close those that already apply in Luxembourg. The retail sector will be the most affected.

Taxation of goods retained after termination of economic activity

The same draft law would amend the VAT law to provide for the taxation of goods retained by a taxpayer (or its legal successors) after the termination of its economic activity, when the VAT incurred on the goods has been partly or fully deducted before the termination of the activity.

This new rules will affect smaller businesses ending their economic activities and retaining goods that could also be used for private purposes such as cars or PCs.

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Malta

VAT guidelines on gambling services

The tax authorities have published guidelines expressly specifying which gambling supplies qualify for VAT exemption in terms of the VAT Act, in line with the EU Principal VAT Directive. These changes came into effect on 1 January 2018.

The guidelines specify that the VAT exemption mainly applies to five categories of gambling supplies:

1. The provision of any facilities for the placing of bets and wagers, including the services of book makers, betting exchanges and any equivalent facilities.

2. The granting of the right to participate in a lotto or lottery, including *Grand Lottery, Super 5*, scratch cards, keno and any other lottery-type games.

3. The granting of the right to participate in a bingo game.

4. The provision to players of devices or equipment for the playing of casino-type games of chance, the outcome of which is determined by a random generator, including tables for the playing of roulette, blackjack, baccarat, poker when played against the house, and slot machines.

5. Supplies which are strictly required, related and essential to, and which form part of, an underlying gambling or betting transaction falling within paragraphs (1) – (4) above, as shall from time to time be determined by the Malta Gaming Authority.

The guidelines also provide helpful guidance on the computation of the taxable value of those gambling services that will no longer be treated as VAT exempt, taking into account the distinct particularities of the gambling sector.

Operators offering VAT taxable services to players established in Malta will generally be required to account for and pay Malta VAT thereon at 18% on the taxable value. This implies a change from the existing simplified VAT registration (Article 12) to the standard VAT registration (Article 10). Operators not established in Malta, as a potential alternative to local VAT registration, may opt to pay the Malta VAT due via the Mini One Stop Shop (MOSS) mechanism in another EU Member State. One of the most significant implications is in relation to input VAT recovery rights, as it will extend to operators that make offerings which are no longer covered by the VAT exemption.

For further information, see Deloitte Malta Tax Alert.

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Netherlands

State Secretary of Finance answers questions raised by Parliament on bill to implement voucher Directive

On 22 December 2017, the State Secretary of Finance answered the questions raised by the Dutch Parliament on the legislative proposal on the VAT treatment of vouchers, which should enter into force on 1 January 2019. The bill aims to implement the EU voucher Directive. As a consequence, ambiguities in cross-border use of vouchers should be removed.

Free coupons

One of the most striking issues that arose in the answers to the questions is the treatment of coupons that are issued free of charge. The State Secretary uses the example of a free coupon that entitles the recipient to a tube of toothpaste. According to the State Secretary, such a coupon is in principle a single-purpose voucher (SPV), which leads to a deemed supply upon issuance. However, no Dutch VAT is charged when the product has a small value or can be regarded as a sample.

Stamps and vouchers that can only be exchanged for money

With regard to stamps and vouchers that can only be exchanged for money, the Secretary of State is still examining whether the regulation should be revised.

Discount vouchers

The voucher Directive does not cover the treatment of discount vouchers. The new rules therefore do not apply to this type of voucher. The State Secretary specified that a voucher only qualifies as a discount voucher if an additional payment is always required when a voucher is redeemed.

Products with a lower sales price

Finally, the State Secretary gives an example of vouchers that are exchanged for a product with a sales price lower than the nominal value of the voucher, while the consumer does not receive any change. According to the State Secretary, the VAT treatment depends on the nature of the voucher. In the case of an SPV, the already-paid VAT remains due. In the case of a multiple-purpose voucher (MPV), only the value of the supplied goods or service is taken into account. This leads to a lower VAT payment if the value thereof is lower than the nominal value of the voucher. There is a query as to whether this example is correct, as the taxable amount when a MPV is exchanged is the amount paid for the voucher or the nominal value.

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Norway

SAF-T update

The Ministry of Finance has confirmed that SAF-T will be voluntary until 1 January 2020, at which point it will become mandatory to deliver in SAF-T format all bookkeeping entities (i.e. subject to the Bookkeeping Act). According to the current draft provisions, only information booked from 1 January 2020 will have to be included in the SAF-T file.

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Poland

Definition of 'first settlement' does not comply with EU VAT rules

The Court of Justice of the European Union (CJEU), in its verdict of 16 November 2017, found that the Polish definition of 'first settlement' was not compliant with the EU Principal VAT Directive (*Kozuba Premium*). The Polish definition assumed that first settlement occurs only when a company provides a building as a VATable transaction to a third party, i.e. a sale or lease transaction after its construction or refurbishment subject to certain conditions. The CJEU did not agree with that approach, in particular it has concluded that for first settlement to occur it is enough if the building would be used by the taxpayer for its own purposes after completion, and the condition of taxable activity is not included in the EU legislation.

Additionally, the CJEU referred to the refurbishment definition. Polish VAT law defines refurbishment as a situation when improvement expenditure accounts for at least 30% of the building's initial value. If this is the case, the building may be regarded as a new building again. However, the CJEU ruled that the definition of 'improvement' is wider than the definition of 'reconstruction' – each 'reconstruction' should be an 'improvement', while not every 'improvement' (even if the limit of 30% of the initial value is exceeded) will be 'reconstruction', which in accordance with the VAT Directive makes the building new. Bearing in mind the above, the CJEU found the Polish VAT provisions do not comply with the VAT Directive.

The discrepancy on the first settlement as regards taxable activity had previously been identified by the tax authorities and incorporated into rulings issued, but a change in practice regarding refurbishment is expected.

CJEU to decide on VAT tax point for construction services

According to Polish VAT law binding since 2014, the tax point for construction services arises upon invoice issuance or, if the invoice was not issued on time, on the 30th day following the completion of the service. The time of completion of service has become the source of disputes between taxpayers and the tax authorities. The approach of the tax authorities presented in a number of rulings considers the service to be completed at the moment of actual completion of works and notification of this fact to the investor. Taxpayers, following the market practice as well as the previously binding provisions, consider the moment of completion of service to be the moment of signing the acceptance protocol, which may occur months from the moment of notifying the completion of service to the investor, and be preceded by a number of adjustments and correction works.

As the position of the tax authorities does not meet the realities of business in the construction industry and results in suppliers self-financing VAT for the period until acceptance is granted and remuneration for the services is received, a number of disputes arose around this issue both at the authorities and court levels, and it has been decided by the Supreme Administrative Court to turn to the CJEU to resolve this issue.

CJEU to decide on VAT treatment of fuel card schemes

The CJEU will decide how issuers of fuel cards should be treated for VAT purposes, i.e. whether as an entity participating in the chain supply or as a provider of a financial service. In 2012, the Supreme Administrative Court (SAC) stated that the issuer of a fuel card should be viewed as an entity financing the purchase of fuel and not as an intermediary in the chain supply. As a result the tax authorities questioned the right to recover input VAT on invoices received by the issuer of fuel cards and the final recipient of the fuel. The conclusion was based on the 2003 CJEU case *Auto Lease BV*.

However, in a recent case the SAC has raised doubts as to whether the card issuer should always be recognized as providing a financial service – it must be examined whether the card issuer affects the essential elements of the transaction (i.e. price, conditions of fuel purchase etc.).

Mandatory e-filing of VAT returns and mandatory electronic format of VAT evidence

The transitional period implemented into the Polish VAT law on 1 January 2017 has expired and thus as of 1 January 2018 all Polish VAT-related returns must be submitted only in electronic form. The tax authorities will no longer accept returns submitted on paper (this also applies to correction returns for previous periods).

Mandatory e-filing relates to all VAT returns, i.e. VAT return, ECSPL return, reverse charge return, etc.

Furthermore, as of 1 January 2018, VAT evidence (i.e. ledgers and VAT registers) will have to be prepared and kept in electronic form using computer programs (i.e. paper evidence will no longer be accepted). Electronic forms of VAT evidence can be kept using both professional accounting programs and spreadsheets (such as MS Excel), provided the VAT evidence meets the conditions of the VAT law. The obligation to keep VAT evidence in electronic form is due to the fact that the tax authorities may require to be provided, during a tax audit or explanatory proceedings, with VAT registers (and ledgers as of 1 July 2018) in electronic form. This concerns VAT ledgers only. Taxpayers for archive purposes may still keep VAT evidence and other accounting documentation (such as invoices and transport documentation) in paper.

New version of SAFT file – JPK_VAT(3)

As of 1 January 2018, the third version of SAFT file will be applied. The Ministry of Finance decided to simplify the structure and limit required data. The fields 'default currency code' and 'tax office code' as well as 'address of the Company' and 'REGON number' have been removed. However new fields are introduced: 'the name of the system' (system used for accounting purposes) and 'email address' (for contacts with the taxpayer), with the latter being voluntary. Thus, the changes are relatively minor character.

Split payment

The application of the split payment mechanism has been postponed to 1 July 2018. (For information on the proposed mechanism, see the August 2017 edition of GITN.)

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Portugal

Budget Law 2018

On 29 December 2017, the Budget Law for 2018 was published in the Official Journal. Below are the main indirect tax changes, which entered into force on 1 January 2018.

VAT

Tax rate changes

- Musical instruments will be subject to the intermediate VAT rate – 13% in Portugal Mainland (12% in Madeira and 9% in Azores).

- Construction works for the National Fund for the rehabilitation of buildings that have been entered into directly by the respective managing/undertaking entity will be subject to the reduced VAT rate – 6% in Portugal Mainland (5% in Madeira and 4% in Azores).

Other legislative changes

- The requirements that must be met by a taxpayer to be able to recover the VAT included in bad debts will be amended and clarified. For example, a taxpayer will be able to recover the VAT if a debtors' insolvency procedure is closed due to insufficient assets or following assessment and distribution of the debtor's assets in accordance with each creditor's ratio (whereby creditors have definitely not been repaid the amount due). On the other hand, it is clarified that under a special procedure for revitalization of companies or insolvency processes, the taxpayer may recover the VAT after the recovery or insolvency plans are decided and approved by the court where such decisions foresee the definitive non-payment of the debt.

- Further to the new reverse charge mechanism for the VAT due on the import of goods (eliminating the associated financial impact) which will come into effect on 1 March 2018 for all goods (it has applied from 1 September 2017 to goods listed in Annex V of the EU Principal VAT Directive), a taxpayer may opt for the reverse charge procedure even when still benefiting from the payment deferral regime for previous imports.

- The threshold to apply the VAT exemption to the export of goods by a traveler who is a nonresident in the EU (tax free) decreases from EUR 75 to EUR 50; and there is a possibility that the transition period will be extended (currently to 31 December 2017), which waives the obligation for electronic communication of the supplies of goods performed under such regime.

- Taxpayers established in another EU Member State will be able to correct items of the VAT refund request (e.g., taxable and VAT amount or nature of the goods acquired), until the end of the following civil year to which the refund relates.

- An authorization has been proposed so the Government may extend the intermediate VAT rate to all beverage services provided by restaurants (currently beverage services of alcoholic drinks, soft drinks, juices, nectars, and sparkling waters and those to which carbon dioxide or other substances are added are subject to the standard VAT rate – 23% in Portugal Mainland).

- An authorization has been proposed for the Government to include in the VAT reverse charge mechanism the acquisition of cork, wood, pine nut cones, and pine nuts with shell.

Excise duties

Tax on alcohol, alcoholic drinks and sugar added drinks

- The tax rate applicable to beers, intermediate products, spirit drinks and other fermented beverages will rise by about 1.4%.

- The tax rate applicable to non-alcoholic drinks, with added sugar or other sweeteners, will rise by about 1.4%.

- The excise duty rates applicable to syrups will be EUR 50.01 or EUR 100.14 per hectoliter, according to whether the correspondent sugar content is lower or greater than 80gr per liter. The new tax rate for sugar content lower than 80gr per liter will only enter into force on 1 July 2018.

- For concentrates in the form of powder, containing added sugar or other sweeteners, the applicable excise duty rates are, respectively, EUR 83.35 and EUR 166.90 by 100 kg of weight which may vary according to the amount of sugar contained (whether is lower/higher than 80gr per liter).

Tobacco tax

- The excise duty levied on the specific component regarding cigarettes will increase from EUR 93.58 to EUR 94.89 per 1,000 cigarettes. Nonetheless, the correspondent *ad valorem* component will be reduced to 15% (currently 16% for cigarettes, smoking tobacco, snuff, chewing tobacco and heated tobacco).

- On cigars and cigarillos, there is an increase by about 1.4% in the minimum limit of duty, resulting from the application of the *ad valorem* component, which will be EUR 405.60 per 1,000 cigars and EUR 60.84 per 1,000 cigarillos.

- The duty related to smoking tobacco, snuff, chewing tobacco and heated tobacco may not be lower than EUR 0.171 per gr (currently EUR 0.169 per gr).

Tax on petroleum products

- Tax applicable to methane and oil gas used as a propellant will increase about 1.4%.

- Tax applicable to natural gas: (i) when used as a propellant decreases from EUR 2.87 to EUR 1.15 per gigajoule; and (ii) when used as fuel, increases from EUR 0.303 to EUR 0.307 per gigajoule.

- The duty exemption applicable to products (used to produce electricity, 'city gas' and combined heat and power generation) with Nomenclature Codes 2701 (briquettes, ovoids and similar solid fuels manufactured from coal), 2702 (lignite, whether or not agglomerated (excluding jet)), 2704 (coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated) will no longer be applicable. In this context a transitional provision determines that such products will be subject to 10% of both of the applicable tax and CO2 special contribution rate, progressively increasing until 2022 (the year in which these products will be fully taxed).

- The additional petroleum and energy products tax remains in force for the 2018 year: EUR 0.007 per liter for gasoline and EUR 0.0035 per liter for road, colored and marked diesel fuel.

Vehicle tax

- The vehicle tax will increase by about 1.4% generically.

- The amount of tax to be paid will be settled by electronic means through the tax authorities' website.

Circulation tax

- The circulation tax rates will increase by about 1.4%.

- Passenger and commercial vehicles with a gross weight of up to 2,500 kilograms and CO2 level between 180gr and 250gr per km will decrease from EUR 38.08 to EUR 28.92 (which corresponds to a 24% decrease). If the CO2 level is higher than 250gr per km, the respective tax rate will decrease by 11%, i.e., from EUR 65.24 to EUR 58.04.

- The additional car circulation tax will remain in force in 2018 for diesel vehicles (passenger vehicles with a gross weight of up to 2500 kilograms).

Excise duty rate on petroleum products increased

Under the review periodically performed by the Government of the excise rates applicable to petroleum and energy products, Decree no. 385-I/2017, dated 29 December 2017 has been published by the Ministry of Finance, which increases the excise rate to EUR 343.15 per 1,000 liters (previously, EUR 338.41) applicable to commodity code 2710 19 43.

This change entered into force on 1 January 2018.

Binding ruling on application of VAT exemption for operations related to suspension arrangement, in customs warehouse, regarding non-alcoholic beverages with added sugar

The tax authorities have published a binding ruling information in response to a specific question filed by a taxpayer to clarify whether the VAT exemption applicable to operations performed with products under excise duty suspension arrangements (as foreseen in Article 15 (1) (b) (v) of the VAT Portuguese Code which follows Articles 157(1)(b) and 160(1)(b) of the EU Principal VAT Directive) also applies to non-alcoholic beverages with added sugar, which are subject to excise duty from the beginning of 2017.

The tax authorities consider that such exemption applies, considering that sugar added drinks are subject to excise duties.

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Romania

Split payment update

The law regarding split payment, amending Government Ordinance no. 23/2017, has been published, following the adoption by Parliament and approval of the President. The law provides as follows.

Application

Mandatory application by:

Taxpayers	Starting date for application	Mandatory application for
1. Having outstanding VAT liabilities at 31 December 2017 (except those for which forced execution is suspended) higher than: • RON 15,000 for large taxpayers • RON 10,000 for medium-sized taxpayers • RON 5,000 for small-sized or nonresident taxpayers, if such debts are not paid by 31 January 2018	1 March 2018	The entire period when recording outstanding VAT liabilities plus a minimum six months after paying all outstanding VAT liabilities
2. Having outstanding VAT liabilities after 1 January 2018 higher than the abovementioned thresholds, older than 60 days (except those for which forced execution is suspended)	1st day of the second month after the expiry of the 60 days deadline	
3. Under insolvency procedures	For companies under insolvency at 31 December 2017, 1 March 2018 For companies under insolvency after 1 January 2018, the 1st day of the month following the one when insolvency was declared	until all insolvency procedures finalized

Taxpayers with outstanding VAT liabilities suspended for execution via a letter of bank guarantee will not be obliged to apply the VAT split payment.

Optional application by other taxpayers may be requested via submission of Form 086. In such cases, the request should be processed by the tax authorities in three working days.

Further, the split payment mechanism must be applied starting with the next day after publication in the *Registry of taxpayers applying VAT split payment* for a period of minimum one year.

Taxpayers optionally applying the system will benefit from a 5% reduction of the corporate income tax/microenterprise tax due for the entire period of application.

Payments

Action points for payments

Taxpayers acquiring goods/services from suppliers applying VAT split will have to pay the VAT in the VAT account of the supplier, even if such companies will not apply the system (the payment being performed from their normal bank account).

The general guidelines on how the receivable/payable amounts will be settled are as follows:

Taxpayer	**Suppliers of A apply VAT split?**	**Customers of A apply VAT split**	**Payable/receivable guidelines**
Company A not applying VAT split	YES	N/A	Split payments for such suppliers from the normal bank account (e.g. one payment for RON 100 to the normal bank account of the supplier and one payment for RON 19 to the VAT account of the supplier)
	NO	N/A	Regular payments as performed until 2018
	N/A	YES	Split payments performed by clients into a normal bank account (e.g. clients will pay RON 100 from their normal bank account and RON 19 from their VAT account)
	N/A	NO	Regular payments as performed until 2018

Taxpayer	Suppliers of A apply VAT split?	Customers of A apply VAT split	Payable/receivable guidelines
Company A applying VAT split	YES	N/A	VAT split payments RON 100 from the normal bank account to the normal bank account RON 19 from the VAT account to the VAT account
	NO	N/A	VAT split payments RON 100 from the normal bank account to the normal bank account RON 19 from the VAT account to the normal account
	N/A	YES	VAT will be cashed in via split payments RON 100 from the normal bank account to the normal bank account RON 19 from the VAT account to the VAT account
	N/A	NO	VAT will be cashed in via split payments RON 100 from the normal bank account to the normal bank account RON 19 from the normal account to the VAT account

Split payments are not applicable for: (i) taxpayers that are not VAT registered and (ii) nonresidents that are neither established nor registered for VAT purposes in Romania.

Fines and penalties

In the legislative process there was a notable change with respect to the fines and penalties for not following the VAT split payment rules, namely, the proposed fine of 50% of the VAT for not paying the tax in the VAT account of the supplier was eliminated and only the penalty of 0.06%/day remained in the amendments approved in Parliament.

However, if a client made an erroneous payment (paid the full amount in the current account), the receiver of the payment (i.e. the supplier of the goods/services) may transfer the VAT received in its normal bank account to its own VAT account. In such cases, it will be considered that the erroneous payment was corrected, provided the supplier sends the proof of the transfer to its client.

Recommendations

Even for businesses that are not required to or opt to apply VAT split payments, it is recommended that a procedure is implemented for identifying suppliers applying the system.

The tax authorities will not issue notifications, so that businesses will need to check the status of their suppliers to avoid penalties for erroneous payments.

Steps for checking suppliers

- Step 1: Check all suppliers in the *Registry of taxpayers applying VAT split payment* (https://www.anaf.ro/RegPlataDefalcataTVA/)

- Step 2: For suppliers applying the VAT split payment system, check internally if they have communicated the details of their VAT account.

  If no account was communicated by the supplier, check the *Registry of VAT accounts opened at the Treasury* (https://www.anaf.ro/ContIBANTVA/) and use the identified VAT account.

- Step 3: Make split payments to the identified suppliers using the identified VAT account.

Steps for diligence procedure

- Step 1: Implement diligence procedures for regularly verifying that payments are correctly made.

- Step 2: If erroneous payments are identified, take necessary actions for correcting them in order to avoid penalties (if correction is performed within seven working days) or to limit the amount of penalties.

VAT.InstantScan Tool

Deloitte Romania has developed VAT.InstantScan, which verifies approximately 200 taxpayers and returns the results in less than 10 seconds. The application verifies the VAT IDs in all 5 registers available on the site of the tax authorities, including the VAT split payment registry.

The tool is useful for all Romanian registered companies, especially for those with an extensive number of suppliers.

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Russia

Unified agricultural taxpayers will become VAT payers

Federal Law No. 335-FZ of 27 November 2017 introduced amendments to the Tax Code of the Russian Federation. In accordance with the new requirements, businesses and individual entrepreneurs that pay Unified Agricultural Tax (UAT) will also be treated as VAT payers.

However, they will be entitled to a VAT exemption if:

- Their transition to UAT and the application of VAT exemption take place in the same calendar year; or

- The revenues (for the preceding UAT period) from the sale of goods or services subject to UAT do not exceed, net of VAT, the following values: RUB 100 million for 2018, RUB 90 million for 2019, RUB 80 million for 2020, RUB 70 million for 2021, RUB 60 million for 2022 and subsequent years.

Amendments oblige the UAT payers that wish to apply a VAT exemption to file a respective notification with their local tax authorities.

The amendments will enter into force on 1 January 2019.

Allocation of input VAT between taxable and exempt supplies

Federal Law No. 335-FZ of 27 November 2017 introduced amendments to the Tax Code of the Russian Federation.

In accordance with the expired provisions of the Tax Code, a taxpayer had the right to claim all amounts of input VAT in tax periods in which the share of expenses for the acquisition, production and/or sale of goods/work/services and property rights with respect to which sales are not taxable did not account for more than 5% of the total amount of aggregate expenses for the acquisition, production and/or sale of goods/work/services and property rights.

From 1 January 2018 the '5% rule' now applies to indirect expenses (i.e. expenses that relate simultaneously to both taxable and non-taxable operations) only. Thus, a taxpayer has the right to claim the amounts of input VAT with respect to expenses related simultaneously to both taxable and non-taxable operations in tax periods in which the share of expenses for the acquisition, production and/or sale of goods/work/services and property rights with respect to which sales are not taxable do not account for more than 5% of the total amount of aggregate expenses for the acquisition, production and/or sale of goods/work/services and property rights. VAT on goods (work, services) and property rights purchased for the purpose of making solely non-VAT-able transactions cannot be claimed as input credit, but instead should be included in the acquisition cost of goods (work, services) and property rights non-depending the share of these expenses in the total amount of aggregate expenses.

These amendments require taxpayers to account for input VAT separately, regardless of the volume of non-VAT-able transactions.

The changes apply from 1 January 2018.

Rules for VAT deductions on purchases using subsidies and/or budget investment clarified

Federal Law No. 335-FZ of 27 November 2017 introduced amendments to the Tax Code of the Russian Federation. The new version of Article 170 of the Tax Code states that in case of purchasing goods (work, services) and property rights using subsidies/budget investment input VAT, that is charged to a taxpayer or actually paid upon the import of such goods, cannot be claimed for recovery against output VAT.

This VAT can be expensed for profit tax purposes, provided the costs of goods (work, services) or property rights purchased are deductible for profits tax purposes and accounted for separately.

The obligation to reverse VAT deductions when receiving not only subsidies but also budget investment is introduced.

The changes apply with effect from 1 January 2018.

VAT exemption for sales of non-ferrous and ferrous metals scrap removed and reverse charge mechanism for VAT payment introduced for sales of this scrap and for sales of waste, secondary aluminium alloys and raw animal skin

Federal Law No. 335-FZ of 27 November 2017 introduced amendments to the Tax Code of the Russian Federation. Amendments exclude the sales of non-ferrous and ferrous metals scrap and waste from the list of VAT-exempt transactions and establish that VAT must be paid on sales of such scrap by buyers via the reverse charge mechanism (unless such goods are sold by exempt taxpayers or persons not recognized as taxpayers). The same mechanism for VAT payment (i.e. by buyers as reverse charge) will also apply to sales of raw animal skins, secondary aluminium, and its alloys.

The changes apply with effect from 1 January 2018.

VAT place of supply for certain services refined

Federal Law No. 335-FZ of 27 November 2017 introduced amendments to the Tax Code of the Russian Federation. The Law adds a new provision to Article 148 of the Tax Code, granting an exclusion from the general rule with respect to services on the lease of aviation engines and other aviation equipment that are deemed supplied in a foreign state according to the laws of such foreign state.

Owing to the change, Russian lessees of the mentioned movable property will no longer be treated as tax agents and will not have to withhold VAT from relevant lease payments.

In addition, Article 148 of the Tax Code will also set forth that services of pipeline transportation of natural gas will be deemed supplied in Russia in the instances envisaged by international treaties signed by Russia. The Law also introduces a zero VAT rate on the abovementioned transportation services for the instances envisaged by international treaties signed by Russia.

The changes apply with effect from 1 January 2018.

List of data necessary for purchases from foreign online stores delivered by express carriers expanded

The Federal Customs Service has expanded the list of data necessary for purchases from foreign online stores delivered by express carriers.

In addition to passport data, it will be necessary to specify the recipient's taxpayer identification number (TIN) and provide screenshots or links to the ordered goods.

The changes are introduced under the experiment on the application of the Unified Automated Information System of Customs Authorities (UAIS CA) for personal ordered goods, purchased by individuals in foreign online stores and delivered by transport forwarding companies and courier services.

Passport data, TIN, and information regarding the value of the recipient's goods in Euros and Rubles, the weight of goods, and other data will be stored in UAIS CA. Based on this information a decision on the collection of a customs duty will be made by customs authorities. The new rules will not affect postal items.

Duty-free import to Russia is applied with respect to goods for personal use sent to the address of one recipient, the total value of which within a calendar month does not exceed the amount equivalent to EUR 1,000, and/or whose weight does not exceed 31 kg. Where the limit is exceeded, a 30% duty must be paid in terms of the amount exceeding the value, but not less than EUR 4 per kilogram in excess of the weight limit.

The new procedure will be tested throughout Russia from 7 December 2017 to 1 July 2018.

Introduction of temporary import restrictions on live animals and birds from Malaysia

Instruction of the Federal Service for Veterinary and Phytosanitary Surveillance (*Rosselkhoznadzor*) of 20 November 2017 No. FC-HB-7/25170 introduces from 24 November 2017 a temporary ban on the importation from Malaysia into Russia of:

- Live animals and birds, except companion animals and birds carried by owners for non-commercial purposes;
- Genetic material (with the exception of those selected *in vivo* in accordance with the provisions of Chapter 8.8.17 of the OIE Code).

At the same time, temporary restrictions are introduced on the transit of animals and birds across the territory of the Russian Federation, with the exception of the companion animals and birds transported by owners for non-commercial purposes originating from the territory of Malaysia.

Instruction of 20 November 2017 No. FC-HB-7/25170 came into effect on 24 November 2017.

Amendments to lists of goods subject to export control

Decree of the President of the Russian Federation of 14 November 2017 No. 545 introduced amendments to the list of chemicals, equipment and technologies that can be used to create chemical weapons and for which export control is established.

The changes consist in the replacement of customs classification codes in a number of positions, the presentation of some positions in a new edition, and the inclusion of new positions.

Decree of the President of the Russian Federation of 14 November 2017 No. 544 expands the list of microorganisms, toxins, equipment and technologies subject to export control. Additions are made, in particular, in:

- Section 1: Microorganisms, pathogenic to humans, and toxins;
- Section 2: Microorganisms pathogenic to animals;
- Section 5: Equipment.

Certain positions are set out in a new edition.

Decrees No. 545 and 544 will come into effect on 15 February 2018.

Introduction of export customs duty on tungsten and cermet waste and scrap

Resolution of the Government of the Russian Federation of 27 November 2017 No. 1437 introduces a 7.5% export customs duty rate for tungsten waste and scrap classified under customs classification code 8101 97 000 0 and for cermet waste and scrap classified under customs classification code 8113 00 400 0.

Resolution No. 1437 came into effect on 30 December 2017 and will be effective for one year.

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Serbia

Amendments to VAT law

The National Assembly of the Republic of Serbia has adopted the Law on Changes and Amendments to the Law on Value Added Tax (VAT Law), which envisages significant changes to certain legal provisions, primarily with the aim of harmonizing tax rules with EU rules. The amendments applied from 1 January 2018, except where noted.

New supply where the supply of goods and services is not subject to VAT computation

In accordance with the new Article 6a of the VAT Law, it will be deemed that a supply of goods and services does not occur when the supply is made by the grantor of a concession to the concessionaire, and *vice versa*, within the framework of the implementation of a public-private partnership agreement concluded in accordance with the law regulating public-private partnerships and concessions, if the following two conditions are cumulatively fulfilled:

- Both parties are VAT payers; and
- Both parties would be entitled to deduct input tax in full in accordance with the VAT Law if the supply between them would be deemed as executed.

Article 6a will not apply where payment for the supply is paid, i.e. collected in full or in part (advance payment), before 1 January 2018, in which case the provisions of the VAT Law should be applied (Official Gazette of RS No. 84/2004 ... 108/16).

Zero VAT rate on the supply of goods a nonresident recipient dispatches in luggage abroad and abolition of VAT refund right of a nonresident

Amended Article 24, paragraph 1, item 4, of the VAT Law specifies the conditions under which a taxpayer can apply the VAT zero rate to the supply of goods to nonresident recipients (travelers), which they dispatch abroad, with two important changes to the previous rules:

- The VAT zero rate does not apply to the supply of excise goods and goods used for equipping and supplying transportation vehicles;
- The total value of the goods for which the exemption can be used is reduced from EUR 150 to EUR 100.

In this context, the VAT refund mechanism for nonresident citizens is abolished.

The new rules will apply from 1 January 2019.

Amendments regarding the right to deduct input VAT

Food (including beverages) of employees and other work-engaged persons

Pursuant to the amendment of Article 29, paragraph 1, item 3 of the VAT Law, input VAT may be deducted for expenditures on food, including beverages, for employees and other work-engaged persons served in catering facilities (canteens) provided the taxpayer charges a fee based on that expenditure.

Adjustment of the input VAT deduction on importation of goods

In accordance with the amended Article 31a paragraph 6 of the VAT Law, from 1 January 2018, taxpayers will no longer be required to adjust the input VAT computed by the customs authority when importing goods, which was deducted as an input VAT, in the case of a subsequent VAT increase.

Accordingly, the Article of VAT Law was harmonized with Article 5 of the Rulebook on the manner of adjustment of input VAT due to changes in the VAT base (Official Gazette of RS, No. 86/2015), which stipulates that if VAT deducted as input VAT on importation of goods is increased, then the VAT payer may increase the deduction of the input VAT that the taxpayer had realized based on this, if the conditions for deduction of the input VAT, in accordance with the law, were fulfilled.

The right to deduct the computed VAT upon the incorrect application of the reverse charge mechanism

Amended Article 31a of the VAT Law stipulates that if the tax authorities during an audit procedure determine that a VAT payer incorrectly applied Article 10 paragraph 1 item 3) and paragraph 2 (the reverse charge mechanism), e.g. a supply of goods and services in the construction industry, and accordingly computed VAT as the tax debtor and at the same time stated the same amount of VAT as input VAT, the tax authorities will make an adjustment of the deduction of the input VAT via a decision.

On the other hand, based on such a decision, the VAT payer will have the right to reduce the incorrectly computed VAT, no earlier than the tax period in which the taxpayer received the respective decision of the tax authorities.

Additionally, if the decision is annulled, amended, or revoked to correct the input vat, the VAT payer must disclose the VAT due on that basis.

Places of supply for tourism services

In accordance with the amended Article 35 paragraph 3 of the VAT Law, the place of supply for tourism services is the place where the service provider has a head office or a permanent establishment if the service is provided from a permanent establishment which is not located in the same place as the service provider has its head office.

Postponement of the obligation to submit a detailed breakdown of the VAT return together with the VAT return

The obligation to submit the POPDV (the overview of the calculation of VAT) breakdown with each VAT return has been postponed until 1 July 2018 (from 1 January 2018).

Investment gold supplies

The new Article 36a of VAT Law proposes the introduction of a new special taxation regime for the supplies of investment gold, which will apply from 1 April 2018.

Refund of VAT to the buyer of a first apartment

The announced changes provide the necessary conditions for exercising the right to a VAT refund based on the purchase of a first apartment where the apartment is the subject of a mortgage or the subject of enforcement proceedings.

In addition, it is envisaged that the buyer of an apartment who has purchased it prior to entry into force of this law, as mortgaged real estate or during enforcement proceedings, and paid in full the agreed price including VAT can submit to the competent tax authorities a new VAT refund request if the buyer has not received a VAT refund as per a previous request.

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Slovakia

Amendments to VAT law

Amendments to the VAT Act were approved by the Parliament on 7 December 2017. All the changes to the VAT Act entered into force as of 1 January 2018.

The major changes to the VAT Act are as follows:

- **The possibility of appointing a tax representative** by a foreign taxable person where the said foreign taxable person is acquiring goods from another EU Member State with the intention of performing subsequent intra-Community supplies, exports, or distance sales with a place of delivery in another EU Member State. Thus, the foreign taxable person could potentially avoid a VAT registration in Slovakia, provided the following conditions are met:
    - The supplies of goods by the foreign taxable person are made via an electronic communication interface, such as an electronic marketplace, electronic platform, electronic portal or similar electronic means;
    - The foreign taxable person is not a VAT payer in Slovakia; and
    - The foreign taxable person does not supply goods or services that would incur an obligation to pay VAT in Slovakia.

- **Change of conditions for triangular simplification**. One of the conditions for a triangular simplification, that the first customer cannot be identified in a Member State of the second customer, has been changed to comply with the EU Principal VAT Directive. Starting from 1 January 2018, the first customer cannot be established in the Member State of the second (final) customer. In other words, as of 1 January 2018, foreign companies that act as the first customer in a triangular transaction may use the triangular simplification even though they are VAT registered in Slovakia, provided they have no seat, place of business, or VAT permanent establishment in Slovakia.

  Further, persons registered for VAT purposes in Slovakia in line with Art.7 and Art.7a of the VAT Act (i.e. persons that do not become Slovak VAT payers by the VAT registration in Slovakia) will be obliged to file EC Sales Lists in Slovakia if acting as the first customer in a triangular trade.

- **Special VAT scheme for travel agents**. As of 1 January 2018, the provisions of the special VAT scheme are not limited to sales of travel services to travelers (passengers) and extend to sales to any customer (i.e. also to an entrepreneur using such services for its business).

- **Local reverse charge on certain kind of industrial crops and metals**. From 1 January 2018, the threshold limit of EUR 5,000 for a VAT base on the invoice is cancelled. This means that any local supply of the industrial crops falling into chapter 10 and 12 of the Common Customs Tariff and metals or metal products falling into chapter 72 and items 7301, 7308 and 7314 of the Common Customs Tariff performed between Slovak VAT payers is subject to a local reverse charge regardless of the invoiced amount.

- **Summary invoices**. The possibility to issue a summary invoice for rent and deliveries of electricity, gas, water, and heat for 12 months period will not be limited to recipients being Slovak-established persons, i.e. a summary invoice may be issued even if the recipient is a foreign person.

- **Fixed assets definition**. The definition of fixed assets was extended and as of 1 January 2018 it includes not only buildings but all constructions (as defined by the Slovak Building Act). This new definition will be used only if the payer deducts VAT from the construction after 31 December 2017.

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South Africa

Increase in customs duty

The general rates of customs duty for the following commodities have been increased:

Commodity	Tariff subheading	Current duty	New duty
Self-adhesive tape (biaxially oriented polymers of propylene)	3919.10.41 3919.10.43	Free Free	10% 20%
Wheat and wheaten flour	1001.91; 1001.99 1101.00.10; 1101.00.90	91c/kg 136.50c/kg	71.63c/kg 107.45c/kg

HS 2018 amendments

The South African Revenue Service (SARS) has published a phase-down and technical amendments to Schedule No. 1 to the Customs and Excise Act No 91 of 1964 (the Customs Act) which came into effect on 1 January 2018.

The phase-down amendments were to reduce the rates of customs duty on certain products listed in Schedule No. Part 1 of the Customs Act, as agreed upon in the Economic Partnership Agreement (EPA) between the European Union and the Southern African Development Community (SADC) EPA States.

Technical amendments include the creation of separate 8-digit tariff subheadings for photoluminescent self-adhesive plates, peanut butter packed for retail sale or having a smooth texture, mayonnaise and phosphoric acid of a phosphoric content of 78% or more.

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Spain

On 1 January 2018, Royal Decree 1075/2017 entered into force modifying, *inter alia*, the following rules.

- Modifications to the VAT Regulation, approved by Royal Decree 1624/1992 of 29 December:
    - SII (Immediate Information Supply):
        - To simplify the maintenance of VAT books by electronic means (SII), in certain cases the tax administration will be able to authorize, if requested, that certain, otherwise mandatory, information will not need to be reported or reported in summary records, provided the business practices of the relevant economic sector justify this.

- It is clarified that to be included in summary entries, invoices must have been issued on the same date, notwithstanding that the accrual of the transactions occurred within the same calendar month.

- It is established that in transactions under the special regime for used goods, art objects, antiques and collectibles, and the special regime for travel agencies, derived from their own regulations, the total amount of the operation must be recorded in the books.

- A series of technical adjustments have been made to the deadlines for the electronic remittance of billing records for the operations to which the special VAT cash regime applies and to the communication of the rectification of registry entries, which is referenced when the taxpayer has proof of the error and not from the date of accrual.

- The quarterly VAT liquidation period is maintained for taxpayers who voluntarily opt for the application of the SII, and who, as a consequence of the option, would have been required to declare the tax on a monthly basis.

- A series of technical adjustments are made to the electronic VAT reimbursement processing system in the return to travelers procedure (VAT refunds for non-EU travelers) that became effective as of 1 January 2018. However, until 1 January 2019, the invoice issued by the supplier may also be used instead of the electronic reimbursement document.

- A modification related to the control regime of taxpayers under the Special VAT Regime of the Group of Entities (REGE) adapts it to the new regulation contained in Law 58/2003, of 17 December, General Tax, regarding justified interruption and delays for reasons that are not attributable to the administration in tax verification proceedings.

- Taxpayers taxed exclusively by the Basque Tax Administration (specifically located in the Basque Country) may exercise the option for applying the VAT deferral regime for importation.

- Modifications to the Royal Decree 1619/2012, concerning the Invoicing Regulation:

  - The competence of the tax authorities is broadened in terms of authorization of the rectification procedures for invoices, upon request of the interested parties, and, in addition, a technical adjustment is made regarding the deadline for the remission of said rectifying invoices, such that the said period must be computed from the date of issue, and not from the date of accrual of the operation.

  - The invoicing regime for certain services provided by travel agencies in the name and on behalf of other professionals is updated to include new services to which this special procedure will apply.

- Modifications to the VAT exemptions concerning services supplied to diplomatic, consular and international organizations:

    - The VAT exemption is extended to certain services, such as security, cleaning, consulting, and translation, to meet the needs of diplomatic missions, consular offices, and international organizations, also favoring the reciprocity of treatment for diplomatic and consular representations of Spain in other countries.

- Excise duties:

    - Regarding excise duties, taxpayers not required to maintain accounts through a computerized accounting system will be able to present their accounting books through a website operated by the tax authorities, subject to prior authorization.

- Tax on fluorinated greenhouse gases:

    - Royal Decree 1075/2017 modifies the tax regulations to adopt a series of measures aimed at facilitating more effective control, modifying the recapitulative statement of operations, and specifying where the inventory record book must be kept. The obligation to provide a signed statement or, where appropriate, a written communication for the enjoyment of certain tax benefits has been removed.

- Other modifications:

    - A modification is introduced in Royal Decree 1065/2007, of 27 July, which approves the general regulation of the actions and procedures of tax administration and inspection and of development of the common rules of the procedures of application of the taxes, to establish the effects of the lack of resolution in the term of the request for authorization of the rectification procedure of invoices (negative silence).

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Turkey

Nonresident e-service suppliers obliged to register for VAT

From January 2018, nonresident electronic service providers are obliged to register for VAT due for all types of electronic services sold to real person end customers in Turkey (B2C). Applications will be made from www.digitalservice.gib.gov.tr (which is not yet live), where an exclusive username and password is generated that will be used for filing the monthly VAT return.

The initial tax return will be filed by 24 April, and will consist of the first three months' sales. After the first exclusive tax return, the following returns will be filed monthly, and there is no need to file a VAT return for a month in which no sale was made; so nil tax returns are not required. Tax payments can be made through a company's bank account or the Ministry of Finance's website with debit/credit cards.

According to the communique, there are no bookkeeping and invoicing requirements and no certain threshold for application. The input VAT incurred from purchases in Turkey will be subject to deduction.

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United Kingdom

Court ruling on 'free' banking

The Court of Appeal has held that ING Intermediate Holdings cannot recover VAT incurred in operating deposit accounts, for which it did not charge customers.

Based on the case *MBNA*, ING argued that the court should focus on the economic reality of how it operated. However, the Court of Appeal considered that economic reality had to be viewed through the contractual agreement between ING and its customers (applying *SecretHotels2*). On this basis, the Court of Appeal agreed with the First-tier Tribunal and the Upper Tribunal that there was a supply by ING of operating the deposit accounts. The supply was for consideration (as the customer could have got better returns from a less convenient account), which was capable of being expressed in money (although the appropriate valuation method was not determined). ING's appeal was therefore dismissed.

Court ruling regarding VAT input tax on single farm payments

Frank Smart farmed 200 hectares, and leased a further 35,150 hectares under seasonal lets. The leases enabled him to purchase GBP 7.7m of Single Farm Payment Entitlement (SFPE) units, which entitled him to a subsidy of GBP 1.7m to 2.4m annually. The tax authorities (HMRC) took the view that managing the SFPE was separate from running the farm, and that input VAT recovery on the units should be denied, either wholly or partly.

The Court of Session has dismissed HMRC's appeal. The SFPEs were acquired in order to generate finance for developing additional farm buildings, and to help the farm diversify into wind power. The VAT on the SFPEs was input tax of the entire business, even though it could not be directly linked to any specific supplies. On that basis, Frank Smart was entitled to input tax recovery.

New anti-avoidance disclosure rules come into effect

On 1 January 2018, the Disclosure of Avoidance Schemes (VAT & Other Indirect Taxes) rules came into effect. DASVOIT, for which HMRC guidance became available just before Christmas, is intended to reach further than the old disclosure rules (for example, it will cover all indirect taxes, not just VAT). Although many of the obligations will fall on advisers (as 'promoters'), the scheme can in some cases also give rise to reporting obligations for businesses, so it is important that in-house advisers are aware of when these obligations may arise.

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