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INDIRECT TAX NEWS

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ROMANIA

THE VAT SPLIT PAYMENT MECHANISM

The VAT split payment mechanism requires that taxable persons and public institutions (whether VAT registered or not) must pay VAT related to their purchases of goods or services into a separate bank account specially opened by the supplier for collection of VAT. Under an exception, natural persons who are not registered for VAT purposes are not obliged to pay VAT into such a separate bank account.

By default, all taxable persons registered for VAT purposes (including non-residents that are directly registered in Romania, or registered through a fiscal representative) are required to open and use a distinct bank account for VAT amounts. The specific account must be separate from their other bank accounts. They must use the specific account to collect the VAT related to output transactions and to pay the VAT for input transactions and the VAT due to the state.

Taxable persons registered for VAT are obliged to transfer the VAT on the goods they delivered and services they supplied in transactions carried out for cash or charged to credit/debit cards into their own VAT account. This is because the buyer does not have to pay the VAT into a VAT specified account on such supplies. In such cases the taxable VAT registrant must transfer the VAT into their VAT account within seven days of receiving it from the buyer.

The VAT split payment mechanism applies to the taxable supplies of goods/services where the place of supply is in Romania, except for transactions subject to the reverse charge mechanism and transactions that fall within the special schemes provided by the Fiscal Code (such as the margin scheme).

From 1 October 2017, taxpayers have the option to apply the VAT split payment mechanism. With effect from 1 January 2018 it becomes mandatory. Tax incentives are provided for those opting to apply the mechanism from 1 October 2017.

The legislation includes penalties for non-compliance with the VAT split payment mechanism.

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EDITOR'S LETTER

Dear Reader,

I'm literally just off a plane from Rome where I hosted our largest ever BDO international VAT & Customs conference, which was attended by almost 100 BDO colleagues from across the globe.

This was the fourth year that we held a Customs Conference as part of our annual event. It's fantastic to see the ongoing evolution of our international customs expertise because it means BDO is well placed to advise our clients on the likely fallout from the expected exit of the United Kingdom from the EU, as well as new opportunities presented from the recent agreement of the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. The timing of CETA is extremely important, as it affords EU countries that are potentially compromised by the UK's impending exit to compete on more favourable terms when making supplies to Canadian-based customers.

It's likely that customs expertise will continue to become more relevant to our clients going forward, as disputes between economic blocs around the world generally result in the threat of higher customs duty rates. So, if this is a concern to you and your business, please reach out to me, or your local BDO contact, so we can point you in the right direction to ensure you get the expert help you may require.

In the meantime, I hope you find our latest edition of BDO *Indirect Tax News* to be of interest. Kind regards from sunny Dublin where our evenings are starting to close in a little earlier than we would hope!

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BELGIUM

VAT AND THE LETTING OF IMMOVABLE PROPERTY

The budget agreement of the Belgian federal government of 26 July 2017 included a modification of the VAT regime for the letting of immovable property. In many cases, the current VAT exemption has a cost-increasing effect, as the VAT on new buildings and on renovations cannot be recovered by the lessor. An optional system will now be provided if the lessee intends to use the building predominantly for VAT purposes.

Optional VAT system

The lessor will henceforth have the option to charge VAT on the letting of immovable property, which will allow him to recover the input VAT on investment costs.

This optional VAT system provides a valid alternative to the so-called 'real estate leasing', in which case the VAT deduction is subject to strict conditions, such as the reconstitution of the capital within a 15 year period by means of the lease payments and a mandatory purchase option at the end of the leasing contract.

A VAT unity, on the other hand, in many cases also offers different advantages; for example, no pre-financing of VAT on mutual transactions.

Excluded entities

Lease contracts that relate to lessees that do not predominantly use the building for VAT purposes, such as public institutions, private individuals, and so on, will not qualify for the optional VAT system.

Scope

The new rule will apply to new rental agreements concluded from 1 January 2018. This immediately triggers a number of questions regarding the VAT position of renewed contracts, possible revision of input VAT related to older buildings regarding investments within the revision period (5 or 15 years depending on the nature of the works), and the impact on the payment of registration duties.

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CHILE

NEW REQUIREMENTS FOR CLAIMING VAT CREDITS

Since 1 July 2017 Chile has a new system in place with respect to VAT invoices. VAT invoices for goods and services must be filed electronically through the Chilean tax authority's website. Once an invoice is electronically filed, the taxpayer to whom the invoice was issued has eight days to accept or reject the invoice. If that taxpayer accepts the invoice within this period, the taxpayer may claim the VAT credit. If the taxpayer does not accept or reject the invoice within the eight days, the invoice is considered irrevocably accepted by the taxpayer and by the tax authorities. This system does not apply in the case of services where the invoice is issued before the services are delivered.

Based on the electronic information filed by the taxpayer, on a monthly basis the tax authorities prepare a ledger and VAT Form 29, which sets out the VAT tax liability. The taxpayer must then review the form and confirm the information or amend it.

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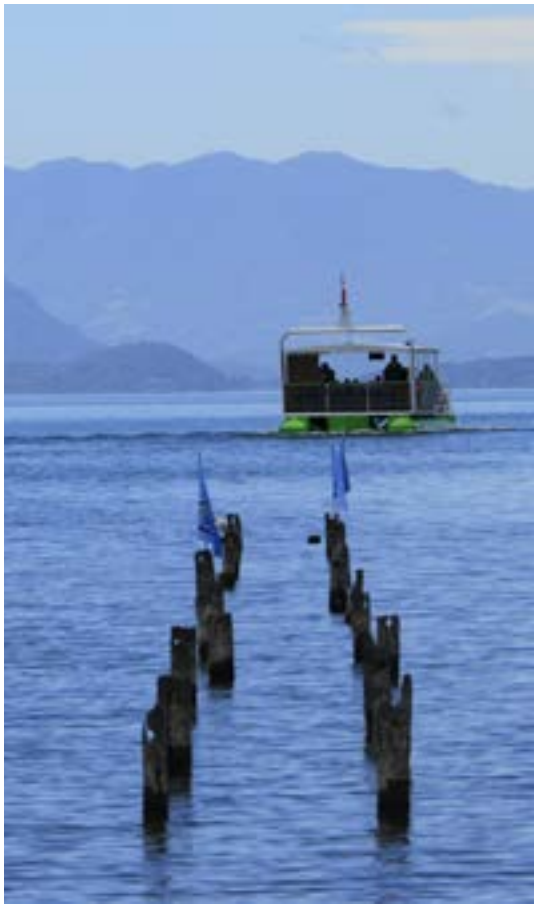

GERMANY

WHAT VAT RATE IS APPLICABLE FOR SO CALLED 'WIESNBREZN'

With Germany's famed Oktoberfest (Bavarian beer festival) about to start, the Federal Fiscal Court (BFH) has handed down a timely decision where the question was what VAT rate is applicable to the sale of pretzels (*Wiesnbrezn*). The BFH confirmed its former decisions in this regard, which is that the supply of pretzels generally falls under the reduced VAT rate of 7% if the seller sells them from a so-called vendor's tray. But, if the same pretzel is sold by a beer tent operator, the standard rate of 19% applies.

Facts

In 2012 and 2013 the plaintiff sold pretzels at Oktoberfest from stands it rented in Oktoberfest party tents. The plaintiff employed staff (*Brezenläufer*) to walk from table to table offering and selling *Wiesnbrezn* from a vendor's tray. Both the tax office and the tax court of Munich were of the opinion that those sales qualify as restaurant services and thus are subject to the standard VAT rate of 19%.

What did the Federal Fiscal Court decide?

The BFH concluded that the sale of the pretzels qualifies as a supply of food and thus the reduced VAT rate applies. The only way a supply of pretzels could fall under the standard VAT rate is if the supplier also supplies significant (additional) services to the supply such that the whole supply could qualify as a uniform restaurant service. The tax office, as well as the tax court of Munich, were of the view that the facilities for consumption as well as the live music provided by the party tent operators should also be attributed to the plaintiff's supply of the pretzels. Consequently, the plaintiff's supply should be regarded as a restaurant service.

This approach was rejected by the BFH. In its opinion, the additional services provided by the party tent operator, as a third party, could not be attributed to the plaintiff's supply. As the BFH noted, the plaintiff did not have any right to influence the music, nor did it provide any facilities for consumption of the food and beverages, as such things were supplied at Oktoberfest by the party tent operator to their guests in order to promote their own sales. In further support of its conclusion that pretzels should be taxed at 7%, the BFH noted that a pretzel is a simple, standard food item that requires no packaging or further equipment for consumption.

Conclusion

With this decision, the BFH confirmed its earlier case law. For assessment of whether restaurant services are provided, services rendered by third parties are not decisive. What is crucial in such a determination is whether the same taxable person supplies the food and 'additional' services related to the food.

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HUNGARY

MANDATORY DATA DISCLOSURE AND THE USE OF INVOICING PROGRAMS

Amendments to the Rules of Taxation (the Act) will come into effect 1 July 2018. Under these rules, the following changes will occur:

- The threshold that triggers the obligation to prepare a domestic summary report is being reduced from HUF 1 million to HUF 100,000. This means that the taxpayer must file a domestic summary report for every invoice where the VAT charged is HUF 100,000 or more;
- The electronic data disclosure (automatic online tax reporting) sets out the data elements that invoices issued by invoicing programs must contain.

It should be noted that these provisions were originally supposed to take effect in 2017. This one-year postponement is to allow taxpayers enough time to fulfil the technical requirements of the online data disclosure. Also, the National Tax and Customs Office (NTCO) has assured taxpayers that there will be a sufficient trial period before the online data disclosure go-live date.

We recommend that taxpayers begin developing invoicing software so that they will be able to fulfil their on-line disclosure obligations by July 2018. The XML data files produced in relation to Online Invoicing can be tested within the External Online Notification and Reporting System Framework provided by the NTCO. It is available on **https://kobak.nav.gov.hu**.[1]

Taxpayers can access information for on-line registration on **https://onlineszamla.nav.gov.hu**. You can also find up-to-date technical information and up-to-date data file schemes related to online invoicing there.

DOMESTIC PROVISION REGARDING LATE PAYMENT INTEREST IS NOT IN LINE WITH EU LAW

In July 2017 the Court of Justice of the European Union (CJEU) issued its decision in Hungarian case no. C-254/16 Glencore Agriculture Hungary. A Hungarian court sought the CJEU's opinion on whether Hungarian law, which provides that taxpayers are not entitled to late payment interest on refunds that are delayed as a result of a tax audit, is in line with the EU VAT directive.

A Hungarian company sought a VAT refund of approximately HUF 4.5 billion from the Hungarian tax authority. The Hungarian tax authority initiated a tax audit before deciding whether to reimburse the company. During the audit, the tax authority took the position that the company repeatedly failed to file the necessary documents and so the tax authority repeatedly imposed default penalties on the company.

The audit was delayed for years and during this period, the tax authority did not pay the company anything. Because of the delay, the company sought late payment interest from the tax authorities. The tax authorities refused to pay interest, claiming that the company contributed to the delay by not providing the requested documents.

The Hungarian court concluded that the delay in the tax audit was not primarily due to the company's conduct. The Hungarian court then asked the CJEU to determine whether Hungary's law, which provides that a refund of VAT is suspended until the end of the tax audit and that no compensation is owed to a taxpayer for a delay, is in line with the EU VAT Directive.

In its decision, the CJEU confirmed that if a taxable person is owed a refund of overpaid VAT and that refund is not made within a reasonable period, the VAT principle of fiscal neutrality is violated. So, financial losses incurred by a taxable person as a result of the unavailability of a refund owed to the person should be compensated through the payment of default interest. As a result, the CJEU determined that the Hungarian legislation the tax authorities relied on does not comply with EU law and principles.

This CJEU decision makes it clear that the EU VAT Directive sets limits with respect to protracted tax audits. The judgement also shows that certain Hungarian procedural rules are not in, or are not fully in, conformity with EU provisions. As a result, Hungarian courts may not take these Hungarian procedural rules into account. Instead, EU law must be directly applied.

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[1] This page can be used only by registered users who have browser-based protection certificate and fixed IP address.

IRELAND

VAT TREATMENT OF ROAD TOLLS AND UPDATE ON BUSINESS CONCERN OVER BREXIT

There was welcome VAT news for motorists in Ireland when Dublin City Council recently announced they were reducing the cost of the toll on the East Link Bridge.

The price drop follows Irish Revenue's direction that VAT should not be applied to tolls levied on roads under the control of the National Roads Authority (NRA), an Irish body governed by public law to manage the public roads network.

Revenue's direction was in response to the preliminary ruling from the Court of Justice of the European Union (CJEU) in January 2017 (C-344/15) that VAT should not be charged on toll roads in Ireland that are under the control of the NRA. The CJEU ruling found that Article 13(1) of the VAT Directive is not applicable where there was "no real competition, actual or potential, between the public law body in question and private operators".

The majority of toll roads in Ireland are under the control of private operators under public-private agreements concluded with the NRA, and VAT will continue to apply to tolls on these roads.

Business sentiment on Brexit

Brexit continues to cause concern for Irish businesses with business activity and levels of operational profit slipping in the current quarter. In the recent business sentiment survey conducted by BDO, the percentage of Irish businesses expressing that they believe Brexit will have a negative impact on them was twice what was recorded when the Brexit vote was held in the UK 14 months ago.

The survey can be accessed at: **www.bdo.ie/en-gb/insights/2017/bdo-optimism-index-q3-2017**.

We will continue to monitor all Brexit developments closely and if you have any concerns, please contact your local BDO Partner for support.

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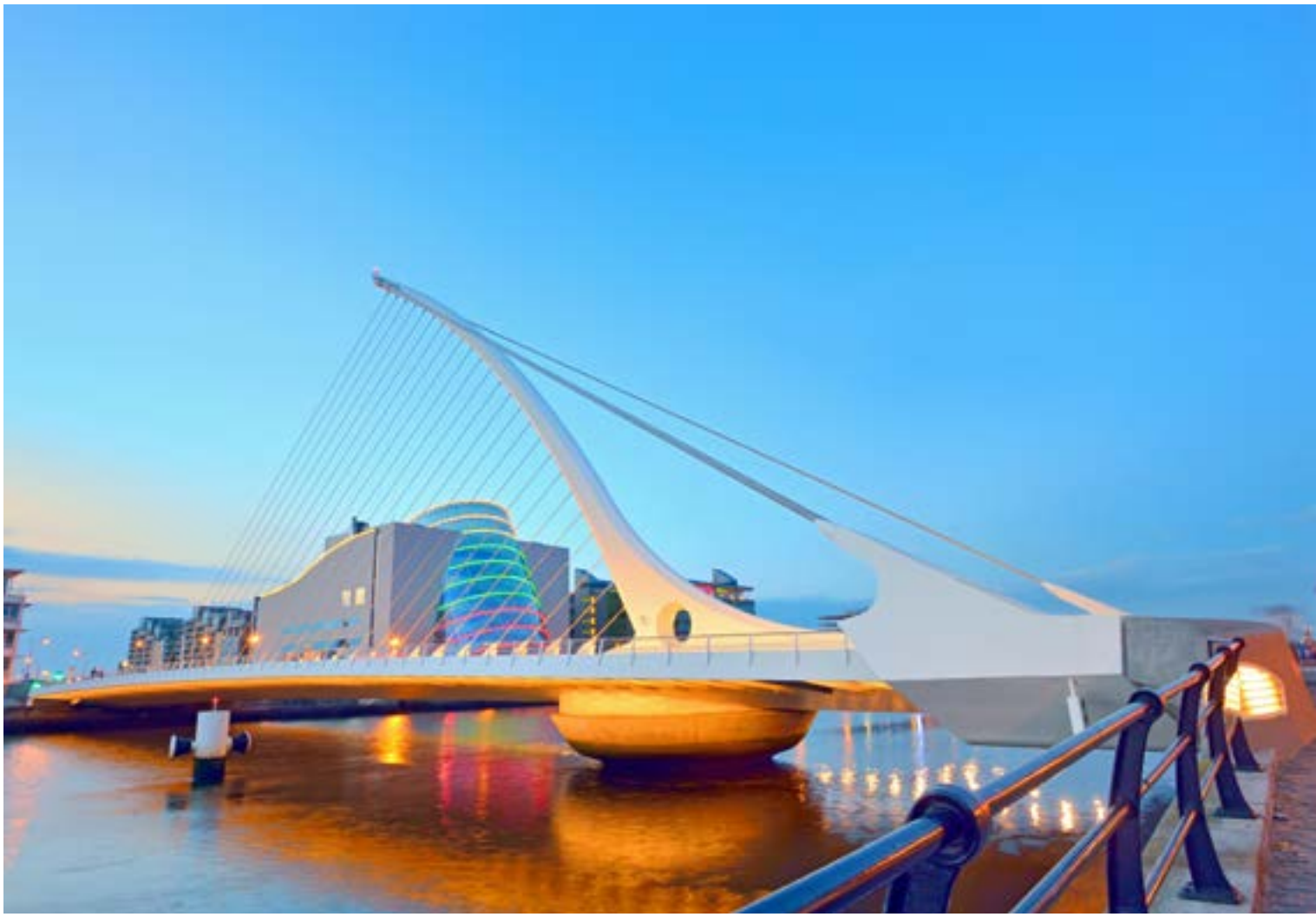

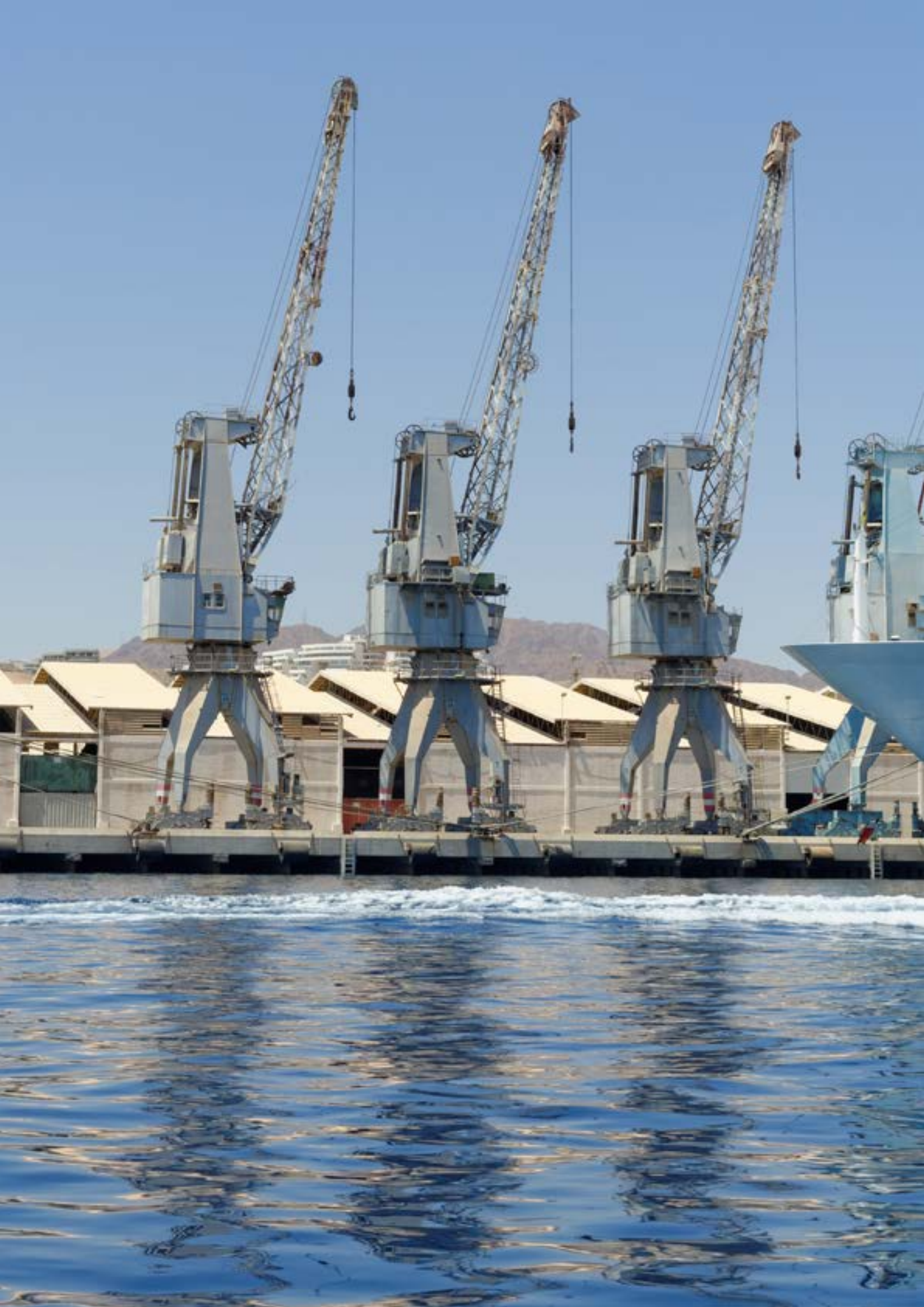

ISRAEL

GLOBAL TRADE IN GOODS - NEW AGE CHALLENGES

Indirect taxation is in the headlines in Israel and around the world. Developments in global trade range from closing borders and imposing restrictions on importation, to cancelation of the free movement of goods, to establishment of new free trade agreements, to reducing or abolishing import duties for goods imported from certain territories or for small consignments, and so on.

Among the considerations that must be weighed when deciding whether to allow relief or to impose indirect taxes is reduction of consumer prices and opening of global competition versus protection of domestic industry. There is constant tension between these factors. E-commerce also brings new challenges that must be taken into account, as overseas goods are increasingly accessible to everyone with minimal, or no, compliance burden (for example, no import license or other certification for the imported goods) and sometimes no indirect tax costs, creating unfair competition for the local suppliers. This article presents a short review of some of these trends and their potential influence on enterprises with global activity.

The Trump government's protection of local industry is reflected in a variety of actions, including elimination of US participation in the Trans-Pacific Trade Agreement, reduction of corporate tax, and declaring the possibility of imposing a new 'border adjustment tax', which is similar to an import duty imposed only on imported goods. (The border adjustment tax has not been imposed at this point, but as the Trump administration looks for ways to finance other tax reductions, it may bring the border adjustment back into consideration.) The US's recent imposition of heavy levies on importation to the US of Bombardier's aircrafts on the basis that Bombardier was the beneficiary of subsidies by the UK and Canada demonstrates a trend that is bad news for exporters, especially those exporting to the US.

The UK's Brexit and separation from the European Union is expected to create customs borders between the UK and the EU, stopping the free movement of goods, services, and people to and from the EU. This will abolish existing free trade agreements between the UK and other countries that were settled with the EU rather than each one of its members separately. The challenges for the UK government are huge and there is uncertainty as to the new status in March 2019.

On the other hand, free trade is expanding in other places, for example there is a question of whether China will join the Trans-Pacific Trade Agreement. The EU and Japan are nearly ready to sign an agreement that will reduce trade barriers, reduce tariffs, and enhance trade between the countries. Such changes increase competition to local industries as well to industries of countries that previously enjoyed the privilege of free trade agreements that are being expanded to more countries.

Israel is also in the midst of signing a free trade agreement with South Korea that will cancel tariffs on imports of cars, electronics, and so on. As well, Israel is negotiating trade agreements with China, Vietnam, Ukraine, and Russia. This is good news for Israeli consumers because the tax reduction will reduce consumer prices, but it is not good news for local industry that will have increased competition.

In Israel there is a trend toward cancelling tariffs, for example, under the framework of the 'net family' reform, on importation of mobile devices and accessories, on baby clothes and footwear, and so on. However, the most substantial hit suffered by local industry comes from the VAT and customs exemption on the importation of goods worth up to USD 75 for VAT and customs, and the fact that the value of goods to be subject to exemption is expected to be increased by the government and the exemption is expected to be expanded. The exemption from VAT on the import of goods amounts to discrimination against local industry, which is liable to VAT on its sales, while foreign exporters who sell to the Israeli consumer over the Internet enjoy zero VAT on exports from their country and have no VAT liability in Israel. As a result, the Israeli consumer pays 17% less on goods purchased over the internet that are supplied by foreign exporters than they would otherwise pay on a local purchase.

The OECD's Recommendations

An exemption from VAT and customs duty on imported goods of low value was customary in Israel and worldwide. Prior to the technological development and the possibility of carrying out customs procedures online, the rationale for such exemptions was that the cost of handling import duties on low value goods would exceed the actual tax collected. This rationale is no longer valid. Indeed, in view of the exponential growth of online trading, the OECD report of 2015 recommends the abolition of VAT exemptions on importation of goods of low value. The report also suggests various ways of collecting tax effectively, especially on online transactions, and cancellation of exemptions on imported goods. The OECD's recommendations are currently being implemented in various countries.

Analysing your supply chain

In light of the changing landscape, enterprises should assess the trends and analyse their supply chain to identify new risks and opportunities, rather than wait for local governments to find the balance between taking steps aimed at reducing prices for local consumers, opening their market to overseas competition, and protecting local industries.

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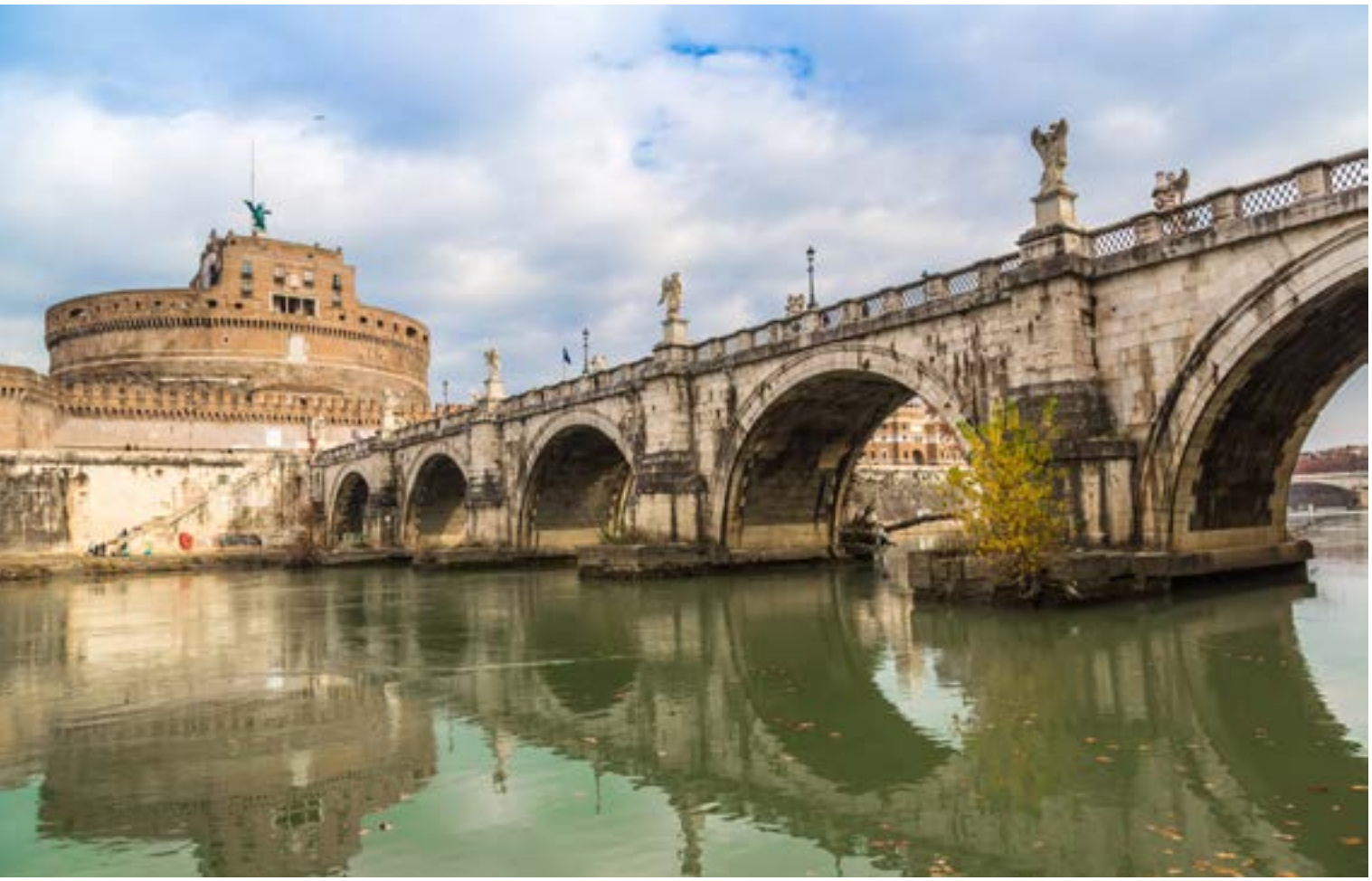
ITALY

EXTENSION OF THE SPLIT PAYMENT MECHANISM



To avoid VAT evasion and prevent fraudulent practices, Article 1 of Decree Law 24 April 2017, no. 50, converted by Law 21 June 2017, no. 96, (the Decree) extends the scope of the split payment mechanism for supplies of goods and services rendered to the majority of Public Bodies. This mechanism does not apply to supplies that are subject to the reverse charge mechanism or other VAT schemes.

Under the split payment mechanism, first introduced in 2015:

- When a supplier issues to a major Public Body an invoice charging VAT, the invoice must state that the supply is subject to the split payment mechanism;
- The purchaser must 'split' the invoiced payment. The taxable amount must be paid to the supplier, and the VAT amount charged must be paid directly to the Revenue Agency by the Public Body.

As a result, suppliers that mainly carry out transactions subject to the split payment mechanism may be in a constant VAT credit position. However, Italian VAT Law grants priority access to the refund claims of the VAT on supplies subject to this mechanism.

New bodies subject to the split payment mechanism

The split payment mechanism has been extended. It now applies not only to all transactions with Public Bodies, but also to transactions with:

a) Companies directly controlled by the Presidency of the Council of Ministers and by Ministries;

b) Companies directly controlled by local authorities, such as regions, provinces, metropolitan cities, municipalities, and unions of municipalities;

c) Companies directly or indirectly controlled by the companies mentioned in (a) and (b) above; and

d) Listed Companies included in the FTSE MIB index of the Italian Stock Exchange.

Moreover, the split payment mechanism has been extended to self-employed persons subject to withholding tax if they provide services to the above-specified categories of customers.

With regard to Public Bodies, the Italian Ministry of Economy and Finance has further clarified (Decree dated 13 July 2017) that the split payment mechanism applies to invoices that must be issued in an electronic format.

The Department of Finance publishes a specific list of companies controlled by Public Bodies and Listed Companies to which the revised split payment mechanism applies. The list is published by 15 November each year (with effect the following year). The list can be found on the Department of Finance's website **http://www.finanze.it**.

Suppliers can ask their customers for a certificate attesting to their qualification for the split payment regime. After receiving such a certificate, the supplier is obliged to issue the sales invoice in accordance with the rules related to split payments.

Effective date

The revised and extended rules apply to invoices issued from 1 July 2017. Italy has been authorised by the European Commission to apply this anti-fraud measure until 31 December 2020. Originally, it was supposed to be in force only through the end of 2017. (Council Implementing Decision (EU) 2017-784 dated 25 April 2017.)

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JAPAN

UPDATE OF CONSUMPTION TAX LAWS

To improve and stabilize the social security system and to secure financial resources, the Japanese government announced its plan to increase the consumption tax rate in the 2012 budget. The initial plan was to increase it in two stages. However, because of Japan's economic situation and other factors, the second increase (from 8% to 10%) has been postponed. The introduction of a reduced consumption tax rate for specific items and introduction on an invoice method was also postponed, as described below.

Increase of consumption tax rate

As noted, the original plan was to increase the consumption tax rate in two steps, as follows:

- **Step 1** – Increasing the consumption tax rate from 5% to 8% (6.3% national consumption tax and 1.7% local consumption tax) on 1 April 2014. This step was implemented as scheduled.
- **Step 2** – The consumption tax rate was to increase from 8% to 10% (7.8% national consumption tax and 2.2% local consumption tax) on 1 October 2015. This step was not implemented in 2015. Instead, it is now expected that this increase will come into effect on 1 October 2019.

Introduction of reduced tax rate and change of consumption tax system

Currently, there is only one consumption tax rate. In connection with the proposed increase of the consumption tax rate to 10%, a reduced tax rate for specific items (for example, groceries and beverages, excluding liquor, and newspaper subscriptions) and an introduction of an invoice method, which is similar to a VAT method adopted in European countries, was announced in the Budget 2016. The reduced tax rate of 8% applicable to specific items will be implemented on 1 October 2019. The invoice method will be implemented on 1 October 2023 so that a creditable tax amount can be calculated properly under the multiple tax rate system.

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LATVIA

CHANGES IN THE VAT LAW STARTING 1 JANUARY 2018

The tax reform approved by the government of Latvia includes several changes in the VAT Law. We discuss some of the changes below.

VAT registration threshold

Currently, businesses must register with the State Revenue Service as a VAT payer if their annual turnover exceeds EUR 50,000. With effect from 1 January 2018, the registration threshold will drop to EUR 40,000.

VAT reverse charge

Starting in 2018, the VAT reverse charge mechanism, which currently applies to the supply of wood materials, grain, scrap metal, mobile phones, laptops, personal computers, precious metals, and specific construction services, will also apply to the supply of gaming consoles, metal products, home appliances, construction materials, and construction services.

Transaction reporting threshold

Currently, VAT registered persons must disclose in a VAT return details of transactions valued over EUR 1,430. Beginning 1 January 2018, VAT registered persons will have to disclose details of transactions valued above EUR 150 (excluding VAT).

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THE NETHERLANDS

TO BE ZERO RATED OR NOT BE ZERO RATED ... THAT IS THE QUESTION

The Court of Justice of the European Union (CJEU) recently gave its opinion regarding the application of the VAT exemption on the supply of services that are directly connected with the exportation or importation of goods.

In the case ('L.Č.' IK, 29 June 2017, Case C-288/16), A personally arranged the transport of goods from the port of Riga to Belarus. Under a separate contract, A assigned the performance of the transport to B. The transport was carried out using vehicles owned by A but leased by A to B specifically for this transport. Regarding the consignors of the goods, A acted as the party that undertook the transportation. B was responsible for driving the vehicles, repairs, refuelling, customs formalities, surveillance of the goods, transferring the goods to the consignee, and the necessary loading and unloading tasks.

In dispute was whether B had supplied services connected with the export of goods as stated in article 146(1)(e) of the VAT Directive so that B could apply the 0% VAT on the services it provided.

The CJEU was of the opinion that the 0% rate applies only to services rendered directly to the exporter, importer, or consignee of the goods. According to the CJEU, just because a service is related to, or was even necessary for, the actual transport of the goods does not mean B can claim application of the 0% rate. The person that provides the services must have a direct legal connection to the exporter, importer, or consignee of the goods. According to the CJEU, to claim application of the 0% VAT rate for the services, it is not sufficient that the services are provided for a contractual counterparty of the consignee. Therefore the services that B provided did not fall within the scope of article 146(1)(e) of the VAT Directive.

The CJEU's interpretation of article 146(1)(e) of the VAT Directive is stricter than the Dutch treatment. Under Dutch tax law, application of the 0% tax rate on the supply of services connected to the import or export of goods is much broader. Under Dutch law, the application of the 0% rate requires that the applicant must be able to prove they have the right to apply that rate by showing documents to the tax authorities, if necessary. An example of proof a taxpayer could use would be a transport document that shows the consigner or consignee and information that shows that the goods were transported from a country outside the EU and that they were brought directly (or through another Member State under a customs procedure) into The Netherlands, or that they will be transported to a country outside the EU following that transport.

The Dutch VAT legislation does not provide that the 0% rate can only be applied when the provider of the services has directly concluded an agreement with the consigner or consignee. Under the Dutch VAT legislation, both the actual transporter and the person that signed the contract with the consignee's exporter/importer can apply the 0% rate if they can prove they provided services regarding the import or export of the goods. As a result, we are of the opinion that subcontractors can still apply the 0% VAT rate in The Netherlands. However, it is advisable to speak with a VAT adviser in The Netherlands if you are dealing with such situations. At this point, we do not know whether the Dutch legislation will be amended to be in line with the strict interpretation of the CJEU's judgement.

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SERBIA

DRAFT RULEBOOK REGARDING KEEPING VAT RECORDS AND VAT CALCULATION OVERVIEW PUBLISHED

From 1 January 2018, Serbia will require VAT registrants to submit a VAT calculation overview along with their VAT return. This overview consists of 14 tables that provide information about the VAT payer, about the supply, and other data used to populate the VAT return. Taxpayers who fail to submit this information will be deemed to have not submitted a VAT return.

The existing Rulebook that sets out the form, content, and methods of keeping VAT records is being replaced by a new Rulebook (*Rulebook on form, content and methods of keeping VAT records and form and content of VAT calculation overview*). The new Rulebook was supposed to be released earlier in 2017, but it was delayed.

A draft version of the new Rulebook has since been published and the final version, which will correct some of the problems discovered in the draft version, is expected soon. The earliest that the final version will take effect is 1 January 2018.

There are two parts to the new Rulebook:

- **Part I** – Relates to the form, content, and method of keeping VAT records (general and specific records);
- **Part II** – Relates to the form and content of the VAT calculation overview.

Based on general VAT records, the VAT payer must compile the VAT calculation overview on the prescribed form (the *Pregled Obračuna* PDV, or POPDV). Data from the POPDV also populates the tax return.

Before the issue of the new Rulebook, the obligation to prepare a VAT calculation overview was simply prescribed by the Rulebook, not by Law. The form and content were not prescribed either and there was no obligation to submit a VAT calculation overview together with the VAT return.

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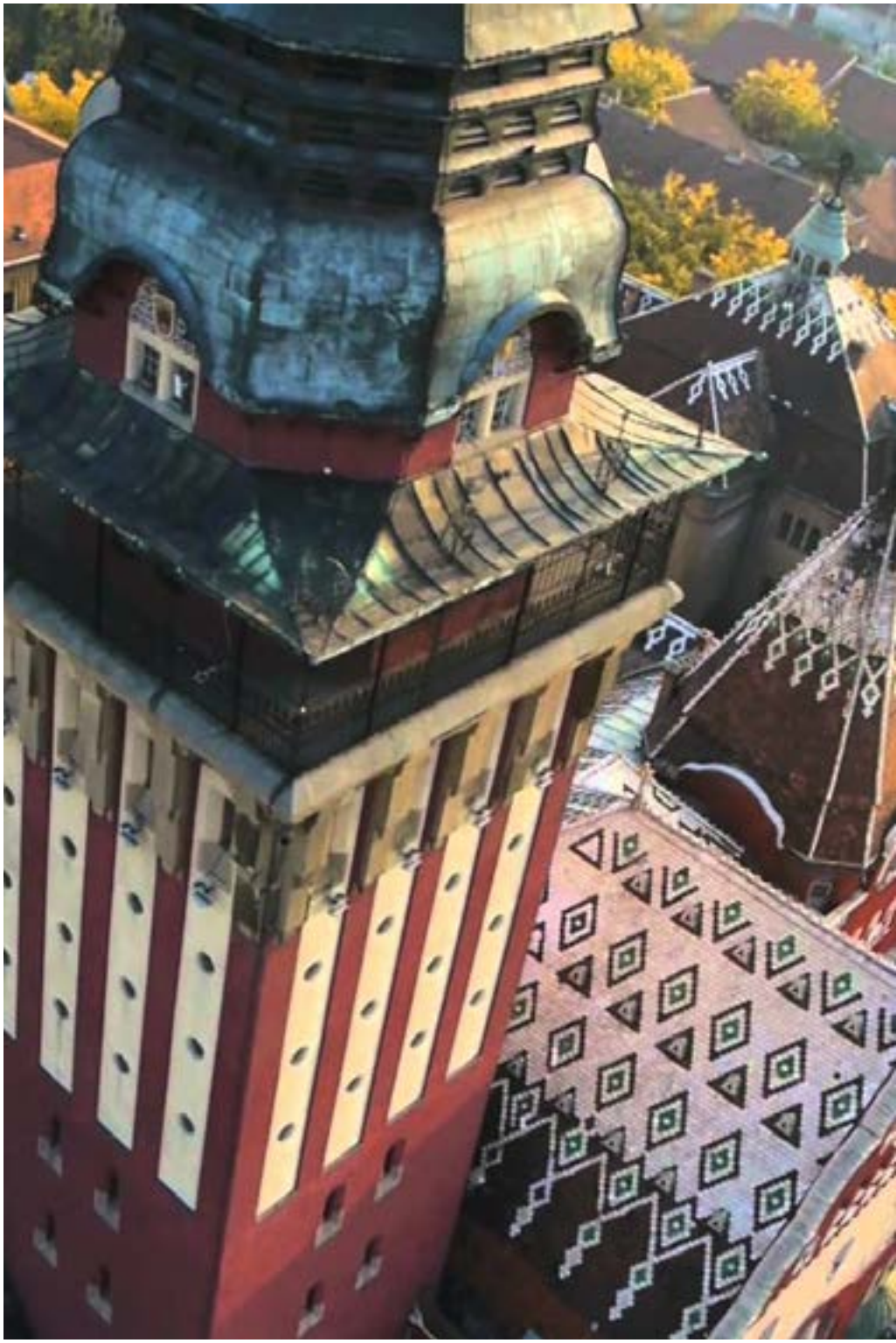

SINGAPORE

TAXATION OF CROSS-BORDER SERVICES AND LOW-VALUE GOODS

Goods and Services Tax (GST) is a tax on local consumption. Hence, GST should be levied on all supplies of goods and services consumed in Singapore, whether they are procured locally or from abroad. However, imported services and low-value goods imported via air, or post, that fall under the GST import relief threshold of SGD 400 are currently not subject to GST.

This has resulted in an uneven playing field for GST-registered local businesses as compared to foreign-based businesses. Consumers buy the same/similar goods or services from foreign vendors because the prices are comparatively lower because they save the 7% GST. This uneven playing field has been further exacerbated with the advent of the digital economy, which has been driving the growth of e-commerce in recent years.

Via a consultation document, the Inland Revenue Authority of Singapore (IRAS) has sought feedback on the proposed overseas vendor registration regime for taxing cross-border digital services and imports of low-value goods. The IRAS is also seeking feedback on ways to ensure efficient GST collection on imported services and low-value goods without imposing significant compliance and administrative costs on businesses.

Business-to-business transactions

Some of the Asia Pacific countries (for example, Australia, New Zealand, and Malaysia) already levy value added tax (VAT) or GST on imported services. Under the Organisation for Economic Co-operation and Development's (OECD's) 'International VAT/GST Guidelines', the optimal collection mechanism for business-to-business (B2B) transactions is by way of a reverse charge. As such, IRAS is proposing to implement a reverse charge mechanism under section 14 of the GST Act. Under this mechanism, buyers would become liable to pay the tax on the imported services, instead of the suppliers. Such a change will affect GST-registered buyers that are not entitled to full input tax claims and non-GST registered buyers.

Business-to-consumer transactions

The IRAS also proposes implementing a simplified registration regime to optimise GST collection on cross-border business-to-consumer (B2C) transactions. Several countries, such as South Korea, New Zealand, and Japan, have already adopted an overseas vendor registration regime to tax B2C imported services. Based on other countries' experiences, overseas vendor registration seems to be the most effective and efficient approach for GST collection on B2C transactions.

With the intention of levelling the playing field, the same GST registration threshold of SGD 1 million worth of taxable supplies has been proposed for overseas vendor registration in Singapore. Under the proposal, the overseas vendor registration regime would apply only to cross-border supplies of digital services to local customers for B2C transactions. The following parties are likely to be affected by implementation of an overseas vendor registration regime:

1) Overseas suppliers that sell goods or services via an electronic marketplace;
2) Overseas parcel forwarding companies; and
3) Overseas digital services providers.

Consultations with affected business entities are still on-going. We will provide further updates when the proposed changes are formally announced by the IRAS.

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SPAIN

WHAT TO DO WHEN THE ISSUER OF AN INCOMPLETE INVOICE REFUSES TO CORRECT IT

In principle, and in accordance with article 97 of the Law of VAT in force in Spain, for an entrepreneur or professional to deduct input VAT they must have a document – an invoice – issued by the provider of a good or service that shows that the party invoiced has the right to deduct the input VAT. In this sense, the invoice must satisfy all legal and regulatory requirements.

When an invoice does not satisfy the requirements, the invoiced person is not justified in deducting the input VAT, unless the person issuing the invoice corrects the invoice. But, what happens when the invoice issuer refuses to correct an improper invoice?

The Directorate General for Taxes has indicated (Binding Ruling V1504-17, of 13 June 2017) that in such a case an entrepreneur or professional has the right to ask the invoice issuer to correct the invoice. If the issuer refuses to correct it (Article 24 of the Billing Regulation), the taxpayer that received the invoice can file an economic-administrative claim with the tax authorities. When such a claim is filed, the tax authorities will direct the issuer to correct the invoice and re-issue it to the taxpayer so that they can claim input VAT they are entitled to.

Our tax team has experience filing such claims and we are happy to help clients who may find themselves in need of filing such a claim.

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FORMAL REQUIREMENTS CONTRARY TO THE RIGHT OF VAT DEDUCTION

According to the Spanish VAT Act, taxpayers performing both taxable and non-taxable transactions are subject to the general pro-rata system. This system requires taxpayers to calculate an annual ratio of taxable transactions over their total transactions. This ratio is used to assess the amount of input VAT that can be deducted, regardless of whether the goods or services acquired have been used in VAT chargeable transactions.

However, taxpayers can opt for a special pro-rata system that allows full deduction of VAT in so far as it exclusively relates to taxable transactions. The VAT cannot be recovered, however, if it relates only to exempt transactions.

On 16 March 2017, the Spanish Economic-Administrative (SEA) Court ruled in a case where the Inspector of Taxes rejected a real estate company's claim to deduction of VAT. The Inspector of Taxes took the position that:

(i) The company did not formally request application of the special pro-rata system, even though it actually applied this system when submitting its VAT returns; and

(ii) The general pro-rata system should apply (rather than the special pro-rata system), because the transactions performed during the years under review were exempt (not VAT taxable), even though the intended use of the goods acquired was related to VAT chargeable transactions.

Following an in-depth analysis of the deduction system provided under the VAT Directive and based on the criteria laid down by the Spanish Supreme Court and on previous rulings, the SEA Court disagreed with the Inspector of Taxes' conclusion.

According to the VAT Directive, the general pro-rata system is established purely as an exception for goods or services acquired for use in taxable and non-taxable transactions, the general rule being that VAT can only be deducted if used in taxed transactions.

Based on these criteria, the SEA Court rejected the Inspectorate's arguments and ruled that failure to formally opt for the special pro-rata system does not jeopardize the taxpayer's right to deduction. This is especially so, according to the SEA Court, when, as here, the taxpayer 'de facto' applied the special pro-rata system. As the SEA Court noted, application of the general pro-rata system instead of the special pro-rata system would have had a significant impact contrary to the VAT Directive.

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SWITZERLAND

REDUCTION OF VAT RATES ON 1 JANUARY 2018

On 1 January 2018, Switzerland will lower its VAT rates as follows:

	Until 31 December 2017	As of 1 January 2018
Standard rate	8.0 %	7.7 %
Special rate for accommodation services	3.8 %	3.7 %
Reduced rate	2.5 %	2.5 % Unchanged

Supplies made from 1 January 2018 and imports of goods for which the import tax debt arises on or after 1 January 2018 are subject to the new, lower VAT rates. Those supplies made until 31 December 2017 and those imports for which the tax debt arises on or before 31 December 2017 are still subject to the higher VAT rates.

Hence, neither the date of the invoice, nor the date of the payment are decisive when it comes to determining the applicable VAT rate. The decisive date is exclusively the time or period for which the supply or service are performed. The date or the period of supply must be stated on the invoice otherwise it does not fulfil the formal requirements and the old, higher VAT rates will be applicable to the entire invoice amount.

For periodical supplies (for example, newspaper subscriptions) that extend beyond 31 December 2017, a pro rata allocation of the old and the new VAT rate has to be applied.

Discounts, returns, and bonuses concerning supplies before 1 January 2018 can be adjusted with the old VAT rate.

REQUIREMENT FOR FOREIGN COMPANIES OPERATING IN SWITZERLAND TO REGISTER FOR VAT FROM 1 JANUARY 2018 AND CHANGES TO LOW VALUE CONSIGNMENT RELIEF DELAYED TO 2019

A revised Swiss VAT Law (first reported in the December 2016 issue of Indirect Tax News) and new VAT rates (see separate news item) will come into force on 1 January 2018. The most significant change could lead to an additional 30,000 foreign businesses having to register for VAT in Switzerland.

VAT registration of foreign companies

Currently, the threshold for VAT registration is calculated by annual turnover in Switzerland and the Principality of Liechtenstein. However, the new law stipulates that the worldwide turnover is relevant to determine whether a company exceeds the CHF 100,000 registration threshold. From 2018, many foreign domiciled companies who make domestic supplies of goods and/or work on goods (for instance, installation, maintenance-services) and/or other specifically listed services (for example, architectural services, telecommunication- or electronic services to consumers) in Switzerland will be required to register for VAT, even though their turnover within Switzerland may be minimal.

The only exemptions will apply to foreign suppliers that exclusively render services to Swiss-based consumers (B2C), or businesses (B2B) for which the reverse-charge provisions apply (for example, management-, consulting-services). It is important to note that a supplier that is registered for VAT in Switzerland (for example, due to work performed on goods) has to account for Swiss VAT on any service rendered to Swiss customers, even if the service would otherwise fall under the reverse charge provision.

This revision of the Swiss VAT law will increase the number of primarily foreign, non-established companies doing business in Switzerland who must register for VAT. With only two months to go, it is very important for these businesses to take action as soon as possible to comply with this new law.

Foreign domiciled companies must appoint a Swiss domiciled VAT representative to deal with their VAT obligations in Switzerland. BDO Switzerland is eligible to provide this service.

Low Value Consignment Relief

The second important change to the Swiss VAT Law for foreign business concerns the Low Value Consignment Relief (LVCR). This change has been postponed and will now come into force on 1 January 2019. Upon importation of goods into Switzerland, VAT is currently only levied if the VAT amount exceeds CHF 5. Taking into account the low applicable VAT rates of 2.5% and 7.7% (from 1 January 2018), goods up to a value of CHF 200 (taxable at 2.5%) and CHF 64 (taxable at 7.7%) do not trigger an import VAT charge. To close this loophole, the new rules foresee that the place of supply of goods falling under the LVCR will be shifted to Switzerland if the (foreign domiciled) supplier generates taxable supplies in excess of CHF 100,000 per year from such LVCR sales, regardless of whether the goods are delivered to a tax liable person or not. Foreign businesses covered by this new rule (mainly distance sellers) will consequently conduct domestic sales in Switzerland and will have to register for VAT in Switzerland and to import the goods in their own name.

Other VAT changes for 2018

Here is a selection of the other important changes in brief, all of which come into force on 1 January 2018:

- The reduced VAT rate of 2.5% will no longer only apply to printed issues of magazines, journals and books, but also to electronically provided issues;
- The margin taxation instead of the notional input tax deduction will be re-introduced for collectibles such as art, antiques, and similar items;
- Tax liability of a foreign based company begins on commencement of its supplies of goods or services to Switzerland;
- Pension schemes are not considered closely related persons. Accordingly, the consideration for supply of goods or services to or from a pension scheme need not be at arm's length for VAT purposes;
- The supply of gas, electricity and long distance heating to consumers (B2C) is taxed where it is actually used;
- Donations that do not entitle the donors to claim benefits from the charity do not trigger a reduction of the charity's input tax recovery, although the donors may receive benefits at the discretion of the charity;
- The option for taxation of VAT-exempt supplies is no longer only valid if the VAT is displayed on the invoice but also if the tax is just declared in the VAT return;
- Under the new law, (branches of) public authorities will remain exempt from tax liability unless their turnover to non-public authorities exceeds CHF 100,000. They are currently taxable if their turnover to non-public authorities has exceeded CHF 25,000 and their overall turnover (public and non-public authorities) has exceeded CHF 100,000. All branches of public authorities whose taxable supplies and services to private bodies do not exceed CHF 100,000 may apply for deregistration.

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UNITED KINGDOM

UK TIGHTENS DISTANCE SELLING RULES

The UK tax authority, HMRC, has adopted EU proposals to extend distance selling rules to online or mail order sellers of goods who promote a separate delivery service to their customers. Vendors selling goods from the UK should urgently review their VAT position and watch out for possible litigation on this point in the Court of Justice of the European Union.

Distance selling in the EU

The VAT distance selling rules apply to online and mail order sales to private customers in other EU Member States, where the goods are 'dispatched or transported by or on behalf of the supplier'. Such businesses must register for VAT in any EU Member State to which they deliver goods, where their turnover exceeds the distance selling threshold set by that country – normally EUR 35,000 or EUR 100,000.

Sales below the threshold do not trigger a registration requirement and vendors should instead apply and account for VAT at the rate applicable in the Member State of dispatch of the goods.

Alternative delivery arrangements

Until now, some vendors have not fallen within these distance selling rules because their business has chosen to separate the supply of the goods from the service of delivering them with the latter task performed by a separate company/provider.

However, according to a recent update of its guidance (which it has not yet widely publicised), HMRC has changed its interpretation of the term 'dispatched or transported by or on behalf of the supplier'. HMRC now says that the distance selling rules apply where the supplier intervenes directly or indirectly in the transport or dispatch of the goods. Examples of this include situations where the vendor subcontracts the transport to a third party who delivers the goods to the customer on his behalf, or actively promotes the delivery services of a third party and/or puts the customer in contact with a third party carrier.

This change of interpretation originates from proposals made by the EU Commission in 2015, which have also been adopted by some other EU States.

What does this mean for vendors?

UK internet and mail order businesses that have adopted such delivery arrangements are now at risk of HMRC concluding that their supplies are distance sales. Vendors could face the burden of registering for VAT in up 27 other EU States, applying VAT at the differing rates applicable in those EU countries and having to file multiple VAT returns.

Such distance selling registrations should bring an opportunity for vendors to recover UK VAT previously paid to HMRC on those sales in error. However, the customers' own Member States may require vendors to retrospectively register for VAT in their territories, potentially triggering historic VAT liabilities and penalties that considerably outweigh any VAT repayment due in the UK.

Possible reference to the European Court

This issue is expected to be considered by the UK courts in a case brought by sportswear retailer Sports Direct. Sports Direct has appealed to the First-tier Tax Tribunal in response to HMRC's decision that its delivery arrangements for online sales to consumers in other Member States constitutes distance selling.

The tribunal in this case may decide to refer to the Court of Justice of the European Union for guidance on how the term 'dispatched or transported by or on behalf of the supplier' (in Article 33 of the Principle VAT Directive) should be interpreted. However, this litigation may take some time to reach a conclusion. The long term position could also be further complicated by the UK's impending departure from the EU, and the EU's own VAT Action Plan, which proposes to scrap the distance selling system altogether in 2021.

In the meantime, the fact that HMRC has extended the scope of distance selling in written guidance suggests that it intends to actively pursue its new policy with operators in the e-commerce sector.

Businesses selling goods online or by mail order from the UK to EU consumers should therefore take immediate action to review their position.

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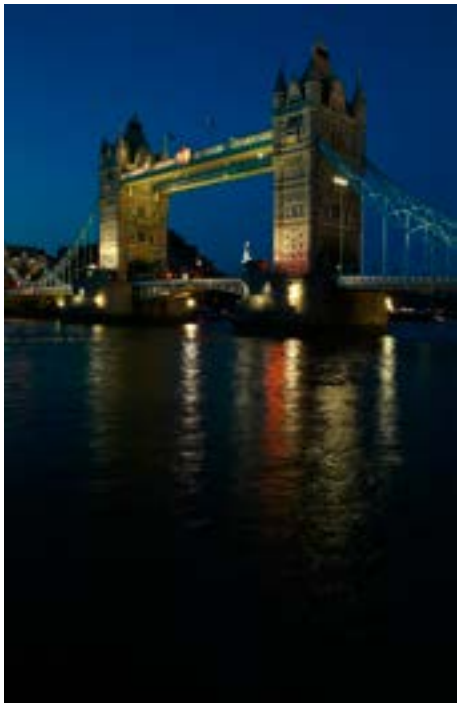

ZIMBABWE

RECENT VAT DEVELOPMENTS IN ZIMBABWE

Electronic Registry

It is now mandatory for all taxpayers that are registered to collect VAT (so-called registered operators) to use electronic fiscal registers (EFRs) that are linked to the Zimbabwe Revenue Authority (ZIMRA). Fiscal registers are electronic devices that contain a memory used for recording transactions. The devices are interfaced with the ZIMRA server. ZIMRA can apply penalties of up to USD 25 per day, per point of sale, for failure to comply with the legislation.

VAT withholding tax

A VAT withholding tax was introduced effective 1 April 2017. The rate is 10% of the turnover or 2/3 of the Output Tax, which is the VAT charged by the registered operator.

ZIMRA appointed registered operators to act as VAT Withholding Agents (VAT WHT agents) effective 1 April 2017.

VAT WHT Agents are required to withhold 2/3 of the Output Tax and issue a VAT Withholding Certificate for the amount withheld. VAT WHT Agents are required to submit VAT returns and remit the amounts withheld to ZIMRA on or before the 15th day of the following month.

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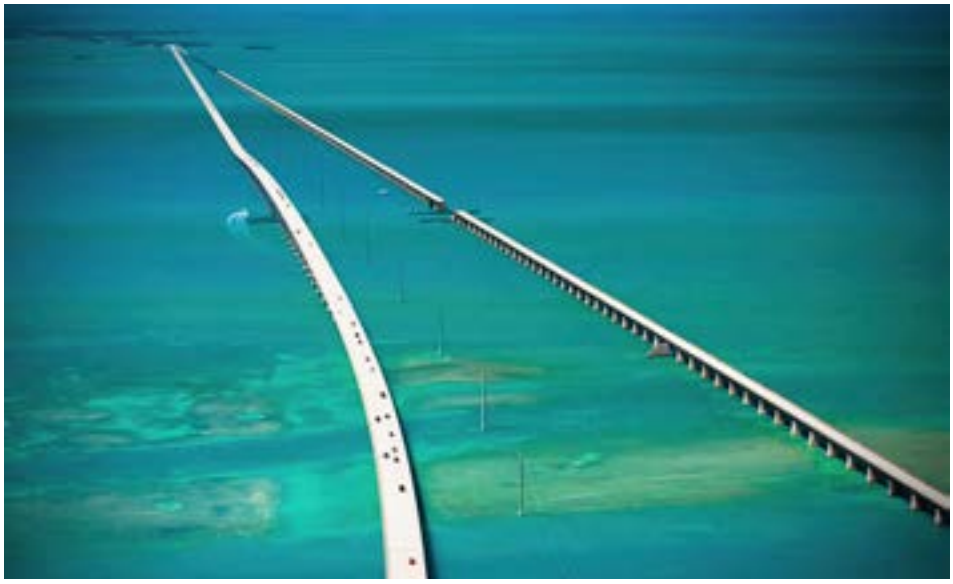

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 2 October 2017.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Hungarian Forint (HUF)	0.00305	0.00360
Euro (EUR)	1.00000	1.12212
Singapore Dollar (SGD)	0.59200	0.69948
Swiss Franc (CHF)	0.83000	0.97537
United States Dollar (USD)	0.80403	1.00000

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