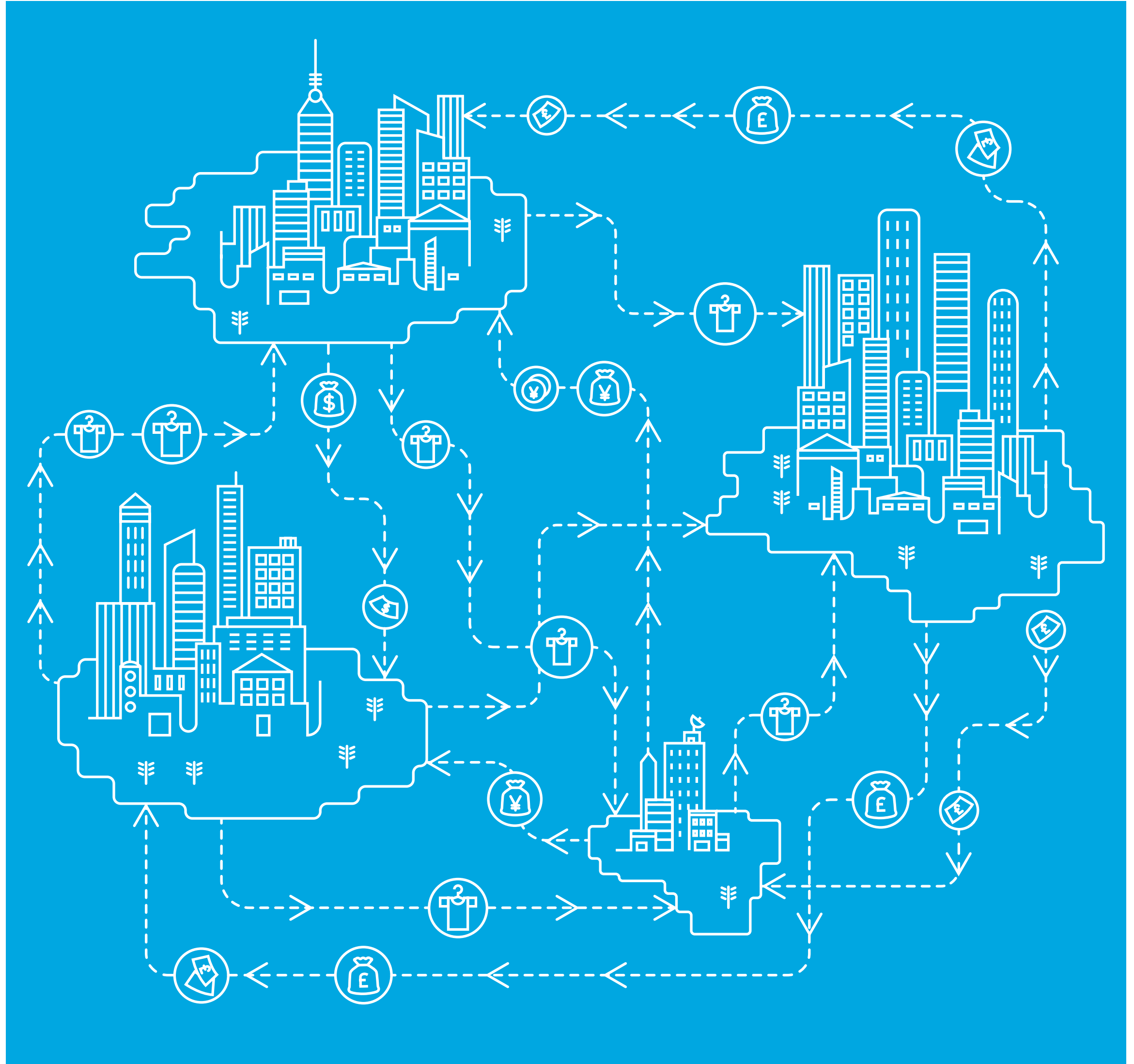
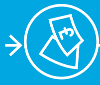


INTERNATIONAL VAT UPDATE

NOVEMBER 2017

The European Union, Romania, Hungary, Slovakia, Ireland, Norway and the Gulf Cooperation Council.



EUROPEAN UNION

Reform of the EU VAT system – a single VAT area

The European Commission has proposed a series key reforms of the 'transitional rules' within the Principle VAT Directive ('PVD') to improve the day-to-day functioning of the current VAT system. These proposals are over and above the earlier proposals issued in December 2016 to support e-commerce and online businesses in the EU which are currently before the European Parliament for consultation, and adoption by the Council.

The 'cornerstones' of the October proposal are:

- Abolishing the VAT exemption on B2B cross-border trade, that is, adopting the principle of 'taxation at destination' for intra-EU cross-border supplies of goods whereby the VAT rate of the Member State of destination, the Member State where the buyer is located, is charged.
- Agreement that the VAT should always be paid in the Member State of the final consumer and at the rate of that Member State, that is, confirmation that the seller, as a general rule, is liable and responsible for charging and collecting the VAT on intra-EU supplies.
- The extension of the existing One Stop Shop (currently applicable for e-services, and proposed for B2C goods) to B2B supplies, meaning businesses will make declarations, payments and deductions for cross-border supplies of goods through a single online portal, Member States will then pay the VAT to each other directly.
- Simplification of VAT invoicing allowing sellers to prepare invoices in accordance with the rules of their own country, even when trading across borders. This would remove the need for EU Sales Lists.

The proposal also introduces the notion of a Certified Taxable Person, that is, trustworthy businesses certified by their tax administrations, who would benefit from much simpler and time-saving rules by being able to continue to purchase goods free of VAT in another Member State and pay VAT in their own country.

The Commission also presented four 'quick fixes' to improve the day-to-day functioning of the current VAT system until the definitive regime has been fully agreed and implemented. These are:

- 'Call-off stocks' – simplification of VAT rules for companies in one Member State storing goods in another Member State to be sold directly to customers there. This simplification is limited to Certified Taxable Persons who will no longer need to register and pay VAT in another Member State when they store goods there.
- "Chain transactions' – simplification for those elements of a chain transaction which do not involve the physical movement of goods, for example when goods are sold via several traders, but physically the goods move directly from the original seller to the final buyer. This simplification is limited to Certified Taxable Persons.
- "Proof of transport of goods' – new harmonised and uniform rules so that traders can more easily provide proof that goods have been transported from one EU country to another. This simplification is again limited to Certified Taxable Persons
- 'Clarification that, in addition to the proof of transport, the VAT number of the commercial partners recorded in the electronic EU VAT-number verification system (VIES) is required in order to apply the cross-border VAT exemption under the current rules.

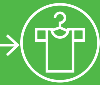
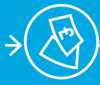
What this means

The proposals will be forwarded to the European Parliament and the European Economic and Social Committee for consultation, and will require the unanimous agreement of all Member States in the Council before they can enter into force. The Commission will follow this initiative in 2018 with a detailed legal proposal to amend the VAT Directive at technical level so that the definitive VAT regime proposed can be implemented and operational by 2022.

The proposals, and the subsequent amendment to the PVD will of course not be applicable to 'third countries'. The 'impact of Brexit, and what this may or may not mean for UK businesses trading with customers (businesses and consumers) in Member States post 1 April 2019 remains unclear.

The benefits and opportunities to UK businesses of the proposed VAT reforms and quick fixes (including the ease of VAT administration for those afforded certifiable taxable person status) may now need to be considered as part of the UK negotiation on transitional arrangements, and of its ability to retain access to the tariff-free single market.

Andy Ilsley, RSM UK

ROMANIA

Introduction of split VAT payments

An optional system to enable VAT payments to be made directly to the Romanian tax authorities is being introduced in October 2017 and will become mandatory from January 2018:

- For each supply made or service performed, the supplier is required to provide the customer with a 'VAT' bank account and the customer should then transfer the VAT element straight to this account and the difference (i.e. the net amount on which the VAT is calculated) to the supplier's regular bank account. Practically, the customer will have to make two payments for each amount transferred to the supplier, i.e. one for VAT and one for the taxable base, into two different bank accounts.
- The amounts received in the VAT bank account must be used by taxpayer only to pay the VAT to the treasury. The amounts from the VAT bank account should be transferred to the regular account of the taxpayer only with the approval of the National Agency for Fiscal Administration (i.e. ANAF) within 3 days.
- Where the balance of the VAT account does not cover the VAT due for a respective month, the supplier should transfer the difference from his regular account and make the payment of the VAT due from his VAT bank account.
- Where deliveries made/services performed are paid in cash, or by card or other similar payment methods, the taxpayer (supplier) should transfer from his regular bank account to his VAT bank account the VAT amounts within 7 days.
- Where the payment of the VAT owed to the suppliers is made to an account other than the 'VAT account', this has to be corrected within 7 days, otherwise penalties of 0,06% per day and a fine of 50% of the amount wrongly paid could be applied.

What this means

A number of countries (including the UK) have investigated the possibility of using the 'split payment' mechanism to reduce incidence of VAT loss through avoidance or evasion through direct payment to the authorities

The split VAT payment system, when it is mandatorily introduced, will result in cash flow problems and administrative issues, additional bank charges, as well as IT costs for adapting the accounting and payment software.

Adrian Serban, RSM Romania

HUNGARY

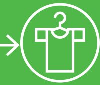
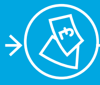
Extension of Food Chain Supervision Fee (FCSF) to foreign businesses registered for VAT in Hungary

Hungary has extended the scope of its food chain supervision fee (FCSF) to include foreign businesses registered for VAT in Hungary. Previously only domestic companies were obliged to pay FCSF. The FCSF is a tax on certain food supply chain activities and it is levied at a rate of 0.1% on the net sales revenue derived from such activity.

Due to recent changes, however, the obligation to pay FCSF has been extended to foreign companies which are VAT registered in Hungary, and is effective from June 2017.

The following businesses are subject to the new obligation who are appropriately registered and carry out the following activities in Hungary:

- Persons who place animals on the market that are kept for food production, breeding or experimental purposes.
- Person who place food or fodder crops, seeds, plant products, and certain propagating and planting material on the market.
- Food businesses (production, processing and distribution of food).
- Registered or authorised feed businesses.
- Persons who manufacture or place on the market veterinary medicines and veterinary medicinal products.
- Persons who manufacture or place on the market "EEC fertiliser" or other products subject to authorisation.
- Persons involved in the handling, use, further processing and transport of animal by-products or placing derived products on the market.
- Businesses engaged in the transport of live animals; persons operating facilities for the cleaning and disinfection of vehicles used for transport of live animals, isolation facilities for receiving animals from different stocks, livestock loading ramps, assembly centres, trading sites, feeding and watering stations, rest stations and livestock fairs.
- Persons manufacturing and storing plant propagation material.
- Persons operating a registered or authorised laboratory.
- Persons placing devices on the market that are used for marking animals.

What this means

If a business' activities are included in the list above, the following information is relevant and should be noted:

- There is a requirement to comply with the e-reporting obligation by 31st May following the reporting year, i.e. first time by 31st May 2018.
- The annual food chain supervision fee is 0.1% of the net sales revenue (excluding excise duty and public health product tax) derived in the preceding year from these activities.
- The supervision fee is payable in two equal instalments: the first instalment by 31st July, and the second by 31st January of the following year, i.e. first time by 31st July 2018 and 31st January 2019.

In case of non-compliance of the above obligations the amount of the default penalty would be between HUF 10,000 forints and HUF 500,000 (~ EUR 1,600), but subject to a maximum 10% of the net sales revenue from the previous financial year on which the supervision fee is based.

We should also highlight that unpaid supervision fees and default penalties shall be treated as outstanding public dues enforced as taxes.

The changing in the law raises a number of practical questions for the foreign companies such as how the tax base for 2017 should be calculated and how the net turnover should be supported etc. It is important therefore to consider the issues carefully to ensure compliance with the regulations.

Dániel Sztankó, RSM Hungary

SLOVAKIA

Refusal to refund VAT charged subsequent to a supply of goods not appropriate

The opinion of the Advocate General of the CJEU has been released concerning Opinion C-533/16 – Volkswagen: in which the Slovakian tax authority's refusal of Volkswagen's right to deduct VAT in the particular circumstances is suggested by the AG to be contrary to the principles of the Principle VAT Directive (PVD) as it goes against the fundamental EU principle that VAT should not represent a cost to businesses carrying out taxable operations and the measure should not go further than that required to prevent avoidance or abuse.

Between 2004 and 2010, Volkswagen AG in Germany received goods from Slovakian suppliers without VAT being included in the relevant invoices; both parties wrongly assuming that the transactions in question constituted financial compensation and, as such, were not subject to VAT. When, in 2010, they realised their mistake, the suppliers charged VAT to Volkswagen, issued VAT invoices stating the amount of tax payable, and filed a supplementary VAT return and paid the tax to the Slovakian Treasury. Volkswagen sought to deduct the input VAT via an Eight Directive refund claim but the Slovakian tax authority only allowed the application in respect of the latter periods claimed, and rejected the earlier periods on the basis that the time limit for exercising the right (five years) had already elapsed.

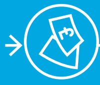
The AG considers that, in the circumstances, establishing the commencement date of that period cannot be solely a matter of looking at the time the goods were supplied, irrespective of any other relevant factors. The refund claim can only be exercised once the taxable person holds an invoice showing that the goods have been supplied.

It had already been established by the national court that a supply of goods to Volkswagen did take place, that this was reflected in the corresponding invoices, and that the invoices included all the information required by the PVD. As it was only as a result of the issuing of the invoices reflecting the adjustments to the original transactions that the substantive and formal conditions triggering the right of deduction within the PVD were satisfied, it was at that point that the calculation of the time limit for exercising that right should have commenced.

What this means

This is a positive opinion from the AG which may provide an opportunity for additional belated claims to VAT when charged subsequent to the supply being made, and in the majority of cases the CJEU will agree with an earlier AG Opinion but it is not necessarily bound to do so. We await the full decision of the court with interest.

Andy Ilsley RSM UK



IRELAND

Update following Budget 2018

The current standard rate of Irish VAT is 23 percent. The rate was increased by 2 percent to this rate with effect from 1 January 2012, as a financial emergency measure following the domestic financial crisis.

Following the Brexit vote by the UK electorate, and in the context of the lead in to Budget 2018, calls were made from influential lobby groups in Ireland to cut the standard rate of Irish VAT from 23 percent to 20 percent to make the rate more competitive with the UK rate. As Belfast is a 1.5 hours' drive from Dublin, retail groups in particular pointed towards Ireland's high standard VAT rate as a contributory factor for lost sales to UK retailers by way of cross-border shopping by Irish consumers. The higher rate of VAT has also been cited as a factor in the growing trend for online shopping, which is predominantly fulfilled by businesses operating outside of Ireland, albeit this ignores the fact that sales from EU business are likely to fall within the distance selling thresholds.

What this means

Much debate has taken place on the efficacy of the reduced rate of 9 percent, which applies to services provided in the tourism sector. Up until May 2011, the rate for this sector was 13.5 percent (the rate was reduced to boost the industry during the economic recession). The rate was initially expected to revert back to 13.5 percent at the end of 2013. However, the Government extended the deadline for the 9 percent rate to remain in place in all Budgets since 2013.

A number of economists called for the 13.5 percent rate to be reintroduced. This stance arises from the current state of the Irish economy, which has sharply recovered in the past three years to become one of the fastest growing EU economies, with hotel occupancy rates at saturation, and significant price increases. On the other hand, the tourism industry argues the retention of the 9 percent VAT is key to boosting the sector which is competing strongly with overseas destinations, and in particular, to assist the sector in areas outside of Dublin.

In this context, in Budget 2018 (announced 10 October 2017), the Irish Finance Minister announced the retention of the reduced rate. It was cited that it provided protection for the sector in times of uncertainty surrounding Brexit, given the UK market is one of the most important sources of revenue for the industry. The Minister also saw its retention as key to protecting regional growth, noting that while prices in Dublin are rising, VAT policy cannot be decided by reference to one location only.

Charities VAT Compensation Scheme

The other key VAT piece to Budget 2018 was the announcement of a new VAT Compensation Scheme for Charities. This will be introduced in 2019 in respect of VAT expenses incurred in 2018. This scheme is being introduced to compensate VAT exempt charities for the VAT they occur on their inputs. An amount of €5m is available to the scheme in 2019.

What this means

Ordinarily charities suffer a significant VAT cost on the basis that their activities and income sources typically do not have an associated right of VAT recovery. Under this scheme, charities will be entitled to a refund of a proportion of their VAT costs based on the level of non-public funding they receive. For example, where a charity's gross income for 2018 involves 30 percent funding from State/EU/international organisations and 70 percent privately sourced income including fundraising, subscriptions and donations, they may claim 70 percent of their VAT input costs for the year. Not eligible for relief under the scheme will be VAT incurred on private non-charity related expenses; VAT incurred that is subject to an existing VAT refund order and VAT incurred that is otherwise deductible.

Seán McCarthy, RSM Ireland

NORWAY

Increase in Reduced Rate Announced

The Norwegian government has recently presented its Budget Proposal for 2018 to the parliament, in which it proposes an increase in the lower VAT rate from 10 percent to 12 percent. This rate applies to the supply of passenger transport, and the procurement of such services, cinema tickets, tickets to certain larger sports arrangements, and tickets to amusement parks and museums.

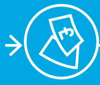
It also applies to hotel accommodation, the letting out of cabins and holiday apartments by hotels and camping businesses, and the procurement of such accommodation, which are consequently also included by the proposal, as well as the annual fee paid for access to the Norwegian public broadcasting company.

What this means

There is much opposition to the rate rise which is in the context of an already high standard VAT rate, particularly in the hotel and leisure sector where affected businesses fear the negative impact on tourism, both by Norwegians and foreigners visiting the country. The effect on passenger transport is also seen as negative and in contrast to a general political pursue of greener transport alternatives to private cars.

The rate has increased by 2 percentage points already in 2016, from 8 percent to 10 percent, so the new increase, effective from 1 January 2018 entails a 50 percent raise to the lower VAT rate within less than three years.

Marianne Brockmann Bugge, RSM Norway



GULF COOPERATION COUNCIL

UAE and Saudi Arabia VAT Update

Further to the announcement that VAT will be introduced across the Gulf Cooperation Council States effective from 1 January 2018, to be charged at a standard rate of 5 percent on goods or services provided (subject to some reliefs and exemptions) the UAE and Saudi Arabian Governments have introduced legislation and registration particulars enabling businesses with activities in the respective regions to prepare the necessary applications to ensure compliance by the due date.

Businesses with interests and activities in UAE will be required to register where the value of taxable supplies and imports are in excess of AED 187,500 and, in order to be effective from 1 January 2018, the UAE Federal Tax Authority has recently announced the ability for businesses to register for VAT via an online portal – with registration deadlines on a 'sliding scale' according to the value of taxable turnover as follows:

- Turnover above AED 150 million: 31 October 2017
- Turnover between AED 10 million and AED 150 million: 30 November 2017
- Turnover below AED 10 million: 4 December 2017

In respect of Saudi Arabia, all entities and companies with annual revenue of more than SAR 375,000 are required to register by 20 December 2017; a failure to register by this date could result in a penalty of SAR 10,000. Taxable persons whose annual taxable supplies exceed the mandatory registration threshold, but do not exceed SAR 1,000,000 will be exempted from the requirement to register until 20th December 2018.

Overseas entities obliged to account for VAT on their economic activities in Saudi Arabia must also register, and appoint an approved Tax Representative established in Saudi Arabia.

What this means

UAE and Saudi Arabia are the first of the GCC states to issue draft legislation and provide registration opportunities, with the others expected to follow later in 2018. It does raise some logistical and administrative issues around dealing with other GCC countries in the 'hiatus' period before the other GCC members formally introduce their VAT systems, and more widely, businesses with activities within the GCC should consider their position as a matter of priority

Dale Taylor, RSM United Arab Emirates

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