

# INDIRECT TAX NEWS

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## NETHERLANDS

### IMPORTANT CHANGE IN DUTCH TOUR OPERATOR MARGIN SCHEME REGULATION

The tour operator margin scheme (TOMS), contained in articles 306 - 310 of the EU VAT Directive, is a special scheme for businesses that buy and re-sell travel, accommodation, and certain other services as a principal or undisclosed agent (that is, acting in their own name). The TOMS is intended to be a simplification measure which allows VAT to be accounted for on travel supplies without businesses having to register and account for tax in each Member State where the services and goods are enjoyed. Under the scheme's rules, no input VAT on direct costs can be recovered by the supplier and VAT is payable in the country in which the supplier is established. However, in practice, the system is extremely complex and anomalies have arisen with regard to how it is implemented across Europe.

#### New decree in the Netherlands

Recently, the VAT calculation for travel services has changed in the Netherlands. In Holland it was always assumed that the TOMS is only applicable on business-to-consumer (B2C) transactions for sales to the actual traveller (in other words, the final customer). The new Dutch TOMS decree is based on the ruling of the Court of Justice of the European Union (CJEU) in case *C-189/11 European Commission v Kingdom of Spain*, dated 26 September 2013. In that case, the CJEU decided that travel services purchased from third parties and sold by a taxpayer under its own name as a package deal to a customer other than the actual traveller are also subject to the TOMS.

The CJEU's decision therefore widens the scope of TOMS and is binding on all member states, although some other EU Member States have not yet amended their national law in accordance with the CJEU's findings.

However, as a result of the Netherlands' new decree, the TOMS is now also applicable to the business-to-business (B2B) (re)sale of travel packages in the Netherlands.

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# EDITOR'S LETTER

Dear Readers,

I hope you are all keeping well and looking forward to the extended break over the festive season that is celebrated in many of the countries in which BDO is represented internationally.

Our last Indirect Tax News for 2015 contains an extensive mix of articles detailing indirect tax-related developments from BDO contributors from across the globe and it was great to see so many of them at our annual 2 day VAT & Customs Conference, which was hosted in the beautiful city of Budapest in mid-September by Gábor Kertész and Zoltan Gerendy of BDO Hungary.

When one attends these conferences and reads through the quarterly Indirect Tax News, it becomes abundantly clear how important it is for businesses expanding internationally to obtain specific and timely advice regarding any tax implications that need to be considered in relation to any countries in which they intend to do business in.

As always, my colleagues and I are available to assist as required so please feel to reach out to me at [ifeerick@bdo.ie](mailto:ifeerick@bdo.ie) if you require details of any local BDO contacts in your region.

In the meantime, I'd like to take the opportunity to thank all of our clients for their continued support of our network and to wish you all a safe and happy holiday season and best wishes for 2016.

Kind regards from a very festive Dublin!

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## Transitional regulation

In the decree, the Dutch tax authorities provided transitional provisions. Under these provisions, the old rules remained applicable where the following conditions were met:

1. The travel services were provided based on a contract that was entered into before 1 April 2015;
2. The travel services took place before 1 November 2015;
3. The VAT rules that apply for services not covered by the TOMS were being applied.

If the conditions are met:

- The TOMS is not applicable to transactions between tour operators; it will only apply to transactions between the tour operator and the final customer.
- Tour operators can make use of the transitional regulation for their travel services to non-final customers until 31 October 2015 at the latest.

## Consequences of the new decree

The consequence for Dutch travel agents is that the sale of package deals to customers other than final customers are also subject to the TOMS in Holland. From now on, travel services provided by a tour operator to another tour operator are subject to the Dutch TOMS. This can have a big impact on tour operators' margins. Where the TOMS applies, the invoice should include a reference to the application of the TOMS and no VAT should be included on the invoice.

If the travel takes place within the EU, the standard VAT rate is applicable on the margin in the country of establishment. Where the travel begins outside the EU, or the destination is outside the EU (direct travel), the 0% VAT rate applies.

With respect to travel provided by a company using its own services, the standard place of supply rules are applicable. For example, accommodation is taxable where the accommodation is located and transport of persons is taxable where the transport actually takes place.

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# ARGENTINA

## WITHHOLDING TAX 'GROSS UP' TO BE INCLUDED IN VAT VALUE OF IMPORTED SERVICES

An important principal to consider when entering into foreign contracts in the Republic of Argentina is that VAT is charged on imports. With respect to the importation of services, the rule regarding who must collect the tax is different from that on goods. If the services rendered abroad have economic use in Argentina, the payer (the buyer of the services) is responsible for payment of the tax and then it can claim such payment as an input VAT the following month.

In general, amounts paid for imported services are often "net" of local tax. Consequently, if the service is subject to income tax withholding, since the liability for the withholding falls on the payer, the amount paid usually represents the cost plus a "gross up".

It was always understood that this gross up should not be included when calculating the VAT on imported services (because the gross up is not stated in the invoice or any other original documentation). But, in the *Puentes del Litoral vs/DGI* case dated 20 August 2014, the Supreme Court of Argentina has, surprisingly, overturned the accepted view that the gross up is part of the "net price of the operation".

Following the reasoning of the Supreme Court of Argentina, in the event that the payer cannot quickly offset this input VAT, importers of services will face a higher cost.

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# AUSTRALIA

## SECOND EXPOSURE DRAFT LEGISLATION RELEASED ON GST AND CROSS-BORDER TRANSACTIONS

The Government has released a second version of its draft legislation in relation to the proposed application of GST to supplies of digital products and other services by non-resident suppliers to Australian consumers.

*Tax Laws Amendment (GST Treatment of Cross-Border Transactions) Bill 2015* ("the Exposure Draft") was released on 7 October 2015 and, having received input from various affected parties, this draft reflects a number of changes to the first version, including:

- Clarifying that the standard AUD 75,000 registration threshold applies to non-resident suppliers (AUD 150,000 for not-for-profit entities);
- Providing additional guidance on what constitutes the taking of "reasonable steps" to ascertain whether a customer is an Australian consumer;
- Providing additional detail on the limited registration option, including clarifying the circumstances in which a non-resident supplier can revoke an initial decision to take up a limited registration option (for example, in order to reclaim the GST component of acquisitions made in Australia);
- Amending the definition of "financial supply" to ensure GST is not imposed under the new rules on supplies made by foreign entities that would be input taxed financial supplies if made by a domestic entity;
- More accurately defining the circumstances in which a liability for GST under the new rules could be shifted to a supplier of an Electronic Distribution Platform; and
- Inserting transitional rules to deal with supplies made on or after 1 July 2017 but under, or in accordance with, agreements entered into before that date.

The imposition of GST on non-resident suppliers of digital products and other services is aimed at bringing non-residents into the GST system (for business-to-consumer (B2C) transactions). However, the other significant change contained in the Exposure Draft relates to proposed rules aimed at keeping non-resident suppliers out of the GST system (for business-to-business (B2B) transactions).

The proposed rules achieve this by looking primarily at the input tax recovery position of the business customer. Where full input tax credit recovery is available, the non-resident supplier will not have what would otherwise be a GST registration obligation. Where less than full input tax credit recovery is available, the reverse charge rules will be extended so as to apply to the GST registered customer (that is, the liability will be shifted to the business customer).

These rules implement certain recommendations outlined in the 2010 report "Application of GST to Cross-Border Transactions" prepared by the Board of Taxation.

Once ratified, the new rules are expected to come into force on 1 July 2017.

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# AUSTRIA

## ROUNDUP OF VAT CHANGES FOR 2016

### Changes to reduced rates

The VAT Law foresees an increase of the reduced VAT rate of 10% or 12% to 13% for some items. This will create a three-tier system for VAT in Austria, because the current reduced 10% rate will continue to apply e.g. to food, pharmaceuticals or rental for residential purposes. The current standard rate of 20% will not change.

Apart from the goods referred to in Annex 2 of the § 10 VAT Law (such as flowers, livestock, seeds, and works of art), the VAT rate for the following services will also be increased from 10% to 13%:

- Hotel accommodation and similar services
- Artist activities;
- Cultural-related services and admissions to museums, theatres, music and singing performances, zoological gardens, botanical gardens, natural parks, cinemas, circuses (the 10% VAT rate will continue to apply if performed by charitable entities);
- Domestic air transportation (10% VAT rate continues to apply to transportation by other means, buses, trains or taxis);
- Operation of swimming pools;
- Services of youth, education, training and recreation centres to individuals under 27 years of age (10% rate applies if performed by charitable entities);
- Sales of wine direct from the winegrower (from 12% to 13%);
- But: a reduced tax rate of 13% (currently 20%) will be introduced for sporting events.

Most changes will take effect from 1 January 2016, but VAT on hotel accommodation and cultural events will increase from 1 May 2016. However, the 10% VAT rate will still apply to services supplied between 1 May and 31 December 2017, if the booking and prepayment was made before 1 September 2015.

### Further VAT changes

- In 2012, open market value provisions (based on Article 80 of the EU VAT Directive) were introduced as the VAT basis for supplies of goods and services provided to employees or for non-commercial purposes. As from 2016, the open market value will also apply to supplies and rental of immovable property.
- In Austria, the input VAT related to cars is not deductible. As from 2016, VAT incurred on the acquisition, hire, and the operation of cars without CO<sub>2</sub> emissions (e.g. electric vehicles) will be deductible up to certain thresholds.
- Taxable persons with sales not exceeding EUR 2 million who apply the cash basis of taxation are only entitled to input VAT deduction based on the actual payment of the invoice. As from 2016, no payment is necessary if the input VAT is transferred from the tax account of the recipient to the tax account of the supplier according to para 215(4) Austrian Fiscal Code.

### Antifraud measures

For businesses with annual sales of at least EUR 15,000 who primarily make cash sales, the obligation to use electronic cash registers applies as of 1 January 2016. Each cash payment has to be registered electronically.

Moreover, a duty to issue receipts was introduced. Suppliers have to issue proper receipts/invoices and customers will be obliged to accept and keep them. The document must contain the following:

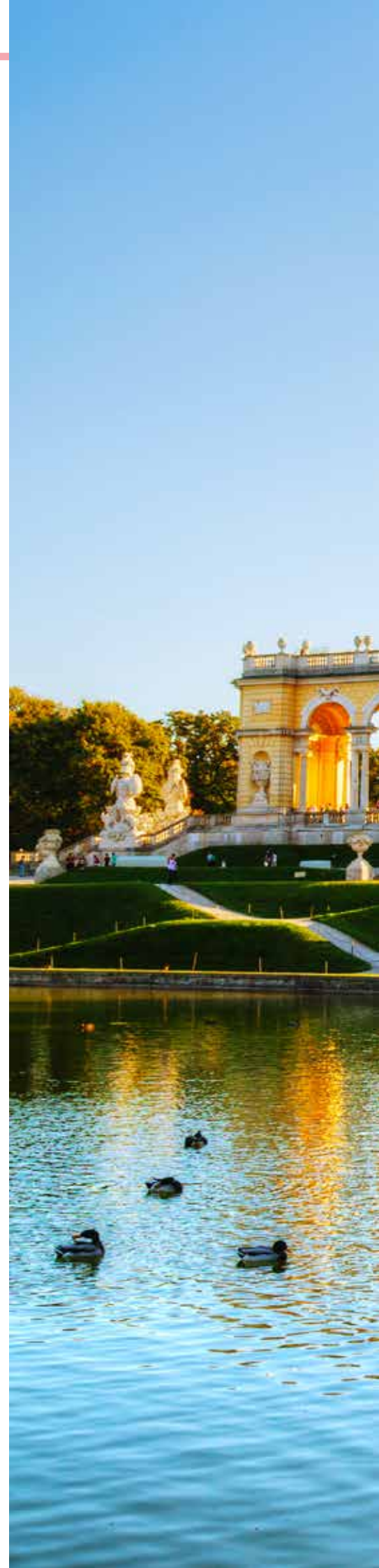
- Identity of the supplier;
- Sequential number;
- Date of issue of the document;
- The amount and the standard commercial description of the goods supplied or the nature and scope of other services;
- Amount of cash paid, which can be determined mathematically from the document entries;
- As from January 2017, additional obligations come into force, in particular that cash registers need to be tamper-proof.

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# BELGIUM

## THRESHOLD FOR VAT EXEMPTION FOR SMALL ENTREPRENEURS INCREASES AGAIN

The Belgian Government has announced a new extension of the VAT exemption regime threshold for small entrepreneurs. The old threshold of EUR 5,580 was increased to EUR 15,000 in July 2014. Once the formal approval of the European Council has been received, the threshold will be increased again to EUR 25,000 from 1 January 2016.

Entrepreneurs whose annual turnover did not exceed EUR 25,000 during the calendar year 2015 will automatically switch to the VAT exempt regime by 1 July 2016, unless they explicitly opt to stay subjected to VAT.

It may be possible to submit a request to the competent VAT office prior to 15 December 2015 to opt for the VAT exempt regime as from 1 January 2016.

In practice the VAT exempt regime means that the entrepreneurs do not need to apply VAT on outgoing invoices (no VAT needs to be paid to the VAT Authorities), and no periodic VAT returns need to be submitted.

On the other hand, the VAT exemption regime also means that there is no right to deduct the input VAT incurred. This means that entrepreneurs switching from VAT taxable to the VAT exempt regime need to perform a VAT revision within one month of the switching date. This VAT revision must be performed on goods (other than company assets) for which input VAT has been deducted and which are still in the possession of the small entrepreneur, and on services for which input VAT has been deducted but have not yet been consumed. In addition, a VAT revision must also be carried out on company assets where the revision period of 5 (or 15) years has not yet ended.

Entrepreneurs adopting the VAT exemption regime must also comply with the following formalities:

- Submit a declaration of start, modification or cessation of activities;
- Issue sales invoices (without VAT) but with the reference "VAT exempt regime for small entrepreneurs";
- Submit annual client listings before 31 March of each year;
- Number and store all outgoing and incoming invoices;
- Maintain a table of company assets (if any);
- Provide its Belgian VAT identification number to customers and suppliers;
- Submit intra-Community sales listings (if applicable);
- Submit a special VAT return to report reverse charge transactions.

Finally, there are some entities and some activities that are excluded from this VAT exemption regime:

- VAT groups;
- Entities active in the building/construction sector (work on immovable property);
- Sale of an immovable property by occasional taxpayers.

As the official publications are not yet in place, the information above is still subject to change. If this affects your business, make sure you monitor developments closely.

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# FRANCE

2016 FRENCH FINANCE BILL CALLS FOR THE FRENCH DISTANCE SELLING THRESHOLD TO DECREASE



Currently, if the amount of goods transported by an EU supplier to France does not exceed EUR 100,000 per calendar year, the EU supplier can invoice French private individuals under the VAT of the supplier's home country. If the supplier exceeds the threshold in the previous year or during the current year, the supplier must register for French VAT and invoice French private individuals for French VAT.

Under a proposal in the 2016 French Finance Bill, which is currently being discussed by the French parliament, the distance selling threshold would decrease from EUR 100,000 to EUR 35,000. The rationale for decreasing the distance selling threshold to EUR 35,000 is to better harmonise with the thresholds applied by most countries and to ensure fair competition between EU operators.

If adopted, this change would apply to supplies of goods as of 1 January 2016.

The definitive French finance law for 2016 will be voted on by year-end.

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# GERMANY

## VAT DEDUCTION BASED ON AN INVOICE ADDRESSED TO A PO BOX

### Decision of the German Federal Court of Finance

In a recent decision, the German Federal Court of Finance (BFH) denied an input VAT deduction where the address on the invoice was merely a postal address where no economic activity was performed. The address on the invoice was for an office that rendered accounting services for the supplier and accepted the supplier's mail. The supplier did not carry out any economic activity at that address.

The BFH confirmed the initial decision of the Finance Court of Düsseldorf to deny the input VAT deduction because the recipient of the supply was not in the possession of a proper German VAT invoice since the appropriate "name and address of the taxable person (here the supplier)" was not stated on the invoice. According to the Finance Court of Düsseldorf, the criterion related to the "name and ADDRESS of the taxable person" is met only if the address shown is the actual place (seat of the taxable person) where the supplier carries out the economic activities.

### Refusal of the opinion of the German fiscal authorities and change of the case law

The BFH's decision is significant because it contradicts the opinion of the German fiscal authorities. According to the German VAT ordinance, the fiscal authorities took the position that it was sufficient for invoices to provide a post office (PO) address or a so-called "Großkundenadresse". (Suppliers with Großkundenadressen usually have their own postal code.)

Additionally, the BFH's decision also contradicts an earlier BFH decision that held that the criterion "the full name and address of the taxable person and of the customer" is met by stating a PO address which grants the postal availability of the taxable person in question.

### Relevance for taxable persons

The BFH's decision is relevant for taxable persons because it tightens the criterion that must be met for the input VAT deduction. Going forward, taxable persons will not be entitled to an input VAT deduction where the invoice only includes the supplier's PO address.

It is expected that the German fiscal authorities will adopt the opinion of the BFH.

The protection of legitimate expectation due to a change in the interpretation of the German law, however, is expected to only apply to VAT periods where the annual German VAT return has already been filed, and not for periods in which only a preliminary German VAT return has been filed.

### Prospects

Taxable persons facing an issue regarding the input VAT deduction may be hopeful that the BFH will reconsider its current decision, however, because the same issue has been referred to it in another case. In the future decision of the BFH, the judgment of the CJEU, dated 7 September 2015 case C-183/14 *Salomie & Oltean*, will also have to be taken into consideration. In that case, the CJEU ruled that the invoicing requirements have to be seen as formal requirement for control purposes and, when the substantive requirements are fulfilled, the formal requirements cannot restrict the fundamental principle of a VAT deduction.

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# HUNGARY

## VAT CHANGES FOR 2016

**W**ith the passing of the 2016 amendments to the Hungarian tax law, the tax legislation for the coming year is now finalised. There are three main changes that could have an impact on foreign firms registered for VAT in Hungary.

### Reliable/risky taxpayers

The Act on Taxation introduces rules for reliable and risky taxpayers. Under the new classification scheme, taxpayers classified as reliable will be treated more positively for VAT purposes, while risky taxpayers will be treated more strictly than under the general rules.

The benefits for reliable taxpayers include the following:

- Audits by the National Tax and Customs Administration may not exceed 180 days.
- The maximum default penalty and tax penalty is 50% of the normal penalty.
- Once a year they have beneficial payment options and are exempt from surcharges for the settlement of their tax liability between HUF 10,000 and 500,000.
- Their requests for VAT refunds are processed faster than for other taxpayers.

Risky taxpayers, on the other hand, are subject to the following:

- Their VAT remittance deadline is a uniform 75 days.
- Their tax audit deadline is extended by 60 days.
- They are treated more strictly with regard to the assessment of default interest, tax fines, and default penalties.

A taxpayer may be classified as reliable if they meet 10 criteria prescribed under the law. The tax authority will make the initial classification in the first quarter of 2016 based on data as of 31 March 2016.

### Data export

All invoicing software must have an independent function suitable for making the data available to the tax administration with a single click. This new function, the so-called "data disclosure for tax administration audit" or "data export", will enable the tax administration in the course of a potential tax audit to quickly export data about invoices issued in a certain time period or within a certain range of invoice numbers.

### VAT performance date

Finally, there are new rules for determining the VAT performance date in case of periodic settlements (if the parties have agreed on payment in instalments or on settlement within set time periods).

As of 1 January 2016 there are four ways to determine the performance date. Pursuant to the new rules, the performance date could be:

- The issue date of the invoice,
- The payment due date,
- The last day of a particular settlement period or by the instalment payment, or
- The 60<sup>th</sup> day following the last day of the period settled.

Therefore, the performance date can vary on a case-by-case basis, depending on the agreement between the parties.

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# INDIA

## ROUND UP OF RECENT DEVELOPMENTS IN INDIRECT TAX

### Foreign Trade Policy 2015-2020

Every five years, the government of India issues a Foreign Trade Policy (FTP) that provides various incentives and benefits to encourage export of goods and services.

The FTP includes provisions related to duty credit scrips and authorisation for duty free imports of raw materials and capital goods. Duty free scrips are government-issued authorisations that allow the scrip holder to import certain inputs without paying customs duties, procure inputs domestically without payment of excise duty, and procure input services without payment of service tax equal to the value of the scrip.

The FTP also provides other schemes that have various tax benefits intended to foster cross border trade. India's latest Foreign Trade Policy (2015-2020), which came into effect April 2015, provides a framework for increasing exports of goods and services.

The focus of this new FTP is to support both the manufacturing and service sectors with a special emphasis on improving the "Ease of Doing Business in India". Accordingly, the FTP introduced two new schemes: the Merchandise Exports from India Scheme (MEIS) and the Service Exports from India Scheme (SEIS). Under these schemes, exporters of specified products/services are eligible for benefits in the form of scrips of from 2% to 5% of the value of exports, depending upon the products and the countries to which the goods are exported.

The scrips can be used for payments of import duties, excise duties, and service tax, and can be traded commercially as well. In India, special tax incentives have been offered to exporters setting up units in a designated area considered a Special Economic Zone (SEZ). Such tax incentives include a direct tax exemption for a specified period and indirect tax exemptions on procurements. For the first time, the new FTP has extended MEIS and SEIS benefits to units in a Special Economic Zone. Such units welcome this because now they are eligible to claim FTP benefits as well as existing benefits available to SEZ units.

### Service Tax update

#### 0.5% Swachh Bharat tax (SBT) on all taxable services

Government Notification No. 21/2015-Service Tax dated 6 November 2015 imposed a 0.5% tax (the SBT) on all taxable services to fund the Swachh Bharat programme, a national campaign to clean the streets, roads and infrastructure of India. The tax is applicable from 15 November 2015.

In the budget for 2015-16, the government increased the service tax rate to 14% (from 12.36%) and retained the option of levying a tax on any or all services to fund the Swachh Bharat Mission, if needed. In his Budget Speech, the Finance Minister sought an enabling provision that would allow the government to levy up to 2% tax, but it was finally set at 0.5% of the value of taxable services. This 0.5% tax is imposed in addition to the 14% Service Tax rate that began on 1 June 2015. Therefore, the effective service tax rate is 14.5%. The SBT is not leviable on services that are exempt from the service tax.

#### Recent case law

#### Karnataka High Court rules on whether enterprise resource planning is subject to VAT

In the case of IBM India Pvt Ltd, the issue before the Karnataka High Court was whether business consultancy service and enterprise resource planning (ERP) implementation service is liable to VAT. The High Court observed that in the integration process of developed ERP software there is no transfer of any goods. ERP implementation specialists only input machine-readable instructions into commercially available standard software to make ERP functional and client-specific and such instructions do not constitute goods and are not described in the contract. The High Court reiterated the well-settled principle of law that unless the goods are in existence and deliverable so that the ownership of the goods is transferred, VAT is not applicable. In the course of implementation, even if any software comes into existence, the title of the software vests with the client. Therefore, no marketable commodity existed to be sold and unless a commodity, whether tangible or intangible, exists, there cannot be a sale or works contract.

This is a landmark decision regarding the taxability of implementation of software because it settles a long-disputed issue. We believe this decision has correctly made a distinction between purchasing packaged software (off the shelf) and customisation thereof to make it functional for a specific client. The important principal laid down by the High Court is that in the course of implementation, the title of the software vested with the customer at any given point in time and hence the same is not a sale that could attract VAT.

### Roadmap to GST

India is moving towards implementing a Goods and Services Tax (GST) and doing so will change the way businesses operate today. Business entities need to take many steps as part of their preparations for implementation of a GST, the foremost being to understand the key areas of impact to their businesses, such as revenue, costing, supply chain, procurement, IT, business compliance, and so on. Businesses should also define the essential transformation processes that will have to be dealt with. With complex business and IT systems, a period of six months may not be enough for even a mid-size company to implement a GST. The impact of a GST will be on business objectives, supply chain, and information technology.

The GST Constitutional Amendment Bill 2014 has been passed in the Lower House of Parliament. However, the Upper House has referred the bill to the Select Committee for consultation before voting. The bill could not be passed during the monsoon session of Parliament. Accordingly, it seems unlikely that the proposed deadline of 1 April 2016 will be met.

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# INDONESIA

## VAT NOT COLLECTED ON IMPORT OF CERTAIN TRANSPORTATION VEHICLES AND ASSOCIATED SERVICES

The Government of Indonesia recently issued Regulation number 69 of 2015 (GR-69) to amend some articles in GR-38/2003 concerning the import and/or delivery of certain transportation vehicles and associated services on which VAT is not collected.

Pursuant to GR-69, VAT is not collected on the import and/or delivery of the following taxable goods:

- a) Water, underwater, or air means of transportation and trains and their spare parts, imported by the Defence Ministry, National Army, and State police (TNI/POLRI);
- b) Sea, river, and lake vessels, ferries, fishing vessels, pilot boats, tug boats, barges and their spare parts, as well as shipping safety equipment and human safety equipment that is imported and utilised by a national commercial shipping company, fishing company, port service management company, or national river, lake, and ferry transportation services company;
- c) Airplanes and their spare parts, human safety equipment, and aviation safety equipment, as well as airplane repair and maintenance equipment imported by any party appointed by a national commercial airline for repair and maintenance services; and
- d) Trains and their spare parts, as well as equipment for their repair and maintenance.

VAT is also not collected on the taxable services associated with the following:

1. Services received by a national trade shipping company, fishing company, port service management company or national river, lake, and ferry transportation services company;
2. Services received by a national commercial airline;
3. Train repair and maintenance services received by public train operators.

As a result of the provisions of GR-69, input VAT paid on these taxable goods/services on whose delivery VAT is not collected may still be credited. Under the previous regulation (GR-38/2003), the input VAT could not be credited.

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# IRELAND

## FINANCE BILL 2015

Finance Bill 2015 was published on 22 October 2015. From a VAT perspective, it contains a small number of changes, the most notable of which are described below.

### Gas and electricity – reverse charge

The VAT reverse charge mechanism has been extended to include certain supplies in the wholesale gas and electricity sector and to gas and electricity certificates. From 1 January 2016, the changes will apply to a taxable person carrying on business in Ireland on the supply of:

- Gas or electricity to a taxable dealer carrying on business in the state, or
- A gas or electricity certificate to another taxable person carrying on business in the state.

In both these situations, the recipient must account for the VAT on a reverse charge basis.

### Educational services

The Finance Bill provides for the continued exemption of children or young people's education, school or university education, and vocational training or re-training. The exemption includes education and vocational training and re-training where it is provided by a recognised body.

The Bill also provides for the continued exemption of tuition given privately by teachers covering school or university education. A provision has also been made to allow the Revenue Commissioners to determine whether a specified educational activity is subject to VAT where the Commissioners conclude an exemption would distort competition.

### Cancellation of VAT registration number

An avoidance of doubt provision has been included that allows the Revenue Commissioners to cancel a VAT registration number that has been assigned to a person where that person does not become, or ceases to become, an accountable person.

Following the cancellation of a VAT number, if they deem it necessary, the Revenue Commissioners may notify a person's suppliers and publish details of the cancellation of that person's VAT number.

### Margin scheme for taxable dealers

An avoidance of doubt provision has also been included that clarifies that the margin scheme for taxable dealers cannot be applied to cross-border supplies of new means of transport.

### Betting and betting exchange services

The VAT exemption for betting and betting exchange services has been extended to such services provided to customers located outside of Ireland.

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# ITALY

## DIFFERENT VAT TREATMENT FOR REBATES AND BONUSES TO CUSTOMERS

In a decision announced on 20 November 2015, the Italian Supreme Court ("Corte di Cassazione") explained the VAT treatment of customer rebates and bonuses.

As the court noted, rebates directly affect the price of the goods sold or services provided, decreasing the taxable amount of the transactions. Bonuses, which generally are paid at the end of the year, are basically just a benefit for customers that reach specific amounts of purchases and are meant to encourage future sales.

In the facts of the case before the Court, in disallowing a VAT deduction claimed by a company that issued credit notes (rebates) representing a price reduction on business to business transactions, the Court stated that the ability to issue a credit note (art. 26 of Decree n. 633/1972 implementing the art. 90 of EU Directive 2006/112), requires that the following conditions be met:

- The rebate must be paid based on a specific (written or verbal) agreement between the parties;
- The agreement must be referenced in the credit note; and
- There must be a correspondence between the original transaction and the reduction.

Absent evidence related to the conditions that must be met, the company is not allowed to recover output VAT related to a credit note because the price reduction amounts to a bonus that is outside the scope of VAT (art. 2, par. 3 of Decree n. 633/1972), not a rebate.

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## NEW ADMINISTRATIVE PENALTY SYSTEM IN FORCE SOON

The Italian government recently approved the 2015 tax reform package, which has also amended the Italian administrative and criminal tax penalty system. This article highlights the main amendments to the administrative penalty system that are relevant for VAT purposes.

The new penalty regime will be effective starting in fiscal year 2017, but the draft 2016 Finance Bill provides for the penalties to begin 1 January 2016. This difference is currently under discussion.

The entire set of rules related to administrative tax violations was reviewed with the intention of focusing penalties on situations involving tax evasion and on taxpayers who clearly have a fraudulent intent, rather than those who merely make a mistake or innocent omission.

The changes most relevant to VAT are:

### Failure to file a VAT return

- Standard penalty of from 120% to 240% of the VAT due, with a minimum of EUR 250.
- The penalty can be reduced to 60% to 120% (with a minimum of EUR 150) if the VAT return is filed before the due date of the VAT return the following year.

### Incorrect VAT return

- Standard penalty of from 90% to 180% of the additional VAT due.
- Where there is a fraudulent intent, the penalty can be increased up to 270%.
- The penalty can be reduced to 60% to 120% if the additional VAT due is less than 3% of the total VAT declared and it is less than EUR 30,000.

### Other important adjustments relevant for VAT purposes

- Violations related to registration of VAT transactions:
  - Standard penalty of from 90% to 180% of the taxable basis that was not declared, with a minimum of EUR 500.
  - The penalty can be reduced to 5% to 10% (with a minimum of EUR 500) of the taxable basis if the operation is out of the scope or exempt.
- Violations related to the reverse charge mechanism:
  - Standard penalty of from EUR 500 to EUR 20,000.
  - Where there is a fraudulent intent, the penalty can be increased to 100% to 200% of the VAT due.

We will keep you informed of any further developments and we would be happy to respond to any questions.

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# LATVIA

## VAT REVERSE-CHARGE PAYMENT METHOD TO CONTINUE

The Latvian government is currently working on the amendments to the VAT Law. Current proposals include a continuation of the application of the VAT reverse-charge payment method.

### Reverse-charge payment method to be extended to mobile phones, computers, and integrated circuit devices

To combat VAT fraud, the proposed amendments include introduction of the VAT reverse-charge payment method to the supplies of mobile phones, tablet PCs and portable computers, and integrated circuit devices (including microprocessors and central processing units). The reverse-charge mechanism will only apply, however, if the recipient of goods pays using some form of payment other than cash.

### Reverse-charge payment method to be extended to transactions involving various supplies of wood

The VAT reverse-charge payment method will also apply to the following wood supplies:

- Firewood logs, branches, bundled twigs, fagots, and similar items;
- Wood chips and shavings, sawdust, and wood waste;
- Sawdust and wood waste not fused into logs, briquettes, pellets or similar forms, for use as fuel wood.

It should be noted that before its accession to the EU, the European Commission had granted Latvia derogation from the general rules laid down by the VAT Directive to allow Latvia to use a VAT reverse-charge payment method for general supplies of timber and related services. The amendments described above mean that these additional types of wood supplies will be treated the same as general supplies of timber.

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# NETHERLANDS

## DOUBLE OR NON-TAXATION ON PRIVATE USE OF COMPANY CARS IN CROSS-BORDER SITUATIONS

The EU Member States have rules to deal with VAT taxation on the private use of a company's business assets. The VAT rules regarding the private use of company cars differs among EU Member States. This is a particular issue in the Netherlands and Germany, whose different approaches can result in double taxation or non-taxation.

### Dutch VAT rules on private use of company cars

As of 1 July 2011, the private use of company cars has been treated as a deemed supply of services under Dutch VAT law. The deemed service is taxable at the place of residence of the company that provides the car to the employee based on the general rule for business-to-consumer (B2C) services, as laid down in Article 45 of the VAT Directive. The Dutch legislature has provided some practical rules (like a flat rate) for the calculation of the VAT on the private use.

If the employee pays any kind of consideration for the private use of a company car, the private use can be regarded as a regular supply of services. This is the case when the consideration is equal to, or higher than, the "open market value" of the private use. The open market value is the amount the company would have to pay in order to make the car (or a similar car) available for private use by the employee under conditions of fair competition.

### Double and non-taxation situations

Some EU Member States, including Germany, regard the private use of company cars as a regular supply of services, even if the employee does not pay consideration in terms of money for the private use.

Germany treats private use without payment by the employee as a regular supply of services if part of the work performed by the employee is considered to be the agreed consideration for the (private) use of the car.<sup>1</sup> The link between the work to be performed and the private use of the car can be based on an employment agreement or a verbal agreement, or implied from the particular circumstances. In other words, in such cases, German VAT rules treat the private use of the company car as a long-term lease of a means of transport. The service is then taxable at the place where the employee resides, under article 56 of the VAT Directive.

A double taxation situation arises when a company established in the Netherlands provides a car to an employee residing in Germany, and the employee does not pay for the private use of the company car, or pays a consideration that is lower than the open market value of the private use.

In this situation, Germany will treat the private use of the company car as a regular supply of services taxable where the employee resides, while the Netherlands will treat this private use as a deemed supply of services that is subject to Dutch VAT because the service is taxable in the company's country of residence.

The opposite situation is also possible: non-taxation. This is the case if a company established in Germany provides a car without receiving consideration to an employee residing in the Netherlands. Under the German rules, the private use would be taxable in the Netherlands and the Dutch rules would deem a taxable service supplied in Germany.

Where the employee does pay consideration that is equal to, or higher than, the open market value, there is no double or non-taxation. In this situation, the private use will be regarded as the long-term lease of a means of transport and both Holland and Germany will treat it as taxable at the place where the employee resides.

### Lease of means of transport or deemed service?

In our opinion, the private use of a company car by an employee without consideration does not qualify as the lease of a means of transport. Based on the CJEU case of *Wolfgang Seeling* (8 May 2003, no. C-269/00), the private use of a car cannot be treated as a lease. Such use is a deemed service based on article 26 of the VAT Directive with a taxable amount consisting of the full costs of providing the service.

In the joined cases of *Medicom SPRL* and *Masion Patrice Alard* (18 July 2013, no. C-210/11 and C-211/11) the CJEU declared that a benefit for income tax, which has to be considered by the recipient, does not qualify as consideration. Both cases deal with the private use of immovable property. In our view, these cases also apply to the private use of movable assets like a company car.

Based on the CJEU cases described above, the private use of a company car by an employee without consideration is a service pursuant to the main rule in Article 45 of the VAT Directive. As a result, the service is taxable at the place of residence of the company providing the car to the employee.

### In practice

As a result of the current difference between the Dutch and German points of view, Dutch companies may be confronted with both Dutch and German VAT when they provide a company car to German employees. The companies might also have to register for VAT in Germany. On the other hand, German-based companies providing company cars to Dutch employees may benefit from a non-taxation situation.

These double and/or non-taxation situations could arise in other EU Member States too. For example, in Luxembourg there is also a risk of double taxation applying. The Luxembourg authorities have already referred the issue to the European VAT Committee. Nearly two years ago, BDO Netherlands raised the double taxation issue with the Dutch tax authorities, but has not yet received a response.

As long as the VAT rules related to the treatment of the private use of company cars is not fully harmonised among EU Member States, the differences in the national VAT provisions of EU Member States should be taken into account. As a result, companies providing company cars to employees must be alert to possible double or non-taxation situations.

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<sup>1</sup> In case of 'non-valuable' private use of the company car, the private use can be regarded as a deemed supply for VAT purposes according to German VAT rules. This can be the case if the company car is provided to the employee occasionally, for a specific reason and for not more than five days in any calendar month.

# PERU

## NEW SYSTEM INVOLVING A NEGOTIABLE INVOICE AND THE VAT PAYMENT MECHANISM

Peru recently introduced a "Negotiable Invoice System". Under this system, "negotiable invoices", which are copies of actual physical invoices that comply with certain requirements, may be freely transferred, giving holders of the negotiable invoice the right to collect the invoice amounts. (The system will also include electronic invoices in the near future.)

The government's objective in establishing this mechanism is quite simple: to provide liquidity to those who provide goods and services by allowing them to trade in the marketplace their right to collect on the invoice (rather than waiting for the expiration of current term offered by their customers to make payments). In effect, the negotiable invoice has the quality of a security and, as such, it is much easier to collect on the invoice (by the third party that acquired the negotiable invoice and within the term specified by the customer).

Though similar to factoring, the negotiable invoice system differs from factoring because it is binding/mandatory, since each invoice issued in Peru must have a negotiable invoice attached to it. Nonetheless, the binding nature of negotiable invoices creates a series of operational problems since only the outstanding amount (plus applicable VAT) must be specified in the negotiable invoice.

As well, the system rules do not set out how to deal with VAT drawdowns and withholdings, both of which are mechanisms created specifically to facilitate the collection of such tax.



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# ROMANIA

## VAT RATES TO BE REDUCED FROM 2016

After almost 12 years, Romania will have a new Fiscal Code (Law. 227/2015) beginning 1 January 2016. The new Fiscal Code will bring significant improvements to Romanian VAT, bringing it in line with the EU regulations and directives.

As a result of the changes, Romania's standard VAT rate will decrease from 24% to 20% effect 1 January 2016 and it will drop again from 20% to 19% on 1 January 2017.

### Other VAT changes

From 1 January 2016, the reduced VAT rate will be lowered from 9% to 5% on the supply of school manuals, books, newspapers and some magazines, as well as on admission charged for access to castles, museums, cinemas, and sports events. For the first time, the reduced VAT rate will also be applied to the supply of potable water and water used for irrigation.

The reduced rate of VAT applies to the transfer of social houses. Under the new Fiscal Code the threshold for social houses that qualify for the reduced VAT rate of 5% is being modified. Though the conditions that must be satisfied to qualify as social housing are not being changed, the value of social houses that qualify for the reduced VAT rate is being increased from RON 380,000 to RON 450,000.

A new definition for capital goods is being introduced. Under the new Fiscal Code, fixed assets that are depreciated in under five years will be considered fixed assets. Goods registered by a taxpayer as inventory or immovable assets will also be considered capital goods.

Romania will introduce a simplified procedure for mergers/spin-offs. Under the new procedures, mergers and spin-offs will not have to comply with the general "transfer as a going concern" (TOGC) rules. But, in order for the transfer to be considered VAT neutral, the buyer must be a Romanian-established entity.

Romania will introduce a reverse-charge mechanism in line with article 199a from the EU VAT Directive 2006/112 beginning 1 January 2016. The reverse charge will also be applicable to the supply of buildings, parts of buildings, and land to Romanian VAT registered companies. The reverse charge also will apply to the supply of mobile phones, devices that use integrated circuits, laptops, PC tablets, and game consoles until 31 December 2018.

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# SLOVAKIA

## SLOVAKIA'S RECENT LEGISLATIVE CHANGES



### VAT cash accounting scheme

**R**ecent amendments to the Slovak VAT Act, which come into force on 1 January 2016, introduce a new special cash accounting scheme for domestic VAT payers with annual turnover up to EUR 100,000. This voluntary, special scheme applies only to supplies where the person liable to pay VAT is a supplier (except for the intra-community supplies of goods/services to other EU Member States or export of goods/services).

Under the new scheme, the VAT liability arises on the day of receipt of payment for goods or services from the customer. The VAT payer who decides to apply this special scheme is entitled to deduct input VAT on purchased goods and services from all the suppliers after settlement of the liabilities to them regardless of whether these suppliers chose to apply this special scheme or not. The right to an input deduction after settlement of the invoice also applies to the customers of such VAT payers, so long as the invoice indicates that the special scheme applies.

### Domestic reverse-charge on supply of construction works

As of 1 January 2016 the Slovak Republic will adopt the approach of other EU Member States and extend the local reverse-charge rules to supplies in the construction industry. The domestic reverse-charge mechanism will apply to the following:

- The supply of construction work,
- The supply of buildings or parts of buildings under construction or similar agreements,
- The supply of goods with assembly and installation, where assembly and installation can be considered construction work.

For such supplies, the supplier will not charge VAT on the issued invoice and the customer will be liable to pay output VAT. At the same time, the customer will be entitled to deduct the input VAT if specific conditions are met. To apply the domestic reverse-charge on these supplies, both the supplier and customer have to be registered Slovak VAT payers. The main purpose for implementation of this rule is to reduce the insolvency of small and medium-sized entrepreneurs and to eliminate tax fraud in the construction industry.

### Reverse-charge mechanism for local supplies of goods by foreign persons

The amendments to the Slovak VAT act also introduce the reverse-charge mechanism for local supplies of goods delivered by foreign persons to Slovak customers. In such cases, the foreign supplier will issue an invoice with no VAT stated on it but the Slovak customer will apply the reverse-charge mechanism in Slovakia. As of 1 January 2016, foreign persons that only provide local supplies of goods will not be required to register for VAT purposes in Slovakia.

### Other changes

Several other changes to the VAT Act were introduced, including:

- Abolition of the obligation by Slovak entities to pay a VAT guarantee when they voluntarily register for VAT if they only perform preparatory activities,
- The ability to deduct input VAT related to goods and services purchased by a VAT payer before the payer is actually registered for VAT in Slovakia, provided that certain conditions are met,
- Extension of the application of the reduced 10% VAT rate to selected groceries, for example, meat, fish, milk, bread, etc.

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# SPAIN

## VAT REFUND PROCEDURE FOR COSTS OF NON-PE ACTIVITIES

The Economic Administrative Central Court has recently ruled on how a foreign company with a permanent establishment (PE) in Spain should recover Spanish VAT relating to activities that are not carried out by that PE.

In the case before the court, the foreign company sought a VAT refund through the Special Procedure set out in the VAT Directive for EU Companies that are not established in Spain. The Court determined that the VAT Directive establishes that the Special Procedure applies in situations where a foreign company does not have a PE in the country, not simply where the activities that gave rise to the VAT were incurred on activities unrelated to the PE's activities.

As a result, the Court concluded that where a company has a PE carrying on operations in Spain, the VAT must be claimed via the General Procedure even if the VAT in question is not linked to the PE's activities. As a result, the input VAT should be sought through the periodic VAT returns submitted by the PE, not through the Special Procedure that is used by companies not established in Spain.

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# SRI LANKA

## KEY VAT CHANGES PROPOSED IN THE 2016 BUDGET

### VAT on wholesale trade and retail trade

In 2013 Sri Lanka introduced VAT on wholesale and retail traders whose turnover exceeded LKR 500 Mn per quarter. Prior to 2013, traders were excluded on the theory that their activities did not add value so as to be liable for "value added" tax. In 2014 the turnover threshold for the application of VAT on such traders was reduced to LKR 250 Mn per quarter and in 2015 it was further reduced to LKR 100 Mn per quarter. The result, of course, was that more traders came within the VAT net.

In the 2016 Budget the Finance Minister announced that the government now plans to exclude this category of traders from VAT. The result will be, in essence, a return to the pre-2013 treatment of the wholesale and retail trade.

### VAT rate revisions

At present, Sri Lanka has two rates of VAT: a zero rate on exports of goods and services where the payments are in foreign currency and a standard rate of 11% on imports and local supplies of goods and services (subject to exemptions). In the 2016 Budget the Finance Minister announced the government's plan to introduce three rates of VAT. The zero rate will continue unchanged but the service sector will be subject to VAT at 12.5% and manufacturers and importers will be subject to VAT at 8%.

Subject to legal enactment, these proposals will be in effect from 1 January 2016.

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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 7 December 2015.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Australian Dollar (AUD)	0.67392	0.73345
Euro (EUR)	1.00000	1.08763
Hungarian Forint (HUF)	0.00319	0.00348
Romania New Lei (RON)	0.22280	0.24254
Sri Lanka Rupee (LKR)	0.00627	0.00682

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