Welcome to the latest edition of *EY VAT News*, which provides a roundup of indirect tax developments.

If you would like to discuss any of the articles in more detail, please speak with your usual EY indirect tax contact or one of the people below.

Previous editions of EY VAT News can be found [here](#).

**In this edition:**

**EY Events**
- EY Indirect Tax Perspectives: 4 July 2017, confirmed attendance by Nigel Mellor, Senior OTS Policy Advisor
- EY ReF (Retail) Forum: 21 July 2017

**General Election 2017**
- Implications for Finance Act measures and tax proposals
- Impact of the Election result on Brexit – Podcast

**EY Publications**
- Global Indirect Tax Connection – Managing indirect tax refunds

**Court of Justice of the European Union**
- Opinion – Limits applied to the application of Bad Debt Relief are disproportionate
- Referrals
- Calendar update

**Supreme Court**
- Hearing dates – BPP now confirmed

**Court of Appeal**
- Latest appeal updates

**EY Global Tax Alerts**
- Nigeria – Federal Government approves higher interest rates on unpaid tax
- Belarus – Introduction of new VAT rules for e-services
- Switzerland – Revised Swiss VAT law
- Saudi Arabia – Publication of Excise Tax bylaws

**European Council**
- Generalised VAT Reverse Charge Mechanism
EY Events

EY Indirect Tax Perspectives – 4 July 2017

The next EY Indirect Tax Perspectives event will be on the morning of Tuesday 4 July 2017 at 1 More London Place.

In addition to the usual update on current and future indirect tax developments we intend to focus on 3 current important indirect tax topics in detail. These are:

- The implications of the new Corporate Criminal Offence for businesses that fail to prevent the facilitation of tax evasion which are potentially wide ranging for many entities
- A post general election discussion looking at the latest position and implications of Brexit from an indirect tax perspective
- The Office of Tax Simplification (OTS) – a look at the current developments and recommendations arising from the OTS review of Value Added Tax. We are pleased to announce that we will be joined by Nigel Mellor, Senior Policy Advisor at the OTS, who will provide his thoughts and latest update regarding the review

If you would like to register for the event please refer to our invitation and contact Elaine McCluskey or Olivia D'Silva.

EY ReFIT (Retail) Forum – 21 July 2017

On behalf of the EY Indirect Tax Retail Team, we are delighted to invite you to the next EY ReFIT Forum, which will be held on Friday 21 July.

ReFIT is an indirect tax forum for people working in Finance/Tax/VAT in a retail environment. The agenda is VAT focussed, but we also include other tax issues which are relevant. Through Forums such as ReFIT, we help to make sense of the latest changes, updates and caselaw and provide you with an excellent opportunity to network with your peers.

Details:
- Date: Friday 21 July 2017
- Time: 10am arrival for tea/coffee, 10.30am start and 1pm finish with a buffet lunch
- Location: 1 More London Place, London, SE1 2AF

We do hope that you can join us – following the election on June 8, all eyes will be on the plans for Brexit, but it’s also business as usual with compliance both in the UK and in foreign territories becoming increasingly complex – we will look through the issues and consider some solutions:

Agenda:
- Caselaw Update
- Global VAT/GST update including GCC
- Real time reporting – Spain
- New Criminal Corporate Offence
- Brexit Update
- Hot Topics
- Open Forum

If you would like to attend this event please contact Simon Baxter.

General Election 2017

Implications for Finance Act measures and tax proposals

Following the UK's election on 8 June, the Conservative Party will be the largest party in the House of Commons but will not have an overall majority. As the largest party, the Conservatives are looking to form the next government, relying on support from the Democratic Unionist Party (DUP). Parliament is due to return and elect a new Speaker of the House of Commons on Tuesday 13 June 2017, with the State Opening of Parliament provisionally scheduled for the following week. Our alert issued on 9 May 2017, provides further details.

From a tax perspective, the immediate key focus is still likely to be on the provisions which were deferred from Finance Act 2017. The Finance Bill 2017, as originally published on 20 March 2017, was cut significantly as a result of the accelerated
timetable required to enact the Bill prior to the dissolution of Parliament in advance of the General Election. Originally the Bill was scheduled to receive Royal Assent prior to the commencement of the Government's summer recess in mid-July, but following the announcement of the General Election it became necessary to enact certain essential measures of the Bill prior to the dissolution of Parliament on 3 May 2017. Accordingly a number of measures, for which greater parliamentary scrutiny had been intended, were dropped from the Bill.

The shortened Finance Bill had its third reading in the House of Commons, and so became substantively enacted, on 25 April 2017. The Bill received Royal Assent on 27 April 2017. A copy of the Finance Act 2017 can be found here.

What remains uncertain is which of the provisions cut from the Finance Bill will be re-introduced and the date they will apply. From an indirect tax perspective, the following clauses were removed:

- **60 (Landfill Tax).** Introducing changes to what constitutes a taxable disposal for Landfill Tax purposes. The reforms were to take effect after Royal Assent on a day to be appointed by Treasury regulations.

- **62 (APD).** Providing for changes to the rates of Air Passenger Duty, intended to be from 1 April 2018.

- **66 (Gaming Duty: rates).** Increasing the gross gaming yield bands for Gaming Duty in line with inflation, originally proposed for accounting periods starting on or after 1 April 2017.

- **67 (Remote Gaming Duty: freeplay).** Amending the Remote Gaming Duty provisions to make certain freepays chargeable with duty, originally proposed for accounting periods beginning on or after 1 August 2017.

- **70 (Tobacco products manufacturing machinery: licensing scheme).** Amendments to introduce new legislation requiring owners and those leasing tobacco manufacturing machinery to secure a license for each machine. The scheme was proposed to be effective from 1 April 2018.

- **108–119 (Fulfilment Businesses).** Introducing new legislation requiring third country goods fulfilment businesses to be registered with HMRC from 2018, keep certain records and carry out due diligence checks on their overseas customers. The Bill also provides HMRC with powers to publish the register of fulfilment businesses to allow other businesses to check whether they are dealing with compliant businesses. If an offence is committed under the scheme, penalties range from imprisonment and/or fines to the forfeiture of goods.

- **122 (Digital Reporting and record keeping for VAT).** Amendments to existing powers to make regulations about the administration and enforcement of VAT. This will enable HMRC to make regulations requiring businesses to keep digital records and report digitally for VAT purposes (in addition to existing powers to require returns to be rendered digitally).

- **124 (Errors in taxpayers’ documents).** Amendments to Schedule 24 to Finance Act 2007, which provides for penalties to be charged in respect of inaccuracies in taxpayers’ documents where those inaccuracies are the result of careless or deliberate behaviour by the taxpayer. The new rules clarify what constitutes the taking of reasonable care.

- **126 (Disclosure of tax avoidance schemes, VAT and other indirect taxes).** Replacing the regime for disclosure of VAT avoidance schemes to HMRC. It moves the primary responsibility for disclosing schemes from users to promoters of arrangements. It also extends the scope of the disclosure regime to include Insurance Premium Tax, all Excise Duties, the Soft Drinks Industry Levy, Landfill Tax, Aggregates Levy, Climate Change Levy and Customs Duties. The measure was proposed to be effective from 1 September 2017.

- **129 (Penalty for transactions connected with VAT fraud).** Introducing a new penalty for participating in VAT fraud. This will enable HMRC to apply a penalty where a person has entered into a transaction connected with fraudulent evasion of VAT; and they knew or should have known of that connection. The penalty will be 30% of the potential lost VAT. The penalty liability can be attributable to company officers where they personally knew or should have known that the relevant transactions were connected with fraud. HMRC will be able to name those liable to a penalty. The new penalty was proposed to take effect following Royal Assent to Finance Bill 2017.

- **130–131 (Customs enforcement powers).** Extending the scope of existing powers to enable an officer of HMRC to inspect, examine and take account of goods held on premises. Also amendments to clarify the powers officers have to use reasonable force to gain entry to a vehicle.

- **Schedule 24 Fulfilment businesses, penalty** (see clauses 108-119 above)

- **Schedule 28 Disclosure of tax avoidance schemes, VAT and other indirect taxes** (see clause 126 above)
Impact of the election result on Brexit – Podcast

The election result has introduced additional uncertainty and instability into the Brexit process. The chance of a softer Brexit has increased slightly, but the most likely outcome is still a negotiated Free Trade Agreement and UK exit in March 2019. A ‘no deal’ scenario remains a risk.

For further information, listen to our views via an EY podcast with Mats Persson, EY’s Head of International Trade and Chris Sanger, EY’s Global Tax Policy leader.

Businesses should continue with Brexit scenario planning. Whilst Britain leaving the EU with a Free Trade Agreement remains the most likely option, the key is to develop plans that can move with different outcomes.

EY Publications

Global Indirect Tax Connection Managing indirect tax refunds

Managing indirect tax refunds is our new Global Indirect Tax thought leadership report.

The report examines the challenges that taxpayers face around the world in recovering foreign VAT/GST, managing domestic VAT/GST credits and obtaining customs and excise duty rebates. It outlines leading practices for avoiding and reducing excess indirect tax costs and for making successful claims. Some key topics covered include:

- Maximising recovery of overseas VAT/GST
- Accelerating domestic VAT/GST refunds
- Making successful claims
- Minimising and avoiding “trapped” VAT/GST and duty
- Improving indirect tax cash flow
- The role of tax technology in managing indirect tax refunds, credits and rebates
- Creating an effective corporate strategy for managing indirect tax refunds, credits and rebates

The report also contains country spotlights for a number of key jurisdictions including Brazil, China, France, Mexico and Italy.

Court of Justice of the European Union

Opinion – Limits applied to the application of Bad Debt Relief are disproportionate

C-246/16 Di Maura

On 8 June 2017, the Court of Justice of the European Union (CJEU) delivered the opinion of Advocate General Kokott (AG) in this Italian referral regarding limits applied to the application of Bad Debt Relief (BDR).

Under EU VAT law, where a business has made supplies of goods or services to customers and has not been paid, it is entitled to make a claim for BDR in respect of the unpaid VAT provided certain conditions are met. In Italy, prior to 2017, VAT BDR claims were only permitted following the conclusion of insolvency proceedings, consequently it is entirely possible for several years to pass before a business is entitled to a VAT repayment.

Di Maura adjusted its VAT following non-payment of a supply. The Italian Revenue Agency subsequently raised an assessment plus penalties asserting that taxpayers are only entitled to make an adjustment if it is clearly established that a debt is uncollectible. Di Maura appealed the decision and the Regional Tax Court referred the case to the CJEU for a preliminary ruling.

The AG has opined that whilst the VAT Directive allows for derogation from the adjustment of VAT in circumstances where payment for a supply has been refused or there has been total or partial non-payment, this should be interpreted narrowly. Whilst Member States may derogate from an immediate adjustment in the event of partial or non-payment, they may do so only in a proportionate manner that takes into account the nature of VAT as a tax on consumption, the principle or neutrality and the fundamental rights of the tax payer. As a Member State is not entitled to exclude the adjustment of VAT in the event of non-payment, the question before the Court is how long a derogation from adjustment is justified?
The AG considered that it is for national courts to determine what measures can be demanded of a taxpayer before it is entitled to make an adjustment for BDR, in doing so taking account of national law in each individual case and applying it in conformity with the VAT Directive. The AG suggested that in this regard it might be proportionate for Member States to demand certain evidence for a probable extended period of non-payment (which might include the opening of insolvency proceedings, albeit that this may not always be proportionate in this regard). It might also be proportionate to implement a reasonable period of non-payment (e.g. six months after issuance of an invoice). Whether it may be demanded that the taxable person bring enforcement proceedings depends particularly on the financial burden entailed. An obligation to pursue judicial enforcement of the collection of a debt that results in significant costs is fundamentally incompatible with the principles of neutrality and proportionality.

In conclusion the AG held that the VAT Directive does not permit a disproportionate restriction of the possibility of adjusting VAT via a claim for BDR. It does, however, permit Member States to take into account the uncertainties surrounding non-payment by requiring the taxable person to take certain reasonable measures. However, the requirement that insolvency proceedings be concluded in relation to the customer represents a disproportionate restriction.

Comment: The AG’s opinion seems to be in line with UK practice but there are a number of countries which could be considered to be applying disproportionate restrictions to the application of BDR.

The provisions relating to BDR changed in Italy with effect from 1 January 2017, specifically allowing taxpayers to issue credit notes at the start of the insolvency procedure. The AG’s opinion could challenge this revised policy if it is still considered disproportionate in the time a taxpayer is expected to wait.

Business which have failed to make claims for BDR or had claims refused, in Italy or elsewhere, may wish to consider the implications of the AG’s opinion in the event that the CJEU’s judgment follows the opinion.

Referrals

The CJEU website shows the following new referral:

- A UK referral from the Supreme Court - C-153/17 Volkswagen Financial Services (UK) Ltd asking, where general overhead costs attributed to hire purchase transactions (consisting of exempt supplies of finance and taxable supplies of cars) have been incorporated only into the price of the exempt supplies of finance, does the taxable person have a right to deduct any of the input tax on those costs?

How is C-93/98 Midland Bank, to be interpreted, specifically the statement that overhead costs “are part of the taxable person’s general costs and are, as such, components of the price of an undertaking’s products”?

For further information please contact Jamie Ratcliffe.

Calendar update

Wednesday 14 June 2017

Judgment – C-26/16 Santogal – Portuguese referral concerning the scope of the exemption with credit (zero-rating) under Article 138(2)(a) of the VAT Directive for the intra-Community supply of a new means of transport.

Judgment – C-38/16 Compass Contract Services - UK referral from the First-tier Tribunal asking whether the different treatment of output tax and input tax Fleming claims (where the former could be made for periods ending before 4 December 1996 and the latter for periods ending before 1 May 1997) breaches any principles of EU law.

Thursday 15 June 2017

Opinion – C-90/16 The English Bridge Union - UK referral from the Upper Tribunal asking, in the context of the VAT exemption for services closely linked to sport within Article 132(1)(m) of the VAT Directive, whether the activity must have a significant physical element of performance or whether a game, such as contract bridge, with a predominantly mental element of performance, falls within the meaning of a ‘sport’ (in other words, whether contract bridge is a sport for VAT purposes).
Thursday 29 June 2017

Opinion – C-303/16 Solar Electric Martinique - A French referral asking whether the sale and installation of photovoltaic panels and solar water heaters on buildings, with a view to supplying electricity or hot water to buildings, constitutes a single transaction that may be characterised as works of construction. This case had originally been listed for an AG opinion on 11 May 2017.

Judgment – C-288/16 IK ‘L.Č.’ - A Latvian referral regarding the interpretation of the exemption of services connected with the exportation or importation of goods. Must Article 146(1)(e) of Council Directive 2006/112/EC be interpreted as meaning that the exemption laid down therein is applicable only where there is a direct legal connection or a reciprocal contractual relationship between the service provider and the consignee or the consignor of the goods?

What criteria must be met by the direct connection referred to in the abovementioned provision in order for a service connected with the importation or exportation of goods to be exempt?

Tuesday 4 July 2017

Opinion – C-308/16 Kozuba Premium Selection - A Polish referral, asking whether Article 135(1)(j) of Council Directive 2006/112/EC precludes a national provision under which the supply of buildings and civil engineering works is exempt save where:

- The supply is made within the period of first occupation or prior to the first occupation
- The period between the first occupation and the supply was shorter than 2 years following their erection or upgrade if the expenditure incurred on the upgrade constituted at least 30% of the initial value.

Wednesday 5 July 2017

Opinion – C-374/16 Geissel – A German referral asking whether a tax invoice is valid, in this case for the purpose of VAT recovery, where it records the suppliers postal address rather than the address from which the economic activity is performed. The referral also asks whether the VAT Directive precludes a national practice of accepting claims of ‘good faith’ only outside the assessment process. Comment: this is an interesting case, with economic activities being provided electronically increasing, it can be difficult to verify the actual place of an economic activity.

Opinion – C-375/16 Butin - A German referral asking whether a valid VAT invoice requires the taxable person to record the address from which the economic activity is performed and if not whether a postal address is sufficient. The referral also seeks clarification regarding which address should be used by those without business premises (eg those trading through the internet). A further question has been asked whether, in the event that formal invoicing requirements are not met, must the taxable person automatically be allowed to deduct input tax where no tax evasion has been committed or the taxable person did not know, and could not have known, of the connection with fraud or, in that event, does the principle of the protection of legitimate expectations presuppose that the taxable person has done everything that could reasonably be required of him in order to verify the accuracy of the content of the invoice? This case will be joined with Geissel above.

Thursday 6 July 2017

Judgment – C-254/16 Glencore Agriculture Hungary - A Hungarian referral asking various questions concerning whether national law, which extends the timeframe within which the repayment of overpaid VAT is made, following a tax investigation which led to a fine for non-compliance, is compatible with EU law. The referral also considers the right to default interest.

Judgment – C-392/16 Marcu - A Romanian referral concerning a belated registration requirement in relation to property transactions. The referral asks whether EU legislation precludes national legislation and established tax authority practice from refusing the application of a reverse charge procedure (mandatory in Romania at the time) where it has not been requested or authorised at the time of the relevant transaction.

Thursday 13 July 2017

Opinion – C-574/15 Scialdone - An Italian referral, made in criminal proceedings, concerning the compatibility with EU law of national provisions relating to penalties for non-payment of VAT and the interaction with national provisions relating to penalties for non-payment of income tax. This case had originally been listed for an AG opinion on 15 June 2017.
Supreme Court

Hearing dates – BPP now confirmed

BPP Holdings Limited and others – connected supplies of education and printed matter, barring order

The Supreme Court will hear HMRC's appeal against the Court of Appeal's judgment in favour of BPP Holdings Limited on 27 June 2017. This case concerns a decision by the Court of Appeal to restore an order barring HMRC from taking any further part in this test case concerning connected supplies of printed matter and education services, and the issue of whether amendments to VAT legislation in 2011 precluded zero-rating for the former. The Court of Appeal held that it was appropriate that compliance with the Tribunal's rules and directions was given the weight accorded to it by the First-tier Tribunal (FTT) in this case. The Court of Appeal considered that HMRC had no good reason, indeed no stated reason at all, for its non-compliance. On this basis, the FTT did not make an error of law, with the consequence that the Upper Tribunal should not have intervened.

For further information please contact Damian Shirley.

Court of Appeal

Latest appeal updates:

- The Court of Appeal will hear the appeal of Adecco UK Limited & Ors against the Upper Tribunal's (UT) decision by 23 April 2018. This case concerns the VAT treatment of supplies of non-employed temporary staff (temps) and whether VAT was due on all payments received by Adecco from its clients in respect of the supplies (the temps remuneration plus commission) or the commission element only, in line with the earlier decision in Reed Employment Ltd TC01069.

The First-tier Tribunal (FTT) found that the temps supplied their services to Adecco and not directly to the clients. On this basis, Adecco was supplying the temps' services to its client's not just introductory services and consequently VAT was due on the total consideration received. The FTT therefore reached a decision that contradicted the earlier decision in Reed. On appeal, the UT considered that the FTT was correct to review the contractual position when determining whether and to whom and of what a supply is made. The temps had no contract with the clients and gave no undertaking to the client to perform the work and the client did not have a contractual obligation to pay the temps for any work done. The UT found that Adecco made a supply of the provision of the temps to the clients in return for the total fees paid by the clients.

EY Global Tax Alerts

Nigeria - The Minister of Finance has approved a new interest rate on unpaid taxes for the year 2017 and has directed the Executive Chairman of the Federal Inland Revenue Service (FIRS) to commence implementation effective 1 July 2017. The new interest rate will be 5% over the Central Bank of Nigeria's (CBN) Minimum Re-Discount Rate (MRR) for the year 2017. The MRR is the rate at which the CBN gives out loans to other banks.

Belarus - Effective 1 January 2018, new Belarusian VAT rules for electronic services (e-services) come into force. These new rules introduce an obligation for non-resident providers of e-services to register for VAT and apply Belarusian VAT to services provided to private individuals.

Switzerland - On 2 June 2017, the Swiss Federal Council confirmed that the revised Swiss VAT Law will come into force on 1 January 2018.

The key changes include:
- Effective elimination of the turnover threshold for foreign entities doing business in Switzerland
- Exemption from Swiss VAT of additional services in the field of insurance
- Introduction of the VAT margin scheme to supplies of works of art, antiquities and collector's items
- Application of the reduced VAT rate of 2.5% to supplies of electronic books and publications
- Clarification of the rules regarding reverse charge liability for taxable as well as non-taxable persons acquiring services from abroad
The most significant change is the effective elimination of the turnover threshold for foreign entities doing business in Switzerland. While the practice around the application of the rules still remains somewhat unclear this change is expected to lead to an additional 30,000 foreign businesses having to register for Swiss VAT.

Another anticipated amendment which would impact foreign businesses, will however only be introduced in 2019. Non-established entities supplying low-value goods to Swiss customers are expected to have to register for Swiss VAT once they exceed a turnover threshold of CHF100,000.

US - National Economic Council Director Gary Cohn said recently that the Trump Administration is preparing a very detailed, draft tax reform plan that will be delivered to Congress when they return to Washington from the August recess. Cohn further said the Administration expects Congress to act on that tax plan in 2017.

House Ways and Means Committee Chairman Kevin Brady this week again confirmed that House and Senate Republicans and Administration officials are meeting to try and unify around a single tax reform plan, something that he said is necessary if tax reform is to take place in 2017. Chairman Brady also indicated he has not given up on including the House Blueprint's border adjustability proposal in a final tax reform plan, despite strong opposition from some quarters. The Chairman was quoted as saying he is convinced that a redesign, coupled with transition rules can address concerns about the controversial provision. He further said he strongly supports a generous transition period for a border adjustability rewrite as opposed to exemptions for imported commodities.

Saudi Arabia – The General Authority of Zakat and Tax (GAZT) has published the Excise Tax bylaws pursuant to the Board Resolution No. 01/09/2017 dated 31 May 2017 (5/9/1438H) on its official website.

The Excise Tax bylaws consisting of 21 chapters and 58 articles will be effective from 11 June 2017 (the effective date of the Saudi Excise tax law).

European Council

Generalised VAT Reverse Charge Mechanism

As previously reported, the Economic and Financial Affairs Council meeting in Brussels on 21 March 2017 discussed the possibility of a generalised VAT reverse charge mechanism (RCM). The council debated a proposal for a RCM which aims to contribute to the prevention of VAT fraud. According to the proposal, Member States would be able to temporarily apply, if they so wish, a RCM to domestic supplies of goods and services above a threshold of €10 000.

Following the meeting, the Council confirmed that it would continue to work on the proposal but a number of issues were noted which required resolution, including; criteria for obtaining a derogation, procedure for repealing a derogation and duration of the derogation.

We now understand that Lawyers to the European Council of Ministers, during a recent meeting, suggested that the proposed RCM could be deemed disproportionate and disturb the EU single market. The Lawyers also considered that the RCM deviates from the general VAT principles of levying VAT throughout the supply chain. The Lawyers have called for further investigation into alternative proposals.

In December 2016 the European Commission presented its proposal for a generalised RCM following requests by a number of EU Member States suffering significant revenue losses due to VAT fraud. The proposal follows the meeting held last year which obtained a commitment from the European Commission to bring forward a legislative proposal allowing individual Member States to apply a generalised RCM to domestic supplies above a defined threshold.