



CONFEDERATION  
FISCALE  
EUROPEENNE

# CFE Fiscal Committee

## National Reports

Developments in national tax laws

April – September 2016



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No changes in: Slovakia, Slovenia, Spain

## BELGIUM

### Program law of 01/07/2016

#### 1. Reporting obligation of payments made to tax havens

The tax authorities expanded the scope of the reporting obligation of payments made to states considered as tax havens. Three major changes were introduced:

- Payments made to permanent establishments and bank accounts in a state considered as a tax haven are also concerned by the reporting obligation.
- The presence of the state on the OECD black list at the moment of the payment is sufficient to require its reporting. The OECD black list is established by the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes.
- The criteria used to constitute the Belgian list of states considered as tax havens are broadened. New criteria : A state is considered as a tax haven if:
  - It is located outside the EEA and
    - companies are not subject to corporate tax on domestic or foreign income
    - Or the nominal corporate tax rate is less than 10%
    - Or the effective corporate tax rate on foreign income is less than 15%

The definition of a “state” has also been adapted and means: independent State recognized by the majority of UN-members or part of a state that can decide on the tax base or the tax rate.

Entry into force: 14 July 2016

#### 2. Country-by-Country reporting and transfer pricing documentation

Implementation in Belgian law of BEPS action 13 ‘Transfer pricing documentation and country-by-country reporting’.

- Country-by-country reporting  
For international group with an annual consolidated group revenue of at least €750 million. This document contains the identifications of the entities of the group and quantitative information of each entity. Its practical form is still to be determined by Royal Decree.

Transfer pricing documentation:

- Master file

This declaration concerns the companies exceeding for the previous financial year one of the following thresholds:

- €50 million of operational and financial income or
- A balance sheet total of €1 billion or
- An annual average of employees of 100 full-time employees.

- Local file

Contains two parts: one part contains general information that has to be completed and filed by all companies or PE satisfying one of the following thresholds:

- €50 million of operational and financial income or
- A balance sheet total of €1 billion or
- An annual average of employees of 100 full-time employees.

The second part is more detailed and provides mainly qualitative and quantitative information on various sort of intercompany transactions. It will need to be completed and filed by companies or permanent establishments that have cross-border intragroup transactions exceeding in total €1 million.

Applicable for accounting years starting as from 1 January 2016

### 3. VAT online gamblings

The VAT exemption for online forms of gambling other than lotteries has been abolished as from July 1, 2016.

### **Law containing urgent tax provisions 03/08/2016**

#### Changes to Belgian patent box regime

Belgian patent box regime has been abolished as from June 30, 2016 but the law provides for a grandfathering period until June 30, 2021. Belgium will have to adapt the PID to the BEPS action 5 Nexus approach. The details of the changes are not now at the moment but the expected changes are a broadened scope, a lift-up of 30% of the qualifying expenses, introduction of a 'tracking system' and only the net amount of the patent will qualify for the deduction.

### **Law introducing a new bank tax 03/08/2016**

The Belgian tax authorities harmonized several Belgian bank taxes and levies into one single "New bank tax". The introduction of this new bank tax leads to a simplification of the formalities to be compiled and

increase of the overall tax contribution of the banking sector.

The tax rate of 0,13231% will be applied on the reported Belgian “debt towards clients” of the year preceding the assessment year.

As a transitional measure, every credit institution and branch subject to the new bank tax are required to pay the new tax ultimately on November 15, 2016. The tax for 2016 will be calculated based on the “debt towards clients” as per December 31, 2015, without taking into account the 2015 averages. The amounts already paid with regard to previously existing annual taxes can be deducted from the amount due.

#### Tax amnesty law 21/07/2016

The federal government decided to introduce a new system of permanent social and fiscal amnesty. The regime allows a taxpayer to regularize his tax and/or social position with respect to income or capital which was not reported to the tax authorities.

The law entered into force on 01/08/2016.

#### **Measures for starting companies**

New measures have been taken to stimulate starting companies. A starting company is a company which has been inscribed at the CBE (Crossroad bank for enterprises) less than 48 months ago.

Three measures entered into force:

#### Tax shelter - Reductions for shares or parts acquired in starting companies

A tax reduction is granted to the individual taxpayers for amounts allocated to the payment (even via crowdfunding) of new shares or units representing a part of the social capital of the company. This contribution must be done either at the constitution of the company or at a capital increase in the 4 years following its constitution. Taxpayer has to own the shares for 48 months. This new measure entered into force to acquisitions of shares as from July 1, 2015.

#### Exemption of interest on loans to starting companies

This exemption is available for loans granted by an individual tax payer to a starting company . The interest is not deductible for the borrower and the exempt income is limited to max 15.000€ for AY 2016. The loan must be granted for at least 4 years and has to be made to finance new activities of the

starting company (refinancing loans are excluded but crowdfunding is accepted). Applicable for new loans granted as from July 1, 2015.

#### Payment exemption of wage withholding tax for starting companies

Starting SME's will only have to pay to the tax authorities 90% of the 100% of the wage withholding tax withheld. Please note that very small entities (new category foreseen by the law) will only have to pay 80% to the tax authorities. The regime is not applicable in case of a reorganization procedure or bankruptcy. Entry into force: Remuneration paid as from August 1, 2015.

#### **VAT decision on costs of lodging, food and drinks made for publicity purpose**

The tax authorities have published their decision to follow the Supreme Court in this matter (VAT Decision nr. E.T.124.247 dd. 13.03.2015). If the costs are made in the context of an activity which mainly and directly aims to inform potential clients about the existence and nature of a product or service with the purpose to promote the sales, those costs are publicity costs and the VAT is fully deductible.

#### **VAT decision about the consequences of the ECJ Skandia case**

The Belgian VAT Authorities have published their decision about the consequences in Belgium stemming from the judgment of the European Court of Justice ("ECJ") in the case Skandia America Corporation ("Skandia"). The ECJ decided in September 2014 that, where an establishment of a legal entity is part of a VAT group, then the disregard applied in the FCE Bank Judgment, in respect to services provided from a head office to a branch, will no longer apply. This is on the basis that the VAT group is the taxable person who receives the supply and not the branch. Therefore, the services are no longer deemed to be provided to the branch with the effect that they can no longer be disregarded for VAT purposes and should as such be subject to VAT.

As expected, the Belgian VAT authorities have upheld the full application of the Skandia case in Belgium. This implies, in practice, that:

- When purchasing taxable services localized in Belgium, the branch or the head-office must self-account for Belgian VAT when one is member of a VAT group (in Belgium or abroad). The VAT will be deductible in Belgium depending upon the actual VAT deduction right at the level of the VAT group (if a mixed taxpayer)
- The services recharged by a branch or a head-office to its foreign head-office or branch, when one is member of a VAT group, will have to be taken into account to determine the VAT deduction right (if mixed taxpayer)

When the services are taxable from a VAT perspective, the above applies regardless of whether the purchasing entity recharges the costs to another member of the VAT group in Belgium. VAT is therefore to be reverse charged in any case.

## CZECH REPUBLIC

### 1) VAT Control Statement

The Tax Administration has started check-ups of the reported data and audits following to the obligatory submission of the Control Statements by all VAT payers (starting from 1 January 2016).

### 2) Electronic Sales Record

The Tax Administration launched info web as well as practical manual for ESR. It is a political topic. Obligatory ESR will be introduced for hotels and restaurants at the end of 2016, further industries should follow in 2017.

### 3) VAT Amendment applicable from 29 August 2016

The amendment has introduced a broadly-applicable reverse charge regime for the sale of goods to a tax-payer if the sale is realised by a person not established and not registered to VAT in the Czech Republic.

Other main changes are: revocation of the special status of free zones, conditions for deregistration of foreign entities from Czech VAT, clarification of VAT correction in case of insolvency, etc.

### 4) New Union Customs Code from May 2016

Many changes in the areas such as customs clearance, including the customs guarantee, assessment and collection of customs duty, corrections of customs declarations, post-release control procedures, status and duties of the customs representative and the person represented, administrative delicts/offences, etc.

### 5) Real Estate Acquisition Tax Amendment Published

The Amendment will be effective starting from 1 November 2016. The principal change is unifying the “tax payer” such that the acquirer of real estate is always the tax payer.

### 6) Providing Evidence of Income and Asset Declaration

New legislation passed, the Financial Administration will have the ability to request that the taxpayers prove the taxation of their income in the past (as many as 10 or even more years ago) in circumstances where it concludes that the increase in assets exceeds the income reported in the tax return by no less than CZK 5 million.

#### **7) BEPS and ATAD reflection in the Czech Republic**

The Ministry of Finance has published a document entitled “International Initiatives against Base Erosion and Profit Shifting in Direct Tax” summarizing main initiatives of BEPS and ATAD.

#### **8) Totalisation Agreement with the USA – Extension to Include Health Insurance**

On 1 May 2016, a supplementary agreement between the USA and the Czech Republic came into force, extending the totalisation agreement between these two countries to include health insurance.

#### **9) Reporting of financial accounts (CRS)**

On 6 April 2016, the Common Reporting Standard/CRS (global platform that will facilitate an automatic exchange of information on financial accounts to be collected and reported by banks and other financial institutions) was implemented into the Czech legal environment.

#### **10) Preparation of a tax evasion as a criminal offence**

An amendment to the Criminal Code is in the legislative procedure which defines the preparation of a tax evasion (or the evasion of another fee/similar obligatory payment) as a criminal offence.

#### **11) Central register of bank accounts**

New regulation regarding the obligation to create a central register of all bank accounts has been approved. The register should be set and managed by the Czech National Bank.

*Prepared by: Lucie Rytířová, KDP CR, Czech Republic*

**Amendments of the Czech VAT Act with effect from 29 July 2016**



On 29 July 2016, the amendments of the Czech VAT Act were published in the Collection of Laws. The amendments generally apply with effect from 29 July 2016 unless specified below otherwise. The important changes are summarized below.

### **Extension of local reverse-charge**

The reverse-charge applies also on any local delivery of the goods realized by a taxable person established outside the Czech Republic which is not registered for the Czech VAT if a recipient of the goods is registered for the Czech VAT. It does not matter whether the recipient is established in the Czech Republic or not.

If the supplier is the taxable person established outside the Czech Republic and is registered for VAT in the Czech Republic the reverse-charge does not apply and such supplier has to account for the Czech VAT in a normal way.

The taxable person established outside the Czech Republic which registered for the VAT in the Czech Republic before 29 July 2016 because it realized in the past local sale(s) of the goods on the territory of the Czech Republic can apply for the cancellation of the VAT registration within 6 months from the above date provided that this taxable person realizes as of 29 July 2016 in the Czech Republic only local sales of the goods to the taxable persons registered for the Czech VAT.

### **Penalties for breach of duty to submit a Control Report (statement)**

All taxable persons registered for the Czech VAT are obliged as of 1 January 2016 to submit, in addition to the VAT return, also the Control Report. The VAT Act defines strictly the amounts of penalties for late submission of the Control Report and for failure to submit them at all. The amendments soften the relevant provisions of the VAT Act.

The taxable person is obliged to pay the penalty at the value of CZK 1000 if it submits the standard Control Report belatedly but before receiving the request of the tax administrator to submit it. The obligation to pay this penalty will not arise if this is a first breach of duty to submit the Control report in the relevant calendar year.

The taxable person is also obliged to pay the penalty CZK 10 000 for the late submission of the standard Control Report just after receiving the request of the tax administrator to submit this Control Report and the Control Report has been submitted within the prescribed substitute period of 5 days.

The taxable person is also obliged to pay the penalty CZK 50 000 for failure to submit the standard Control Report within the above prescribed substitute period of 5 days.

The taxable person is also obliged to pay the penalty CZK 30 000 for failure to submit the corrective Control Report required by the tax administrator.

The taxable person will be entitled to ask the tax administrator to waive these penalties. The tax administrator may wholly or partly waive the above penalties if the Control Report was submitted late or not submitted due to justifiable reasons. The justifiable reasons mean mainly serious disease, natural calamities and defect of the tax authorities electronic system.

### **Tax invoices**

According to the wording of the Czech VAT law valid till 28 July 2016 the export customs declaration was considered as the tax document in the case of the export of the goods. Now the standard invoice containing the data required by the VAT Act will be considered as the tax document. The export customs declaration should be used for proving the exit of the goods from the territory of the EU.

### **Tax administration of taxable persons established outside the Czech Republic and registered for VAT in the Czech Republic**

All taxable persons established outside the Czech Republic and registered for VAT here will be administered by the local tax authorities located in the city Ostrava (until now they have administered by the local tax authorities in Prague). This change is effect from 1 September 2016.

The administration of the taxable persons established outside the Czech Republic and registered for the Czech VAT before 1 September 2016 will be transferred gradually to the local Ostrava tax authorities. All the relevant taxable persons have to be transferred till 31 August 2017.

*Prepared by: Milan Tomicek, KDP CR, Czech Republic*

## **IRELAND**

### **BEPS / ATAD implementation**

#### **Irish Revenue releases Guidelines on BEPS measures**

Ireland's Finance Act 2015 enacted legislation to give effect to two minimum standards proposed by the OECD as part of the BEPS project;

- Action 5: Knowledge Development Box (e.g. patent box regime)
- Action 13: Country-by-Country Reporting

Revenue has now released guidelines on each of these regimes.

- Knowledge Development Box Guidelines: [link](#)
- Country-by-Country Reporting Guidelines: [link](#)

### **Ireland launches formal APA Process with effect from 1 July 2016**

Irish Revenue has introduced a formal bilateral Advance Pricing Agreement programme for transfer pricing issues with effect from 1 July 2016.

Prior to the introduction of the formal programme, Ireland accepted requests for bilateral APAs on an ad hoc basis in situations where a double tax treaty partner agreed to enter into a bilateral APA negotiation.

The guidelines on Ireland's APA process can be viewed in this [link](#).

### **Other EU Matters**

#### **Irish Government challenges EU proposals on Public Country-by-Country Reporting**

Following a review of the European Commission's proposals on public Country-by-Country Reporting, a Government Select Committee has concluded that the proposals are in breach of the EU principle of subsidiarity.

In concluding on its position, the Committee identified a number of concerns on the proposals including the following;

- "The Committee is of the opinion that the objectives of the proposal fall generally within the area of tax policy rather than accounting and thus impinges on a national competency"
- "With regard to the creation of a list of non-cooperative tax jurisdictions, given that tax matters are the remit of National Parliaments, the Committee is of the opinion that the Member States are best placed to determine which states are to be deemed non-cooperative tax jurisdictions".
- "The Committee is further concerned that the reporting threshold of EUR 750 million is potentially subject to change in future reviews. The Committee notes that Multinational Enterprises (MNEs) straddling the turnover threshold of EUR 750 million may face reporting requirements one year and not the next as their fortunes change. Therefore, it is recommended

that the threshold not be based on turnover in the given year, but rather, on the average turnover in a certain time period”.

### **European Commission publishes decision on state aid investigation**

On 30 August, the European Commission announced its decision in the Apple state aid investigation.

The Commission concluded that “two tax rulings issued by Ireland to Apple have substantially and artificially lowered the tax paid by Apple in Ireland since 1991” which, in its view, breached EU state aid rules. Ireland has been instructed to recover the unpaid taxes from Apple for the years 2003 to 2014, which the Commission estimates could be up to €13 billion (plus interest). The Commission states, however, that the amount of unpaid taxes to be recovered by the Irish authorities would be reduced if other countries were to lay claim to the underlying profit.

The Commission notes that the decision “does not call into question Ireland's general tax system or its corporate tax rate”.

Speaking after the publication of the decision, Irish Minister for Finance, Michael Noonan, TD, commented;

*“I disagree profoundly with the Commission’s decision. Our tax system is founded on the strict application of the law, as enacted by the Oireachtas, without exception”.*

Niall Cody, Chairman of the Revenue Commissioners, commented:

*“We have provided all relevant information and explanations to the Commission. These demonstrate that Revenue collected the full amount of tax due from Apple in accordance with Irish tax law”.*

The Irish Government has decided to appeal the Commission’s ruling. Apple has also signaled its intention to appeal.

### **Domestic Matters**

#### **Irish Government outlines tax proposals in Programme for a Partnership Government**

In May, the Government published its Programme for a Partnership Government which sets out the key objectives for its term of office.

The key proposals including the following;

- Publication of a medium-term income tax reform plan (this was published in July)
- Phasing out of the Universal Social Charge (a personal tax which applies on top of income tax – this is as high as 8% for workers earning over €70,044)

- Removal of the PAYE Tax Credit for high earners (this will most likely be tapered out)
- Introducing a PRSI scheme for the self-employed
- Reducing the rate of Capital Gains Tax for entrepreneurs to 10% on gains up to €10 million
- Introducing a new tax on sugar sweetened drinks

Some of the measures are likely to be formally announced in Budget 2017 which will take place in October.

## ITALY

### **Patent Box Regime**

Article 1, paragraphs 37-45 of Law No. 190/2014 (Italy's 2015 Stability Law) introduced an optional tax regime granting a reduced rate (so-called "Patent box") for income deriving from the use, or from the right of use of certain categories of intangibles.

On 7 April 2016, the Italian Revenue Office published a Circular to provide clarifications on application aspects of the patent box regime.

The Circular emphasizes that where interpretative issues might arise with regard to the application of the patent box regime, OECD principles must be referred to.

### **Counteracting Tax Evasion**

On 28 April 2016, the Revenue Office published Circular No. 16/E on operating plans for the countering of evasion in the 2016 tax period. With regard to transfer pricing, it is worth noting that if, on the one hand, such actions must be aimed at behaviors most likely to determine the erosion of taxable bases, on the other, they must keep into due account the risk of triggering double taxation phenomena at international level.

### **CFC Rules and Regulations**

On 4 August 2016, the Revenue Office published Circular No. 35/2016, for the purpose of clarifying any amendments that were introduced in the last two years on CFC Rules and Regulations.

With reference to the notion of States with privileged tax regimes, Law No. 208/2015 established that pursuant to CFC regulations, the tax basis for the participated company must be at a rate of less than 50% vis-à-vis the Italian one.

The Revenue Office specifies that, in order to assess the rate between the nominal tax level of the controlled company and the Italian rate, a comparison should be made between the IRES (Corporate Income Tax) and IRAP (Italian Regional Tax on Productive Activities) rates, on the one side, and the income tax rates of the foreign State, on the other.

### **Cooperative Compliance Regime**

The Official Gazette of 15 June 2016 defined the required procedures to apply for an accelerated advance tax ruling process for such taxpayers that opt for the cooperative compliance regime, given that such provision allows large taxpayers to establish a dialoguing relationship with the Revenue Office specifically aimed at preventing and settling tax controversies.

### **Transfer Pricing: Non-Interest-Bearing Loans**

The Italian Supreme Court, with its ruling No. 7493 of 15 April 2016, amended its jurisprudential position with regard to the possibility of applying transfer pricing rules to non-interest-bearing intercompany loans. With ruling No. 7493, the Judges reiterated that the granting of non-interest-bearing loans is a legitimate transaction, which gratuitousness is entirely left at the interested parties' sole discretion: nevertheless, the transfer pricing regulation provided by Article 110, paragraph 7 of the Italian Income Tax Code (i.e., Testo Unico delle Imposte sui redditi italiano), establishes that the normal (arm's length) value is applicable to transactions entered into between entities belonging to the same corporate group.

### **New Rules for Electronic Invoicing**

As of 1 July 2016, the Italian Revenue Office launched an electronic invoicing system for private parties, through a new APP, free of charge.

The tool – currently optional – allows to perform all checks and verifications in advance, and is expected to increase voluntary compliance.

### **Circular No. 22 of 26 May 2016 on the Place of Supply of TBE Services Within the MOSS Scheme**

The Revenue Office has delivered some guidelines concerning the rules on the place of supply of electronic and broadcasting services and the collection of VAT related to such supplies carried out through the MOSS system.

The most innovative part of the mentioned document is point 18, as it dedicated to the clarification of audit and assessment activities carried out by the Italian Tax Administration with regard to tax collection through the MOSS system. Such section provides an exhaustive explanation of national rules on such activity, and their compatibility with EU tax law.

### **European Law 2015-16**

European Law 2015-16 was enacted with Law No. 122 of 7 July 2016 (Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2015-2016, i.e., Provisions on Compliance of Requirements deriving from Italy's Membership to the EU – European Law No. 2015-2016). Tax matters were introduced in order to prevent infringement procedures:

- removal of VAT at ordinary rate on truffles sold by non-professional collectors. This atypical VAT was also non-deductible for buyers;
- removal of super-reduced rate (4%) introduced after 1 January 1979, and transfer of these products (basil, sage, rosemary) to the new reduced rate of 5%;
- taxation of vehicles owned by foreign students.

This law has also improved the so-called “tonnage tax” regime (i.e., lump-sum taxation of shipping companies) and of Parent Subsidiary dividends. Anti-avoidance rules set forth under Directive (EU) 2015/121 are considered to be already defined by the National GAAR (“abuse of right”).

*September 2016*

*Piergiorgio Valente, Raffaele Rizzardi, Paolo Centore*

## **MALTA**

### **Value Added Tax**

#### **1.1 Amendments to the VAT Act through the Budget Measures Implementations Act (Act XV of 2016).**

The main amendment to the VAT Act may be summarised as follows:

- In case of a correction to a VAT return the six year statutory period during which the Commissioner may make a provisional assessment shall start to run from the date on which the Commissioner receives the request for the correction.
- In article 77 the amendment reduces the further fine which the Criminal court may impose where a person is found guilty of an offence under all paragraphs of this article except for paragraph (p), from ten times to two times the "endangered tax".
- With the amendment in sub-article (3) of Article 84 the compromise fine structure which the Commissioner may apply in lieu of Criminal court proceedings has been thoroughly overhauled. In addition to the existing offences under Articles 76(b) or 77(e) it now also applies to offences under article 77(f) and (o) whilst a four tier fine structure has been introduced. The compromise fines are now set at €100 for a first offence; €200 for a second offence; €400 for a third offence; and, €500 in case where the offender, or any of his employees or any other person acting on his behalf, is found in default on two separate occasions within a period of six months

## **1.2 Revisions to the Aviation Leasing Guidelines**

Whilst the existing conditions for applying VAT on the lease remain, the table which establishes the percentage of deemed use of the aircraft within EU airspace has been amended to be based on the flight range of the aircraft. The VAT treatment provides that on the basis of the use and enjoyment principle, only the portion of deemed use of the aircraft within European airspace is taxable. The remaining portion is deemed to be effectively used and enjoyed outside the EU and consequently falls outside scope of VAT.

## **1.3 Amendments to Malta Travel and Tourism Services Act**

The definition of a tourist has been amended and now covers, "any person who is travelling to and staying in places outside his usual environment for not more than one consecutive year for leisure, business and other personal purpose other than by taking up employment or to establish a business in the place visited."

The above essentially implies that the rental of immovable property to a person who is travelling to Malta and staying here for employment purposes or for the purposes of establishing a business, is not a licensable activity in virtue of the Malta Travel and Tourism Services Act and consequently, for VAT purposes, the rental activity is treated as an exempt without credit supply.

## **1.4 Legal Notice 247/2016 – Amendment to the definition of “educational services and supplies”.**

Legal Notice 247 of 2016 published on 05/07/2016 amends paragraph (5) of Item 12 in Part Two of the Fifth Schedule to the VAT Act by the addition to the original text of the following: "or supplied by any other organisation recognised by the Commissioner as an organisation which has similar objectives.". As a result of this amendment, as from date of publication, the Commissioner may now, for the purpose of the exemption, recognise an organisation which has objectives similar to those of an "educational" organisation.



Furthermore, the Commissioner clarified the activities which are exempt from VAT and which are ancillary to educational services. Activities such as party events and accommodation for students are not considered as an essential part of the educational activity.

### **1.5 Landmark Court Decisions (VAT related) in Malta.**

In **case 8/11JRM**, decided on 05/04/2016 the Court found that Article 83(3) of Chapter 406 (VAT Act) breached appellant's rights as provided in Article 39(9) of the Constitution of Malta and Article 4 of the Seventh Protocol of the European Convention for Human Rights. In addition, the Court ordered the cancellation of those judgements in the Magistrates Court (Criminal Jurisdiction) where a daily fine was imposed on appellant for failure to file VAT returns. The Court based its judgment on the principle of *nebis in idem* in that a person cannot be punished twice for the same offence (in that administrative penalties and court fines were imposed simultaneously for failure to submit VAT returns). Finally, the Court ordered that a copy of the sentence be sent to the Speaker of the House of Representatives in order to regulate himself with regard to Article 83(3) of the VAT Act pursuant to this decision.

## **Direct Tax**

### **1.1 Amendment to the Deductions and Tax Credits Rules that enables Malta Enterprise to approve Tax Credits for students aiming to attain qualifications required by industry**

Malta Enterprise shall not issue the letter of approval in respect of a course of studies that had already been terminated at the time of application; or was commenced more than twelve months before the date of the application and where such application reached the Corporation by the 31st December, 2015; or commences after the 31st December 2020.

### **1.2 Amendment to the Duty on Documents and Transfers Act regarding the valuation of the property**

As from first June 2016, the value of the property subject to duty, transferred *inter vivos* or transmitted *causa mortis*, has been amended. The value of any property subject to duty under the Act, transferred *inter vivos* or transmitted *causa mortis*, shall be the value of such property on the date of the said transfer *inter vivos* or on the date of death of the person from whom the transfer *causa mortis* originates, as the case may be and such value shall be established in accordance with the following provisions. The value of the full ownership of any property on the relevant date shall be the average price which such property would fetch if sold on the open market on that date, in the state it is in as on that

date, including any improvements existing on that date, whether made or paid for by the transferor, the transferee or any other person. Provided that in the case of a transfer by a gratuitous title by a person to his spouse, descendants and ascendants in the direct line and their relative spouses, or in the absence of descendants to his brothers or sisters and their descendants, who acquire such property for the purpose of establishing therein or constructing thereon their sole, ordinary residence, the value thereof shall be deemed to be eighty per centum of the market value of the property so transferred on the date of transfer

The rules relating to the value of the usufruct, nuda proprietas, dominium utile, dominium directum and where the consideration consists of a periodical payment in perpetuity remained the same.

### **1.3 Amendment to the deduction rate for the acquisition of electric vehicle by qualifying persons**

The government amends the deduction rate regarding credit card and incorporate, the tax deduction is calculated at the rate of 150% of the cost incurred in the case of an electric vehicle or 125% of the cost incurred in the case of a hybrid vehicle. "Electric Vehicle" is defined as a vehicle that derives its motive power exclusively from an electric motor, whilst "hybrid vehicle" is defined as a vehicle having at least two different energy converters and two different energy storage systems for the purpose of vehicle propulsion. The total deduction claimed shall not exceed €40,000 in the case of an electric vehicle and € 30,000 in the case of a hybrid vehicle.

### **1.4 Tax credit for Seed Investment**

This scheme will grant tax credits to natural persons resident, or operating in, Malta who bear the full risk in respect of the investment made, being either Malta resident persons or EU/EEA non-resident persons, who have at least 90% of their worldwide income derived from Malta, and who invest in start-up businesses between 1st January 2016 and 31st December 2018.

In terms of the rules, a qualifying investor will benefit from a tax credit of 35% of the aggregate value of the investments made in a qualifying company, provided that the total tax credit shall not exceed €250,000 per annum with a maximum total investment per qualifying company of €750,000.

A 'qualifying company' in terms of this regulation shall mean an SME that satisfies the following cumulative conditions:

- is incorporated in Malta or controlled and managed from Malta, or has a place of business in Malta;
- has been in existence and engaged in carrying out qualifying activities for a period not exceeding three years following its first commercial sale;
- is not listed on any recognised stock exchange;
- has a maximum of ten employees;

- has gross assets of not more than €250,000 immediately preceding the issue of equity shares to the qualifying investor; and
- has been duly issued with the relative compliance certificate by the competent entity in terms of these rules.

### **1.5 Restriction to the exemption relating to Commutation of Pensions**

This notice refers to the exemption relating to commutations of pensions, an exemption that has recently been restricted. Rule 3 of the said LN prescribes that the total amount of capital sum received by way of scheme which is exempt from income tax shall amount to 30% of the total pension. The rules apply irrespective of whether the said capital sum is paid as one lump sum or in a series of tranches within one year from retirement date as prescribed under the Retirement Pensions Act, including any regulations or Pension Rules issued thereunder.

### **1.6 Adoption of a Family Business Act**

The government has adopted the Family Business Act with the aim at facilitating the transmission of family business from members to the same family. The Act proposes a reduction or deferral of family business taxes, the development of clear family governance structures to facilitate the way a family business is organized, provides publicly funded training and succession planning for family businesses, their family members and employees, provided they qualify as a family business under the proposed Act. A “family member” is defined as the business owner’s spouse, his descendants in the direct line and their spouses, and the brothers and/or sisters and their descendants. The draft act defines family businesses as those owned by at least two members of the same family, although a small minority stake by non-family members will be allowed. The legislation is not limited to limited liability structures but encompasses holding structures like trusts and foundations and informal partnerships.

The incentive will also be available for family businesses based outside Malta to register under the Act.

*Geraldine Schembri and Christian Vella*

## **NETHERLANDS**

### **1 BILL TO AMEND DUTCH FISCAL UNITY REGIME**

CURRENTLY A BILL IS PENDING IN THE DUTCH HOUSE OF REPRESENTATIVES THAT PROVIDES FOR A CHANGE OF THE DUTCH FISCAL UNITY. THE BILL (TO AMEND THE DUTCH FISCAL UNITY) IS NECESSARY AS A RESULT OF DEVELOPMENTS IN EUROPEAN CASE LAW ON THE ADMISSIBILITY OF A CROSS BORDER FISCAL UNITY.

BASICALLY, THE BILL INTRODUCES TWO NEW ALTERNATIVES FOR THE FISCAL UNITY REGIME. THE FIRST POSSIBILITY IS A FISCAL UNITY BETWEEN A DUTCH PARENT-COMPANY WHICH HOLDS THE SHARES IN DUTCH SUB-SUBSIDIARY THROUGH AN INTERMEDIATE HOLDING COMPANY ESTABLISHED IN ANOTHER EU MEMBER STATE. THE SECOND POSSIBILITY IS A FISCAL UNITY BETWEEN DUTCH SUBSIDIARIES THAT ARE ALL HELD BY A PARENT-COMPANY SITUATED IN THE NETHERLANDS. CURRENTLY A BILL IS PENDING, HOWEVER ACCORDING TO PUBLISHED POLICY IT IS ALREADY POSSIBLE TO SET UP THE MENTIONED FORMS OF A FISCAL UNITY.

## **2 ABOLITION OF SELF-ADMINISTERED PENSIONS**

A SOLUTION HAS BEEN SOUGHT FOR THE PROBLEM OF THE SELF-ADMINISTERED PENSIONS FOR MANY YEARS NOW. A PROBLEM IS THE DISTINCTION BETWEEN THE FISCAL AND THE COMMERCIAL VALUATION RULES OF THESE PENSIONS. A RESULT OF DIFFERENCES IN VALUATION IS THAT THEY RESTRICT THE PAYMENT OF DIVIDENDS. DUTCH STATE SECRETARY WIEBES HAS RECENTLY NOTED THAT HE WISHES TO ABOLISH THE POSSIBILITY TO SELF-ADMINISTERED PENSIONS. THE CONCRETE PLANS SHOULD BE AWAITED FOR AND ARE EXPECTED TO BE PUBLISHED ON SEPTEMBER 20, 2016. ABOLITION COULD ALSO HAVE INTERNATIONAL CONSEQUENCES.

## **3 STUDY OF THE DIFFERENCE IN TAX TREATMENT COOPERATIVES AND PUBLIC COMPANIES AND LIMITED LIABILITY COMPANIES**

IN NOVEMBER 2015, THE STATE SECRETARY OF FINANCE ANNOUNCED A STUDY OF THE DIFFERENCE IN TAX TREATMENT BETWEEN DUTCH COOPERATIVES (COÖPERATIES) AND DUTCH PUBLIC COMPANIES AND LIMITED LIABILITY COMPANIES. DUTCH PUBLIC COMPANIES AND PRIVATE LIMITED LIABILITY COMPANIES SHOULD IN PRINCIPLE WITHHOLD 15 PER CENT DUTCH DIVIDEND WITHHOLDING TAX ON DISTRIBUTIONS OF PROFIT (IN ANY FORM), WHILE COOPERATIVES ARE GENERALLY EXEMPT FROM THIS WITHHOLDING OBLIGATION (EXCEPT IN ABUSE SITUATIONS). SUBSEQUENTLY, IN MAY 2016 THE DUTCH GOVERNMENT INDICATED THAT IN MANY CASES THERE IS NO JUSTIFICATION FOR THIS DIFFERENCE IN TAX TREATMENT, AND IT ANNOUNCED THAT A PROPOSAL WILL BE MADE TOGETHER TO ELIMINATE THIS DIFFERENCE IN TAX TREATMENT. AT THIS STAGE IT IS UNCERTAIN WHAT THIS PROPOSAL WILL BE; DUTCH PUBLIC COMPANIES AND PRIVATE LIMITED LIABILITY COMPANIES COULD BE PUT IN THE SAME FAVOURABLE DIVIDEND WITHHOLDING TAX POSITION AS COOPERATIVES OR THE FAVOURABLE TREATMENT OF COOPERATIVES COULD BE ABOLISHED.

## **4 INTERNET CONSULTATION INNOVATION BOX**

ON MAY 19, 2016, THE DUTCH GOVERNMENT LAUNCHED AN INTERNET CONSULTATION CONTAINING A DRAFT LEGISLATIVE PROPOSAL TO AMEND THE DUTCH INNOVATION BOX. ACCORDING TO THE PROPOSAL, THE PLANS SHOULD BE EFFECTIVE FROM 1 JANUARY 2017. PARTIES HAD THE OPPORTUNITY TO RESPOND TO THIS PUBLIC CONSULTATION. A CONCRETE BILL SHOULD BE AWAITED FOR.

## **5 INTERNET CONSULTATION ON RECOVERY OF STATE AID**

ON JUNE 15, 2016, THE DUTCH MINISTRY OF ECONOMIC AFFAIRS LAUNCHED A CONSULTATION ON A PROPOSAL FOR THE RECOVERY OF STATE AID. DUTCH LAW DID NOT PROVIDE FOR A CONCLUSIVE SET OF RULES ENSURING THE EFFECTIVE RECOVERY OF STATE AID IN ALL CASES. FOR THE RECOVERY OF AID AS A RESULT OF FISCAL LAW, THE PROPOSAL REFERS TO THE EXISTING TOOLS UNDER A SPECIFIC LAW. THAT LAW WILL BE AMENDED FOR THIS PURPOSE.

A CONCRETE BILL SHOULD BE AWAITED FOR.

#### **6 INTERNET CONSULTATION ON AMENDMENTS TO INTEREST LIMITATION PROVISIONS**

ON JUNE 20, 2016, THE DUTCH MINISTRY OF FINANCE LAUNCHED AN INTERNET CONSULTATION ON AMENDMENTS TO EXISTING INTEREST LIMITATION RULES SPECIFICALLY TARGETING BASE EROSION THROUGH INTEREST DEDUCTIONS ARISING FROM RELATED PARTY AND ACQUISITION FINANCING. THE CONCRETE PROPOSED RULES ARE EXPECTED TO BE RELEASED ON SEPTEMBER 20, 2016 IN THE 2017 DUTCH BUDGET.

#### **7 INTERNET CONSULTATION 4TH ANTI-MONEY LAUNDERING DIRECTIVE**

ON JULY 5, 2016, THE DUTCH MINISTRY OF FINANCE AND THE MINISTRY OF SECURITY AND JUSTICE OPENED AN INTERNET CONSULTATION ON THE BILL FOR THE IMPLEMENTATION OF THE 4TH ANTI-MONEY LAUNDERING DIRECTIVE. THE AIM OF THE DIRECTIVE IS TO ADDRESS THE USE OF THE FINANCIAL SYSTEM FOR MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM. THE PROPOSED RULES SHOULD COMPLEMENT THE EXISTING RULES. PARTIES HAD THE OPPORTUNITY TO RESPOND TO THE PUBLIC CONSULTATION. A CONCRETE BILL SHOULD BE WAITED FOR.

#### **8 INTERNET CONSULTATION SIMPLIFICATION OF THE VAT-REFUND**

ON JULY 12, 2016, THE DUTCH MINISTRY OF FINANCE OPENED AN INTERNET CONSULTATION ON THE SIMPLIFICATION OF THE VAT-REFUND. VAT IS DUE AT THE MOMENT OF SENDING AN INVOICE TO THE CUSTOMERS. IF AT A LATER STAGE IT APPEARS THAT THE INVOICE IS NOT PAID, THE VAT PAID TO THE TAX-ADMINISTRATION CAN BE RECLAIMED. THE INTENTION IS TO SIMPLIFY THESE RULES AS PER JANUARY 1, 2017. A CONCRETE BILL SHOULD BE WAITED FOR.

*CULEMBORG, SEPTEMBER 13, 2016*

*ADJAY PAHLADSINGH*

## **PORTUGAL**

### **Tax developments in general**

#### **a) Personal Income Tax**

##### **i) Monitoring of Individuals by the Large Taxpayers Unit**

The Portuguese 2016 State Budget had already foreseen the inclusion of “high-net-worth individuals” (HNWI) on the scope of monitoring of the Large Taxpayers Unit («LTU»).

The Authorities have since defined the term HNWI for the purpose of monitoring by the LTU.

Therefore, one will be subject to the monitoring of the LTU whenever: i) declares income above € 750,000; ii) owns, directly or indirectly, wealth (including assets and rights) worth more than € 5 million; iii) demonstrates a lifestyle commensurate with the abovementioned income or wealth and/or possession of the related accoutrements or iv) is simply related with HNWIs or with companies or entities that are followed by the LTU.

Other entities, including companies, will continue to be subject to LTU monitoring.

#### ii) Simplified procedure of granting NHR status

A simplified procedure of granting of the successful «Non-Habitual resident regime» has been enacted. Therefore, from now on, the registry is made through the internet, on a platform made available by the Portuguese Tax Authorities.

Nevertheless, an in-depth analysis of the i) eligibility and ii) types of income of any potential beneficiary is still highly advisable.

### **b) Value Added Tax**

The VAT rate applicable to restaurant and catering services has been substantially reduced to the intermediate rate (currently of 13% on mainland).

### **c) Motor Oil Tax**

In order to mitigate the effects of the higher tax burden associated to motor oil tax in Portugal (when in comparison with Spain), the Portuguese Government has recently approved a special regime, according to which a company may be reimbursed of a significant part of Motor Oil Tax applicable to diesel. The regime applies exclusively to companies of road freight services.

### **d) Possible upcoming tax developments**

#### i) Bank account data communications

A new mandatory compliance procedure, according to which the credit institutions operating in Portugal must communicate the data of all accounts with a balance of over € 50.000, is currently in discussion. Even though Portugal has committed to comply with OECD's Common Reporting Standard, it is still unclear if the broader scope of the communications proposed by the Portuguese Government will be ultimately approved.

#### ii) Special wealth tax

In the discussions prior to the presentation of the Portuguese 2017 State Budget, it has been revealed that a new special wealth tax may be enacted.

It is still highly unclear whether this new special tax on wealth will be eventually presented but, according to the press, individuals who own immovable properties with a combined tax amount of over € 500.000 may be subject to a special and higher tax burden.

## **II. BEPS implementation in Portugal**

### **a) Recent amendment to the Portuguese Patent Box regime**

The Portuguese Patent Box regime was recently amended in order to comply with the BEPS OECD Action 5 final report, which foresees Patent Boxes shall be examined according to existence of substantial activity and, namely, through the Modified Nexus Approach ("MNA"), which has since then been widely recognized as a key factor to determine whether a Patent Box regime is legitimate and acceptable under the international rules of taxation.

In broad terms, one will only be able to benefit from the Portuguese Patent Box regime whenever it is possible to track and duly identify that the costs deriving from the investment in R&D that led to the IP obtainment were incurred by the potential beneficiary.

Furthermore, according to a grandfathering provision, old entrants of the Portuguese Patent Box regime may be entitled to benefit from it until 2021, the established final date of abolition of the effects of the initial Portuguese regime.

### **b) Country by Country report**

Following the current international trend, the Country by Country reporting - as set by the final version of the OECD BEPS Action 13 Plan - was recently implemented in the Portuguese Corporate Income Tax code as a new annual compliance procedure.

Therefore, given the clear intent of enhancing the tracking of profit allocation and economic substance of multinational groups, entities belonging to a multinational group will now have to file a return, for each tax period, with all the relevant financial and tax information divided by country or jurisdiction in which it operates.

This obligation is applicable to entities that i) own or control, directly or indirectly, one or more entities in different countries, ii) derive business income equal or over 750.000.000 euros in the previous year and iii) are not controlled by any entities resident in Portugal that are obliged to file this new Country by Country tax return.

Each Country by Country report will contain an overview of aggregate information per country regarding the amount of revenues, profits (or losses) before tax, income tax paid, tangible assets and number of employees.

*Roberto Mendonça, Lisbon*

## SWITZERLAND

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### ***Update on Swiss Corporate Tax Reform III***

A long lasting tax dispute between the European Union and Switzerland re preferential tax regimes has been solved by a joint agreement in October 2014. On 5 June 2015, the Swiss Federal Council proposed an initial version of a Corporate Tax Reform. The primary goal of the Swiss Federal Council was to preserve the attractiveness of Switzerland as a business location but on the other hand to abolish the preferential tax regimes. Since then the two parliamentary chambers (National Council and Council of States) have been debating and have finally approved the bill on Corporate Tax Reform III on 17 June 2016.

The reform package includes:

- **Patent box** (according to the nexus approach model of the OECD)
- **Super deduction for research and development (R&D) costs** (max. 150% of expenses incurred in Switzerland)
- **Notional interest deduction (NID) on surplus equity**
- **Step-up** when leaving the preferential regime, reducing corporate tax rates over a transitional period of time

Patent box, super deduction for R&D and NID will be subject to an overall combined limit of maximum 80%.

A potential introduction of a tonnage tax as well as the abolition of the one-time capital duty have been postponed and will be treated separately at a later stage.

This final bill on Corporate Tax Reform III, approved on 17 June 2016, is subject to an optional referendum, which has already been announced by the socialist party. The popular vote is expected in February 2017. The new law about the Corporate Tax Reform III will enter into force as of 1 January 2019.

Not directly included in the reform is an envisaged general reduction of the cantonal corporate tax rates. By and large corporate tax rates in Switzerland will totally be between 12% and 18%, depending on the concerned canton and location of the company.



### ***Automatic exchange of information in tax matters (AEOI)***

In 2014 the OECD released the new standard on the International Automatic Exchange of Information in Tax Matters (AEOI) which was accepted end of 2014 by almost 100 countries in the world (Switzerland included).

In December 2015 the Swiss Parliament approved the legal basis for introducing AEOI in Switzerland (Administrative Assistance Convention IAA, Multilateral Competent Authority Agreement MCAA, AEOI-act). The Swiss Federal Council launched in May 2016 the public consultation procedure for the AEOI-ordinance involving all interested parties. The period for the hearing ended on 9 September 2016. The AEOI-act will enter into force as of 1 of January 2017.

The AEOI-act provides that the financial institutions of the member countries collect financial datas about their foreign clients and transfer all of them to the local Swiss tax authority which once a year transmit it to the corresponding foreign tax authority. The first data will be exchanged in 2018, so Switzerland is not an early adopter.

In 2015 and 2016 Switzerland has been examined by the OECD re the quality of international exchange of information in tax matters. Switzerland has passed the exam in summer 2016 with the rating 'largely compliant'.

### ***Multilateral agreement on the exchange of country-by-country reports (CbC)***

On 27 of January 2016 Switzerland signed the Multilateral agreement on the exchange of country-by-country reports (CbC), which is linked to the Base Erosion and Profit Shiftig project (BEBS), launched by the OECD and G-20 countries. The Swiss Federal Council has initiated in April 2016 the consultation procedure for the domestic implementation of CbC reporting. After the consultation phase the final bill on CbC reporting is expected to enter into force as of 1 of January 2018.

This Cbc report includes figures of Swiss headquartered multinationals with an annual consolidated group revenue of CHF 900 million or more. The exact threshold will be determined at later stage. The first CbC report is expected to be filed for fiscal years beginning on or after 1 January 2018. Voluntary it is possible to start with filling in the CbC reporting already in 2016 and 2017.

### ***Spontaneous exchange of information***

Also connected to the Base Erosion and Profit Shiftig Agreement (BEBS) is the spontaneous exchange of information (tax rulings) between partner countries. In April 2016 the Swiss Federal Council initiated the consultation about the ordinance on international administrative assistance in tax matters (IAA). The IAA will probably enter into force as of 1 January 2017. First exchange is expected in 2018.

Switzerland will exchange all relevant tax rulings - based on a template - which have been granted after 2010 and will still be valid in 2018.

### ***Tax holiday reform***

The Swiss Federal Council has adopted the revised Swiss federal tax holiday scheme, which came into force as of 1 July 2016.

The reform includes:

- maximum amount of tax relief is strictly related to the number of newly created or maintained jobs
- new and restricted definition of the qualifying areas for a tax relief
- more transparency on given tax reliefs
- tax relief for a maximum period of 10 years

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BDO Ltd

*Walo Staehlin/Sabrina Ingold*

*September 19, 2016*

## **UNITED KINGDOM**

### **New Chancellor (Finance Minister)**

After the decision in the EU referendum of 23 June, 52:48 in favour of UK leaving the European Union, Theresa May took over from David Cameron as Prime Minister and she appointed Philip Hammond as Chancellor of the Exchequer to replace George Osborne.

### **Brexit**

This is the great imponderable at the moment. No country has ever left the European Union so there is no precedent. The UK needs to notify the EU, under Article 50 of the Treaty, that it intends to leave and that at the end of a 24 month period the UK will no longer be a member of the EU.

It is in the VAT and Customs areas that the UK will have to make some changes as we will now, depending on the outcome of the negotiations, be outside the Customs Union and we will certainly be a third party country as far as the EU VAT area is concerned.

### **Autumn Statement**

This year's Autumn Statement will be on 23 November 2016

This is going to be one of the first opportunities to gauge the tax policy aims and objectives of the new Chancellor.

The Autumn Statement is also like a mini-Budget.

There are likely to be detailed policy announcements following a whole range of consultations during the summer and draft clauses will then be published shortly afterwards for inclusion in Finance Bill 2017 which will be published in Spring 2017 and enacted in Summer 2017. The consultations are mainly about the new UK digital tax system, which will come in in a few years' time, employment and payroll taxes, simplifying business tax for smaller businesses and offshore evasion and avoidance.

### **Finance Act 2016**

In the March 2016 Budget the then Chancellor announced that the headline rate of corporation tax was going to come down to 17% by 2020 and there is a provision to that effect in FA 2016.

The Finance Act completed its Parliamentary stages on 13 September 2016 and it is, at 649 pages, the second longest Finance Act ever.

### **Direct tax**

#### **The corporation tax rate**

The headline rate is 20% and will go down to 19% from April 2017 and then to 17% from April 2020.

#### **Implementing BEPS**

The government is keen to introduce the measures included in the OECD BEPS Action Plan.

There was a second consultation in the summer on limitations in interest deductibility to 30% of group earnings together with a group ratio subject to a £2m *de minimis* threshold. This change won't be introduced before 2017 but there are going to be immediate changes to combat hybrid mismatches.

There are provisions in place for country by country reporting under BEPS Action 13 and there may be requirements to disclose information by large business as explained in the item immediately below.

#### **Large Businesses to publish their tax strategies**

The largest businesses in the UK, about two thousand, will have to publish details of their tax strategies to cover the approach of the UK group to risk management and governance arrangements in relation to UK taxation, the attitude of the group towards tax planning (so far as affecting UK taxation), the level of risk in relation to UK taxation that the group is prepared to accept and the approach of the group

towards its dealings with HMRC. The government has also introduced a power in this year's Finance Act, which if triggered would require country by country reporting to be added to the other matters that need to be disclosed as part of the company's tax strategy.

### **Indirect Tax**

We have set out below the chronological developments over the past six months.

#### **April**

- 20 Apr Condoc on extending DOTAS for VAT to promoters as well as extending it to IPT and gambling duties.
- 10 Apr HMRC issues paper on how the requirement for temporary storage premises to be 'exclusively operated' by the holder of the temporary storage approval, would affect new and existing temporary storage approvals under Union Customs Code (UCC).

#### **May**

- 4 May HMRC issues two papers on how it will deal with VAT reclaims concerning VAT on golf club fees arising from CJEU in Bridport and West Dorset Golf Club (Case C-495/12).
- 4 May Court of Appeal decides 'spot the ball's' competition is a game of chance.
- 11 May Supreme Court holds by a majority decision that Airtours is not entitled to input VAT deduction for VAT on due diligence services it engaged PWC for at the request of Airtours' bankers (PWC services supplied to bankers, but paid for by Airtours).
- 12 May Court of Appeal decides University of Huddersfield scheme for its property company (owned by a discretionary trust set up only for the scheme's purpose), to refurbish university properties at a net of VAT cost – an abuse of rights.
- 26 May CJEU decides card handling and booking services of Odeon Cinema Holdings Ltd's subsidiary Bookit, and National Exhibition Centre Ltd, were taxable supplies and not exempt payment or transfer supplies.

#### **June**

- 23 June The First-tier Tribunal (FTT) has held that Life Services Limited ('Life'), a non-profit making provider of social welfare services, was entitled to VAT exemption under the Health and Welfare exemption, despite not strictly falling within that UK legislation. The UK legislation was not in accordance with the updated EU VAT Directive and CJEU decisions on the interpretation of 'charitable status' for VAT purposes.
- 24 June HMRC issue Brief 11/2016 setting out its revised policy on the transfer of a business as a going concern (TOGC) concerning the acquisition of a business that supplies only the acquired group.
- 27 June Upper Tribunal (UT) holds that Zipvit was not entitled to input VAT recovery on Royal Mail invoices that should have been subject to VAT.
- 27 June European Council of the EU adopted a directive aimed at increasing legal certainty for transactions involving vouchers by harmonising national VAT rules in this area. It will need to be adopted by Member States with respect to vouchers issued after 31 December 2018.

## July

25 July The European Commission is consulting on reduced VAT rates for electronically supplied publications such as eBooks. Responses are requested by 19 September 2016.

## August

10 Aug Following a consultation in February 2016, HMRC has announced that it is introducing a 'use and enjoyment' provision, for repair services carried out on goods in the UK, as a result of an insurance claim. This will apply to transactions carried out on or after 1 October 2016. Services that are effectively used and enjoyed in the UK will be subject to UK VAT.

15 Aug HMRC issues 'making tax digital' consultations which proposes all VAT registered businesses be within quarterly reporting from April 2019.

15 Aug UT to refer further questions to CJEU on whether payment services come within the financial services VAT exemption in the case of DPAS Ltd.

23 Aug Brief 13/2016 announces that HMRC now accepts that the law does not require a dwelling to be formed from a single building. It has invited taxpayers to make retrospective VAT reclaims for a period of up to four years before 23 August 2016.

## Sept

1 Sept Court of Appeal holds that discounted supplies of water based activity services, provided by Longridge on the Thames to disadvantaged youths, is a business activity that prevents zero rating of otherwise charitable purpose building construction costs.

5. Sept Brief 14/2016 extends to 31 December 2017 the deadline for the transitional period during which taxpayers can recover input VAT on pension fund management costs incurred on the management of occupational pension funds under the 30/70 rule where a single invoice is issued to cover both fund management and investment management costs.

8 Sept Advocate General Kokott has advised that the prohibition on applying reduced rates of VAT to books delivered in electronic form is not in contravention of the principle of equal treatment of similar supplies.

## **Stamp duty land tax (SDLT) and land & buildings transaction tax (LBTT) and Land Transaction Tax (LTT)**

- 11 Apr – exemption from SDLT additional charge for granny annexes announced (draft legislation issued 27 June).
- 4 May – from 26 May new exemption from SDLT for purchases/sales of land by public bodies, effected under s51/53A of Housing and Regeneration Act 2008.
- 26 May – Project Blue wins at Court of Appeal as HMRC had assessed the wrong entity and were out of time to assess the right entity. Also the Court considers FA03 s75A (SDLT anti-avoidance provision) does not require an assessment of whether an arrangement has an avoidance purpose to be within scope.

**Annual tax on enveloped dwellings (ATED)**

**Stamp duty and stamp duty reserve tax**

- 29 June - For instruments executed on or after 29 June 2016, it will no longer be possible to obtain FA86 s77 stamp duty relief for share for share exchanges in certain public or private company situations. The restriction applies where there are arrangements for the control of the company to change.

**Insurance premium tax (IPT)**

**Sugar levy**

- 18 Aug – HMRC/HMT issue consultation on form of the sugar levy scheduled to take effect from April 2018.

*ICAEW Tax Faculty / Chartered Institute of Taxation  
September 2016*