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INDIRECT TAX NEWS

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MALAYSIA

NEW GOVERNMENT REDUCES GST RATE TO ZERO

On 16 May 2018, the Ministry of Finance issued a Media Release conveying that the rate of Goods and Services Tax (GST) currently at 6% will be reduced to 0%, effective 1 June 2018.

However, GST registrants are still required to comply with the current GST regulatory framework including the issuance of tax invoices, submission of GST returns and claiming of GST Input Tax Credit.

The Media Release has also reiterated that businesses are to ensure that the pricing of their goods and services is in accordance with the Price Control and Anti-Profiteering Act 2011.

The GST legislation has not been repealed. As such, GST registrants are still required to comply with the current GST legislation and regulatory framework.

Furthermore, GST registrants are required to ensure that no GST shall be charged on exempt supplies and GST Input Tax incurred attributable to exempt supplies is not claimable.

It has been announced that Sales and Services Tax (SST) will eventually replace GST but at this point in time, no further details on SST have been announced.

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EDITOR'S LETTER

Dear Reader,

Greetings from sunny (yes sunny 😎) Dublin where the longer springtime daylight hours have led to a very significant increase in the number of tourists visiting Ireland from abroad.

Whereas this is very welcome news for our island economy, it is also leading to unwelcome pressures and related cost increases in Dublin hotel accommodation, pending completion of 10 or 12 hotels currently under construction here.

This year BDO Ireland has the pleasure of hosting our BDO International Direct and Indirect tax colleagues at the Global Tax Conference – a combined high-level tax conference/indirect tax conference – a change from our traditional separate tax stream conferences.

This new format should help ensure there is more 'joined up' thinking within our international tax community, thus ensuring continuous improvement in the quality of services we provide our clients.

Hopefully I will have the pleasure of welcoming quite a number of you to Dublin in mid-October.

In the meantime, I hope you enjoy the latest edition of BDO Indirect Tax News.

Kind Regards

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ARGENTINA

FISCAL CONSENSUS ON TURNOVER TAX

The so-called Fiscal Consensus (Law N° 27.429) was signed on 1 January 2018 by the national government, representatives of the Provinces, and the Government of the Autonomous City of Buenos Aires. This law sets forth regulations aimed at reducing the provincial tax burden in an effort to fuel the Argentine economy.

Regarding Turnover Tax, which is a provincial tax levied at different stages of production and selling and is based on gross revenue, the provincial jurisdictions issued regulations with a trend toward:

- Eliminating differential treatment based on: the place of settlement, the location of the taxpayer's establishment, or the place of production of the asset.
- Considering the income arising from the provision of services as non-taxable where the services are effectively used or exploited abroad.
- Establishing exemptions and applying tax rates no higher than the ones provided for in the regulation for each activity and period. For example, in the case of a company in the manufacturing sector, the maximum rate is of 2%.
- Using the collection regimes for the tax, so as to avoid generating inappropriate or permanent credit balances.
- Establishing an automatic refund mechanism for taxpayers with respect to credit balances generated by withholdings accrued during a reasonable period of time, which may not exceed six months from the taxpayer's filing of a refund request.

To sum-up, with this law, Argentine administrations (both National and Provincial) are seeking to help entities be more competitive.

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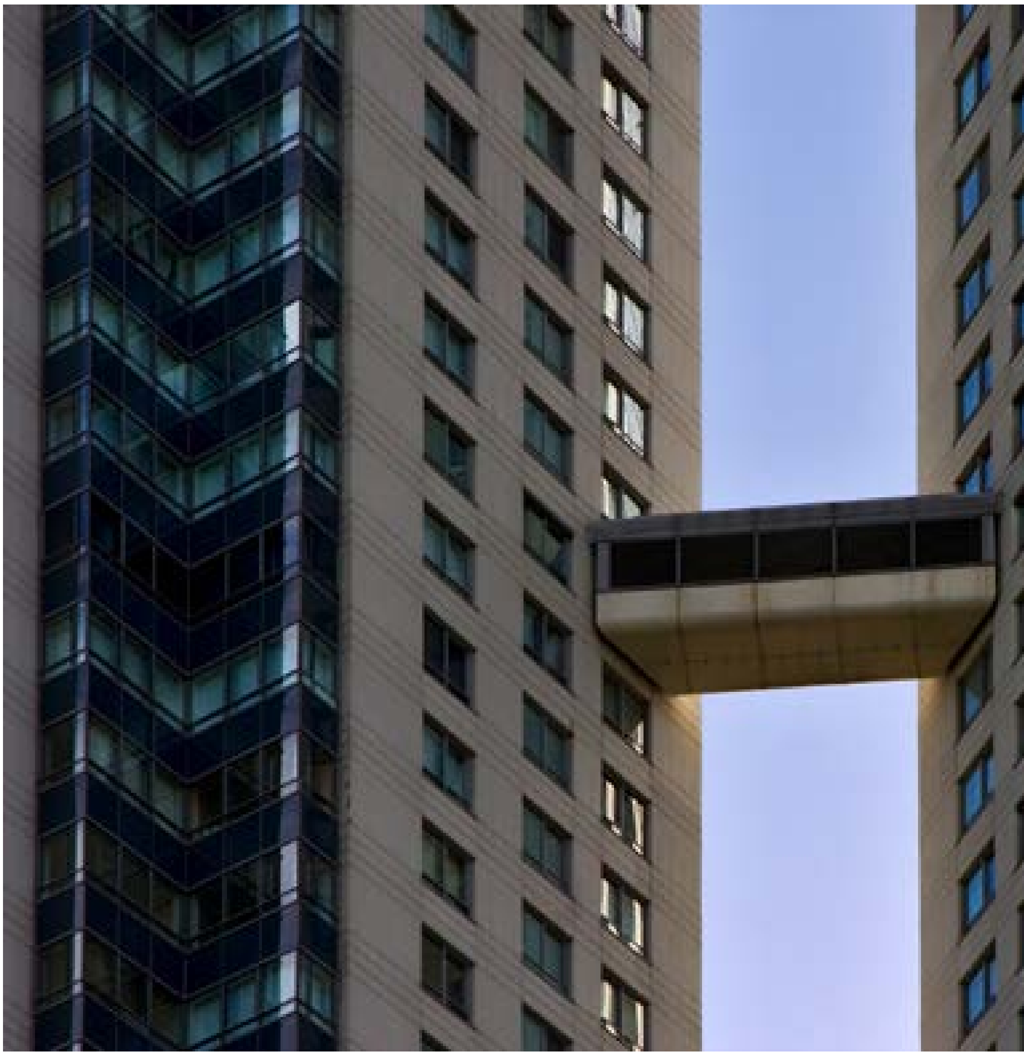

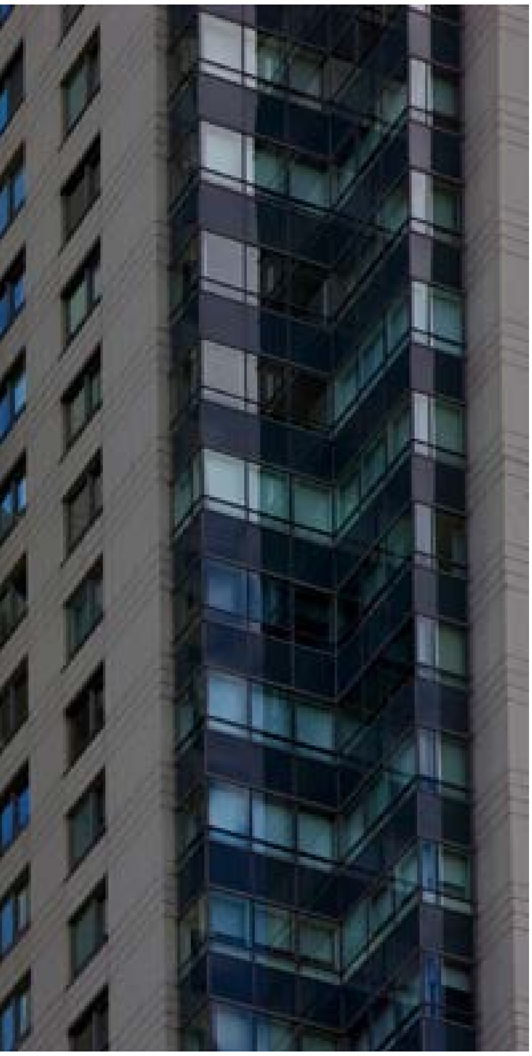

BAHRAIN

UPDATE ON IMPLEMENTATION OF VAT

Bahrain, one of the four remaining Gulf Cooperating Countries (GCC States) that is yet to implement VAT, has pushed back the projected date of implementation a number of times. The last implementation date unofficially suggested by the Finance Minister was October 2018. However, with Ramadan during May and June, summer holidays, and the upcoming parliamentary elections in October, the unofficial estimate is that VAT will more likely be implemented in early 2019.

Once VAT is implemented it will apply to most supplies of both goods and services at a standard rate of 5%. However, we are still awaiting the details of the Bahrain domestic VAT legislation, which will be based on the GCC Framework Agreement that allows certain domestic supplies to be either standard or zero rated from VAT.

Given the relatively low compulsory registration turnover threshold of BHD 37,500 (USD 100,000), we expect that most companies will be required to register.

Excise update

Bahrain began levying excise tax on specific harmful goods on 30 December 2017 under Excise Law number 40 of 2017.

The excise tax applies to products that are harmful to human health and to the environment and aims to promote the consumption of healthier alternatives by discouraging consumption of these harmful products.

Currently, the excise tax applies to tobacco (100%), carbonated drinks (50%), and energy drinks (100%). The following are required to register for Excise Tax:

- Companies that produce excise goods;
- Companies that import excise goods;
- Companies involved in the storage of excise goods.

Base Erosion and Profit Shifting (BEPS) update

As of May 2018, the Kingdom of Bahrain has become a member of the Base Erosion and Profit Shifting Framework, suggesting a commitment by the country's leadership to tackle tax evasion schemes designed to shift profits to low tax jurisdictions.

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BELARUS

VAT ON ELECTRONIC SERVICES

Since January 2018, services provided via the Internet (in other words, services in electronic form) are subject to Value Added Tax at the general rate of 20%. Particularly, non-resident providers of electronic services to consumers in Belarus must charge local VAT from 1 January 2018. They are obliged to register for VAT with the Ministry of Taxes and Duties, and the reporting period is quarterly.

For purposes of VAT, services provided in electronic form are subject to tax in Belarus if one of the following criteria applies:

- The services are provided to an individual whose place of residence is in Belarus;
- The bank account used for payment is at a Belarusian bank or via an online wallet;
- The IP address refers to Belarus;
- The phone number used for payment has an international code that refers to Belarus.

The following services are treated as being provided in electronic form (via the Internet):

- Use of a database, software, electronic books, educational information, graphics, music, and so on;
- Advertising;
- Automated data processing and collection;
- Providing information to potential customers;
- Use of an electronic platform for trade;
- Web-page support, hosting services, domain names.

Among other services, the following are not regarded as electronic services under the Tax Code:

- Sale of goods ordered via the Internet but physically supplied in Belarus;
- Sale of computer programs (games) on tangible media;
- Sale of data bases on tangible media;
- Consulting services provided via e-mail;
- Internet access services.

A taxpayer that fails to file a quarterly report is subject to liability (penalties, late payment interest).

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BELGIUM

OPTIONAL VAT SYSTEM FOR PROFESSIONAL LETTING OF IMMOVABLE PROPERTY FROM THE LAST CALENDAR QUARTER OF 2018

In March 2018, the Government finally approved the optional VAT system for immovable letting. This was first announced in 2017 as part of the 'Summer Agreement' of the Belgian Federal Government, but was then delayed for budgetary reasons. Belgium now aims to implement the optional system by the last calendar quarter of 2018.

Option to tax for professional (B2B) immovable letting

As soon as the new regulation enters into force, property owners will have the option to subject the letting of their 'new buildings' to VAT, and as a consequence will also be able to recover the input VAT incurred on the investments made. This **option** is however only possible if:

- It concerns the letting of immovable property destined for business purposes (that is, the tenant uses the building for his VAT taxable activities, regardless whether in the end these activities are taxed or exempt);
- It concerns a newly constructed building, or a building that has undergone thorough renovation works (that is, stripping the building entirely and rebuilding it);
- Both the landlord and tenant jointly opt for the VAT system (the modalities still need to be published).

As a consequence, there will be **no option** to tax for the letting of existing buildings or the letting of new buildings to private individuals, taxpayers using the building for private purposes or to public bodies who use the building for an activity for which they do not qualify as a taxable person.

The optional VAT system will only be available for newly constructed buildings, meaning that if the project has already started (in other words, material works to the construction have been performed) before the date of implementation of the optional system, the option to tax will not be possible.

The optional application of VAT will also be available for buildings that will be significantly renovated to a point that they become a 'new' building for VAT purposes after the date of implementation.

Short term rental agreements (almost) always subject to VAT

In addition to the optional VAT system for professional immovable letting agreements, a mandatory application of VAT will be implemented for short term letting agreements. This obligation will apply to all immovable property letting agreements (business-to-business and business-to-consumer) with a duration of less than 6 months.

There is, however, an exception for private dwellings and buildings used for activities of a social-cultural nature. Such letting agreements are always VAT exempt.

In practice, the mandatory application of VAT will mainly concern the short term letting of spaces for events, congresses, seminars, or meetings.

Waiting for enactment

Currently, we are still waiting for the final legislation and the administrative guidelines to be published.

Nevertheless, proactive analysis of new construction or renovation projects is recommended in light of these fundamental VAT changes.

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CHILE

NEW GUIDANCE ON TAX TREATMENT APPLICABLE TO MOTORISED VEHICLES

On 18 January 2018, through Circular Letter No. 5, the Chilean Tax Authority provided updated guidance related to the tax treatment applicable to motorised vehicles for VAT and Corporate Income Tax (CIT) purposes.

The Circular makes it clear that to determine the tax treatment for each vehicle, the Tax Authority applies the classification of motorised vehicles used by the National Customs Service. Here is a summary of the VAT treatment:

- VAT taxpayers whose regular business is the sale or lease of any type of vehicles are entitled to a VAT credit for the import, acquisition, and/or leasing of such assets.
- VAT taxpayers whose regular business is something other than the sale or lease of vehicles may claim a VAT tax credit with respect to the expenses of maintaining and operating the following vehicles acquired or imported for use directly related to their business or activity:
  - Motorcycles;
  - Light and medium-weight motorised vehicles classified as vans, jeeps, mortuary cars, ambulances, and minibuses; and
  - Heavy motor vehicles. Note that these taxpayers are not entitled to a VAT tax credit on vehicles classified as 'automobiles, station wagons, or similar vehicles' unless the taxpayer obtained authorisation of the Director of the Chilean IRS qualifying the vehicles as necessary to the taxpayer's business.

To qualify a vehicle as necessary, the Tax Authority applies a series of criteria to determine the connection of the disbursement with the reality of the business, considering functional, personal, temporal, territorial, and economic criteria.

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HUNGARY

REAL-TIME INVOICE REPORTING IN HUNGARY

Hungary's new regulation regarding real-time invoice reporting is expected to be implemented on 1 July 2018. As communicated previously, the regulation will apply to business-to-business (B2B) invoices issued by taxpayers (including Hungarian VAT registered companies) where the charged VAT amount reaches the threshold of HUF 100,000 (approximately EUR 320). The issued invoices should be reported to the tax office immediately – once the invoicing system issues them – in the prescribed xml format. Users of the live reporting system must register on the following website: **https://onlineszamla-test.nav.gov.hu/**.

In addition to the registration, you can also find useful information on that portal. On the portal is the latest version of the xsd schema, which defines the data circuits and their main features, so you can produce the xml file to be uploaded to the test portal. Please note that manual upload is not possible. During the registration process, technical user data should be generated, ensuring the 'machine-to-machine' communication. The portal and most of the documents are also available in English and German.

The tax office may levy default penalties of up to HUF 500,000 (approximately EUR 1,600) per invoice if a taxpayer does not fulfil this real time invoice reporting obligation.

BDO in Hungary can provide tax advisory services, immediate solutions, and interface development in connection with this new regulation.

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INDIA

IMPACT OF GST ON INDIAN ECONOMY

Introduction of a Goods and Services Tax (GST) at the national level has been one of the key fiscal reforms the current government has attempted. Implementation of the GST and the long-awaited indirect tax reform process has brought with it some anxieties. Even with the uncertainties and challenges, there is confidence that in the long run, it will lead to higher GDP growth and a broader tax base. Signs in the short term justify these expectation.

Macro economic view

Macro economic indicators from the fourth quarter of 2017 and first quarter of 2018 show a positive trend. Inflation has trended downward, due to elimination of cascading taxes. The broader tax net resulted in increased tax revenue and the fiscal deficit is expected to remain in check. Moreover, Indian exports have become unshackled from the lack of international price-competitiveness that they suffered from because of previously embedded taxes and compliance costs.

Improved revenue collections

Nearly 10 months after introduction of the GST, the economy is recovering from the early shocks. Government has been proactive in addressing initial teething troubles, which in turn increased the number of tax filers. Tax revenues have crossed INR 1 trillion in April 2018, as compared to a monthly average of INR 0.90 trillion during the nine months before. Introduction of the e-way bill system for the movement of goods is expected to help combat evasion and increase tax revenue.

The ripple effect these changes have had on direct tax revenue is evident too. Direct tax collection has jumped 18% in 2017-18 from earlier years. Tax filings increased 26%, as GST and direct tax registrations are linked, resulting in integration of the informal economy into the national mainstream economy.

Conclusion

It will take some time before the true impact of GST settles in. But, if the government continues to address concerns of businesses and focuses on capacity building, GST can take India to the next level of growth.

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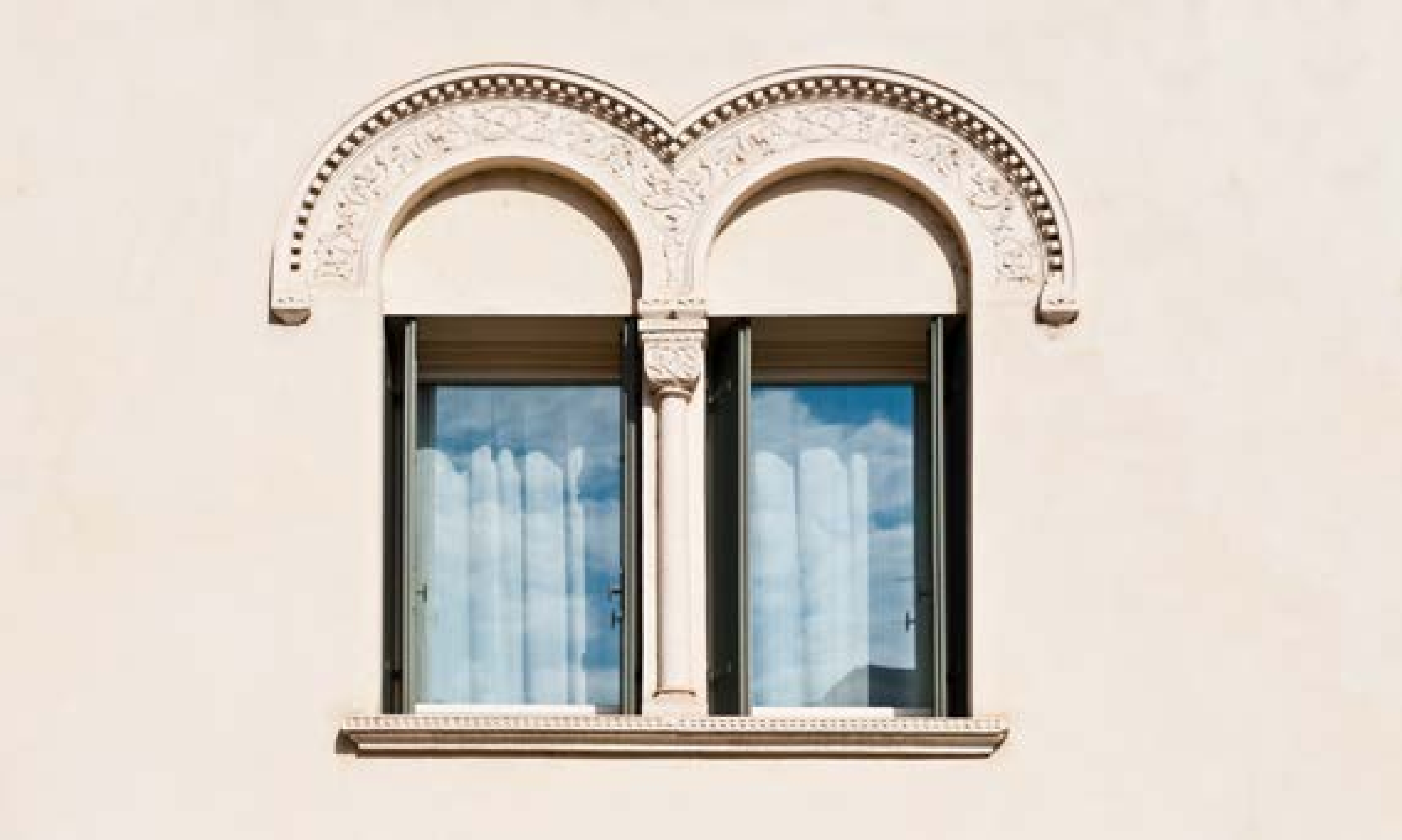
ITALY

TRANSFER PRICING ADJUSTMENTS FOR VAT PURPOSES



A recent decision of the Italian Court (Sentenza Corte di Cassazione n. 2240 of 30 January 2018) examined transfer pricing adjustments for VAT purposes and applied important principles that were previously stated by the European Court of Justice (CJEU) and set out in the VAT Committee's Working Paper n. 923.

In the underlying matter, the Italian tax authorities challenged the taxpayer's omission of VAT on transfer pricing adjustments that were challenged for corporate tax purposes.

According to Articles 2 and 73 of the VAT Directive (2006/112/CE), a supply of goods or services is subject to VAT when made for consideration by a taxable person and the taxable amount shall include everything that constitutes consideration obtained, or to be obtained, by the supplier in return for such supply. As a general rule, for VAT purposes, the consideration does not have to reflect the market value of the goods and services provided. Instead, since the VAT Directive does not refer to the arm's length principle of Article 9 of the OECD model, for VAT purposes the taxable amount of the supply of goods or services is based on the consideration actually received for the goods or services.

For VAT purposes, the only exception is included in Article 80 of the EU Directive, which contains anti-avoidance rules that allow Member States to levy VAT on a transaction based on its open market value rather than on the consideration actually paid, provided that certain conditions are met.

While the VAT Directive recognises that the price at arm's length may have to be used to determine the taxable amount of a supply of goods or services, the general rule laid down in Article 73 of the VAT Directive is that the taxable amount is everything that constitutes consideration, which is understood to be the subjective value actually received. Therefore, application of the arm's length principle for VAT purposes is much narrower compared to the application of the arm's length principle observed in intra-group transactions for corporate tax purposes.

Conclusion

Transfer pricing adjustments (upwards or downwards) might have VAT implications, when the following conditions are met:

- **Existence of consideration** – If the transfer pricing adjustments are reflected in the accounts of the parities to the transaction, the adjustments should not be seen only as an adjustment for tax purposes.
- **Existence of supply** – If transfer pricing adjustments can be seen as consideration made in return for a supply of goods and services, the upward or downward adjustment should be linked to a specific transaction. And, to have VAT implications, even if the adjustment is made on an aggregate basis, it should be possible to allocate the adjustment to individual transactions.
- **Existence of a direct link between supply and consideration** – According to the CJEU, if there is a legal relationship between the supplier and the client, or if the remuneration received by the provider constitutes the actual consideration given by the recipient, a direct link is established.

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ELECTRONIC INVOICING

From 1 January 2019, it will be compulsory to issue e-invoices when carrying out transaction with Italian counterparties (business-to-business 'B2B' or business-to-consumer 'B2C'). E-invoice regimes come into force earlier for supplies of fuel (1 July 2018) and tax-free shopping (1 September 2018).

The e-invoices must be sent and received in XML format by means of the Interchange System (so called 'SDI') to the Tax Authority, which then submits them to the recipients. The XML format is the same as used so far for e-invoices issued to the Public Sector.

The transition from paper invoice to e-invoice is intended to prevent and reduce tax evasion and VAT fraud.

The main features of the new electronic invoicing regime are described below.

Subjects covered by mandatory e-invoicing for supplies of goods or services

The new requirements will apply to:

- Taxable persons resident in Italy;
- Taxable persons established in Italy;
- Taxable persons identified for VAT purposes in Italy.

E-invoicing will also be mandatory for B2C transactions where the customer asks for the invoice.

Subjects applying for the specific regimes '*regime forfettario*' or '*regime di vantaggio*' will be exempt from the application of e-invoicing.

The e-invoice is not applicable to the sales/purchases of goods and services to/from taxable persons not established in Italy.

Format of e-invoice

- The XML format is currently the only one allowed but, in the future, it will be possible to apply different formats based on standards provided by the European Union.
- The invoices must include the same information as is currently required for paper invoices, with the indication of the certified email address of the client and the specific code provided by the SDI.
- A digital signature or qualified signature is required.
- Invoices are transmitted through the SDI. It is possible to rely on qualified intermediaries if both parties agree.

Communication of data received to invoices issued and received

Although cross border transactions are excluded from the e-invoicing requirement, it will be mandatory from 2019 to transmit the data of invoices related to the supply and purchase of goods and services to and from subjects not established in Italy. That data must be transmitted to the Italian tax authority by the last day of the month following the month of issue or receipt of the invoices. The report shall contain:

- Identification data of the seller;
- Identification data of the purchaser;
- The date of the document proving the transaction;
- Receiving date (for documents received only);
- Document number;
- The taxable amount, the VAT rate and the levy applied, or the kind of transaction if no levy can be applied.

The communication is optional for transactions for which a customs bill has been issued or electronic invoices have been issued or received.

Penalty regime

Some specific penalties are due in case of failure to issue an e-invoice, in particular:

- Invoices issued in paper format — not compliant with the e-invoice format — will be considered as omitted.
- Penalties for omitted invoices will apply in a range from 90% to 180% of the VAT that has not applied in compliance with the rules of e-invoicing.

Whenever a client does not receive the purchase e-invoice, they can avoid the application of penalties (100% of VAT not documented with a minimum from EUR 250) by issuing the so-called '*autofattura*' through the SDI in order to apply VAT.

In respect of transmission of data related to the transactions carried on with subjects not established in Italy:

- For omitted/incorrect/incomplete data, the penalty is equal to EUR 2 for each invoice, with a maximum cap of EUR 1,000 for each quarter (even if the obligation is on a monthly basis).
- The penalty is reduced to half (EUR 1 for each invoice, maximum cap of EUR 500) if an amending communication is submitted within 15 days of the deadline.

Technical requirements for e-invoicing

On 30 April 2018, the Inland Revenue (the Italian tax authority) published detailed technical rules on the issue and receipt of e-invoices.

E-invoicing for tax free shopping

Starting from 1 September 2018, it will be compulsory to issue invoices in electronic format for the purchases of goods transported in the baggage of private customers resident outside the EU when the value of the goods exceeds EUR 154.94.

E-invoicing for fuel

From 1 July 2018, it will be compulsory to issue e-invoices for the sale of petrol and diesel for motor vehicles. The Inland Revenue has also published a circular letter setting out the details of this new regime.

BDO in Italy would be pleased to assist with any queries about how e-invoicing in Italy will affect your business.

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SAUDI ARABIA

INTERNATIONAL ISSUES ARISING WITH THE NEW TAX

VAT was introduced on 1 January 2018 and, as would be expected, a number of issues are appearing for both taxpayers and the Saudi tax authority, the General Authority for Zakat and Tax (GAZT). Some of the most relevant points for international businesses are summarised below.

Intra-GCC supplies

It had been expected that special rules would be applied to transactions between member states of the Gulf Cooperation Council (GCC), namely, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE). However, to date, only Saudi Arabia and the UAE have implemented VAT and, in addition, the electronic system for the exchange of information between member states has not been set up. As a result, Saudi Arabia has confirmed that until further notice, no distinction will be made between supplies of goods or services to GCC customers and supplies to non-GCC customers. This treatment was expected for supplies of goods, but the GAZT recently confirmed that it will also apply the same approach to services.

Exported services

The VAT law contains a zero-rating for services supplied to foreign customers (strictly speaking, the law says supplies to non-GCC residents but, as noted above, no distinction is made between GCC and non-GCC customers). On first reading, this appears to be a useful relief for international services. However, the law is drafted in a very restrictive way with a number of conditions to be met. The GAZT is interpreting the conditions very strictly and, as a result, services supplied from Saudi Arabian businesses to customers outside the country will be subject to VAT in many cases. This is causing disputes between Saudi businesses and their foreign customers that had expected to receive services VAT free.

International branch to head office supplies

The VAT law states that there is no VAT on supplies that an entity 'makes to itself'. This means that branch-to-branch transactions or head office to branch transactions are not supplies within the scope of VAT. This is straightforward for domestic transactions but there has been some question as to whether the GAZT is accepting this for cross-border branch to head office transactions. We are awaiting confirmation from the GAZT on this point.

If the GAZT confirms there is no supply between branches and their overseas head offices, there will be a question as to whether the branch will be entitled to register for VAT and recover input tax in Saudi Arabia. Further clarification from the GAZT on this point may also be required.

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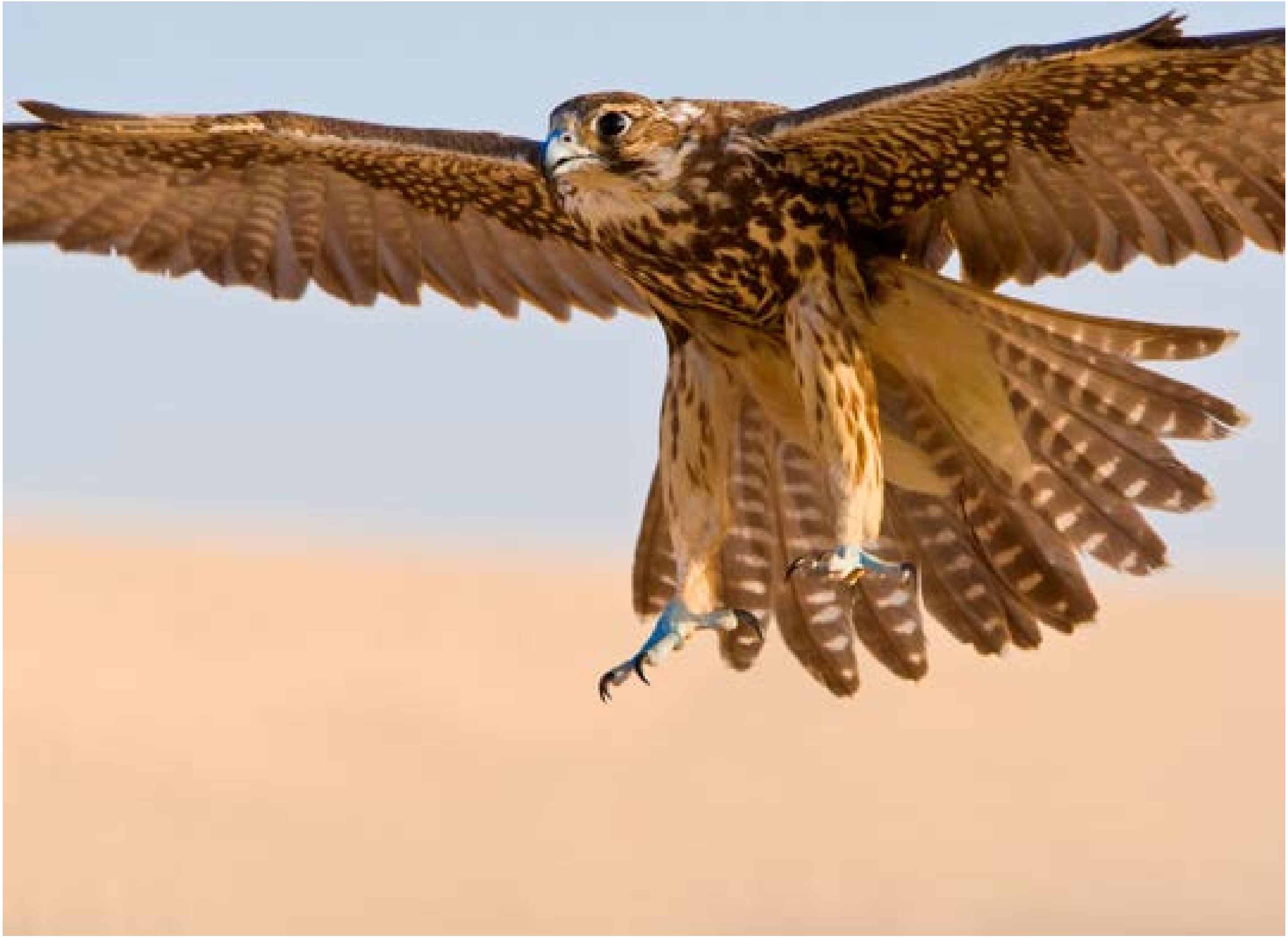

SINGAPORE

GOODS AND SERVICES TAX CHANGES FOR THE FUND MANAGEMENT INDUSTRY

Singapore has established itself as a leading global financial centre over the past few decades. To further strengthen Singapore's position as a hub for both fund management and domiciliation, the Monetary Authority of Singapore (MAS) is currently studying the regulatory framework for Singapore Variable Capital Companies (S-VACCs). S-VACCs are a new legal entity or structure designed for collective investment schemes that will accommodate a variety of traditional and alternative asset classes and investment strategies.

In the 2018 Singapore Budget, it was announced that a tax framework for S-VACCs will be introduced to complement the S-VACC regulatory framework and this includes extending the existing GST remission for funds to incentivise S-VACCs.

GST remission for funds

Generally, 7% GST is chargeable on fund management, custodian, and other services supplied by GST-registered suppliers to funds belonging in Singapore. Only GST-registered funds making taxable supplies are able to claim the GST incurred on its expenses. As some of the funds are not eligible for GST registration due to the type of investment activities made, the GST incurred on the fees charged would be an unrecoverable business cost to the funds.

A GST remission was introduced on 22 January 2009 to allow qualifying funds that are managed by a prescribed fund manager in Singapore to claim GST incurred on all expenses related to the fund's investment activities (except disallowed expenses) from 22 January 2009 to 31 March 2014 (both dates inclusive) at an annual recovery fixed rate. In the 2014 Singapore Budget, the GST remission was extended to 31 March 2019.

To qualify for the GST remission, the following conditions must be met:

- The fund must satisfy conditions for income tax concessions in Singapore as a Section 13C, 13G, 13R, 13X fund, of 13CA fund (with effect from 1 January 2014) or a designated unit trust or a unit trust included under the CPF[1] Investment Scheme (CPFIS) as at the last day of its preceding financial year.
- The fund must be managed or advised by a prescribed fund manager[2] in Singapore.

Funds that meet the qualifying conditions are required to file a quarterly statement of claims to make the claims based on their financial year end. This allows funds that are not eligible for GST registration to mitigate the GST incurred while doing business in Singapore.

With respect to S-VACCs, the above will take effect on or after the effective date of the S-VACC regulatory framework and MAS will release further details by October 2018.

How BDO in Singapore can assist

BDO in Singapore can help assess whether a fund is eligible for the GST remission (under the existing income tax concessions or under the S-VACC). BDO in Singapore can also assist funds with filing of the quarterly statement of claims for the purpose of making the GST claims.

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[1] *Central Provident Fund – A mandatory social security savings scheme funded by contributions from employers and employees.*

[2] *One that holds a capital markets licence under the Securities and Futures Act (Cap. 289) for fund management or one that is exempt under the Act from holding such a licence .*

SPAIN

EDUCATION SERVICES EXEMPTION

The VAT treatment applicable to all sorts of operations is becoming more complicated. This is particularly true in certain sectors, such as education, because of the application of various special provisions that are not necessarily easy to interpret and apply.

Below are the most important provisions that should be analysed to ensure VAT regulation is applied correctly to education services.

- **VAT exemption** – Educational services are generally exempt from VAT. But, given the wide range of activities and services currently offered by the educational institutions to students and third persons, it is important to assess whether particular activities and services qualify for the exemption.
- **Pro-rata regime (general or special)** – Incorrect application of the exemption has a direct impact on the deductibility of the VAT borne by an educational institution. Correct calculation of the pro-rata percentage is an essential procedure for the VAT payers that render services exempt from VAT.
- **VAT separate sectors** – The wide range of activities and services offered by education institutions obliges them to review whether the requirements of this special, mandatory regime are satisfied.
- **Capital goods** – If the educational institution has to modify the pro-rata calculation due to the exemption, the percentage of VAT that the institution can deduct on the acquisition of capital goods would also need to be adjusted.
- **Formal obligations** – Educational institutions should notify the Spanish tax authorities if any of these special treatments apply to their activities and services. A failure to report them triggers penalties for the educational institution.

Correct application of VAT by an educational institution will avoid any problem with the Spanish Tax Authorities and will also prevent any conflict for parents that might otherwise arise if the educational institution wrongly applies the VAT exemption and mistakenly charges them VAT.

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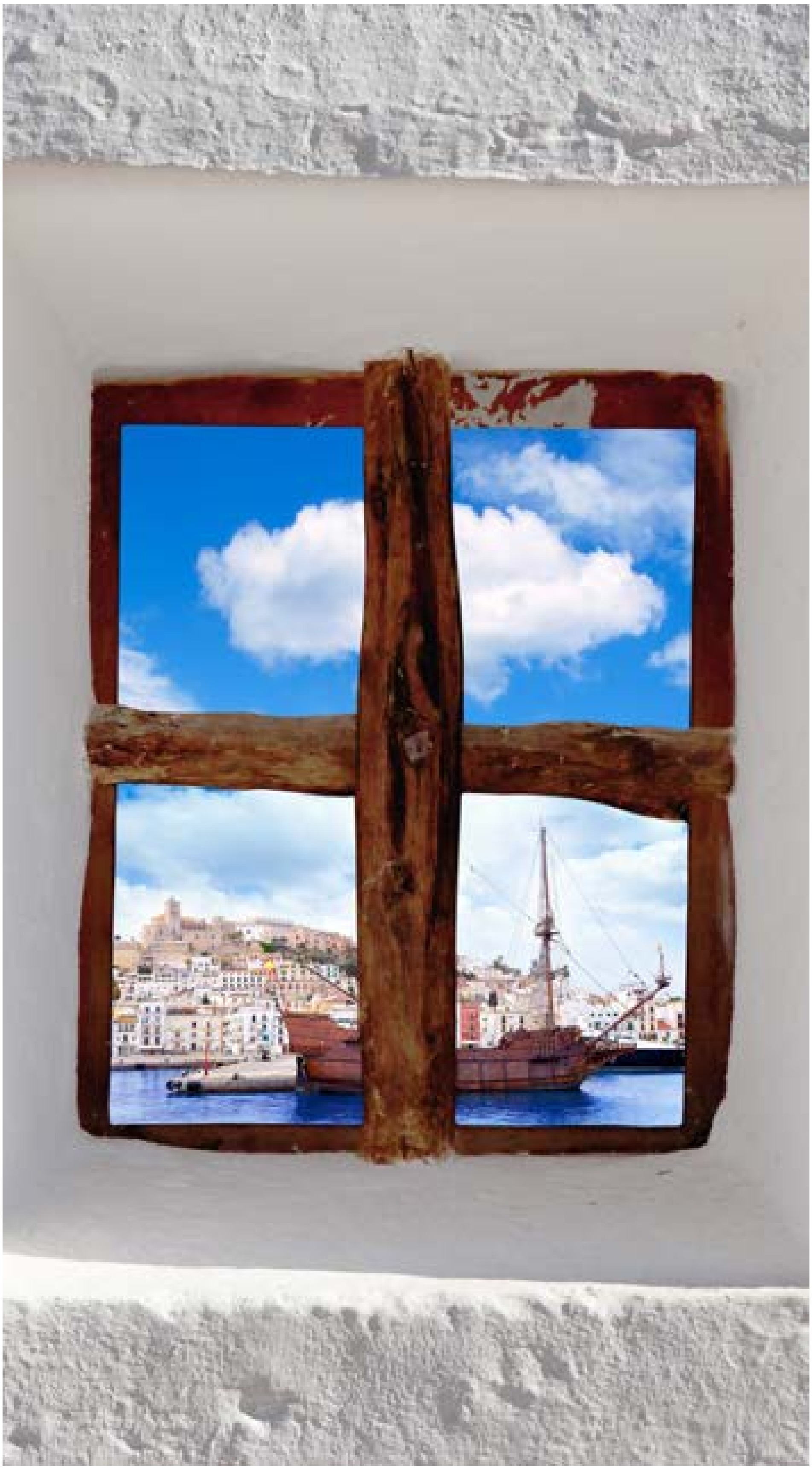

UNITED ARAB EMIRATES

FIRST 100 DAYS OF VAT IMPLEMENTATION

The United Arab Emirates' Federal Tax Authority (FTA) reported nearly 275,000 VAT registered businesses since the go-live date with compliance percentages as high as 98.8% for the first VAT return, which was due on 29 April 2018. The FTA have successfully registered 47 tax agents who are authorised to be the prime link between businesses and the FTA for clarifications, representations, and filing of VAT returns.

Businesses can now seek clarifications from the FTA

The FTA has made available a procedure for businesses to seek clarifications in the form of written guidance or advice about the FTA's interpretation and position on specific tax matters. This system is similar to advance rulings in various VAT jurisdictions. An application for clarification can be made by the applicant, that is, the business, by an individual, or through appointed tax agents or legal representatives.

Cabinet decision outlining government entities still under process

The UAE VAT law states that services provided by government entities that are in the nature of a sovereign capacity and that are not in competition with the private sector would not be considered subject to VAT. However, the Cabinet decision outlining the list of such government entities has not yet been issued by the FTA.

Refund scheme for tourists approved

The FTA has approved a refund scheme for tourists under which outlets and points of sales across the UAE would be able to directly issue refunds to tourists when they are buying goods in the UAE. The refund system is likely to be implemented soon and could be a mix of what is currently prevalent in Europe and Asia.

Real estate guidance

The FTA issued detailed guidance on various practical issues faced by the real estate industry, such as retentions, benefits of zero-rating, transitional provisions, and so on. The guidance provided welcome relief to the real estate sector, as ambiguity in the UAE VAT provisions related to implementation created several roadblocks for the industry. Unfortunately, some uncertainties still remain.

VAT relief for gold B2B trade

The UAE has rolled back VAT on the gold and diamond sectors at the wholesale level by introducing a reverse charge mechanism for business-to-business (B2B) trade. However, amendment of the legislation is still pending. The rollback only provides relief to the wholesale gold trade; retailers will continue to levy VAT on all jewellery transactions taking place in shops.

The rest of the GCC – Bahrain, Kuwait, Oman, and Qatar

All of the other GCC countries are expected to implement VAT by 1 January 2019. To date, only the UAE and Saudi Arabia have done so. Bahrain has unofficially announced its target date would be early 2019. Kuwait, on the other hand, announced it would likely push the implementation to 2021, citing the unreadiness of processes and systems to support VAT implementation.

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UNITED KINGDOM

MAKING TAX DIGITAL FOR VAT

The UK plans to introduce new digital filing and record keeping requirements for VAT. The new Making Tax Digital for VAT (MTDfV) regime will come into force on 1 April 2019 and will be compulsory for all entities that are VAT registered in the UK and have an annual taxable turnover exceeding GBP 85,000. This includes businesses based overseas, including those without a UK establishment.

What is Making Tax Digital for VAT?

MTDfV will require almost all UK VAT registered businesses to keep 'digital records' and file their VAT returns via 'functional compatible software'. Other European countries have already created or are planning similar systems, and it is anticipated that this is the first step in a long-term goal of requiring 'real time filing' of individual transactions with HMRC, the UK tax authority.

While MTDfV will change the manner in which UK VAT returns are submitted, it is not expected to alter the deadlines or the frequency of UK VAT return filings.

How will it work?

HMRC's guidance is not yet finalised but, according to information currently available, MTDfV will introduce new VAT record keeping rules and the requirement that all applicable VAT return data is 'digitally linked' so that transactions can be traced from source data (that is, purchase/sales ledger) through to VAT return completion and upload to HMRC.

For example, a business may record sales and purchase transactions in its accounting system, transfer the totals to a spreadsheet in which it calculates the UK VAT return figures, then send the information to bridging software which submits the return to HMRC via an online portal. The new law requires these three pieces of software to be 'digitally linked' (in other word, no 'copy and paste').

HMRC has allowed a 'soft landing' approach for certain aspects in the first year of MTDfV to give businesses extra time to become fully compliant with the new law. The requirement for a digital connection into the purchase and sales ledgers will not come into force until 1 April 2020.

What challenges will MTD for VAT bring?

The Application Programming Interface (API) software needed for the digital upload of UK VAT return figures to HMRC will not be provided free of charge by HMRC – instead it will be developed by third parties and will not be specifically endorsed or approved by HMRC. Software trials are currently underway and HMRC expects that a wide range of software products will be available to businesses from 1 April 2019. However, the 2019 implementation date does not give larger businesses with sizeable and complex accounting systems much time to adapt them to comply with the new law.

The 1 April 2019 implementation date for MTDfV also clashes with the expected date of Brexit (29 March 2019) which, depending on the outcome of negotiations between the UK and EU, could well necessitate its own major systems changes for VAT at the same time. Businesses that trade cross border could face the onerous task of dealing with the effects of MTDfV and Brexit simultaneously. Furthermore, the full picture of the changes that MTDfV and Brexit will bring has yet to be fully confirmed, giving UK VAT registered businesses very little time to identify and make the necessary adjustments.

How should businesses prepare?

UK VAT registered businesses should review their current accounting systems to map the VAT audit trail and identify areas where digital links will be required. While some digital links, such as transfers from non-API enabled systems to one or more spreadsheets may not be compulsory until 1 April 2020, businesses should be preparing their systems for full MTDfV compliance now.

The current focus of most businesses has been on identifying how they can share their data with HMRC in a manner that complies with the new rules. However, they should also consider precisely what data they will share with HMRC as a consequence of MTDfV, and the quality of that data.

How can BDO help?

BDO in the UK can help assess your business's readiness for MTDfV, identifying any breaks in the digital journey, and work with your IT department to help you implement the changes necessary to your accounting software to comply with the new law. As the implementation date approaches, we can also help you identify the most suitable independent software package for making the digital upload to HMRC's system and, if any aspect of MTDfV proves impractical or unduly onerous for your organisation, help you negotiate alternatives with HMRC. Lastly, we can assist with the creation of MTDfV-compliant VAT return spreadsheet templates.

BDO is also participating in a number of HMRC stakeholder groups on Making Tax Digital for VAT and can keep you up to date with the latest developments.

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UNITED STATES

THE *QUILL CORP.* PHYSICAL PRESENCE NEXUS STANDARD IS UNDER REVIEW

The US national physical presence nexus standard for when a state may impose a sales-and-use tax collection and remittance requirement is under review and could be replaced with a much lower economic presence nexus standard. If this occurs, the authority of states to impose a sales-and-use tax collection and remittance requirement would be expanded. Such an expansion could result in a much greater compliance burden for non-US vendors, including those non-US vendors that merely sell goods and services into the United States from outside the country.

Quill Corp. and physical presence nexus

In 1992, the US Supreme Court held in *Quill Corp. v. North Dakota* that a state may not impose a use tax collection and remittance responsibility on a vendor unless the vendor has a physical presence in the state. Today, a physical presence nexus may be established in a variety of ways, such as:

- Via in-state employees or property (rented or owned);
- Via in-state affiliates or representatives acting on a vendor's behalf to establish or maintain a market;
- By having an Internet link on a website of an in-state resident the use of which results in sales to the vendor and the payment of a commission to the in-state resident ('click-through' nexus); and
- Via the in-state presence of a computer 'cookie' and sales that exceed a threshold amount ('cookie' nexus).

Wayfair, Inc. and economic presence nexus

In an effort to press the US Supreme Court to review the *Quill Corp.* physical presence nexus standard, several states, including Alabama, Connecticut, Indiana, Maine, North Dakota, Ohio, South Dakota, Tennessee, Vermont, and Wyoming have adopted economic nexus provisions that are presumably in contravention of the *Quill Corp.* physical presence nexus standard. The nexus provisions these states have adopted authorise the state to impose a sales-and-use tax collection and remittance responsibility if the vendor's economic activity derived from customers in the given state exceeds a threshold amount. For example, in South Dakota, the standard is USD 100,000 of sales into the state or 200 separate transactions with customers in the state.

Indeed, vendors have challenged these state economic nexus laws and, on 12 January 2018, the US Supreme Court granted review of one such matter, *South Dakota v. Wayfair, Inc*. If the Supreme Court decides in favour of the state and overturns the presently controlling *Quill Corp.* physical presence nexus standard, then the economic nexus laws in South Dakota and other states could be confirmed, making them a roadmap for the other states to follow.

On 17 April 2018, the US Supreme Court heard oral arguments in *Wayfair, Inc*. The questions from the highly engaged Justices emphasised their concerns (and potentially those of vendors) relating to the impact of overturning the *Quill Corp.* physical presence nexus standard on vendors. Among other questions for counsel representing the state, Wayfair, and the United States Solicitor General, the Justices focused on the constitutionally acceptable minimum threshold for imposing a tax based on economic presence nexus and the possibility that some states may apply the standard retroactively. The South Dakota Attorney General (as well as the United States Solicitor General) argued that even one sale into a state would meet the constitutional standard for the imposition of a tax, regardless of the fact that states like South Dakota opted for a higher statutory standard. Moreover, the statutes imposing a time limitation on the authority of a state to assess tax for a particular taxable period typically do not begin to run until a return is filed for that period (and a vendor typically does not file a return if it has no nexus). Thus, if a decision overturning *Quill* is applied retroactively, at least theoretically, vendors could wake up to exposure as far back as 1992!

US tax treaties and sales-and-use taxes

Of particular note to non-US vendors, US tax treaties typically do not apply to state and local taxes. A tax treaty may contain a non-discrimination provision that prohibits imposition of a tax of any kind that imposes a more burdensome tax based on country of residence, including discriminatory state and local taxes. See, for example, 2006 US Model Income Tax Convention of 15 November 2006, Article 24 (Non-Discrimination). But discrimination under one of these provisions should not arise where a state imposes a tax generally applicable to US and non-US vendors alike. In such a case, and in terms of a nexus standard of general application, this puts non-US vendors on similar footing with US vendors, absent pre-emption by federal law, impairment of federal regulation of international trade, or multiple international taxation of the same subject or risk thereof.

Conclusion

Non-US vendors should watch for the US Supreme Court's decision in *Wayfair, Inc*. A decision could be issued as soon as June 2018. Vendors should begin contemplating how the replacement of a physical presence nexus standard with an economic presence nexus standard could impact their US sales-and-use tax compliance and potential solutions to address increased compliance burdens. Advance preparation should put the non-US vendor in a better position to tackle increased compliance burdens in the event *Quill* is overturned.

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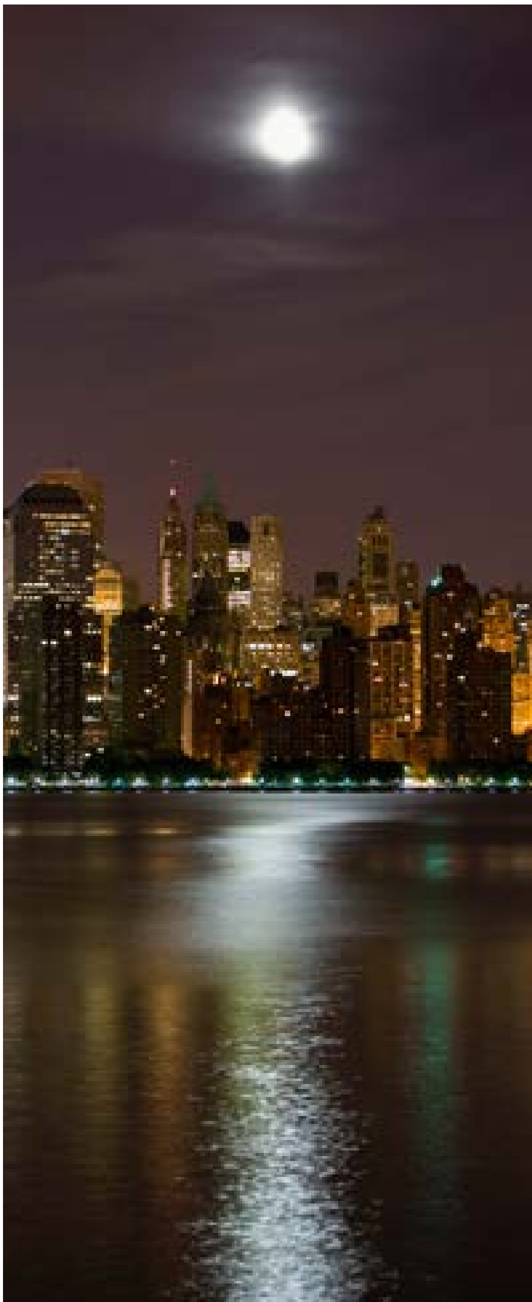

CURRENCY COMPARISON TABLE

The table below shows comparative exchange rates against the euro and the US dollar for the currencies mentioned in this issue, as at 18 June 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
Bahraini Dinar (BHD)	2.27155	2.63721
US Dollar (USD)	0.86135	1.00000
Hungarian Forint (HUF)	0.00359	0.00359
Euro (EUR)	1.00000	1.16042
Indian Rupee (INR)	0.01261	0.01465
British Pound (GBP)	1.14362	1.32764

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