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UNITED STATES

US SUPREME COURT UPHOLDS SALES/USE TAX ECONOMIC NEXUS STANDARD – MORE STATES FOLLOW

On 21 June 2018, the US Supreme Court issued its widely anticipated decision in *South Dakota v. Wayfair*. In a 5-4 decision, the Court upheld South Dakota's application of an economic presence rule for purposes of determining state sales/use tax nexus (or jurisdiction to tax). Prior to the Court's decision, a state's jurisdiction to tax was traditionally limited to those vendors with an in-state physical presence established through employees, property, affiliates, or independent contractors acting on the vendor's behalf. The Court's decision in *Wayfair* opens the gate for states to subject US and non-US remote vendors to a sales/use tax compliance obligation on a seemingly uninhibited basis.

Background

In a direct challenge to the *Quill* physical presence rule, in March 2016, South Dakota enacted an economic presence nexus law for purposes of determining whether a vendor has an obligation to collect and remit sales and use tax. Under South Dakota's law, a remote seller is required to collect and remit sales/use tax if:

1. The seller's South Dakota sales exceed USD 100,000; or
2. The seller has more than 200 separate sales transactions into the state.

Wayfair, Inc. and two other Internet retailers, Overstock.com, Inc. and Newegg, Inc., none of whom had a physical presence in South Dakota, challenged the statute in the US Supreme Court. The Court overturned the prevailing state court decision and held that the long-standing physical presence rule for state tax jurisdiction is incorrect and not a predicate for the imposition of sales/use tax.

The impact of the decision in *Wayfair* is a national concern. Twenty-one states had economic nexus standards prior to *Wayfair*, the enforcement of which were generally pending South Dakota's success in *Wayfair*. In addition, since the *Wayfair* decision, states are following South Dakota's lead and adopting similar economic presence rules. For example, as of 20 August 2018, seven states have adopted economic nexus laws for sales/use tax purposes. More states are expected to follow.

Who is affected?

Given that *Wayfair*'s additional economic nexus standard does not require physical presence, a company that conducts business without physical storefronts, especially online retailers and those engaged in other forms of digital or remote commerce, will be the most affected by the anticipated widespread change in state sales/use tax nexus rules. And, of particular note to non-US vendors, US tax treaties typically do not apply to state and local taxes applicable to US and non-US vendors alike.

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EDITOR'S LETTER

Dear Reader,

I trust that most of you on this side of the globe had a pleasant summer break and that you're suitably rested and your energy levels are restored.

With about a week to go before BDO International's inaugural Global Tax Conference (GTC), which will be held here in Dublin on 15-16 October, preparations are ramping up. Across our international network we've had numerous meetings – and lots of emails back and forth – to ensure that none of the underlying arrangements are left to chance.

As a relatively small country with lots of history, we Irish greatly welcome the opportunity to host friends and work colleagues from across the BDO International network.
Our hope is that a good proportion of about 230 delegates expected to attend our conference will be able to spend a couple of days relaxing and enjoying Irish culture and hospitality.

As always, I hope you enjoy the latest edition of BDO's Indirect Tax News from across the globe. And finally, we welcome any feedback you may wish to provide to ensure this publication continues to be of relevance to you and your business.

Kind regards from Dublin!

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What to do next?

A vendor will need to know where, what, and when to file, and which sales are subject to tax. In addition, the vendor will likely need the infrastructure in place to comply with the sales/use tax laws of potentially significantly more states.

Knowing where to file

The first step in addressing state sales/use tax compliance requirements is to identify the jurisdictions where a company has a requirement to register for sales/use tax purposes. In addition to any current and/or future filing obligations under an economic nexus standard, a company should also assess whether it has any latent historical filing obligations under the traditional physical presence nexus regime.

Though a state's retroactive application of an economic nexus standard is not likely to be enforceable, most states are generally not likely to forgive the historical liabilities of companies that should have been in compliance based on physical presence nexus and most jurisdictions disqualify registered businesses from participation in voluntary disclosure programs. As such, before registering with a taxing authority, companies should:

1. Assess their nexus footprint under both physical and economic standards;
2. Quantify potential historical liabilities; and
3. Consider mitigation of any historical liability through a voluntary disclosure agreement, settlement, or similar strategy.

Knowing when and what to file

As noted, as of 20 August 2018, 28 states have enacted economic nexus laws and more states are expected to. The effective dates for registration and collection requirements under these new laws vary among states and companies should be aware of such compliance dates. In addition, some of these states provide an option to remote sellers to make an election to register and collect sales/use tax or comply with certain use tax notice and reporting requirements. An election to comply with use tax notice and reporting typically requires the seller to provide a customer with a statement that they may owe use tax and that the vendor will report the transaction to the state revenue department, rather than the vendor collect and remit the tax.

Knowing what to tax
The taxability of traditional tangible goods is relatively straightforward. However, digital products and services are generally difficult to categorize for sales/use tax purposes. State sales/use laws are typically antiquated, and, as a result, they do not clearly define or address the taxability of digital products and services. In addition, gaps often exist between the language in state sales/use tax laws and the desire among state revenue departments to broaden the application of existing laws to include digital products and services. This lack of clarity in laws and these gaps cause challenges, as well as pitfalls, in discerning the proper sales/use tax treatment of a company's products and services.

Even after successful analysis and categorization of a product or service, companies should also address the taxability of ancillary products and service offerings, including set-up, maintenance, training, and other revenue streams. In addition, a company's invoicing practices (for example, bundling charges vs. itemized listing) could have tax implications that should also be explored.

Knowing where it should be taxed
Products and services subject to tax are typically taxed in the jurisdiction where they are delivered or used. Unlike tangible goods, digital products and services generally do not have a shipping address and the location of use may be unknown, nomadic, or involve multiple locations. Consequently, companies should be prepared to address revenue sourcing issues related to digital goods or services to ensure reporting to the proper jurisdiction.

Infrastructure requirements
When faced with invoicing sales/use tax to customers in multiple states, businesses typically need a solution for keeping track of sales/use tax rates of more than 10,000 potential state and local taxing jurisdictions that automatically integrates into a company's billing system. In addition, an exemption certificate management solution should also be considered for businesses that sell to exempt customers (for example, reseller, government, or not-for-profit). And businesses without adequate personnel may want to consider implementing a solution or outsourcing their sales/use tax compliance function to a third-party, since sale/use tax compliance in a multistate environment can be a complex and time-consuming process.

Fortunately, there are a number of third-party software solutions and outsourcing companies capable of assisting with sales/use tax compliance. However, a careful evaluation of software solutions and outsourcing providers should be made, including the cost, implementation complexity, compatibility with the company's accounting system, and scalability to grow with the company. Perhaps the most important consideration is the availability of operational support, as most businesses will likely face questions from internal and external sources that are not used to seeing sales/use tax charged on their invoices.

Conclusion

The *Wayfair* decision significantly broadens the jurisdiction of US states to subject US and non-US remote vendors to sales/use tax compliance requirements. It has the potential to increase the number of US state sales/use tax laws that a vendor selling into the United States may have to comply with. Further, the lack of uniformity among states' laws and the existence of over 10,000 local taxing jurisdictions has the potential to cause significant challenges when discerning the what, where, and when of state taxation. Coupling the number of potential taxing jurisdictions with a general lack of conformity among states' laws has the potential to increase the infrastructure and resources a company must direct to their US sales/use tax compliance function.

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ARGENTINA

FOREIGN TRADE – RE-INTRODUCTION OF EXPORT DUTIES

To help reduce its fiscal deficit, in early September, the Argentine government issued a National Executive Power that has temporarily re-introduced an export duty of 12% on exports for consumption of all the goods included in the chapters of the Common Mercosur Nomenclature (NCM). The temporary duty applies through 31 December 2020.

The duty may not exceed ARS 4 per USD 1 of the taxable value or the official FOB price, as applicable, on exports of 'primary goods' and services. (Note that regulations related to the export of services have not yet been published.) The duty may not exceed ARS 3 per USD 1 for all other exports.

The export duty will also apply on goods whose export is already taxed (for example, beans, flours, and soybean oils). Indeed, the re-introduced duty is more comprehensive than the previous duties, as it applies to all export sectors of the economy at basically the same rate.

Unlike the existing duties, which are a percentage of the gross value in dollars sold abroad, the re-introduced duty is a fixed-sum tax in pesos. This is different from the previous taxes, which means that though the charge (and therefore collection) is fixed and in pesos, the amount of the tax in dollars is variable. Thus, a depreciation of the peso would benefit exporters in relation to the tax collected (which would fall, in dollars). In the event the peso appreciates, the tax in dollars will not increase beyond the maximum amount.

The only possible change is on the downside: the tax collected will be diluted due to depreciation of the currency and due to inflation, until it eventually disappears. This treatment is logical, given the temporary nature of the tax.

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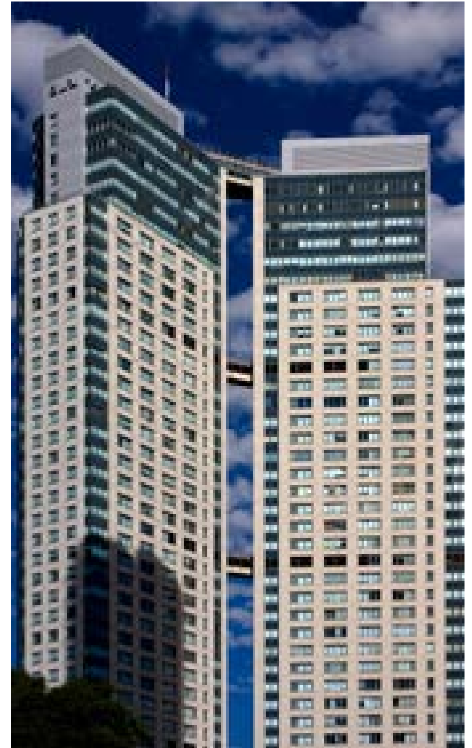

BAHRAIN

VAT UPDATE

As of the time of writing this article, Bahrain's lower parliament has approved the introduction of 5% value-added tax in the kingdom from 1 January 2019, after the country's House of Representatives voted on the introduction of VAT in an extraordinary parliamentary session ordered by Royal Decree by the King. The VAT regulations still need to be approved by the Upper parliament which is due to meet W/C 8 October 2018 and once this is passed the VAT domestic laws should be published within 15 days of this. The expectation is the VAT legislation will be similar to the VAT laws implemented in KSA where most goods and service will be taxable.

Bahrain announced a significant fiscal overhaul meant to balance its budget by 2022, backed up by a USD 10 billion economic support package from Saudi Arabia, the UAE and Kuwait. This plan aims to raise USD 2.1 billion a year as Bahrain looks to curb its debt after years of lower oil prices with VAT expected to generate and contribute at least half of this amount. Hence part of the deal was for Bahrain to implement VAT in line with the GCC Framework agreement which his signed up to back in June 2016. Taxation in Bahrain is very limited with just Excise taxes introduced in December 2017. With no direct taxation system and very little in the way of a tax authority infrastructure, even though plans for VAT laws are well advanced, when VAT goes go live in Bahrain many businesses will struggle to understand the implications and will not have expected it to be introduced with such a tight window of just nine weeks. However, it is a matter of urgency for businesses to make all the necessary preparations and be VAT ready and compliant with the VAT legislation when it is eventually published.

Given the lack of any tax authority or tax establishment in Bahrain, there is concern about whom queries can be addressed to, no website portals exist and it is uncertain how VAT will be administered and controlled and what are the VAT registrations requirements. However the potential revenue generation from this new tax source will provide a degree of much needed financial support and although the Finance Minister of Bahrain has committed to have everything in place by the end of 2018, this is going to be extremely challenging.

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BELGIUM

OPTIONAL VAT SYSTEM FOR PROFESSIONAL LETTING OF IMMOVABLE PROPERTY – BILL SUBMITTED TO PARLIAMENT

Earlier this year, an optional VAT regime for the professional letting of immovable property was announced by the federal government. The revised bill has now been sent to the Parliament for final approval and the law will come into effect on 1 January 2019. Compared to the pre-draft bill of March 2018, a number of changes have been made to the earlier proposals.

Option to tax for professional immovable letting (Business-to-Business – B2B)– Basic principles remain unchanged

The following conditions apply to the optional VAT system for the professional letting of immovable property (including accompanying land):

- The renting is done in a professional context (the tenant is a VAT taxable person, using the building for its VAT taxable or exempt economical activities);
- The option can be exercised for parts of the premises that can be exploited independently and have separate access from outside;
- The choice of the lessor and the lessee of applying VAT is applied for the entire term of the rental contract;
- The option can be jointly exercised by the landlord and the tenant through a 'pro fisco' statement in the tenancy agreement; there is no need for a formal notification to the tax authorities.

The reduced VAT rates of 6% and 12% (already applicable to sales, real rights, and immovable leasing of social housing, service flats, homes and institutions for the disabled, school buildings, and so on) will be extended to the optional letting of these types of new buildings with VAT.

Eligible buildings

The 'option to tax' will normally enter into force as of 1 January 2019. For budgetary reasons it will only be available for letting agreements in relation to (parts of) new or heavily renovated buildings for which the VAT on the construction/renovation/expansion works has become due after 1 October 2018.

More precisely, the option only applies to the 'construction' of new buildings or renovations that took place after 1 October 2018 and for which no advance invoices have been issued or advance pre-payments have been received that would make the VAT due before this date. Intellectual work or intangible services, for instance, architectural services, preliminary studies, requests for different building permits, purchase of materials or renting the equipment do not qualify as 'construction works'. The demolition of existing constructions, as well as all preparatory works in relation to soil (for example, sounding and decontamination, digging, and stabilization works) can also start before 1 October 2018 without jeopardising entitlement to use the optional system.

Extended 25-year revision period

Despite the dissenting opinion of the Council of State, it looks like a special revision period of 25 years will be introduced for budgetary reasons (instead of the current 15-year revision period). This extended VAT recapture period will apply as from the moment that the building is destined or effectively used for professional letting with the application of VAT within the first 15 years.

Normal rental value for related parties

To prevent possible abuse where the owner/ lessor immediately and fully deducts the VAT on the construction or purchase of a 'new building' (and afterwards the input VAT on the possible improvement works) but only accounts for output VAT gradually on artificially low rental fees, a minimum taxable amount will apply, which corresponds to the rental market price in similar circumstances.

This anti-abuse provision applies if all of the following conditions are met:

- The consideration is lower than the normal (rental) value;
- The lessee does not have a full right of VAT deduction;
- The tenant is connected to the landlord on the basis of personal, financial, or organisational ties.

Flexible VAT regulation for storage rooms

To eliminate the commercial disadvantages for the Belgian logistics sector, the option to apply VAT on long term leases of storage space will be available as of 1 January 2019 for both new and existing warehouses. As from this date, any building or part of the building that is used more than 50% for warehousing purposes and not used more than 10% for retail/sales purposes will qualify as a 'storage/ warehousing facility':

- Nothing changes for the current warehousing agreements that are already subject to VAT. These agreements will continue to be subject to VAT from 1 January 2019 until the end of their original term. The contracting parties do not have to explicitly opt for this regime.
- For existing storage contracts that were not subject to VAT under the old/strict rules, it will be possible as of 1 January 2019, to opt for the application of VAT (if it concerns a B2B contract and more than 50% of the building is used for storage activities).
- For new agreements (related to new or existing buildings) that will be concluded after 1 January 2019, parties will be able to opt for the application of VAT, if the conditions are met.

Compulsory VAT taxation for short-term rental

In addition to the optional system for (long-term) letting of buildings in a B2B context, a mandatory VAT system is also introduced for short-term (B2B and Business-to-Consumer (B2C)) real estate renting. For example, the rent of a seminar, congress or meeting room in hotels or conference centres, the rent (with or without additional services) of event rooms for one or more days (for example, for fashion shows, team building events, and so on) or space for stands or exhibitions at fairs.

This obligation will apply to all rental agreements (B2B or B2C) for a period shorter than six months. For consecutive contracts (with voluntary or automatic renewal), the total duration is taken into account.

However, the short term letting of residential dwellings (for example, student accommodation, cottages, or holiday apartments) remains exempt from VAT. The same VAT exemption applies for short term rent of immovable property to natural persons who use the goods for private purposes (for instance, for a party, a marriage, and so on) or the short-term lease of such property to non-profit organizations or organizations carrying out socio-cultural activities:

A statement from the lessee that it qualifies under one of the above-mentioned categories will be sufficient for the lessor to prove that the rent was rightfully exempt from VAT.

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FRANCE

REAL ESTATE – VAT ON MARGIN SCHEME APPLICABLE TO SALES OF VACANT BUILDING LAND

According to Articles 266 and 267 of the French Tax Code (FTC), the sale of vacant land suitable for building on (so called 'building land') is, in principle, subject to VAT on the total price. However, on the sale of building land by a VAT registered person, VAT is levied on the seller's profit margin when the sale did not give the transferor the right to deduct input VAT during the initial acquisition (Article 268 of the FTC).

In its guidelines, the French Tax Authorities (FTA) considered that the application of VAT on the profit margin on the resale price of building land lots (the so-called 'VAT on margin') presupposes both a strict physical and a legal identity between the acquired goods and the resold goods, which implies a prior division of the property into lots before the acquisition by the seller. It should be noted that, in our experience, this rarely happens. Nonetheless, the FTA reiterated this position in four ministerial replies it provided during 2016.

Real estate professionals challenged this position and administrative tribunals, such as the Administrative Tribunal of Grenoble and the Administrative Tribunal of Montpellier found the FCA's stance to be incorrect. The tribunals ruled that the scope of Article 268 of the FTC is not limited to goods that have the same character at the time of acquisition and at the time of resale (Administrative Tribunal of Grenoble, 14 November 2016, n° 1403397, SARL Gepim Habitat; Administrative Tribunal of Grenoble, 4 December 2017, n° 1602770).

Given the difficulties of applying the VAT on margin scheme, in a ministerial reply, the FTA reversed its view and said that physical identity is no longer required for a taxable person to benefit from charging the VAT only on their profit margin (RM Jean-Pierre VOGEL, JO Sénat, on 17 May 2018, question n° 04171).

Therefore, this kind of sale can benefit from the VAT on margin scheme, provided the condition of legal identity is respected. This remaining condition could lead to further discussions, as the condition of legal identity is an unclear concept.

Conclusion

The change in the FTA's guidelines means that property traders that carry out property development transactions should be able to benefit from the VAT on the margin scheme.

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MALAWI

ADJUSTMENT FOR OUTPUT TAX DUE TO CHANGE IN GOVERNMENT POLICY

With effect from 1 July 2017, the government made a decision to restore the VAT exemption on eggs, natural honey, and infant milk and to remove VAT on fresh milk (VAT was introduced on skimmed milk in 2016/17) and on cooking oil, fats, and waxes (both vegetable and animal).

In addition, the following stiff penalties and interest were introduced for failure or delay in submitting VAT returns:

- For the first month that a VAT return is late, a penalty of MWK 300,000 for companies and a penalty of MWK 75,000 for individuals. There is a further penalty of MWK 50,000 for companies and MWK 20,000 for individuals for each month, or part of a month, that the failure continues. The previous penalty for late filing of a VAT return was MWK 20,000, with an additional MWK 1,000 for each day the return was not submitted.
- Penalty and interest on unpaid VAT – An additional 20% penalty of the unpaid tax for the first month or part of a month thereof plus interest at the prevailing bank lending rate plus 5% per year for each month or part of a month which the tax remains unpaid.

With effect from 1 July 2018, the government made the following changes to the VAT legislation:

- Regarding the provision allowing recovery of VAT on purchases of electronic fiscal device (EFD) machines, VAT operators are now required to expense the cost of purchasing EFDs under the Taxation Act.
- To enhance compliance and collection of VAT, VAT Withholding Agents have been introduced. Such agents withhold the VAT at source and remit it to the Malawi Revenue Authority (MRA).
- VAT returns must now be submitted to MRA on imported services. This measure is applicable only to services rendered by non-residents who are not registered for VAT.
- Mining companies may now register for VAT during the exploration phase so that they may claim input VAT on such activities.

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THE NETHERLANDS

THE IMPLICATIONS OF DUTCH IMPLEMENTATION OF THE EU VOUCHER DIRECTIVE

The so-called EU Voucher Directive (Council Directive (EU) 2016/1065) was accepted by the European Commission on 27 June 2016. According to this directive, each Member State must implement the directive in their domestic VAT law no later than 31 December 2018. Implementation of the EU Voucher Directive in Dutch VAT law will affect the VAT treatment of some existing payment instruments in the Netherlands.

Definition of 'voucher'

According to the Dutch bill, Holland's definition of 'voucher' will be in line with the definition in the EU Voucher Directive. In the Dutch bill, voucher is defined as an instrument where there is an obligation to accept it as consideration, or part consideration, for a supply of goods or services. The goods or services to be supplied or the identity of the potential supplier is indicated on the instrument itself, or in related documentation, as well as the terms and conditions for using the voucher. The Dutch Ministry of Finance has already announced that there will be no prescribed form for vouchers. In effect, vouchers are form-free and can be provided in a physical or electronic form and can include a public transport travel card, entrance tickets, or other chargeable cards.

Single/multi-purpose voucher

The EU Voucher Directive makes a distinction between multi-purpose vouchers and single-purpose vouchers. Single-purpose vouchers are vouchers where the place of supply of the goods or services to which the voucher relates and the liability of VAT on those goods or services are known at the time the voucher is issued. Multi-purpose vouchers are all other vouchers. The distinction is crucial for the VAT treatment of the voucher and the right of VAT deduction. For single-purpose vouchers the VAT is due for each supply of the voucher. In contrast, the supply of multi-purpose vouchers is only taxed at the moment of exchange of the voucher for the underlying supply. The place of the supply (and thus the application of the VAT rate) depends on the underlying supply for which the voucher can be exchanged.

Dutch payment instruments

Under current Dutch VAT law, a distinction is made between several payment instruments. These payment instruments include coupons, gift vouchers, stamps, and phone cards. As a consequence of implementation of the EU Voucher Directive, these payment instruments will now fall under the broad EU definition of vouchers, which means the current VAT treatment of specific payment instruments may change. All the facts, circumstances, and objective documentation has to be taken into account in assessing whether such payment instruments qualify as a voucher under the revised Dutch VAT voucher provisions.

Right of VAT deduction

One of the fundamental principles of the EU VAT Directive is that a VAT taxable person can deduct the VAT on the input costs to the extent the costs are directly linked to VAT taxed supplies. However, not every supply of multi-purpose vouchers will be subject to VAT under the new voucher rules. It is noteworthy that the Dutch bill does not include provisions that limit the right to deduct VAT in case of (re)selling a multi-purpose voucher. In our opinion, the VAT on costs that are directly linked to the non-taxable supply of a multi-purpose voucher can, in principle, be deducted if they are linked to the business of the taxable person.

In contrast, the VAT on costs that are directly linked to a VAT-exempt supply (for example, a banking voucher) are not deductible. However, in practice, we think that the costs for the supply of vouchers are normally linked to the whole business activity of the taxable person and should be considered as general costs. In such a case, the 'pro rata' of the whole business activity has to be taken into account for determining the deduction of the input VAT.

Conclusion

Under the new Dutch VAT Voucher legislation, the VAT aspects of each case must be separately considered to determine whether there is a single- or multi-purpose voucher. The assessment should be based on all the objective documentation and relevant facts and circumstances.

From a practical perspective, we applaud the harmonisation of the EU voucher definition for VAT purposes. But, practical questions regarding the right of deduction of VAT costs linked to the non-taxable supply of vouchers still remain. For example, to what extent can the VAT be deducted on costs directly linked to the supply of a non-taxable multi-purpose voucher? Will the deductible proportion be influenced by the non-taxable supply of multi-purpose vouchers that will eventually be exchanged for VAT-exempt supplies? We hope the Dutch Ministry of Finance gives its opinion on these issues before the final implementation on 1 January 2019.

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ROMANIA

FIXED ESTABLISHMENT IN ROMANIA

The EU Commission has grappled with various issues related to the concept of a fixed establishment, particularly when it comes to identifying the person liable to pay the VAT.

In Romania, the current definition of fixed establishment, which has been in effect since 1 January 2010, was based on Art. 192a of the VAT directive. This definition was not revised after the EU provided a definition of the concept of fixed establishment in Regulation 282/2011, Art. 11 Par. 2, which entered into force in 2011.

After that regulation entered into force, Italy raised a concern with the EU Commission regarding the possibility of applying the concept of fixed establishment to the supply or acquisition of goods under Article 11 of Regulation (EU) No. 282/2011. On this subject, the EU Commission issued two working papers in which is confirmed that, in principle, the concept of fixed establishment is applicable only to supplies of services, not to supplies of goods (Working Papers 857/2015 and 791/2014).

Based on the Romanian legislation, a taxable person whose headquarters of economic activity is outside Romania is considered to have a fixed establishment in Romania if it has sufficient technical and human resources to carry out, on a regular basis, taxable supplies of goods and/or supplies of services in Romania.

Even though, based on the provisions of the VAT Directive, EU Regulation, and the Working Papers, carrying out transactions consisting of the supply of goods should not give rise to a fixed establishment, the Romanian legislation provides that a fixed establishment is generated as a result of the supply of goods and/or the supply of services. As a result, there might be situations where Romania's legislation is not in line with the provisions of the VAT Directive and an infringement procedure could be initiated.

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SAUDI ARABIA

ASSESSMENTS, PENALTIES, AND VAT COMPLIANCE

In the eight months since VAT was introduced in Saudi Arabia, the Saudi Tax Authority (the General Authority for Zakat and Tax (GAZT)) has taken a proactive approach to policing VAT compliance. Their approach involves monitoring taxpayers' submissions of monthly or quarterly VAT returns and, in many cases, immediately requesting further information. Enquiries have been especially common where the taxpayer has reported zero-rated or exempt sales. Typically, GAZT requests copies of supporting documents and data, such as invoices, contracts, and trial balances.

In most cases, the information provided supports the figures in the VAT return and GAZT takes no further action. However, if there is anything that suggests there might have been an underpayment of VAT, GAZT calculates the amount of VAT due and issues an assessment together with a penalty.

Though GAZT's very active approach is leading to additional liabilities and penalties for some businesses, there are also some positive aspects for the business community. For example, to compliant taxpayers the approach is providing comfort that their records are in order. As well, it has helped clarify some issues where there was uncertainty and it has helped businesses improve their VAT records and processes.

VAT penalties

As explained above, in recent months, many businesses have been assessed for penalties as a result of errors discovered by GAZT. This highlights how important it is to be aware of the main penalty provisions.

The standard penalty for errors in VAT returns is 50% of the tax under-declared. The penalty is applied very strictly. It applies both to errors that GAZT discovers and to errors the taxpayer identifies and discloses itself.

In addition to the penalty for errors, GAZT also levies a late payment penalty. This penalty is 5% of the VAT due, for each month the VAT is outstanding.

These are the main penalties affecting taxpayers at the moment, but it should be noted that there are other penalties for transgressions, such as late registration and the incorrect issue of invoices.

Late returns

Some taxpayers have failed to submit their VAT returns on time, which has led to GAZT's issuing some large demands for tax and penalties.

The approach GAZT is taking regarding late VAT returns is to post estimated figures based on the information it has on file for the business, such as information from other tax declarations or from the information the business provides when it registered for VAT. GAZT then issues a bill to the taxpayer for the estimated VAT due, plus a late payment penalty. Some of these bills are far higher than the true liability because GAZT usually bases its estimate on a multiple of the taxpayer's normal trading figures.

Taxpayers that have been penalised for not submitting returns on time will need to amend estimated figures posted by GAZT and apply to have the penalties withdrawn or reduced. However, at this stage it is not clear what approach GAZT will take when amending penalties and resolving the matter may be a long process. So, we recommend taxpayers give high priority to submitting VAT returns on time.

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SERBIA

AMENDED RULEBOOK ON VAT EXEMPTIONS WITH THE RIGHT TO PRELIMINARY TAX DEDUCTION

Changes to the Rulebook on the Manner and Procedure for Accomplishing VAT Exemptions with the Right to Preliminary Tax Deduction have been adopted and have been applicable since 1 July 2018. In this article we present the most significant changes.

Tax exemption for transportation services related to the import of goods

A tax exemption is available for transportation services related to the import of goods. The exemption applies regardless of whether the transport of goods is performed by one or more entities. The fee for the transport services includes all amounts charged by the carrier (for example, tolls, storage, and so on). This change facilitates the application of the tax exemption for carriers and importers and it ensures the application of the tax exemption in a consistent manner. Before this change, the treatment was a topic of dispute by a large number of carriers in transport chains.

Tax exemption regarding the export of goods

When customs clearance is carried out in one tax period and the transfer of goods is confirmed in the following tax period, the taxpayer can obtain a tax exemption for the tax period when the customs declaration and clearance from the Republic of Serbia is completed. In such situations, the taxpayer is not obliged to charge VAT or to report the turnover for the period in which the customs clearance is performed. But, if the clearance of goods is not confirmed in the tax period following the customs declaration, the taxpayer must calculate VAT for the tax period when the customs clearance of goods is complete and submit an amended tax return for the period when the goods are delivered to the customs authorities.

Tax exemption on the introduction of goods to a free zone

The Rulebook now provides more details regarding:

- The conditions for qualifying for a tax exemption on introduction of goods to a free zone; and
- The related transportation services when the supply is made to a foreign entity with which the free zone consumer has a contract and the goods will be embedded into other goods.

In practice, these rules enable a tax exemption for many companies in the Republic of Serbia that do business in free zones.

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UPDATE ON CUSTOMER ACCOUNTING ON PRESCRIBED GOODS

Impending rule change

Proposed changes will shift the responsibility to account for output tax on the supply of prescribed goods from the supplier to the customer. These changes are to take effect from 1 January 2019. As a result, it is imperative for GST-registered businesses that sell and purchase prescribed goods (in other words, mobile phones, memory cards, and off-the-shelf software) to ensure that their accounting system will be able to support the new GST reporting rules.

'Customer accounting' applies on the sale of prescribed goods made to a GST-registered customer if the value of the sale (excluding GST) exceeds SGD 10,000 on a single invoice. The following are specifically excluded from the customer accounting rules:

- Supplies of goods made under the Gross Margin Scheme;
- Supplies of goods made under the Approved Third Party Logistics Company Scheme or the Approved Refiner and Consolidator Scheme to an approved/specified person; and
- Deemed taxable supplies of goods arising from transfer of goods for no consideration.

Businesses that make occasional purchases of prescribed goods may seek approval from the Comptroller of GST to be exempt from applying the customer accounting requirements, if certain conditions are met.

What affected businesses must be aware of

GST-registered businesses (both suppliers and purchasers of prescribed goods) should take note of the following, come 1 January 2019:

Suppliers

- Check the registry of customers to determine whether they are GST-registered. This can be done via the IRAS website at www.iras.gov.sg.
- Ensure their tax invoice template for customer accounting includes a place for providing the customer's GST registration number and a statement that the 'Sale is made under customer accounting. The customer is to account for GST of SGD X' or 'Customer accounting: Customer to pay SGD X to IRAS' where SGD X refers to the output tax due on the supply that is to account for as output tax by the customer on behalf of the supplier.
- Collect only the GST-exclusive price on prescribed goods sold.

Customers

- Provide their GST registration number to suppliers when purchasing prescribed goods exceeding SGD 10,000 (excluding GST) for business purposes.
- Inform the supplier if the purchase of prescribed goods exceeding SGD 10,000 (excluding GST) is for non-business purposes so that the supplier can charge and collect the GST.

GST reporting

The table below illustrates the GST reporting applicable on the sale and purchase of prescribed goods where the customer accounting provisions apply.

Businesses should engage a software vendor or developer to understand if their system will be compliant with the new requirements or whether tweaks are required to ensure GST compliance.

Hypothetical Transaction	GST-Registered Supplier	GST-Registered Customer
Sales of prescribed goods for SGD 14,000 (excluding GST)	Total value of standard-rated supplies = SGD 14,000 Output tax due = SGD 0	Total value of standard-rated supplies = SGD 14,000 Output tax due = SGD 980 Total value of taxable purchases = SGD 14,000 Input tax and refunds claimed = SGD 980

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SPAIN

GENERAL STATE BUDGET FOR 2018

On 4 July 2018 Law 6/2018, the General State Budget for 2018, was published in Spain's Official Gazette (*Boletin Oficial del Estado*). The law includes modifications to Value Added Tax. This article highlights the key VAT changes.

Telecommunications, radio broadcasting, and electronic services

- The new law modifies the localisation rules related to telecommunications, radio broadcasting, and electronic services. The change, which will be effective 1 January 2019, basically brings into Spain's regulations changes included in the VAT by the Council Directive 2017/2455 5 December 2017.

Tax rate

- Effective 5 July 2018, the reduced tax rate of 10% applies to cinema tickets.
- Effective 5 July 2018, the reduced rate of 4% applies to remote care services, home help, day and night care, and residential care for people with disabilities that require special care and who are also eligible for special economic benefits that cover more than 10% of the price of such services.

Exemptions

- Effective 1 January 2019, the exemption for services provided directly to members by unions, groupings, or autonomous entities is modified to bring it in line with European Union regulations and case law (case *C-605/15 Aviva* and *C-326/15 DNB Banka*).
- The EUR 90 threshold previously required for travellers to qualify for a VAT refund has been removed effective 5 July 2018. The refund is now available regardless of the invoice amount.
- A person's air transport (including connecting flights) to or from Spain is exempt from VAT so long as all the flights are included in a single transport document. The exemption also applies to the transport of their luggage. This change is effective from 5 July 2018.

  For example, a connecting flight from Madrid to Barcelona that is linked to a flight from Barcelona to Paris is exempt, so long as both flights are covered by a single transport document.

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INTRODUCTION OF VAT REFUNDS FOR TOURISTS

In this article we describe the latest VAT developments introduced by the Value Added Tax (Amendment) Act, No. 25 of 2018.

The Amendment act introduces a VAT refund scheme for tourists. Sri Lanka has introduced this procedure for the repayment of the 15% VAT to foreign tourists on their departure for goods purchased during their stay in the country.

The scheme will be available to any tourist who purchases specified goods in Sri Lanka from an authorised retailer where the value of such goods exceeds a minimum value. To obtain a refund, the tourist must have paid VAT on the goods and must be able to produce the goods for inspection at the point of departure. 'Tourist' and 'Authorised Retailer' are exhaustively defined in the Amendment act. To become eligible, business enterprises are expected to register with the Inland Revenue Department under this scheme based on their VAT permanent number.

The Amendment act further sets out that the goods must be taken out of Sri Lanka within two months from the date of purchase. Regulations on how the scheme is to be implemented are provided in *Gazette Extraordinary 2088/25* dated 11 September 2018.

A Tourists VAT Refund Scheme (TVRS) counter has been set up at the Bandaranaike International Airport in Katunayake. The aim of the TVRS is to persuade more foreign tourists to visit Sri Lanka and to transform the country to an Asian trading hub.

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SWITZERLAND

2019 CHANGES AFFECTING FOREIGN BUSINESSES OPERATING IN SWITZERLAND

Radio and television fee

In Switzerland the radio and television fee (RTV Fee) for businesses, which funds public-licenced radio and TV stations, will soon be connected with VAT. From 1 January 2019 the new device-independent fee will be collected from households and businesses. It is based on the federal act of radio and television and replaces the current device-dependent fee, which will be terminated at the end of 2018.

In Switzerland, businesses (with a registered office, domicile or permanent establishment on Swiss territory) that are subject to VAT and have a global turnover of CHF 500,000 or more are automatically subject to the RTV fee. Global turnover includes a company's worldwide turnover, independent of the definition applicable under VAT rules. This also includes turnover from services, which are exempt or excluded from VAT. These companies will automatically receive an annual bill from the Federal Tax Administration (FTA).

Tariff categories

Global turnover (CHF)		Tariff/year (CHF)
Up to	499,999	0
500,000 –	999,999	365
1,000,000 –	4,999,999	910
5,000,000 –	19,999,999	2,280
20,000,000 –	99,999,999	5,750
100,000,000 –	999,999,999	14,240
1,000,000,000	or more	35,590

In a change from the original proposals, the Swiss Government has now decided that businesses without a registered office domicile or permanent establishment on Swiss territory will not have to pay any fee.

Reminder of requirement for foreign businesses operating in Switzerland to register for VAT

As previously reported in ITN, new rules came into force on 1 January 2018, meaning that foreign companies will increasingly be subject to VAT in Switzerland. A further change, applicable to vendors of low value consignments of goods, will take effect on 1 January 2019.

The VAT registration liability of foreign companies that provide the services listed below, is no longer calculated based on the turnover generated in Switzerland, but rather on the turnover generated worldwide:

- Services under a contract for work and services in Switzerland;
- Work on items in Switzerland (for example, repairs or assembly/fitting work);
- Physical software implementation in Switzerland;
- Other physical work in Switzerland;
- Services in connection with real estate in Switzerland like agency activities, management, valuation, architecture, engineering and surveillance;
- Telecommunication and electronic services to end users (Business-to-Consumer – B2C).

Accordingly, if a company generates less than CHF 100,000 from services of this kind in Switzerland, but at least CHF 100,000 in turnover around the world, it is now liable for VAT in Switzerland from the first CHF of turnover.

Also, from 1 January 2019, those abroad who send small consignments exempt from import tax (that is, the import tax is no more than CHF 5) to Switzerland will also be liable to VAT in Switzerland if the consignments are worth at least CHF 100,000 per year.

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UNITED ARAB EMIRATES

FURTHER STEPS FORWARD – NEW GUIDANCE FROM THE FEDERAL TAX AUTHORITY

The United Arab Emirates' Federal Tax Authority (FTA) has released a flurry of new VAT guides with public clarifications. The information provides some useful insight into the FTA's expectations and policies, and has helped clarify several grey areas. In this article we outline some of the most important new announcements.

Though the FTA has been very active in providing general guidance to taxpayers, so far it has taken a very low-key approach to policing VAT compliance. Few taxpayers have received any sort of enquiry or challenge from the FTA in connection with VAT returns, other than where the taxpayer has requested a VAT refund. This approach is probably attributable to the fact that the FTA is a very new body. In other words, we don't think their current approach indicates a long-term strategy and we expect that the number of enquiries will increase as the FTA develops its internal processes and policies. It is also likely that VAT audits and inspections will start to take place by the end of the year.

VAT refunds for tourists

The FTA has released new legislation to implement a VAT refund scheme for tourists. The provisions will be similar to the scheme operated in many other jurisdictions. Tourists will be able to obtain a claim form when they buy goods from participating retailers and they will then receive a refund when they leave the country. An authorised operator will administer the scheme and will make the refunds. The operator will earn a commission for its service and this amount will be deducted from the refund.

For a country like the UAE, which relies on tourism, it was important to implement a scheme of this type, as tourists expect it. However, with a rate of tax of only 5%, the amounts refunded to travellers (after deduction of the operator's commission) will be relatively small.

It is expected the refund scheme will be operational by the end of the year. Initially, refunds will only be available at the major airports, but ports and land borders will be added in due course. The scheme is expected to apply only on expenditures of a minimum amount – likely AED 250 (about USD 68), though this is subject to review.

Entertainment and employee expenses

The FTA has issued a guide with some useful details on when input VAT can be claimed on client and employee expenses. For certain expenses, the guide includes a new test of whether entertainment is 'an aim in itself' to determine whether the VAT is recoverable. The guide also provides information on the VAT treatment of some common employee related expenses, such as end of service gifts and business trips.

This guide is a useful resource for taxpayers, given that entertainment expenses cause a disproportionate amount of trouble for the money involved.

Designated Zones

The UAE has a number of free-zone areas where businesses enjoy certain trading benefits. Some of these free-zones have been categorized as 'Designated Zones', where goods can be traded VAT free. The FTA has already issued several detailed publications dealing with Designated Zones, but this new guide draws the previous guidance together and includes a number of useful tables to illustrate a range of potential scenarios.

Tax invoices

On the face of it, the issues covered in the guide on tax invoices appear to be relatively narrow and discrete. However, what makes this guide interesting, and potentially important, is that the FTA suggests it addresses points that have been raised by a large number of taxpayers. So clearly, the issue of tax invoices is an area where taxpayers are having problems. Points covered in this guide include rounding of decimals, the use of exchange rates, and the layout of simplified invoices.

Central Bank exchange rates

The Central Bank has started to publish exchange rates for the calculation of VAT. The FTA has clarified that these rates should be used on tax invoices and for reverse charge accounting.

Exhibition and conference services

UAE is a leading centre for exhibitions and conferences. To promote this industry, the FTA has announced a refund scheme for conference organisers and foreign attendees. It's a complex scheme but the overall purpose is to provide relief for foreign companies.

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UNITED KINGDOM

BREXIT – THE 'NO DEAL' PLAN FOR VAT

The UK government has issued a series of Technical Notices to set out its plans in the event it fails to reach an agreement with the EU over the terms of the UK's exit from the European Union. These include details of its proposals of how a 'no deal Brexit' would affect the UK's VAT and customs rules from 29 March 2019.

Key proposals include postponed accounting to avoid the cash flow burden of paying import VAT on goods at the time of arrival from the EU. There will also be major changes for businesses operating distance selling of goods and the Mini One Stop Shop for Business-to-Consumer (B2C) supplies of digital services.

The 'no deal' scenario

If there is no deal, the UK government says that businesses will have to apply the same customs rules to goods moving between the UK and EU as currently apply to trade between the UK and non-EU countries – that is, a hard border will apply. Customs declarations will be required when goods enter or leave the UK and importers will be liable to pay import VAT and/or customs duties, which will be set out in a new UK Trade Tariff. Duty rates will most likely equal the non-preferential rates currently applied by the EU ('WTO rates'). Similarly, the EU will apply customs rules (and duty and VAT at EU rates) to goods it receives from the UK, requiring customs declarations on goods imported from the UK just as for goods imported from other non-EU territories.

While the UK government stresses its view that a no deal scenario is unlikely and that it expects a negotiated agreement will be reached, it says the Technical Notices are a necessary preparation for all eventualities until it can be certain of the outcome of the Brexit negotiations.

The Technical Notices cover three key VAT issues that are particularly important for businesses trading cross border between the UK and EU Member States.

Postponed accounting for import VAT

In the event of a 'no deal Brexit', the government has announced that it will introduce postponed accounting for import VAT on goods brought into the UK. This would allow businesses bringing goods into the UK from both the EU and non-EU countries to account for any import VAT due on their VAT return, instead of paying it at the time the goods arrive in the UK. In practice, this is expected to work in a similar way to the current EU VAT system under which VAT on Business-to-Business (B2B) arrivals of EU goods is accounted for under the 'reverse charge' procedure on the buyer's VAT return, usually as a nil net tax adjustment.

The introduction of postponed accounting is a very important reassurance for UK importers. If the UK were to leave the EU's VAT system without a such a contingency plan in place, UK importers would face a liability to pay import VAT (at 20% for many goods) at the time that the goods enter the UK from the EU. They would also have to wait until the next VAT return to recover it as input tax, putting increased pressure on cash flow and working capital.

Although this easement is intended to address the import VAT issues arising from Brexit, that is, cash flow issues related to goods arriving from the EU, postponed accounting will also apply to non-EU imports. The government says further guidance on postponed accounting will be published in due course.

While postponed accounting is good news for UK importers, it should be noted that it is only expected to defer the liability to pay import VAT, and will not cover any customs duties that may become due. In the event of a no deal Brexit, the government says it will introduce its own customs tariff and apply duty to many imports from the EU. Payment of customs duties can only be deferred by use of:

- A deferment account, which allows businesses to pay their customs charges by a single monthly payment on the 15th day of the month following the month of import; and/or
- A customs warehousing arrangement, where goods can be stored with customs charges suspended until the time the goods are removed for use.

Both are subject to an application process and have stringent authorisation requirements, including a bank guarantee as security for a deferment account. This would create additional compliance and administration costs for importers.

Distance selling

Currently, the EU VAT distance selling rules apply to online and mail order sales of goods to private customers in other EU Member States. UK businesses must register for VAT in any EU Member State to which they deliver goods, where their turnover exceeds the distance selling threshold set by that country – either EUR 35,000 or EUR 100,000. Sales below the threshold do not trigger a registration requirement and vendors instead apply and account for VAT at the rate applicable in the member state of dispatch of the goods.

The Technical Notices now confirm that the EU's distance selling regime will no longer apply to the UK, should there be a no deal Brexit. Sales by UK operators would be zero-rated as exports from the UK, but could then face a liability for customs duty and VAT at the point of arrival into the EU.

In practice, some UK distance sellers might be able to benefit from the EU's Low Value Consignment Relief (LVCR), which exempts packages worth less than EUR 22 from customs charges as they enter the EU, although the EU plans to abolish this in 2021.

EU businesses distance selling into the UK could also be liable to customs duty and VAT at the border – the UK government has confirmed that no LVCR equivalent will apply for imports into the UK. However, it does plan to set up an online system to allow overseas vendors to charge and account for UK VAT at the point of purchase for packages valued up to GBP 135.

Mini One Stop Shop (MOSS)

At present, UK businesses selling telecoms, broadcasting and digital services (for example, apps, computer software, music and video downloads/streaming services, online gaming, ebooks, and so on) to EU consumers have the option of using the UK's MOSS portal to account for VAT on B2C digital sales to EU customers. This allows vendors to declare VAT on sales without having to register for VAT in each EU country where sales are made.

In a 'no deal' scenario, the government confirms that the UK will no longer have a MOSS portal. Instead, UK vendors will instead have to choose an EU Member State in which to register for the VAT MOSS 'Non-Union scheme' for Non-EU providers.

What happens next?

It is important to note that the UK has yet to set out its 'no deal' scenario for the border between Ireland and Northern Ireland, which casts uncertainty over how it can achieve the hard border between the UK and EU proposed in its Technical Notices. The government has promised further information on this in due course. Meanwhile, negotiations for a withdrawal agreement between the UK and EU continue, so the VAT and customs implications of Brexit remain subject to change.

For the time being, businesses should continue to prepare for a no deal Brexit and watch out for further developments. BDO in the UK has published some useful tools and articles on its website to help with the Brexit planning process:

- **BDO: Brexit Planning Tool**
- **BDO Hard Brexit Trade Assessment**
- **BDO Insight: Why Authorised Economic Operator status is essential for manufacturers with non-UK supply chains**

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ZIMBABWE

ADJUSTMENT FOR OUTPUT TAX DUE TO CHANGE IN GOVERNMENT POLICY AND OTHER VAT CLARIFICATIONS

With effect from 1 January 2017, the government of Zimbabwe exempted from VAT supplies of food stuffs such as beef, chicken, fish, rice, potatoes, and so on. Previously these items were zero-rated. This change in policy places a burden on the affected registered operators who now cannot claim input tax on inputs, including expensive plants and machinery that they have acquired.

With effect from 1 January 2018, the government amended the VAT legislation so that no VAT is payable when a deemed change of use and therefore VAT treatment is caused by a government change in policy. The government is being lobbied to change the effective date to 1 January 2017 so that registered operators are not disadvantaged.

VAT Exemption for the Law Society of Zimbabwe

A recent court judgement held that the Law Society of Zimbabwe (LSZ), a non-profit association, is exempt from VAT on fees donated by members of the profession who donate their time as members on the council that runs the organization.

LSZ argued that the services provided by council members for the purposes of regulating and controlling the legal profession for the benefit of the public should not be subject to VAT because the councillors donate their services to the LSZ, which, in turn, provides the services to its members.

The Zimbabwe Revenue Authority's (ZIMRA's) view was that LSZ does not provide memberships or certificates without payment. A lawyer subscribes for membership and pays a fee for a practicing certificate on joining the society.

The High Court ruled that the services offered by the LSZ under its professional development programmes qualify for exemption from VAT under Section 11(b) of the VAT Act.

Had ZIMRA succeeded, the collecting of VAT, penalties, and interest would have rendered the LSZ bankrupt.

ZIMRA intends to appeal this VAT decision, as it could result in a loss of revenue from other non-governmental organizations and professional associations, such as the Institute of Chartered Accountants.

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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 1 October 2018.

Currency unit	Value in euros (EUR)	Value in US dollars (USD)
US Dollar (USD)	0.86151	1.00000
Argentine Peso (ARS)	0.02086	0.02422
Malawi Kwacha (MWK)	0.00117	0.00136
Singapore Dollar (SGD)	0.62953	0.73073
Euro (EUR)	1.00000	1.16018
Swiss Franc (CHF)	0.87723	1.01831
UAE Dirham (AED)	0.23455	0.27226
British Pound (GBP)	1.12236	1.30250

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