

## 02-2019

### 28/02/2019 **Cyprus** - Guidance on VAT refund requests

In the context of Brexit, the Tax Department of Cyprus issued a guidance regarding VAT refunds request, in which is specified that:

- Taxable persons established in Cyprus must submit their VAT refunds requests, regarding the VAT paid in the United Kingdom in 2018, until 10 March 2019;
- Taxable persons established in the United Kingdom may request the refund of VAT paid in Cyprus between 1 January 2019 and 29 March 2019 in accordance with the procedure provided for under the Thirteenth VAT Directive.

### 28/02/2019 **United Kingdom** - Deadline announced for EU VAT claims

The HMRC recommended that, with a possible no-deal Brexit scenario, the refund claims for 2018 should be submitted by 5pm on 29 March 2019 in order to use the EU VAT refund electronic system, otherwise the claims will be sent directly to the Member State in question to be dealt with as a non-EU refund claim.

### 28/02/2019 **Romania** - Adjustment of the VAT taxable base in case of bankruptcy

The moment of adjustment of the VAT taxable base in case of debtor's bankruptcy was changed by Law 30/2019. The new provision foresees that the date from which this adjustment is allowed is the date of issuance, by the court, of the decision for starting the bankruptcy procedure (and not anymore from the date of closing decision of the bankruptcy procedure).

### 28/02/2019 **Lithuania** - Authorization to apply the reverse charge mechanism to supplies of IT equipment

The Council Implementing Decision (EU) 2019/309 of 18 February 2019 grants Lithuania an authorization to introduce the reverse charge mechanism for the sales of certain IT equipment, such as mobile phones, tablets and hard drives. The authorization has been granted from 1 March 2019 until 28 February 2022.

### 28/02/2019 **France** - Non-profit organizations carrying on ancillary commercial activities – threshold for VAT exemption updated

The French tax authorities have updated the 2019 VAT exemption threshold for non-profit organisations carrying out ancillary commercial activities to EUR 63 059 of commercial profits.

28/02/2019 **Spain** - Clarifications on the reduced rate for performers, artists, directors and technicians

The Spanish Tax Administration clarified the criteria for the application of the reduced VAT rate (10%) for performers, artists, directors and technicians:

- The performer, artist, director or technician must be an individual;
- It applies whether the services are hired by an agent acting on behalf of the artist or if artists are hired as employees to render that service;
- Theatre plays and musical organizers are individuals or entities who manage material and human resources for the performance of the show;
- Theatre plays must include text recited or other forms of artistic expression adapted to the stage, whereas musical plays must include a sound scheme;
- Puppets theatres, storytellers and poetry reading shows have the status of theatre play for the application of the reduced rate (magic shows are not included).

28/02/2019 **Poland** - Authorization for Poland to apply a split payment mechanism to certain supplies paid by electronic bank transfer

The Council Implementing Decision (EU) 2019/310 of 18 February 2019 grants Poland an authorization to introduce a “split payment mechanism” to certain B2B supplies of goods and services, which are specified in the Annex of the Implementing Decision and only if the respective payment is made through an electronic bank transfer. The authorization has been granted from 1 March 2019 until 28 February 2022.

28/02/2019 **Italy** - New rule for electronic invoicing and online marketplaces

The Law Decree no. 135/2018, which was published on 12 February 2019, introduced some amendments on the tax law, namely:

- For 2019 the obligation to issue electronic invoices does not apply to healthcare professionals or entities providing medical services to individuals;

- Online marketplace operators are now liable for the VAT due on imports of mobile phones, gaming consoles, tablets PCs and laptops valued 150 EUR or less. The new rules consider these businesses as deemed to have purchased and subsequently re-sold the goods, and therefore the input VAT should be accounted via the reverse charge mechanism and the output VAT on the onward supply to the final customer should be accounted under domestic rules to non-taxable persons.

#### 28/02/2019 **Ireland** - New guidance on VAT treatment food supplements

The eBrief No. 034/19, which updates the manual on the VAT treatment and VAT rates applicable to food supplements has been enacted. The new VAT rate was planned to come into effect on 1 March 2019 however it has been now delayed until 1 November 2019.

#### 20/02/2019 - European Court of Justice, “Human Operator”, C-434/17 - on the retroactive application of Council Implementing Decisions

The court has held that a country’s national legislation cannot apply an article 193 VAT Directive derogation before the date the EU act authorizing the requested derogation was notified to the Member State. This is despite the fact that the act does not mention the date when the derogation applies and even if the Member State stated the wish to apply it retroactively.

#### 20/02/2019 **Romania** - Reduced VAT rate for transport of passengers for tourism and leisure

On 13 January 2019 the reduced VAT rate of 5% became applicable to the supplies of transport of passengers by train, cable car, animal-drawn vehicle or boat for tourism or leisure purposes.

#### 20/02/2019 **Finland** - Reduced rate for performers and their representatives

Starting from 1 April 2019, performers and their representatives will be able to opt to be exempt from VAT or to be subject to a 10% reduced VAT rate on their remuneration and fees for athletic and other public performances and copyright.

#### 20/02/2019 - European Court of Justice, “Vetsch Int. Transporte”, C-531/17 - VAT exemption on importation with subsequent fraudulent intra-Community supply

The ECJ has held that a VAT exemption applied on an import of goods may not be refused on the basis that the recipient of the intra community supply of goods commits tax evasion effected after that import, provided that:

- the recipient of the goods committed tax evasion in a transaction not linked to the initial Intra-Community transfer of goods; and
- there is no evidence to suggest the importer knew or ought to have known that a subsequent transaction would entail VAT fraud.

20/02/2019 **United Kingdom** - Retailer's loyalty schemes and input VAT recoverability

The Upper Tribunal held that the input VAT recovery in the business promotion chain is possible even when members of a retailer's in-house business promotion scheme benefits from untaxed consumption, provided that customers paid for those rewards in the prices paid for premium goods and services in order to earn the rewards (Tesco Freetime Ltd and Tesco PLC [2019] UKUT 0018 (TCC)).

20/02/2019 **Greece** - Implementation of EU Directive 2017/2455

On 8 February 2019, a draft bill that implements the provisions of the EU Directive 2017/2455 (E-Commerce package) concerning for supplies of services and distance sales of goods, was adopted by the parliament. The respective provisions are effective as from 1 January 2019.

20/02/2019 - European Court of Justice, "Nestradé", C-562/17 - time limit to provide rectified invoices, refusal of VAT refund for non-resident company

The ECJ has held that for the purposes of the exercise of the right to a VAT refund, the Thirteenth Directive must be interpreted as not precluding national legislation from imposing a time limit on the possibility of rectifying incorrect invoices, such as the correction of a VAT identification number, provided that the principles of equivalence and effectiveness are respected.

18/02/2019 **Germany** - Official guidance for operators of online marketplaces

On 28 January 2019, the German Ministry of Finance issued official guidance on the application of the new sections 22f and 25e of the German VAT Act regarding record-keeping obligations of operators of online marketplaces. Such operators are obliged to keep records of the German VAT registration certificates from the resident and non-resident sellers or must have the digital confirmation from the German federal tax authorities of the seller's accurate VAT compliance. Furthermore, in case the VAT is not collected by the vendors, including those that are not registered in Germany, the operators of online marketplaces become VAT liable for it.

18/02/2019 **Bulgaria** - Amendments on the issuing of fiscal receipts for sales of fuel

As from 31 March 2019 fiscal receipts registering sales of liquid fuels must include in separate lines and among other mandatory requirements information concerning the amount of VAT, excise duty, sale price of the fuel excluding excise duty and VAT (net value), and purchase price of the fuel excluding excise duty and VAT (purchase value).

18/02/2019 **Italy** - Summary of VAT changes for 2019

Law No. 136 of 17 December 2018 implements the Law Decree No. 199, with the following measures for VAT:

- The reverse charge mechanism will continue to apply until 30 June 2022 for supplies of mobile, integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end-user products, game consoles, tablet PCs and laptops. It will also continue to apply to the transfer of allowances to emit greenhouse gases and to supplies of gas and electricity to a taxable person;
- Invoices and related corrections for supplies of goods and services between taxable persons must be issued electronically. This obligation does not apply for non-resident taxable persons registered in Italy for VAT purposes through a direct VAT identification or appointment of a VAT representative;
- As from 1 July 2019 an invoice may be issued within 10 days from the time of supply, provided that the date of issuance of the invoice and the date of the time of supply are both stated on the invoice;

- Taxable persons are required to record sales invoices in their VAT ledger by the 15th day of the month following that in which the supply took place. Furthermore, it is no longer a requirement to number the purchases invoices and customs bills sequentially in the VAT ledger;
- A taxable person is entitled to deduct input VAT in the month in which the supply takes place, provided that the respective invoice is recorded in the VAT ledger by the 15th day of the following month, unless such supply took place in the previous fiscal year;
- Starting in 2020 and only for taxable persons established in Italy, VAT ledgers, periodical VAT calculations and annual VAT returns will be made available online and pre-filled;

With effect from 1 January 2020, qualifying retailers must, on a monthly basis, electronically store and transmit data on their daily considerations. This applies from 1 July 2019 to retailers with an annual turnover higher than EUR 400 000.

18/02/2019 **Bulgaria** - New requirement for distant sellers in Bulgaria

All persons who sell through an 'electronic shop' in Bulgaria must be registered in the electronic portal of the Bulgarian Revenue Agency. The registration is carried out electronically with a qualified electronic signature through an electronic service in the e-Services Portal of the NRA. The deadline to make the above registration is 29 March 2019.

07/02/2019 **Czechia** - Date of taxable supply in respect of continuous supplies

A taxable supply with the place of supply in the Czech Republic, which has been provided for more than 12 months is deemed to have been made no later than on the last day of the calendar year following the calendar year in which the taxable supply began.

The amendment became effective on 1 January 2019 and does not apply to services provided based on the law or based on the decision of a public authority to a third party, where the provision of that service is paid by the state.

07/02/2019 **Spain** - Transitional threshold for the VAT special regime and special simplified regime

The transitional threshold of 250 000,00 EUR for the special VAT Regime and the special simplified VAT Regimes was extended for 2019, according to

Royal Decree-Law 27/2018 of 28 December 2018.

07/02/2019 **Italy** - VAT rates applied to food supplements, energy gels and protein drinks

The Italian Tax Authorities published Ruling Answer No. 8 of 18 January 2019, providing clarifications on the VAT rate applicable to supplies of energy gels and protein drinks (VAT rate 22%, according to TARIC codes 20202.9919 and 2202.9991) and to supplies of qualifying food supplements (VAT rate 10%, according to TARIC code 2106).

07/02/2019 **Greece** - Clarifications on the new VAT provisions concerning the special scheme for small businesses

Circular E.2012, published on 17 January 2019, provided clarifications on the new VAT provisions concerning the special scheme for small companies. In this context, the 10 000,00 EUR threshold remains but it does not include disposals of capital assets nor the exempt supplies with no deduction right. Moreover, as soon as the threshold is exceeded, the company must apply the regular VAT regime irrespective of when the notification to the Greek tax authorities is filed. In addition, any newly established business may apply to the regime and it is no longer mandatory to retain it for 2 years.

07/02/2019 **Netherlands** - Reduced VAT rate and exclusion of Input VAT Deduction 1968

In the sequence of the increase in the reduced VAT rate from 6% to 9%, that took effect on 1 January 2019, the Ministry of Finance announced on 28 January 2019 an amendment to the decree on the Exclusion of Input VAT Deduction 1968, in order to update the reduced VAT rate there mentioned.

Under this decree, a taxable person can deduct the input VAT incurred on the purchase of food and drinks that are provided to its employees, provided that the difference between what the employee would normally have to pay for such food and drink and what the employee pays is not higher than 227,00 EUR per employee.

07/02/2019 **Ireland** - Food supplements liable to 23% VAT

Entering into force on 1 March 2019, all vitamins, minerals fish oils, etc. are liable to the 23% standard VAT rate. Previously, a zero VAT rate applied to such products.

05/02/2019 **Italy** - Electronic invoicing in public procurement

The Legislative Decree No. 148 which implements the Directive 2014/55/EU on electronic invoicing in the execution of contracts relating to public procurement will become effective from 1 February 2019.

05/02/2019 **Czechia** - Request for the application of Generalised Reverse Charge mechanism

Czech Republic has formalised a request on 16 January 2019 to apply the generalised reverse charge mechanism (GRCM) under the Council Directive (EU) 2018/2057.

05/02/2019 **Spain** - Amendments to the VAT Law

The Royal Decree 1512/2018 which contains the following amendments to the VAT Law, became effective on 1 January 2019:

- The option for voluntary application of the SII regime can be exercised during the entire fiscal year. However, the taxpayers that take this option will have to submit the electronic VAT books from the beginning of the respective year;
- The reimbursements provided to travellers under the travellers' scheme for exports will have to be informed electronically until the 16th day of the following month to the settlement period in which the taxpayer rectified its due VAT to recover.

05/02/2019 **Italy** - Legal interest rate increased to 0,8% from 2019

Effective from 1 January 2019, the legal interest rate has been increased from 0,3% to 0,8% per annum.

05/02/2019 **Estonia** - Amendments to VAT rules

On 1 January 2019, the following amendments to VAT law became effective:

- The EU Directive 2016/1065 regarding the treatment of vouchers, was implemented into the national legislation;



- The EU Directive 2017/2455 was also implemented into the national legislation. It foresees the VAT obligations for supplies of services and distance sales of goods, such as: allows taxable persons who supply electronic services with an annual turnover inferior than EUR 10 000 to apply the VAT rules of the country of their establishment;
- In order to simplify the conditions to declare and deduct the import VAT in the VAT return, the following requirements were abolished: (i.) the proportion of zero-rated supplies to total supplies had to be at least 50% in the previous 12 months and (ii.) the submission of VAT returns could only be through electronic means during the previous 12 months.

Moreover, as from 1 February 2019, fuel importers that have provided a security under the Liquid Fuel Act may declare and deduct their import VAT in the VAT Return declaration.

05/02/2019 **Spain** - Interpretation of VAT Directive regarding vouchers

The Spanish Directorate General for Taxation issued a ruling providing interpretation to Directive 2016/1065/EC on the VAT treatment of vouchers, in the absence of a regulatory development.

05/02/2019 **Luxembourg** - Circular issued on transactions between closely related parties

The Circular 790 which was published on 18 January 2019, has the purpose to determine the taxable base for transactions between closely related parties.

This Circular establishes that the fair market value rule, defined in article 32 of the VAT Law will be applied when the consideration agreed:

- is higher than the fair market value;
- is lower than the fair market value and the recipient does not have a full VAT deduction right; and
- is lower than the fair market value and the supplier does not have a full VAT deduction right while the supply itself is VAT exempt.

In this context, the fair market value is the full amount that a customer would have to pay in order to obtain goods or services, under conditions of a fair competition.