



## VAT and Customs Duties

VAT affects all transactions involving the provision of goods or services in every EU jurisdiction and in many jurisdictions outside the EU. An understanding of how VAT operates is essential if businesses are to avoid failing to charge VAT when appropriate and unnecessary costs in terms of not being able to reclaim VAT charged to them. Penalties are increasingly stringent for non-compliance.

Our specialist VAT team advises clients on the incidence of VAT, how to structure commercial transactions in a VAT efficient way and registration and compliance generally.

Because of our international network, including VAT, GST and Sales Tax advisers in non-EU jurisdictions, we are able to provide a seamless cross border service, integrating the different rules of the jurisdictions into our advice. By closely monitoring developments, particularly at EU-level, we are able to ensure that our clients do not inadvertently generate VAT liabilities and are aware when VAT issues may affect their business plans detrimentally, and how this can be alleviated.

We also advise on customs duties, including the procedures for importing and exporting goods to and from the EU, the prohibitions and restrictions, the reliefs available (including temporary importation relief and inward and outward processing reliefs), the classification of goods for tariff purposes and valuation issues, so as to ensure that the correct amount of customs duties is paid at the right time.

Most of our VAT lawyers also have direct tax experience, so we are able to give VAT advice in the context of the overall tax implications of any particular transaction, ensuring that any VAT solution does not give rise to adverse direct tax consequences, for example in transfer pricing situations, and creating a permanent establishment.

We have contentious VAT lawyers within the team who can provide assistance in relation to VAT disputes and negotiating settlements. We also have contacts at the EU Commission and can assist with lobbying for tax change.

### CAPABILITES

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Our Services include:

#### Incidence of VAT and Structuring

- Advising on the incidence of VAT on transactions, structuring advice and registration and compliance generally.
- Advising on prudent VAT mitigation in the light of the “abuse of rights” doctrine.

#### Cross-border Activity

### KEY CONTACTS

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- Advising multi-national businesses on the VAT consequences of trading in, investing in or carrying on business in the EU and the need to register and account for VAT in accordance with the place of supply rules.
- Advising on the impact of the place of supply rules
- Advising clients on all aspects of e-business
- Advising on the creation of fixed establishments
- Advising on the VAT impact of transfer pricing issues
- Advising banks and other financial services institutions on structuring outsourcing contracts to gain as much VAT efficiency as possible and on such issues as branded credit cards and debt assignment.

## VAT and Real Estate Transactions

- Advising on the effect of the VAT rules on real estate transactions and the efficient use of the option to tax, and prudent planning in relation to both commercial and residential property.

## EU Developments

- Monitoring VAT developments generally and advising clients on appropriate action to take account of those developments.

## VAT Disputes and Litigation

- Full service assistance in connection with VAT disputes, including negotiating successful settlements and appealing assessments at every level of tribunal and court.

## Customs Duties

- We also advise on customs duties, including the procedures for importing and exporting goods to and from the EU, the prohibitions and restrictions, the reliefs available (including inward and outward processing reliefs), the classification of goods for tariff purposes and valuation issues, so as to ensure that the correct amount of customs duties is paid at the right time.

## GST and Sales Tax

- Liaising with our experts in the US and Australia and Asia on the impact of indirect taxes in their jurisdictions

## EXPERIENCE

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- Acting for financial institutions wishing to outsource services in as VAT-efficient a way as possible
- Acting for an electronic games provider on VAT compliance issues in relation to B2C transactions in many jurisdictions
- Acting for VATit on numerous VAT reclaim and consultancy problems including aviation, TOMS, exhibition organising
- Acting for various US corporations wishing to expand their markets into Europe or reorganise their business models in Europe
- Advising a crate leasing business on VAT compliance in EU and obtaining concessions from the relevant tax authorities
- Mitigating VAT on various real estate transactions

## INSIGHTS

## Publications

## 2021 Guide to VAT on Digital Services

December 2021

This guide provides a country-by-country overview of VAT law covering cross-border supplies of digital content, intangible services and, more generally, the various forms of e-commerce.

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### Country-specific updates: Germany

1 December 2021

#### VAT MONTHLY ALERT

In its recently published decision (case no.: XI R 22/19) the German Federal Tax Court decided that the waiver of the tax exemption of section 4 no. 9 letter a of the German VAT Act can be revoked as long as the tax assessment for the year of service can still be challenged / objected or amended according to section 164 of the German Tax Code. Section 9 paragraph 3 sentence 2 of the German VAT Act does not regulate the revocation.

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### Country-specific updates: Italy

1 December 2021

#### VAT MONTHLY ALERT

A sale made under a sale and leaseback agreement does not constitute a supply of goods for VAT purposes as it should be considered as a whole single transaction having financing purpose every time (i) it does not result in the physical transfer of the tangible asset entailing the purchaser-supplier to act as the owner of the asset itself, (ii) it only satisfies the company's real cash-flow needs and, as such, (iii) it has no tax avoidance purpose.

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### Country-specific updates: Poland

1 December 2021

#### VAT MONTHLY ALERT

Effective 1 January 2022 Poland will allow formation of VAT groups. This option will be available to taxpayers who: (i) are Polish based entities or Polish branches of foreign companies; (ii) conclude a VAT group agreement for min. three years; (iii) are financially, economically, and organizationally connected.

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### Country-specific updates: UK

1 December 2021

#### VAT MONTHLY ALERT

Earlier this year, the UK announced the identity of eight freeport tax sites in England which would benefit from various special direct and indirect tax reliefs. The Free Zones (Customs, Excise and Value Added Tax) Regulations 2021 have now been made, which establish the customs and VAT rules that will apply to UK free zones (also known as freeport customs sites). Free zones are secure customs zones located within a freeport where business can be carried out inside the UK's land border but where different customs, VAT and excise rules apply.

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## Court of Justice

1 December 2021

### VAT MONTHLY ALERT

In *X-Beteiligungsgesellschaft mbH* (C-324/20), the taxpayer provided brokerage services in connection with a land sale. At the time the fee agreement was concluded between the taxpayer and its client, the service had already been performed. The fee agreement provided that the fee of EUR1 000 000 plus VAT was to be paid in five equal annual instalments and the first instalment was to be paid almost one year after the service was performed.

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## VAT Monthly Alert - November 2021

1 December 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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## Advocate General

27 October 2021

In *I GmbH* (C-228/20), the taxpayer was a German-based private limited liability company which managed and operated hospitals providing neurological medical care. The private hospital company considered its medical services to be exempt but the German tax authorities determined that a significant portion of the private hospital company's transactions were not exempt on the basis that the company was not considered a specific kind of approved hospital under German law.

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## Country specific updates: France

27 October 2021

The French Draft Finance Act for 2022 has recently been released and is being discussed in the French Parliament.

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## Country specific updates: Germany

27 October 2021

The German Federal Ministry of Finance (highest German Tax Authority; "BMF") decided on 1 October 2021 to publish the decisions of the German Federal Tax Court dated 21 December 2016 (XI R 27/14) and 13 February 2019 (XI R 1/17) in the Federal Tax Gazette Part II. This means that the BMF has accepted and agrees on the content of the relevant decisions carried out by the German Federal Tax Court stating that warning notices are subject to German VAT. This should apply to warning notices issued after 1 November 2021.

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## Country specific updates: Italy

27 October 2021

Italian Tax Authority, Principle of Law No. 13 of 29 September 2021 The person entitled to recover the VAT paid on importation at customs premises is the actual final recipient of the imported goods or services, i.e. the person who will use the imported goods or services in the exercise of his/her business activity (the so-called, *principio di inerenza*).

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## Country specific updates: UK

27 October 2021

HMRC has updated its guidance to help businesses prepare for the new plastic packaging tax which comes into effect on 1 April 2022. Businesses which manufacture or import 10 or more tonnes of plastic packaging over a 12 month period, are liable to register for the Plastic Packaging Tax.

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## Court of Justice

27 October 2021

In *Boehringer Ingelheim RCV GmbH & Co KG Magyarorszagi Fiolktelepe (C-717/19)*, the taxpayer was a pharmaceutical company which marketed state-subsidised drugs to wholesalers. The wholesalers in turn sold the drugs to pharmacies which sold them to patients. The Hungarian state health insurance body operated a 'purchase price subsidy' system under which it paid pharmacies a proportion of the price of a drug while the patients paid the balance of the price to the pharmacy.

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## VAT Monthly Alert - October 2021

27 October 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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## Advocate General

1 October 2021

In *Grundstücksgemeinschaft Kollaustrabe 136 (C-9/20)*, the Advocate General opined that the VAT Directive precludes German rules having the effect of a taxpayer which used 'cash accounting' being unable to reclaim its input tax because it paid its rent late.

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## Country specific updates: Italy

1 October 2021

Italian Supreme Court, judgement no. 24661 of 14 September 2021 Pursuant to Article 19-ter of Presidential Decree 633/72, where a non-business taxable person also carries on business activities, to recover input VAT, the non-business taxable person must record separately, those transactions on which it has paid VAT and which are attributable to its business or institutional activities. Italian Tax Authority, ruling no. 584 of 14 September 2021 A taxpayer is entitled to claim for a refund of the VAT paid before the start of the business activity. In particular, such VAT refund may legitimately be granted whether the taxable purchases are actually connected with the planned business and that the resulting taxable transactions would give the taxpayer the right to recover VAT.

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## Country-specific updates: EU

1 October 2021

*European implementation assessment on "VAT gap, reduced VAT rates and their impact on compliance costs for businesses and on consumers"* - The European Parliamentary Research Service on has published a report about the EU's VAT gap — the difference between projected VAT revenue across the bloc and the amount that is actually collected — and the factors that influence that gap. The report was prepared in support of ongoing work by the European Parliament's permanent subcommittee on tax matters on the implementation of the EU's sixth VAT directive.

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## Country-specific updates: Spain

1 October 2021

Application of Titanium Ltd v Finanzamt Österreich C-931/19 to Spain - The EU Court of Justice has ruled in judgment Titanium Ltd v Finanzamt Österreich C-931/19 on 3 June 2021 that the leasing of a real estate property in a EU Member State without having human resources does not qualify as a fixed establishment for VAT Purposes. The judgement clarifies that the rent would be subject to the reverse charge mechanism if the lessor does not have the human resources to operate the leasing business in Spain.

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## Country-specific updates: UK

1 October 2021

Repeal of VAT (Treatment of Transactions) Order 1992 (SI 1992/630) - The Order will be repealed with effect from 21 October 2021 and align the VAT recovery position of public bodies (within section 41 of VATA 1994) with other employers in respect of cars supplied to employees under salary sacrifice arrangements.

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## Court of Justice

1 October 2021

In *GE Auto Service Leasing GMBH (C-294/20)*, the Court ruled that a tax authority may reject a request for a VAT refund by a non-established person (a Refund Directive reclaim) if the person has not filed, by the required time, all of the documents and information required to evidence its entitlement to the VAT refund, even if the taxpayer submits the documents and information to an administrative court or judicial appeal.

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## VAT Monthly Alert - September 2021

1 October 2021

### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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## Advocate General

3 August 2021

In *Zipvit Ltd (C-156/20)*, the taxpayer supplied vitamins and minerals by mail order. The UK's national postal service supplied the taxpayer with a number of postal services under contracts which had been individually negotiated.

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## Country-specific updates - Italy

3 August 2021

The activity of developing and renovating instrumental real estate assets (with a view to their subsequent sale after the reconversion into residential ones) can be kept separate from the sale and rental of real estate units already carried out.

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## Country-specific updates - UK

3 August 2021

The tax authority has announced that overseas (non-EU) businesses will be allowed a further six months to submit a valid certificate of status (ie until 31 December 2021) in relation to VAT refunds for the prescribed year 1 July 2019 to 30 June 2020.

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## Court of Justice

3 August 2021

In the joined cases of K (C-58/20) and DBKAG (C-59/20), the Court returned to the issue of the ambit of the exemption for the management of special investment funds, this time in the context of third party supplies.

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## Recap of the 1 July marketplaces/platforms amendments

3 August 2021

Since 1 July 2021, the VAT rules on cross-border business-to-consumer (B2C) e-commerce activities have changed

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## VAT - Monthly Alert - July 2021

3 August 2021

### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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## Country-specific updates: Spain

1 July 2021

### [VAT MONTHLY ALERT](#)

The Spanish General Directorate of Taxes has recently issued a binding ruling (V0933/2021) explaining the accrual of VAT where the parties enter into an escrow agreement.

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## Advocate General opinions

1 July 2021

### [VAT MONTHLY ALERT](#)

In *Apcoa Parking Danmark A/S* (C-90/20), the Advocate General opined that a parking fine levied for breaching the conditions of a private car park was consideration for VAT purposes and not compensation outside the scope of VAT, as a service had been provided.

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## Country-specific updates: Germany

1 July 2021

### [VAT MONTHLY ALERT](#)

Section 21 (3a) of the German VAT Act, which has been introduced by the Second Corona Tax Aid Act, amends the due date for import VAT which might lead to a reduction of the taxable person's liquidity burden.

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## Country-specific updates: Italy

1 July 2021

### VAT MONTHLY ALERT

With reference to the VAT regime applicable to the implementation of a settlement agreement, the Italian Tax Authority, ruling no. 401 of 10 June 2021 stated that the obligation “not to do something” is considered taxable for VAT purposes.

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## Country-specific updates: UK

1 July 2021

In *Tower Resources PLC v HMRC* [2021] UKUT 123, the Upper Tribunal (UT) upheld the decision of the First-tier Tribunal that an oil and mining holding company charging fees for management services provided to its subsidiaries represented an economic activity for VAT purposes, which enabled the holding company to reclaim input VAT on its costs.

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## Court of Justice

1 July 2021

### VAT MONTHLY ALERT

In *Titanium Ltd* (C-931/19), the Court confirmed that a property leased to a third party, managed by an independent agent, does not, of itself, constitute a fixed establishment of the landlord in the member state where the land is situated since a fixed establishment requires human and technical resources.

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## VAT - Monthly Alert – June 2021

1 July 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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## Advocate-General opinions

28 May 2021

### VAT MONTHLY ALERT

The Advocate General begins her opinion in *Wilo Salmson France SAS* (C-80/20) by saying that the Court has the opportunity in this case to answer one of the most important questions of VAT law in practice, namely whether a business' right of deduction of input tax depends upon possession of an invoice and when the time limit for reclaim input tax begins to run.

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## Country-specific updates: Germany

28 May 2021

### VAT MONTHLY ALERT

The Federal Ministry of Finance extended in its notice dated 3 May 2021, the applicability of the VAT exemption for turnover generated by trading with cryptocurrencies.



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## Country-specific updates: Italy

28 May 2021

### VAT MONTHLY ALERT

A sale made under a sale and leaseback agreement does not constitute a supply of goods for VAT purposes as it should be considered as a whole single transaction having financing purpose every time (i) it does not result in the physical transfer of the tangible asset entailing the purchaser-supplier to act as the owner of the asset itself, (ii) it only satisfies the company's real cash-flow needs and, as such, (iii) it has no tax avoidance purpose.

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## Country-specific updates: UK

28 May 2021

### VAT MONTHLY ALERT

HMRC has produced a policy paper on the EU e-commerce package taking effect from 1 July 2021.

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## Court of Justice of the EU

28 May 2021

### VAT MONTHLY ALERT

In two joined cases of *CS and technoRent International GmbH* (C-844/19) the Court was asked whether a refund resulting from an adjustment of the taxable amount must, like a refund of excess VAT, give rise to a right to the payment of interest where it is not made within a reasonable period of time by the tax authority even where the national law does not provide for such an interest payment.

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## European Commission

28 May 2021

### VAT MONTHLY ALERT

The European Commission has published new webpages containing an overview and guidance of the new rules for e-commerce coming into force on 1 July 2021.

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## VAT - Monthly Alert - May 2021

28 May 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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## Country-specific updates: Germany

28 April 2021

### VAT MONTHLY ALERT

From 1 March 2020 to 31 December 2021, a temporary exemption for donations in kind is available pursuant to the newly issued letter of the Federal Ministry of Finance dated 18 March 2021.

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## Country-specific updates: Spain

28 April 2021

### VAT MONTHLY ALERT

Until 31 March 2021, UK-established VAT taxable persons could make a reclaim of Spanish VAT incurred on goods and services during the year ended 31 December 2020 under the EU VAT refund procedure.

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## Court of Justice of the EU

28 April 2021

### VAT MONTHLY ALERT

In *Q-GmbH (C-907/19)* the taxpayer supplied three types of services to an insurance company in return for a fee: (i) it made available a specialised insurance product with a non-exclusive user licence; (ii) it placed insurance contracts for that insurer, adapting policies if necessary and assessing the risks (although contracts were concluded between the insurer and the policy holders); and (iii) it managed those insurance contracts and the settlement of claims.

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## European Commission opens feedback period on VAT exemption for vital goods and services distributed in times of crisis

28 April 2021

### VAT MONTHLY ALERT

The European Commission has opened the feedback period for its proposal to amend Directive 2006/112/EC (the VAT Directive), so as to provide an exemption from VAT on goods or services supplied to and goods imported by the Commission or an EU agency or body and provided to Member States and citizens during times of crisis—particularly where the EU is distributing them free of charge to Member States according to their emergency needs.

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## OECD report: Value added tax policy in the sharing and gig economy

28 April 2021

### VAT MONTHLY ALERT

The OECD has published a report on how digital platforms can play an important role in the application of VAT/GST policies in the sharing and gig economy.

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## VAT - Monthly Alert – April 2021

28 April 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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## VAT - Monthly Alert - March 2021

1 April 2021

### VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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### **VAT - Monthly Alert – February 2021**

2 March 2021

#### **VAT MONTHLY ALERT**

Our February summary of important VAT developments with implications for cross-border business operations.

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### **Saudi Arabia extends tax amnesty scheme enabling international groups to regularize historic tax exposure**

1 February 2021

An increasing number of international taxpayers are using the KSA scheme.

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### **VAT - Monthly Alert – January 2021**

29 January 2021

#### **VAT MONTHLY ALERT**

See our January summary of important VAT developments with implications for cross-border business operations.

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### **UK VAT changes on the sale of goods to customers from 1 January 2021**

23 December 2020

With the end of the Brexit implementation period approaching at 11pm on 31 December 2020, the UK's tax authority, Her Majesty's Revenue and Customs (HMRC) on 5 October 2020, updated its guidance, "Changes to VAT treatment of overseas goods sold to customers from 1 January 2021".

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### **Belgium introduces the tax free "recovery reserve" in response to the COVID-19 pandemic**

26 November 2020

Following the introduction of the one-off carry-back of tax losses, Belgium has recently introduced a complementary measure intended to strengthen the solvency and cash-flow position of Belgian companies that have suffered a loss pursuant to the COVID-19 pandemic.

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### **VAT - Monthly Alert – November 2020**

25 November 2020

#### **VAT MONTHLY ALERT**

A summary of important VAT developments with implications for cross-border business operations.

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### **VAT Monthly Alert October 2020**

2 November 2020

## VAT MONTHLY ALERT

A summary of important VAT developments with implications for cross-border business operations.

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### Oman introduces VAT: A law firm's perspective

22 October 2020

Prudent businesses operating in Oman are already planning for the implementation of Omani VAT and have started reviewing their legal arrangements and contracts.

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### DLA Piper acts for Mid Ulster District Council (as lead appellant) in successful VAT repayment claim at First Tier Tribunal

19 October 2020

Mid Ulster District Council (formerly Magherafelt District Council), in a group litigation action, as the lead case on behalf of Northern Ireland Councils, represented by the DLA Piper London's VAT group, with Counsels Melanie Hall QC and Harry Gillow, have won an important case against HM Revenue & Customs.

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### Updated guidance on early termination and compensation payments - impact for real estate

30 September 2020

Following the CJEU decisions in *Vodafone Portugal* (C-43/19) and *MEO* (C-295/17), HMRC has surprisingly changed its published guidance to make it clear that early termination and compensation payments relating to commercial contracts are in most cases consideration for goods or services and subject to VAT.

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### Updated guidance on early termination and compensation payments

25 September 2020

Following the CJEU decisions in *Vodafone Portugal* (C-43/19) and *MEO* (C-295/17), HMRC has updated its guidance to make it clear that early termination and compensation payments are in most cases consideration for goods or services and subject to VAT.

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### VAT cash saving tips for the return to office

17 July 2020

Our International VAT leadership team, Daan Arends, Bjoern Enders, Giovanni Iaselli and Richard Woolich, have produced 10 tips concerning VAT strategies that can be used to benefit businesses.

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### Update: The meaning of a "fixed establishment"

15 July 2020

- Dong Yang Electronics Sp. z o.o. (Case C-547/18) – Supplies held to have been made to the overseas parent and not its local subsidiary

- o Titanium Ltd (C-931/19) – CJEU referral – Can a fixed establishment exist without human or technical resources if none are needed?
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### VAT - Monthly Alert - May/June 2020

9 June 2020

#### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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### VAT - Monthly Alert - March/April 2020

8 April 2020

#### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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### Making International VAT work for you: Eight top tips during the Coronavirus COVID-19 outbreak

2 April 2020

Coronavirus COVID-19 is affecting businesses globally in ways that no one could ever have imagined. The saying, “cash is king” reflects the importance of cashflow to a business and is relevant now more than ever. Here are some key areas that International businesses can review to hold cash longer, gain cash from VAT and help improve cashflow during this unprecedented period.

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### Making UK VAT work for you: Ten top tips during the Coronavirus COVID-19 outbreak

2 April 2020

Coronavirus COVID-19 is affecting businesses globally in ways that no one could ever have imagined. The saying, “cash is king” reflects the importance of cashflow to a business and is relevant now more than ever. Here are some key areas that UK businesses can review to hold cash longer, gain cash from VAT and help improve cashflow.

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### VAT - Monthly Alert - February 2020

5 March 2020

#### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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### VAT - Monthly Alert - January 2020

3 February 2020

#### [VAT MONTHLY ALERT](#)

A summary of important VAT developments with implications for cross-border business operations.

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