

VAT UPDATE 2017/18

INDEX

**Covering quarterly update
April and July 2017**

VAT Update July 2017 Index

INTRODUCTION

This index arranges the material in the update according to type of source (CJEU decision, High Court, Tribunal, new law etc.). If you are looking for a particular word or name, use the “find” function to find it.

This is a cumulative for the year to date. Each January’s index will be the final index for the calendar year to 31 December.

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1 HMRC’s publications of their views

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<i>Notice 340</i>	Updated Notice <i>Importing scientific instruments free of duty and VAT</i>	Jul 17 4.3.5
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<i>Notice 3001</i>	Updated Notice <i>Customs special procedures for the Union Customs Code</i>	Jul 17 4.3.5
<i>R & C Brief 01/2017</i>	HMRC set out conditions for historic bad debt claims following <i>GMAC</i>	Apr 17 5.7.1
<i>VAT Information Sheet 1/2017</i>	Table of VAT MOSS exchange rates for quarter to December 2016	Apr 17 4.1.2
<i>VAT Information Sheet 2/2017</i>	Romanian VAT rate 19% with effect from 1 January 2017	Apr 17 4.1.3
<i>VAT Information Sheet 3/2017</i>	Internet access subject to 18% in Hungary from 1 January 2017	Apr 17 4.1.3
www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers	Updated guide on MOSS	Apr 17 4.1.1
www.gov.uk/government/publications/let-property-campaign-your-guide-to-making-a-disclosure	HMRC launch campaign to encourage disclosure of underpaid direct taxes, but VAT is not covered	Jul 17 6.9.6
www.gov.uk/government/publications/second-incomes-campaign-your-guide-to-making-a-disclosure	HMRC launch campaign to encourage disclosure of underpaid direct taxes, but VAT is not covered	Jul 17 6.9.6
www.gov.uk/government/publications/use-of-labour-providers	Updated guidance on due diligence procedures for businesses that use labour supplied by a third party	Jul 17 6.9.5
www.gov.uk/government/publications/vat-supply-splitting-tax-avoidance-schemes-spotlight-38	HMRC publish new VAT avoidance “spotlight” on supply splitting	Jul 17 6.9.2
www.gov.uk/hmrc-internal-manuals/vat-input-tax/vit40600	HMRC update guidance on deduction of input tax by holding companies	Jul 17 6.1.1

2 Statute and other Parliamentary material

<i>SI 2017/290</i>	Annual increase in registration thresholds	Apr 17 6.2.3
<i>SI 2017/295</i>	Final version of changes to Flat Rate Scheme from 1 April 2017	Apr 17 6.3.2
<i>SI/Draft The Enactment of Extra-Statutory Concessions Order 2017</i>	Enactment of ESC 3.20 disapplying s.26A where insolvency has commenced	Apr 17 6.9.5
<i>House of Commons 7 February 2017: “UK tax after the EU referendum”</i>	Commons library comments on Brexit consequences	Apr 17 6.9.1
<i>No reference</i>	Finance Bill contains new penalty for involvement in VAT fraud	Apr 17 6.8.2
<i>No reference</i>	Relaxation in Making Tax Digital timetable for businesses below the VAT registration threshold	Apr 17 6.9.2

<i>No reference</i>	Finance Bill contains measures to strength disclosure of VAT avoidance scheme rules	Apr 17 6.9.4
<i>Northern Ireland Affairs Committee 21 March 2017</i>	Commons committee calls for VAT changes following Brexit	Apr 17 6.9.1
www.gov.uk/government/consultations/draft-legislation-the-value-added-tax-refund-of-tax-to-museums-and-galleries-amendment-order-2017	Draft order on new list of museums qualifying for VAT repayment	Apr 17 5.8.3
www.gov.uk/government/consultations/vat-fraud-in-labour-provision-in-construction-sector	Proposals for long-term changes announced for consultation in March Budget	Apr 17 6.9.3
www.gov.uk/government/consultations/vat-tackling-fraud-on-goods-sold-online-update-on-split-payment	Government “call for evidence” on possibility of collecting VAT on internet sales by “split payments”	Apr 17 4.3.1
www.gov.uk/government/consultations/withdrawal-of-extra-statutory-concessions-2017	Consultation on enactment of extra statutory concessions	Apr 17 6.9.5
www.gov.uk/government/publications/vat-refund-scheme-for-museums-and-galleries	Explanation of new list of museums qualifying for VAT repayment	Apr 17 5.8.3
http://www.legislation.gov.uk/ukpga/2017/10/contents/enacted	Abridged Finance Act passed	Jul 17 6.9.1
<i>SI 2017/Draft Value Added Tax (Place of Supply of Services) (Telecommunication Services) Order 2017</i>	Draft rules to change use and enjoyment provisions in relation to supplies of telecommunications services to consumers	Jul 17 4.2.1

3 Other UK official material

www.gov.uk/government/publications/ots-publishes-interim-paper-on-review-of-value-added-tax ; www.gov.uk/government/collections/ots-review-of-value-added-tax	Office of Tax Simplification publishes areas for review of VAT system	Apr 17 6.9.6
<i>CPS press release, 19 May 2017</i>	Recovery of defrauded VAT from individual’s assets	Jul 17 6.9.4
www.nao.org.uk/report/investigation-into-overseas-sellers-failing-to-charge-vat-on-online-sales/	National Audit Office considers failure of online sellers to account for output tax on international transactions	Jul 17 4.3.4

4 Case law: Court of Justice of the European Union

<i>CJEU (A-G) (Case C-132/16): Direktor na Direktsia ‘Obzhalvane i danachno-osiguritelna praktika’ — Sofia v ‘Iberdrola Inmobiliaria Real Estate Investments’ EOOD</i>	A-G’s opinion on recoverability of input tax on costs associated with a company’s taxable supplies, but also associated with a benefit supplied without charge to a third party	Jul 17 4.4.11
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CJEU (A-G) (Case C-26/16): <i>Santogal M-Comércio e Reparação de Automóveis Lda v Autoridade Tributária e Aduaneira</i>	A-G considers rules for exemption of new means of transport	Apr 17 4.3.3
CJEU (A-G) (Case C-326/15): <i>DNB Banka AS</i>	A-G gives detailed opinion on various aspects of cost sharing exemption	Jul 17 4.4.8
CJEU (A-G) (Case C-605/15): <i>Minister Finansów v Aviva Towarzystwo Ubezpieczeń na Życie S.A. w Warszawie</i>	A-G gives detailed opinion on various aspects of cost sharing exemption	Jul 17 4.4.8
CJEU (A-G) (Case C-616/15): <i>Commission v Germany</i>	A-G gives detailed opinion on various aspects of cost sharing exemption	Jul 17 4.4.8
CJEU (Case C-21/16): <i>Euro Tyre BV v Autoridade Tributária e Aduaneira</i>	Despatches satisfied substantive conditions for exemption, even if recipient was not registered as international operator in Spain	Apr 17 4.3.2
CJEU (Case C-217/15 and C-350/15): <i>Re Orsi and another</i>	Double jeopardy did not apply where civil penalties were levied on a company and its owners were prosecuted	Jul 17 4.4.7
CJEU (Case C-26/16): <i>Santogal M-Comércio e Reparação de Automóveis Lda v Autoridade Tributária e Aduaneira</i>	Spanish rules on new means of transport did not comply with PVD	Jul 17 4.3.3
CJEU (Case C-274/15): <i>Commission v Luxembourg</i>	Luxembourg's rules on cost-sharing were too lax and did not comply with the PVD	Jul 17 4.4.8
CJEU (Case C-28/16): <i>Magyar Villamos Művek Zrt. (MVM) v Nemzeti Adó- és Vámhivatal Fellebviteli Igazgatósága</i>	Holding company that did not charge subsidiaries for management services was not entitled to claim related input tax	Apr 17 5.1.1
CJEU (Case C-33/16): <i>A Oy v Veronsajien oikeudenvalvontayksikkö</i>	Exemption for providing services for direct needs of ocean-going vessel applied all down the supply chain	Jul 17 4.4.9
CJEU (Case C-344/15): <i>National Roads Authority v The Revenue Commissioners</i>	Public authority operating toll roads was not in direct competition with businesses operating different roads, so distortion would not arise	Apr 17 2.1.1
CJEU (Case C-36/16): <i>Minister Finansow v Posnania Investment SA</i>	Transfer of property to local authority in settlement of tax arrears was not a supply for consideration	Jul 17 4.4.10
CJEU (Case C-37/16): <i>Minister Finansów v Stowarzyszenie Artystów Wykonawców Utworów Muzycznych i Słowno-Muzycznych SAWP</i>	Statutory levy on recording media was not consideration for any supply	Apr 17 4.4.2
CJEU (Case C-38/16): <i>Compass</i>	CJEU did not regard UK's different dates for capping output tax and input	Jul 17 6.4.3

<i>Contract Services Ltd v HMRC</i>	tax to be in breach of EU law	
CJEU (Case C-471/15): <i>Sjelle Autogenbrug I/S v Skatteministeriet</i>	Cars bought for breaking up into spare parts were within the scope of the second hand margin scheme	Apr 17 2.10.1
CJEU (Case C-493/15): <i>Agenzia delle Entrate v Identi</i>	Italy was not in breach of EU regulations where VAT debts were written off in bankruptcy	Apr 17 4.4.3
CJEU (Case C-571/15): <i>Wallenborn Transports SA v Hauptzollamt Gießen</i>	Breach of Community Transit procedures in free zone did not trigger a VAT tax point, as long as the goods did not enter free circulation	Jul 17 4.3.2
CJEU (Case C-573/15): <i>Etat belge v Oxygure Belgium SA</i>	Oxygen compressors did not qualify for lower rate in Belgium, even though oxygen tanks did	Apr 17 4.4.4
CJEU (Case C-592/15): <i>HMRC v British Film Institute</i>	Cultural services exemption was not sufficiently certain to have direct effect	Apr 17 2.3.1
CJEU (Case C-699/15): <i>HMRC v Brockenhurst College</i>	CJEU holds that meals in training restaurant were sufficiently closely related to education to qualify for exemption	Jul 17 2.3.4
CJEU (Reference) (Case C-499/16): <i>AZ v Minister Finansów</i>	Questions about fiscal neutrality and lower rate for food with short or long shelf life	Apr 17 4.4.5
CJEU (Reference) (Case C-500/16): <i>Caterpillar Financial Services Poland sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie</i>	Questions about effectiveness of rights where delay by authorities meant trader was out of time to claim a repayment	Apr 17 4.4.6

5 Other European material

ec.europa.eu/taxation_customs/consultations-get-involved/tax-consultations/public-consultation-functioning-administrative-cooperation-and-fight-against-fraud-field-vat_en	Consultation on updating the rules governing administrative co-operation in tackling cross-border VAT fraud in the EU	Apr 17 4.4.1
ec.europa.eu/taxation_customs/business/vat/vat-cross-border-rulings-cbr_en	Cross-border rulings pilot further extended to 30 September 2018	Jul 17 4.4.6
http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html	Commission published report on e-commerce sector	Jul 17 4.4.3
http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-604.735&format=PDF&language=EN&secondRef=01	Commission proposals for new VAT rules for digital marketplace	Jul 17 4.4.4

www.consilium.europa.eu/en/press/press-releases/2017/04/25-new-rules-to-protect-eu-finances/	Council directive on protection of the financial interests of the EU	Jul 17 4.4.1
www.europarl.europa.eu/news/en/news-room/20170502IPR73133/meps-vote-to-lower-vat-on-e-books-aligning-them-with-printed-books	EU Parliament recommends allowing e-books to qualify for lower rate	Jul 17 4.4.2
www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-604.736&format=PDF&language=EN&secondRef=01	Proposal to extend MOSS to distance sales of goods	Jul 17 4.4.5

6 Case law: Supreme Court

Supreme Court: <i>HMRC v Investment Trust Companies</i>	Supreme Court ruling suggests it is very unlikely that customers can claim overpaid VAT directly from HMRC	Jul 17 6.4.1
Supreme Court: <i>Jetivia SA and another v Bilta (UK) Ltd and others</i>	Directors of company that engaged in MTIC fraud could not avoid liability to the liquidator	Apr 17 6.9.10
Supreme Court: <i>Volkswagen Financial Services (UK) Ltd v HMRC</i>	FTT was correct to choose between HMRC's proposed PESM and the company's proposal, rather than suggesting an intermediate solution of its own invention	Jul 17 5.3.1

7 Case law: Court of Appeal/Court of Session

Court of Appeal: <i>Associated Newspapers Ltd v HMRC</i>	Upper Tribunal's decisions upheld on gifts of vouchers: no output tax under SI 1993/1507, and input tax in principle deductible as overhead, but no input tax on vouchers issued by retailer	Apr 17 2.12.1
Court of Appeal: <i>Colaingrove Ltd v HMRC</i>	Supply of unmetered electricity in caravan did not qualify for lower rate because compound supplies of this kind were not mentioned in Sch.7A	Jul 17 2.5.1
Court of Appeal: <i>Cunningham (trading as Urban Developments) v Buckley and another</i>	In a commercial dispute, CA confirms that builder was correct to charge standard rate in absence of documentation to show lower rate applied	Jul 17 3.3.2
Court of Appeal: <i>R v Chada and others</i>	Appeal against sentence for involvement in VAT fraud dismissed	Apr 17 6.9.8

8 Case law: High Court/Upper Tribunal

High Court: <i>Ahmed v Swedish Economic Crime Authority</i>	Extradition to Sweden in relation to VAT fraud prosecution confirmed	Apr 17 6.9.9
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High Court: <i>Bilta (UK) Ltd (in liquidation) and others v SVS Securities plc and others</i>	Pre-trial procedures in relation to emissions trading fraud case	Apr 17 6.9.10
Upper Tribunal: <i>AC (Wholesale) Ltd v HMRC</i>	<i>Kittel</i> conditions considered: FTT had not erred in dismissing trader's appeal	Jul 17 5.8.2
Upper Tribunal: <i>Adecco UK Ltd and others v HMRC</i>	Full consideration paid by clients for temp workers was subject to VAT	Apr 17 2.9.1
Upper Tribunal: <i>Blue Chip Hotels Ltd v HMRC</i>	Hiring of room with licence for civil wedding ceremonies was more than "bare land", so it was taxable	Jul 17 3.1.1
Upper Tribunal: <i>BTS Specialised Equipment Ltd (in liquidation) and another v HMRC</i>	<i>Kittel</i> conditions considered: FTT had not erred in dismissing trader's appeal	Jul 17 5.8.3
Upper Tribunal: <i>Coin-a-Drink Ltd v HMRC</i>	Company fails to persuade UT that a VAT repayment was not subject to direct tax as a profit	Jul 17 6.4.4
Upper Tribunal: <i>Gala 1 Ltd v HMRC</i>	Only representative member could claim repayment of overpaid VAT; claim by subsidiary was not valid	Apr 17 6.1.1
Upper Tribunal: <i>HMRC v Boyce t/a Glenwood</i>	FTT had erred in concluding that "grey market trader" could not reasonably obtain compliant purchase invoices: HMRC's appeal allowed	Jul 17 5.8.4
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Upper Tribunal: <i>HMRC v Elbrook (Cash & Carry) Ltd</i>	Hardship application considered: FTT had not erred in granting relief to taxpayer	Jul 17 6.8.4
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High Court: <i>Vieira v HMRC</i>	Statutory demand and bankruptcy considered	Jul 17 6.9.3
Upper Tribunal: <i>Westminster Trading Ltd and others v HMRC</i>	FTT had not acted unreasonably in refusing an adjournment in a MTIC case	Apr 17 6.8.5

9 Case law: First Tier Tribunal

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First-Tier Tribunal (TC05702): <i>Nicholas Gayle t/a Photogen Promo Music Adverts Ltd</i>	Individual who had attempted to register for VAT five times was not entitled to registration of a company; penalty was confirmed	Apr 17 6.2.2
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First-Tier Tribunal (TC05707): <i>Hilden Park LLP</i>	Case management directions in case about VAT avoidance arrangements	Apr 17 6.8.5
First-Tier Tribunal (TC05713): <i>The Royal Bank of Scotland Group plc</i>	Assessment was issued within 12 months of HMRC having sufficient information to justify its issue	Apr 17 6.7.1
First-Tier Tribunal (TC05717): <i>Hylton Hill</i>	It was trader's responsibility to notice that the flat rates had changed	Jul 17 6.3.1
First-Tier Tribunal (TC05719): <i>Balti Hut (Gloucester) Ltd and another</i>	Determination of exact amounts subject to estimated assessment	Jul 17 6.7.1
First-Tier Tribunal (TC05722): <i>Redwood Birkhill Ltd</i>	Company combining purchasing power of publicans to obtain better terms was liable to output tax on a supply to the publicans	Jul 17 2.7.1
First-Tier Tribunal (TC05726): <i>Stoke by Nayland Golf and Leisure Ltd</i>	Not-for-profit club was run independently of commercial club from which it was hived off, so it was	Jul 17 2.3.7

	not subject to commercial influence	
First-Tier Tribunal (TC05731): <i>Oxfordshire Masters Golf Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05743): <i>Open Safety Equipment Ltd</i>	Misunderstandings of export rules meant output tax was probably not due, but input tax claims were not justified	Jul 17 4.3.1
First-Tier Tribunal (TC05806): <i>JDI International Leasing Ltd</i>	13 th Directive claim was correctly refused where company supplied purchased goods to an associate without charging for the lease	Jul 17 4.5.1
First-Tier Tribunal (TC05811): <i>Little Rascals Pets Ltd</i>	Puppies bought from unregistered breeders were not “used”, so could not be sold under the margin scheme	Jul 17 2.10.1
First-Tier Tribunal (TC05813): <i>Ellon Car Clinic Ltd</i>	Amounts recharged for MOT tests qualified for disbursement treatment in spite of not fulfilling conditions in Notice 700	Jul 17 2.2.1
First-Tier Tribunal (TC05820): <i>Fio’s Cash and Carry Ltd</i>	Discussion of “best judgement” in relation to assessment	Jul 17 6.7.2
First-Tier Tribunal (TC05823): <i>Plant Force (Leeds) Ltd</i>	Director was held not to have acted dishonestly, on balance of probabilities, so appeal against s.61 notice allowed	Jul 17 6.8.2
First-Tier Tribunal (TC05839): <i>Dance with Mr D Ltd</i>	Belated notification penalty considered and confirmed	Jul 17 6.8.2
First-Tier Tribunal (TC05845): <i>Morgun Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05850): <i>Botleigh Grange Hotels Ltd</i>	Procedural dispute about additional documents and adjournment	Jul 17 6.8.3
First-Tier Tribunal (TC05852): <i>Anglian Water Services Ltd</i>	Unjust enrichment prevented repayment claim by water company that had made charges subject to regulatory cap	Jul 17 6.4.2
First-Tier Tribunal (TC05854): <i>Silvergate Support Services Ltd</i>	Paying more than centrally issued assessments was not enough to notify inadequacy of those assessments: penalties confirmed	Jul 17 6.8.2
First-Tier Tribunal (TC05867): <i>Oval Estates (Bath) Ltd</i>	Inter-company transactions between builder and developer were not entered into dishonestly, so <i>Kittel</i> did not apply	Jul 17 5.8.1
First-Tier Tribunal (TC05874): <i>J & B Hopkins Ltd</i>	Sub-contractor involved in constructing relevant charitable purpose building was liable for output tax, even though main contractor	Jul 17 3.3.3

	could have recovered it	
First-Tier Tribunal (TC05876): <i>Total Façade Solutions Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05877): <i>DM Specialist Joinery Ltd</i>	Default surcharge appeal partially successful	Jul 17 6.8.1
First-Tier Tribunal (TC05878): <i>Dentech Dental (Materials and Equipment) Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05888): <i>Paypoint Collections Ltd and another</i>	Companies assisting with payments by consumers to utility companies were making taxable supplies: they transmitted information that enabled other people to transfer money	Jul 17 2.3.2
First-Tier Tribunal (TC05891): <i>Graham and Christine Belcher</i>	Husband and wife ran separate businesses for VAT in spite of filing self assessment tax returns as a partnership	Jul 17 6.2.1
First-Tier Tribunal (TC05894): <i>Jestic Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05895): <i>La Belle Vie Ltd</i>	Discussion of “best judgement” in relation to assessment	Jul 17 6.7.2
First-Tier Tribunal (TC05902): <i>RT Coopers Solicitors</i>	Default surcharge appeal dismissed, but s.63 penalties discharged	Jul 17 6.8.1
First-Tier Tribunal (TC05907): <i>ABSS Consulting Services Ltd</i>	Default surcharge appeal allowed in part	Jul 17 6.8.1
First-Tier Tribunal (TC05910): <i>Ahmed Rasouli</i>	Dispute about registration date after trade was transferred as a going concern	Jul 17 6.2.2
First-Tier Tribunal (TC05926): <i>Lowcost Holidays Ltd t/a Lowcost Beds</i>	Hotel booking website appeared to be acting as agent, not as principal, so was not subject to TOMS	Jul 17 2.9.1
First-Tier Tribunal (TC05935): <i>Michael Llamas and another</i>	Best judgement assessments confirmed, but mitigation of penalty increased	Jul 17 6.7.2
First-Tier Tribunal (TC05944): <i>Havenridge (Stevenage) Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05945): <i>Finlayson Media Communications Ltd</i>	Default surcharge appeal dismissed	Jul 17 6.8.1
First-Tier Tribunal (TC05946): <i>The Learning Centre (Romford) Ltd</i>	Company qualified for exemption of welfare services in spite of not being state regulated, because a similar company would have had to be regulated in Scotland or Northern Ireland	Jul 17 2.3.6
First-Tier Tribunal (TC05952): <i>Stuart</i>	Application to appeal out of time	Jul 17 6.8.5

<i>Browne t/a Sound Solutions</i>	refused	
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10 Other material

<i>Taxation, 12 January 2017</i>	Article about changes to the Flat Rate Scheme	Apr 17 6.3.1
<i>Taxation, 26 January 2017</i>	Article considers importance of clear contracts in tripartite situations	Apr 17 2.12.2
<i>Taxation, 9 February 2017</i>	Basics article about VAT on property	Apr 17 3.5.1
<i>Taxation, 16 February 2017</i>	Article about <i>Water Property Ltd</i> (TC05450) case on option to tax	Apr 17 3.2.1
<i>Taxation, 2 March 2017</i>	Article about changes to the Flat Rate Scheme	Apr 17 6.3.1
<i>Taxation, 16 March 2017</i>	Article about changes to the Flat Rate Scheme, including catches for those choosing to deregister	Apr 17 6.3.1
<i>Taxation, 20 April 2017</i>	Article about VAT issues to consider while preparing year-end accounts	Jul 17 2.12.1
<i>Taxation, 20 April 2017</i>	Article about leaving the flat rate scheme	Jul 17 6.3.2
<i>Taxation, 4 May 2017</i>	Article about main four topics requiring Neil Warren's input in the last year	Jul 17 2.12.1
<i>Taxation, 18 May 2017</i>	Article about tax issues when selling land, buildings or both to a developer	Jul 17 3.3.4
<i>Taxation, 1 June 2017</i>	Article considering rules on revocation of option to tax	Jul 17 3.2.1
<i>Taxation, 1 June 2017</i>	Article about overhead input tax and HMRC policy	Jul 17 5.1.1
<i>Taxation, 8 June 2017</i>	Article about new offence of "failure to prevent the facilitation of tax evasion"	Jul 17 6.9.7
<i>Taxation, 22 June 2017</i>	Article about <i>Belcher</i> decision on registration	Jul 17 6.2.1
<i>Taxation, 29 June 2017</i>	Article about exposure of tax advisers to risk of lawsuits arising from missing deadlines	Jul 17 6.4.1

11 Lectures

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4.3 International goods

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