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EU VAT Compass 2021/2022

Including:

- EU VAT Directives
- ECJ Case Law on VAT
- VAT Options Exercised by the Member States

EU VAT Compass 2021/2022

Why this book?
Part One presents the consolidated text of the current EU VAT Directive (No. 2006/112), as most recently amended by Directive 2020/2020. It also contains the texts of several other Directives in the field of VAT. The text of Implementing Regulation 282/2011, as most recently amended by Implementing Regulation 2020/1112, is included.

For the interpretation of EU VAT legislation, the case law of the Court of Justice of the European Union (ECJ) is an indispensable element. Part Two provides an overview of both the operative parts of the more than 1,000 ECJ judgments in VAT cases and the pending cases that are expected to lead to judgments in the course of 2021 and 2022.

The book concludes with an overview of the options laid down by the VAT Directive that have been taken up by the individual Member States. This comprehensive analysis covers all EU Member States and the United Kingdom.

Title:	EU VAT Compass 2021/2022
Editor(s):	Fabiola Annacondia
Date of publication:	June 2021
ISBN:	978-90-8722-708-1 (print/online), 978-90-8722-709-8 (ePub), 978-90-8722-710-4 (PDF)
Type of publication:	Book
Number of pages:	1,046
Terms:	Shipping fees apply. Shipping information is available on our website
Price (print/online):	EUR 130 / USD 155 (VAT excl.)
Price (eBook: ePub or PDF):	EUR 95 / USD 115 (VAT excl.)
Price (subscription):	EUR 100 / USD 120 (VAT excl.)

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www.ibfd.org

ISBN 978-90-8722-708-1 (print)
ISBN 978-90-8722-709-8 (eBook, ePub); ISBN 978-90-8722-710-4 (eBook, PDF)
ISSN 2210-934X (print); 2772-4107 (electronic)
NUR 826

Preface

The *EU VAT Compass 2021/2022* aims to provide an essential source of reference for all those actively working or interested in the VAT system of the European Union. The book consists of three Parts, each encompassing a vital element of the European VAT system. All Parts reflect the situation prevailing on 1 January 2021.

Part One contains the text of the provisions of the European Union's basic VAT Directive (Directive 2006/112). The consolidated text of the VAT Directive contains all amendments, including amendments by Directive 2017/2455; Directive 2019/475; and Directive 2019/1995, which Member States must transpose into their national legislation by 30 June 2021 and apply from 1 July 2021 (the date of transposition has been postponed from 31 December 2020 to 30 June 2021 and the date of application has been postponed from 1 January 2021 to 1 July 2021 due to the COVID-19 crisis); and Directive 2020/1756, which applies from 1 January 2021. It also includes the most recent amendments by Directive 2019/2235, which Member States must transpose into their national legislation by 30 June 2022 and apply from 1 July 2022; Directive 2020/284, which Member States must apply from 1 January 2024; and Directive 2020/285, which Member States must apply from 1 January 2025.

Part One also contains the text of several other Directives on VAT, and the provisions of the Implementing Regulation (Regulation No. 282/2011, as most recently amended by Regulation No. 2020/1112) are added as notes to the respective provisions of the VAT Directive.

For the interpretation of the European Union's VAT legislation, the case law of the Court of Justice of the European Union (ECJ) is an indispensable element. Part Two provides an overview of the operative parts of the more than 1000 ECJ judgments in VAT cases. It also contains an overview of the cases pending before the ECJ on 31 December 2020, which can reasonably be expected to lead to judgments of the ECJ in the course of 2021 and 2022.

The book concludes with an overview of the options laid down by the VAT Directive that have been taken up by the individual Member States. The comprehensive analysis in Part Three covers all EU Member States and the United Kingdom. In principle, the overview is based on information available on 1 January 2021. The footnotes contain information, if available, on amendments that are envisaged to come into force after that date. Part Three also includes an overview of the place-of-supply rules for services that apply from 1 January 2021 (*see* section 4.2.). The options for Member States to apply the reverse charge mechanism have been split up into permanent (*see* section 10.1.2.) and temporary arrangements (*see* section 10.1.3.). As regards the simplified intra-Community triangulation arrangement, detailed information is provided (*see* section 10.2.). In recent years, some Member States introduced the split payment mechanism as an alternative VAT collection method; details of these mechanisms are provided (*see* section 10.7.). The book also includes the implementation of the "quick

fixes" for intra-Community trade in the European Union by the Member States that are applicable from 1 January 2020.

In producing this book, it is inevitable that some "minor details" were missed and the presentation of the information may occasionally be less than optimal. In an effort to improve future editions, the editor gratefully receives any suggestions that may make future editions more accessible and useful. Comments and suggestions can be sent to VATCompass@ibfd.org.

The editor

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Part One

Directive 2006/112 and several other VAT Directives

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Council Directive 2006/112/EC
of 28 November 2006
on the common system of value added tax

to 390c, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities.
[Directive 2009/162, Act of Accession of Croatia]

TITLE IV
TAXABLE TRANSACTIONS

CHAPTER 1
Supply of goods

Article 14

1. "Supply of goods" shall mean the transfer of the right to dispose of tangible property as owner.

2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:

   a. the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;

   b. the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment;

   c. the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.

3. Member States may regard the handing over of certain works of construction as a supply of goods.

[Text from 1 July 2021]

4. For the purposes of this Directive, the following definitions shall apply:

(1) "intra-Community distance sales of goods" means supplies of goods dispatched or transported by or on behalf of the supplier[6], including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

(2) "distance sales of goods imported from third territories or third countries" means supplies of goods dispatched or transported by or on behalf of the supplier[6], including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

[Directive 2017/2455]

6. ***[Text from 1 July 2021]***
Under Article 5a of Implementing Regulation 282/2011, for the application of Article 14(4) of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular in the following cases:
   a. where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
   b. where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;
   c. where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
   d. where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.
   However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

Article 14a

[Text from 1 July 2021]

1. Where a taxable person facilitates[7], through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding

EUR 150, that taxable person shall be deemed to have received and supplied those goods himself [8, 9].

2. *Where a taxable person facilitates*[7]*, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself* [8, 9].

[Directive 2017/2455]

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7. ***[Text from 1 July 2021]***
Under Article 5b of Implementing Regulation 282/2011, for the application of Article 14a of Directive 2006/112/EC, the term "facilitates" means the use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply of goods through that electronic interface.
However, a taxable person is not facilitating a supply of goods where all of the following conditions are met:
   a. *that taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;*
   b. *that taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;*
   c. *that taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods.*

Article 14a of Directive 2006/112/EC shall not apply to a taxable person who only provides any of the following:
   a. *the processing of payments in relation to the supply of goods;*
   b. *the listing or advertising of goods;*
   c. *the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.*

8. ***[Text from 1 July 2021]***
Under Article 5c of Implementing Regulation 282/2011, for the application of Article 14a of Directive 2006/112/EC, a taxable person, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where all of the following conditions are met:
   a. *the taxable person is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;*
   b. *the information referred to in point (a) is erroneous;*
   c. *the taxable person can demonstrate that he did not and could not reasonably know that this information was incorrect.*

9. ***[Text from 1 July 2021]***
Under Article 5d of Implementing Regulation 282/2011, unless he has information to the contrary, the taxable person deemed to have received and supplied the goods pursuant to Article 14a of Directive 2006/112/EC shall regard:
   a. *the person selling goods through an electronic interface as a taxable person;*
   b. *the person buying those goods as a non-taxable person.*

Article 15

1. Electricity, gas, heat or cooling energy and the like shall be treated as tangible property.
[Directive 2009/162]

Part Two

ECJ Case Law on VAT

1970 – 2020

Introduction

This part sets out the judgments of the Court of Justice of the European Union ("ECJ") in VAT cases. In principle, only cases relating to the First, Second, Sixth, Eighth and Thirteenth Directives and Directives 2006/112 and 2008/9 are included, even if they relate to:

– articles that have been withdrawn, such as Article 32 of the former Sixth Directive,
– imports and exports between Member States (prior to 1993),
– taxes characterized as turnover taxes within the meaning of Article 401 of Directive 2006/112, and
– failure of Member States to transpose EU legislation into national law on time.

Therefore, not included are cases exclusively relating to:

– the European Union's Own Resources,
– Article 110 of the Treaty on the Functioning of the European Union (previously Articles 90 and 95 of the EC Treaty),
– the European Union's Customs Codes (Regulations 2913/92 and 450/2008), and
– Directives 69/169, 83/181, 83/182, 83/183, 85/362, 2006/79, 2007/74 and 2009/132.

For practical reasons, references to Directives have been shortened. For example, "Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment" is presented as "Sixth Directive [...]" and "Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax" as "Directive 2006/112 [...]". "Value added tax" and "value-added tax" have been replaced with "VAT" and "Commission of the European Union" with "Commission". The names of the private parties (taxable persons) involved in the proceedings are consistently mentioned first (the symbol "ↄ" indicates that the order of the parties has been reversed).

The **Table of Contents** lists the decided and officially published pending cases in a consecutive order indicating (i) the case numbers, (ii) the date of the judgment or the order, (iii) the (principal) parties involved, and (iv) several keywords or a brief description of the legal issue.

The **Judgments of the Court of Justice** section presents the operative parts of the ECJ's judgments or orders in a chronological order. Where necessary, a short summary of the facts in the main proceedings has been added. The case numbers and the main party or parties involved are highlighted in bold. Also included is the page number where the official text of the judgments is published in the *European Court Reports* [ECRs]. From 2012, judgments are identified by a European Case Law Identifier (ECLI), which is a uniform identifier that has the same recognizable format for all Member States and EU courts. It is composed of five, mandatory, elements separated by colons: ECLI**:**[country code]**:**[court

code]**:**[year of decision]**:**[an ordinal number].[1] Where the full text of the judgment is not available in English, the reference is marked with an *.

The **Index of Topics** groups the judgments by issue or Article of the VAT Directive.

The **Alphabetical Index** presents the parties involved in the decided cases, in an alphabetical order.

The **Transposition Table** is aimed at facilitating transposition of the judgments of the ECJ that are based on the provisions of the former Sixth Directive to the corresponding provisions of the current VAT Directive.

1. Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law, OJ C 127, 29 Apr. 2011, p. 1-7.

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Part Three

VAT Options Exercised by the Member States (situation on 1 January 2021)

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1. Introduction

The European Union consists of 27 Member States: Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Cyprus (CY), the Czech Republic (CZ), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (EL), Hungary (HU), Ireland (IE), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), the Slovak Republic (SK), Slovenia (SI), Spain (ES) and Sweden (SE), which means that they all apply the "harmonized" European VAT system.

On 29 March 2017, the United Kingdom (Great Britain and Northern Ireland) submitted a notification of its intention to withdraw from the European Union pursuant to Article 50 of the Treaty on European Union. The United Kingdom (GB) became a "third country" as of 1 February 2020, 00:00 a.m. (CET) towards the rest of the EU Member States[1]. However, after the end of the transition period, the Protocol on Ireland/Northern Ireland ("IE/NI Protocol") applies[2]. The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period. The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the European Union and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State. The IE/NI Protocol provides that EU VAT rules concerning goods apply to and in the United Kingdom in respect of Northern Ireland. This means that references to the European Union have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain (England, Scotland and Wales). Transactions involving services are not covered by the IE/NI Protocol. This means that transactions of services between Member States and Northern Ireland are treated as transactions between Member States and third countries/territories.

Where there is a reference to the United Kingdom, this includes all parts of Great Britain and Northern Ireland. References to Great Britain only cover the nations of England, Scotland, and Wales.

In view of the dozens of options available to the Member States under the VAT Directive[3], the adjective "harmonized" significantly overstates the actual situation, even if the legislation of all Member States were perfectly in line with the provisions of EU law, which is clearly not the case.

1. For more information, *see* https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/ and https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en.
2. Article 185 of the Withdrawal Agreement.
3. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 of 11 December 2006; for the consolidated text of the VAT Directive, *see* Part One.

Member States and the United Kingdom impose VAT under the following headings:

	Official name of the tax	**Common abbreviation(s)**
AT	Umsatzsteuer[1]	USt, MwSt
BE	Belasting over de toegevoegde waarde Taxe sur la valeur ajoutée	btw, TVA
BG	Danak varhu Dobawenata Stoinost	DDS
CY	Φόρος Προστιθέμενης Αξίας (Foros Prostithemenis Axias)	ΦΠΑ (FPA)
CZ	Daň z přidané hodnoty	DPH
DE	Umsatzsteuer[1] (Mehrwertsteuer)	USt, MwSt
DK	Merværdiafgift	MOMS
EE	Käibemaks[1]	KM
EL	Φόρος Προστιθέμενης Αξίας	ΦΠΑ
ES	Impuesto sobre el Valor Añadido	IVA
FI	Arvonlisävero	ALV
FR	Taxe sur la valeur ajoutée	TVA
GB	Value added tax	VAT
HR	Porez na dodanu vrijednost	PDV
HU	Általános forgalmi adó	ÁFA
IE	Value added tax	VAT
IT	Imposta sul Valore Aggiunto	IVA
LT	Pridetines vertes mokestis	PVM
LU	Taxe sur la valeur ajoutée	TVA
LV	Pievienotās vērtības nodoklis	PVN
MT	Taxxa fuq il-Valur Mizjud	VAT
NL	Omzetbelasting[1]	BTW, btw, OB, ob
PL	Podatek od towarów i usług	PTU
PT	Imposto Sobre o Valor Acrescentado	IVA
RO	Taxa pe valoarea adăugată	TVA
SE	Mervärdesskatt	MOMS
SI	Davek na dodano vrednost	DDV
SK	Daň z pridanej hodnoty	DPH

1. Turnover tax. It should be noted that the Treaty on the Functioning of the European Union (TFEU) also refers to the term "turnover tax", not "value added tax" (*see* Articles 112 and 113 of the TFEU).

This Part provides information[4] on how Member States of the European Union have made use of some of the most important options available to them under the VAT Directive in force on 1 January 2021. This Part also includes information on VAT rules applicable in the United Kingdom on 1 January 2021.

4. Part Three is based on contributions made by the correspondents listed at the beginning of this Part. Only the editor is responsible for the final result.

"Exemptions" – "Taxable"

For the purposes of this Part, the concept of "exemption" is restricted to "true exemptions", i.e. supplies of goods and services on which no output VAT is payable, whilst the supplier is not entitled to deduct related input tax. Exemptions with the right to deduct input tax are referred to as "zero rates".

The meaning of the expression "taxable" in the VAT Directive is quite ambiguous. It may mean "subject to the VAT legislation" or "actually subject to VAT". Where they are actually subject to VAT, supplies of goods and services are labelled as "taxed", unless use of the word "taxable" does not give rise to misunderstanding, such as in "taxable person", "taxable dealer", "taxable entity", "taxable amount", etc.

Currencies

The names of the currencies of the Member States that have not adopted the euro are expressed by means of a three-letter code, of which the first two letters indicate the country and the final letter the name of the currency[5]. For three Member States, the final letter of the official code is an "N", which stands for "new". Where the new currency was introduced more than 10 years ago, which applies to the Bulgarian lev, the Polish zloty and the Romanian leu, qualifying those currencies as "new" is not appropriate and, therefore, the official currency abbreviations "BGN", "PLN" and "RON" in this Part have been replaced with "BGL", "PLZ" and "ROL", respectively.

For reference purposes, all amounts expressed in the national currencies of the Member States have been converted into euro on the basis of the exchange rates as published by the European Central Bank for 4 January 2021; *see* OJ C 2 of 5 January 2021. That procedure does not apply to amounts in national currencies that must be converted into euro on the basis of the exchange rate applicable on a specific date.

"Community" – "Union"

Under the Treaty of Lisbon, which entered into force on 1 December 2009, the *Treaty on (the) European Union* (TEU) and the *Treaty establishing the European Community* (TEC) have been amended, and the latter Treaty has been renamed as *Treaty on the Functioning of the European Union* (TFEU). From 1 December 2009, the European Union has been given a single legal personality. Prior to that date, the *European Community* and the *European Union* had different statutes. The Treaty of Lisbon has ended this dual system and, under the new Article 1 of the TEU, the *European Union* has replaced and succeeded the *European Community*. That replacement has undoubtedly the effect that, from 1 December

5. In this respect, the abbreviation of the euro ("EUR") is a notable exception to that rule because the name of the European currency does not begin with an "R".

2009, the concept "European Community" in secondary EU law must be interpreted as meaning "European Union".

It could be argued that the replacement of the concept of "Community" by that of "European Union" in primary EU law should also affect the terminology in secondary EU law. However, the wording of secondary EU law, which contains definitions of concepts containing the adverb "intra-Community", has formally not been adapted. In order to maintain the link with legally defined concepts, we will continue to use the old and familiar adjective "intra-Community", even if the concept in question is not legally defined ("intra-Community supplies of goods"). The proposal for a Council Directive amending the VAT Directive as regards the introduction of a definitive VAT system[6] seizes the opportunity to replace the terms "intra-Community" and "Community" by the terms "intra-Union" and "Union" in the provisions of the VAT Directive. Other terms have been "modernized", such as "European Union", "EU law", "EU Member State" and "Member States of the European Union".

"Territory of the Community"

Under Article 5 of the VAT Directive, the terms "Community" and "territory of the Community" are defined as the territory of the Member States to which the Treaty establishing the European Community is applicable in accordance with Article 299 of that Treaty, with the exception of certain territories.

As mentioned above, with effect from 1 December 2009, the Treaty establishing the European Community (TEC) has been renamed as the Treaty on the Functioning of the European Union (TFEU), therefore, reference to Article 299 TEC should have been replaced by reference to, inter alia, Article 52 of the Treaty on (the) European Union and Article 355 of the TFEU.

The VAT Directive does not apply to the following territories forming part of the customs territory of the Community: Mount Athos; the Canary Islands; the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union[7]; the Åland Islands; Campione d'Italia and the Italian waters of Lake Lugano; and to the following territories not forming part of the customs territory of the Community: the Island of Heligoland; the territory of Büsingen; Ceuta; Melilla and Livigno. For the purposes of applying the VAT Directive, these territories are considered "third territories".

In view of the conventions and treaties concluded with France and Cyprus respectively, the Principality of Monaco and the United Kingdom Sovereign

6. Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States, COM(2018) 329 final of 25 May 2018.
7. Articles 349 and 355(1) of the Treaty on the Functioning of the European Union refer to the French territories of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy and Saint-Martin.

Base Areas of Akrotiri and Dhekelia are, for the purposes of the application of the VAT Directive, not considered third countries.

Member States shall take the measures necessary to ensure that transactions originating in or intended for the Principality of Monaco are treated as transactions originating in or intended for France, and that transactions originating in or intended for the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for Cyprus.

The United Kingdom (Great Britain and Northern Ireland) left the European Union in 2020 and following the transition period became a third country on 1 January 2021. However, there are special arrangements for Northern Ireland that continues to apply the rules of the VAT Directive for supplies of goods.

The Isle of Man is treated as part of the United Kingdom. Transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom.

The position of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia is governed by a protocol between the Republic of Cyprus and the United Kingdom, according to Article 7(8) of the EU Withdrawal Agreement.

VAT options

It should be noted that the following overview is inevitably a compromise between completeness and clarity, which means that "minor" details had to be ignored. However, what may be a minor detail to some, may be of vital importance to others. The editor is aware of the fact that the presentation of the information in this edition may occasionally be less than optimal and she intends to improve future editions in this respect. To that end, the editor invites you to bring to her attention any suggestions which may make future editions more accessible and useful. Although the country information has been compiled and summarized with great care, it cannot be precluded that the overview contains mistakes. The editor would be grateful if you were to bring them to her attention.

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