

# BA Legal Report

January 2015

## Banking & Payment Systems

### Late Payments

The UK Government believes that late payments remain a significant problem for UK businesses with SMEs owed £39 billion in late payments. To deal with this issue it is introducing a Reporting Requirement for large and listed companies involving publishing detailed information about their payment practices and performance and also looking to strengthen the Prompt Payment Code, including sector based approaches. At the EU level, there will be an evaluation of the Directive starting in January 2015 to which the new DG Grow Commissioner is very committed. The issue of late payment is now seen as having huge impacts on competitiveness and growth and additional measures may be introduced in the B2B area such as sanctions, making the directive stronger, and a clearer definition of grossly unfair practices.

The Government has issued its consultation on Late Payments. This can be found [here](#). Press Release is [here](#).

The consultation options seem to be quite extensive – including a need to report on;

- proportion of invoices that are paid beyond the payment terms
- proportion of invoices paid within 30 days
- proportion of invoices paid over 30, 60 and 120 days
- the average time taken to pay invoices

Views are also requested on whether companies should also provide a statement that would help the supplier understand the company's payment practices and performance.

The Consultation will end on **2 February 2015**.

### Interchange Fee Regulation

There have been a series of final stage European negotiations (Triologue) between Council, Parliament and Commission to seek a compromise on the Interchange Fee Regulation and a deal has been reached.

Press Release: [MEPs Secure Deal to Cap Card Payment Fees](#)

HM Treasury has now received the final compromise text and based on this, here are the key points:

### **Rates**

Member States have the option of implementing (for domestic debit fee caps):

- A 0.2% per transaction cap
- A per transaction cap of 5 eurocents
- A combination of a per transaction cap and flat fee (this fee cannot be higher than 0.2% of the average value of transactions)

Member States may opt for a weighted average approach, but this option is removed after 5 years.

- Credit at 0.3%
- Member States may introduce lower caps

### **Timing**

Caps will be implemented 6 months after the adoption of the Regulation. This adoption looks likely to be in January or February, so caps should be in place by late summer.

### **Scope**

- Commercial cards used only for business expenses will be exempt. This will be reviewed and the Commission will report on the impact after four years of the caps being in place.
- 'Pure' three party schemes are exempt (ie where the card is both issued and processed within the same scheme).
- Member States can exempt three party schemes that licence (where there is a visible interchange fee) for a period of 3 years, as long as they fall below a 3% market share threshold in that Member State.

The UK Government has consistently campaigned against a weighted average approach. The BRC will continue to lobby for the introduction of a fixed pence per transaction and also lower fees.

### **Cheque Imaging**

Cheque usage has been in decline for more than 20 years, falling from 4 billion cheques written in 1990 to 718 million in 2013. It is forecast that around 275 million cheques will be written in 2023. The Cheque and Credit Clearing Company (C&CCC) has looked at a number of possible ways of improving the cheque clearing process to ensure that cheques can be sustained for those consumers and businesses that use them. Clearing cheques via a 'cheque imaging' model appears to offer the most benefits for consumers and businesses. This system would mean that images of cheques are exchanged between the relevant banks, removing the need for the actual paper cheque to be transported.

One of the main benefits is that the cheque clearing process could be speeded up. The new process could also see customers being able to send their bank a photo of a cheque by using a secure online banking app on their smart phone or tablet rather than having to go to the bank itself to pay it in. Customers would still have the option of paying in cheques at a bank branch in exactly the same way as they do today.

To be kept up-to-date with all future developments regarding cheque imaging, email: [info@chequeandcredit.co.uk](mailto:info@chequeandcredit.co.uk).

Here are some other documents about this proposal:

- [FAQs](#)
- [Fact sheet](#)
- [Facts and figures](#)
- [C&CCC response to HMT consultation 'Speeding up cheque payments: legislation for cheque imaging'](#)
- [C&CCC comment regarding publication of HMT Consultation outcome](#)

## **Companies & Competition**

### **[The Transatlantic Trade and Investment Partnership \(TTIP\) and Book Pricing](#)**

Under the GATS, printing and publishing are not classified as 'cultural services' but rather as 'other business services'. Some people are concerned that TTIP might jeopardise some Member States' policies of fixed prices for books, claiming that TTIP will affect online distribution of books and e-books and compliance with Member States' laws on book pricing, therefore US companies could use investor-to-state dispute mechanisms to challenge laws on book pricing. This is not the case. Insofar as rules for fixed-prices apply on a non-discriminatory basis – in other words both to books produced in the EU and to imports – there is no problem. There is not even a need to flag fixed prices for books as a restriction to any additional market opening for TTIP and Culture 16/07/2014 Page 5 of 6 publishing activities (on top of GATS) that the EU may or may not grant in TTIP. There is no reason why TTIP should affect how booksellers comply with the law.

### **[Alex Chisholm Speaks About Digital Technology](#)**

Text of a speech given by CMA Chief Executive, Alex Chisholm, at the CRA Competition Conference in Brussels, concerning multinational digital companies and competition. He sees four types of problems: special pleading, big societal questions, regulatory barriers to disruption and bread and butter competition issues.

## **Consumer Protection**

### **Government Response to the ADR Directive Consultation**

The Government has published their response to the consultation on the implementation of the Alternative Dispute Resolution (ADR) Directive. ADR can offer a cheaper and quicker alternative to the courts, for disputes where a consumer is not able to resolve their complaint directly with the business from whom they made their purchase. ADR already operates in the UK, but currently not across all sectors. Under the Directive, the UK Government are obligated to provide ADR through a certified body, for any dispute concerning contractual obligations between a consumer and a business.

The Government intends to leave the existing landscape as this already operates well, and will introduce a residual ADR scheme to plug the gaps in the existing landscape where coverage is limited. This will be achieved through the appointment of an external supplier through a competitive procurement process to provide a residual ADR scheme, which will be targeted at those sectors which generate a significant number of complaints.

Further changes being implemented as part of this Directive will be to create a consumer complaints "helpdesk" to be provided by Citizens Advice; establish the Trading Standards Institute (TSI) as the "generic" competent authority; legislate to allow regulators to act as competent authorities in their sectors and work across Whitehall and with external stakeholders to gather evidence on the costs and benefits of broader simplification of the UK landscape.

The full response document can be viewed [here](#).

### **Commercial Use of Consumer Data**

The Competition and Markets Authority (CMA) is inviting views on the commercial use of consumer data. Businesses are increasingly collecting and using data from, and about, consumers. This includes the identity of their customers, what they consume, where they live and work and other demographic information. It also includes information on who they connect with, their interests and attitudes. This call for information is a fact-finding exercise to help understand fully how businesses collect and use this data for commercial purposes and the implications for firms and consumers. Documents:

[The commercial use of consumer data: call for information](#)

[How the CMA will handle responses](#)

[Respond online](#) or complete a [response form](#) and email to: [ConsumerData@cma.gsi.gov.uk](mailto:ConsumerData@cma.gsi.gov.uk)

## Copyright & Piracy

### Copyright High Priority of New Commission – Interoperability

The European Commission has reported that copyright would be a high priority in the next six months. The achievement of a single digital market is priority N° 2 on Juncker's agenda. Marco Giorello, the Deputy Head of Unit for Copyright (being transferred from DG Market to DG Connect), said the next step will be to try to square the circle between the protection of cultural diversity, consumer behaviour in a digital environment and the need to remunerate stakeholders. Various stakeholders from the book and music industry underlined the importance of copyright for authors, publishers and music producers. EIBF raised interoperability and fair competition pointing out these crucial issues which should be given high priority for the benefit of booksellers and consumers.

### UK Government Publishes Copyright Notice on Assigning Copyright

When people write books, paint pictures or take photographs, they are usually the owner of the copyright and can control how others use their work. But sometimes these people may wish to sell their copyright or to assign it to someone else. To help those that have questions about selling or transferring their copyright, the Government has published guidance through its 'Copyright Notices Service'. This Notice covers things to be aware of such as who owns the copyright, and issues around selling or even inheriting copyright. While the guidance isn't a legal 'how to' guide on assigning copyright, it provides useful information to those that are considering the legal and practical aspects of assigning copyright or being assigned copyright. The guidance can be found [here](#).

### IPO Guidance: Technological Protection Measures (TPMs) Complaints Process

The IPO has published guidelines for users to complain about lack of access to works due to restrictive TPMs. They provide a form to complain to the Secretary of State for Business, Innovation and Skills. They also set out some of the criteria the Secretary of State will consider when assessing the complaint. Download [here](#).

IPO has also issued: **Exceptions to copyright: Guidance for creators and copyright owners**. Download [here](#).

### [UK libraries Protest Copyright Restrictions With Empty Spaces](#)

CILIP, libraries and other library associations in the UK are running [a campaign](#) to move unpublished individual works to the current copyright regime of the author's life plus 70 years, instead of the "Orphan Works" category, which restricts their exhibition until 2039.

### [Can Proper Licensing Help Solve Piracy Problems?](#)

Two UK rights experts argue that physical book piracy is often due to lack of availability. So, the more content that can be licensed the better.

## **Data Protection & Privacy**

### **Criminalising Enforced Subject Access**

Every person is entitled to know what personal information Data Controllers record about them. To find out what that information is held they simply make a '[Subject Access Request](#)' in writing under Section 7 of the Data Protection Act 1998. Unfortunately this right has been abused by some employers, as a condition of employment, or other third party, as part of a contract for the provision of services, whereby they require individuals to make a subject access request to find out what information is held on them with other Data Controllers. Usually the aim is to gather information about their convictions and cautions or disciplinary matters, and is a way to circumvent CRB checks. From 1 December 2014, under Section 56 of the Data Protection Act 1998, it is now a criminal offence for an employer or a third party to require someone to make a subject access request.

Penalties on conviction will range from a maximum £10,000 fine (or an unlimited fine if heard under solemn procedure) in the Sheriff Court in Scotland, an unlimited fine in England and Wales, and a £5,000 (summary) or unlimited (on indictment) fine in Northern Ireland. Employers needing to check on an applicants' history can lawfully achieve this through [Disclosure Scotland](#), [the Disclosure and Barring Service \(DBS\)](#), or [Access Northern Ireland](#).

### **BIC Guidance for Librarians to Meet EU Requirements on RFID Privacy**

The EU has published its long awaited Mandate 436 (Privacy and RFID). The mandate is an instruction to standards and data protection agencies in member nations to take whatever steps they consider appropriate to meet the requirements of the mandate over the use of Radio Frequency Identification (RFID) in a number of business and service sectors – including libraries. The focus of the EU is to ensure that the privacy of EU citizens is safeguarded. BIC's current advice is that action or expenditure to comply with these EU regulations is not necessary at the moment and that if it should become necessary, BIC will be in a position to advise on the best action to take to comply with UK law. Librarians concerned about this and would like to register their details with BIC can supply name, email address and organisation contact details to BIC: [Alaina-Marie@bic.org.uk](mailto:Alaina-Marie@bic.org.uk)

## Employment

### Holiday Pay – Inclusion of Non-Guaranteed Overtime

Holiday pay in the UK has been calculated on the basis of a 'week's pay' – based on basic salary and excluding payments such as voluntary overtime and commission. Holiday pay has recently been challenged in a number of legal cases. On 4 November the Employment Appeal Tribunal published its ruling that non-guaranteed overtime should be taken into account when calculating holiday pay, along with some additional payments intrinsic to carrying out the role. The question of whether commission should also be included was referred by the Employment Tribunal to the European Court of Justice, which ruled that commission should be taken into account. In February 2015 the UK Tribunal will interpret the European ruling.

The ruling on overtime only applies to the 20 days of holiday guaranteed by the EU Working Time Directive and not the additional eight days required by UK law. The ruling also indicated that claims for illegal deductions (past holiday pay that should have included overtime) were only valid where they had not been followed by a period of three months during which no illegal deductions were made, which for many workers will mean that they cannot claim beyond the past holiday year. This ruling is subject to appeal from either party, which means that its impact will remain uncertain until late December. If the ruling stands it will mean that many businesses will need to change how they calculate holiday pay and possibly how they offer overtime. It will also likely give rise to claims for back pay from employees who have suffered illegal deductions in the past, which may lead employers to consider some form of settlement to anyone affected.

The Government laid a Statutory Instrument ["SI"] shortly before Christmas to create a two year backstop (from the date when a claim is submitted) on retrospective claims for unlawful deductions. This would limit liabilities for employers where individuals do not have a three month gap in unlawful deductions within the previous two years' holiday payments. It would also protect against a future claim that might challenge the three month gap backstop and restrict the impact of an attempt to bring purely voluntary overtime into the scope of holiday pay calculations.

- The SI will follow negative procedure, so will automatically become law unless there is an objection from either House. Members will have 40 sitting days during which they could pray against it and trigger a debate and vote. Assuming the Government manages to pass this SI the backstop would apply to all claims filed on 1 July 2015 or after.

- The Government is not able to restrict claims with immediate effect as this would likely be found an unlawful attempt to restrict citizens' ability to seek legitimate redress. There will therefore be a six month window of opportunity to lodge claims.
- BIS officials have spoken to the TUC who confirmed that they do not support this proposal, as it would affect other forms of unlawful deductions where redress is sought through a tribunal.
- The BIS Holiday Pay Taskforce will continue to meet in 2015 with a focus on the Commission ruling expected in February and longer-term possible renegotiation of the Working Time Directive and tidying of the UK Working Time Regulations.

### **Are You Ready for Auto Enrolment Pensions?**

The first staging dates for small businesses to implement the new auto enrolment pension legislation occur this year, and the Pensions Regulator has already handed out fixed penalties to employers for failing to meet their auto-enrolment pension duties. The BA is urging all members to find out their staging date and take steps to implement the rules, before fines start falling due. An employer is required to enrol an employee into a workplace pension if the employee is not already in a qualifying pension at work; is aged 22 or over; is under State Pension age; earns more than £9440 a year (figure subject to change) and works in the UK. Employers must inform The Pension Regulator of their qualifying workplace pension scheme within four months of their staging date; registration must be completed within four months of the staging date and will have to be updated every three years thereafter. For further information, including details on staging dates and 'Getting Ready' Guide for employers, see [here](#).

Through the BA's association with the Independent Retailers Confederation, BA members can access advice and help from Elliott Sanders of Copthorne Hundred Wealth Management - 01372 721616 or email [Elliott.Sanders@sjpp.co.uk](mailto:Elliott.Sanders@sjpp.co.uk).

### **[Sentencing Council Guidelines Proposed](#)**

The Sentencing Council has proposed new guidelines for sentencers dealing with health and safety offences, including non-fatal offences. The Council is proposing to increase sentence levels for some offences and will take account of the financial circumstances of offenders or offending organisation, which will be based on turnover. The Council is seeking views on its proposals through a consultation and the BRC will submit a sectoral response through the Risk and Safety PAG before the deadline of 18 February 2015.

## **Environment & CSR**

### **Waste Policy Review: Defra/BIS**

Key points are from Environment Ministers meeting:

- Orientation Debate on the waste proposals.
- Most Member States support the resource efficiency principles behind the proposals, but are not content with some details.
- Many Member States questioned the high level of ambition reflected in the targets; the logic of basing future targets on the recycling rates of the current highest achievers; and the relatively short time frame for low-performing States to replicate these.
- Other issues which were raised in the Council included: calls for better policy around design of products with the prevention of waste in mind; and concerns at the lack of robust data against which to set and measure any food waste prevention target.

### European Parliament

- The rapporteur on the waste package, Simona Bonafè, will publish a draft report on the proposals in March 2015, with the final adoption of her report by the ENVI committee pencilled in for September 2015.

### UK position

A position on the proposals will need to be cleared ahead of more detailed negotiations. There is no firm timetable for this yet, and the future pace will depend largely on the Italian Presidency's plans.

### **Britain's Retailers on Track to Meet Ambitious Environmental Goals**

The latest report from the BRC confirms Britain's retailers are on course to meet ambitious voluntary targets to reduce the direct environmental impact of their operations. The figures and case studies, which form part of the BRC's progress report on the industry initiative A Better Retailing Climate (ABRC) show how retailers are working in partnership with suppliers and customers to make significant progress including lowering energy usage in buildings, cutting emissions from refrigeration, diverting waste from landfill and reporting on food waste.

### **A Better Retailing Climate Driving Resource Efficiency in Scotland**

A Better Retailing Climate is a voluntary initiative that sets out the collective environmental ambitions of a group of leading retailers operating in Scotland and across the UK. When we launched this initiative in 2008 we announced five targets reducing the direct environmental impact of the retail industry. The 2008 targets came to an end in 2013 and all have been exceeded; this document provides a summary of the progress and achievements made by retailers in relation to these targets.

## **Plastic Bags**

### **Scotland: Ban on Plastic Bags**

Further to the BRC submission to the Public Petitions Committee on the proposed ban on plastic bags the Scottish Government has submitted supporting evidence which makes clear its opposition, in line with the SRC, to a ban on plastic bags. The Scottish Government's evidence can be read [here](#).

### **Northern Ireland: Important Changes To The 5p Carrier Bag Levy**

The 5 pence carrier bag levy took effect on 19 January and The Department will be posting updated legislative guidance on the NIDirect site and can be accessed [here](#). The Department has been rolling out of its communication campaign to promote the extension of the levy and explain the rationale behind it. Retailers can access downloadable posters (free of charge) for display in store [here](#). Further information:

[www.nidirect.gov.uk/baglevy](http://www.nidirect.gov.uk/baglevy) - email: [carrierbaglevy@doeni.gov.uk](mailto:carrierbaglevy@doeni.gov.uk) - Tel: 0300 200 7879

### **England: Carrier Bag Charges Order Laid in Parliament**

The Carrier Bag Charges Order was laid in Parliament on 17 December 2014. The Order and Impact Assessment are available [here](#). Defra are expecting the Order to be debated in both Houses of Parliament sometime between January and March 2015.

Subject to Parliamentary approval the Order will be on the statute book by April 2015 and the charge will start from **5 October 2015**. The legislation will apply to larger retailers with over 250 employees and covers single use plastic bags under 70microns. The legislation introduced in Parliament also requires Defra to review existing industry standards for the biodegradability of lightweight plastic material, including whether there is an existing standard that may be appropriate for an exemption, and if so how the exemption would be implemented. Defra will report the conclusions of this review to Parliament in October 2015.

### **England: Notes of BRC Defra Carrier Bag Workshop**

- SMEs are exempt and franchises will also be exempt from the charge.
- Reporting will be via Excel spreadsheets to Defra rather than through an online portal.
- Retailers will be required to report on: numbers of single use plastic bags; the amount of proceeds from the charge; and where the net proceeds have been donated. There will also be voluntary questions on numbers of paper and reusable bags.
- Retailers present confirmed that they see no need for a voluntary agreement on the proceeds of the charge.

- Defra is also drafting guidance for local authorities on enforcement and can share this.
- Defra is planning to communicate the charge through: social media; a Ministerial radio day; broadcast ministerial interviews; press announcements and briefings; customer facing material on Government websites and high profile news stories.
- Defra will also create downloadable templates and flyers for point of sale.
- Defra is unable to pay for advertising.
- Defra is unable to do much in the run up to the May 2015 general election.

### **EU: Plastic Bag Proposals**

Agreement has been reached and once enacted at EU level, member states will have 18 months within which to transpose the legislation. Member states can either commit to a target (90 single use plastic bags per capita by 2019 and 40 bags by 2025), or introduce a charge. Measures need to be in place by 2018. The Commission has one year in which to develop a methodology for reporting by member states; develop standards for home composting and a label for compostable and biodegradable bags; and review biodegradable bags. Defra's understanding is that the England charge would satisfy the EU proposals even though the England charge will not apply to all retailers.

### **Loss Prevention**

#### **Value of Shop Theft Now Tops £600m**

The impact of theft on UK retailers has reached its highest level in a decade according to this year's BRC Retail Crime Survey. Key findings:

- There were an estimated 3m offences against UK retailers in 2013-14, directly adding £603m to retailers' costs.
- Although the volume of shop theft offences declined by 4 per cent, the average value of each incident increased from £177 to £241.
- Fraud increased by 12 per cent in 2013-14 and accounts for 37 per cent of the total cost of retail crime - cyber attacks pose a critical threat to their business.
- There were 32 incidents of violence and abuse per 1,000 employees in 2013-14.

#### **BIS Guidance: Cyber Security - Balancing Risk and Reward with Confidence**

As part of the Strategy, the Department for Business Innovation and Skills has published new guidance for Non-Executive Directors called *Cyber Security: Balancing Risk and Reward with Confidence*. The Guidance has been designed to help non-technical NEDs engage with board colleagues about managing cyber risks and can be found [here](#).

## Property & Rates

### [Treasury Minister Addresses Small Shops Group on Business Rates](#)

Financial Secretary to the Treasury, David Gauke MP and the Minister responsible for business rates addressed the All Party Small Shops Group to discuss business rates in light of the Chancellor's announcements in the Autumn Financial Statement. The Statement featured a variety of announcements about business rates, including: a full review into the future structure of business rates to be completed by 2016; introducing Retail Business Rate Discount, giving retail businesses up to £1,500 discount; an extension of the annual cap of 2% on the business rates multiplier and an extension of the doubling of Small Business Rate Relief.

### [BA Tells Treasury 'scrap business rates altogether'](#)

The Booksellers Association has called for the scrapping of business rates altogether for small businesses in a meeting in the House of Commons. Tim Godfray said in a speech to the all-party parliamentary small shops group that The BA and the British Retail Consortium would like to see "small businesses removed completely from the financial and administrative burden of business rates".

### [BRC Welcomes Rates Review Announcement and Extension of Short Term Relief](#)

The BRC and our members have been leading the cross-industry debate about the future scope of change for business rates and there is a strong consensus from retail and property to manufacturing that we need more fundamental reform because the existing system is no longer fit for purpose. The BRC's Manifesto Milestones for how to reform the rates system set out four principles of fundamental reform which include:

- The total amount of business rates should be reduced.
- Business rates should flex with overall economic performance as other taxes do.
- Business rates should be shared equitably across different industries.
- The system should have positive incentives such as encouraging energy efficiency.

### **Administration of Business Rates in England - Responses & Interim Findings**

The Government has published: [Administration of business rates in England: summary of responses](#). In April 2014, the government published a [discussion paper](#) on business rates administration in England. It received over 200 responses from local authorities, businesses, their representatives and individuals to this paper. The key findings from the discussion paper and from the meetings held with officials from HM Treasury, the Department for Communities and Local Government and the Valuation Office Agency have informed the government's [interim findings](#) on business rates administration.

The main messages from the responses under four main headings:

**How property is valued:** Ratepayers have sent a clear message to the Government that they support an individualised approach to valuation. Overall ratepayers would not support a move away from this towards more broad brush approaches (banding or zoning).

Opinion is divided on how often revaluations should take place. The Government proposes to continue the discussion on:

- The costs and benefits of more frequent revaluations.
- What more frequent revaluations would mean for all stakeholders.
- How the gap between the valuation date and the date on the rating list can be reduced while maintaining accuracy.

**Checking your rateable value and making challenges:** The Government has identified problems with business rates appeals. It is seeking to look at:

- Alternative informal routes that allow ratepayers to check or seek changes to rateable values.
- Improvements to formal routes of appeal.
- Whether reforms such as introducing a charge or a requirement for the submission of information could encourage ratepayers to use informal routes to resolve disputes.

**Information gathering:** The Government is committed to improving the transparency and accountability of government and its services. It will look for a suitable opportunity to change the law to allow greater sharing of information between the VOA and local government. The Government also commits to set up a forum of ratepayers, their representatives, landlords and local authorities to bring forward practical improvements that:

- Ensure the VOA has the data it needs to carry out timely and accurate valuations.
- Ensure information about changes to properties can be shared efficiently between public bodies.
- Improve VOA systems for gathering rental details.
- Ensure the VOA can increase the transparency of the valuation process.

**Billing and collection:** The Government will set up a billing and collection forum to bring forward practical improvements to the billing system. The Government will also consider best practice guidance for standard and clear bills.

### **New NAVs for Northern Ireland published**

The new rateable values for commercial properties were have been released. This gives the values on properties from the Northern Ireland Rates Commissioner. There are winners and losers in the retail sector with some seeing rises of over 50% on their properties. However what this means in practice will not be known until the poundage rate is struck in February 2015.

### **Welsh Business Rates**

The Welsh Government has set up a business rates panel ahead of full devolution of rates to Wales in April 2015. The Minister has said that the panel to look at the various recommendations from the review by Professor Morgan and the panel will also look at the various reviews that have taken place within the devolved nations and the business rates administration review, using this to help shape the strategic position which the Welsh Government will adopt. The panel will be chaired by Chris Sutton, Chair of CBI Wales.

### **Taxation & VAT**

#### **No Agreement on VAT on E-Books in the EU**

Member states agreed on the need to promote reading, given in particular its strategic importance to support access to culture and cultural diversity and to develop awareness of European identity. However, opinions diverged on the fiscal treatment to be applied to printed books and e-books. According to the VAT Directive, printed books are treated as 'goods' to which reduced VAT rates might apply while e-books are considered as 'electronic services' which don't benefit from reduced rates. Several member states were of the view that a book is always a book, independently of its support and therefore Member states should be allowed to apply the reduced VAT rate also to e-books. On the other hand, a number of member states considered that this is complex issue which called for a more cautious approach due to the unforeseeable consequences of such an approach on book policy and tax revenues.

#### **A value added tax?**

The application of VAT on digital books within the European Union continues to be a muddle wrapped up in dated legislation subject to continuing consultation. The European Union's general principle is that tax imposed on similar goods and services ought to be harmonised and yet there remains different treatments for books depending on whether they are bought in print or digitally.

### UK Isolated on e-book VAT as Italy and Malta Cut Rates

The UK is looking increasingly isolated in charging 20% VAT on e-books after two more European countries lowered their rates to be in line with print books. Italy has ruled that VAT on e-books will be cut from the standard 22% to 4% so it matches the rate imposed on printed books. Meanwhile, Malta has decided to cut its VAT on e-books from 18% to 5%, also so it is in line with print. The changes came in on 1 January 2015.

### **Telecommunications, Broadcasting & Electronic Services**

The European Commission has launched a [web portal](#) to help businesses to adapt to the change in VAT rules that will enter into force on 1 January 2015. Businesses selling telecommunications, broadcasting and electronic services (including e-books) will have to charge VAT where the customer is based, rather than where the supplier is located. This means all e-books sold to consumers based in the UK will be charged VAT at 20%. A 'Mini One Stop Shop' (MOSS) is in place to allow companies to make a single VAT declaration and payment in their own Member State for all their intra-EU transactions.

### Small Victory for UK Micro Firms as HMRC Tweaks EU VAT MOSS Rule

The Government has agreed to change a controversial VAT rule that thousands of UK business owners claimed was putting their companies at risk. New EU regulation introduced on 1 January 2015 would have forced UK firms selling digital services, such as e-books and e-courses, in Europe to register for VAT in every country, as VAT on digital products will be chargeable in the place of purchase rather than the place of supply. HMRC has conceded that while micro companies are still obliged to register for VAT in the UK to use MOSS, they will no longer be forced to charge UK VAT on their domestic sales.

### **Electronic Publishing: VAT**

**Mr Elfyn Llwyd:** What estimate he has made of the total revenue from taxation levied on e-books, digital magazines and digital newspapers in each of the last three years; and what estimate he has made of the further revenue that will accrue from the forthcoming changes to VAT place of supply rules on those products from 1 January 2015. [217126]

#### **Mr David Gauke:**

No reliable estimate has been possible for the total revenue from VAT levied on e-books in each of the last three years. HMRC estimates that additional revenues as a result of the change to the VAT place of supply rules for telecommunications, broadcasting and e-services for years 2014-15 and 2015-16 will be £70m and £300m respectively.

### [Osborne Announces New Tax on UK-Generated Profits for Multinationals](#)

Multinational companies like Amazon and Apple will pay a 25% tax on their UK-generated profits, Chancellor George Osborne announced in the Autumn Statement, specifically mentioning large companies 'including in the tech sector' who would be penalised for 'using elaborate structures to avoid paying taxes.'

### [Trade Welcomes Chancellor's Tax and Rates Measures](#)

Booksellers have welcomed the news that business rates will be reviewed and a 25% tax will be imposed on multinationals' profits from UK economic activity. Tim Godfray said he 'applauded' the coalition government for taking steps to try and tackle the unfair situation. 'It is encouraging to see politicians of all parties aware of these inequalities and taking steps to try and improve the situation,' he said. He added the trade body was 'disappointed' Osborne did not address tax breaks and subsidies many multinational companies receive in the UK to open warehouses, 'which benefit one area but ultimately cost jobs and revenue in other areas of the UK economy, notably on the high street.'

### [Luxembourg Backed 'Cosmetic' Amazon Deal in 11 Days, EU Says](#)

The European Union stepped up criticism of Luxembourg's sweetheart tax pacts, saying the country approved a "cosmetic" deal with Amazon.com in 11 days, potentially letting the company shift billions of euros to a tax-free unit. The EU told Luxembourg officials that the deal, based on a 'cosmetic arrangement,' gives the Internet retailer an unfair advantage over competitors and could lead to the repayment of any back taxes that are considered illegal state aid.

### [Luxembourg Accused of Supplying 'state aid' to Amazon](#)

Luxembourg provided 'state aid' to Amazon through its tax arrangements for the company, the European Commission has said. The EC launched an [investigation](#) into preferential tax arrangements between Luxembourg and Amazon last year, and in a [document](#) just made public said that its 'preliminary view is that the tax ruling . . . by Luxembourg in favour of Amazon constitutes state aid . . . and the Commission has doubts at this stage as to that ruling's compatibility with the internal market'.

### [Amazon EU Sarl Paid Too Little Tax, EU Competition Regulator Says](#)

Amazon's main European trading company that accounts for a fifth of the online retailer's worldwide sales has been paying too little tax for years, European competition regulators have said. A 23-page provisional decision paper from the competition commission in Brussels said Amazon EU Sarl, the group's Luxembourg trading hub sales of €13.6bn (£10.3bn) in 2013, had been paying inflated royalty fees to another Amazon entity.