Deloitte.
Legal

Octubre y Noviembre 2018

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

3. Dirección General de Tributos. Contestación nº V2327-18, de 20 de agosto de 2018.

4. Dirección General de Tributos. Contestación nº V2328-18, de 20 de agosto de 2018.

5. Dirección General de Tributos. Contestación nº V2333-18, de 20 de agosto de 2018.

6. Dirección General de Tributos. Contestación nº V2356-18, de 20 de agosto de 2018.

7. Dirección General de Tributos. Contestación nº V2398-18, de 6 de septiembre de 2018.

8. Dirección General de Tributos. Contestación nº V2399-18, de 6 de septiembre de 2018.

9. Dirección General de Tributos. Contestación nº V2448-18, de 12 de septiembre de 2018.

10. Dirección General de Tributos. Contestación nº V2456-18, de 12 de septiembre de 2018.

11. Dirección General de Tributos. Contestación nº V2565-18, de 19 de septiembre de 2018.

12. Dirección General de Tributos. Contestación nº V2607-18, de 25 de septiembre de 2018.

IV. Country Summaries

October 2018

Global

The US has announced additional tariffs on USD 200 billion of Chinese imports and China has responded with additional tariffs on USD 60 billion of US imports

Americas

US-Mexico-Canada

There is news regarding the United States-Mexico-Canada Trade Agreement.

Asia Pacific

Australia-Taiwan

The customs agencies of Australia and Taiwan have signed a Mutual Recognition Agreement.

India

There is an update on GST and customs.

There has been an amendment to the rules for Special Economic Zones.

There have been two decisions by the National Anti-profiteering Authority.

New Zealand

Non-resident retailers selling to New Zealand consumers will be required to register for and charge New Zealand GST from 1 October 2019.

EMEA

Estonia

There have been changes to the VAT treatment of real estate.

France

The VAT refund procedure for EU non-resident taxable persons in France now conforms with the EU Principal VAT Directive.

The non-residents' tax office has changed its practice concerning the filing of VAT returns under the *saisonnier* regime.

Greece

Under a new law, pending VAT refund claims of a total amount up to EUR 10,000 will be processed more quickly.

Hungary

Hungary has been authorized, by way of derogation from the EU Principal VAT Directive, to apply a presumed VAT deduction rate of 50% on the use of leased cars.

Hungary has also been authorized a derogation to increase the VAT exemption threshold for small enterprises.

Ireland

Budget 2019, delivered on 9 October 2018, included a number of indirect tax measures, including changes to the current VAT rate of 9%, and increases in excise duty on cigarettes and Vehicle Registration Tax on diesel cars.

Italy

E-invoicing simplifications are being evaluated.

Excise duty exemption will apply where electronic cards are used for withdrawal of fuel by personnel assigned to US/NATO.

There are new operating instructions for the communication of accounting data by traders storing energy products at third party deposits.

Malta

Malta has implemented the EU's e-commerce VAT package rules.

Poland

The Ministry of Finance is considering replacing VAT returns and mandatory JPK_VAT evidence files submitted on monthly basis to the tax authorities with one SAF-T file.

Portugal

The 2019 Budget law proposal has been announced and submitted by the Government to Parliament, including a number of proposals to amend indirect taxes.

Russia

The Government expanded the list of addresses where retail organizations must be located to participate in the Tax Free pilot project.

The Ministry of Finance has clarified the ability to amend government contracts due to the increase to the VAT rate.

The Ministry of Finance has clarified the VAT treatment of international communication services.

The Ministry of Finance has clarified the VAT treatment of the sale of residential premises (apartments).

The Ministry of Finance has clarified the procedure for confirming the application of the 0% VAT rate for export sales of goods on the basis of temporary customs declarations.

Rates of customs duties for customs escort and storage at a temporary storage warehouse have been established.

The licensing period has expired for the import of crushed stone and gravel, etc.

Methodological recommendations have been approved for the implementation of the experiment on marking the identification of shoe products.

The Government has established a transition procedure for applying stamps for marking alcoholic products.

Serbia

There have been amendments to the law regarding VAT refunds to foreign taxpayers.

Slovakia

The Ministry of Finance submitted a draft amendment to the VAT Act to be effective from 1 January 2019.

South Africa

There will an implementation and phase down of safeguard duty on frozen bone-in portions of chicken.

United Kingdom

The Chancellor of the Exchequer delivered his Budget Statement on Monday 29 October, including a number of indirect tax measures.

Eurasian Economic Union

There has been an extension of anti-dumping duty on graphite electrode originating from India.

A 0% import customs duty rate has been introduced for raw materials of fur and tanned or dressed fur skins.

The list of information specified in the customs declaration for certain categories of goods placed under the customs procedure of export in the Republic of Kazakhstan and the Russian Federation has been clarified.

The start date for the confirmation procedure for the actual export of goods from the customs territory of the EEU by the customs authorities of the EEU Member States has been changed from 1 September 2018 to 1 February 2019.

November 2018

Americas

Central America

The Customs Union expands in Central America.

Asia Pacific

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

The TPP-11 will enter into force for a number of countries on 30 December 2018.

Australia-Hong Kong

Australia and Hong Kong have concluded negotiations for a free trade agreement.

EMEA

Czech Republic

An amendment to the VAT Act which was to take effect from January 2019 will be postponed by several months.

Denmark

A binding instruction has been issued regarding VAT deduction by holding companies.

A recent CJEU judgment deals with the VAT deductibility of costs directly related to the sale of shares in subsidiaries.

Germany

The Federal Tax Court has referred a question to the CJEU concerning the VAT rate applicable to the rental of boat moorings.

Greece

The provisions of the law regarding accelerated processing of VAT refunds have been notified.

There has been an announcement on mandatory e-invoicing and e-bookkeeping.

Ireland

Finance Bill 2018 included a number of indirect tax changes.

There has been a CJEU judgment on VAT recovery on deal fees.

Italy

The tax authorities have provided some clarifications on e-invoicing.

The tax authorities have also provided clarifications regarding the new VAT grouping rules.

A ruling has set out the VAT treatment of transfer pricing adjustments.

There are new parameters for training activities to achieve qualification for Authorized Economic Operator.

There have been clarifications on the amendments made to Regulation (EU) no. 2246/2015.

There is an update on the customs assessment procedure.

There is information regarding the tax treatment of fuels used in the combined generation of electricity and heat.

Malta

Malta issues guidelines on the VAT treatment of distributed ledger technology assets.

Netherlands

The 2019 Tax Plan was adopted by the House of Representatives.

Poland

A new draft bill introduces new VAT rates and classifications and Binding Rates Information.

From 1 January 2019, electronic monitoring will be introduced in Poland for excise goods exempt from excise duty due to their intended use and harmonized excise goods subject to a zero excise duty rate.

Portugal

The annual tax return is to be pre-filled based on the accounting SAF-T(PT) file.

Russia

Storage services of aviation fuel rendered outside of an airport area should not be exempt from Russian VAT.

The Ministry of Finance clarified that from 1 January 2019, Russian buyers of e-services rendered by a foreign legal entity should not act as tax agents.

The supply of goods in Russia between two foreign entities not subject to registration with the tax authorities should not be subject to Russian VAT.

The Ministry of Finance clarified that foreign legal entities registered with the Russian tax authorities should account for and pay VAT with respect to rendered services (performed work) subject to Russian VAT based on the place of supply rules.

The Ministry of Finance clarified the application of the 20% VAT rate for supplies made after 1 January 2019 of goods acquired before 1 January 2019.

The Federal Tax Service plans to amend the VAT return form.

Imports of biomedical cellulated products will be regulated.

Slovakia

There is an amendment to the VAT Act with respect to the application of the reduced VAT rate.

South Africa

There is an update on the phased roll-out of the New Customs Act.

Spain

A preliminary draft law has been published including a number of indirect tax proposals.

A Royal Decree-Law has been approved regarding measures for energy transition and consumer protection.

The draft law on the 2019 general budget for the Canary Islands has been delivered.

Switzerland

New rules on distance sales of low value goods take effect from January 2019.

United Kingdom

The CJEU has rejected the 'cost component' approach to VAT partial exemption.

There are a number of VAT measures included in the recently introduced Finance Bill.

There is an update on Making Tax Digital for VAT.

Eurasian Economic Union

Rates of import customs duty have been established on motor vehicles for industrial assembly.

A Technical Regulation establishes rules for the safety of children's playground equipment.

Decisions of the Eurasian Economic Commission have explained the classification of certain products.

Commodity codes have been extended for certain types of organic chemical compounds.

The list of goods to which temporary prohibition or export restrictions may be imposed has been extended.

A list of products has been established for which certain documentation is required for customs clearance.

I. Normativa

1. Orden HAC/1148/2018, de 18 de octubre, por la que se modifican la Orden EHA/3434/2007, de 23 de noviembre, por la que se aprueban los modelos 322 de autoliquidación mensual, modelo individual, y 353 de autoliquidación mensual, modelo agregado, y el modelo 039 de comunicación de datos, correspondientes al régimen especial del grupo de entidades en el impuesto sobre el Valor Añadido, la Orden EHA/3012/2008, de 20 de octubre, por la que se aprueba el modelo 347 de declaración anual de operaciones con terceras personas, así como los diseños físicos y lógicos y el lugar, forma y plazo de presentación, la Orden EHA/3786/2008, de 29 de diciembre, por la que se aprueban el modelo 303 Impuesto sobre el Valor Añadido, autoliquidación, la Orden EHA/3111/2009, de 5 de noviembre, por la que se aprueba el modelo 390 de declaración-resumen anual del Impuesto sobre el Valor Añadido y se modifica el anexo I de la Orden EHA/1274/2007, de 26 de abril, por la que se aprueban los modelos 036 de declaración censal de alta, modificación y baja en el censo de empresarios, profesionales y retenedores y 037 declaración censal simplificada de alta, modificación y baja en el censo de empresarios, profesionales y retenedores, y la Orden HAP/2194/2013, de 22 de noviembre.

Esta Orden realiza determinadas modificaciones, de carácter meramente formal y técnico, en las declaraciones-liquidaciones periódicas, modelos 303 y 322, y en la declaración resumen anual, modelo 390, al igual que fija, con carácter indefinido, el plazo de presentación del modelo 347.

Dichas modificaciones podemos concretarlas de la siguiente forma:

A) Modelo 303. *Autoliquidación.*

Se aprueba un nuevo modelo de declaración-liquidación en el que se realizan las siguientes modificaciones: i) en el apartado de datos identificativos, la casilla "¿Existe volumen anual de operaciones (Art 121 LIVA)?" se sustituye por otras dos, la primera a cumplimentar por los exonerados de la obligación de presentar la declaración-resumen anual y la segunda por los que, estando exonerados, deban consignar su volumen de operaciones, y ii) se modifica la casilla 79 para incluir en la misma, de manera expresa, el importe de las entregas no habituales de oro de inversión.

El nuevo modelo de autoliquidación se utilizará en el último periodo de liquidación de 2018.

B) Modelo 322. *Grupo de entidades. Modelo individual. Autoliquidación mensual.*

Se aprueba un nuevo modelo de declaración-liquidación en el que se realizan las siguientes modificaciones: i) en el apartado de datos identificativos, la casilla "¿Existe volumen anual de operaciones (Art 121 LIVA)?" se sustituye por otras dos, la primera a cumplimentar por los exonerados de la obligación de presentar la declaración-resumen anual y la segunda por los que, estando exonerados, deban consignar su volumen de operaciones, y ii) se modifica la casilla 79 para incluir en la misma, de manera expresa, el importe de las entregas no habituales de oro de inversión.

El nuevo modelo de autoliquidación se utilizará en el último periodo de liquidación de 2018.

C) Modelo 390. *Declaración resumen anual.*

- Se establece que la realización de actividades por las que no exista obligación de presentar autoliquidaciones periódicas no afectará a la exoneración de presentar el modelo 390.

- Se aprueba un nuevo modelo de declaración en el que se realizan las siguientes modificaciones: i) en el apartado de datos identificativos del modelo 390 se elimina la casilla «¿La autoliquidación del último período corresponde al régimen especial del grupo de entidades?», ii) en el desglose del IVA deducible, se eliminan los tipos no vigentes y se crea una casilla en la que se incluirán, en su caso, las cuotas deducibles en virtud de resolución administrativa o sentencia firmes con tipos no vigentes, iii) en el apartado de resultados de las liquidaciones se crea una casilla para consignar las cuotas pendientes de compensación al término del ejercicio, y iv) en el desglose del volumen de operaciones se incluyen expresamente las entregas no habituales de oro inversión en la casilla 106.

  El nuevo modelo de declaración informativa se utilizará para la declaración correspondiente a 2018.

D) Modelo 347. *Declaración anual de operaciones con terceras personas.*

Se establece, con carácter indefinido, que el plazo de presentación del modelo 347 es durante el mes de febrero de cada año en relación con las operaciones realizadas durante el año natural anterior, siendo este plazo ya aplicable a la declaración informativa correspondiente a 2018.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 12 de septiembre de 2018. Asunto C-69/17, Siemens Gamesa Renewable Energy Romania SRL.

Directiva 2006/112/CE — Derecho a la deducción — Adquisiciones efectuadas por un contribuyente declarado "inactivo" por la Administración tributaria — Denegación del derecho a la deducción — Principios de proporcionalidad y de neutralidad del IVA

Se plantea al TJUE si los artículos 213, 214 y 273 de la Directiva IVA se oponen a una normativa nacional que permite a la Administración tributaria denegar, a un sujeto pasivo que ha efectuado determinadas adquisiciones mientras estuvo anulado su NIF (por no haber presentado declaraciones tributarias), el derecho a deducir el IVA correspondiente a estas adquisiciones tras reactivarse dicho NIF.

Concluye el Tribunal que la Directiva IVA se opone a dicha normativa nacional señalando que, pese a que la deducibilidad del IVA se supedita al cumplimiento de los requisitos formales y materiales, el incumplimiento de los requisitos formales sólo debería impedir la deducción del Impuesto cuando dicho incumplimiento tuviese como objetivo impedir que se verifiquen los requisitos materiales o que el derecho a la deducción haya sido invocado de forma fraudulenta o abusiva. Todo ello, sin perjuicio del cumplimiento de los requisitos materiales, en todo caso.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 17 de octubre de 2018. Asunto C-249/17, Ryanair Ltd.

Directiva 77/388/CE — Concepto de sujeto pasivo — Gastos en servicios de asesoramiento en los que se ha incurrido para adquirir acciones de otra sociedad — Intención de la sociedad adquirente de prestar servicios de gestión a la sociedad objetivo — Falta de prestación de tales servicios — Derecho a deducir el IVA que ha gravado los servicios obtenidos.

Se plantea ante el TJUE si los artículos 4 y 17 de la Sexta Directiva deben interpretarse en el sentido de que confieren a una sociedad, que tiene la intención de adquirir la totalidad de las acciones de otra sociedad para ejercer una actividad económica consistente en prestar a la sociedad adquirida servicios de gestión sujetos al IVA, el derecho a deducir el IVA soportado por los gastos efectuados en concepto de servicios de asesoramiento en que incurrió en el marco de una OPA, aunque resulte que no se ha realizado esa actividad económica.

Concluye el Tribunal que se entenderá que una sociedad actúa como sujeto pasivo desde el momento en que incurre en gastos relativos a los servicios de asesoramiento en el marco de la OPA, pese a que la actividad económica que debía dar lugar a operaciones gravadas no se llevara a cabo finalmente.

Asimismo, contará con el derecho a la deducción del IVA de los gastos soportados, siempre y cuando esos gastos traigan causa exclusivamente de la actividad económica prevista, y que dicha actividad, como la que trae causa en este asunto (servicios de gestión sujetos al IVA) genere derecho a la deducción del IVA.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 18 de octubre de 2018. Asunto C-153/17, Volkswagen Financial Services Ltd.

Directiva 2006/112/CE — Deducción del impuesto soportado — Operaciones de venta a plazos de vehículos — Bienes y servicios utilizados indistintamente para operaciones sujetas al impuesto y para operaciones exentas — Nacimiento y alcance del derecho a deducir — Prorrata de deducción.

Se plantea al TJUE si los artículos 168 y 173, apartado 2, letra c), de la Directiva sobre el IVA deben interpretarse:

- Por una parte, en el sentido de que los gastos generales correspondientes a ventas a plazos de bienes muebles, que se reflejan en el importe del interés debido por la parte financiación de la operación (parte exenta), pueden considerarse elemento constitutivo del precio de dicha entrega sujeta y no exenta, y;

- Por otra parte, en el sentido de que los Estados miembros pueden aplicar un cálculo de la prorrata de deducción que no tenga en cuenta el valor inicial del bien de que se trate en el momento de la entrega de éste.

En primer lugar y con carácter preliminar, el TJUE viene a confirmar el criterio del órgano jurisdiccional remitente, en el sentido de considerar que los contratos de venta a plazo de vehículos a que se refiere el asunto están formados por varias prestaciones distintas, esto es, por una parte, la entrega del vehículo y, por otro lado, la concesión de un crédito.

Respecto de las cuestiones prejudiciales, señala el TJUE que los gastos generales presentan una relación directa e inmediata con el conjunto de actividades llevadas a cabo por el sujeto pasivo en cuestión y no solo con algunas de ellas. Por lo cual, la decisión del sujeto pasivo de incluir

tales gastos únicamente en el precio de las operaciones exentas no puede tener consecuencia alguna sobre esta apreciación de hecho. Así, si los gastos se han utilizado efectivamente para realizar operaciones gravadas (entregas de vehículos), se entiende que forman parte de los elementos constitutivos del precio de dichas operaciones y por consiguiente se genera el derecho a la deducción.

De otra parte, responde negativamente el Tribunal a la segunda cuestión planteada, señalando que un sistema de deducción del IVA que no tenga en cuenta el valor inicial del bien de que se trate en el momento de la entrega de éste, no permite garantizar una asignación más precisa de la que resultaría de aplicar el criterio de reparto basado en el volumen de negocios.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 25 de octubre de 2018. Asunto C-528/17, Milan Božičevič Ježovnik.

Directiva 2006/112/CE — Exención del IVA a la importación — Importación seguida de una entrega intracomunitaria — Riesgo de fraude fiscal — Buena fe del sujeto pasivo importador y proveedor — Obligación de diligencia del sujeto pasivo importador y proveedor.

Se plantea ante el TJUE si el artículo 143, apartado 1, letra d), de la Directiva del IVA permite que, cuando el sujeto pasivo importador y proveedor se ha beneficiado de una exención del IVA a la importación, en virtud de una autorización expedida por las autoridades aduaneras competentes tras efectuar un control previo sobre la información facilitada por dicho sujeto pasivo, debe pagar el IVA *a posteriori* si de un control ulterior resulta que no se cumplían los requisitos materiales de la exención.

Señala el TJUE que se podrá denegar el derecho a la exención cuando se realice un control posterior a la entrega y se determine que no se cumplían los requisitos materiales para aplicar la exención del IVA, siempre y cuando el sujeto pasivo supiese o debiera haber sabido que las entregas posteriores a la importación estaban implicadas en un fraude cometido por el adquirente y que dicho sujeto pasivo no llevó a cabo las medidas razonables a su alcance para evitar tal fraude.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 5790/2015, de 25 de septiembre de 2018.

IVA – Exenciones - Operaciones de mediación en la venta de acciones.

La entidad reclamante (en adelante, "X S.A.") suscribió un contrato de mediación con la entidad reclamada (en adelante "CZ AG") por el cual la primera encargaba a la segunda la intervención, como mediadora, en una operación de compra-venta de acciones y participaciones.

Tras la operación de venta, CZ AG expidió factura a X S.A. en concepto de "comisión de éxito por el asesoramiento en la venta del Grupo W" por un importe de 1.900.000 Euros más el 21% del IVA.

X S.A. entendió que la factura debía estar exenta del IVA en virtud de lo establecido en el artículo 20.Uno.18º m) de la Ley del IVA (en adelante, "LIVA") al considerar que el servicio recibido era una mediación financiera.

El Tribunal, a la luz de la jurisprudencia del TJUE recogida en la sentencia de 13 de diciembre de 2001 (Asunto C-235/00), considera que para poder aplicar la exención prevista para los servicios de mediación relacionados con operaciones financieras han de cumplirse dos requisitos:

a) Que el prestador del servicio de negociación sea un tercero, distinto del comprador y del vendedor en la operación principal.

b) Que las funciones que realice vayan más allá del suministro de información y la recepción de solicitudes y que se plasmen en la indicación de las ocasiones en las que se puede realizar la operación y, una vez existen dichas ocasiones, hacer lo necesario para que ésta se efectúe.

Tras analizar el contrato firmado entre las partes, el TEAC concluye que los servicios prestados por CZ A.G. pueden calificarse como de mediación en operaciones financieras ya que:

- Existe una limitación de los servicios encomendados a CZ AG. Entre esos servicios, cabe destacar el de análisis financiero y valoración de sociedades, la realización de un memorando de información y la evaluación y negociación de las distintas propuestas que sean dirigidas a los accionistas.

- Se establecen las condiciones de los servicios prestados por CZ AG: según criterio del TEAC, esas condiciones son propias de un mediador que indica al comitente las ocasiones de celebrar el negocio, poniéndose en contacto con la otra parte y negociando en nombre y por cuenta del cliente los detalles de las prestaciones recíprocas.

- Forma de la remuneración: se estipula que la remuneración se determinará como "única y exclusivamente" por los servicios prestados por CZ AG, junto con una retribución variable de éxito ("Comisión de éxito"), devengada cuando se materialice y formalice la venta.

El TEAC concluye por tanto que resulta aplicable la exención contemplada en la letra m) del artículo 20. Uno.18º de la LIVA a los servicios prestados por CZ AG.

2. Tribunal Económico-Administrativo Central. Resolución 5879/2014, de 25 de septiembre de 2018.

Investigación básica – Universidad pública – Concepto de actividad empresarial – Deducción – Derecho a la deducción de las cuotas del IVA soportadas en la adquisición de bienes y servicios utilizados en la realización de proyectos de investigación básica.

La entidad reclamante es una Universidad Pública que desarrolla dos actividades diferenciadas. Por un lado, realiza la actividad relacionada con la enseñanza superior (exenta del IVA) y por otro, desarrolla actividades de investigación. A su vez, esta última actividad se divide en dos:

(i) Investigación básica: la cual no genera ingresos que puedan considerarse contraprestación de los proyectos efectuados.

(ii) Investigación aplicada: cuyo el resultado es la obtención de patentes que son explotadas a través de la cesión a terceros, obteniendo la Universidad una contraprestación por su cesión.

Según criterio de la Universidad, las actividades de investigación tienen un porcentaje de deducción del 100%. No obstante, el Órgano inspector considera que soló la actividad de investigación aplicada tiene un porcentaje de deducción el 100% mientras que la investigación aplicada constituye una actividad no sujeta y por tanto, no genera derecho a la deducción de las cuotas de IVA soportadas.

En su defensa, la Universidad Pública argumenta que la división realizada por la Inspección entre investigación básica y aplicada es *"artificiosa e irrelevante desde la perspectiva del IVA"*. Entiende además que la actividad de investigación globalmente considerada se realiza dentro del ámbito de la aplicación del IVA por lo que las cuotas soportadas por las adquisiciones de bienes y servicios asociados a la investigación básica son deducibles al 100%.

Por tanto, la primera cuestión objeto de controversia es determinar el régimen de deducción aplicable a las cuotas soportadas en la adquisición de bienes y servicios que vayan a utilizarse en los proyectos de investigación básica.

La segunda cuestión que se plantea es sobre gastos atribuibles a los centros gestores (campus, bibliotecas y facultades) de la Universidad y que esta considera que son plenamente deducibles y el Órgano inspector no ya que entiende que estos gastos generales deben deducirse conforme a la regla de prorrata.

En relación con la primera cuestión, el TEAC comienza por analizar en la resolución la sujeción o no al Impuesto de la actividad desarrollada por la universidad de investigación básica cuando los resultados no van a ser objeto de explotación económica mediata ni inmediata, lo que es tanto como determinar si puede considerarse que dicha actividad la realiza la universidad en su condición de empresario o profesional (estando la misma sujeta al IVA) o, por el contrario, la realiza en el ejercicio de sus funciones públicas (estando no sujeta al Impuesto). Pues bien, de acuerdo fundamentalmente con lo dispuesto en los artículos 13.1 y 9 de la Directiva 2006/112/CE, tal y como estos preceptos han sido interpretados por la jurisprudencia comunitaria, el TEAC llega a la conclusión de que la mencionada actividad de investigación básica no puede calificarse de actividad empresarial a efectos del IVA "*en la medida en que en el desarrollo de la misma no se realizan operaciones a título oneroso ni se efectúan operaciones que puedan estar relacionadas de manera directa y específica con el resto de transacciones sujetas al tributo efectuadas por ella. Antes bien, debe considerarse que nos encontramos ante una actividad en la que una Administración pública, en el ejercicio de una función pública, lleva a cabo actividades que le son dadas en tanto que tal y que se ubican al margen de lo que cabe entender como actuación empresarial o profesional a los efectos del impuesto.*".

Así, a juicio del TEAC, la actividad desarrollada por la universidad, consistente en la realización de proyectos de investigación básica, no tiene la consideración de actividad empresarial o profesional por lo que al IVA se refiere –situándose extramuros del Impuesto–, al no realizarse con el ánimo de obtener contraprestación alguna, sino simplemente con la finalidad de transferir conocimiento a la sociedad.

Con esta interpretación, el TEAC se desmarca de anteriores pronunciamientos suyos en los que, de una forma un tanto peculiar, acabó aceptando la condición de actividad empresarial a la realización

de los proyectos de investigación básica. Ahora, sin embargo, refrenda la tesis mantenida por el órgano de inspección en el acuerdo de liquidación respecto de su no sujeción al Impuesto.

Una vez determinada la no sujeción al IVA de las operaciones efectuadas por la universidad, consistentes en la realización de los proyectos de investigación básica, el Tribunal aborda la cuestión medular de determinar el derecho a la deducción de las cuotas del IVA soportadas.

Y lo hace admitiendo que, aunque en una primera aproximación cabría entender que las cuotas del IVA soportadas por la universidad pública en la adquisición de bienes y servicios utilizados en la realización de la actividad de investigación básica no son deducibles (al tener esta actividad el carácter de no empresarial), no obstante, esta cuestión debe analizarse más en profundidad a la luz de la jurisprudencia del Tribunal de Justicia de la Unión Europea (TJUE) y, en concreto, de su sentencia de 10 de noviembre de 2016, Baštová*,* asunto C-432/15. En esta, el TJUE analizó el derecho a la deducción del IVA soportado por los bienes y servicios adquiridos para la preparación y participación en carreras hípicas por parte de un empresario dedicado a la explotación de una instalación hípica para caballos de carreras.

A raíz fundamentalmente de las conclusiones alcanzadas por el TJUE en la sentencia de 10 de noviembre de 2016, el TEAC considera que debe admitirse el derecho a la deducción de las cuotas del IVA soportadas con ocasión de la adquisición de bienes y servicios utilizados en los proyectos de investigación básica siempre y cuando los costes incurridos en la adquisición de los mismos formen parte de las gastos generales de la universidad, circunstancia que sólo cabe considerar si puede acreditarse adecuadamente que la realización de los proyectos de investigación básica ayudan a la mejora del nombre, la visibilidad o la proyección científica o académica de la universidad, o suponen un medio de promocionar su actividad económica.

Dada la relevancia que la Ley Orgánica 6/2001, de 21 de diciembre, de Universidades, otorga a la actividad investigadora en el ámbito universitario, el TEAC concluye que cabe apreciar la vinculación de esos costes con los gastos generales de la universidad, por lo que ha de admitirse el derecho a la deducción del IVA soportado en la adquisición de los bienes o servicios utilizados en los proyectos de investigación básica, si bien la misma habrá de practicarse conforme al régimen de deducción aplicable a los gastos generales (prorrata).

Con esta conclusión, el TEAC, por un lado, rechaza la tesis mantenida por el órgano de Inspección, acogiendo parcialmente el criterio mantenido por la universidad pública, y, por otro, se desmarca expresamente de recientes pronunciamientos de nuestro Alto Tribunal (véanse, por ejemplo, las sentencias, ambas de 2016, de 16 de febrero, nº de recurso 1615/2014, y de 4 de julio, nº de recurso 1795/2015) al entender que obedecen a casuísticas distintas, ya que en los asuntos analizados por el Tribunal Supremo los presupuestos fácticos quedaron al margen, centrándose el debate en una cuestión meramente jurídica: si puede establecerse automáticamente –o presumirse– una vinculación entre investigación básica y enseñanza.

En relación con la segunda cuestión, esto es, si puede considerarse que los gastos correspondientes a los centros gestores son íntegramente deducibles, entiende el Tribunal que en la medida en que la Universidad no pueda acreditar que dichos gastos tienen un grado de utilización exclusivo, atribuyéndole su uso a la actividad de enseñanza o bien a la de investigación, podrán deducirse de acuerdo al porcentaje de prorrata general.

3. Dirección General de Tributos. Contestación nº V2327-18, de 20 de agosto de 2018.

Sujeción al Impuesto sobre el Valor Añadido de los servicios de intermediación en nombre ajeno en arrendamientos de viviendas.

El consultante es una mercantil establecida en el territorio de aplicación del Impuesto que presta servicios de intermediación en nombre ajeno en arrendamientos de viviendas, a través de su página web, percibiendo una comisión de los arrendadores como contraprestación. Los inmuebles están radicados, tanto en el territorio de aplicación del Impuesto, como fuera del mismo.

En primer lugar, y en relación con las reglas de localización aplicables al servicio de intermediación en nombre ajeno en arrendamiento de viviendas prestado por la entidad consultante, alude este Centro Directivo al artículo 70, apartado primero, de la Ley del IVA, que supone la trasposición al ordenamiento jurídico interno de la norma contenida en el artículo 47 de la Directiva del IVA, donde se establece que se entenderán prestados en el territorio de aplicación del citado impuesto los servicios relacionados con bienes inmuebles que radiquen en dicho territorio. En este mismo sentido, el TJUE ha establecido en su sentencia Heger Rudi GMBH, que sólo se entenderán comprendidos en el ámbito de aplicación anterior, aquellos servicios que guarden una relación suficientemente directa con un bien inmueble.

Por otro lado, y en aras de matizar qué tipología de servicios cumplen con los requisitos establecidos en el apartado anterior, y en particular, si los servicios de intermediación en nombre ajeno en arrendamientos de viviendas pueden llegar a considerarse directamente relacionados con bienes inmuebles, hace mención la DGT a los preceptos incluidos en el artículo 31 bis del Reglamento de ejecución 282/2011, donde se matiza lo siguiente:

"Se considerará que los servicios tienen una vinculación suficientemente directa con los bienes inmuebles en los siguientes casos:

a) cuando se deriven de un bien inmueble y dicho bien sea un elemento constitutivo de los servicios y sea básico y esencial para los mismos;

b) cuando se presten en relación con un bien inmueble o se destinen a él y tengan por objeto la modificación física o jurídica de dicho bien.

2. El apartado 1 abarcará, en particular:

(…)

p) la intermediación en la venta o el arrendamiento, con o sin opción de compra, de bienes inmuebles, y en el establecimiento o transmisión de determinados derechos sobre bienes inmuebles o derechos reales sobre bienes inmuebles (asimilados o no a bienes corporales), distinta de la intermediación cubierta por el apartado 3, letra d).

(…).".

De acuerdo con todo lo anterior, confirma este Centro Directivo que los servicios de mediación en el arrendamiento de un inmueble en las condiciones aquí dispuestas son servicios relacionados con bienes inmuebles, por lo que estarán sujetos al IVA español siempre que el inmueble esté localizado en el territorio de aplicación del citado impuesto.

4. Dirección General de Tributos. Contestación nº V2328-18, de 20 de agosto de 2018.

Exención en la prestación de servicios de un agente financiero de un mediador en la comercialización de seguros.

La entidad consultante actúa como agente financiero de un mediador en la comercialización de seguros. En esta consulta se cuestiona la exención en la prestación de tales servicios y si el destinatario de tales servicios es el mediador o la entidad de crédito.

En primer lugar, la DGT inicia su análisis trayendo a colación el artículo 135.1.a) de la Directiva de IVA que establece lo siguiente:

"Los Estados miembros eximirán las operaciones siguientes:

a) las operaciones de seguro y reaseguro, incluidas las prestaciones de servicios relativas a las mismas efectuadas por corredores y agentes de seguros.".

Este precepto de la Directiva ha sido objeto de trasposición al ordenamiento jurídico español por el artículo 20.Uno.16º que dispone la exención de las siguientes operaciones:

"16º. Las operaciones de seguro, reaseguro y capitalización.

Asimismo, los servicios de mediación, incluyendo la captación de clientes, para la celebración del contrato entre las partes intervinientes en la realización de las anteriores operaciones, con independencia de la condición del empresario o profesional que los preste.

Dentro de las operaciones de seguro se entenderán comprendidas las modalidades de previsión.".

Planteado lo anterior, deviene fundamental conocer que se entiende por mediación. Para ello, la DGT tiene en consideración determinados pronunciamientos del TJUE (entre otros, la sentencia dictada en el Asunto C-472/03, de 3 de marzo de 2005, (Andersen)).

Como señala el Tribunal en dicha sentencia, para poder hablar de servicios de mediación es preciso que se encuentre presente alguno de los aspectos esenciales de la función del mediador como es buscar clientes o poner a éstos en relación con el asegurador.

Asimismo, de acuerdo con este Tribunal en la delimitación de lo que deban considerarse servicios exentos es necesario excluir el puro y simple *"back office",* es decir, la prestación de servicios de apoyo que, por sí mismos, no constituyen prestaciones de servicios relativas a operaciones de seguros efectuadas por un corredor o agente de seguros en el sentido de la citada disposición.

Una vez determinado el concepto de mediación procede examinar la cuestión de si las prestaciones de servicios realizadas y recibidas por el consultante constituyen «prestaciones de servicios relativas a operaciones de seguro efectuadas por corredores y agentes de seguros» y pueden por ello, acogerse a la exención.

Para ello, el Tribunal de Justicia, en su sentencia Aspiro, C-40/15, exige la concurrencia de dos requisitos:

- El prestador de servicios debe mantener una relación con el asegurador y con el asegurado.

- Su actividad debe cubrir aspectos esenciales de la función del agente de seguros, como buscar clientes o poner a éstos en relación con el asegurador.

En consecuencia, con lo anterior, parecen cumplidos ambos requisitos por lo que puede concluirse que la actividad realizada por mediadores de seguros, como el consultante, que realicen dichos servicios estará sujeta y exenta del IVA.

Por último, se debe considerar destinatario de las operaciones aquél para quien el empresario o profesional realiza la entrega de bienes o prestación de servicios gravada por el IVA y que ocupa la posición de acreedor en la obligación (relación jurídica) en la que el referido empresario o profesional es deudor y de la que la citada entrega o servicio constituye la prestación.

Al respecto, cabe recordar que, según el concepto generalmente admitido por la doctrina, por obligación debe entenderse el vínculo jurídico que liga a dos (o más) personas, en virtud del cual una de ellas (deudor) queda sujeta a realizar una prestación (un cierto comportamiento) a favor de la otra (acreedor), correspondiendo a este último el poder (derecho de crédito) para pretender tal prestación.

Por consiguiente, el consultante deberá facturar sus servicios al cliente que contrató sus servicios, como destinatario de los mismos.

5. Dirección General de Tributos. Contestación nº V2333-18, de 20 de agosto de 2018.

Valoración de si una declaración jurada sirve como elemento justificativo del transporte del vehículo, a efectos del artículo 25, apartado dos, de la Ley 37/1992.

El consultante es un concesionario oficial de una marca de vehículos, establecido en el territorio de aplicación del Impuesto, que realiza también las actividades de mantenimiento y reparación de los mismos y de compraventa de vehículos usados. Algunos de sus clientes que adquieren vehículos nuevos son particulares residentes en Francia que, tras satisfacer el impuesto indirecto correspondiente en Francia, obtienen las placas de matrícula y transportan el vehículo por su cuenta a dicho país firmando una declaración jurada a los efectos de acreditar el transporte del vehículo.

Tal y como manifiesta el consultante en su escrito, el mismo realiza entregas de medios de transporte nuevos a sujetos que no tienen la condición de empresario o profesional a efectos del IVA siendo transportados por ellos mismos al territorio de otro Estado miembro, y estando exentas por el artículo 25 de la Ley del IVA.

En relación con los medios de prueba del cumplimiento de los requisitos exigidos para la referida exención contenido en el artículo 13 del Reglamento del IVA, este Centro señala que en el ordenamiento jurídico español rige el principio general de valoración libre y conjunta de todas las pruebas aportadas, quedando descartado como principio general el sistema de prueba legal o tasada.

De esta manera, concluye la DGT con que no sólo los medios de prueba a los que expresamente hace referencia el artículo 13 del Reglamento del Impuesto sino también cualquier otro medio de prueba no explícitamente mencionado en dicho precepto, como la declaración jurada del adquirente manifestando el transporte efectivo de los bienes, pueden llevar, tras su valoración conjunta y en cada caso concreto por parte de los órganos competentes de la Agencia Estatal de Administración Tributaria, a entender acreditado el hecho del transporte efectivo de los bienes a Francia.

A su vez añade que, la valoración del medio de prueba compete a los órganos de la Agencia Estatal de Administración Tributaria en el ejercicio de sus facultades de comprobación y no a este Centro directivo. No obstante, lo anterior, señala que no parece que una mera declaración jurada presentada por el adquirente venga por sí sola a justificar la realidad de un transporte intracomunitario.

6. Dirección General de Tributos. Contestación nº V2356-18, de 20 de agosto de 2018.

Tributación de la adquisición de los bienes por parte de la consultante, así como de la venta posterior de los mismos a bordo de los buques.

La consultante es una sociedad mercantil que va a iniciar la actividad de venta a bordo en buques afectos a la navegación marítima internacional. La venta se efectuará a los pasajeros que viajen a bordo de esos buques habiendo suscrito, a estos efectos, un contrato con la naviera propietaria de los mismos.

Los bienes que serán posteriormente suministrados son adquiridos a una entidad establecida en el territorio de aplicación del impuesto mientras estos bienes se encuentran vinculados a un depósito distinto del aduanero.

Tras su adquisición, sigue los trámites aduaneros requeridos para ser embarcados en los buques a través de la presentación de los Documentos Único Aduanero (DUA) requeridos al efecto.

Comienza la DGT señalando que de acuerdo con el artículo 24 Ley del IVA, las entregas de bienes realizadas en el territorio de aplicación de dicho impuesto por los proveedores de la consultante a favor de ésta estarán sujetas, aunque exentas del mismo, cuando se trate de bienes que se encuentren vinculados al régimen de depósito distinto del aduanero en las condiciones y con el cumplimiento de los requisitos previstos en la normativa aduanera. En consecuencia, la consultante no vendrá obligada a soportar el IVA en la adquisición de los bienes que en el momento de la entrega se encontrasen debidamente vinculados a dicho régimen.

Del mismo modo, recuerda la DGT que, de conformidad con las disposiciones incluidas en el artículo 19.5º de la Ley del IVA, el abandono del régimen de depósito distinto del aduanero determinará la realización de una operación asimilada a una importación, correspondiendo, en este caso, a la entidad consultante, la condición de sujeto pasivo del impuesto de conformidad con lo dispuesto en el artículo 86.Dos de la ley mencionada. Por el contrario, lo anterior no tendría lugar cuando el abandono del régimen de depósito distinto del aduanero tenga lugar por motivo de una entrega efectuada por la consultante exenta por cualquiera de los artículos 21, 22 o 25 de la Ley del IVA.

Por último, concluye la DGT que las entregas posteriores de los bienes que estén, en su caso, sujetas al IVA, no estarán exentas en virtud del artículo 22 de la Ley del impuesto por no concurrir los requisitos previstos en dicho precepto, en particular, por no ser la compañía naviera que explota los buques la adquirente de dichos bienes, sino los pasajeros del mismo.

Cabe recordar que este criterio ha sido aplicado por la DGT en su contestación vinculante de 6 de junio del 2016, número V2489-16, en relación con los servicios de restaurante y bar prestados por un operador independiente en buques destinados a la navegación marítima internacional.

7. Dirección General de Tributos. Contestación nº V2398-18, de 6 de septiembre de 2018.

Excesos y defectos de adjudicación en el planeamiento urbanístico.

La entidad consultante es un Ayuntamiento que ha aprobado un proyecto de urbanización mediante el sistema de cooperación y, una vez

aprobada la cuenta de liquidación provisional, los propietarios deberán, en su caso, pagar o recibir indemnizaciones, así como recibir o soportar la monetarización derivada del déficit o superávit de los aprovechamientos recibidos. Finalmente, el Ayuntamiento recibirá el 10 por ciento correspondiente a su aprovechamiento urbanístico.

En primer lugar, y respecto al tratamiento a efectos del IVA de las indemnizaciones pagadas o recibidas por los propietarios, y en base a los criterios fijados por el TJUE en sus sentencias e 29 de febrero de 1996, asunto C-215/94, y de 18 de diciembre de 1997, asunto C-384/95, este Centro Directivo ha venido manifestando, entre otras, en la contestación vinculante, de 29 de noviembre de 2016, con número de referencia V5159-16, que estas indemnizaciones no constituyen contraprestación de una prestación de servicios sujeta al IVA, puesto que la entidad urbanística colaboradora que vaya a abonarlas se limita al pago de unas cantidades que no pueden considerarse como la contraprestación de ninguna prestación de servicios efectuada por los propietarios de los terrenos a favor de la misma. Por lo tanto, y pese a que dichas cantidades son la compensación que reciben los propietarios por ser privados de bienes o derechos incompatibles con el proceso urbanístico, no suponen ninguna ventaja para la entidad urbanística que pueda permitir que se la considere como consumidora de un servicio.

Así, las referidas indemnizaciones no constituyen contraprestación de una operación sujeta al Impuesto, no formando parte de la base imponible del mismo.

En segundo lugar, en relación con el tratamiento de los excesos y defectos de adjudicación, y en base al criterio mantenido por este Centro Directivo en la contestación vinculante con número de referencia V2555-12, de 26 de diciembre, se determina que, considerando que el reparto de las cargas de urbanización es proporcional a las parcelas que definitivamente se adjudiquen a cada uno de los propietarios, se puede llegar a deducir que los excesos y defectos de aprovechamiento urbanísticos son operaciones que tienen por objeto los citados derechos, pero sin incorporación de cargas de urbanización. Así, los mismos serán, en principio, contraprestaciones de operaciones no sujetas o, en su caso, exentas del Impuesto.

Así, las entregas realizadas como consecuencia de defectos de aprovechamiento urbanístico, serán operaciones no sujetas al IVA cuando el transmitente no tenga la condición de empresario o profesional. No obstante, en el caso en que el transmitente sí tuviese esta consideración con anterioridad, la entrega estará sujeta al mismo, aunque exenta por tratarse de un terreno no urbanizado ni en curso de urbanización.

Por último, establece la DGT que, en relación con la cesión obligatoria del 10 por ciento del aprovechamiento al ayuntamiento, y tal y como ha sido manifestado, entre otras, en la contestación vinculante de 14 de febrero de 2018, con número de referencia V0387-18, habrá que estar a lo dispuesto en la Resolución 2/2000, de 22 de diciembre.

En base al contenido de la misma, concluye este Centro Directivo que la compensación económica dineraria no constituirá la contraprestación de ninguna entrega de bienes o prestación de servicios sujeta al IVA, realizada por el ayuntamiento en favor de los propietarios de terrenos incluidos en la unidad de ejecución.

8. Dirección General de Tributos. Contestación nº V2399-18, de 6 de septiembre de 2018.

Transporte de pasajeros – Exención.

La entidad consultante se dedica a la prestación de servicios de transporte de pasajeros por lo que comercializa rutas internacionales con origen o destino en el territorio de aplicación del Impuesto directas o con una escala y, cuando no dispone de una conexión directa comercializa como un único servicio de transporte el trayecto internacional con conexión, de tal forma que los pasajeros deben realizar escala en una ciudad del territorio de aplicación del Impuesto donde cambian de avión.

Se plantea la posibilidad de que estos servicios resulten exentos conforme al artículo 22.Trece de la Ley del IVA o, en su caso, proceda la aplicación de un tipo impositivo reducido de acuerdo con lo establecido en el artículo 91.Uno.2.1º).

En primer lugar, la DGT, señala que se localizará en el TAI la parte del transporte de pasajeros que transcurra por dicho territorio según el artículo 70.Uno.2º.a) de la Ley de IVA. No obstante, se entiende exento el transporte de viajeros y sus equipajes por vía aérea o marítima, procedentes o con destino a un puerto o aeropuerto situado fuera del ámbito espacial del impuesto conforme al artículo 22.Trece de dicha Ley.

Por tanto, la DGT entiende que, debido a la evolución del tráfico aéreo, un viajero puede adquirir un título único de transporte para realizar un trayecto internacional, cuando el inicio o destino se sitúa en un país tercero, pero se exige una conexión aérea y cambio de avión en un aeropuerto situado en el territorio de aplicación del Impuesto. Asimismo, enumera las notas características que deben reunir estos servicios emitidos al amparo de un título único, para ser considerados por ende como internacionales, destacando entre otros que, en el billete

no se consigne un vuelo directo sino un vuelo de conexión, el precio del servicio de transporte sea único y, en el caso de vuelos con escala, que el viajero no pueda recuperar su equipaje en el aeropuerto de conexión que se factura al destino final.

Tras lo anteriormente enunciado, concluye la DGT entendiendo que los servicios de transporte de pasajeros por vía aérea amparados por un único título de transporte con origen o destino el territorio de aplicación del Impuesto hacia, o desde, un aeropuerto situado fuera de dicho territorio haciendo uso de un vuelo de conexión estarán exentos del Impuesto sobre el Valor Añadido.

9. Dirección General de Tributos. Contestación nº V2448-18, de 12 de septiembre de 2018.

Servicios de caución – Exención.

La entidad consultante presta servicios de caución sobre cantidades entregadas a cuenta, en la compraventa de futura vivienda. El precio del servicio es del 1% de las cantidades ingresadas.

Se plantea la naturaleza de estos servicios de cara a su sujeción y, en su caso exención de la garantía aportada.

En primer lugar, la DGT, señala que conforme a lo dispuesto en el Artículo 20.Uno.18º.f) de la Ley del IVA y, a su vez, con arreglo al artículo 135.1.c) de la Directiva de IVA, están exentas del Impuesto la prestación de garantías y la gestión de las mismas que realice quien las concedió.

No obstante, conviene señalar que, ni la Ley del IVA ni la Directiva del mismo impuesto precisan una definición del término garantía.

Por tanto, la DGT acude al Tribunal de Justicia de la Unión Europea, concretamente a la sentencia de 19 de abril de 2007 (Asunto C 455/05, Velvet - Steel Inmobilien) en la que se define por garantía la aceptación de una obligación pecuniaria de pagar una deuda u otro compromiso financiero del deudor. Asimismo, el Tribunal matiza que, sólo aquellas garantías relativas a obligaciones pecuniarias pueden beneficiarse de la exención y, por lo tanto, aquellas prestaciones de servicio que supongan una obligación de hacer y que carezcan de un componente financiero, se encontrarán dentro del ámbito imponible del Impuesto.

Tras lo anteriormente expuesto, concluye la DGT estableciendo que, en el supuesto de hecho, el importe monetario del 1 por ciento cobrado por la consultante puede considerarse como una garantía en la medida en que responde al compromiso, previo a la obtención de la licencia de

obras por el promotor, de que las cantidades aportadas van a ser utilizadas en la adquisición del solar y la construcción de las viviendas. Consecuentemente, las cantidades percibidas por la consultante derivadas de dicha garantía, constituyen la contraprestación de una operación financiera, prestación de servicios que, de conformidad con el artículo 20.Uno.18º.f) de la Ley del IVA quedará sujeta y exenta del Impuesto sobre el Valor Añadido.

10. Dirección General de Tributos. Contestación nº V2456-18, de 12 de septiembre de 2018.

Exención. Importaciones de bienes de escaso valor.

El consultante es una sociedad mercantil que ejerce su actividad como representante aduanero y que en el desarrollo de la misma efectúa despachos de bienes de escaso valor cuya importación está exenta del Impuesto sobre el Valor Añadido en virtud del artículo 34 de la Ley 37/1992.

Dicho precepto prevé la exención de los bienes que, siendo importados en el territorio de aplicación del impuesto, tengan un valor global inferior a 22 euros.

La DGT trae a colación lo dispuesto por la Directiva 2009/132/CE. Según esta Directiva, se indica que es favorable establecer un régimen de impuesto sobre el valor añadido diferente para las importaciones con el objetivo de satisfacer los objetivos de armonización fiscal. Además, conforme a esta Directiva, se señala que se pueden declarar exentas las importaciones siempre y cuando no afecte a las condiciones de competencia en el mercado interior.

En dicho documento de trabajo se señala que a la hora de determinar el concepto de "valor global", no debe entenderse relacionado con la necesidad de agregar al valor de los bienes importados el importe de los costes accesorios incurridos para la importación de los bienes al territorio de la Comunidad, sino más bien sobre la consideración del valor total o suma del valor de una partida de bienes declarados conjuntamente para su importación.

En este sentido, se concluye que bajo el concepto de "valor global" se entienda exclusivamente el valor total de los bienes declarados para su importación, sin incluirse los costes accesorios a la importación de los bienes, tales como los de transporte y otros.

11. Dirección General de Tributos. Contestación nº V2565-18, de 19 de septiembre de 2018.

Calificación del hecho imponible: entrega de bienes vs. prestación de servicios.

El consultante es una mercantil que desarrolla la actividad de fabricación de piezas de plástico para automóvil y su posterior ensamblaje en un motor procediéndose a su entrega dentro del territorio de aplicación del Impuesto a un tercero distinto del propio cliente. El cliente es una mercantil no establecida en el territorio de aplicación del Impuesto.

En primer lugar, apunta la DGT que conforme al artículo 11 de la Ley del IVA, la actividad consistente en el ensamblaje de las piezas objeto de consulta, se considerará como una prestación de servicios. No obstante, en aquellos casos en los que una operación esté constituida por varios elementos, se cuestiona si estas operaciones han de entenderse a efectos tributarios de forma separada o si, por el contrario, han de tratarse como una operación única.

En este sentido, conforme a reiterada jurisprudencia emitida por parte del TJUE, se señala que, si cliente que adquiere del consultante, entiende que compra un bien y unos servicios, existen dos operaciones diferentes. Pero, si, por el contrario, la entrega del bien o la prestación del servicio, es un medio de disfrutar en mejores condiciones de la operación principal para el cliente, será el supuesto de una prestación de servicios accesoria o a la inversa.

Del escrito de consulta se deduce que si el cliente entiende que compra un bien y unos servicios, podríamos encontrarnos ante dos operaciones distintas, existirán dos operaciones diferentes. Si por el contrario, la entrega del bien o la prestación del servicio, es un medio de disfrutar en mejores condiciones de la operación principal, estaremos en presencia de una entrega de bienes con una prestación de servicios accesoria o a la inversa.

En las operaciones objeto de consulta existe una significativa aportación de materiales, aportación que puede ser no solo cuantitativamente relevante sino que puede ser cuantitativamente poco importante pero por la calidad de los materiales aportados (tecnológicamente relevantes) el bien que se entrega es significativo para el cliente, tendrá la consideración de entrega de bienes, en otro caso, constituirá una prestación de servicios.

Por consiguiente, concluye la DGT que en este caso la operación objeto de consulta merece la calificación de entrega de bienes y, que, dado que la misma se produce en el territorio de aplicación del impuesto, se entenderá localizada en el TIVA-ES y por lo tanto, estará sujeta al IVA.

12. Dirección General de Tributos. Contestación nº V2607-18, de 25 de septiembre de 2018.

Facturación.

La entidad consultante expide facturas simplificadas en el desarrollo de su actividad y en ocasiones recibe solicitudes de los destinatarios de las operaciones para completar las citadas facturas.

Se plantea la posibilidad de que el emisor de una factura simplificada complete los datos indicados en el artículo 7.2 del Reglamento de facturación de forma manual después de haber sido impresa la factura.

En primer lugar, la DGT, señala que la regulación contenida en el Reglamento de facturación no impide que una parte de la factura sea completada de manera manual aunque ésta haya sido creada utilizando medios mecánicos o electrónicos.

Por tanto, la DGT concluye que podrá completar manualmente (a bolígrafo) las facturas después de su impresión, y estas no perderán la consideración de factura a los efectos del impuesto cuando contenga las menciones específicas previstas en los artículos 6 o en su caso, 7 del Reglamento de facturación y garantice la autenticidad de su origen y la integridad de su contenido en los términos señalados.

IV. Country summaries (October 2018 - November 2018)

October 2018

Global

US announces additional tariffs on USD 200 billion of Chinese imports and China responds with additional tariffs on USD 60 billion of US imports

On 17 September 2018, President Trump and the United States Trade Representative (USTR) announced that the US will proceed with implementing additional tariffs on 5,745 goods of Chinese origin pursuant to Section 301 of the Trade Act of 1974. This third tranche of tariffs will levy an additional tariff of 10% on approximately USD 200 billion of imports of Chinese origin, effective 24 September 2018. This additional tariff rate will increase from 10% to 25% on 1 January 2019.

Following a recent public comment and hearing process, 297 tariff items were removed from the originally proposed list of 6,031 tariff items, including:

- Certain consumer electronic products, such as smart watches and Bluetooth devices;
- Chemical inputs for manufactured goods;
- Textiles and agricultural products;
- Certain health and safety products; and
- Child safety furniture, such as car seats and playpens.

When considered in combination with the two tranches of additional tariffs on Chinese origin goods of 25% that became effective on 6 July 2018 and 23 August 2018, this third tranche brings the total of impacted imports of Chinese origin goods to approximately USD 250 billion – nearly half of all imports of Chinese origin goods in in 2017.

In conjunction with this announcement, President Trump specifically stated that any retaliatory action against the US in response to these Section 301 duties may result in the implementation of more tariff actions on an additional USD 267 billion worth of Chinese origin goods. Should this occur, tariffs on goods of Chinese origin would cover nearly the entire value of all imports of Chinese origin goods imported last year.

Exclusion process

On 18 September 2018, the USTR finally published procedures to request the exclusion of products from the Section 301 List 2 tariffs on China origin goods that took effect on 23 August 2018. These procedures detail the process by which any person(s), including trade associations, can submit requests for exclusion from the second tranche of additional duties. Citing protests from interested persons received during the initial notice and comment period for the Section 301 List 1 tariffs that took effect on 6 July 2018, the USTR determined to consider exclusions based on the following required information:

- A detailed description of the physical characteristics of the product in consideration;
- The 10-digit subheading;
- The average annual quantity purchased for the last three years;

The percentage of the importer's total gross sales of the product in consideration, or for imports used in the production of final products, requestors must provide the percentage of the total cost of producing the final product and percentage of total gross sales; and

- The rational for the requested exclusion (i.e., whether the product is available from a source outside of China, whether the additional duties would cause severe economic harm to the requestor or other US interest, and/or whether the particular product is strategically important or related to Chinese industrial programs (i.e., 'Made in China 2025').

Requests for product exclusions for List 2 must be filed within 90 days of the publication of the list (18 December 2018). Responses to the requests are due 14 days after the request is posted in docket number USTR-2018-0032. At the end of the 14-day response period, interested persons will have an additional seven days to reply to the response. Exclusions will be applied retroactively to 23 August 2018, and will be effective for up to one year upon publication of the exclusion determination in the *Federal Register*.

The exclusion request process for List 3 has not yet been published. Also, the previously published exclusion request process for List 1 set a deadline of 9 October 2018 for the filing of requests.

China responds

On 18 September 2018, China announced that it would impose a 10% retaliatory tariff on 3,571 goods of US origin, effective 24 September 2018. The affected products of US origin include:

- Oak wood veneer;
- Non-electrical machines;
- Makeup;
- Copper;
- Natural gas.

A separate list of 1,636 tariff items, including bleached wood pulp, cow hides, optical media, and needles, will be subject to a 5% additional tariff as of the same date.

The import value associated with these tariff measures amounts to approximately USD 60 billion in Chinese imports of US origin goods.

Americas

US-Mexico-Canada

US-Mexico-Canada Agreement

On 30 September 2018, shortly before a midnight deadline, Canada, Mexico and the US (the Parties) announced the completion of North American Free Trade Agreement (NAFTA) renegotiations. The result is a deal known as the United States-Mexico-Canada Agreement (USMCA). The text of the USMCA is available from website of the Office of the United States Trade Representative, see United States-Mexico-Canada Agreement.

The Agreement provides for government managed trade as well as many other matters including investment, labour mobility, etc. The USMCA preserves key elements of the relationship developed between the Parties under NAFTA, develops new rules to deal with modern business issues, and makes changes that will affect every business that imports or exports goods within the trade bloc. Business should now prepare for the business opportunities and the regulatory challenges presented by completion of this agreement.

Once ratified, the USMCA is expected to bolster North American trade, investment, and business growth. This is the latest development in a regional integration process that has spanned decades, beginning with the Automotive Products Trade Agreement of 1965 (which is better known as the Canada-US Auto Pact). The process of regional integration accelerated under NAFTA in 1994. Last year, the total trade between the NAFTA Parties reached USD 1.1 trillion. Collectively, the Parties account for 28% of the world's gross domestic product (GDP). The development of the North American trade bloc has opened export markets, stimulated international business, and helped to attract foreign investment.

The path towards the ratification of the USMCA and replacement of NAFTA will take time. Steps in this process towards ratification include the 'legal scrubbing' of the initial version (that is, a legal review for accuracy, clarity, consistency, and language authentication). There will also be some opportunity for consultation with government entities in respect of the expected impact of the USMCA. Representatives of the Parties will likely hold a formal signing ceremony in late November 2018. The Parties will likely develop USMCA implementation legislation for potential review and ratification next year.

The USMCA will affect almost every business engaged in cross-border trade between Canada, Mexico and the US. In general, the USMCA builds upon NAFTA and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) rules. Importers, exporters, freight forwarders, shippers, and others who are engaged in the business of trade between Canada, Mexico, and the US will be impacted. These types of business will need to review and understand the new rules for trade in North America once the rules in the USMCA have been ratified.

Asia Pacific

Australia-Taiwan

AEO Mutual Recognition Arrangement

On 18 September 2018, the customs agencies of Australia and Taiwan signed a Mutual Recognition Arrangement (MRA) in relation to providing streamlined border treatment to each other's Authorized Economic Operator (AEO) accredited traders.

Broadly, this preferential treatment will involve expedited clearance of goods at the border, reduced documentation and cargo inspections, and minimized disruption to trade flows.

Based on the average time for Australia's other MRAs to be fully implemented, it is anticipated that the Australia-Taiwan MRA will be fully implemented by the Australian Border Force (ABF) and the Taiwan Customs Administration by mid-2019.

Australia also has MRAs with the customs agencies of New Zealand, Hong Kong, Canada, the Republic of Korea (all fully implemented), as well as MRAs currently being implemented with Singapore and the People's Republic of China. Preparations are underway currently for MRAs to be signed with several of Australia's other key trading partners including the United States, Japan, and Thailand.

The ABF provides AEO accreditation to qualifying Australian importers, exporters, and related service providers under the Australian Trusted Trader program.

India

GST updates

GST annual return and audit report

The format of the GST annual return and GST audit report has been notified for normal and composition taxpayers. The due date for filing the GST annual return and audit report for the year 2017-18 is 31 December 2018.

Update on Tax Deduction at Source

The Central Government had notified that the provisions of Tax Deduction at Source (TDS) under the GST regime will be effective from 1 October 2018.

Guidelines for deductions and deposits of TDS have been prescribed under GST. In brief, government agencies are liable to deduct tax from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply exceeds INR 250,000. Such tax collected must be paid to the government within 10 days from the end of the month in which such deduction is made along with a return in the prescribed form.

The deductor must issue a certificate to the deductee mentioning therein the contract value, rate of deduction, amount deducted, etc.

Refund of GST paid on export of goods or services

The Central Board of Indirect Taxes and Customs has amended the process of refund of GST paid on the export of goods or services.

The amendment provides that an exporter cannot claim a refund of the GST paid on the export of goods or services if the person claiming the refund has received supplies on which the 'supplier' has availed the benefit of certain notifications, such as those relating to deemed exports, the concessional rate for merchant exports, and other notifications which granted exemption from GST and compensation cess on procurement of inputs in respect of *inter alia* advance authorization and Export Promotion Capital Goods (EPCG).

Amendment to Special Economic Zone rules

Central Government has amended the SEZ Rules, 2006 to be in line with GST. This will help provide procedural and compliance ease to SEZs.

Customs update

With the objective to reduce the current account deficit and curb imports of specific non-essential items in India, the Central Board of Indirect Taxes and Customs has notified an increase in the basic customs duty rates of specified non-essential items. These changes take effect from 27 September 2018.

GST decisions by National Anti-profiteering Authority

Whether a benefit accrued due to reduction in rate of tax of one product can be passed on via another product

As per the provisions of Section 171 of the Central Goods and Services Tax (CGST) Act, 2017, any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit must be passed on to the recipient by way of a commensurate reduction in prices.

On 15 November 2017, there was a reduction in the rate of tax on certain products. In a recent case, the dealer dealing in one such product, instead of passing on the benefit accrued due to such reduction in tax rate, increased the base price of the product, due to which the landed cost of the purchaser would remain the same, even though the GST rate applied was a new reduced rate.

The purchaser of the product complained that the dealer had not passed on the benefit of the GST rate reduction, and alleged that the dealer had profiteered on account of the GST rate reduction in respect of the product.

The dealer contented that he had passed on the benefit not in particular on that product, but on the product category as a whole, and it was not particularly adjusted against the relevant product only to avoid inconvenience due to legal tender issues.

The National Anti-profiteering Authority analyzed the petition filed and all the documents and evidence brought on record and concluded the following:

1) Benefit available to the buyer on one product could not be denied by offering more than the required benefit to the buyer of other product.

2) It is apparent from the facts of the case that the dealer had no legal sanction to increase the base price of the product on his own and what was required of him was that he should have only reduced the maximum retail price (MRP) of the product by taking into account the effect of the reduction in the rate of tax.

3) The dealer is directed to reduce the price of the product commensurate to the reduction in the rate of tax and refund the applicable amount to the purchaser, along with interest. As the other customers of the product are not identifiable, the dealer is directed to deposit a certain amount along with the interest in the respective central or state Consumer Welfare Fund.

Whether anti-profiteering applied where dealer selling product of foreign brand owner

In another similar case of anti-profiteering, a dealer increased the basic price of products by an amount exactly equal to the amount by which the GST on them had been reduced. This change in the basic price was done with effect from the day from which the rate of tax was reduced.

According to the anti-profiteering authorities, the dealer was selling the product of a foreign brand owner and though the dealer had no direct influence over the revision of the MRP of external brands, he was still liable to revise his retail selling price, as he had taken the benefit of an input tax credit (ITC) on the purchase of the product.

The dealer had offered discounts on the product, but such discounts cannot be taken as in lieu of the reduction in the rate of tax, as such discounts are regular trade practices. Therefore the authority alleged that the dealer had not passed on the benefit of the reduction in the rate of tax to the applicant and resorted to profiteering.

The dealer contended the following:

1) The CGST Rules, 2017 empowered the National Anti-profiteering Authority to prescribe the methodology and procedure for determination of whether any

reduction in the rate of tax or benefit of ITC had been passed on by a registered person by way of commensurate reduction in the prices or not. Since no guidelines had been framed as prescribed under CGST Rules, a registered person could not be held to be non-compliant.

2) In the absence of any prescribed methodology, a methodology that was reasonable and consistent with the objectives of the statutory provisions deserved to be accepted, and since the dealer had adopted a methodology that was reasonable and consistent with the objectives, the entire proceedings should be dropped.

3) As per the CGST Act, 2017, it was necessary to determine whether the reduction in tax rate had actually resulted in a commensurate reduction in the prices, but there was no prescription either under the Act or the Rules which required that the benefit had to be passed on in respect of each product separately. The pricing of the products was a complex exercise and they were usually not priced individually as several considerations were also taken into consideration to determine the price of a product.

4) As per the statutory provisions, it required only a broad correlation between the reduction in taxes and the pricing of products. The Indian Constitution granted him the right to carry on trade or business and to fix prices and earn profits which could not be subjected to unreasonable restrictions under GST.

The National Anti-profiteering Authority analyzed the petition filed and all the documents and evidence brought on record and concluded against the dealer on the following grounds:

1) There was no reason for the dealer to increase the basic price exactly equal to the amount by which the rate of tax had been reduced. This change in the basic price was also made by him with effect from the day from which the rate of tax was reduced. Therefore, the whole exercise of increasing the basic price was done by the dealer with malafide intention of not passing on the benefit of tax reduction to his customers.

2) Although the dealer was selling the product of a foreign brand owner, the MRP of which he could not have decided, he was still legally bound to pass on the benefit of the tax reduction to his local customers as he had claimed the benefit of the ITC.

3) Any discount offered by the dealer on the product can also not be taken to have been given in lieu of the reduction in the rate of tax, as such discounts are regular trade practices.

4) The dealer has no discretion to provide benefit on certain class of products and deny the same in respect of other products. Denial of benefit as per the convenience of the dealer is not permissible, as the provisions of law apply, and hence he cannot argue that the benefit was not required to be passed on to all the products, as a consumer may buy a particular product and may not buy another.

5) The Authority is only concerned with the passing on of the commensurate benefit as is arrived at after calculation of the impact of the rate reduction on the MRP of a product. There is further no restriction on the right of the dealer to conduct trade as provision under GST only requires him to pass on the benefits, and does not require him to obtain any licence or seek approval to conduct trade or fix prices of the products being sold by him.

New Zealand

GST on imported low value goods: Offshore vendor registration

Following consultation earlier in the year, details have been released on the proposed GST regime for non-residents supplying 'low value goods' to New Zealand consumers, see Proposed new rules for GST on low-value imported goods announced. While many aspects of the proposals remain the same as originally proposed, a major change is the proposal to apply the rules to all consignments of goods costing NZD 1,000 or less (as compared to the originally proposed threshold of NZD 400).

While legislation will not be introduced into Parliament until November 2018, there is still a commitment to have the regime apply from 1 October 2019. The new rules will apply to offshore suppliers who make supplies (or expect to make supplies) of goods to New Zealand consumers of NZD 60,000 or more in a 12-month period. Electronic marketplaces and re-deliverers will also have a requirement to register and comply with the new rules.

Low value goods will be defined as imports with a consignment value of NZD 1,000 or less. New Zealand tariffs and cost recovery charges will no longer apply to supplies covered by the new rules (alcohol, tobacco and fine metals are excluded from these rules).

Under the current GST rules, all sales by non-residents of goods on which the total amount of GST and duty is less than NZD 60 per shipment are not subject to GST at the border and no GST is due on the sale. Due to varying rates of duty on goods, there is no single value on which GST does not apply, in some cases it is under NZD

400, and in other cases only goods under around NZD 230 are not subject to GST currently. The new rules will do away with this distinction and simply focus on whether the consignment value is NZD 1,000 or less.

How will a supplier know if a customer is a New Zealand consumer?

Suppliers will need to charge GST if the destination of the goods is a delivery address in New Zealand.

Offshore suppliers will not be required to return GST on supplies to New Zealand GST registered businesses. There will be an optional rule allowing offshore suppliers to zero-rate supplies to New Zealand GST registered businesses. This approach would allow any GST incurred by the offshore supplier to be claimed back (for example costs of attending trade fairs in New Zealand). If supplies to businesses are zero-rated, these are including when calculating whether the NZD 60,000 registration threshold is exceeded.

Offshore suppliers will be able to presume that a New Zealand resident customer is not a GST registered business unless the customer has provided their GST registration number, New Zealand Business Number, or otherwise notified the supplier of their GST registered status.

If offshore suppliers are making supplies of types of goods that are typically consumed only by businesses, it is expected that it will be possible to seek agreement from the tax authorities (the Inland Revenue Department) that it can be presumed all customers are GST-registered businesses. This rule already exists for the existing remote services rules.

Marketplaces

When certain conditions are satisfied, an operator of an online marketplace (whether based in New Zealand or offshore) may be required to register and return GST on supplies made through the marketplace by non-resident suppliers, instead of the underlying supplier.

It is proposed that a marketplace would be liable to account for GST unless they do not authorize payment, authorize the delivery or directly or indirectly set any of the terms or conditions of the supply. These rules are consistent with the approach adopted in Australia.

If a marketplace does not process the payment for a supply of goods, in some instances the marketplace will be able to claim a bad debt deduction if they are unable to collect the GST and any other fees from the supplier.

A marketplace will be subject to the NZD 60,000 registration threshold, however this will include the total value of both low value goods and remote services.

Re-deliverers

Catering to the needs of New Zealand consumers who want to purchase from retailers who will not ship to New Zealand there are now a range of businesses who create local delivery addresses and then ship the goods to New Zealand. There are also personal shopping services available.

These businesses will be liable to register for GST and will need to collect the 15% GST on the value of the goods (the information released does not specify whether GST must also be charged on the redelivery services which take place outside New Zealand).

A re-deliverer will need to register when the value of the goods they 're-deliver' exceed NZD 60,000 in a 12-month period.

Supplies above NZD 1,000

Where the value of a consignment of goods exceeds NZD 1,000 then the current rules will continue to apply, and rather than the supplier charging GST, GST (and any applicable duty) will be collected at the New Zealand border, with the purchaser unable to collect their goods until the tax is paid.

Suppliers will, in some instances, be able to charge GST on goods costing more than NZD 1,000 (these rules will also apply to marketplaces and re-deliverers).

Compliance requirements

While not covered in the proposals released, it is expected that suppliers who are required to register under these rules will be able to apply for a simplified 'pay-only' registration basis, or alternatively may undertake a full registration allowing them to claim back any New Zealand GST incurred in making New Zealand sales.

Offshore suppliers who are already GST registered under the remote services rules do not need to separately re-register for these new proposed rules.

GST returns will ordinarily be due in quarterly instalments (March, June, September, and December). There will be an optional one-off six month filing period from 1 October 2019 – 31 March 2020 to allow suppliers to adapt to the new filing requirements.

The Government will be monitoring compliance with the rules, including through sharing of information between New Zealand Customs and Inland Revenue and using powers under double tax agreements to obtain information about foreign taxpayers.

Key issues for suppliers

Suppliers who sell low value goods to consumers in New Zealand should start thinking about how the new rules could impact their business.

A range of issues will need to be considered and addressed before the rules take effect including:

- Can total sales be easily tracked by jurisdiction?
- Will the level of supplies to New Zealand consumers exceed the registration threshold?
- What type of supplier is the supplier and what specific rules will apply – actual supplier, online marketplace operator, or re-delivery service?
- What modifications would need to be made to websites or business processes in order to determine whether New Zealand GST should apply?
    - Determining the delivery address of the customer
    - Determining whether the customer is an end consumer or a GST registered business
    - Determining the NZD value of the transaction
    - Being able to remove any local sales tax and replacing it with 15% GST
    - Excluding freight and insurance charges when determining if GST applies, but including those costs when calculating GST
    - How will returned or replaced goods need to be treated for GST purposes?
    - Do invoicing processes need to change?
- Does the business wish to continue shipping to New Zealand or effectively outsource the compliance to a marketplace or re-delivery businesses?

Legislation is expected to be introduced into Parliament in November 2018. There will be an opportunity for taxpayers to make submissions on the legislation before it is finalised. It is expected that legislation will not be enacted until close to the 1 October 2019 application date, which may be problematic for systems design.

EMEA

Estonia

Changes to VAT treatment of real estate

On 1 October 2018, an important addition was made to the VAT law – the words 'plot of land' were replaced with the wider concept of 'building land'.

Previously only plots ('plot' means a land area defined in a detailed spatial plan and in respect of which building rights are granted according to the Planning Act §6 (3)) without any construction on them were subject to VAT in Estonia. Under the new VAT law, in addition to plots, 'building land' will also be subject to VAT, defined as follows:

"Building land is deemed to be such immovable within the meaning of the General Part of the Civil Code Act, that does not contain any construction works, except utility networks or utility works, and which is designed for building pursuant to the design specifications, a detailed spatial plan or special spatial plan of the state or local government or for which a building notice has been submitted or the intended purpose of the cadastral unit of which is over 50% residential land or commercial land or these jointly." (VAT Act §2 (3))

The selling of this type of land without a building will be subject to VAT from 1 October.

France

VAT refund procedure for EU non-resident taxable persons in France now in conformity with EU Principal VAT Directive

On 4 December 2017, the French Administrative Supreme Court (*Conseil d'Etat*) issued a decision, concluding that the French tax authorities (FTA) may not reject a VAT refund claim submitted after 30 September of the calendar year following the refund period (Case No. 392575) as France has not transposed Article 15 of the EU Principal VAT Directive into the French Tax Code (FTC).

This has provided an opportunity for some taxpayers to make VAT refund claims for otherwise barred periods.

However, a decree dated 8 October 2018 has transposed Article 15 into the FTC (Article 242 or annex II of the FTC).

As a consequence, for 2018, VAT refund claims of EU residents (non-resident in France) will have to be submitted on or before 30 September 2019, and it is no longer possible to submit claims for previous years.

In addition, a VAT refund claim would be considered as 'not submitted' if information requested in the form is not provided. It would not be possible to regularize these omissions.

It is therefore important that VAT refund claims are made carefully.

Non-residents' tax office changes practice concerning filing of VAT returns under *saisonnier* regime

The *saisonnier* regime allows for a taxpayer to file a VAT return only when a taxable turnover has been realized.

This regime is, in theory, only applicable when the taxpayer has an activity during a part of the year on a regular basis and is closed during the rest of the year. For example, the regime applies to a taxpayer who only has activity in summer (every summer) and is closed in winter. (Reference the FTA's comments, BOI-TVA-Decla-20-20- 10-10-20150506.)

The non-residents' tax office has decided to apply this regime more strictly, as the regime was applied to taxpayers having an 'occasional activity', meaning an activity performed from time to time in France but not on a regular basis.

The non-residents' tax office will inform taxpayers already registered under the *saisonnier* regime that, as from a certain date, they will have to submit quarterly VAT returns if they perform an occasional activity. This change will be made on a case-by-case basis.

New taxpayers with an occasional activity will be required to submit quarterly VAT returns from the commencement of their activity. In this case, the amount of VAT to be paid per year should not be taken into account. This means that a taxpayer with an occasional activity will submit quarterly VAT returns even if the annual VAT to be paid is more than EUR 4,000, according to oral information obtained at this stage.

In France, VAT returns must be submitted on a monthly basis unless annual output VAT is less than EUR 4,000, in which case, the taxpayer can opt to pay VAT on a quarterly basis.

Greece

Quicker processing of pending VAT refund claims

Article 36 of Law 4569/2018 (published in the Government Gazette on 11 October 2018 (FEK 179 A'/11.10.2018)) provides the following.

The processing of VAT refunds of amounts up to EUR 10,000 per beneficiary in audit cases pending on 11 October 2018 is accelerated to facilitate and support business activities. Audit cases for which a temporary corrective tax assessment act has not been issued are considered to be pending audit cases for these purposes.

Audits of refunds of up to EUR 10,000 still may take place in a sample of cases selected through a decision issued by the Chief Officer of the Independent Authority of Public Revenues based on specific risk analysis criteria.

As per the Explanatory Report issued by the Greek Parliament on the articles of the new law, the above provision has been introduced as an extension of article 74 of Law 4484/2017, which first regulated the quicker processing of VAT refunds of amounts up to EUR 10,000 per beneficiary in audit cases that were pending on 1 August 2017.

Hungary

50% VAT deduction for leased cars

On 18 September 2018, the European Council passed the proposal submitted by the European Parliament that would allow Hungary to decide, by way of derogation from the EU Principal VAT Directive, on a presumed VAT deduction rate of 50% on the use of leased cars.

This proposal is indicated in the autumn tax package of the Hungarian Government and the Hungarian Parliament will vote on this in November. If the Hungarian VAT Act is amended according to the resolution of the European Council, Hungarian taxpayers may deduct automatically 50% of the VAT on leased cars, or a higher proportion if a business usage ratio is verified, for example with a mileage log.

The new legislation would apply from 1 January 2019 to 31 December 2021.

HUF 12 million VAT exemption threshold for small enterprises

On 2 October 2018, the European Economic and Financial Affairs Council passed a derogation request submitted by Hungary in relation to the increase in the VAT exemption threshold for small enterprises. The purpose of the legislation is to improve the competitiveness of small enterprises by reducing their administration-related costs.

Accordingly, the Hungarian Government is able to raise the VAT exemption threshold for small enterprises from HUF 8 million (approx. EUR 24,850) to HUF 12 million (approx. EUR 37,270) of annual revenues per year.

This proposal is also indicated in the autumn tax package of the Hungarian Government and the Hungarian Parliament will vote on this in November.

Budget 2019

Budget 2019, delivered on 9 October 2018, included a number of indirect tax measures. Full coverage of the Budget is available at Budget 2019.

Changes to current VAT rate of 9%

The 9% VAT rate was initially introduced in July 2011 in response to a deep recession caused by the financial crisis of 2008. The reduced VAT rate was supposed to last for a three year time period but, now, after more than seven years, the VAT rate is being restored to its original level. The Government has cited the level of employment nearing its pre-crisis peak and the economy being in full recovery as its grounds for reversing the reduction. Some concerns have been expressed in relation to its removal, with the uncertainty of Brexit prime among them.

The increase in rate to 13.5% will affect hotels, other short-term guest accommodation, restaurants, cinemas, theatres, hairdressers, museums, and art galleries. The 9% VAT rate on newspapers and sporting facilities will remain. Additionally, the VAT rate for e-publications which are currently taxed at 23% will be reduced to 9%.

The changes will come into effect from 1 January 2019.

Increase in excise duty on cigarettes

Budget 2019 saw the excise duty on tobacco products rise by a further 50 cents from midnight on 9 October 2018, increasing the average cost of a pack of 20 cigarettes to around EUR 12.50. The increase will also apply pro-rata on other tobacco products.

No change to excise duty on petrol and diesel, but 1% increase in VRT on diesel cars

Further changes in Budget 2019 resulted in a raise in Vehicle Registration Tax (VRT) on diesel cars by 1% from midnight on 9 October 2018. The Minister for Finance also referred to the introduction of a more accurate form of calculating CO2 emissions which could potentially lead to a further increase of VRT on both diesel and petrol vehicles of 2% in January 2019. This would result in a total VRT increase of 3% for diesel and 2% for petrol vehicles.

Italy

E-invoicing simplifications

The Government has approved a fiscal decree aimed at simplifying the implementation of the e-invoicing obligation (effective from January 2019). Below are the most significant simplifications:

- 'Grace period' for late e-invoicing:

  For invoices issued during the first half-year of 2019:

  - No administrative penalties for late e-invoicing would apply for valid e-invoices issued within the deadline provided for the settlement of VAT (in this case the relevant VAT is computed with reference to the correct period);

  - Penalties will be reduced by 80% for late invoicing for valid e-invoices issued within the deadline provided for the settlement of VAT related to the following period (in this case the relevant VAT is computed with reference to the following period – month or quarter).

- 'Extended timing for the issuance of e-invoices:

  Taxpayers would be allowed to raise invoices (both ordinary and e-invoices) within 10 days from the date on which the transaction is deemed to be carried out, upon condition that the relevant invoice provides evidence of the mismatch between the date of issuance and the tax point.

- 'Extended timing' for the accounting of sales e-invoices:

  Taxpayers would be allowed to account for sales invoices by the 15th day following the month in which the transaction is deemed to be carried out (this provision amends the current provision under which the sales invoices must be accounted for by the 15th day from the date of issuance of the invoice).

- 'Extended timing' for the exercise of the right of deduction:

  Taxpayers would be able to deduct, by the 16th of each month, the VAT related to invoices received and booked by the 15th day following the one in which the transaction is deemed to be carried out, except for invoices related to transactions carried out in the previous FY. (This means that the new provision should not apply for transactions carried out in FY1 and for which the relevant invoice is received in FY2, in such a case the VAT will have to be deducted in the year of receipt.)

- Simplifications in the accounting of e-invoices received:

  The apposition of the protocol number on purchase e-invoices would no longer be required, as fulfillment would be deemed to be met for e-invoices passing through the SDI system.

Excise duty exemption applies where electronic cards used for withdrawal of fuel by personnel assigned to US/NATO

With reference to the excise duty exemption for fuel supplies to personnel assigned to US/NATO commands, in Circular no. 9/D of 20 September 2018, the Customs authorities provide for the conditions to be met for the purpose of using electronic identifying cards for the withdrawal of fuel instead of paper vouchers.

Communication of accounting data by traders storing energy products at third party deposits

With reference to the new rules relating to the storage of energy products in a third party warehouse that apply as from 29 August 2018, in the note 103356/RU of 27 September 2018, the Customs authorities issued operating instructions for transmitting the accounting data by the parties storing energy products at third party deposits (i.e. traders).

Malta

Malta implements e-commerce VAT package rules

On 20 September 2018, regulations implementing EU Council Directive 2455/2017 in Malta were published by means of the following Legal Notices (L.N.):

- L.N. 297 – Value Added Tax Act (Amendment of Third Schedule) Regulations;
- L.N. 298 – Value Added Tax Act (Amendment of Twelfth Schedule) Regulations; and
- L.N. 299 – Value Added Tax Act (Amendment of Fourteenth Schedule) Regulations.

The Regulations will enter into force on 1 January 2019.

L.N. 297/2018: Place of supply of telecommunications, broadcasting and electronic services to non-taxable persons

As of 1 January 2019, the place of supply of telecommunications, broadcasting and electronic services (TBES) to non-taxable persons will be determined in accordance with the general place of supply rule (i.e. the place where the supplier is established) where:

- The supplier of such services is established in Malta, or has his permanent address or usual residence only in Malta; and

- The customers are non-taxable persons who are established, have their place of permanent address or usual residence in any EU Member State other than Malta; and

- The total value of such supplies (exclusive of VAT) does not in the current calendar year exceed EUR 10,000 and did not do so in the course of the preceding calendar year.

However, where, during a calendar year, this threshold is exceeded, the special rule determining the place of supply of TBES to nontaxable persons (i.e. the place where that person is established, has his permanent address or usually resides) will apply as of that time, and the supplier may opt to apply the Mini One Stop Shop (MOSS) simplification measure.

In addition, suppliers falling within the scope of this provision have the right to opt for the place of supply to be determined in accordance with the special rule mentioned above, which option shall in any event cover two calendar years. Exercise of this right requires a written notice to be furnished to the Commissioner for Revenue specifying the date from which it applies, which date cannot be earlier than thirty days from the date on which it is furnished.

L.N. 298/2018: Simplified invoicing

As of 1 January 2019, the issuance of a tax invoice will be governed by the rules applicable in the EU Member State where the supplier making use of one of the special schemes for TBES (i.e. EU and non-EU MOSS schemes) is identified. In Malta, persons supplying TBES under MOSS are exempt from the requirement to issue VAT fiscal receipts.

L.N. 299/2018: Non-EU MOSS scheme

As of 1 January 2019, a "taxable person not established within the Community" is defined as "a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there". The additional condition under existing rules whereby in order for a person to qualify as being established outside the Community, such person should also not be required to be identified for VAT purposes under article 10 of the Malta VAT Act, is therefore being removed.

Poland

SAF-T file JPK_VDEK likely to replace VAT returns and JPK_VAT

The Ministry of Finance is considering replacing VAT returns and mandatory JPK_VAT evidence files submitted on monthly basis to the tax authorities with ultimately one SAF-T file (the working name of which is JPK_VDEK) in mid-2019.

At this stage there is little information available apart from press interviews by the Minister of Finance, in particular, no draft law is yet available. Nevertheless, the currently binding JPK_VAT evidence template will need to be significantly reshaped, as it does not yet contain all of the elements of the VAT returns (such as carry forward amount, VAT liability amount, etc.).

This is a change that will obviously impact all Polish VAT registered entities and require significant involvement in and changes to the IT and financial systems of Polish VAT taxpayers.

Portugal

State Budget proposal 2019

The 2019 Budget law proposal has been submitted by the Government to the Parliament, for which parliamentary approval is still required.

Below are the main measures that the government has proposed in relation to VAT and other indirect taxes. All the listed proposed amendments will enter into force on 1 January 2019, except where indicated, provided the 2019 Budget law proposal is approved by the Parliament and the President of Portugal, and published in the Official Journal.

VAT

Changes in VAT rates proposed

The reduced rate (6% in the mainland, 5% in Madeira and 4% in Azores) will be applied to the following goods and services (instead of the standard or intermediate rate):

- Supply of hair prostheses for cancer patients, as well as leasing of other type of prostheses, devices and other goods used namely by disabled people and by cancer patients;
- The acquisition by INEM (Portuguese Institute of Medical Emergency) of devices/equipment for emergency assistance;
- Cleaning services and social intervention performed in the scope of fire prevention as well as in agricultural and forest management contexts; and
- Admission fees for singing, dancing, music, theatre and circus shows (from 1 July 2019) when performed in fixed show rooms or itinerant circuses. Admission fees for cinema and bullfighting shows will remain at the intermediate VAT rate, as will any of the abovementioned shows not performed in the indicated places.

Legislative changes proposed

Vouchers

Rules have been introduced regarding the VAT treatment of vouchers, transposing EU Council Directive (EU) 2016/1065.

The VAT treatment of transactions associated with vouchers varies according to the specific characteristics of the voucher. Single purpose vouchers are taxed upon supply, whereas multipurpose vouchers are liable to VAT when they are redeemed and the goods or services are supplied.

For non-redeemed vouchers and when there is no return of the amount paid, VAT is due upon the expiration date of the right to the respective use of the voucher.

Telecommunications, broadcastings and electronically supplied services

EU Council Directive (EU) 2017/2455 will be transposed. The Directive determines rules to facilitate taxpayers that occasionally supply telecommunications, broadcasting or electronically supplied services, allowing the VAT taxation in the EU Member State where the supplier is established, when (i) the consumer is not a taxable person and is established in a different EU Member State from the supplier, (ii) the value of the services provided does not exceed EUR 10,000 (VAT excluded) in the former civil year or in the current civil year.

Bullfighting artists' services

Services supplied by bullfighting artists are no longer VAT exempt (currently subject to exemption without credit) and will be taxed at the reduced rate (allowing the recovery of the VAT incurred in the goods and services acquired for this activity).

Municipal companies

It has been clarified that supplies of fixed assets from municipal companies to municipalities, as a result of the compulsory winding-up of the municipal companies, does not imply the adjustment of the VAT initially deducted.

Legislative authorizations

The Budget Law proposal includes the following authorizations for the government to amend the VAT rules:

- Introduction of a VAT reduced rate for the fixed component of the supply of electricity and natural gas when the contract power does not exceed 3.45 kVA (electricity) and to low-pressure consumers which do not exceed 10,000 m^3 per year (natural gas); and,

- Creation of a simplified VAT regime which may include a special compensation scheme of deductible VAT, within the scope of a flat-rate scheme, for independent cinemas and public spaces for independent cinematographic and audiovisual works projections.

The Budget Law proposal includes the following authorizations (included in the 2018 Budget but not exercised):

- Expansion of the intermediate VAT rate (13% in the mainland) applicable to all beverage services provided by restaurants (currently beverage services of alcoholic drinks, soft drinks, juices, nectars, and sparkling water and those to which carbon dioxide or other substances are added are subject to the standard VAT rate – 23% in Portugal mainland);

- Expansion of the internal VAT reverse charge system for the purchase of cork, wood, pinecones and pine nuts with shell, similar to the current regime in force for waste, residues and recyclable scrap metal.

Excise duties

Tobacco tax:

- The excise duty levied on the specific component regarding cigarettes will increase from EUR 94.89 to EUR 96.12 per 1,000 cigarettes.

- For cigars and cigarillos, there is an increase of approximately 1.3% in the minimum limit of the duty resulting from the application of the ad valorem component which will be EUR 410.87 per 1,000 cigars and EUR 61.63 per 1,000 cigarillos.

- For rolling tobacco, snuff, chewing tobacco and heated tobacco there is an increase of duty levied from EUR 0.080 per gram to EUR 0.081 per gram.

- Additionally, the duty regarding fine cut tobacco for rolling cigarettes and the remain smoking tobaccos, for snuff, for chewing tobacco, and heated tobacco cannot be less than EUR 0.174 per gram, which represents an increase to the current limit (EUR 0.171 per gram).

- For liquids containing nicotine, the tax rate will increase from EUR 0.3 per ml to EUR 0.31 per ml.

- The rate of the ad valorem element regarding cigarettes manufactured in the Autonomous Regions of Madeira and Azores by small producers, whose yearly production does not exceed 500 tonnes individually and which are consumed in Azores, increases from 40% to 42%. On the other hand, there is an increase in the minimum amount of tax on cigarettes, from 73% to 75% of the minimum value due in Portugal mainland.

- The general arrangements for products subject to excise duty now apply to the circulation of tobacco leaf aimed for public sale of snuff, chewing tobacco and heated tobacco and liquid with nicotine, in devices used for charges and recharges of electric cigarettes.

Tax on alcohol, alcoholics drinks and sugar-added drinks

For non-alcoholic drinks with sugar or sweetener added, and drinks with alcohol content higher than 0.5% vol. and lower than or equal to 1.2% vol., there will be more tiers for taxes applied. This expansion results in an increase to the maximum tax rate applicable to drinks with a higher sugar level (≥ 80g), whilst the remaining drinks benefit from a tax reduction, as follows:

Sugar (grams)	Tax rate EUR / hectoliter	
	2018	2019
<= 25	8.34	1
25-49		6
50-79		8
=>80	16.69	20

Tax on petroleum products

The mix or incorporation of biofuels in other petroleum and energy products must be made in a tax bonded warehouse. Progressive taxation is maintained in the following petroleum and energy products in the production of electricity, heating electricity (co-generation) or city gas:

- Nomenclature Code 2701 (briquettes, and similar solid fuels manufactured from coal);
- Nomenclature Code 2702 (lignite, whether or not agglomerated, excluding jet); and,
- Nomenclature Code 2704 (coke and semi-coke of coal, of lignite, or of peat, whether or not agglomerated).

During 2019, a tax rate will apply to these products corresponding to 25% of the tax on petroleum products and a tax rate corresponding to 25% of the CO^2 special contribution rate (10% in 2018 for both).

Unlike in 2018, it is not expected that considering this additional cost in the final consumer's invoice will be prohibited.

In 2019, the additional rates of tax on petroleum products of EUR 0.007 per liter for gasoline and EUR 0.0035 per liter for both bus diesel and colored and marked diesel remain unchanged from 2018.

A legislative authorization has been approved for the government to smoothly expand the scope of the CO^2 special contribution rate to certain petrol and energy products.

Vehicle tax

Vehicle tax will generally increase by approximately 1.3%.

Considering the increase of vehicle emissions (resulting from the new rules regarding the measure of gas emissions under the Worldwide Harmonized Light Vehicle Test Procedure (WLTP)), a transitional regime will be created for 2019, with a reduction (of between 5% and 24%) to be applied to CO^2 emissions calculations, that are considered in the computation of the environmental percentage rate of vehicle tax, as well as for the computation of CO^2 limits fixed in benefit regimes. In broad terms, the computed taxes in the scope of this transitional regime will offset the general increase in the vehicle tax rate, resulting, in several cases, in a reduction of the vehicle tax due in less polluting vehicles (but also in a higher tax for more polluting vehicles).

Circulation tax

The circulation tax will generally increase by approximately 1.3%. Similar to vehicle tax, a transitional regime will also be created for circulation tax for 2019. Considering the significant increase in vehicle emissions under the new cycle of WLTP, the transitional regime will determine a reduction (between 5% to 21%) to apply to CO^2 emissions considered for computation of the applicable rates to category B vehicles (passenger vehicles), as well as for measurement of the CO^2 limits established for the application of existing exemptions.

For heavy-duty vehicles, with a gross weight of over 3,500 kg, exclusively used for entertainment and itinerant activities, by taxpayers who perform these services as their main activity, an exemption of 50% applies.

For 2019, the additional contribution of the circulation tax for diesel vehicles of categories A (motorcycle) and B (passenger vehicles) will be maintained.

Russia

Government expands list of addresses for participation in the Tax Free pilot project

The Tax Free pilot project has been implemented in Russia from April 2018. Retail organizations included in a special list of retail organizations participate in the pilot project.

To be included in the list, a retail organization or its separate subdivision must be located at the addresses approved by Government Resolution # 105 dated 6 February 2018.

The Government recently has expanded the list of locations to include the following Moscow streets: Kuznetsky Most, Nikolskaya, Bolshaya Dmitrovka, Petrovka, Novy Arbat and Stoleshnikov Lane.

It is assumed that the expansion of the list of locations will increase production and sales of goods that are popular among foreign tourists.

Ministry of Finance clarifies ability to amend government contracts due to increase in VAT rate

The Ministry of Finance in its Letter of 28 August 2018 No. 24-0307/61247 clarified the possibility to amend government contracts due to an increase of the VAT rate.

In accordance with the Federal Law of 3 August 2018 No. 303-FZ, the general VAT rate will be raised from 18% to 20% starting from 1 January 2019.

There is no exception with respect to goods/ work/ services/ property rights supplied under contracts, including government contracts, concluded before the introduction of the Federal Law.

The Ministry of Finance stated that the Federal Law of 5 April 2013 No. 44-FZ 'On the Contract System of the Federal and Municipal Procurement of Goods, Work and Services' provides for the possibility to amend contracts including due to changes in the VAT rate.

In accordance with Federal Law No. 44-FZ, substantial terms of a contract may be amended where the execution of the contract without amendment is impossible due to reasons beyond the control of the parties.

Ministry of Finance clarifies VAT treatment of international communication services

The Ministry of Finance in its Letter of 31 August 2018 No. 03-0708/62285 advised that the place of supply of international electronic communication services rendered by a foreign entity to a Russian entity is not deemed to be Russia. In accordance with the general provisions of the Russian Tax Code, the place of supply of services is determined as the supplier's place of activity, unless specific rules are established with respect to particular services. No specific place of supply rules are established with respect to international electronic communication services. Thus, the services are not subject to VAT in Russia.

Ministry of Finance clarifies VAT treatment of sale of residential premises (apartments)

The Ministry of Finance in its Letter of 11 September 2018 No. 03-07-07/64777 clarified the following.

In accordance with Art. 149 of the Russian Tax Code, the sale of residential buildings and residential premises, and of shares therein is exempt from VAT.

The Ministry states that with respect to the sale of residential premises (apartments) designed for temporary accommodation (without the right to register for permanent living), the VAT exemption provided by the Russian Tax Code is not applied.

Thus, the sale of residential premises (apartments) is subject to VAT.

Ministry of Finance clarifies procedure of confirming application of the 0% VAT rate for export sales of goods on basis of temporary customs declarations

The Ministry of Finance in its Letter of 24 August 2018 No. 03-0708/60478 advised that taxpayers should submit final customs declarations to the tax authorities to confirm the application of the 0% VAT rate with respect to export sales of goods placed under the customs procedure of export on the basis of temporary customs declarations. The final customs declaration should be issued before the end of the tax period with respect to which the VAT return is submitted and where the application of the 0% VAT rate is declared.

Rates of customs duties established for customs escort and storage at temporary storage warehouse

Government Resolution of the Russian Federation of 11 September 2018 No. 1082 established the rates and base for calculating customs fees for the customs escort of goods transferred by road, sea, air and railway.

In addition, the rates and base for the calculation of customs fees for storage in warehouses of temporary storage of the customs authority are established.

Government Resolution No. 1082 came into effect on 21 September 2018.

Licensing period expires for import of crushed stone, gravel, crushing screenings, materials from crushing screenings and mixtures whose components are crushed stone, gravel and sand

Government Resolution of the Russian Federation of 30 June 2018 No. 773 introduced from 1 July 2018 to 31 October 31 2018 (inclusive) licensing of imports into the Russian Federation from non-Member States of the EEU of crushed stone and gravel, classified by customs classification code 2517 10 100 0, crushing

screenings, and materials from crushing screenings in the process of manufacturing crushed stone and gravel, as well as various mixtures whose components are crushed stone, gravel and sand, classified by customs classification codes 2517 10 200 0, 2517 10 800 0, 2517 49 000 0, imported from third countries that are not members of the EEU, when placed under the customs procedure of release for internal consumption.

Methodological recommendations approved for implementation of experiment on marking identification of shoe products

The Ministry of Industry and Trade has approved methodological recommendations for the implementation of the experiment on marking the identification of shoe products in the territory of the Russian Federation from 1 June 2018 to 30 June 2019.

Methodological recommendations include, in particular, the definitions, the rules regulating the application of the means of identification, the requirements for equipment used to apply and read labeling codes, the requirements for participants in the experiment on labeling, and the procedure for labeling goods with means of identification.

Methodological recommendations for participants in the experiment on labeling with means of identification and monitoring the turnover of shoe products that correspond to commodity positions 6401 – 6405 according to the Harmonized System of the EEU in the Russian Federation were approved by the Ministry of Industry and Trade of Russia on 3 September 2018.

Government establishes transition procedure for applying for stamps for marking alcoholic products

In accordance with the Government Resolution of the Russian Federation of 27 September 2018 No. 1140 it is possible to trace each unit of alcoholic beverages through a two-dimensional bar code contained on federal special stamps (FSM) and excise stamps (AM), stamped by the manufacturer and containing the unique identifier of the Unified State Automated Information System (EGAIS) in coded form, allowing identification of the brand, as well as the alcoholic products they mark.

The Government has established a transition procedure for applying for the federal special and excise stamps.

In particular, the following changes have been made:

- Production of FSM and AM is carried out in accordance with the samples, list of details, and security elements approved by the Ministry of Finance of Russia (Rosalkogolregulirovanie), using a technology that excludes the possibility of their counterfeiting and reuse, as well as providing the ability to read a two-dimensional bar code containing the EGAIS identifier;

- Requirements for samples of FSM and AM for labeling alcoholic beverages, for the order of their application to various types of alcoholic beverages, and the form of the report on the use of previously issued AM are clarified;

- It is stipulated that the Rosalkogolregulirovaniye transfers to the manufacturer the EGAIS identifier included in the two-dimensional bar code applied to FSM and AM;

- The price of a federal special stamp was reduced from RUB 1,850 (approx. USD 28.90) (excise stamps from RUB 1,700 (approx. USD 25.90)) to RUB 1,690 (approx. USD 25.80) without VAT (per 1,000 units), the costs included in the price were adjusted.

Government Resolution of the Russian Federation of 12 December 2005 No. 786 'On excise stamps for labeling alcoholic beverages' was terminated.

Government Decree No. 1140 came into effect on 1 October 2018. Stamps of the previous type will be issued until 1 January 2019.

Serbia

Amendment to law regarding VAT refunds to foreign taxpayers

As of 1 January 2019, VAT refunds will be allowed even for nonresident taxpayers who perform supplies of goods and services in the Republic of Serbia, provided that such supplies are performed to VAT registered persons and that the tax debtors for such supplies, as per Serbian regulations, are the recipients of goods or services (i.e. that the reverse charge applies).

Prior to this, non-residents performing any type of supply in the Republic of Serbia (save for international passenger transport services) were not eligible for VAT refunds.

Slovakia

Amendments to VAT Act

The Ministry of Finance submitted a draft amendment to the VAT Act to be effective from 1 January 2019. The draft amendment to the VAT Act will be discussed by the relevant committee of the National Council of the Slovak Republic. The most important proposed changes are as follows:

- Cancellation of the tax guarantee concept – decisions on the deposit of a tax guarantee issued until 31 December 2018, where a 12-month period since the date of the guarantee deposit has not expired, will be cancelled, and the guarantee or its part, which was not used to pay tax arrears, must be returned by the tax authorities by no later than 28 February 2019.

- Change in the definition of turnover for VAT purposes/ the coefficient for the proportional deduction of tax – it is proposed to replace the terms 'revenues' and 'income' by the term 'value of supplied goods and services' as a result of which the actual value of supplied goods and services will be included in turnover, i.e. the consideration at the time of their supply. The change will also affect the provision on the calculation of the coefficient for the proportional deduction of tax, and the method of calculating the turnover and the coefficient for the proportional deduction of tax for 2018, following changes to become effective on 1 January 2019, is regulated under the transitional provisions.

- Supply of goods/services when using vouchers – the definition of a voucher and rules for the application of VAT when using such voucher are to be added to the Act. According to the new rules, vouchers will be classified as 'single purpose vouchers' and 'multi-purpose vouchers' depending on whether the amount of tax payable and the place of supply of goods/services, to which the voucher applies, is known at the time of the voucher issue. The new rules for the tax treatment of vouchers for VAT purposes will apply to vouchers issued after 31 December 2018.

- Modification of rules for providing telecommunication services, radio and television broadcasting services and electronic services to a person other than a taxable person – the new rules are mainly intended for occasional providers of the said services which will be able to decide whether the place of supply of these services will be the EU Member State of establishment of the service recipient or the Member State of their establishment, provided that they will comply with the statutory requirements.

- Changes in the supply and lease of real estate – the relevant provision of Article 38 of the VAT Act is to be amended significantly. The first major change is new conditions for applying tax exemption upon the supply of a building or its part, according to which for the first five years taxation will apply not only to new buildings but also to older buildings for which a change in purpose has been permitted, as well as to buildings after reconstruction, provided that in both cases the costs of the construction work amount to at least 40% of the value of the building before the start of construction work. Another change is the limitation of the right to choose taxation upon the supply of a residential building or its part that qualifies for tax exemption. There is the same limitation of the right to choose when leasing residential real estate, i.e. the lessor will be required to apply tax exemption regardless of the status of the recipient.

- Adjustment of deducted tax for investment property – a new provision is to be introduced, imposing a payer's obligation to adjust the deducted tax for investment property with a cost over EUR 3,319.39 if the extent of its use for business and other-than-business purposes has changed.

- Modification of domestic reverse charge for selected agricultural crops and metal goods – it is proposed to abolish the transfer of tax liability to the recipient in situations where the supplier issues a simplified invoice (eg a receipt from an electronic cash register) upon the supply of the above goods.

The draft amendment to the VAT Act also specifies in more detail certain provisions of the VAT Act, including the following:

- Registration obligation upon the sale of a business or part of a business – the reference to the Commercial Code is deleted as the supply of a business or its part is a term defined by the European Union and should, therefore, not be governed exclusively by Slovak legislation.

- Free supply of goods – the payer is required to pay VAT on a free supply of goods if the payer applied VAT deduction upon the purchase of the goods or part thereof, but the tax base will only include the costs related to the part of the goods, which appreciated after the purchase and to which VAT deduction was applied.

South Africa

Implementation and phase down of safeguard duty on frozen bone-in portions of chicken

Parts of the schedules of the Customs and Excise Act, 1964 that provide for safeguard duties on imported goods have been amended to implement a gradual phase down of safeguard duties on frozen bone-in portions of fowls of the species *Gallus domesticus* (chickens) imported from or originating from the EU.

Effective from 28 September 2018, the following safeguard duty rates will apply on frozen bone-in portions of chickens imported or originating from the EU:

- 35.3% effective from 28 September 2018 up to and including 11 March 2019

- 30% effective from 12 March 2019 up to and including 11 March 2020

- 25% effective from 12 March 2020 up to and including 11 March 2021

- 15% effective from 12 March 2021 up to and including 11 March 2022

Frozen bone-in portions of chickens, tariff subheading 0207.14.9, attract 37% 'general rate' or a free 'EU rate' of ordinary customs duty. The safeguard duty on frozen bone-in portions of chickens imported or originating from the EU will be due in addition to the ordinary customs duty due at the time of importation into South Africa.

Frozen bone-in portions of chickens imported or originating from the EU, with a valid EU proof of origin/certificate, for the period 28 September 2018 to 11 March 2019, are liable to 35.3% in safeguard customs duty only. However the same articles if imported or originating from the EU, without a valid EU proof of origin/certificate, in addition to the 37% in ordinary customs duty, for the period 28 September 2018 to 11 March 2019, are liable to 35.3% in safeguard customs duty. This will also increase, although refundable, the amount of import VAT paid at the time of importation into South Africa.

United Kingdom

Budget 2018

The Chancellor of the Exchequer delivered his Budget Statement on Monday 29 October. The indirect tax measures include the following. Full coverage of the tax measures is available at www.ukbudget.com.

VAT groups

It has been confirmed that the VAT grouping rules will be amended to permit certain non-corporate entities, e.g. individuals and partnerships, to be members of VAT groups. In addition, HMRC proposes to alter its guidance to VAT groups that buy in services via overseas branches and to provide clarity about HMRC's 'protection of the revenue' powers and treatment of UK fixed establishments. HMRC expects to collect an additional £240 million as a result of the changed guidance, which is to come into force from 1 April 2019.

Unfulfilled supplies

The government has announced that, from 1 March 2019, VAT will be due on all prepayments for goods and services, even when the underlying supply does not take place, unless the customer receives a refund. At present some 'forfeited deposits' and the like (e.g. on a hotel booking where the hotelier collects a non-refundable deposit and the customer cancels the booking) can be treated as compensatory and VAT-free. HMRC expects to collect an additional £425 million over the next five years as a consequence of this change.

Price adjustments and VAT refunds

HMRC is to take a stricter approach to VAT adjustments that follow a reduction in price. From 1 September 2019, the Regulations relating to such adjustments will require that a credit note is issued to the customer. The measure is intended to guarantee that businesses are transparent and do not benefit from VAT that is due to the consumer or the exchequer. The change is expected to yield an additional £515 million over the next five years.

Single use plastics

The government intends to introduce a tax on the production and importation of plastic packaging from April 2022. It proposes to tax plastic packaging that does not contain at least 30% recycled plastic, and to reform the Packaging Producer Responsibility System, to increase the producers' responsibility for the costs of their packaging waste, provide an incentive for producers to design packaging that is easy to recycle and penalise the use of hard to recycle packaging. A consultation about the tax is to be launched in the coming months.

'Split payment' VAT collection

The government is continuing to work on a 'split payment' VAT collection model that is intended to reduce online VAT fraud by third country sellers and improve the way in which VAT is collected on cross-border e commerce. An industry working group is to be established to address some of the main challenges associated with this policy.

VAT registration threshold to remain unchanged

The government has published a summary of the responses to its call for evidence on changes to the VAT registration threshold. The responses "... did not provide a clear option for reform" and the VAT registration and deregistration thresholds are to remain at their current levels (GBP £85,000 and GBP 83,000 respectively) for a further two years, until 1 April 2022.

Court rules that free bets not subject to gaming duty

Valued casino customers can sometimes be given chips which cannot be exchanged for cash (non-negotiable chips, or 'Non-Negs') to encourage them to play more. In the recent case of London Clubs Management Ltd, the Court of Appeal has considered whether these should be subject to gaming duty, which is calculated by reference to 'stakes staked'.

The Non-Negs were a stake, in the sense that they could be used in much the same way as cash chips at the gaming tables. However, the Court has dismissed the tax authorities' appeal: although the Non-Negs had a face value, they effectively allowed customers to bet with the casino's money.

Nothing came out of the customer's pocket when they placed a bet with a Non-Neg, and therefore (in the normal everyday meaning of the word) they were not 'staking' anything on the outcome. The judgment shows the importance that courts can attach to economic reality when considering all indirect taxes, not just VAT.

Eurasian Economic Union

Extension of anti-dumping duty on graphite electrode originating from India

Decision of the Board of the Eurasian Economic Commission of 25 September 2018 No. 156 extends until 24 September 2018 (inclusive) anti-dumping duties regarding graphite electrodes used in furnaces, graphitized round section with a diameter of more than 520 mm, but not more than 650 mm, or other cross-section with an area of more than 2,700 cm^2, but not more than 3,300 cm^2 with customs classification code 8545 11 002 0 according to Harmonized System of the EEU, originating from India and imported into the Eurasian Economic Union.

The anti-dumping duties are established in the amount of 16.04% and 32.83% of the customs value, depending upon the producer.

Decision No. 156 came into effect on 28 October 2018.

Introduction of 0% customs duty rate for raw materials of fur and tanned or dressed fur skins

Decision of the Board of the Eurasian Economic Commission of 7 September 2018 No. 146 introduced 0% import customs duty on the customs value of raw materials of fur and tanned or dressed fur skins which are included in commodity group 43 of the Harmonized System of the EEU, from 12 October 2018 until 30 September 2020 (inclusive).

Decision No. 146 came into effect on 12 October 2018.

List of information specified in customs declaration of certain categories of goods placed under customs procedure of export in the Republic of Kazakhstan and the Russian Federation clarified

Decision of the Board of the Eurasian Economic Commission of 25 September 2018 No. 157 introduces amendments to the Order of completing a customs declaration of goods, approved by the Decision of the Customs Union Commission No. 257 of 20 May 2010. The changes relate to information that must be additionally specified upon customs clearance of birch wood products placed under the export customs procedure in the Republic of Kazakhstan and the Russian Federation.

Decision No. 157 came into effect on 28 October 2018.

Start date for applying procedure for confirming actual export of goods from EEU customs territory by the customs authorities of the EEU Member States moved from 1 September 2018 to 1 February 2019

Decision of the Board of the Eurasian Economic Commission of 28 August 2018 No. 144 amends the Decision of the Board of the Eurasian Economic Commission of 7

February 2018 No. 25 'On the Order for confirming the actual export of goods from the customs territory of the Union by the customs authorities of the member states of Union'. The amendment is due to the need for development of the information systems of the customs authorities of the EEU Member States regarding confirmation of the actual export of goods from the customs territory of the EEU.

Under the amendments, the start date for applying the Order for confirmation by customs authorities of the actual export of goods from the customs territory of the EEU has been postponed from 1 September 2018 to 1 February 2019.

The Order will be applied by the customs authority in which region the final departure of goods from the customs territory of the EEU took place when confirming the actual export of goods placed under the export customs procedure, the customs procedure for processing outside the customs territory, temporary export customs procedure, re-export customs procedure, or a special customs procedure, to the customs authority that carried out the release of goods in accordance with one of these customs procedures.

Decision No. 144 came into effect on 29 September 2018.

November 2018

Americas

Central America

Customs Union expands in Central America

On 1 March 2018, the Customs Union between the Republics of Guatemala and Honduras mandatorily went into effect. This means that, as of that date, operations for the export and import of goods between both countries fall outside of the customs realm and now constitute operations for the transfer and acquisition of goods that are documented through the FYDUCA (Central American Invoice and Single Declaration). As a result, the territories of Guatemala and Honduras now constitute a single national territory for customs purposes.

This process has led to an increase in commercial activity between the two countries, and the Customs Union has allowed for the streamlining of the movement of goods at the national borders.

On 20 August 2018, El Salvador officially joined the Central American Customs Union first executed by Guatemala and Honduras. With this addition, 70% of Central American trade will move through a common customs territory, with GDP growth expected in the three countries, in addition to the benefits from the facilitation of trade.

El Salvador is currently performing technical work in order to start the operational phase of its addition to the Customs Union, which will include the mandatory use of the FYDUCA for documenting transfers and acquisitions of goods among the three countries. It is expected that this process will conclude in January 2019, and thus it is also a challenge for companies, which must work to integrate their international trade processes with the new procedures and practices resulting from the Customs Union.

The execution of the Central American Customs Union is a gradual process, and thus, in the short term, it is expected that the rest of the Central American countries will join.

Asia Pacific

Comprehensive and Progressive Agreement for Trans-Pacific Partnership

TPP-11 to take effect

On 31 October 2018, Australia ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11).

As Australia is the sixth signatory to ratify the TPP-11, following Canada, Japan, Mexico, New Zealand and Singapore, the agreement will enter into force for these countries on 30 December 2018.

This start date means that the first two rounds of customs tariff reductions will occur in quick succession for goods traded between the above countries: the first on 30 December 2018 and the second on 1 January 2019.

On 12 November 2018, Vietnam's National Assembly ratified the TPP-11. The TPP-11 will enter into force for Vietnam 60 days after it provides notification of its ratification, making a start date in early 2019 likely.

As at 19 November 2018, four signatories had yet to ratify the TPP-11: Brunei, Chile, Malaysia and Peru. The agreement will enter into force for each of these countries 60 days after they ratify.

Tariff cuts under a free trade agreement (FTA) are not applied automatically to imported goods. Businesses trading with customers/suppliers from another TPP-11 country that has also ratified should be using the time leading up to the start date to:

- Identify goods that will potentially benefit from tariff reductions under the TPP-11;
- Check whether those goods will meet relevant rules of origin (ROO) requirements, including any product-specific rules of origin for goods

imported from a TPP-11 country which contain inputs or components sourced from outside the TPP-11; and

- Clarify which party (i.e., producer, exporter or importer) will complete and provide the certificate of origin in respect of goods for which preferential treatment will be claimed and ensure that the certification documentation includes all required information.

Australia Australia-Hong Kong

Australia and Hong Kong conclude negotiations for a free trade agreement

On 15 November 2018, Australia announced that it had concluded negotiations with Hong Kong for the Australia-Hong Kong Free Trade Agreement (A-HKFTA).

The key outcome announced in relation to trade in goods between Australia and Hong Kong is the agreement to fix all customs tariffs at zero from the date of the A-HKFTA's entry into force.

Although Hong Kong currently provides tariff-free entry for goods from Australia, the benefit for Australian exporters lies in the certainty that Hong Kong will not apply customs tariffs in the future. As things presently stand, Hong Kong has the ability to increase tariffs to any level on a wide range of goods without breaching the World Trade Organization (WTO) rules.

The A-HKFTA is also expected to include non-tariff measures and streamlined customs procedures to provide improved outcomes for two-way trade in goods.

The A-HKFTA will also provide many benefits in relation to trade in services and improved conditions for investment between Australia and Hong Kong.

The text of the A-HKFTA awaits finalization, ahead of its formal signing and publication. A proposed timetable for signing, ratification, and entry into force has not been announced.

EMEA

Czech Republic

Amendment to VAT Act postponed

A not-yet-approved amendment to the VAT Act with proposed effect from January 2019 will be definitively postponed by several months. The changes (such as VAT treatment of vouchers, bad debt relief rules, a new definition of leasing agreement which is considered a supply of goods, etc.) can thus be expected to apply no

sooner than 1 April 2019. It has been newly proposed, furthermore, that the supply of organic/bio food should be subject to the 10% reduced VAT rate, instead of the currently applicable 15%.

Denmark

VAT deduction by holding companies

On 16 October 2018, the tax authorities published updated instructions on the deduction of VAT by holding companies, which expand the possibilities for holding companies to deduct VAT on expenses incurred in connection with the acquisition and ownership of subsidiaries.

The instructions reflect the 5 July 2018 decision of the Court of Justice of the European Union (CJEU) in *Marle Participations SARL*, in which the CJEU held that a holding company's acquisition of a subsidiary and subsequent rental of real estate to the subsidiary constitutes involvement in the management of the subsidiary, such that the rental should be regarded as an economic activity on which the holding company is entitled to deduct input VAT.

The instructions represent guidance to tax officials on applying the relevant legislation and also may be used by taxpayers.

One of the major differences between the new instructions and those dating from 2015 is that, in general, the right of deduction cannot be limited because the holding company only performs certain types of transactions (e.g. a deduction for input VAT cannot be disallowed if the sole activity consists of the rental of real estate.)

This reflects the CJEU decision in *Marle Participations* and overrules the former practice of the tax authorities, as set out in the 2015 instructions, that the rental of real estate to a subsidiary cannot, by definition, be considered involvement in the direct or indirect management of the subsidiary.

There are two key requirements that must be met for the holding of shares to be regarded as an economic activity and, as a result, for the holding company to be entitled to a deduction for VAT incurred on expenses in connection with the acquisition and ownership of subsidiaries:

- The holding company must be involved in the management/administration of the subsidiary; and
- The transactions must be subject to VAT.

The instructions contain an example of a Danish company that sells its goods via a third-party distribution company. The Danish company acquires the majority of the shares in the distribution company and subsequently replaces the entire board of directors and management team.

The tax authorities are of the opinion that the equity investment is acquired with the intention of the Danish company becoming involved in the management and administration of the company and potentially make further VATable deliveries to the company.

The acquisition and ownership of the distribution company is an indication of economic activity and, therefore, means the Danish company meets the above requirements.

Potentially affected holding companies should assess whether they have engaged in activities that may give rise to a right to deduct input VAT. Such companies may request a repayment of VAT incurred as from 1 January 2009, in line with the CJEU decision in the *Marle Participations* case, and refund applications must be submitted to the tax authorities by 16 April 2019.

Some uncertainty remains regarding a number of additional conditions that may need to be fulfilled, but this is expected to be settled as the tax authorities begin to process specific cases.

Possible VAT deduction for sale of shares in subsidiaries

The CJEU judgment *C&D Foods Acquisition ApS* concerns a Danish entity. In brief, the CJEU agreed with the tax authorities that C&D Foods Acquisition ApS was not entitled to deduct the VAT for advisory costs directly related to the disposal of shares. The purpose of the sale of shares was clearly to settle a debt to a bank and the activity was found not to be related to the taxable activities of C&D Foods Acquisition ApS. This conclusion is in line with the Danish administrative practice.

What could turn out to be of more interest is what the CJEU mentions in premise 38 of the ruling. It is stated in general that in order to deduct VAT related to a sale of share transaction, the transaction must constitute the direct, permanent, and necessary extension of the economic activity.

This statement could be interpreted in different ways and it will be interesting to hear the opinion of the Danish tax authorities, as they in general do not allow deduction of VAT in such situations. In particular, whether the statement will broaden the tax authorities' view in order for holding companies more generally to be allowed the right to deduct the VAT related to the sale of shares if the transaction is in direct, permanent, and necessary extension of the economic activity.

Reference for preliminary ruling from Federal Tax Court concerning VAT rate reduction for rental of moorings for boats

In a resolution dated 2 August 2018 (and published on 14 November 2018) Germany's Federal Tax Court (BFH) referred a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling on whether the VAT rate reduction applicable under VAT law for the short-term rental of camping areas also applies to the rental of boat moorings. In its decision of 2 August 2018 the Federal Tax Court therefore asked the CJEU to clarify whether a port should be treated in the same way as a campsite, while retaining the same function.

Facts of the case

The plaintiff, a registered association whose purpose is the promotion of sailing and motor water sports, let boat moorings in its harbor for a so-called harbor fee to water sportsmen who could anchor and stay overnight there with their boat. The harbor dues also included the use of similar (sanitary) facilities as on campsites and in so-called mobile home harbors.

The plaintiff applied the reduced VAT rate to the fees from the transfer of the berths. In the course of a special audit, the tax office subjected the disputed revenues to the standard VAT rate.

The Lower Court dismissed the complaint on the grounds that the short-term provision of boat berths did not fall under the legal formulation 'short-term rental of camping areas' (according to section 12 para. 2 no. 11 sentence 1 German VAT Act), as a boat is primarily a means of transport.

Reference for a preliminary ruling from the BFH

By contrast, the Federal Tax Court considers it possible that the principle of fiscal neutrality requires that the tax rate reduction for campsites and thus for so-called motorhome ports also apply to the provision of boat moorings in so far as these carry out similar transactions. The Federal Tax Court refers the following question to the CJEU for a preliminary ruling:

Does the reduction in the tax rate for the rental of camping sites and caravan parks under Article 98(2) of the VAT Directive in conjunction with Annex III No 12 to the VAT Directive also cover the rental of moorings for boats?

Legal framework:

Art. 98 (2) of the EU Principal VAT Directive in conjunction with Annex III No 12 VAT Directive; sect. 12 para 2 no. 11 sentence 1 German VAT Act.

Greece

Notification of law regarding accelerated processing of VAT refunds

By virtue of Circular Pol. 1202/2018, the provisions of article 36 of Law 4569/2018 have been notified. Article 36 provides for the processing of pending VAT refund claims of up to EUR 10,000 (per beneficiary) in audit cases pending on 11 October 2018 to be accelerated (see the October 2018 edition of this newsletter for further information). It was also clarified that the effective date of the law is 11 October 2018.

Announcement on mandatory e-invoicing and e-bookkeeping

With respect to the introduction of mandatory e-invoicing and e-bookkeeping, the Secretary-General of the Independent Authority of Public Revenues (Mr. Pitsilis), during his speech at the 10th Tax Forum, announced that electronic books (for accounting purposes) have taken a specific format and are designed to receive information through e-invoicing, either through a recording method, a mass data transfer, or the separate cash register channel.

Moreover, until e-invoicing is fully implemented, in which case the completion of e-books will be made automatically through e-invoices, an innovation is currently processed, namely, invoices will be recorded in the systems of the Independent Authority of Public Revenues only by the issuer. The said recording/entry will automatically update both the recipient's books and account. As a result, progressively, e-invoicing and e-bookkeeping will reduce the bookkeeping work in total, whereas the filing of summary lists of customers and suppliers will not be required.

Furthermore, as the Secretary-General indicated, at this stage, several solutions are being examined to enable recipients to complete accounting books where the issuer/supplier has omitted to record the relevant invoice, as well as where there are mismatches.

In light of the above, the Secretary-General concluded that within a tight timeline, the competent working groups have managed to substantiate the project of designing the e-bookkeeping option. Therefore, provided the required storage and calculating capacity of the system is secured, e-invoicing and e-bookkeeping will become operational in 2019.

Ireland

Finance Bill 2018

In addition to the recent indirect tax changes in this year's budget, the Finance Bill 2018 published by the Minister for Finance Paschal Donohoe on 18 October 2018 included some unexpected changes, which can be summarized under the following four headings:

Extension of the sugar sweetened drink tax

The sugar sweetened drink tax was introduced in May 2018 and applied to water-based and juice-based drinks with 5g or more of added sugar per 100ml. Dairy products were initially exempt from the tax, however, on the basis of the commitment made to the European Commission that the drinks exempted from such tax should have certain nutritional value, the Finance Bill 2018 extended the tax to include milk substitute or milk fat based drinks containing added sugar whose calcium content is below 119mg per 100ml.

Withdrawal of vehicle registration tax (VRT) relief for leased or hired cars

In the past, cars leased or hired in another EU Member State that were temporarily used in Ireland for a term of lease or hire could not avail of any VRT relief on the basis of temporary use in Ireland and were liable to the full rate of VRT. The Finance Bill 2018 grants VRT relief on such temporary use on a pro-rata basis, subject to certain conditions being met. This change is in line with a recent Court of Justice of the European Union judgment against Ireland for imposing a full VRT charge where the vehicle was only being used for a short period in Ireland.

Closure of a loophole on the sale of residential properties by receivers/mortgagees in possession

Currently the sale of residential properties by receivers or mortgagees in possession is only subject to VAT if the owner was entitled to VAT input deduction in the course of a property development business. To close a loophole, in which someone other than the owner developed the property and claimed the VAT input deduction, the Finance Bill removes the requirement that deduction was claimed by the owner, and instead the property will be liable to VAT if anybody developed it and received a VAT input deduction.

This amendment comes into effect from 1 January 2019 and will only apply to receiver/mortgagee in possession sales of the specific residential properties in question from thereon.

Changes to VAT deduction rules for providers of pre-paid phone cards

The final change introduced by the Finance Bill 2018 was removal of the provisions allowing for the adjustment of VAT liability for telephone cards sold in Ireland but used outside of the EU. The ability to make such VAT adjustments has now been removed with effect from 1 January 2019.

VAT recovery on deal fees

The Court of Justice of the European Union judgment in the case *Ryanair* was released on 17 October 2018. The case relates to VAT recovery entitlement on professional fees incurred in the process of an unsuccessful bid by Ryanair to

acquire shares in a rival airline with an intent to take it over and provide management services to the target company following acquisition.

The CJEU held that full VAT recovery on such costs should be available on the basis of Ryanair's intent to make taxable supplies of management services, despite the fact that the acquisition did not go through and the intended management services did not materialise.

Italy

E-invoicing

On 16 November, the tax authorities released the following significant clarifications in a 'video forum' with the Italian specialized press:

- The introduction of mandatory e-invoicing does not affect the provisions in place for Intrastat obligations.

- Taxpayers are not required to adopt separated sectional VAT ledgers (and therefore different sequential numberings) depending on different archiving methods (e.g. traditional for paper invoices and e-storage for e-invoices) provided that: (i) the numbering of the invoices ensures the unicity of each invoice; (ii) the e-invoices are e-stored.

- The storage service provided by the tax authorities allows storage of e-invoices for 15 years, even in the case of revocation or expiry of the agreement with the taxpayer. The agreement with the tax authorities covers a period of three years and must be renewed at the time of expiry according to the instructions released by the tax authorities.

- Input VAT related to a purchase e-invoice dated 30 January 2019 and received on 1 February 2019 can be deducted with reference to the month of January (by 15 February).

- As a result of the grace period for the first semester of 2019, no penalties will apply where: (i) payment is received from a customer on a given date (e.g. 20 March 2019); and (ii) an invoice with the same date (i.e. 20 March 2019) is sent through SDI by the 15th of the following month (i.e. 15 April). On the purchase side, VAT may be deducted with reference to the month of March; on the output side, the VAT must be paid by 16 April.

- With respect to transactions with non-established operators, from 1 January 2019, Italian-established companies will be required to issue e-invoices to non-residents VAT registered in Italy. To transmit e-invoices to these recipients, the supplier must enter the value '0000000' in the field dedicated to the recipient code (unless the recipient has already sent to the supplier the telematics code PEC or recipient code). A pdf copy of the e-invoices will

be available for the recipient in the dedicated Web Area. It would be advisable to provide the recipient with the pdf copy of the invoice sent through SDI, informing the recipient that the e-invoice (the original document) is available on the dedicated section in the SDI. In this respect, the tax authorities refer to the e-invoice as the 'original document'; even if not expressly clarified, this could suggest that the e-invoice (and not the paper one) is the document legitimating/giving rise to the VAT deduction, even for non-established subjects VAT registered in Italy.

- Foreign subjects VAT registered in Italy will not be required to issue e-invoices for outbound transactions.

- With respect to the provision of services, the 'proforma invoice' can be deemed useful to ground the issuance of a deferred e-invoice (by 15 days after the payment of the consideration), provided it contains: (i) the description of the service provided; (ii) the tax point (date of payment of the consideration); (iii) the identification of the parties.

- Reverse charge on intra-Community acquisitions and the extra-EU acquisition of services: Transactions will have to be declared in the Cross Border Report. The tax authorities confirmed that for the reverse charge on domestic transactions traced by e-invoices with code N6, the purchaser should integrate the invoice but will be allowed also to issue a self-invoice; in this case, the self-invoice could (but should not) be sent through SDI.

- The Italian Data Protection Authority, based on the corrective power granted by the GDPR EU Regulation, has issued a warning to the tax authorities that the e-invoicing implementing rules are likely to infringe provisions of the Regulation. The Authority has asked the tax authorities for information on the initiatives taken to comply with the provisions of the Regulation. Given this, it is likely that the tax authorities will need to add some further technicalities to the e-invoicing implementing rules.

VAT grouping

With Circular Letter n° 19/E of 31 October 2018, the tax authorities provided some significant clarifications regarding the new VAT grouping rules, effective (for the first time) from January 2019, where an option has been exercised by 15 November 2018. The main points are as follows:

- Pure holding companies are not eligible, being non-taxable persons for VAT purposes; however, the requisite financial link is deemed to be met by all subsidiaries directly or indirectly controlled by non-operative holdings (in other words, the pure holding companies will be considered for the purposes of verifying the existence of the financial link).

- The financial link is deemed to be met by all subsidiaries directly controlled by foreign companies established in a country with a bilateral tax information exchange agreement in place with Italy.

- To avoid the potential negative impact for VAT deduction arising from the application of the pro-rata method, a VAT group may opt for the so-called 'separation of activities' (with direct imputation to each of the activities of the specific costs and allocation of the mixed costs based on objective criteria) even when the activities, substantially different from each other, are under the same statistical classification of economic activities (ATECO code).

- Internal transactions will be disregarded for VAT purposes and thus no 'internal invoices will need to be raised; on the other hand, where the 'separation of activities' is in place, invoices will have to be raised for internal transfers of goods or services from the activity carrying out taxable transactions (with full right of VAT deduction) to the activity carrying out exempt transactions (without full right of VAT deduction).

VAT treatment of transfer pricing adjustments

With Ruling n° 60 of 2 November 2018, the tax authorities, in line with the principles stated by the European Commission in Working Paper n° 923 of 28 February 2017, clarified that transfer pricing (TP) adjustments are relevant for VAT purposes, thus affecting the determination of the VAT taxable base by increasing or decreasing the consideration for the supply of goods/services only when: (i) there is a consideration; (ii) the supply of goods/services to which the consideration relates is identified; (iii) there is a direct link between the supply of goods/services and the consideration.

New parameters for training activities to achieve qualification for Authorized Economic Operator

With the Customs Authorities Directorial Act no. 99766/RU of 25 October 2018, the customs authorities have reformulated the regulation of training activities, concerning customs legislation, aimed at achieving the requirement of 'professional qualification' for Authorized Economic Operator (AEO) purposes.

Clarifications on amendments to Regulation (EU) no. 2246/2015

With Customs Note no. 112029/RU issued on 15 October 2018 and Note no. 100970/RU issued on 2 November 2018, the customs authorities provided some clarification with reference to the implication of the changes introduced by Delegated Regulation (EU) no. 1063/2018 to Regulation (EU) no. 2246/2015 (concerning certain provisions of the Union Customs Code (UCC)). In particular, the former document focused on customs procedures and the latter on origin.

Customs facilitation agreement for assessment procedure

With the Customs Agency Directorial Act No 298724/2018, issued on 12 November 2018, the customs authorities have defined the methods and terms of payment for

resolution of the assessment procedure. In particular, it will be possible to resolve assessment notices through the payment of only the tax net of penalties and interest.

Tax treatment of fuels used in the combined generation of electricity and heat

Article 19 of the Decree-Law of 23 October 2018 regulates the taxation of energy products used for the combined production of electricity and heat. This provision has effect from 1 December 2018.

Note of the customs authorities no. 116558 of 24 October 2018 specifies that until 30 November 2017 the coefficients that must be used are those identified by the authorities for electricity and gas in resolution no. 16/98 of 11 March 1998, published in the Official Gazette no. 82 of 8 April 1998, reduced by 12%.

Malta

Malta issues guidelines on VAT treatment of DLT assets

On 1 November 2018, the VAT authorities issued guidelines setting out the position of the Commissioner for Revenue on the VAT treatment of transactions concerning activities involving distributed ledger technology (DLT) assets (DLT Guidelines). The DLT Guidelines cover transactions in relation to DLT assets that fall within the ambit of the categories of 'Coins' or 'Tokens'. However, transactions concerning electronic money that is representative of fiat currency are explicitly excluded from the scope of the DLT Guidelines.

The general thrust of the DLT Guidelines is that the Malta VAT treatment of any transaction involving DLT assets is to be analyzed and determined in the same way as any other transaction, i.e., by applying the rules and principles applicable in terms of the VAT Act (Chapter 406, Laws of Malta), the EU Principal VAT Directive and pertinent implementing regulations, and any relevant case law of the Court of Justice of the European Union (CJEU) to the specific facts and circumstances of the particular case.

Definitions

For the purposes of the DLT Guidelines:

- 'Coins' refers to DLT assets that are designed to function solely as a means of payment, a medium of exchange, or a store of value (i.e. cryptocurrencies).

- The category of 'tokens' refers to other DLT assets such as financial tokens and utility tokens.

VAT treatment of coins

In analyzing the VAT treatment of transactions in relation to coins, the DLT Guidelines make express reference to the CJEU judgment in *Hedqvist*. On that basis, for Malta VAT purposes transactions consisting in the exchange of cryptocurrency for other cryptocurrency or for fiat money against consideration would be covered by the exemption from VAT provided for "*transactions, including negotiation, in currency, bank notes and coins normally used as legal tender*".

VAT treatment of tokens

Financial tokens

The Malta VAT treatment of financial (aka security) tokens, i.e., tokens the supply of which gives rights to dividends, interest payments, or similar rights, will be dependent upon whether such instruments would fall within the scope of VAT and, that being the case, on whether they could qualify as VAT exempt (without credit) *"transactions, including negotiation, excluding management and safekeeping in shares, interest in companies or associations, debentures and other securities".*

The issuance of financial tokens for the sole purpose of raising capital would not give rise to any VAT implications at the level of the issuer, as the raising of finance falls outside the scope of VAT.

Utility tokens

When the tokens issued for consideration carry an obligation to be accepted as consideration or part consideration for a supply of goods or services, and where the goods or services to be supplied or the identity of the supplier is known, these qualify as vouchers for Malta VAT purposes. Accordingly, the VAT treatment thereof will be determined based on whether they qualify as single purpose vouchers (SPV) or multi-purpose vouchers (MPV) for VAT purposes.

Digital wallets

Activities of digital wallet providers fall to be classified as VAT exempt without credit transactions in currency, to the extent that they allow coins users to hold and operate cryptocurrency and create rights and obligations in relation therewith. Activities which do not exhibit these characteristics may be classified as VAT exempt (without credit) "transactions concerning payments or transfers", unless they are mere technical services, in which case they would be classified as fully taxable supplies.

Mining

Mining activities carried out in return for newly minted coins typically fall outside the scope of VAT, whereas activities of miners consisting in the verification of specific transactions against consideration are generally classified as taxable supplies.

Exchange platforms

The provision of an electronic facility whereby holders of DLT assets can trade/exchange (i.e. a technology service) constitutes a taxable supply. However, services which go beyond the mere provision of a trading facility may, depending on the nature of the DLT, fall within the scope of an exemption from VAT provided for:

- Transactions concerning currency;
- Transactions concerning securities;
- Negotiation in currency or securities, provided the activity meets the criteria set out in the CJEU's case law relating to 'negotiation'.

VAT treatment of initial offerings

In analyzing the VAT treatment of initial coin offerings (ICOs), the DLT Guidelines make the following distinction:

1) ICOs that are issued as means for collecting funds for the development of a future project, and which do not give rise to an identifiable supply of goods or services or otherwise give rise to an acquisition of a security (equity, debenture, etc.) of the issuer;

2) ICOs that give rights to identified goods or services for a specified consideration.

Pursuant to the DLT Guidelines, transactions concerning the ICOs referred to in point 1) are considered to fall outside the scope of VAT, whereas the VAT classification of transactions concerning the ICOs referred to in point 2) will be determined according to the nature of the coins offered (e.g. utility tokens).

Netherlands

2019 Tax Plan approved by House of Representatives

After some minor adjustments to the relevant VAT-related legislative proposals, Parliament agreed the 2018 Tax Plan on 15 November 2018. The Bill will now have to be approved by the Senate, which will most likely take place on 18 December. The Tax Plan includes important changes in the field of indirect tax.

Increase of reduced VAT rate

The Bill on the increase of the reduced VAT rate from 6% to 9% has been adopted unchanged. The application of the increased reduced VAT rate will take effect from 1 January 2019. One of the consequences is an increase of the cost of daily necessities, refreshments, medicines, and books. The Government stated it will not include any additional legislation for transitional situations. Services to be performed in 2019 do not require a correction to the new 9% VAT rate if they have been paid before 1 January 2019.

Revision of the VAT scheme for small business

The Bill on the modernization of the scheme for small businesses has also been adopted. The Bill provides for replacement of the current scheme with an optional revenue-related VAT exemption scheme. The maximum revenue threshold is EUR 20,000 per calendar year. The purpose of the modernization is to create a scheme fit for purpose: a simplified exemption scheme for small businesses, irrespective of their legal form, in order to alleviate their administrative burden. Some minor textual changes in the Bill were made.

The new scheme will enter into force on 1 January 2020. Starting 1 June 2019, businesses will be given the opportunity to report application of the new scheme as from 1 January 2020.

Extension of VAT sports exemption

The Bill on the extension of the VAT sports exemption to include sports services provided to non-members as well as members of sports clubs was adopted with minor changes. As from 2019, the exemption will apply to noncommercial operators of sports accommodation as well. Such operators will not, or no longer, be entitled to deduct input VAT as from 1 January 2019. Combined with the Government policy to encourage construction, maintenance, and conservation of sports accommodation, these operators may be adversely affected. Hence, a compensation scheme was introduced. The compensation scheme distinguishes between municipalities and amateur sports organisations. Amateur sports organisations are compensated through the 'subsidy scheme for stimulation of construction and maintenance of sports accommodation', while municipalities are compensated through the 'Regulation on payment of specific stimulation'.

The Government also introduced transitional provisions relating to: (i) application of the usual adjustment schemes to remaining construction periods of sports accommodation intended for VAT taxable use which must be paid in 2019; (ii) for the first use of new sports accommodation intended for VAT taxable use after 31 December 2018; and (iii) for adjusted use of movable and immovable property, for which VAT taxable use had been foreseen. Minor changes were made to these transitional provisions, replacing 1 January 2019 with 31 December 2018.

Implementation of VAT e-Commerce Directive

Furthermore, the Bill regarding the partial implementation of the EU Directive on electronic services and distance sales was adopted. From 1 January 2019, smaller entrepreneurs established in a single EU Member State that offer private customers in other Member States online digital services, must pay VAT in their own Member State at the rate applicable there.

This simplification can only be applied if an entrepreneur does not exceed the total EUR 10,000 cross-border revenue threshold.

Entrepreneurs performing digital services for individuals in other Member States can apply the invoicing rules of their own Member State. Entrepreneurs established outside the EU but with a VAT registration within the EU can use the Mini One-Stop Shop System (MOSS) as from 1 January 2019.

Only one piece of evidence is necessary to determine where the consumer of the electronic service is established provided that an entrepreneur does not exceed the total of EUR 100,000 revenue threshold.

Poland

New draft bill introduces new VAT rates and classifications and Binding Rates Information

On 9 November 2018, the Ministry of Finance published a draft bill which introduces a new classification of VAT rates. The draft bill provides that goods and services will be identified for VAT purposes by the Combined Nomenclature (CN) with respect to goods (instead of the previous Polish Classification of Goods and Services 2008) and current Polish Classification of Products and Services 2015 (PKWiU) with respect to services.

The proposed regulations also present a new matrix of VAT rates for goods and services. The VAT rates would be comparable for similar types of products (e.g. the same VAT rate for bakery products, irrespective of their expiry date). Furthermore, the current 23% VAT rate for e-books will be limited to 5%, while the VAT rate for supplies of newspapers/journals/periodicals not marked with ISSN symbols and e-magazines will be reduced from 23% to 8%.

Additionally, the draft bill plans to introduce Binding Rates Information (WIS). Taxpayers with a tax identification number (NIP) who make (or plan to) or deliver goods, import goods, or make intra-Community acquisitions of goods will be able to apply for WIS. This would be an instrument providing taxpayers with certainty as regards the classification of the goods (based on the CN), and consequently the correctness of the VAT rates applied. It would provide taxpayers with far broader protection than the current statistical rulings issued based on PKWiU classification

by the Central Statistical Office ('GUS' by its Polish acronym), which are not viewed as binding by the tax authorities (which can question the PKWiU classification and hence the VAT rate applied).

According to the current wording of the draft, the new regulations will come into force in general on 1 January 2020, with the exception of the provisions on delivery rates for books/e-books, magazines/e-magazines and selected regulations regarding WIS institutions, which will apply from 1 April 2019.

Electronic monitoring of certain excise goods to be introduced

As of 1 January 2019, there will be a new requirement in respect of documenting transportation on the territory of Poland of particular excise goods with excise preferences. The changes relate to delivery documents accompanying the movement of excise goods exempt from excise duty due to their intended use and harmonized excise goods subject to the zero excise duty rate.

The paper delivery document currently attached to the abovementioned excise goods' movement will be replaced by an electronic document called e-DD, which will be generated in the EMCS PL2 system. This means that the abovementioned excise goods must be moved within the territory of Poland with notification in the EMCS PL2 system.

Using electronic monitoring will be one of the conditions for exemption from excise duty and the application of the zero excise duty rate, so companies must register in the EMCS PL2 system and be able to use it properly to enable them to continue to apply excise preferences after 1 January 2019.

The only exception to this 'transformation' among the products currently covered by the obligation to attach paper delivery documents is coal, which from 1 January 2019 will be covered by the system of declarations of purpose instead of the electronic e-DD document.

Portugal

Annual tax return to be pre-filled based on accounting SAF-T(PT)

On 31 October 2018, Decree-Law no. 87/2018 was published, determining that the annual tax return (IES/DA), namely Annex A, will have to be pre-filled based on the accounting SAF-T(PT) file, to be submitted on an yearly basis to the tax authorities (specific regulation in this respect is yet to be published).

Entities established in Portugal are required to generate a SAF-T(PT) file containing the relevant information from an accounting standpoint (this does not apply to non-resident entities merely registered for VAT purposes in Portugal).

That part of the annual tax return which is to be pre-filled with SAF-T(PT) information relates to accounting information, however it is expected that in a later stage additional annexes of the annual tax return will also be pre-filled based on such accounting SAF-T(PT) file.

The Decree-Law also states that if taxpayers are not able to submit the accounting SAF-T(PT) file, they will not be able to submit their annual tax returns (IES/DA). As such, it is important that established taxpayers are (or will be) able to submit the accounting SAF-T file to the tax authorities with no errors in order to be able to submit their annual tax returns (IES/DA).

This is applicable to annual tax returns (IES/DA) to be filed from November 2018 onwards, although it would be recommended that taxpayers aim to have in-scope the annual tax return (IES/DA) of 2018 which is to be filed during 2019 (up to the 15th day of the seventh month following the end of the year to which it relates).

Russia

Storage services of aviation fuel rendered outside airport area not exempt from VAT

The Ministry of Finance of the Russian Federation in Letter No. SD-43/19233@ of 3 October 2018 clarified that in accordance with the Russian Tax Code, art. 149, point 21, sub-point 22, operations related to services rendered directly at airports of the Russian Federation and in the airspace of the Russian Federation involving the servicing of aircraft, including air navigation services, according to the list approved by the Government of the Russian Federation, are exempt from VAT.

The list of such services is established by the Resolution of the Government of the Russian Federation No. 588 of 23 May 2018 and the list includes storage services of aviation fuel.

If the aircraft fueling complex is located outside of the airport area, the exemption should not be applied.

From 1 January 2019 Russian buyers of e-services rendered by foreign legal entities should not act as tax agents

In accordance with the Letter of the Ministry of Finance of the Russian Federation No. 03-07-08/76139 of 24 October 2018, foreign legal entities, which render e-services deemed to be supplied in the territory of Russia, will be obliged to account for and pay Russian VAT on such supplies themselves where they render such service in favor of a Russian legal entity or an individual entrepreneur, starting from 1 January 2019.

Thereby, from 1 January 2019, Russian customers acquiring e-services deemed to be supplied in the territory of Russia and rendered by a foreign legal entity should not act as tax agents.

If a foreign legal entity has not registered for VAT purposes or does not plan to, such foreign legal entity will be responsible for non-accounting and nonpayment of VAT rather than the Russian customer acquiring e-services.

The Ministry of Finance considers that if a Russian customer acts as tax agent, withholds, and pays the amount of VAT upon acquired e-services, such a customer will not have a right to claim the relevant amount of reverse charged VAT for recovery.

Supply of goods between two foreign entities not subject to registration with tax authorities not subject to VAT

The Ministry of Finance of the Russian Federation in Letter No. 03-0715/64209 of 7 September 2018 stated that if goods are located in the territory of the Russian Federation at the time of the commencement of shipment and transportation, the territory of Russia should be deemed as the place of supply of such goods for VAT purposes.

At the same time, the tax legislation does not provide for any mechanism of VAT payment applicable to situations where VAT-able supplies are performed between two foreign entities not subject to registration with the Russian tax authorities.

Foreign legal entities registered with tax authorities should account for and pay VAT for rendered services (performed work) subject to Russian VAT based on place of supply rules

The Ministry of Finance of the Russian Federation in Letter No. 03-0708/66314 of 17 September 2018 clarified that foreign legal entities registered with the Russian tax authorities, including due to opening a bank account in Russia, should account for and pay VAT themselves with respect to rendered services (performed work) subject to Russian VAT based on the place of supply rules.

Moreover, in such a case Russian customers should not act as tax agents.

Application of 20% VAT rate for supplies after 1 January 2019 of goods acquired before 1 January 2019

The Ministry of Finance of the Russian Federation in Letter No. 03-0711/64577 of 10 September 2018 clarified that due to the increase of the VAT rate starting from 1 January 2019, where a taxpayer supplies goods after 1 January 2019 (including goods acquired before 1 January 2019) the 20% VAT rate should be applied.

Federal Tax Service plans to amend VAT return form

The Federal Tax Service of the Russian Federation released the draft order aimed at updating the VAT return form.

In particular, implementation of the following legislative amendments is planned:

- The increase of the VAT rate from 18% to 20% that will apply with respect to goods (work and services) supplied (performed, rendered) from 1 January 2019.
- Termination of the obligation to account for and pay VAT by tax agents acquiring electronically-supplied services from foreign e-services providers from 1 January 2019.
- Obligation to account for VAT by a tax agent acquiring scrap from 1 January 2018.
- Introduction of the tax-free system.
- Amendments to the list of VAT-exempt operations.

Import of biomedical cellulated products regulated

From 1 November 2018 to 30 April 2019, the import of biomedical cellulated products *Audencel*, *Eltrapuldencel*, and *Spanlekorteemlotcel* into Russia must be carried out according to the rules for importing biomedical cellulated products (BCP) into Russia, established by the Decree of the Government of the Russian Federation of 16 October 2018 No. 1229, which came into effect on 1 November 2018.

The Decree specifies who can import into Russia the BCP indicated above, including a specific party of unregistered products.

Registered BCP may only be imported where they are included in the State Register of BCP. Import of a specific batch of unregistered BCPs intended for state registration (including for biomedical examination, preclinical studies, and clinical studies) or for providing medical care to a specific patient for health reasons must be carried out with an import permit issued by the Ministry of Health of Russia. There is no fee for issuing a permit.

The procedure for obtaining the specified permit is regulated, and the grounds for refusal to issue a permit are provided. Information on issued permits is posted on the official website of the Ministry of Health.

The placement of registered BCP under customs procedures is carried out by way of submission to the customs authorities of the Russian Federation of information advising of the inclusion of such BCP in the State Register of BCP. The placement of a specific batch of unregistered BCP under customs procedures is carried out by

way of submission to the customs authorities of import permission issued by the Ministry of Health.

Placement of BCP under the customs procedure of duty-free trade is not allowed.

Slovakia

Amendment to application of reduced VAT rate

An amendment to the VAT Act drafted by Parliament was signed by the President and is effective from 1 January 2019. Under the amendment, the reduced VAT of 10% will apply to the following accommodation services with the code 55 of the statistical classification of products by activity (CPA):

- Hotel and similar accommodation services;
- Holiday and other short stay accommodation services;
- Camping ground, recreational and vacation camp services; and
- Other accommodation services.

South Africa

Update on phased roll-out of new Customs Act

On 20 April 2018, the South African Revenue Services (SARS) implemented the first phase of the Reporting of Conveyances and Goods (RCG) project. The RCG project is one of three major projects, the other two are the Registration, Licensing and Accreditation (RLA) and the Declaration Processing System (DPS). RCG is aimed at operationalizing the Customs Control Act, 2014 (the CCA) and the Customs Duty Act, 2014 (the CDA).

The CCA and the CDA have not yet come into effect. The Customs and Excise Act, 1964 (the Customs Act) still applies. Section 8 of the Customs Act requires various 'cargo reporters' to submit numerous 'reports of cargo'.

Rule 8.01 to the Customs Act defines a 'cargo reporter' as any person who in terms of a contract of carriage is responsible for delivery of cargo. This includes, but is not limited to, shipping lines, airlines, rail carriers, road carriers, road hauliers, freight forwarders, seaport and airport operators, wharf operators, terminal operators, container depot operators, transit shed operators, de-group depot operators and registered agents. All cargo reporters must register with SARS as 'cargo reporters' and Electronic Data Interchange (EDI) users for purposes of submitting, receiving and processing cargo reports electronically on the SARS Cargo Processing System (CPS).

The term 'reports of cargo' is not defined in the Customs Act or the Rules, however the meaning thereto is found in the definition of 'reporting document' under Rule 8.01 of the Customs Act. A 'reporting document' is any advance notice, arrival or departure notice, manifest or outturn report, or any amendment and replacement of such document as referred to in the Rules. Every cargo reporter required to submit a reporting document is required to submit such a document within a specified time frame, for example:

Report name	Mode	Import / Export	Cargo	House / Master	WHO – message sender	Voyage duration	Submission time	Legal reference	Systems number
Advance arrival notice	Air	IMP		Master	Air Carrier / Agent	More tan six (6) hours	Two (2) hours before arrival at the first customs and excise airport	Section 8, Rule 8, 19 (1)	CUSCAR_FWB
Advance arrival notice	Air	IMP		Master	Air Carrier / Agent	Between six (6) and two (2) hours	One (1) hour before arrival	Section 8, Rule 8, 19 (1)	CUSCAR_FWB

Effective from 19 October 2018, any cargo reporter who fails to submit a report (reporting document) for which s/he is responsible will become liable to a fine of ZAR 5,000 in respect of such non-compliance.

The RCG compliments the World Customs Organization (WCO) SAFE Framework Standards (Framework). The Framework is the minimum international standards for supply chain security and global trade facilitation through the management of end-to-end cross-border movements of goods and customs-to-business partnerships. RCG will facilitate the collection of data collection throughout the supply chain in compliance with the United Nations rules for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT). The UN/EDIFACT is the internationally agreed standards, directories, and guidelines for electronic interchange of structured data between independent computers.

The SARS Customs is progressively modernizing to international

Spain

Preliminary draft law on measures for preventing and combating tax fraud, transposition of certain EU Directives, and amendments of certain tax regulations

On 23 October, the preliminary draft law on measures for preventing and combating tax fraud, transposition of Directives (EU) 2016/1164 and 2017/1852, and amending various tax regulations was published. The text may undergo modifications during the legal process.

The draft law contains a number of changes to the tax system, including the following in relation to VAT and excise duties:

VAT

- The assumption of subsidiary liability for payment of tax is to be updated; it will now apply to persons or entities acting in the name and on behalf of the importer.

- In order to establish the scope of joint and several or subsidiary liability deriving from customs liquidations, the term 'customs area' is replaced to clarify that this responsibility extends to the procedures for declaring and verifying data from customs declarations regardless of whether they occur outside or inside the customs area.

- For the special regime for groups of entities ('REGE', by its Spanish acronym), the dominant entity will be subject to infraction of the following breaches of obligations:

  i) Payment of the tax debt;

  ii) Request for compensation or refund resulting from the aggregated declaration-settlement;

  iii) Veracity and accuracy of the amounts and ratings recorded by the dependent entities included in the aggregate liquidation declaration.

- The assumption of subsidiary responsibility of the payment of the tax debt, corresponding to the exit or abandonment of goods subject to excise duties that have been linked to a deposit other than customs, is extended to the holders of these deposits.

Excise duties

- The definition of tax warehouses is amended, indicating that in order for the holder of a tax warehouse to obtain the corresponding authorization that enables it to operate as such. It is necessary that effective storage operations are carried out in the establishment for products subject to manufacturing excise duties.

- The existence of differences in raw materials, products in the course of manufacture or finished products in factories and tax warehouses, that exceed the percentages authorized by the regulations, will imply a pecuniary fine of 50% of the excise duties to be paid on the differences detected.

- When the use or intended purpose of products for which an exemption or reduced rate has been applied is not justified, it will be considered a serious infringement and a penalty of 50% will apply.

Measures for energy transition and consumer protection

On 5 October 2018, Royal Decree-Law 15/2018 was approved by the Government. This rule includes a number of tax measures, with the main objective of moderating price, developments in the wholesale electricity market, and favoring the transition to a decarbonized economy.

- **Tax on the value of the production of electrical energy:** The retributions corresponding to the electricity incorporated into the system during the last natural quarter of 2018 and during the first quarter of 2019 are exempt from taxation.

- **Tax on hydrocarbons:** An exemption is introduced for energy products intended for the production of electricity in power stations or the generation/cogeneration of electricity and heat in combined heat and power stations. This exemption mainly affects the consumption of natural gas in these types of generation plants.

  The Royal Decree-Law establishes that this exemption can only apply if previously requested from the tax authorities.

  The measures came into force on 7 October 2018.

Draft law on Budget of Canary Islands for 2019

The Counselor of Finance of the Government of the Canary Islands, delivered on 31 October 2018, to the Canary Islands Parliament, the draft law of General Budgets of the Autonomous Community for 2019, for parliamentary processing.

The Canary Islands are out of the scope of application for Spanish VAT, due to the fact that in that territory the General Indirect Canary Islands Tax (IGIC) applies.) The main measures proposed in the draft law in relation to the IGIC are the following:

- A proposal for a half-point reduction in the general rate from 7% to 6.5%.

- Inclusion of the IGIC exemption on the electricity bill (currently taxed at 3%).

- Inclusion of the 'social IGIC' exemption, which applies to social and social health care services, home help, tele-assistance, day and night centers, residential care, and promotion of personal autonomy (currently taxed at 3%).

Switzerland

New rules on distance sales of low value goods effective from January 2019

As from 1 January 2019, foreign mail order companies generating an annual turnover from low value goods (LVG) shipments of at least CHF 100,000 per year will be required to VAT register in Switzerland. This new requirement was announced with the partial amendment of the Swiss VAT Law at the beginning of 2018.

Currently, the Swiss Federal Customs Administration waives the levy of import tax on consignment with a tax amount of CHF 5 or less (so-called low value goods). This tax amount corresponds to goods of a value of CHF 65 at the normal VAT rate of 7.7% and CHF 200 at the reduced VAT rate of 2.5% (consignment costs included). These amounts have to be considered per import document.

Such consignment of LVG will be considered, as from 1 January 2019, as domestic deliveries as soon as the foreign mail order company generates a yearly turnover of a minimum of CHF 100,000 from these supplies. Hence, as from this date, foreign companies active in this sector should VAT register in Switzerland and charge VAT to their Swiss clients.

As a result of the VAT registration, mail order companies should act as importer of record in Switzerland and VAT will become due on all importations they perform within the country (not only on consignment of LVG). If a (domestic or foreign) company is already VAT registered in Switzerland due to other supplies inland and such company also supplies LVG from abroad into Switzerland, the LVG supplies are still considered as turnover generated abroad as long as the annual threshold of CHF 100,000 from such supplies is not reached.

It is recommended that foreign mail order companies:

- Assess the amount of their LVG consignment in the last 12 months and make projections for the next 12 months;
- Appoint a fiscal representative in Switzerland and VAT register within the country when the threshold is reached;
- Review the mapping of Swiss transactions and set-up their ERP system.

United Kingdom

CJEU rejects 'cost component' approach to VAT partial exemption

In *Volkswagen Financial Services Ltd*, the Court of Justice of the European Union has ruled that taxable sales of vehicles by a finance house in hire purchase deals should not be disregarded for partial exemption purposes. The tax authorities

(HMRC) have long argued that, as finance houses buy and sell cars at the same price and earn their profit from interest, their overheads cannot be 'cost components' of their car sales and the VAT partly recoverable. In the Court's judgment, the overheads were still residual and this would restrict input tax recovery by reference to the outcome of an economic activity (i.e. whether it made a profit on the cars) which was incorrect. It was also satisfied that the UK could identify the interest element of HP as separate from the car sale and therefore exempt, applying the normal tests on single/multiple supplies (a point which Advocate General Szpunar had considered the 'elephant in the room').

The judgment does not establish a universal standard for residual input tax recovery by finance houses, but it should mean that negotiations over the level of VAT recovery (both for asset finance and other sectors) should no longer stall over HMRC's cost component argument.

Finance Bill

VAT measures included in the recently introduced Finance (No. 3) Bill include the anticipated rule changes for vouchers (from 1 January 2019) and the inclusion of individuals and partnerships in VAT groups (from a day to be appointed). Responses to two consultations affecting online marketplaces have also been published. HMRC have recognised the difficulties that will arise from a split payment system. However, they are continuing to investigate the possibilities that it offers to combat non-compliance (especially by overseas online traders) and are creating an Industry Working Group to take this forward. A response has also been published on the role of online marketplaces in encouraging user compliance. The UK has cosponsored an OECD report into improving compliance in the gig and sharing economy (with an emphasis on trader education and data gathering by tax authorities) which is expected early in 2019.

Additionally, the statutory instrument for the construction industry reverse charge scheme (which will come into effect on 1 October 2019) has been published, together with guidance on how it will operate. This confirms that (following consultation with industry) the reverse charge will apply to services to contractors that fall under the Construction Industry Scheme. Supplies to end users will continue to be subject to VAT, but the scheme has been designed to function without the need for formal certification. The publication of the rules should allow businesses and their software providers to start planning how to implement the required systems changes.

Making Tax Digital for VAT update

HMRC have announced that the pilot of Making Tax Digital for VAT (MTDfV) is now open to around 500,000 businesses, see Making Tax Digital for VAT pilot open for business. To start with, the pilot is restricted to straightforward single company and sole trader VAT registrations, but it will be extended to partnerships and those trading with the EU in late 2018 or early 2019.

MTDfV has been deferred by six months for 'more complex' taxpayers, which include VAT groups, some public sector entities, and traders based overseas. However, many large corporate groups operate single company registrations alongside their main VAT groups, and for them MTDfV will become mandatory for part of their business in April 2019, and the rest in October 2019.

Eurasian Economic Union

Rates of import customs duty on motor vehicles for industrial assembly

Decision of the Eurasian Economic Commission No. 73 'On introduction of the rates of import customs duties in respect of certain types of goods in accordance with the obligations of the Russian Federation under the WTO' established the rates of import customs duties in respect of motor vehicles for 'industrial assembly' under commodity positions 8701-8705, in the amount of 3% to 15% of the customs value. The Decision came into effect on 9 November 2018.

Technical Regulation for safety of children's playground equipment

Technical Regulation of the EEU 'On the safety of equipment for children's playgrounds' (EEU TR 042/2017) establishes the requirements for the safety of the equipment and/or surface of children's playgrounds, and for the associated processes of design, production, installation, operation, storage, transportation, and utilization.

Annex No. 1 to the Regulation establishes a list of goods to which the requirements of the Regulation apply. The Regulation will not apply to equipment and/or coverage for children's playgrounds that are manufactured and put into operation prior to the entry into force of the Regulation; to equipment and products intended for training and physical education, sport, and tourism; to attractions that are subject to the technical regulation of the EEU 'On safety of attractions' (EEU TR 038/2016); and to toys.

Decision of the Council of the Eurasian Economic Commission No. 21 of 17 May 2018 'On the technical regulation of the Eurasian Economic Union 'On the safety of equipment for children's playgrounds" came into effect on 17 November 2018.

Decisions of the Eurasian Economic Commission explaining classification of iron-containing preparation, fish oil, recycler

Decision of the Eurasian Economic Commission No. 161 of 16 October 2018 explains that iron-containing preparation, which contains iron sulfate as an active ingredient, ascorbic acid or other vitamins (to improve iron absorption) and excipients, packaged in the dosage form or in the packages for retail sale and intended for treatment and prevention of various types of anemia, is classified under the commodity subheadings 3004 50 000 of the Unified Commodity Nomenclature of the Foreign Economic Activity of the EEU (CN of the EEU).

Decision of the Eurasian Economic Commission No. 162 of 16 October 2018 explains that fish oil in gelatin capsules, obtained from the body of fish, unrefined or refined, without changing the chemical composition, with the addition of vitamins and used for a balanced addition to human nutrition as a source of polyunsaturated fatty acids and vitamins, is classified under the commodity position 1504 of the CN of the EEU.

Decision of the Eurasian Economic Commission No. 165 of 16 October 2018 explains that a recycler, which is a self-propelled road-building machine, equipped with a milling and mixing drum with cutters and distribution ramps for spraying the binder component and water and intended for cutting (milling) the road surface (for example, asphalt, asphalt concrete pavement, ground layer, etc.), its grinding, mixing with the binder component and water, the subsequent laying and leveling of the mixture in the form of a new road base, is classified under the commodity code 8479 10 000 0 of the CN of the EEU.

Decisions of the Council of the Eurasian Economic Commission No. 161, No. 162, and No. 165 of 16 October 2018 came into effect on 18 November 2018.

Extension of EEU CN codes for certain types of organic chemical compounds

Decision of the Eurasian Economic Commission No. 163 of 16 October 2018 explains that imported mancozeb for the production of chemical plant protection products into the EEU is classified under the new commodity code 3824 99 930 2; the previous code was 3824 99 930 9.

The rate of customs duty for mancozeb is 5% of the customs value, but from 18 November 2018 to 31 December 2020, the zero customs duty rate is applied in respect of this commodity.

Decision of the Board of the Eurasian Economic Commission No. 163 came into effect on 18 November 2018.

Extension of goods to which temporary prohibition or export restrictions may be imposed

In accordance with Decision of the Eurasian Economic Commission No. 164 of 16 October 2018, in exceptional cases, temporary prohibition or export quantitative restrictions may be imposed in respect of the following goods, which are significant for the domestic market of the EEU:

- Code 4401 CN FEA of EEU – Fuel wood, in logs, billets, twigs, faggots or similar forms; wood in chip or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms;

- Code 4403 CN FEA of EEU – Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared;

- Code 4404 CN FEA of EEU – Hoopwood; split poles; piles, pickets, stakes of wood, pointed, not sawn lengthwise; wooden sticks, roughly trimmed, not turned, bent, etc., suitable for walking sticks, umbrellas, tool handles, etc.;

- Code 4406 CN FEA of EEU – Railway or tramway sleepers (cross-ties) of wood;

- Code 4407 CN FEA of EEU – Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6mm.

Decision No. 164 came into effect on 18 November 2018.

List of products for which certain documentation required for customs clearance

Decision of the Board of the Eurasian Economic Commission of 16 October 2018 No. 167 establishes the list of products, in respect of which the filing of the customs declaration must be accompanied by the provision of a document on the assessment of its compliance with Technical Regulation 'On restriction of the use of hazardous substances in electrical engineering and radio electronics' (EEU TR 037/2016). The list includes, among other products, electrical appliances and appliances for household use, electronic computers and devices connected to them, telecommunications facilities, photocopiers and other electrical office equipment (office) equipment, electrified tools, light sources, and lighting equipment.

Decision No. 167 came into effect on 18 November 2018.

Esperamos que esta información le sea de utilidad y, como de costumbre, quedamos a su disposición para aclarar o ampliar cualquier cuestión derivada del contenido de esta nota. A tal fin pueden comunicarse con su persona de contacto habitual en Deloitte, o enviar un correo electrónico a la siguiente dirección: deloitteabogados@deloitte.es

Sin otro particular, aprovechamos la ocasión para enviarle un cordial saludo.

Atentamente,
Deloitte Legal