Deloitte.
Legal

Diciembre 2018
Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

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IV. Country Summaries

Global

EU Japan

On 12 December 2018, the EU Parliament approved the EU-Japan Economic Partnership Agreement.

Americas

Mexico

Mexican authorities have been working to tighten controls on the importation of goods identified as sensitive.

United States

There has been a 90-day extension to the effective date for additional duties on products from China.

U.S. Customs and Border Protection have released a final rule for duty drawback regulations under the Trade Facilitation and Trade Enforcement Act of 2015.

Asia Pacific

Australia

The tax authorities have alerted property developers and government entities to possible underpayment of GST on certain development lease arrangements.

Malaysia

The Budget was announced on 2 November 2018, and included a number of indirect tax announcements.

EMEA

Gulf Cooperation Council

There are updates from the United Arab Emirates, the Kingdom of Saudi Arabia, Bahrain, Oman, and Qatar.

Angola

There is a new legal system governing invoices and equivalent documents.

Croatia

The VAT Amendments Act (Act) has been published, with the majority of the amendments entering into force on 1 January 2019.

Czech Republic

The Chamber of Deputies has debated an amendment to the VAT Act, which will be voted on in January.

Denmark

The implementation of the EU vouchers Directive in Denmark may be postponed.

A ruling has been issued regarding the VAT treatment of molds produced in Denmark.

Finland

The tax authorities have issued detailed guidance regarding the VAT treatment of vouchers.

A reduced VAT rate has been proposed for electronic books, magazines and newspapers.

France

From 1 January 2019, only one tax representative may be appointed by non-established companies, competent for all taxes.

From 1 January 2019, electronic invoicing will be mandatory for services rendered by small and medium-sized companies to the public sector.

Greece

The special VAT rates that apply to the five islands of Chios, Kos, Leros, Lesbos, and Samos will continue to apply until 30 June 2019.

Italy

The tax authorities have published official answers to frequently asked questions on e-invoicing.

Latvia

There are a number of proposed amendments to the VAT law.

The Netherlands

The 2019 Tax Plan has been adopted by the Senate.

New rules for the application of the VAT zero rate for seagoing vessels and airplanes have been published.

The VAT rules for coupons have been aligned with EU voucher rules.

There is to be no revision of the VAT treatment of services as of 1 January 2019.

Poland

Under the provisions of a draft Bill, traditional VAT returns would be replaced with complex SAFT files from 1 July 2019.

The CJEU will determine whether Polish regulations with respect to bad debt relief violate EU rules.

Portugal

The 2019 Portuguese State Budget Law has now been approved by the President of Portugal and published in the Official Journal.

The Government has published a law setting out the governance model for the implementation of electronic invoicing in public contracts.

Russia

Given the VAT rate increase on 1 January 2019, it is recommended that the relevant accounting documents are amended accordingly.

There has been clarification regarding the obligation to account for VAT on services supplied by a foreign legal entity with a permanent establishment in Russia.

The Federal Tax Service has discussed the amendments to the procedure for VAT accounting of supplies of e-services.

There has been clarification regarding determination of the date of shipment for VAT purposes if the shipment is performed in parts.

There has been clarification regarding the place of supply for VAT purposes of personnel searches and recruitment services.

The experiment for the marking of tobacco products has expired.

Russia has ratified the interim agreement between the EEU and Iran leading to a free trade zone.

Slovakia

There have been a number of amendments to the VAT law.

Spain

Modifications have been published to certain forms and information declarations.

The Institute of Accounting and Auditing has issued a ruling on the accounting treatment of the exchange rate for the importation of goods.

Turkey

The VAT rate for e-magazines and e-books is changing with effect from 1 January 2019.

United Kingdom

Deloitte UK has launched the **Deloitte Indirect Tax Brexit Portal.**

The tax authorities have issued guidance on the new VAT treatment of face value vouchers, from 1 January 2019.

From 1 January 2019, the VAT treatment of digital sales to EU consumers will be amended.

Eurasian Economic Union

A zero import custom duty rate will apply to certain types of electrodes.

The zero import customs duty rate has expired for certain types of goods.

The list of combined nomenclature codes for latex has been expanded and the rates of import customs duties set.

The list of manufacturers of tracked bulldozers to which anti-dumping duties apply has been amended.

Decisions of the Eurasian Economic Commission explain the combined nomenclature classification for a number of products.

There have been changes in the value and weight norms within which goods for personal use can be imported into the customs territory of the EEU without paying customs duties and taxes.

The trigger protection measure applied to certain clothes originating from Vietnam has expired.

There has been clarification of the use of a customs declaration as documentation for the inward processing of goods.

The pilot project for marking clothes, clothing accessories, and other articles from natural fur has expired.

The 2019 tariff quotas for long-grain rice from Vietnam and whey, cattle meat, pork and poultry meat have been established.

I. Normativa

1. Directiva (UE) 2018/1695 del Consejo de 6 de noviembre de 2018 por la que se modifica la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, en lo que respecta al período de aplicación del mecanismo opcional de inversión del sujeto pasivo en relación con determinadas entregas de bienes y prestaciones de servicios susceptibles de fraude, y del mecanismo de reacción rápida contra el fraude en el ámbito del IVA.

Esta Directiva tiene como finalidad prorrogar hasta el 30 de junio de 2022: i) la posibilidad de que los Estados miembros apliquen el mecanismo de inversión del sujeto pasivo para combatir el fraude en las entregas de bienes y las prestaciones servicios comprendidas en el artículo 199 *bis*, apartado 1, de la Directiva del IVA, y ii) la posibilidad de utilizar el mecanismo de reacción rápida (MRR) para combatir el fraude.

Estas modificaciones entraron en vigor el 2 de diciembre de 2018.

2. Directiva (UE) 2018/1713 del Consejo de 6 de noviembre de 2018 por la que se modifica la Directiva 2006/112/CE en lo relativo a los tipos del impuesto sobre el valor añadido aplicados a los libros, los periódicos y las revistas.

Esta Directiva concede a los Estados miembros la posibilidad de aplicar a las publicaciones suministradas por vía electrónica los mismos tipos del IVA que aplicaran a 1 de enero de 2017 a las publicaciones impresas, lo que incluye tanto los tipos superreducidos como el tipo cero (en nuestra Ley del IVA, este último se asimilaría a una exención con derecho a la deducción –exención plena-).

Dicha Directiva también contempla que, para evitar que la utilización de los tipos reducidos del IVA se amplíe a los contenidos audiovisuales, solo se podrán aplicar aquellos tipos reducidos si dichas publicaciones, tanto las suministradas en cualquier medio de soporte físico como por vía electrónica, no consisten íntegra o predominantemente en contenidos de música o vídeo.

Por último, esta Directiva excluye a los álbumes de la lista de bienes a los que pueden aplicarse tipos reducidos del IVA.

Estas modificaciones entraron en vigor el 4 de diciembre de 2018.

3. Orden HAC/1264/2018, de 27 de noviembre, por la que se desarrollan para el año 2019 el método de estimación objetiva del Impuesto sobre la Renta de las Personas Físicas y el régimen simplificado del Impuesto sobre el Valor Añadido.

Esta Orden, en lo relativo al IVA y respecto del año 2019, mantiene el mismo contenido, en cuanto al importe de los módulos y las instrucciones para su aplicación, que el previsto en la Orden HFP/1159/2017, de 28 de noviembre, por la que se desarrollan para el año 2018 el método de estimación objetiva del IRPF y el régimen simplificado del IVA.

4. Lista de monedas que se consideran oro de inversión a efectos del régimen especial del oro de inversión.

La lista publicada en el Diario Oficial de la Unión Europea de 14 de noviembre de 2018 (C 412), viene a recoger aquellas monedas de oro que durante el año 2019 se consideran oro de inversión a efectos del régimen especial aplicable al oro de inversión contemplado en los artículos 140 y siguientes de la Ley 37/1992 del IVA.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de noviembre de 2018. Asunto C-495/17, Cartrans Spedition SRL.

Directiva 2006/112/CE — Exenciones — Operaciones de transporte por carretera directamente relacionadas con la exportación de bienes — Prestaciones realizadas por intermediarios que intervienen en dichas operaciones — Régimen de prueba relativo a la exportación de bienes — Declaración en aduana.

En primer lugar, se plantea al TJUE si los artículos 146.1.e) y 153 de la Directiva IVA se oponen a que un Estado miembro deniegue la exención del IVA aplicable tanto a las prestaciones de servicios de transporte directamente relacionadas con exportaciones, así como a las prestaciones de servicios realizadas por intermediarios que intervienen en ellas, en caso de que el deudor del impuesto no pueda demostrar la exportación de los bienes en cuestión valiéndose específica y exclusivamente de una declaración aduanera de exportación.

Señala el TJUE que la mera circunstancia de que un transportista o un intermediario que ha intervenido en una operación de transporte no pueda presentar una declaración de exportación no implica que tal operación no haya tenido efectivamente lugar. Así, para que las autoridades competentes puedan verificar la aplicación de dichas exenciones del IVA, deben examinar si el cumplimiento del requisito

relativo a la exportación de los bienes en cuestión puede deducirse con un grado de verosimilitud suficientemente elevado teniendo en cuenta el conjunto de elementos de que ellas pudieran disponer.

En segundo lugar, el TJUE concluye que un cuaderno TIR sellado por las aduanas del país tercero de destino de los bienes y presentado por el deudor del impuesto constituye un documento que debe ser debidamente tenido en cuenta por dichas autoridades, salvo que tengan motivos concretos para dudar de su autenticidad o fiabilidad.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de noviembre de 2018. Asunto C-502/17, C&D Foods Acquisition ApS.

Proyecto de cesión de acciones de una subfilial — Gastos relativos a las prestaciones de servicios adquiridas para la realización de esta cesión — Cesión no realizada — Solicitud de deducción del impuesto soportado — Ámbito de aplicación del IVA

Se plantea ante el TJUE si en relación con los artículos 2, 9 y 168 de la Directiva IVA una operación de venta de acciones proyectada pero no realizada está comprendida en el ámbito de aplicación del IVA y, en caso de ser así, determinar si estas disposiciones confieren a la sociedad el derecho a la deducción del IVA soportado correspondiente a los gastos incurridos en el marco de una operación de venta de acciones de una subfilial a la que dicha empresa presta servicios de gestión sujetos al IVA, cuando se prevé destinar el producto de la venta al reembolso de una deuda vencida y, en su caso, el alcance de esta deducción.

Señala el TJUE que es necesario que la operación tenga su causa exclusiva directa en la actividad económica imponible de la sociedad matriz en cuestión o que constituya la prolongación directa, permanente y necesaria de esta actividad. Por lo cual, dado que el objeto de la cesión de acciones prevista pero no ejecutada era pagar unas deudas contraídas, no cumpliendo alguno de los supuestos anteriores, la cesión de acciones en cuestión no está comprendida en el ámbito de aplicación del IVA.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 21 de noviembre de 2018. Asunto C-648/16, Fontana.

Directiva 2006/112/CE — Regularización tributaria — Evaluación de la base imponible por un método inductivo — Derecho a deducción del IVA — Presunción — Principios de neutralidad y de proporcionalidad — Ley nacional que basa el cálculo del IVA en el volumen de negocios presumido.

Se plantea ante el TJUE si la Directiva del IVA, así como los principios de neutralidad fiscal y de proporcionalidad se oponen a una normativa nacional que permite a la Administración tributaria recurrir a un método inductivo basado en estudios sectoriales aprobados por decreto ministerial, para determinar el importe del volumen de negocios generado por un sujeto pasivo y, así, proceder a una regularización tributaria imponiendo el pago de un importe adicional del IVA.

Concluye el TJUE que las Administraciones tributarias nacionales, en casos de graves discrepancias entre los ingresos declarados y los ingresos estimados sobre la base de estudios sectoriales, podrán recurrir a un método inductivo basado en estudios sectoriales para determinar el importe del volumen de negocios generado por un sujeto pasivo y, proceder a una regularización tributaria exigiendo el pago de un importe adicional del IVA. Para ello, dicho método y su aplicación han de permitir al sujeto pasivo cuestionar los resultados obtenidos mediante dicho método, sobre el conjunto de pruebas contrarias de las que disponga, así como ejercer su derecho a la deducción.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 21 de noviembre de 2018. Asunto C-664/16, Vădan.

Directiva 2006/112/CE — Alcance del derecho a deducción — Inexistencia de facturas — Posibilidad de recurrir a un peritaje judicial — Carga de la prueba del derecho a deducción — Principios de neutralidad fiscal y de proporcionalidad.

Se plantea al TJUE si los artículos 167, 168, 178 a), y 179 de la Directiva del IVA, así como los principios de neutralidad del IVA y de proporcionalidad, deben interpretarse en el sentido de que un sujeto pasivo al que no le resulta posible demostrar, mediante la presentación de facturas o de cualquier otro documento el importe del IVA previamente pagado, puede disfrutar de un derecho a deducir el IVA basándose únicamente en una estimación resultante de un dictamen pericial ordenado por un órgano jurisdiccional nacional.

Concluye el TJUE que una estimación resultante de un dictamen pericial ordenado por un órgano jurisdiccional nacional no puede reemplazar a las facturas o cualquier otro documento en posesión de los prestadores de los servicios. Por tanto, dicha estimación resultante del dictamen no podría dar lugar al derecho a la deducción.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 22 de noviembre de 2018. Asunto C-295/17, MEO.

Directiva 2006/112/CE — Ámbito de aplicación — Hecho imponible — Prestación a título oneroso — Distinción entre indemnizaciones no sujetas al IVA y prestaciones de servicios a cambio del pago de una "compensación" sujetas al impuesto.

En primer lugar, se plantea ante el TJUE si el importe preestablecido percibido por un operador económico en caso de resolución anticipada por su cliente o por una causa imputable a éste, de un contrato de prestación de servicios que contempla un período mínimo de permanencia, importe que equivale al que dicho operador habría percibido durante el resto del citado período, debe considerarse como la retribución de una prestación de servicios realizada a título oneroso y debería estar sujeta al IVA.

Señala el TJUE que el importe adeudado por incumplimiento del período mínimo de permanencia retribuye los servicios prestados por la operadora, tanto si el cliente ejercita el derecho a disfrutar de esos servicios hasta el término del período mínimo de permanencia como si no lo hace; es decir, forma parte del precio total pagado por la prestación de servicios. Por tanto, ha de considerarse como una retribución de una prestación de servicios efectuada a título oneroso, sujeta al IVA.

En segundo lugar, concluye el Tribunal que no son determinantes los siguientes hechos para la calificación del importe preestablecido en el contrato de prestación de servicios que el cliente adeuda en caso de resolución anticipada de éste:

- Que la finalidad de dicho importe consista en disuadir a los clientes de incumplir el período mínimo de permanencia y en reparar el perjuicio al operador por dicho incumplimiento;

- Que la retribución percibida por un intermediario por la celebración de contratos que estipulan un período mínimo de permanencia sea superior a la prevista en el marco de los contratos que no estipulan tal período;

- Que el importe se califique en Derecho nacional como pena convencional.

6. Tribunal de Justicia de la Unión Europea. Sentencia de 29 de noviembre de 2018. Asunto C-264/17, Mensing.

Directiva 2006/112/CE — Regímenes particulares aplicables en el sector de los objetos de arte — Sujetos pasivos revendedores — Entrega de objetos de arte por el autor o por sus derechohabientes —Negativa de las autoridades tributarias nacionales a reconocer a un sujeto pasivo el derecho a optar por la aplicación del régimen del margen de beneficio — Requisitos para su aplicación — Derecho a deducción del impuesto soportado

En la primera cuestión prejudicial se plantea ante el TJUE si el artículo 316.1.b) de la Directiva del IVA establece que un sujeto pasivo revendedor puede optar por la aplicación del régimen del margen de beneficio a una entrega de objetos de arte que se le han entregado en una fase anterior, en el marco de una entrega intracomunitaria exenta, por el autor o sus derechohabientes, aunque estos no están comprendidos en las categorías de personas enumeradas en el artículo 314 de esa Directiva.

Señala el Tribunal que sería contrario al artículo 316.1.b) de la Directiva del IVA que un Estado miembro supedite el derecho de un sujeto pasivo revendedor, a aplicar el régimen del margen de beneficio a una entrega consecutiva a una entrega intracomunitaria de un objeto de arte, a que dicho objeto sea entregado por una de las personas enumeradas en el artículo 314 de la Directiva de IVA, puesto que se estaría produciendo una vulneración del principio de neutralidad fiscal.

En segundo lugar, concluye el TJUE que según el artículo 322.b) de la Directiva del IVA, un sujeto pasivo revendedor no puede deducir del importe del IVA correspondiente a los objetos de arte que se le han entregado o se le entregarán por su autor o por sus derechohabientes, en la medida en que esos bienes se utilizan para las necesidades de sus entregas sujetas al régimen del margen de beneficio.

7. Tribunal de Justicia de la Unión Europea. Sentencia de 29 de noviembre de 2018. Asunto C-548/17, baumgarten sports & more GmbH.

Tributación de las agencias de jugadores de fútbol profesional — Pago escalonado y sometido a una condición — Devengo, exigibilidad y recaudación del impuesto.

Se plantea ante el TJUE si los artículos 63 y 64 de la Directiva IVA se oponen a que se considere que el devengo y la exigibilidad del impuesto correspondiente a una prestación de servicios de intermediación para el fichaje de jugadores de fútbol profesional que realiza un agente, que da

lugar a pagos escalonados y condicionales a lo largo de diferentes años posteriores al fichaje, tienen lugar en la fecha de este último.

Concluye el TJUE que, el devengo y la exigibilidad del impuesto correspondiente por una prestación de servicios de intermediación para el fichaje de jugadores de fútbol profesional por un club que realiza un agente, no se produce en el momento del fichaje; sino que en el momento en que expiren los períodos a que se refieran los pagos realizados por el club.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 1047/2015, de 25 de octubre de 2018.

Exenciones en operaciones interiores. Servicios de mediación en operaciones financieras.

La cuestión planteada en el presente caso se centra en determinar si procede aplicar la exención recogida en el artículo 20.Uno.18º, m) de la Ley del IVA respecto a determinados servicios de mediación en relación con operaciones financieras.

En concreto, el TEAC se centra en discernir si los servicios objeto de análisis tienen la naturaleza de servicios de mediación o si, por el contrario, deben considerarse como una mera subcontratación de los servicios prestados por una de las partes y, en consecuencia, no gozar de la referida exención.

En este sentido, el Tribunal entiende que, en base a lo establecido por el TJUE (*ver sentencia de 13 de diciembre de 2001, CSC Financial Services, asunto C-235/00*), para poder hacer extensiva la exención de las operaciones financieras a los servicios de negociación de las mismas, es necesario la concurrencia de dos requisitos:

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

- Que las funciones que realiza vayan más allá del suministro de información y la recepción de solicitudes.

En consecuencia, considera que *"la exención requiere, pues, que el mediador sea un tercero, distinto de las partes, que las aproxima y actúa de manera independiente"*.

Asimismo, entiende que *"esta labor de mediación ha de diferenciarse de la mera subcontratación de los servicios del supuesto mediador por una de las partes*. *Así, si una de las partes solicita de un tercero la realización de un segmento de las actividades que dicha parte realiza en lo que respecta a la colocación de sus productos financieros, no existe tal mediación, pues dicho tercero estará ocupando el mismo lugar que el vendedor del producto financiero y, por consiguiente, no se puede calificar como persona intermediaria entre las partes para la celebración del contrato"*.

Por todo lo anterior, el TEAC concluye que no están exentos los servicios prestados por un pretendido mediador que no se percibe como tal por las partes, del que no consta que actúe en nombre propio y que no se presenta claramente como tal ante los potenciales clientes de su cliente.

2. Tribunal Económico-Administrativo Central. Resolución 5632/2015, de 20 de noviembre de 2018.

Imposibilidad de aplicar la regularización íntegra del IVA a los no establecidos.

La entidad reclamante está registrada en la Isla de Man y es titular de una embarcación abanderada en el mismo territorio.

Con motivo del traslado de la embarcación desde Gibraltar hasta Tarragona en el ejercicio 2013, la Administración entendió que se había producido una importación y dictó propuesta de liquidación en la cual se proponía regularizar la situación tributaria abonando un total de 188.651.084,66 euros correspondientes a la cuota tributaria y a los intereses de demora.

La entidad recurrente, disconforme con la liquidación propuesta, presentó una reclamación económico-administrativa.

Entre las alegaciones presentadas, se solicitó la aplicación del principio de regularización íntegra con el objetivo de que se admitiera la deducción del IVA a la importación soportado en el mismo periodo en que se debió proceder a su declaración.

El TEAC concluye que el principio de regularización íntegra no resulta de aplicación en el presente caso pues, al no estar establecida la reclamante, el régimen para solicitar el reintegro de las cuotas de IVA soportadas es el previsto en el artículo 119 y 119 bis de la Ley del IVA.

3. Dirección General de Tributos. Contestación nº V2677-17, de 2 de octubre de 2018.

Subvenciones vinculadas directamente al precio de las operaciones sujetas al IVA y, en su caso, tipo impositivo aplicable.

La consultante es un Ayuntamiento que va a llevar a cabo un programa de rehabilitación de viviendas. Realizará la demolición de viviendas antiguas deterioradas y las sustituirá por otras de nueva planta. Estas viviendas tendrán la calificación de viviendas protegidas y otras la calificación de viviendas libres. El coste se repercutirá a los propietarios a través de una serie de cuotas periódicas, descontando la cuantía de las subvenciones recibidas de otras Administraciones Públicas.

La construcción realizada por el Ayuntamiento de las viviendas para su entrega posterior atribuye al mismo la condición de empresario o profesional, en virtud del artículo 5 de la Ley del IVA, estando las citadas entregas sujetas al IVA y no exentas, por no concurrir ninguno de los supuestos recogidos en el artículo 20.uno de dicha Ley.

Además, la DGT señala también que las subvenciones vinculadas directamente al precio de las operaciones sujetas al IVA forman parte de la base imponible según lo establecido en el artículo 78. Dos.3º de la Ley del IVA.

Ahora bien, el concepto de "subvención vinculada al precio" ha generado numerosas controversias a la hora de delimitarlo y, en muchas ocasiones, de diferenciarlo de prestaciones análogas, como pueden ser las subvenciones a la explotación o las indemnizaciones.

En este sentido, el TJUE, ha venido esclareciendo en sus sentencias las numerosas dudas suscitadas en relación con el controvertido concepto de subvenciones vinculadas al precio, entre otras, cabe destacar las de 22 de noviembre de 2001 (Asunto C-184/00) y 16 de junio de 2002 (Asunto C-353/00).

Dicho Tribunal, señala cuáles son los requisitos que deben cumplirse para que la subvención pueda considerarse directamente vinculada al precio:

1. Que la subvención haya sido abonada al operador subvencionado con el fin de que realice específicamente una entrega de bienes o una prestación de servicios determinada.

2. Que los adquirentes del bien o los destinatarios del servicio obtengan una ventaja de la subvención concedida al beneficiario.

3. Que la contraprestación que representa la subvención sea, como mínimo, determinable.

De los anteriores requisitos cabe concluir que el concepto de "subvenciones directamente vinculadas al precio" incluye, únicamente, las subvenciones que constituyen la contraprestación total o parcial de una operación de entrega de bienes o de prestación de servicios y que son pagadas por un tercero al vendedor o al prestador.

Como parece desprenderse de la información facilitada, para el caso de viviendas calificadas de protección oficial, las subvenciones que financian su construcción no reunirían los requisitos para ser calificadas como subvenciones vinculadas al precio. Esto es así en la medida en que el precio de las operaciones a que se refiere el escrito de consulta, tratándose de viviendas protegidas, está tasado de antemano con arreglo a los precios máximos fijados por la Administración y no se ve alterado por la concesión de la subvención, de manera tal que la citada magnitud viene dada por circunstancias ajenas a la voluntad de cualquiera de las partes intervinientes en su concesión.

Por último, en relación con el tipo impositivo, la DGT concluye que, tributará al tipo impositivo del 4 por ciento la entrega de la vivienda que, realizada por su promotor, se encuadre en alguna de las siguientes categorías:

- Que se trate de una vivienda calificada de protección oficial de régimen especial.

- Que se trate de una vivienda calificada de protección oficial de promoción pública.

- Que se trate de una vivienda con protección pública según la legislación propia de la Comunidad Autónoma en que esté enclavada siempre que, además, los parámetros de superficie máxima protegible, precio de la vivienda y límite de ingresos de los adquirentes o usuarios no excedan de los establecidos para las viviendas de protección oficial de régimen especial o de promoción pública.

En otro caso distinto de los anteriores, la entrega de la vivienda tributará al tipo impositivo del 10 por ciento.

4. Dirección General de Tributos. Contestación nº V2696-18, de 5 de octubre de 2018.

Si el taller está obligado a expedir factura por sus servicios de reparación.

El consultante ha tenido un accidente con un vehículo afecto a su actividad empresarial o profesional que se encuentra asegurado a todo riesgo con una franquicia de 300 euros, por lo que deberá hacer frente al pago de la correspondiente franquicia para que el taller proceda a la reparación del vehículo.

En primer lugar, la DGT viene a recordar que el pago de la prima del seguro que tiene contratado el consultante estará sujeto y exento del IVA de acuerdo con el artículo 20.Uno.16º LIVA.

Por otro lado, la DGT analiza si el pago de la franquicia responde a una operación sujeta al Impuesto o, por el contrario, supone el pago de una indemnización de daños y perjuicio. Es decir, la DGT trata de determinar si el importe satisfecho por el consultante se corresponde con un acto de consumo, esto es, con la prestación de un servicio autónomo e individualizable, o con una indemnización de ciertos daños y perjuicios. Para determinar si existe una correlación entre la cuantía de la franquicia pagada por el consultante y los servicios de reparación que va a recibir, la DGT se ha apoyado, entre otras, en la Sentencia de 29 de febrero de 1996, asunto C-215/94 (Sentencia Mohr).

En este sentido, la DGT señala que el Diccionario de la Real Academia Española define el concepto de franquicia, en el contrato de seguro, como la "cuantía mínima del daño a partir de la cual surge la obligación del asegurador", por tanto el seguro contratado exime parcialmente de la responsabilidad económica en caso de accidente del vehículo y, por tanto, la parte no eximida de responsabilidad es la que se cuantifica en el importe de la franquicia, y por tanto, el abono de la misma debe considerarse como la contraprestación de una operación sujeta al IVA.

Según reiterada doctrina de la DGT, 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 Impuesto 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.

A este respecto, la DGT recuerda 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 correspondiente poder (derecho de crédito) para pretender tal prestación.

Es igualmente doctrina de la DGT considerar que, en el caso de que no resulte con claridad quién es aquél que ocupa la referida posición de acreedor y por tanto tiene la condición de destinatario, se presumirá que tiene tal condición, salvo prueba en contrario, aquel que esté obligado a efectuar el pago de la contraprestación.

Finalmente, la DGT concluye que el taller deberá expedir factura al destinatario de los servicios de reparación prestados, en la que deberá quedar indicada de manera clara la identificación del destinatario del servicio de reparación, así como el importe total de la contraprestación exigida por dichos servicios, procedente del destinatario o de terceras personas, como pudiera ser el consultante al abonar la franquicia, en su caso, y de la cuota total del impuesto que grava dichos servicios.

5. Dirección General de Tributos. Contestación nº V2698-18, de 5 de octubre de 2018.

Obligación o no de expedir factura y, en su caso, vías por las que el comprador puede exigir dicha expedición.

El consultante ha recibido el traspaso de una expendeduría de tabaco y timbre, mediante la compra de la concesión administrativa, dos máquinas de tabaco, mobiliario y el fondo de comercio por un precio global que consta en escritura pública. Exige al vendedor la expedición de factura donde conste el desglose de cada uno de los conceptos y sus cuantías correspondientes, pero el vendedor se niega a emitirla, alegando que la escritura pública de compraventa es documento suficiente.

En primer lugar, la Dirección General de Tributos hace referencia al artículo 7. 1º de la LIVA en el que se determina la no sujeción como consecuencia de la transmisión global o parcial de un patrimonio empresarial. De esta manera, partiendo de los datos disponibles en la consulta y del hecho de que, de acuerdo con la jurisprudencia, la aplicación del supuesto de no sujeción exige que el conjunto de los elementos transmitidos por cada empresario sea suficiente para permitir desarrollar una actividad económica autónoma en el propio transmitente, concluye que le podría ser de aplicación la no sujeción del mencionado artículo 7.1.

En segundo lugar, en lo relativo a la obligación de expedir factura, se concluye que, en base a las disposiciones contenidas en el artículo 2 del Reglamento por el que se regulan las obligaciones de facturación, el

vendedor que efectúa el traspaso objeto de consulta deberá expedir y entregar una factura con ocasión de la entrega de los elementos que van ser objeto de transmisión, con independencia de que la misma se encuentre o no sujeta en virtud de lo dispuesto en al artículo 7.1º de la LIVA anteriormente citado.

No obstante, a la luz de la Sentencia del Tribunal Supremo de 10 de marzo de 2014 (STS 938/2014), las escrituras públicas que contengan todos los datos de una factura completa de acuerdo con el artículo 6 del reglamento de facturación podrán tener la consideración de facturas, sirviendo a su vez como documento justificativo del derecho de deducción.

Por último, este Centro recuerda los mecanismos de los que dispone el comprador cuando resulte procedente la emisión de la correspondiente factura y el expedidor se negase a ello. Así pues, de acuerdo con el artículo 24 del Reglamento, el adquirente en la operación objeto de consulta estará legitimado para interponer reclamación económico-administrativa ante el Tribunal Económico-Administrativo que corresponda.

6. Dirección General de Tributos. Contestación nº V2702-18, de 5 de octubre de 2018.

Sujeción al Impuesto sobre el Valor Añadido y derecho a deducción.

El consultante es un Ayuntamiento que presta el servicio de estación municipal de autobuses percibiendo una tasa por cada entrada y salida de autobuses o por cada billete expedido en la estación. En esta consulta, se cuestiona si estaría sujeto al Impuesto sobre el Valor Añadido el servicio de estación de autobuses y si cabría el derecho a deducción de las cuotas soportadas por las obras de acondicionamiento y demás gastos de mantenimiento de la estación.

En primer lugar, recuerda este Centro Directivo que las Administraciones Públicas tendrán la condición de empresarios a efectos del Impuesto sobre el Valor Añadido cuando ordenen un conjunto de medios personales y materiales; con independencia y bajo su responsabilidad, para desarrollar una actividad empresarial o profesional, mediante la realización continuada de entregas de bienes o prestaciones de servicios, siempre que las mismas se realicen a título oneroso.

Respecto del servicio de estación de autobuses, se recoge en el artículo 7.8º de la Ley del IVA que estarán sujetas al Impuesto las entregas de bienes y prestaciones de servicios que las Administraciones Públicas realicen en el ejercicio de sus actividades, aun cuando se lleven a cabo

por la Administración Pública de la que dependa el ente prestador; entre las que se encuentra la de transportes de personas.

En este sentido, la Ley 16/1987, de 30 de julio, de ordenación de los transportes terrestres, califica a las estaciones de transporte por carretera como actividades auxiliares y complementarias del transporte. En este sentido concluye la DGT, que el servicio de estación de autobuses no constituye propiamente un servicio de transporte a los efectos del artículo 7.8º de la Ley del IVA, por lo que, siendo prestado por el Ayuntamiento a cambio del cobro de una tasa; estará no sujeto al Impuesto sobre el Valor Añadido.

Respecto de la deducción de las cuotas soportadas, se recoge en el artículo 93.5 de la Ley del IVA por un lado, la no deducibilidad de las cuotas soportadas por la adquisición de bienes y servicios destinados a la realización de operaciones no sujetas efectuadas por aquellos sujetos pasivos que realizan conjuntamente operaciones sujetas y no sujetas.

Por otro lado, las cuotas soportadas por la adquisición de bienes y servicios destinados de forma simultánea a la realización de operaciones sujetas al impuesto y a aquéllas que no lo estén, se deberá adoptar un criterio razonable y homogéneo de imputación de las cuotas correspondientes a los bienes y servicios utilizados para el desarrollo de las operaciones gravadas, criterio que deberá ser mantenido en el tiempo salvo que por causas razonables haya de procederse a su modificación.

7. Dirección General de Tributos. Contestación nº V2703-18, de 5 de octubre de 2018.

Exenciones – Segundas y ulteriores entregas de edificaciones – Arrendamiento con opción de compra.

En esta contestación, la DGT analiza la calificación de primera o segunda entrega de una vivienda adquirida por el consultante, que desde su construcción había estado arrendada con opción de compra, sin que los arrendatarios ejercieran dicha opción. Asimismo, tras la construcción de esta vivienda, la misma había sido vendida por el promotor a otra entidad, que fue la que destinó la vivienda a su arrendamiento con opción de compra.

De conformidad con lo dispuesto en el artículo 20.Uno.22º.A) de la LIVA, la DGT recuerda que aquellas entregas de edificaciones que sean realizadas por el promotor y hayan sido destinadas al arrendamiento en virtud de contratos de arrendamiento con opción de compra, siempre van a tener la consideración de primera entrega, independientemente

de que el adquirente sea el propio arrendatario optante o un tercero distinto del anterior, y con independencia del tiempo de duración del contrato.

No obstante, conviene señalar que, cuando los contratos de arrendamiento con opción de compra no han sido suscritos con el promotor de la edificación, la entrega subsiguiente de esa edificación en ejercicio de la opción de compra o a un tercero adquirente, tendrá la consideración de segunda entrega, sujeta y exenta del IVA.

En virtud de lo anterior, la DGT concluye en el presente caso que, la vivienda que va a adquirir el consultante, si bien ha estado destinada al arrendamiento con opción de compra, no es transmitida por su promotor, sino por otra entidad que previamente la adquirió de este. En consecuencia, la entrega de la vivienda que efectúa la sociedad transmitente no promotora reúne la consideración de segunda entrega de edificación sujeta y exenta del IVA.

8. Dirección General de Tributos. Contestación nº V2757-18, de 19 de octubre de 2018.

Consideración de holding mixta.

La entidad consultante es una entidad holding que presta servicios de gestión y administración a una entidad íntegramente participada.

En este sentido, se plantea si la consultante tiene la consideración de holding mixta a efectos del IVA.

Según reiterada jurisprudencia, se indica que una entidad que interviene en otra de forma directa o indirecta no tiene la calidad de sujeto pasivo del IVA.

De esta forma, el hecho de disponer de obligaciones puede entenderse como una forma de inversión que no excede del concepto de gestión de un patrimonio. Así, los intereses percibidos no pueden entenderse como la contraprestación de una operación, puesto que deriva de la propiedad de estas obligaciones.

Ahora bien, si la tenencia de obligaciones en otra sociedad implica la intervención de forma directa o indirecta en su gestión, constituye una actividad económica.

En consecuencia, la condición de empresario o profesional de una entidad holding se limitará si se trata de una "holding pura" (o mera tenedora de obligaciones) o "holding mixta" (cuando además de tener obligaciones interviene en la gestión de las obligaciones).

9. Dirección General de Tributos. Contestación nº V2831-18, de 26 de octubre de 2018.

Base Imponible REGE avanzado – Deducibilidad del IVA soportado.

La entidad consultante es la dominante de un grupo de entidades a efectos del IVA en su modalidad avanzada del régimen especial.

La consultante plantea diversas cuestiones sobre la aplicación del régimen especial entre las que se encuentran:

(i) Base imponible y tipo impositivo

De acuerdo con el artículo 163.Octies de la Ley del IVA, cuando se ejercite la opción que establece el artículo 163 sexies.cinco de esta Ley (es decir, la opción por la modalidad avanzada del REGE), la base imponible de las operaciones intragrupo *"estará constituida por el coste de los bienes y servicios utilizados directa o indirectamente, total o parcialmente, en su realización y por los cuales se haya soportado o satisfecho efectivamente el Impuesto."*

En virtud de lo anterior, la DGT concluye que en relación a los servicios administrativos que presta la consultante a las entidades del grupo, la base imponible de los mismos se calculará de acuerdo con el coste de los bienes o servicios utilizados. Adicionalmente, la DGT matiza que, en el caso planteado en la consulta, la prestación del servicio administrativo estará sujeto al tipo impositivo general del Impuesto del 21%, con independencia de que parte del gasto soportado para prestar dicho servicio lo haya sido a un tipo reducido del Impuesto.

(ii) Deducibilidad del IVA soportado

En particular, la consultante se cuestiona acerca del efecto que tendría en la base imponible del grupo de entidades la adquisición de determinados equipos informáticos que no tienen la consideración de bienes de inversión, que se afectan al sector diferenciado bancario con una prorrata del 5 % y posteriormente se transmiten en una operación intragrupo. La DGT, por su parte, establece que estaríamos ante un uso sobrevenido en las operaciones intragrupo que supondría la realización de un autoconsumo del artículo 9.1.c) de la Ley del Impuesto que dispone que existirá autoconsumo por, "el cambio de afectación de bienes corporales de un sector a otro diferenciado de su actividad empresarial o profesional" situación que debe entenderse equiparable a los supuestos en de afectación sobrevenida al sector de operaciones intragrupo.

En conclusión, la DGT considera aplicable el apartado Dos del artículo 102 de la Ley que prevé que "los sujetos pasivos podrán deducir íntegramente las cuotas soportadas en las adquisiciones o importaciones de bienes o en las prestaciones de servicios en la medida en que se destinen a la realización de los autoconsumos a que se refiere el artículo 9, número 1º, letra c), que tengan por objeto bienes constitutivos de las existencias y de los autoconsumos comprendidos en la letra d) del mismo artículo y número de esta Ley."

(iii) Transmisión de inmuebles

Una última cuestión hace referencia al efecto que tendrá en diversas entidades del grupo la transmisión de determinados bienes inmuebles.

En virtud de lo previsto en el artículo 104 de la Ley del IVA, *"las operaciones inmobiliarias o financieras que no constituyan actividad empresarial o profesional habitual del sujeto pasivo"*, no han de computarse en el cálculo de la prorrata. No obstante, la DGT matiza que en todo caso se reputará como actividad empresarial o profesional habitual del sujeto pasivo la de arrendamiento.

En el supuesto de hecho, resulta que la consultante, un desarrollando una actividad financiera, desarrolla también una actividad inmobiliaria, de tal forma que dispone de medios humanos y materiales que le permiten la explotación de los bienes inmuebles que ha ido adquiriendo en el tiempo.

Por todo ello, la DGT concluye que la transmisión de los bienes inmuebles constituye una operación habitual y común en el tráfico de su negocio inmobiliario y, por tanto, cuando proceda, deberá incluirse en la prorrata de deducción de la entidad, permitiendo la deducción de los gastos afectos a esa actividad en la proporción correspondiente.

10. Dirección General de Tributos. Contestación nº V2845-18, de 26 de octubre de 2018.

Exenciones – Fianzas globales e individuales – Obligaciones de emisión de factura.

En esta contestación, la DGT analiza a partir del siguiente supuesto de hecho la tributación de las operaciones de alquiler y fianza realizadas por la consultante en relación con los envases reutilizables comercializados por la misma:

"La consultante es una entidad que se dedica al alquiler, explotación y comercialización de envases reutilizables de plástico para el transporte de frutas y hortalizas. La compañía cobra una cantidad por el arrendamiento de los envases y otra en concepto de fianza por cada envase".

Tal y como ya había señalado la DGT en contestaciones anteriores (e.g. consulta número V0362-16, de 2 de febrero del 2016), la entrega de los envases reutilizables junto con "la fianza" constituye una operación única a efectos del IVA, estando dicha operación sujeta y no exenta de dicho Impuesto.

No obstante, en el presente supuesto de hecho, la consultante plantea con uno de sus clientes la posibilidad de constituir una fianza global y no individual que cubriera la totalidad de los envases entregados al mismo.

En dicho supuesto, la DGT considera que dicha la operación de fianza no puede considerarse como accesoria de la entrega individual de los envases por lo que constituirá una operación sujeta y exenta del IVA en relación con la contraprestación que pudiera derivarse de su constitución, de acuerdo con la letra f) del artículo 20.Uno.18º de la Ley del IVA.

Por otro lado, la DGT subraya que, ya que la consultante no tiene la consideración de entidad de crédito, queda obligada a expedir factura por sus servicios financieros exentos (i.e. servicios derivados de la constitución de la fianza global), cuando, conforme a las reglas de localización aplicables a los mismos, se entiendan realizadas en el TIVA-ES, Canarias, Ceuta o Melilla.

IV. Country summaries

Global

EU-Japan Economic Partnership Agreement voted in EU parliament

On 12 December 2018, the EU Parliament approved the EU-Japan Economic Partnership Agreement (EPA).

This vote follows a similar decision taken by Japan's National Diet, thus concluding the EPA's parliamentary ratification by both partners. It paves the way for the agreement to enter into force on 1 February 2019.

What is in the agreement?

The EPA will ensure and regulate several customs, trade and other areas between the EU and Japan, including:

- Market access for goods, services and investments in respective territories;
- Breaking down tariff and non-tariff measures;
- Promoting sustainable development;
- Harmonizing rules on intellectual property rights;
- Protection of geographical indications

Implications

Economic operators in one territory conducting business in the other, or who see opportunities to do so, will be given a tool to optimize their supply chains and increase business opportunities between the two parties. EPA benefits extend far beyond the traditional lowering of duties, and create a level playing field for companies operating in different markets. The benefits comprise financial savings, increased competitiveness, and ease of doing business.

Timeline

Negotiations for the Strategic Partnership Agreement and the Economic Partnership Agreement started in 2013, and both agreements were signed at the EU-Japan Summit on 17 July 2018.

On 29 November and on 8 December 2018, the two houses of Japan's National Diet ratified the EPA. The European Parliament's consent expressed on 12 December 2018 cleared the way for the trade agreement's conclusion and entry into force. The remaining formalities are expected to be completed in time for the agreement to become effective as soon as 1 February 2019.

Although the Strategic Partnership Agreement's entry into force also requires ratification by EU Member States, a large part of the Agreement can be applied on a provisional basis already from early 2019.

Next steps

Companies seeking to benefit from this agreement and issue preferential statements on origin will need to consider registration under the new REX (Registered Exporter) system. Master Data Control (e.g. commodity codes, ERP implementation of trade preference rules, etc.) is a key aspect for compliance with the EPA rules.

Americas

Mexico

Regulations for sensitive goods strengthened

Due to deviations detected in some taxpayers' customs operations, Mexican authorities have been recently working to tighten the controls on the importation of goods identified as sensitive, especially for those imported on a temporary basis.

Sensitive goods are defined as those included in Annex II of the Manufacturing, Maquiladora and Export Services Industry Program (IMMEX Program) and/or in Annex 28 of the General Foreign Trade Rules (sugar, steel, textile and clothing, aluminum, some mineral waste and tobacco). As a general rule, to be imported, these goods require a special authorization of the Ministry of Economy that can be exempted by having an IMMEX program and VAT and IEPS certification.

The controls that the Government is planning to implement involve specific modifications and an already published IMMEX Program draft and a Ministry of Economy Rules draft, which propose to establish new regulations for IMMEX and VAT and IEPS certificated companies. Both documents are available for consultation by companies and business organizations on the Federal Commission for Regulatory Improvement (CONAMER by its Spanish acronym) website.

The proposed changes include removing the privileges that these companies currently have, and setting new requirements to meet a specific profile that must be fulfilled to have or maintain the benefits of the importation of these goods under a temporary basis, such as having a light vehicles manufacturing company registry, maintaining a certain number of workers and amounts of machinery and fixed assets of at least MXN 50 million, making tax payments according to Title II of the Income Tax Law and being a *maquiladora* under Articles 181 and 183 of the Law, being listed on the stock exchange, among others. There is also a proposal to incorporate copper and lead into the list of sensitive goods.

United States

90-day extension for additional duties on China products

On 14 December 2018, the Office of the United States Trade Representative (USTR) formally announced a 90-day extension postponing the effective date on which the rate of additional duties will increase to 25 percent for products of China included in List 3 of 'Section 301' tariffs. These tariffs were covered by September 2018 action. The original date was scheduled for 1 January 2019, however, the increase to 25 percent is now set to take effect 2 March 2019.

CBP releases final rule for drawback

On 17 December 2018, U.S. Customs and Border Protection (CBP) released a final rule for duty drawback regulations under the Trade Facilitation and Trade Enforcement Act (TFTEA) of 2015. Most of the regulations take effect upon publication of the final rule in the Federal Register.

According to CBP, these regulations establish new processes for drawback pursuant to TFTEA as they:

- Liberalize the merchandise substitution standard;
- Simplify recordkeeping requirements;
- Extend and standardize timelines for filing drawback claims; and
- Require the electronic filing of drawback claims.

The notification also made mention of accelerated payment stating that "The regulations necessary for CBP to begin processing payments for Accelerated Payment (AP) on TFTEA drawback claims are now effective."

Asia Pacific

Australia

Underpayment of GST on development lease arrangements

The Australian Taxation Office (ATO) has issued a taxpayer alert about arrangements between property developers and government entities that may be resulting in the underpayment of GST, see GST implications of certain development lease arrangements.

In broad terms, the arrangements involve property developers acquiring land from government entities in exchange for equal value in the form of a monetary payment and/or development works. The ATO's concern is that, in some instances, property developers and government entities are not reporting the value of the supplies between them in a consistent way, leading to GST underpayments.

Depending on the circumstances, including the contractual terms agreed to between the developer and the government entity, underpayment of GST may result from all or some of the following:

- The government entity only reporting the monetary component of the consideration received for its supply of the land (i.e. without also reporting the value of any development works received for the land).
- The developer not reporting the supply of development works invoiced to the government entity.
- The developer improperly including the value of all of the development works completed on the land (whether invoiced to the government entity or not, and whether reported by the developer in a GST return or not) when using the GST 'margin scheme' to calculate its GST liability on sales of new residences, etc. within the development. (The margin scheme permits

eligible taxpayers to calculate their GST liability on the margin between a property's selling price and the original acquisition price. Costs for developing the property cannot be treated as part of the acquisition cost).

The alert notes that in some instances underpayment of GST may occur because the value of the development works has not been agreed between the developer and the government entity, or because the supply is not reported before the four-year statutory time limit prevents the recovery of outstanding GST on it.

Property developers and government entities alike should be identifying past and current development lease arrangements that they have been a party to, and reviewing the GST (and income tax) treatment given (or proposed to be given) to them in returns.

Depending on the circumstances, entities involved in such arrangements can expect increased attention from the ATO, and where GST has been underpaid, interest and penalties may also be payable. The alert also flags criminal prosecution where fraud or evasion is involved.

Malaysia

Budget 2019

The Budget was announced on 2 November 2018, and included the following indirect tax announcements.

Service tax on imported services and imported online services

Service tax is to be charged on imported taxable services in two stages:

- Business to Business (B2B) transactions: Malaysian recipient customers to account for 6 percent tax via reverse charge from 1 January 2019; and
- Business to Consumer (B2C) transactions: Foreign providers of digital products and services are required to register and collect 6 percent service tax from 1 January 2020.

'Imported taxable services' means any taxable service acquired by any person in Malaysia from any person outside Malaysia. The value of an imported taxable service will be prescribed by the Director General of Customs and Excise (DG). The service tax on imported services will be due at the earlier of the payment date or date of receipt of invoice.

Non-taxable persons acquiring imported taxable services will need to account for service tax in a declaration to be prescribed by the DG, no later than the last day of the month following the month the payment was made or the invoice received. Non-taxable persons failing to furnish the declaration as prescribed, or furnishing an incorrect declaration, will be subject to the same penalties as a taxable person.

Service tax exemption on specific 828 services

An exemption for service tax is proposed to be given for specific B2B services between service tax registrants that are registered for the same taxable service. The exemption is meant to prevent the cascading 'tax-on-tax' effect of service tax, for example where a service is acquired and onward-supplied through a supply chain. The exemption would be effective from 1 January 2019.

Determination of value for a manufacturer

Currently where a manufacturer, who is sales tax-registered, receives taxable goods from any person, which are to be manufactured and subsequently returned to that person, the sales value of those manufactured goods will (for sales tax purposes), subject to the approval of the DG, be the amount that the manufacturer charges for the work performed.

This treatment for registered manufacturers is now proposed to extend the application of the sub-section to non-registered manufacturers. The amendment will be effective from 1 January 2019.

Credit system for deduction of sales tax

A credit system for sales tax will be implemented for the deduction of sales tax on raw materials, components, or packaging materials purchased by any registered manufacturer, with effect from 1 January 2019.

The DG will prescribe the necessary conditions for, and the form and manner of, claiming such deductions.

Excise duty on sugar sweetened drinks

An excise duty at the rate of MYR 0.40 per liter is proposed to be charged on sugar sweetened beverages based on the sugar content as follows:

i. Fruit juices and vegetable juices whether or not containing added sugar or other sweetening matter under the tariff heading of 20.09, which contain sugar exceeding 12 grams per 100 millilitres; and

ii. Beverages including carbonated drink containing added sugar or other sweetening matter or flavoured and other nonalcoholic beverages under the tariff heading of 22.02, which contain sugar exceeding 5 grams per 100 millilitres.

The duty will apply from 1 April 2019.

Increase in gaming duties

The following increases to duties and taxes for the gaming industry are proposed:

i. Casino license to be increased from MYR 120 million to MYR 150 million per annum;

ii. Casino duties to be increased up to 35 percent on gross collection;

iii. Machine dealer's license to be increased from MYR 10,000 to MYR 50,000 per annum.

iv. Gaming machine duties to be increased from 20 percent to 30 percent on gross collection.

The application date is still to be confirmed.

Reduction of import duties on bicycles

It is proposed that the import duty rate for bicycles falling under the tariff code 8712.00.30 00 be reduced from the current 25 percent to 15 percent with effect from 1 January 2019.

Airport departure levy

A levy will be imposed on all outbound travelers by air, at the proposed rates of MYR 20 for outbound travelers to ASEAN countries, and MYR 40 to countries other than ASEAN, with effect from 1 June 2019.

Duty and tax incentives for tourism

In measures to promote tourism, Penang's Swettenham Pier will be given tax free incentives in the form of duty free shops to cater to its cruise tourism business. The Government has also affirmed its decision to declare Pulau Pangkor as a duty free island. It is also proposed that the duty free island status of Pulau Langkawi will be further expanded, but no details have been provided.

EMEA

Gulf Cooperation Council

United Arab Emirates – new rules and clarifications

Following the implementation of VAT in the United Arab Emirates, the Federal Tax Authority (FTA) has released further important guides and public clarifications in order to help businesses better understand the application of the VAT legislation. Since the previous update in the September 2018 edition of this newsletter, the following have been published:

- **Insurance VAT Guide (VATGIN1)**: The guide is intended to support businesses in the insurance industry in determining the types of services within the sector that are subject to VAT and those that are exempt.

Significantly, the guide also considers the application of input tax apportionment methods that can be used by businesses that are partially exempt from VAT. It also explains the (limited) right of recovery of input VAT of insurance for employee's dependents. For Deloitte Middle East's summary and analysis of the clarification, please see FTA publishes guide on VAT treatments of insurance.

- **Real Estate VAT Guide (VATGRE1)**: As an updated version of the Real Estate VAT Guide, the guide is intended to clarify the VAT treatment of real estate and construction-related supplies to businesses operating in these sectors.

- **Charities VAT Guide (VATGCH1)**: The guide defines charities and sets out the requirements to qualify as a 'Designated Charity' for VAT purposes. It also gives guidance on the extent to which charities may recovery VAT on costs and deemed supplies.

- **VAT Public Clarification on Public Transportation (VATP007)**: The document discusses the definition of 'public transportation', and the FTA's interpretation of which buses and trains qualify for the application of VAT at a zero rate. VATP007 addresses only the VAT liability of the vehicles themselves and, therefore, it does not impact the VAT liability of transportation services supplied under Article 45(2) of the UAE VAT Law (which are zero-rated) or under Article 46(4) of the UAE VAT Law (which are exempt).

- **VAT Public Clarification on Farm Houses and Farm Land (VATP008)**: The document addresses the issue of categorizing farm houses and farm land as either residential, commercial, or bare land, and then applying the relevant VAT treatment.

UAE – Reconsideration applications in Arabic only

The FTA has stated in an alert on its website that requests for reconsideration in relation to any decision made by the FTA, along with any supporting documents, must be submitted in Arabic only, see UAE VAT/Excise Tax Reconsideration Form.

UAE – Tourist refund scheme

The UAE Tourist Refund Scheme (TRS) is now fully implemented with its phase 2 coming into effect on 16 December 2018. The TRS allows overseas tourists visiting the UAE to reclaim VAT incurred on eligible purchases made through registered retailers. The FTA has stated that tax invoices issued from 18 November 2018 will be eligible for the TRS, which will have over 4,000 participating retailers.

UAE – Excise Tax: Decision on marking tobacco products

The FTA has recently published Decision No. (3) of 2018 on Implementing the Marking Tobacco and Tobacco Products Scheme. The marking scheme is intended to allow the FTA to monitor the payment of excise tax on tobacco and tobacco products.

The Decision sets out the dates relevant to the scheme, the fees for the purchase of the marks, and the definition of 'designated excise goods', among others. The Decision came into effect on 1 January 2019.

UAE – Customs: New notices published

Dubai Customs has recently published three customs notices (CN) revising Dubai Customs procedures for the submission of sea export and air cargo documentation, and laying down the procedures upon receiving a Sea Cargo Discrepancy Notification. The notices covers the following:

- **Sea Export Manifests Submission** (CN 2/2018), coming into effect on 31 January 2019;
- **Resolving Import Manifest Discrepancies** (CN 3/2018), coming into effect on 1 January 2019; and
- **Submitting Air Cargo Manifest** (CN 4/2018), coming into force on 1 May 2019.

All involved parties, such as agents, freight forwarders, brokers, and carrier personnel should take note of the new procedures and ensure they are compliant on the abovementioned dates.

Kingdom of Saudi Arabia – Guidelines translated into English

The Kingdom of Saudi Arabia General Authority of Zakat and Tax (GAZT) has published the English translations of several guidelines, which were originally published only in Arabic:

- **VAT on Employee Benefits guideline:** The guideline provides clarity on a subject which is relevant to all businesses. Further, issues such as the distinction between carrying out an 'economic activity' versus providing 'personal services' are also addressed in terms of identifying recoverable input tax.
- **VAT Economic Activity guideline:** The guideline sets out GAZT's interpretation of what defines 'economic activity', which is a term critical to determining the VAT treatment of transactions in KSA, including sections on special cases, such as dormant companies and holding companies, and on government bodies (those that act as a public authority and those that also carry out commercial activities).

- **Input tax deduction guideline:** The purpose of this guideline is to provide additional clarification with respect to input tax deduction and in particular the partial deduction method.

- **Invoicing and records guideline:** The invoicing and records guideline clarifies GAZT's position on issues that businesses might face with documentation related to VAT compliance. The guide also covers situations where a standard tax invoice or simplified tax invoice is not required.

GAZT has also issued new guides and guidelines in Arabic only:

- Agents guideline: The guide provides additional clarity to taxpayers regarding the VAT implications of transactions involving agents, or other situations where one person acts on behalf of another person.

- Examination, Assessment, Correction and Objection on GAZT Decisions 'EACO' guideline.

- Guide on business promotions: The guideline clarifies the VAT implications of common promotional activities carried out by taxable persons not only in the retail industry but also in other types of trade with consumers, whether businesses or individuals.

While guides issued by tax authorities are helpful, they do not cover all potential scenarios and as such businesses may still need to seek further guidance or support.

KSA – Customs: Authorized Economic Operator status

Saudi Customs has published the requirements for businesses to obtain Authorized Economic Operator status, see What are the requirements for becoming an AEO?

The AEO designation is part of the World Customs Organization (WCO) SAFE Framework of Standards adopted by the WCO Council in 2005. AEO status provides accredited businesses which are deemed to be low-risk with certain advantages, such as simplified customs procedures and being able to move goods at a lower cost.

KSA – Establishment of Special Integrated Logistics Zones

The KSA has announced the establishment of new Special Integrated Logistics Zones, with the first such zone to be situated at King Khalid International Airport. This is part of an initiative by government authorities to attract foreign investment to the KSA, and will have direct and indirect tax consequences as a result.

Bahrain – VAT implementation as of 1 January 2019

The tax authorities, the National Bureau for Taxation (NBT), have published the bilingual versions of the VAT law and executive regulations, which were both previously published in Arabic.

The NBT website is now online. According to the website, the NBT will manage the implementation, administration, and enforcement of taxes in Bahrain.

Oman – VAT implementation

A senior member of the Ministry of Finance Statements has stated that VAT is to be implemented in Oman as early as 1 September 2019. These statements have been reported in the press (including The Times of Oman and the Oman Daily Observer) with a message that business should start to prepare for VAT. Official clarifications are expected shortly.

Qatar – excise law announced

According to a press release issued by the Ministry of Finance, Qatar is to introduce a new 'selective tax' (excise tax) on certain health-damaging goods including 100 percent tax on tobacco and derivatives, and on energy drinks, and a 50 percent tax on sugary drinks. The planned introduction date is the beginning of 2019; the underlying legislation is yet to be published in the Official Gazette.

Up-to-date GCC VAT information available on Deloitte's mobile app

Deloitte Middle East's VAT in the GCC mobile app is free of charge, and is designed to help businesses to better understand VAT and its impact, whether they have already undergone implementation or are preparing for the introduction of VAT.

The app contains Deloitte Middle East's weekly digest reporting news of important indirect tax developments in the Middle East region as soon as they happen, in addition to a series of learning materials. It is available for iOS and Android devices and has a number of different sections that are easy to navigate.

Angola

VAT implementation update on invoicing rules

On 3 December 2018, Presidential Decree no. 292/18 was published in the Official Journal, approving the new legal system governing invoices and equivalent documents.

Although one of aims of this new legal regime is to support the formalities associated with the implementation of VAT in Angola, it will enter into force on 2 April 2019, irrespective of the introduction of VAT, which is still expected to enter into force no sooner than July 2019.

The amendments to the invoices regime are related to the formalities resulting from the expected implementation of VAT and, at the same time, aim to achieve generic objectives such as: (i) a consistent, coherent, and broader billing system; (ii) enhancing the formalization of the Angolan economy by discouraging the use of informal markets; and (iii) strengthening the tax authorities' audit and control mechanisms.

Therefore, Angolan taxpayers with annual turnover higher than USD 250,000 (equivalent value in Kwanzas), and regardless of whether or not they are registered as large taxpayers with the tax authorities, must consider implementations regarding the issuance of invoices and equivalent documents, namely the rules governing the need to use software programs certified by the tax authorities to issue invoices.

Other taxpayers should issue pre-printed invoices by certified printing companies or, alternatively, can opt to issue invoices through certified software systems.

The applicable rules for certification of software systems and the approved printing companies, and for the SAF-T rules, will be subject to autonomous regulation.

Croatia

Amendments to VAT legislation from 1 January 2019

The VAT Amendments Act (Act) was published in the Official Gazette no. 106/2018 with the majority of the amendments entering into force on 1 January 2019. The Act is the third step of tax relief within the tax reform and the harmonization of national legislation with the EU Principal VAT Directive provisions in terms of place of supply of services and distance sales. The amendments are as follows:

- The Act clarifies that the use of company cars for private purposes is not seen as non-business use to which VAT applies when input VAT was partially deducted upon purchase or lease, irrespective of the deduction period.

- The HRK 400,000 threshold for the deduction upon purchase or lease of passenger cars is abolished, so taxpayers can deduct 50 percent of VAT charged on the purchase or lease of passenger cars and related goods or services, irrespective of the car's purchase value.

- The scope of the reduced rates is extended, so the reduced rate of 5 percent applies to all prescription and over-the-counter medicines. The reduced rate of 13 percent will apply to the supply of baby diapers and certain categories of foodstuffs (live animals, fresh or frozen meat, fresh or frozen sausages and similar products, meat or blood, live fish, fresh or frozen fish, molluscs and other aquatic invertebrates, fresh or frozen crayfish, fresh or frozen vegetables, roots and tubers, fresh and dried fruit

and nuts, fresh poultry eggs in shell). Further categorization of these goods will be provided in amendments to the VAT Regulations by the use of the Combined Nomenclature. The rate of 13 percent will also apply to copyright and similar author's fees paid to authors, composers and performers who are members of organizations for the collective exercise of rights that are engaged in these activities under special regulations and with prior approval of the central state authority for intellectual property.

- All taxpayers registered in the VAT register will be required to electronically submit, together with VAT return, the ledger of incoming invoices. The ledger's format and content will be prescribed by the VAT Regulations, amendments to which are expected.

- Non-resident taxpayers that are registered for VAT in Croatia will no longer be eligible to apply the local reverse charge mechanism from section 75 (2) of the VAT Act to their local supplies. In other words, from 1 January 2019, VAT registered non-residents will have to charge VAT on local supplies. Local reverse charge will still apply to local supplies of non-residents that are not registered for VAT purposes in Croatia.

- The scope of application of the local reverse charge mechanism to supplies between domestic taxpayers (section 75 (3) of the VAT Act) is extended, and from 1 January 2019 will also apply to the supply of concrete steel and iron and products thereof.

- The reporting of VAT liability on imports of machinery and equipment worth more than HRK 1,000,000 and categorised in the prescribed Combined Nomenclature codes through the VAT return will be available only upon import of tangible fixed assets.

- In the case of doubt regarding the justifiability of VAT identification number assignation, the tax authorities may request the applicant to provide an insurance instrument (collateral) for a period of up to 12 months. If the taxpayer fails to submit the insurance instrument, the tax authorities will terminate the VAT identification number.

- Small enterprises that exceed the threshold of HRK 300,000 will have to register for VAT immediately and not from 1 January of the following year as was previously prescribed.

- The customs or tax authorities will be able to request from taxpayers acquiring used means of transport from another EU Member State, prior to registration, provision of an insurance instrument for the settlement of VAT liability arising from the acquisition.

- Conditions for the application of simplified triangulation for the second party involved in a supply chain, when the final destination of goods is Croatia,

will change. Simplified triangulation will also be available to non-resident taxpayers who are registered for VAT purposes in Croatia, which is not allowed under the current legislation.

- A threshold for the determination of the place of supply of telecommunications, broadcasting and electronically-supplied services to non-taxable persons is introduced. The main place of supply rule prescribes taxation where the customer has its headquarters, residence or habitual residence. However, from 1 January 2019, the place of supply of those services is, exceptionally, in the Member State of the supplier, if their value does not exceed HRK 77,000 (VAT excluded) in the current and the preceding calendar year.

- From 1 January 2020, the standard rate will be reduced from 25 percent to 24 percent.

Czech Republic

Amendment to VAT Act

On 4 December 2018, the Chamber of Deputies debated an amendment to the VAT Act. A series of motions to amend the Act were presented (which are likely to be subsequently voted on during the course of January).

Of particular note are the proposals to retain the current VAT treatment of payments made to statutory executives and members of statutory bodies and to temporarily retain the current definition of a finance lease of goods (through to the end of 2019).

In addition, the proposed changes include the postponement of the change affecting the public television station and the public radio broadcaster and special rules for determining the tax point in respect of the services of insolvency trustees, and various alternatives for revisiting VAT rates or reclassifying certain supplies into a lower VAT rate (e.g. in respect of the delivery of organic food).

In view of the date on which the amendment and related motions are to be voted on, it would be practical for the amended Act to become effective as of 1 April 2019.

Denmark

Implementation of EU vouchers Directive in Denmark postponed

The EU vouchers Directive was to be implemented in Danish legislation as per 1 January 2019, but Deloitte Denmark has received information that the implementation has been postponed until, it is expected, 1 July 2019. This allows Danish companies further time to implement changes to the VAT treatment of vouchers.

In accordance with current Danish administrative practice, the supply of vouchers is not subject to VAT at the time of issuing the voucher but at the time of purchasing goods or services with the voucher.

The proposed implementation of the EU vouchers Directive in Denmark will lead to a situation where a majority of vouchers are subject to VAT at the time of issuing the voucher. The issuer will, under the proposed rules, still be liable to account for the VAT even if the voucher is not redeemed.

Molds produced in Denmark – with or without Danish VAT?

A binding ruling (non-public ruling) concerns a Danish company which per order manufactures products in Denmark. The products are manufactured by the Danish company and for manufacturing purposes, the Danish company also produces a mold to be used for the production. The mold is only used for production for a specific customer which will also purchase the mold.

The Danish company charges the customer for the mold upfront, and the question is whether or not Danish VAT should be applied. At the time of payment it is not clear if the mold after the production period will remain in Denmark, will be delivered in another EU Member State, or will be exported to outside the EU.

The tax authorities emphasize that the transaction cannot be considered to be a prepayment subject to VAT due to the fact that the place of supply and VAT rate applicable are not known at the time the customer pays for the components.

Deloitte Denmark note that the ruling is somewhat unexpected, as it would be anticipated that, under public administrative practice, a local supply of goods (the mold) takes place at the time of payment. The purchaser takes over the right to dispose of the mold at the time of payment even though the mold at a later stage may be transported to a place outside Denmark. According to Deloitte Denmark, the latter movement of the mold outside Denmark will then have to be considered from a VAT point of view.

It appears that the tax authorities have issued more than one binding ruling following this binding ruling, but without making any of the rulings public. Therefore there is doubt as to the extent to which the ruling may be relied upon. However, there is an opportunity not to charge Danish VAT on molds even where the molds may be transported out of Denmark only after the production period.

Finland

Detailed guidance regarding VAT treatment of vouchers published by tax authorities

On 28 November 2018, the Finnish Tax Administration issued detailed guidance regarding the VAT treatment of vouchers. The purpose of the guidance is to clarify

how the tax authorities will be interpreting the new rules coming into force on 1 January 2019 under the EU vouchers Directive.

The extensive guidance summarizes the basic information concerning the new regulation and provides various examples of the VAT treatment of vouchers in different situations from the Tax Administration's point of view. However, despite the new guidance, many questions still remain open to interpretation.

The most significant change in Finland will be that services related to the distribution of vouchers will become subject to VAT, as previously these services have usually been regarded as financial services exempt from VAT.

Reduced VAT rate proposed for electronic books, magazines and newspapers

On 13 December 2018, the Government presented a law proposal according to which the VAT rate of certain e-publications will be reduced.

Among other things, the reduced VAT rate of 10 percent applies to printed books, and printed newspapers and periodicals with minimum one month subscriptions.

According to the proposal, the reduced VAT rate of 10 percent would in the future also apply to:

- Electronic books;
- Electronic magazines and newspapers; and
- Sales of single copies of printed magazines.

However, the standard VAT rate of 24 percent will continue to apply to publications consisting mainly of video or music content or advertisements. Further, the VAT rate for computer games and computer programs, and databases and other corresponding information sources in electronic form, will continue to be the standard rate of 24 percent also in the future.

The new regulation is intended to come into force on 1 July 2019.

France

Only one tax representative to be appointed by non-established companies from 1 January 2019, competent for all taxes

When a company that is not established in France is liable for certain tax obligations (notably regarding VAT for a company established outside the EU and in a country having not signed an assistance agreement for the recovery of tax receivables according to article 289 A I of the French tax code (FTC), regarding withholding taxes for individual income tax, for gambling and betting taxes,

contributions to security activities, etc.), it is necessary to appoint an accredited tax representative to perform the compliance formalities and to pay the corresponding taxes.

From 1 January 2019, according to new article 302 decies of the FTC, a foreign company can only appoint one tax representative in France. Hence, when a company not established in France has to appoint a tax representative, including for VAT purposes (except for representatives performing in the name and on behalf of the represented company the formalities and obligations related to the tax suspensive regime referred to in article 277 A I 2° of the FTC), this tax representative will be competent for all taxes listed in the abovementioned article.

As a consequence, tax representatives appointed in France before this date for one specific tax will see their competences extended to all taxes mentioned in article 302 decies of the FTC. On the other hand, if several tax representatives have been appointed in France, the foreign company will have to expressly appoint only one tax representative.

Electronic invoicing mandatory from 1 January 2019 for services rendered by small and medium-sized companies to public sector

In accordance with the timetable established by the French authorities, electronic invoicing becomes mandatory for small and medium-sized enterprises (SMEs – 10 to 250 employees) supplying the public sector (the state, local authorities, hospitals, public institutions, etc.) as from 1 January 2019.

This measure has already applied to medium-sized companies (ETI – between 250 and 5,000 employees) since 1 January 2018 and to large companies (more than 5,000 employees) since 1 January 2017.

This obligation will be extended to very small companies (less than 10 employees) from 1 January 2020.

In order to facilitate this dematerialization process, the authorities have set up an IT solution, *Chorus Portail Pro*, allowing electronic invoices to be filed, received, transmitted, and monitored free of charge and totally securely.

The *Chorus Pro Community* website provides more information as to how the portal works.

Greece

It has been announced that the special VAT rates (the VAT rates applicable for the Greek mainland reduced by 30%) for the five islands of Chios, Kos, Leros, Lesbos, and Samos that were to be abolished from 1 January 2019 will continue to apply until 30 June 2019.

The VAT rates are as follows:

Greece region	Standard rate	Reduced rate	Super reduced rate
Greek mainland and other remaining islands	24%	13%	6%
Five islands (Chios, Kos, Leros, Lesbos, Samos)	17%	9%	4%

Italy

E-invoicing - FAQ released by tax authorities

The tax authorities have published official answers to frequently asked questions (FAQ) on e-invoicing. Below are the most significant points clarified by the tax authorities. (The following list does not include mere confirmations of previous clarifications.)

- For transactions carried out by Italian established subjects towards foreign subjects VAT registered in Italy, the Italian established subjects will be required to issue e-invoices via SDI or alternatively to file the 'Cross Border Report'. When e-invoices are raised, these will be transmitted via SDI, by entering the value '0000000' in the field dedicated to the recipient code, unless the recipient provides the supplier with the certified email address PEC or recipient code.

- VAT registered foreign subjects will not be required to issue or to receive e-invoices.

- As the result of the grace period for the first semester 2019, no penalties will apply to the supplier when, for example: (i) payment from the customer is received on 20 January 2019; (ii) the e-invoice is dated 20 January 2019 and sent via SDI by 15 February; (iii) the e-invoice is booked with reference to the month of January and the VAT is paid by 16 February 2019.

- There are technical clarifications regarding the fields to populate with letter of intent details for e-invoices raised to frequent exporters.

- When suppliers opt to trace out of scope supplies, e-invoices must be raised via SDI (invoices are not required for out of scope transactions).

- Traditional paper invoices issued in 2018 and received by the customer in 2019 are not affected by the e-invoicing rules (which apply only to e-invoices dated from January 2019). However, if credit notes need to be raised in 2019 to amend former transactions traced by traditional paper invoices received in 2018, the credit notes must be in XML format and sent via SDI.

- Penalties for incorrect VAT deduction will apply to customers who do not receive correct e-invoices and continue to deduct input VAT based on traditional paper invoices dated from January 2019 onwards (i.e., traditional paper invoices dated from January 2019 onwards will no longer be valid documents for tax purposes).

- SDI will reject e-invoices raised towards VAT numbers/fiscal codes that are non-existent. On the other hand, SDI will not reject e-invoices raised towards VAT numbers/fiscal codes that are no longer valid (as in the case of the closing of a VAT number).

- Self-invoices for free gifts and for self-consumption by a company must be raised in XML format and sent via SDI.

Latvia

Amendments to VAT law

The Ministry of Finance has published draft amendments to the VAT law. The proposed amendments include the following:

Changes in effect as of 1 January 2019

- The EU vouchers Directive will be implemented in the VAT legislation. The new VAT rules will apply to vouchers issued from 1 January 2019.

- The changes to the EU Principal VAT Directive with regards to the place of supply of telecommunication services, radio and television broadcasting services, and electronically-supplied services will be implemented in the VAT legislation.

- The Court of Justice of the European Union judgment in DNB Banka regarding the interpretation of the cost sharing exemption will be implemented in the VAT legislation. The exemption provided by Article 132(1)(f) of the EU Principal VAT Directive will only apply to independent groups of persons whose members carry on an activity in the public interest. In addition, additional requirements will be introduced for the application of the VAT exemption.

- The VAT legislation will now specifically state that granting building rights is a service that is subject to VAT.

- The domestic reverse charge VAT mechanism will no longer apply to the supply of services related to metal products (i.e. the domestic reverse charge VAT mechanism will only apply to supplies of metal products themselves). Furthermore, the list of metal products for which the domestic reverse charge VAT mechanism applies will be substantially reduced to include only ferrous and non-ferrous semi-finished metal products. The list

of metal products and their Combined Nomenclature codes for which the domestic reverse charge VAT mechanism applies is set by the Minister of Cabinet Regulations.

Changes in effect as of 1 January 2020

- The domestic reverse charge VAT mechanism will no longer apply to the supply of household electronic devices and household electrical equipment.
- The domestic reverse charge VAT mechanism will no longer apply to the supply of construction products.

The Netherlands

2019 Tax Plan approved by Senate

The Dutch Senate agreed the 2019 Tax Plan on 18 December. The Tax Plan includes the following 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 percent to 9 percent 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 percent 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 in order to include also sports services provided to non-members as well as members of sports clubs was adopted with minor changes. As from 2019, the exemption will also apply to non-commercial operators of sports accommodations. Such operators will not, or will 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 accommodations, these operators may be adversely affected. Hence, a compensation scheme was introduced. The compensation scheme distinguishes between municipalities and amateur sports organizations. Amateur sports organizations are compensated through the 'Subsidy scheme for stimulation of construction and maintenance of sports accommodations', while municipalities are compensated through the 'Regulation on payment of specific stimulation'.

The Government also introduced transitional provisions: (i) relating to application of the usual adjustment schemes to remaining construction periods of sports accommodations intended for VAT taxable use which must be paid in 2019; (ii) for the first use of new sports accommodations 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 EU 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.

New rules for application of VAT zero rate for seagoing vessels and airplanes published

The VAT zero rate for seagoing vessels will require that, from 1 January 2019, these seagoing vessels are effectively used for navigation on the high seas. The Government has recently published an amended decree that contains new VAT rules that have been brought in line with the wording of the rules in the EU Principal VAT Directive, thus reducing the application of the VAT zero rate.

From 2019 onwards, the VAT zero rate for seagoing vessels will only apply if the following two cumulative conditions are met:

- The vessels are effectively used for at least 70 percent for navigation on the high seas; and

- They are used entirely (100 percent) for commercial activities.

Navigation on the high seas

In this context, 'on the high seas' means all seas beyond 12 nautical miles from the coast of the Netherlands, considered to be the limit of territorial waters.

- A vessel is deemed to be used on the high seas when it has an International Maritime Organization ship identification number (IMO number). This IMO number can be stated on the invoice when deliveries are made to a vessel.

- If it is not mandatory to have an IMO number for a vessel, the entrepreneur applying the VAT zero rate can demonstrate the use for navigation on the high seas in an alternative way, e.g. by means of a certificate of registry.

- Offshore vessels, such as floating drilling rigs (to be fixed on the seabed or not), dredgers, pontoons, and cable and pipe-laying ships also qualify as seagoing vessels.

Actual use, for at least 70 percent, for navigation on the high seas

To determine whether a vessel is used for at least 70 percent for navigation on the high seas, the operator of the vessel must issue a declaration, which is form-free and must be issued annually to suppliers rendering a service or providing goods. The operator has the choice between several methods to calculate the 70 percent requirement, for example:

- The distance travelled on the high seas;

- The routes travelled on the high seas;

- The time spent navigating on the high seas.

This calculation must in principle be determined based on the previous year. If there is a new ship or a ship the use of which is unknown in previous years, the operator must also issue a statement. In determining whether the 70 percent requirement has been met, each route that the vessel (partly) navigates on the high seas counts in its entirety as a route on the high seas. This also involves a journey between two seaports including a journey from and back to the same seaport.

Used entirely (100 percent) for commercial activities

A vessel is used entirely for commercial purposes if it is used (or will be used) 100 percent of the time for industrial, trade, or fishing activities. As a result, the VAT zero rate does not apply to vessels partly used for private purposes of an operator. In principle, the entire commercial use can be proven by means of a declaration from the vessel's operator.

VAT rules for coupons aligned with EU voucher rules

As of 1 January 2019, the VAT rules for coupons (the Implementation Decree 1968) will be amended and brought into line with the new VAT rules for vouchers which will also be introduced as of 1 January 2019. These changes are necessary because some coupons, individually or together, may fall under the new voucher definition that applies as of 1 January 2019.

The rules concerning coupons that can be redeemed for goods will be changed. First of all, the rules will also apply to coupons that are received for services and/or can be exchanged against services. In addition, a clear distinction is made between coupons that can be redeemed without an additional payment and stamps that can be redeemed with mandatory additional payment. If the stamps can only be redeemed without an additional payment, the stamps fall under the scope of the new VAT rules for vouchers. If, in theory, the coupons can be redeemed with an additional payment and without an additional payment, the qualification of the coupons will be examined at the time of exchange (the coupons will be exchanged with or without an additional payment). At that time it will be determined whether the VAT rules concerning vouchers apply (without additional payment) or whether the rules in the Implementation Decree 1968 apply (with an additional payment). As a result, the new VAT rules for vouchers and coupons will be in line with the EU vouchers Directive.

No revision of VAT treatment of services as of 1 January 2019

The Ministry of Finance has not given an update on the proposal for the VAT deduction adjustment rules for services, specifically to extend the rules to apply to 'expensive services', and whether it will come into force on 1 January 2019. Currently, the revision period only applies to capital goods that qualify as movable or immovable property. This implies that the usage of the goods is followed for five years in case of movable property or 10 years in case of immovable property. Changes in circumstances during this period can lead to the situation that in the past too much or too little VAT was deducted. In that case the initial VAT deduction needs to be corrected. When the proposal is implemented, the revision period will also apply to expensive services. These are services which are subject to depreciation by businesses based on the corporate or income tax rules.

It is not yet clear when the proposal, which was offered for internet consultation approximately one and a half years ago, will come into force.

Poland

Abolition of traditional VAT returns from 1 July 2019

The Ministry of Finance has published a draft Bill amending the VAT Act and the Tax Ordinance Act, which assumes, *inter alia*, abolishment of traditional VAT returns and their replacement with complex SAF-T files. This is a revolutionary change in Polish VAT reporting, that would reshape the way Polish VAT compliance is handled. The proposed date for the entry into force of the provisions is 1 July 2019.

JPK_VDEK

The draft amendment provides for the liquidation of, *inter alia*, VAT-7 and VAT-27 returns, and replacement of them with a new, more extensive structure of the JPK file, called JKP_VDEK. According to the justification to the amended bill, JPK_VDEK will contain data that are now in VAT returns and VAT registers. At present, there is no detailed information on the data catalogue that will be subject to reporting in the new structure of the JPK file. However it is clear that these will not be limited to data allowing for correct VAT settlement or preparation of the returns, but will also include the elements allowing for review of the correctness and completeness of VAT compliance by the tax authorities. This is a very broad and imprecise concept which would probably result in significant extension of data that would need to be reported in the new structure in comparison to current requirements.

The draft also provides for the abolishment of annexes to traditional VAT returns, including VAT-ZZ, VAT-ZT, VAT-ZD. They will be replaced with appropriate fields in the new structure of JPK file.

The draft law introduces also fines for submission of JPK files containing incorrect or incomplete information in the amount of PLN 500 for each irregularity found (if irregularities are not corrected within 14 days as of receipt of the summons). Implementing such a penalty would significantly impact the current methodologies of performing corrections to the VAT reporting, in particular, even a mismatch of elements could be considered an irregularity even though it does not influence the VAT liability for a given period.

Taxpayers who settle VAT on a quarterly basis will be able to continue to do so, however they will have to submit data from VAT registers every month.

The obligation to submit VAT-EU return information will remain unchanged.

Further details will follow when the sample structure of VDEK is published by the Ministry of Finance.

CJEU to determine whether Polish regulations with respect to bad debt relief violate EU rules

The Polish VAT law provides for bad debt relief, which allows the supplier to decrease the taxable basis and output VAT on local sales of goods and services if the supplier did not receive the underlying payment within 150 days (90 days as of 2019) from the end of the payment deadline stated in the agreement or on the invoice. The bad debt relief can be exercised if the following requirements are met:

- At the time of the sale of the goods or services, the buyer must be an active VAT payer, not in the course of restructuring, bankruptcy, or liquidation proceedings;

- On the day preceding the date when the bad debt relief is exercised, the creditor and the debtor must be active VAT-payers and the debtor may not be in the course of restructuring, bankruptcy, or liquidation proceedings;

- The period of two years from the end of the year in which the invoice was issued must not have lapsed;

- The claim has not been settled or sold in any form.

In a Supreme Administrative Court opinion, some of the requirements may violate the provisions of the EU Principal VAT Directive. Consequently, the SAC has asked the Court of Justice of the European Union whether Poland is allowed to determine the right to use bad debt relief from the VAT status of the debtor and the creditor, or refuse the relief due to lack of VAT registration or due to removal of the VAT payer from the VAT register.

The answer of the CJEU will be significant, as a number of creditors are not able to use bad debt relief, as their debtors were not active VAT payers, and the decision may open the way to reclaiming VAT (depending on the outcome of the proceedings with respect to B2C supplies).

Portugal

State Budget proposal 2019

Parliament approved some amendments to the 2019 Budget law proposal.

The 2019 Portuguese State Budget Law has now been approved by the President of Portugal and published in the Official Journal.

VAT

Changes in tax rates

The reduced rate (6% in Mainland, 5% in Madeira and 4% in Azores) will be applied to the following goods and services:

- Supply of hair prostheses for cancer patients, as well as leasing of other type of prostheses, devices and other assets, used for cancer patients;

- The purchase of devices and equipment for emergency assistance to INEM (the Portuguese Institute of Medical Emergency);

- Cleaning services and social intervention undertaken in the scope of fire prevention, and in agricultural and forest management contexts;

- Admission fees for singing, dancing, music, theatre, cinema, circus, and bullfighting;

- Digital publications – books, journals, and magazines providing general information and other periodical publications of a predominantly scientific, educational, literary, artistic, cultural, recreational, or sporting nature for all material supports or electronically-supplied publications (provided they do not wholly or predominantly consist of music or video content);

- The transport of passengers in maritime-tourist activities;

- Sugar cane honey.

Legislative changes

- The introduction of rules regarding the VAT treatment of vouchers, with the goal of standardizing the VAT treatment of vouchers, as per the transposition of the EU vouchers Directive.

  The VAT treatment of transactions associated with vouchers varies according to the specific characteristics of the voucher. Single purpose vouchers are taxed upon transfer, whereas for multi-purpose vouchers, VAT should be charged when the goods or services are supplied.

  In the case of non-redeemed vouchers and when there is no return of the paid amount, the tax is due upon the expiration date of the right to the transmission of goods and services.

- For economic agents that occasionally supply telecommunications, broadcasting, or electronically-supplied services, and with the transposition of the relevant changes to the EU Principal VAT Directive, rules are introduced allowing 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 Member State from the supplier; (ii) the value of the services provided does not exceed EUR 10,000 (excluding VAT) in the former civil year or in the current civil year.

- Transposition of the changes to the EU Principal VAT Directive regarding VAT obligations for service delivery and distance selling.

- The supply of goods or provision of services free of charge with a donation will not be liable to VAT as long as the cash amount equivalent received by another person (natural or legal) does not exceed 10% of the value of such supply of goods or services (previously there was no VAT liability if the equivalent amount of goods or services supplied did not exceed 5% of the donation received).

Legislative authorizations

- The following law changes are expected to be conceded by the Government concession regarding:

- The introduction of a reduced rate for the fixed component of the supply of electricity and natural gas when the contract power does not exceed 3.45 kVA and to low-pressure consumers which do not exceed 10,000 m3 per year; and

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

- Change of the verb 3.1 of the list II of the VAT law code, applicable to the supply of goods related with food and beverages, in order to expand the intermediate tax to beverages that are currently excluded.

- Expansion of the VAT reverse charge system to 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.

Municipal companies

- It has been clarified, by way of interpretation, that a supply of fixed assets from a municipal company to a municipality, as a result of the compulsory winding-up of the municipal companies, does not imply adjustment of the VAT initially deducted.

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 about 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 for fine cut tobacco for rolling cigarettes and the remaining 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 milliliter to EUR 0.31 per milliliter.

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

- With respect 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, the general arrangements for products subject to excise duty will now apply.

Tax on alcohol, alcoholic 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 or equal to 1.2% vol., there is a widening of the number of tiers applied. This expansion results in an increase of the maximum tax rate applicable to drinks with a higher sugar level (≥ 80 grams), whilst the remaining drinks benefit from a tax reduction as follows:

    - From EUR 8.34 per hectoliter (2018) to EUR 1 in beverages with < 25 grams;

    - From EUR 8.34 per hectoliter (2018) to EUR 6 in beverages with 25 – 49 grams;

    - From EUR 8.34 per hectoliter (2018) to EUR 8 in beverages with 50 – 79 grams; and,

    - From EUR 16.69 per hectoliter (2018) to EUR 20 in beverages with ≥ 80 grams.

- There are changes for small producers of cider who produce on average less than 1,000 hectoliters per year:

    - For cider alcoholic drinks produced by small producers, the EUR 0 per hectoliter will apply; and,

    - Small producers of cider will benefit from the special excise duty regime applicable to small producers of wine and will therefore be exempt from compliance and reporting obligations related to the production, processing, holding, and movement of excise goods.

Tax on petroleum products

- The mix or incorporation of biofuels in other petroleum and energy products must be made in a tax warehouse.

- The progressive tax is maintained for the following petroleum and energy products in the production of electricity, cogeneration or city gas:

  - Code 2701: briquettes, ovoids, and similar solid fuels manufactured from coal;

  - Code 2702: lignite, whether or not agglomerated, excluding jet; and,

  - Code 2704: coke and semi-coke of coal, of lignite, or of peat, whether or not agglomerated.

  During 2019, a tax rate corresponding to 25% of the tax on petroleum products and a tax rate corresponding to 25% of the CO2 special contribution rate will be applied.

  Unlike what was established in 2018, it is expected that it will not be prohibited to consider this additional cost in the final consumer invoice.

- 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 will stay the same as in 2018.

Vehicle tax

- Considering the increase of vehicle emissions (resulting from the new rules regarding the new cycle of WLTP – Worldwide Harmonized Light Vehicle Test Procedure), a transitory regime has been created for 2019 which foresees a reduction (between 5% and 24%) to be applied to CO2 emissions that are considered in the computation of the environmental percentage rate of vehicle tax, as well as for the computation of CO2 limits fixed in benefit regimes.

- There will be an extension of the exemption for vehicles purchased for the exercise of the Rural Fire I.P. (AGIF) when they are exclusively concerned with preventive support and to combat fires.

Circulation tax

- The circulation tax will generally increase by about 1.3%.

- Similar to vehicle tax, a transitory regime has also been created for circulation tax for 2019. Considering the significant increase in vehicle emissions for which a reduction is expected (between 5% to 21%) will apply to CO2 emissions considered for computation of the applicable rates for category B vehicles, as well as for measurement of the CO2 limits established for the application of existing exemptions.

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

- For 2019, the additional contribution of the circulation tax for diesel vehicles of the categories A and B is maintained.

Mandatory e-invoicing for B2G transactions

Concerning the upcoming mandatory use of e-invoicing protocols for (Business-to-Government) B2G operations as a result of EU Directive 2014/55/EU, the Government has published Decree-Law n.º 123/2018 of 28 December 2018, which sets out the governance model for the implementation of electronic invoicing in public contracts.

Further to the Decree-Law, the Government established a gradual implementation of the mandatory use of e-invoicing for B2G operations, aiming to guarantee an effective implementation of the necessary changes by both taxpayers/suppliers and public entities/contractors. Hence, the deadline previously set out, which was from 1 January 2019, has been adjusted.

In this context, the deadline for when it becomes mandatory for public contractors to receive and process electronic invoices has now been established as 18 April 2019 for state and public institutes, and 18 April 2020 for the remaining public entities.

Until 17 April 2020, suppliers may continue to issue invoices without complying with the e-invoicing rules (this deadline is extended to 31 December 2020 for micro and small companies).

In terms of the syntaxes model, as foreseen in Article 3(2) of Directive 2014/55/EU, there is not yet official guidance published in the Official Journal on the syntaxes to be used, although it is noted in the local press that the Government has already chosen the UBL invoice and credit note messages as defined in ISO/IEC 19845:2015. This has yet to be officially announced and regulated.

ESPAP (Service Shared Centre for Portuguese Public Entities) was designated as the entity responsible for the coordination and implementation of e-invoicing for public entities in Portugal, and on its website (ESPAP: Financial Shared Services) there are already some guidelines on the technical and functional standards for electronic document exchange (UBL2.1 eSPap), although the template currently used will have to be adjusted in accordance with the regulatory ordinance. Accordingly, where suppliers have already initiated the transformation process, they will also need to consider such future adjustments.

Recommendation to amend rules for maintenance of VAT accounting documents in connection with VAT rate increase

In accordance with Federal Law #303-FZ dated 3 August 2018, from 1 January 2019, the VAT rate increased from 18 to 20 percent.

Accordingly, it is expected that the rules for maintaining documents applied in VAT accounting will be amended to include the new VAT rate. In particular, amendments are recommended to the forms of journals of VAT invoices received and issued, sales ledgers, and additional sheets of sales ledgers.

Obligation to account for VAT on services supplied by foreign legal entity with permanent establishment in Russia

The Ministry of Finance of the Russian Federation in Letter No. 0307-08/66769 dated 18 September 2018 clarified that a foreign provider of services the place of supply of which is Russia should account for and pay VAT itself, if the foreign provider is registered with the Russian tax authorities, including through a permanent establishment in Russia.

Accordingly, there is no obligation for Russian customers to act as tax agents, account for and pay VAT on behalf of such a foreign provider, even if services are rendered by the head office of the foreign provider without the involvement of the permanent establishments' employees.

Federal Tax Service discusses with business community amendments to procedure of VAT accounting regarding supply of e-services

From 1 January 2019, foreign providers of e-services in Russia will themselves have to account for and pay VAT on transactions with Russian legal entities and individual entrepreneurs.

Representatives of the Russian Federal Tax Service have noted that the new provisions will not lead to a significant tax burden for foreign e-service providers, and will not trigger new risks for Russian customers.

The online service 'VAT-Office' will be available for foreign e-service providers for the purposes of VAT electronically-supplied services (ESS) registration in Russia. The abovementioned online service will allow e-service providers to communicate with the Russian tax authorities remotely.

Representatives of the Federal Tax Service have also noted that for group companies, the foreign provider of e-services can create a 'personal account' via the representative rather than by itself. The foreign provider has a right to authorize a related Russian customer to register the foreign provider with the tax authorities, and pay the VAT on behalf of such a foreign service provider.

The Federal Tax Service is to further clarify certain issues related to the new procedure of VAT accounting regarding supplies of e-services.

Ministry of Finance clarifies date of equipment's shipment for VAT purposes if shipment performed in parts

According to the Letter of the Ministry of Finance of the Russian Federation No 03-07-11/77373 dated 29 October 2018, if equipment is supplied in parts, for VAT purposes, the date of shipment should be recognized as the date of execution of the primary document issued to the buyer (carrier) when the last part of the equipment is shipped.

Ministry of Finance clarifies place of supply for VAT purposes of personnel search and recruitment services rendered by foreign legal entities

According to the Letter of the Ministry of Finance of the Russian Federation No 03-07-08/76364 dated 24 October 2018, personnel search and recruitment services are not mentioned in the list of services for which the place of supply for VAT purposes should be determined as the place of their buyer's activity.

Therefore, the territory of Russia should not be recognized as the place of supply of personnel search and recruitment services rendered by foreign legal entities.

Accordingly, the Russian customers of abovementioned services should not act as tax agents.

Expiry of experiment on marking of tobacco products

Resolution No. 1433 of the Government of the Russian Federation (which came into effect on 14 December 2017) established the experiment for marking tobacco products with the means of identification and monitoring the turnover of tobacco products with the deadline of 31 December 2018.

Decree of the Government of the Russian Federation No. 792-p (which has not yet entered into force) has established the date for the introduction of mandatory marking with identification marks of tobacco products – from 1 March 2019.

Federal law by which Russia ratified interim agreement between EEU and Iran came into effect

Federal Law No. 429-FZ of 28 November 2018 ratified an interim agreement leading to the formation of a free trade zone between the EEU and its Member States and the Islamic Republic of Iran.

The interim agreement also established tariff preferences in respect of goods transported between Iran and Russia, originating from these countries and included in the list of tariff obligations according to the annex to the interim agreement.

Federal Law No. 429-FZ came into effect on 9 December 2018.

Slovakia

Amendments to VAT Act

Proposed amendments to the VAT Act have now completed the legislative process and, except for certain provisions, came into effect on 1 January 2019. Compared to the draft version of the amendments, see the October 2018 edition of this newsletter, the main changes were in relation to the new rules for the application of VAT when using vouchers and the tax exemption for the supply of building and leasing residential real estate. The new rules for the VAT treatment of vouchers will be effective from 1 October 2019, and will apply to vouchers issued after 30 September 2019.

Taxation of older buildings for which a change in purpose has been permitted and for buildings following reconstruction applies for the first five years, provided that in both cases the construction work will start after 31 December 2018. Similar changes were also made in relation to the limitation of the right to opt to tax the leasing of residential real estate. The lessor will be required to apply the tax exemption regardless of the status of the recipient on contracts concluded after 31 December 2018, based on which the real estate will be made available for use after this date.

The amendment also brings into force a VAT exemption for taxable transactions related to international trade. With effect from 1 January 2020, the import, the supply, and the acquisition of selected petroleum oils and oils obtained from bituminous minerals, as well as the supply of services related to these transactions, will be VAT exempt in certain cases.

Spain

Order establishing modifications to forms and presentation of informative statements

On 18 October 2018, Order HAC/1148/2018 was published. The Order entered into force on the day following its publication, thus it applies to forms 303 and 322 for the last payment period of 2018 and the information declarations (models 390 and 347) for 2018.

The main modifications are as follows:

- In relation to forms 303 and 322:
    - The box 'Is there an annual volume of transactions (Art. 121 LIVA)?' (for taxable persons exempted from the obligation to submit the annual summary return) is replaced by two other boxes. The first box asks: 'Are you exempt from the VAT annual summary return, form 390?'; and

the second, which only those who answer yes to the first question will have to answer, asks: 'Is there an annual volume of transactions (art. 121 LIVA)?'.

- Box 79 is amended to include the amount of nontraditional supplies of investment gold (in addition to supplies of immovable property and non-standard financial transactions, as already reported).

- In relation to form 347 (annual declaration of operations with third parties):

  - The deadline for the submission of Form 347 will be the month of February of each year, in relation to the operations carried out during the previous calendar year.

- In relation to form 390 (annual summary return of VAT):

  - The box 'Does the self-assessment of the last period correspond to the special regime of the group of entities?' is deleted.

  - In the disaggregation of deductible VAT, the boxes corresponding to the rates not in force (7, 8, 16 and 18) are deleted. In their place, boxes 660 and 661 are created to include the taxable base and the deductible quotas, by virtue of an administrative resolution or final judgement with rates that are not in force.

  - In the section on the result of settlements, box 662 is created to record the 'quotas to be offset at the end of the financial year'.

  - Box 106 is modified to include the amount of non-regular deliveries of investment gold (in addition to deliveries of immovable property and non-standard financial transactions, as already reported).

Institute of Accounting and Auditing ruling on accounting treatment of exchange rate for import of goods

Ruling Number 2 of the Institute of Accounting and Auditing discusses the accounting treatment to be applied in relation to the exchange rate to be used to account for the import of goods.

The Institute of Accounting and Auditing has established that imported goods are to be entered into inventory valued at the spot exchange rate prevailing at the time of purchase (the date of the transaction). The value is to be increased by the amount of customs duties paid.

Turkey

VAT rates change for e-publications

A new communique related to the 'Value Added Tax rates regarding goods and services delivery' was published in the Official Gazette on 18 December 2018. According to the new amendment, the VAT rate for e-magazines and e-books has been changed to 18 percent, with effect from 1 January 2019.

According to the details;

- Newspapers and magazines (the sales of their electronic versions; e-newspaper and magazine readers, tablets or similar device deliveries; newspapers and magazines in a nylon bag) will be taxable at the rate of 18 percent; the previous rate was 1 percent.

- Books or similar publications (the sales of their electronic versions; e-book reader, tablets or similar device deliveries; books in a nylon bag) will be taxable with the rate of 18 percent; the previous rate was 8 percent.

United Kingdom

Deloitte Indirect Tax Brexit Portal

Brexit will create the most significant changes to UK indirect tax legislation since the introduction of VAT in 1973. A raft of new legislation and associated guidance is expected over the coming months and years, much of which may significantly impact longstanding business, commercial and reporting processes. To help keep businesses up-to-date on developments, Deloitte UK has launched the Deloitte Indirect Tax Brexit Portal. The Portal is free to use, following a simple registration process.

The Portal provides a single place to find Brexit-related indirect tax content, including opinion, thought leadership, webcasts, and summary articles, together with technical developments and legislative updates. Content is available in the following areas:

- VAT and customs and excise duties, including information on the issues, potential implications, and some of available tools.

- Legislation and other legal/case law issues.

- Compliance and reporting, including the impact on indirect tax reporting systems and processes.

- General information, including the current status of and timeline for negotiations, relevant UK Government/EU announcements and detail on some of the broader supply chain, technology, and people issues.

VAT treatment of face value vouchers

From 1 January 2019, the VAT treatment of face value vouchers is changing. There will no longer be a supply of a voucher – instead, a voucher represents the goods or services to which it relates. The tax authorities (HMRC) have published Information Sheet 09/18, which provides additional guidance and a number of examples of how the new rules will operate (including how they will affect intermediaries).

VAT treatment of digital sales to EU consumers

Two statutory instruments have been made which will, from 1 January 2019, amend the VAT treatment of digital services (e.g. mobile phone apps, e-books and music downloads). In line with changes to the EU Principal VAT Directive:

- UK businesses will be able to treat annual digital sales of up to £8,818 to consumers elsewhere in the EU as being subject to UK VAT; and
- Non-EU businesses will be able to use the Non-Union Mini One Stop Shop even if they are already registered for VAT in the EU.

Eurasian Economic Union

Application of zero import customs duty rate in respect of certain types of electrodes

Decision of the Eurasian Economic Union No. 187 of 20 November establishes a zero import customs duty rate in respect of certain types of electrodes classified under the commodity code 8545 11 008 9 of the Unified Commodity Nomenclature of the Foreign Economic Activity of the EEU (combined nomenclature (CN) of the EEU) from 23 December 2018 to 31 December 2018 (inclusive).

Decision No. 187 came into effect on 23 December 2018.

Expiry of zero import customs duty rate for certain types of goods

Decision of the Council of the Eurasian Economic Commission No. 112 of 18 October 2016 (which came into effect on 2 January 2017) established a zero import customs duty rate for certain types of fruit puree classified under commodity codes 2007 99 500 3, 2007 99 500 4, 2007 99 500 5, 2007 99 500 7 of the CN of the EEU, for the period from 2 February 2017 to 31 December 2018 (inclusive). After 31 December 2018, the import customs duty rate will be 10 percent of the customs value of such goods.

Decision of the Council of the Eurasian Economic Commission No. 44 of 11 May 2017 (which came into effect on 1 September 2017) established a zero import customs duty rate for photographic plates and other films under customs commodity code 3701 30 000 0 of the CN of the EEU, the length of any side of

which is more than 255 mm, for the period from 1 September 2017 to 31 December 2018 (inclusive). Starting from 1 January 2019, the import customs duty rate will be 5 percent of the customs value of such goods.

List of EEU CN codes and rates of import customs duties for latex

Decision of the Eurasian Economic Commission No. 189 of 20 November 2018 introduces amendments to the CN of the EEU regarding latex.

The import of latex into the EEU for the production of carpets is now carried out using the commodity code 4002 11 000 1 of the CN of the EEU. In relation to the specified goods in the period from 23 December 2018 to 31 December 2021 (inclusive), a zero import customs duty rate will apply. After this period, the rate will be 5 percent of the customs value of the goods.

For goods from latex, which are classified under the commodity code 4002 11 000 9 of the CN of the EEU, the rate of import customs duty in the amount of 5 percent of the customs value of goods will apply.

Decision No. 189 came into effect on 23 December 2018.

List of manufacturers of tracked bulldozers for anti-dumping duties amended

Decision of the Eurasian Economic Commission No. 188 of 20 November 2018 expands the list of manufacturers of tracked bulldozers with a non-rotary and rotary blade with a capacity of up to 250 hp, originating from the People's Republic of China and classified under the commodity code 8429 11 009 0 of the CN of the EEU, for which anti-dumping duties were introduced.

Anti-dumping duty in the amount of 18.50 percent of the customs value is applied to bulldozers specified above of the manufacturer Caterpillar (Qingzhou) Ltd (No. 12999 Nanhuan Road, Qingzhou City, Shandong Province, China, 262500), which is included in the abovementioned list.

Decision No. 188 came into effect on 23 December 2018.

Decisions of Eurasian Economic Commission explain classification of quadcopters, biologically active food supplements in the form of chewing marmalade, products impregnated with insecticidal and acaricidal substances

Decision of the Eurasian Economic Commission No. 175 of 30 October 2018 clarifies that products made of polymeric material, impregnated with insecticidal substances used to deter insects (blood-sucking, animal exoparasites), packaged for retail sale, are classified under commodity heading 3808 of the CN of the EEU.

Decision of the Eurasian Economic Commission No. 171 of 30 October 2018 clarifies that a biologically active food supplement in the form of chewing marmalade, consisting of sugar and/or sugar syrups, gelling agents, vitamins, minerals, flavoring and coloring additives designed as supplement for the balanced nutrition of children as an additional source of vitamins and minerals is classified under commodity heading 2106 of the CN of the EEU.

Decision of the Eurasian Economic Commission No. 172 of 30 October 2018 clarifies that a quadcopter, which is a four-screw aircraft equipped with photo and video equipment or other equipment, has built-in navigation receivers (GPS, GLONAS, etc.), controlled by the operator remotely from land or from another aircraft as well as capability to fly automatically, used for various purposes, is classified under commodity heading 8802 of the CN of the EEU, and a quadcopter not equipped with built-in receiver navigation systems and not capable of automated flight, used for entertainment, is classified under commodity subheading 9503 00 of the CN of the EEU.

Decisions of the Eurasian Economic Commission No. 175, 171 and 172 of 30 October 2018 came into effect on 6 December 2018.

Decisions of Eurasian Economic Commission explain classification of pressure limit switches and metal frames for bras

Decision of the Eurasian Economic Commission No. 183 of 12 November 2018 clarifies that a pressure limit switch, which is an electromechanical device consisting of a skeleton, inside which is installed a membrane, a regulating spring, a switch, connecting terminals for connection to an electrical circuit with a voltage not exceeding 1000 V, which principle of operation is based on the closing and opening of electrical contacts when the maximum or minimum pressure in a liquid or gaseous medium is reached, is classified under commodity heading 8536 of the CN of the EEU.

Decision of the Eurasian Economic Commission No. 184 of 12 November 2018 clarifies that frames for bras, which are products of a semicircular shape from heat-treated thin steel wire of rectangular, oval or round section, with an anticorrosive coating, with thickenings of polymer material at the ends, which are inserted into the bottom part of bra cups and performing the shaping function in these products, is classified under commodity heading 7326 of the CN of the EEU.

Decisions No. 183 and 183 of 12 November 2018 came into effect on 16 December 2018.

Changes in value and weight norms within which goods for personal use are imported into the customs territory of the EEU without paying customs duties and taxes

Decision of the Council of the Eurasian Economic Commission No. 107 of 20 December 2017 reduces the limits for duty free importation of goods for personal use, sent by international mail, transported in accompanied and/or unaccompanied baggage by transport other than air, as well as on foot, and transported by carrier.

From 1 January 2019, for goods transported in accompanied and/or unaccompanied baggage, the threshold for duty free importation changed from EUR 1,500 and 50 kg to EUR 500 and 25 kg.

For goods transported by a carrier and sent by international mail, the thresholds for duty free entry for one calendar month change from EUR 1,000 and 31 kg to EUR 500 and 31 kg.

Decision No. 107 came into effect on 16 November 2018.

Trigger protective measure applied to certain clothes originating from Vietnam expires

For Vietnamese underwear imported into the EEU and classified under commodity headings 6107, 6108, 6207, 6208 and 6212 of the CN of the EEU, the trigger protective measure has expired.

The trigger protective measure was established by the Decision of the Board of the Eurasian Economic Commission No. 20 of 7 February 2018. The protective measure was introduced for the above specified goods for nine months.

The trigger protective measure was active from 14 March 2018 in the form of import customs duty in the amount of EUR 1.75 per kg.

Decision No. 20 came into effect on 14 March 2018.

Decision of Eurasian Economic Commission on use of customs declaration as documentation for inward processing

Decision of the Eurasian Economic Commission No. 180 of 12 November 2018 "On other cases of using a customs declaration as a document on the conditions for inward processing on the customs territory of the Eurasian Economic Union" has come into effect.

The decision clarifies the grounds in the presence of which a customs declaration can be used as a document on the conditions for inward processing of goods in the customs territory of the EEU.

A customs declaration, in addition to the general case of customs clearance, is also used as a document on the conditions for inward processing goods in the customs territory of the EEU in the following cases:

- Processing operations in the customs territory of the EEU will be performed directly by the declarant (importer of record) of foreign goods placed under the inward processing customs procedure and specified in the customs declaration (subject to certain conditions);

- The authorized authority of the EEU Member State on whose territory foreign goods, information of which is indicated in the customs declaration, are placed under the customs procedure for processing in the customs territory, establishes the standards product yield for the processing of such goods (subject to certain conditions).

Decision of the Eurasian Economic Commission No. 180 of 12 November 2018 came into effect on 16 December 2018.

Expiry of pilot project for marking clothes, clothing accessories and other articles from natural fur

A pilot project for marking clothes, clothing accessories, and other articles made from natural fur with control (identification) signs was in place until 31 December 2018.

Mandatory marking of fur goods will begin from the date of entry into effect (to come into effect after implementation of all necessary procedures by Member States) of the Agreement on the labeling of goods with identification means in the Eurasian Economic Union, adopted in Almaty on 2 February 2018.

2019 tariff quotas for long-grain rice from Vietnam

Decision of the Board of the Eurasian Economic Commission No. 155 of 25 September 2018 established tariff quota volumes for certain types of long-grain rice imported into the territory of the EEU.

In 2019, for long-grain rice under commodity codes 1006 30 670 1, 1006 30 980 1 of the CN of the EEU the following tariff quota volumes are set. For the Republic of Armenia, the quota for import was set at 150 tons; for the Republic of Belarus, the quota increased from 961 to 1,074 tons; for Russia, the quota decreased from 9,039 to 8,776 tons; for the Republics of Kazakhstan and Kyrgyzstan the level of tariff quotas remain as for 2018 (0 tons).

Decision No. 155 came into effect on 28 October 2018.

Tariff quotas for whey, cattle meat, pork and poultry meat

Decision of the Board of the Eurasian Economic Commission No. 141 of 28 August 2018 established tariff quotas for 2019 for whey, cattle meat, pork and poultry meat imported into the territory of the EEU.

For the Republic of Kyrgyzstan the volume of the tariff quota in respect of cattle meat and some species of poultry meat has been increased from 3,500 to 7,000 tons and decreased from 58,000 to 56,000 tons, respectively. Quotas for the rest of the EEU Member States remain at the level of tariff quotas for 2018.

Decision No. 141 came into effect on 29 September 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