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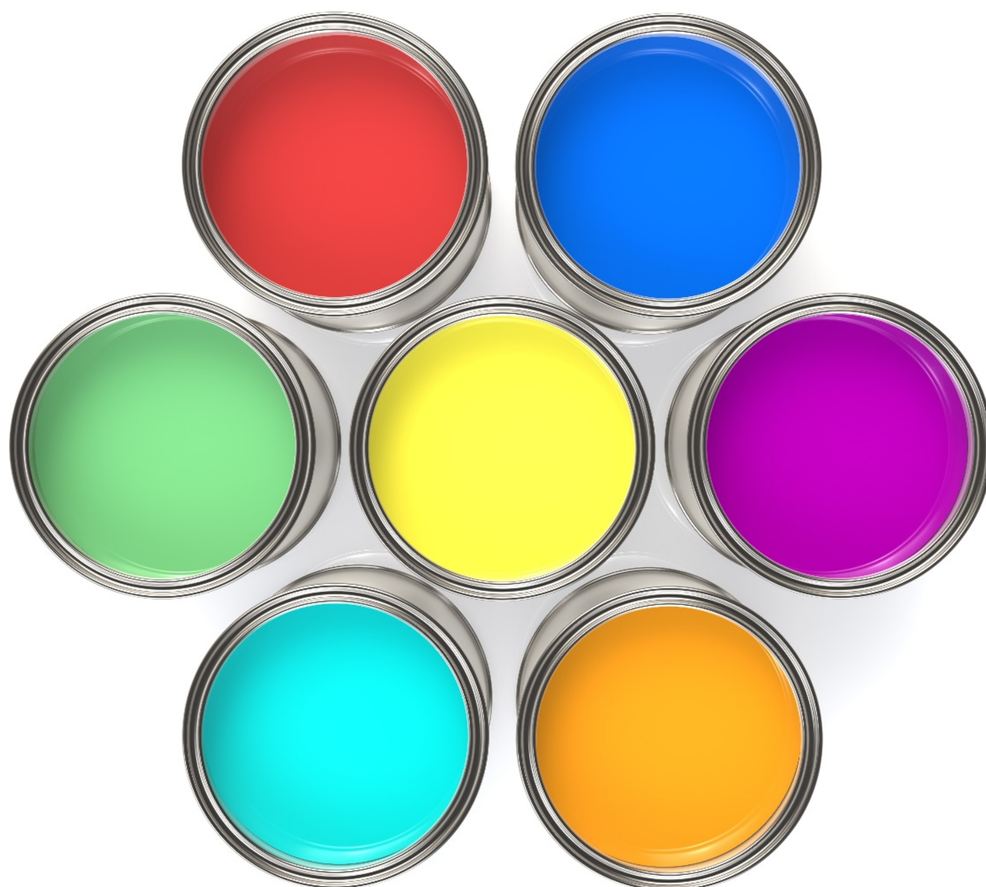

Marzo y Abril 2019
Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

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IV. Country Summaries

Bahrain

Further guidance on VAT issued

Following the implementation of VAT in Bahrain as from 1 January 2019, the National Bureau for Revenue has released additional guidance and clarifications to help businesses better understand the application of the VAT legislation, including a real estate guide and guidance on the VAT treatment of medicines and health products.

Canada

Federal carbon "backstop" may apply to provinces/territories

Pricing carbon is one of the strategies by which Canada plans to achieve a low-carbon economy. Provinces and territories that have not designed their own carbon pricing system or have put systems in place that do not meet the benchmarks set by the federal government will be subject to the federal “backstop” scheme.

China

VAT rates to be reduced as from 1 April 2019

Further to Chinese Premier Li Keqiang's announcement on 5 March 2019 to reduce the VAT rates, a press release of the State Council's executive meeting on 20 March provides additional details about the package of VAT policy changes. The changes, which include a reduction in the 16%/10% VAT rates to 13%/9%, will apply as from 1 April 2019.

European Union

Effect of no-deal Brexit on UK-registered EORI numbers

Should the UK leave the EU without any agreement with the bloc on the future UK-EU relationship, UK-registered Economic Operators Registration and Identification (EORI) numbers would become invalid in the remaining EU member states. Only after Brexit may a "new" EU EORI number be granted to companies that currently hold an EORI number that is obtained/registered in the UK.

European Union

ECOFIN agrees implementing rules on VAT regime for ecommerce

At a meeting held on 12 March 2019, EU finance ministers agreed on two proposals published by the European Commission on 11 December 2018, namely, a proposal to amend the VAT Directive and Implementing Regulation 282/2011. The aim is to ensure a smooth transition to the new VAT rules for e-commerce that will become effective on 1 January 2021.

United Kingdom

Brexit: Announcements on UK tariffs, Irish border controls in event of "no deal"

The UK government has announced a temporary import tariff schedule that will apply if the UK were to leave the EU without a deal. The government also has announced a unilateral, temporary approach to checks, processes and tariffs in Northern Ireland if the UK were to leave the EU without a deal.

Other news

Austria

VAT treatment of roaming services provided by foreign telecom companies.

Bahrain

NBR, reveals VAT return format.

Bahrain

NBR publishes imports and exports VAT guide.

Belgium

VAT remains payable on tenant compensation for own fit-out works.

Brazil

State of Sao Paulo introduces VAT incentive for automakers.

Canada

2019-2020 Manitoba budget highlights, including retail sales tax reduction.

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Announcement on VAT on cloud computing, sales of goods from free trade zones.

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Finland

VAT treatment of server room services referred to CJEU.

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Mandatory electronic invoicing introduced for certain government suppliers.

India

Reduction recommended in GST rates for residential properties under construction.

India

GST Council clarifies reduced tax rates on residential housing.

Ireland

Proposed VAT amendments post-Brexit.

Ireland

Proposed VAT amendments in event of no-deal Brexit.

Ireland

New implementation date for Revenue guidance on VAT treatment of food supplements.

Italy

Guidelines issued on post-Brexit treatment of cross-border movement of goods.

Italy

First successful results of implementation of e-invoicing announced.

Italy

New tax return form approved for quarterly VAT refund claims.

Japan

Consumption tax rates – Special considerations for food and beverages.

Luxembourg

Draft budget law for 2019 released, including VAT announcements.

Oman

Excise law published.

Oman

Update on introduction of VAT.

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Deadlines for compliance with new invoice processing and storage rules postponed.

Qatar

First excise tax returns due.

Saudi Arabia

More VAT guidelines translated into English.

Saudi Arabia

GAZT publishes VAT guide on Islamic Finance.

Ukraine

0% VAT rate proposed for international telecommunications services.

United Arab Emirates

FTA releases additional clarification of VAT, excise tax issues.

United Arab Emirates

FTA publishes financial services VAT guide.

United Arab Emirates

Duty rates on rebar and steel coil increase to 10%.

United Kingdom

VAT on electronically supplied services, imported goods in no-deal Brexit explained.

United Kingdom

VAT recovery on specified EU supplies in no-deal Brexit explained.

United Kingdom

VAT on hire purchase contracts.

I. Normativa

1. Directiva (UE) 2019/475 del Consejo de 18 de febrero de 2019 por la que se modifican las Directivas 2006/112/CE y 2008/118/CE en lo que respecta a la inclusión del municipio italiano de Campione d'Italia y las aguas italianas del Lago de Lugano en el territorio aduanero de la Unión y en el ámbito de aplicación territorial de la Directiva 2008/118/CE.

Esta Directiva contempla la modificación de la Directiva 2006/112/CE (Directiva del IVA) para incluir al municipio italiano de Campione d'Italia y a las aguas italianas del Lago de Lugano en los territorios que forman parte del territorio aduanero de la Unión Europea y están excluidos del ámbito de aplicación territorial de la Directiva del IVA.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 13 de febrero de 2019. Asunto C-434/17, Human Operator.

Directiva 2006/112/CE — Deducción del IVA — Determinación del sujeto pasivo deudor del IVA — Aplicación retroactiva de una medida de excepción — Principio de seguridad jurídica.

Se pregunta al TJUE si el Derecho de la Unión se opone a una normativa nacional que prevé la aplicación de una medida de excepción al artículo 193 de la Directiva del IVA, sobre el régimen de tributación ordinario, antes de que el acto de la Unión que autoriza dicha excepción haya sido notificado al Estado miembro que la ha solicitado, cuando, por una parte, dicho acto de la Unión guarda silencio respecto a su entrada en vigor o a la fecha de inicio de su aplicación y, por otra parte, dicho Estado miembro manifestó el deseo de que dicha excepción se aplicase con efecto retroactivo.

Con arreglo al artículo 297 del Tratado de Funcionamiento de la Unión Europea, apartado 2, párrafo tercero, las decisiones surtirán efecto en virtud de la notificación a sus destinatarios. Esta regla, que deriva del principio de seguridad jurídica, se opone a que un acto de la Unión comience a producir efectos antes de su publicación o de su notificación. Por lo cual, y teniendo en cuenta la ausencia de indicación de aplicación retroactiva, considera el Tribunal que un Estado Miembro carece de margen de apreciación en lo relativo a las condiciones de aplicación temporal de la norma general establecida en el artículo 193 de la Directiva del IVA.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 14 de febrero de 2019. Asunto C-531/17, Vetsch Int. Transporte.

Directiva 2006/112/CE — Artículo 143, apartado 1, letra d) — Exenciones del IVA a la importación — Importaciones seguidas de una transferencia intracomunitaria — Entrega intracomunitaria ulterior — Fraude fiscal — Denegación de la exención — Requisitos.

Se plantea al TJUE si el disfrute de la exención del IVA a la importación, recogida en el artículo 143, apartado 1, letra d) de la Directiva del IVA, debe negarse al importador designado o reconocido como deudor, cuando el destinatario de la transferencia intracomunitaria consecutiva a esa importación comete un fraude en una operación posterior a dicha transacción intracomunitaria, y que no está relacionada con la misma.

Establece el Tribunal que, dado que el fraude no se refiere a la transferencia de la que depende la concesión de la exención del IVA a la importación, dicha exención no puede negarse al importador designado o reconocido como deudor, en la medida en que no exista ningún dato que permita considerar que el importador sabía o debería haber sabido que el destinatario de la entrega intracomunitaria posterior a la importación fuese a cometer un fraude en una operación siguiente.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 14 de febrero de 2019. Asunto C-562/17, Nestrade, S.A.

Decimotercera Directiva 86/560/CEE — Principios de equivalencia y de efectividad — Empresa no establecida en la Unión Europea — Resolución previa y firme denegatoria de la devolución del IVA — Número erróneo de identificación a efectos del IVA.

Se cuestiona al TJUE si las disposiciones de la Decimotercera Directiva, sobre la devolución del IVA a entidades no establecidas en la UE, se oponen a que un Estado miembro limite en el tiempo la posibilidad de rectificar facturas erróneas, por ejemplo, mediante la rectificación del número de identificación a efectos del IVA inicialmente consignado en la factura, de cara a poder ejercer el derecho a la devolución del IVA.

Señala el Tribunal que, como ya ha venido reconociendo, es compatible con el Derecho de la Unión establecer plazos razonables para solicitar la devolución del IVA, de cara a salvaguardar la seguridad jurídica, que protege tanto al contribuyente como a la Administración afectados. En cualquier caso, concluye el TJUE que estos plazos no deberán hacer imposible en la práctica o excesivamente difícil el ejercicio de los derechos concedidos por el ordenamiento jurídico de la Unión.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 28 de febrero de 2019. Asunto C-278/18, Sequeira Mesquita.

Directiva 77/388/CEE — Exención — Artículo 13, B, letra b) — Arrendamiento de bienes inmuebles — Concepto — Contrato de cesión de la explotación agrícola de fincas rústicas constituidas por viñas.

Se interpela a que el TJUE dilucide si la exención del IVA relativa al arrendamiento de bienes inmuebles se aplica a un contrato de cesión de la explotación agrícola de fincas rústicas constituidas por viñas a una sociedad que desarrolla su actividad en el sector de la viticultura, siendo un contrato celebrado por plazo de un año, renovable automáticamente, y que tiene como contraprestación el pago de una renta al término de cada período anual.

Concluye el TJUE que sí resulta de aplicación dicha exención del IVA al citado contrato de cesión, que tenía por objeto los bienes inmuebles de que se trata y que además conllevaba la transferencia de determinados bienes y derechos incorporales, los cuales no pueden disociarse de la cesión de los bienes inmuebles, puesto que forman parte integrante de los mismos, constituyendo el contrato de cesión un negocio jurídico único, cuya prestación principal consiste en poner a disposición del cesionario los bienes inmuebles.

Además, recuerda el Tribunal que el contrato de cesión no se encuentra comprendido entre las excepciones a la aplicación de esta exención del IVA relativa al arrendamiento de bienes inmuebles.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 13 de marzo de 2019. Asunto C-647/17, Srf konsulterna.

Directiva 2006/112/CE — Artículo 53 — Prestaciones de servicios de acceso a manifestaciones educativas — Lugar de realización del hecho imponible.

Se pregunta al TJUE si los términos «servicios de acceso a manifestaciones» recogidos en el artículo 53 de la Directiva del IVA incluyen un servicio que consiste en una formación en contabilidad y gestión, de una duración de cinco días con uno de descanso, impartida únicamente a personas que son sujetos pasivos, la cual exige una inscripción y un pago previos.

De acuerdo con la jurisprudencia comunitaria, el Tribunal señala que constituye una operación única aquella en la que dos o varios elementos que el sujeto pasivo realiza se encuentran tan ligados que, objetivamente, forman una sola prestación económica indisociable cuyo desglose resultaría artificial. En este caso, el acceso a seminarios a

cambio de una contraprestación económica implica necesariamente la posibilidad de asistir y participar en ellos, por lo que se encontraría incluido en el concepto de "servicios de acceso a manifestaciones", entendiéndose localizados en el lugar en el que se accede al curso.

6. Tribunal de Justicia de la Unión Europea. Sentencia de 14 de marzo de 2019. Asunto C-449/17, A & G Fahrschul-Akademie.

Directiva 2006/112/CE — Artículo 132, apartado 1, letras i) y j) — Exención en favor de determinadas actividades de interés general — Enseñanza escolar o universitaria — Concepto — Clases de conducción impartidas por una autoescuela.

Se plantea al TJUE si el concepto de "enseñanza escolar o universitaria", recogido en la Directiva IVA, comprende la enseñanza de la conducción impartida por una autoescuela dirigida a la obtención de los permisos de conducción para vehículos de las categorías B y C1.

Responde de forma negativa el Tribunal, señalando que la enseñanza impartida en una autoescuela hace referencia a conocimientos prácticos y teóricos, siendo una enseñanza especializada y focalizada en la conducción. En este sentido y a juicio del TJUE, no se corresponde con la transmisión de conocimientos relativos a un conjunto amplio y diversificado de materias, ni a su profundización y a su desarrollo, características propias de la enseñanza escolar o universitaria.

7. Tribunal de Justicia de la Unión Europea. Sentencia de 27 de marzo de 2019. Asunto C-201/18, Mydibel.

Directiva 2006/112/CE — Armonización de las legislaciones fiscales — Deducción del impuesto soportado — Bien de inversión inmobiliario — Venta con arrendamiento posterior (sale and lease back) — Regularización de las deducciones del IVA — Principio de neutralidad del IVA — Principio de igualdad de trato.

Se cuestiona al TJUE si existe la obligación de regularizar el IVA que gravó la adquisición y las reformas un inmueble, y que inicialmente se ha deducido correctamente, cuando dicho bien ha sido objeto de una operación posterior de *sale and lease back* (venta con arrendamiento posterior) no sujeta al IVA, y si dicha obligación sería compatible con los principios de neutralidad e igualdad de trato.

Señala el Tribunal que, sin perjuicio de las comprobaciones que puedan realizar los tribunales, cada operación de *sale and lease back* constituye una operación única de naturaleza financiera. En este sentido, no pueden ser calificadas como entregas de bienes, ya que los derechos transferidos a las entidades destinatarias del derecho de enfiteusis

(propio de dichas operaciones de *sale and lease back*) no las facultan para disponer de los inmuebles con la misma capacidad que si fueran sus propietarias. Por tanto, no resulta obligatorio regularizar el IVA deducido, de acuerdo con los artículos 187 y 188 de la Directiva IVA. Por otro lado, en el caso de que existiese obligación de practicar dicha regularización, sería compatible con los principios de neutralidad del IVA y de igualdad de trato.

8. Tribunal de Justicia de la Unión Europea. Sentencia de 28 de marzo de 2019. Asunto C-275/18, Vinš.

Directiva 2006/112/CE — Artículo 131 y artículo 146, apartado 1, letra a) — Exención de las entregas de bienes expedidos o transportados fuera de la Unión Europea — Condición de exención prevista por el Derecho nacional — Inclusión de los bienes en un régimen aduanero determinado — Prueba de la inclusión en el régimen de exportación.

Se interpela a que el TJUE dilucide si el artículo 146, apartado 1, letra a), de la Directiva del IVA, en relación con el artículo 131 de la misma, se opone a que una disposición legal nacional supedite la exención del IVA para los bienes destinados a ser exportados fuera de la Unión al requisito de que esos bienes hayan sido incluidos en el régimen aduanero de exportación.

Señala el Tribunal que la imposición de dicha condición supondría supeditar el derecho a la exención al cumplimiento de obligaciones formales, sin examinar si efectivamente se han cumplido o no los requisitos materiales que establece el Derecho de la Unión. De esta manera, considera el TJUE que no respeta el principio de proporcionalidad exigir la inclusión de unos bienes en el régimen aduanero de exportación para poder conceder la exención del IVA, en la medida en la que consta que se han cumplido los requisitos materiales como la salida efectiva de la Unión.

9. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 12 de marzo de 2019, nº recurso 4636/2017.

Exenciones – interpretación artículo 20.Uno.19º de la Ley del IVA - máquinas recreativas de tipo B - contrato calificable como asociativo o de explotación conjunta.

En el presente supuesto, el TS estima recurso de casación interpuesto por la Administración General del Estado contra la sentencia TSJ Comunidad Valenciana, recaída en recurso sobre devolución de ingresos indebidos relativos al IVA, casándola y anulándola para en su lugar, desestimar el recurso contencioso-administrativo interpuesto por el contribuyente, contra los acuerdos del TEAR de la Comunidad

Valenciana que desestimaron unas solicitudes de rectificación de las autoliquidaciones, presentadas por establecimientos de hostelería que le repercutían al recurrente el IVA, como consecuencia de tener instalado en sus establecimientos máquinas recreativas de tipo B, de su propiedad.

En este sentido, el Abogado General del Estado plantea esta cuestión con interés casacional ante el TS, consistente en determinar si suscrito entre un empresario titular de un establecimiento hostelero y un empresario titular de máquinas recreativas tipo "B" un contrato calificable como asociativo o de explotación conjunta, existe o no una prestación de servicios del primero al segundo que está sujeta al IVA y que no puede considerarse exenta al amparo del artículo 20.Uno.19º de la Ley del IVA.

De este modo, una vez esgrimidos los correspondientes argumentos para considerar i) la existencia de una prestación de servicios por el establecimiento hostelero en favor del empresario titular de las referidas máquinas, sujeta al IVA y ii) la no aplicabilidad de la exención contenida en el artículo 20.Uno.19º de la Ley del IVA, mediante esta sentencia el TS fija el siguiente criterio interpretativo:

"Declarar que los artículos 20.Uno.19º de la LIVA , con relación al artículo 3 del Real Decreto-Ley 16/1977, de 25 de febrero , por el que se regulan los aspectos penales, administrativos y fiscales de los juegos de suerte, envite o azar y apuestas, y a los artículos 14 y 17.4 (actual artículo 17.5) de la LGT deben interpretarse, en el contexto descrito en este recurso, de la siguiente manera:

Con independencia de la calificación del contrato entre un empresario titular de un establecimiento hostelero y un empresario titular de máquinas recreativas tipo "B", el titular de máquinas recreativas tipo "B" realiza, por un lado, la actividad económica de juego, sujeta a IVA pero exenta por aplicación del artículo 20.Uno.19º de la LIVA y el titular del establecimiento hostelero realiza, por otro lado, una prestación de servicios sujeta a IVA (art. 4 y 11 LIVA), que junto a otras obligaciones anejas, consiste principalmente en la puesta a disposición de un espacio para la instalación de las máquinas a cambio de una contraprestación con independencia de que la retribución que perciba pueda variar en función de la recaudación que se obtenga de la máquina, prestación que no puede considerarse exenta al amparo del artículo 20.Uno.19º de la LIVA."

III. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V0017-19, de 3 de enero de 2019.

Tratamiento a efectos de IVA que debe darse a los reembolsos efectuados por la entidad consultante como concesión de mejoras económicas al Servicio de Salud correspondiente.

La consultante es una sociedad mercantil dedicada a la fabricación y venta de productos farmacéuticos de prescripción y productos sin receta. En la venta de alguno de dichos productos el precio es parcialmente satisfecho por el Servicio de Salud de una Comunidad Autónoma. De esta manera, en virtud de un acuerdo suscrito entre la consultante y el Servicio de Salud referido, en relación con los medicamentos suministrados por aquella y parte de cuyo precio de venta es sufragado por este último, la consultante se obliga a reembolsar al Servicio de Salud una parte del precio de venta de tales medicamentos en concepto de mejora económica.

A efectos de determinar el tratamiento a efectos de IVA de dichos reembolsos, la DGT se pronuncia en consonancia con lo enunciado en las sentencias de 24 de octubre de 1996, asunto C-317/94, Elida Gibbs, y en la de 15 de octubre de 2002, asunto C-427/98, Comisión contra Alemania, de 29 de mayo de 2001, Asunto C-86/99, Freemans, y de 16 de enero de 2003, Asunto C-398/99, Yorkshire Cooperatives, estableciendo las siguientes conclusiones:

- El ingreso a que se refiere el escrito de consulta se configura como un "rappel" de ventas, que se concede en atención al volumen de compras. En este caso, el cliente que disfruta del descuento por volumen de ventas a las industrias proveedoras de medicamentos es el Estado, como responsable del Servicio Nacional de Salud.

- La base imponible de la venta de medicamentos y/o productos sanitarios con receta por parte de las oficinas de farmacia estará determinada por la contraprestación total obtenida, conforme a lo dispuesto por el artículo 78.Uno de la Ley 37/1992, con independencia de que toda o parte de esa contraprestación sea satisfecha por un tercero, en este caso, el Estado.

- Dicha base imponible no debe ni puede ser minorada por el hecho de que el consumidor final (junto con el propio Estado que paga todo o parte de la contraprestación) satisfaga por dicha compra un importe menor al establecido por la oficina de farmacia con

carácter general, dado que dicha farmacia no está concediendo el descuento al consumidor final, sino que éste es concedido por las personas o entidades a que se refiere la disposición adicional sexta de la Ley 29/2006.

- El importe del descuento resultante de aplicar la controvertida disposición ha de entenderse con el IVA incluido.

- La sociedad consultante podrá minorar la base imponible de las entregas medicamentos y/o productos sanitarios afectados en el importe del descuento concedido, excluida la parte de dicho importe que se corresponde con la parte de la cuota del IVA que grava la venta efectuada por la oficina de farmacia al consumidor final. Dicha minoración habrá de documentarse a través de la expedición de una factura rectificativa.

Por último, la DGT indica que el descuento que una empresa farmacéutica concede, en virtud de una ley nacional, a una entidad del seguro privado de enfermedad en las condiciones señaladas, conlleva una reducción de la base imponible en favor de dicha empresa farmacéutica.

2. Dirección General de Tributos. Contestación nº V0019-19, de 3 de enero de 2019.

Procedimiento a seguir para la modificación de la base imponible del IVA como consecuencia del desistimiento de un procedimiento judicial iniciado como consecuencia de un impago.

La sociedad consultante modificó la base imponible de sus operaciones como consecuencia de un impago de su cliente. Posteriormente la consultante llega a un acuerdo de cobro con su cliente y desiste del procedimiento judicial iniciado.

En primer lugar, la DGT enuncia el artículo 80 en sus apartados cuatro y cinco de la Ley de IVA. En este sentido, apunta que del citado artículo se deduce que uno de los requisitos necesarios para considerar un crédito total o parcialmente incobrable a efectos de la reducción de la base imponible del Impuesto es que el sujeto pasivo (el acreedor) haya instado su cobro mediante reclamación judicial al deudor o, en su caso, mediante requerimiento notarial al mismo.

En línea con lo anterior, el párrafo segundo del apartado C) del apartado cuatro, del artículo 80, señala que en caso de desistimiento de dicha reclamación judicial por parte del sujeto pasivo o de alcanzarse un acuerdo de cobro tras el requerimiento notarial, se deberá modificar la base imponible nuevamente al alza.

De los hechos del escrito de consulta, este Centro directivo deduce que el consultante desistió del procedimiento judicial iniciado una vez obtuvo un acuerdo de cobro del crédito, de modo que se da el supuesto planteado en el párrafo anterior. En este sentido, para tal modificación al alza de la base imponible, el consultante deberá expedir en plazo de un mes a contar desde el desistimiento una factura rectificativa a través de la cual se repercuta la cuota procedente.

Por otro lado, este Centro trae a colación la consulta vinculante de 31 de mayo de 2010, número V1194-10, que establece que, en caso de un acuerdo transaccional en los términos previstos por la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, en los artículos 19 y 415, como acuerdo homologado judicialmente, determinará que no se procederá a la modificación al alza de la base imponible. De este modo, en caso de que se hubiera puesto fin al procedimiento en virtud de dicho acuerdo transaccional, no procederá modificar al alza la base imponible.

Por último, el artículo 24 del Reglamento del IVA regula el procedimiento a seguir en el caso de modificación de la base imponible por las causas del artículo 80. De esta manera, este precepto no contempla la obligación de comunicar a la Agencia Estatal de Administración Tributaria la modificación al alza de la base imponible en caso de acuerdo de cobro y desistimiento del procedimiento judicial, por lo que no será preceptiva la comunicación.

3. Dirección General de Tributos. Contestación nº V0026-19, de 3 de enero de 2019.

Tributación de la transmisión de la posición contractual de la consultante en cuanto al derecho de superficie a una tercera entidad, que se subrogaría en el contrato de arrendamiento, adquiriendo los derechos y obligaciones de aquella.

La entidad consultante es titular de un derecho real de superficie para la construcción, conservación y explotación, mediante alquiler, de un edificio destinado a ser la sede de una Administración Pública, propietaria del terreno.

Una vez construido el edificio, el mismo se arrienda a la referida Administración Pública, mediante la suscripción de un contrato de arrendamiento por el que la consultante, en su condición de arrendadora, se obliga al mantenimiento y conservación del edificio, pago del Impuesto sobre Bienes Inmuebles y del Impuesto sobre Actividades Económicas, así como a satisfacer el coste de los seguros vinculados al inmueble objeto de arrendamiento, entre otras obligaciones.

Del escrito de consulta resulta que el superficiario-arrendador (entidad consultante) va a ceder su derecho de superficie a otra entidad. Dicho derecho de superficie es comprensivo de diversos derechos y obligaciones sobre el inmueble, derechos que comprenden la percepción de la renta, pero que también obligan a pagar determinados gastos y cargas del inmueble (Impuesto sobre Bienes Inmuebles y el Impuesto sobre Actividades Económicas, así como el coste de los seguros vinculados al mismo), entre otras obligaciones.

En estas circunstancias, arguye la DGT que lo que la entidad consultante pretende transmitir no es sólo un derecho de crédito (derecho a percibir una renta), sino que es comprensivo de toda su posición jurídica, incluyendo los diversos derechos y obligaciones de la misma.

Es decir, la entidad adquirente del derecho de superficie no sólo recibe el derecho a cobrar el canon (renta arrendaticia) de la Administración Pública arrendataria, sino que se convierte en sujeto obligado al cumplimiento de todas las obligaciones del contrato de arrendamiento pactadas entre las partes, entre otras, el pago de las cargas del inmueble (Impuestos y seguros). No obsta a lo anterior el hecho que la arrendataria haya asumido las obligaciones de conservación y mantenimiento del edificio, circunstancia que se entiende que dio lugar a una minoración en la renta arrendaticia.

En estas condiciones, la DGT concluye que la transmisión del derecho de superficie implica la realización de una prestación de servicios que se encuentra sujeta y no exenta y por la misma se deberá repercutir el IVA al tipo general del 21 por ciento.

Dado que la entidad tercera adquirente se subrogará en la posición del superficiario (entidad consultante) en el contrato de derecho de superficie a que se refiere el escrito de consulta que debió repercutir el IVA con ocasión de la transmisión del edificio, realizando, por tanto, operaciones sujetas y no exentas del IVA, las cuotas soportadas por la adquisición de tal derecho de superficie serán deducibles por la adquirente con el cumplimiento del resto de los requisitos establecidos en el Título VIII de la LIVA.

4. Dirección General de Tributos. Contestación nº V0055-19, de 4 de enero de 2019.

Si los gastos de montaje y puesta a punto de una máquina forman parte del precio de adquisición de la máquina a efectos de su regulación como bien de inversión y deben ser objeto de regularización como bien de inversión.

La consultante ha comprado una máquina por valor de 50.000 euros y además existen unos gastos de montaje y puesta a punto de 2.000 y 2.500 euros que facturan otros proveedores.

Comienza la DGT indicando que, el tratamiento previsto en los artículos 107 a 110 de la LIVA en relación con la regularización de la deducción de las cuotas soportadas por la adquisición de bienes de inversión tiene como finalidad ajustar, en la medida de lo posible y por un procedimiento sencillo, la deducción de tales cuotas a la utilización efectiva que de dichos bienes se hace a lo largo de un determinado período de tiempo, dada su naturaleza de medios de producción o explotación destinados a ser utilizados por un período superior a un año.

Asimismo, señala la DGT que el artículo 108.Dos.5º de la LIVA excluye de la consideración de bien de inversión todos aquellos cuyo valor de adquisición sea inferior a 3.005,06 euros. No obstante lo anterior, dado que según la norma 2º del Plan General de Contabilidad, en el valor de adquisición deben incluirse todos los gastos necesarios para la puesta en condiciones de funcionamiento de la máquina, los gastos consultados que cumplan estos requisitos podrán formar parte del valor de adquisición del inmovilizado, y por tanto incrementarán el valor de la máquina, que excediendo el valor de 3.005,06 euros y siempre que se cumplan el resto de los requisitos previstos en el artículo 108 de la LIVA tendrá la consideración de bien de inversión y deberá ser objeto de regularización conforme a lo previsto en la normativa del IVA.

5. Dirección General de Tributos. Contestación nº V0056-19, de 4 de enero de 2019.

En la presente consulta, se plantea a la DGT que se pronuncie acerca del devengo del servicio de gestión en la recaudación de la compensación equitativa por copia privada, la base imponible de dicho servicio, así como la devolución de la compensación por copia privada.

La entidad consultante es una entidad privada sin ánimo de lucro, dedicada a la defensa y gestión colectiva de los derechos de autor de la propiedad intelectual, cuya misión consiste en recaudar derechos de la propiedad intelectual en nombre propio pero por cuenta de sus socios.

Uno de los derechos que gestiona y recauda la consultante es la denominada compensación equitativa por copia privada, cobrando a sus socios una cuantía por la gestión en la recaudación de la misma. Dicha cuantía no será conocida, en la mayoría de los casos, hasta que la entidad consultante reparta la compensación equitativa por copia privada a sus titulares.

Por otra parte, algunos de los destinatarios del servicio de gestión en la recaudación de la compensación equitativa por copia privada son bien titulares de derechos miembros de entidades de gestión españolas pero tienen residencia fiscal fuera de España y en otro país de la Unión

Europea o bien son titulares de derechos representados por entidades de gestión extranjeras con residencia fiscal en otro país de la Unión Europea.

Señala la DGT que a efectos de determinar el devengo de la prestación del servicio por parte de la entidad consultante consistente en la gestión en la recaudación de la compensación equitativa por copia privada, se estará al momento en que la misma efectúe el reparto de dicha compensación a sus titulares, salvo que se efectúen pagos anticipados por dicho servicio, en cuyo caso el devengo tendrá lugar en el momento en que materialmente la consultante perciba dicho pago, es decir, tenga lugar el cobro efectivo, con independencia de la contabilización del ingreso derivado de la prestación del mismo.

Según los hechos contenidos en el escrito de consulta, el importe de la cuantía a percibir por la entidad consultante por la prestación del servicio de gestión en la recaudación de la compensación equitativa por copia privada no es conocido, generalmente, hasta el momento en que tiene lugar su reparto a los titulares así como, tampoco, qué porcentaje de la misma constituye la base imponible del servicio sujeto al IVA, en la medida que parte de sus destinatarios, empresarios o profesionales, no se encuentran establecidos en España, lo que llevaría, en esos casos, a localizar el servicio fuera del TAI conforme a lo establecido en el artículo 69.Uno.1º de la LIVA.

En virtud de lo anterior, si en el momento en que deba fijarse la base imponible por haberse producido el devengo del IVA de acuerdo con el artículo 75 de la LIVA, aquella no fuera conocida con certeza por las circunstancias anteriormente señaladas, deberá determinarse dicha base imponible provisionalmente conforme a criterios fundados, procediendo posteriormente, cuando sea conocida, a rectificar su importe según lo previsto en los artículos 80.Seis y 89 de la LIVA. A estos efectos, se podrán tener en cuenta los datos reales históricos de ejercicios anteriores para la determinación provisional de la base imponible.

En relación con la cuestión relativa a la devolución de la compensación por copia privada en los casos legalmente previstos, la DGT trae a colación la consulta V0032-18 en la que distingue dos supuestos:

1) Cuando el adquirente en la cadena de distribución comercial de los equipos, aparatos o soportes materiales de reproducción sea alguno de los sujetos beneficiarios de la excepción de pago de la compensación equitativa de acuerdo con el artículo 25.7 del Texto Refundido la Ley de Propiedad Intelectual, el empresario o profesional que ha efectuado la venta o cesión de los equipos, aparatos o

soportes materiales de reproducción a uno de dichos sujetos sin incluir la compensación en la base imponible de su operación, podrá solicitar el reembolso del importe de la compensación a las entidades de gestión de derechos de propiedad intelectual, sin que la devolución por estas del importe de la compensación constituya operación alguna a efectos del IVA.

2) Cuando el adquirente en la cadena de distribución comercial de los equipos, aparatos o soportes materiales de reproducción sea alguno de los sujetos beneficiarios de la excepción de pago de la compensación equitativa de acuerdo con el artículo 25.7, pero no cuenten con la debida certificación, o bien sea alguna de las personas jurídicas o físicas a que se refiere el artículo 25.8 del Texto Refundido la Ley de Propiedad Intelectual, el empresario o profesional que ha efectuado la venta o cesión de los equipos, aparatos o soportes materiales de reproducción a uno de dichos sujetos, habrá repercutido al mismo el importe de la compensación equitativa.

   Este importe habrá formado parte de la base imponible de la operación sobre la que se aplicó la repercusión del IVA con ocasión de la entrega o la cesión del uso del bien. No obstante, en la medida en que el destinatario de la repercusión tiene derecho al reembolso de la compensación, procederá, en su caso, la rectificación de las cuotas del IVA repercutidas por la parte de base imponible que se corresponda con el importe de la compensación objeto de reembolso conforme al procedimiento previsto en el artículo 89 de la LIVA.

   Dicha rectificación de la repercusión del IVA deberá efectuarse por el empresario o profesional que efectuó la venta o cesión de los equipos, aparatos o soportes materiales de reproducción y en cuya base imponible incluyó el importe de la compensación equitativa por copia privada, procediendo a reintegrar al destinatario de la operación el importe de las cuotas repercutidas en exceso. Por su parte, las entidades de gestión de derechos de propiedad intelectual deberán, en su caso, proceder al reembolso a dicho destinatario del importe de la compensación.

6. Dirección General de Tributos. Contestación nº V0218-19, de 1 de febrero de 2019.

Accesoriedad – Entrega de libros – Tipo impositivo.

La entidad consultante se dedica a la venta de cursos de formación a distancia mediante la entrega de manuales y libros de estudio en formato físico. Adicionalmente, junto a la adquisición de los manuales y libros, los alumnos tienen la posibilidad de acceder de forma voluntaria

a una plataforma en línea donde poder visualizar videos tutoriales pregrabados y el acceso a un foro virtual con otros alumnos para compartir con ellos cuestiones y experiencia.

De acuerdo con el supuesto de hecho, el material necesario para el aprendizaje es el entregado en formato físico y los contenidos audiovisuales únicamente complementan o amplían las temáticas contenidas en los libros y manuales, cuyo contenido no está disponible en línea.

Por tanto, la DGT entiende que la operación principal en las condiciones señaladas, será la entrega de los libros y manuales sin que el acceso en línea a los contenidos audiovisuales y al foro para comunicarse con otros usuarios, parezca constituir un fin en sí mismo, distinto e independiente de la propia adquisición de los manuales y libros diseñados para el auto-aprendizaje de una materia.

Sobre la base de lo anterior, concluye la DGT que la entrega de los libros y manuales constituyen la prestación principal que tributa al tipo impositivo del 4 por ciento, constituyendo el acceso en línea una prestación accesoria de ésta, cuya tributación seguirá a la principal, es decir, aplicará el tipo impositivo del 4 por ciento.

7. Dirección General de Tributos. Contestación nº V0271-19, de 12 de febrero de 2019.

Exención del IVA – Operaciones financieras.

Una entidad de crédito presta a sus clientes servicios de asesoramiento en la inversión, así como servicios de recepción, transmisión y ejecución de órdenes relativas a inversión en instituciones de inversión colectiva.

En este sentido, la entidad consultante plantea si dichos servicios pueden considerarse independientes a efectos del IVA y cuál sería la tributación del servicio de asesoramiento y del servicio de recepción, transmisión y ejecución.

Para el estudio de esta consulta, la DGT expone las definiciones que se recogen tanto de los servicios de asesoramiento como de los servicios de la ejecución de órdenes por cuenta de clientes en la nueva normativa europea de Mercados De Instrumentos Financieros (MiFID II).

Adicionalmente, en aras de determinar si se trata de un único servicio al que correspondería el mismo tratamiento a efectos del IVA o, por el contrario, si se trata de dos prestaciones de servicios independientes, la DGT señala que una prestación debe ser considerada accesoria de una

prestación principal cuando no constituye para la clientela un fin en sí, sino el medio de disfrutar en las mejores condiciones del servicio principal del prestador.

En este sentido, la nueva normativa europea de MiFID II refuerza la idea de que se consideren como dos servicios independientes, en la medida que se perciba de forma clara el valor añadido que ese servicio de asesoramiento supone para el inversor. Igualmente debe ser percibido por el inversor como un servicio distinto del propio servicio de ejecución de órdenes, ya que añade valor sustantivo y propio como servicio diferenciado, pero no accesorio, de la propia contratación y ejecución de órdenes.

Finalmente, se entenderá que los servicios de asesoramiento de inversión, no están exentos del IVA, mientras que sí lo estarán los servicios de ejecución de acuerdo con el artículo 20.Uno.18º.k) de la Ley del IVA.

8. Dirección General de Tributos. Contestación nº V0274-19, de 12 de febrero de 2019.

Ausencia de expedición de factura - Posible inclusión de la cuota del IVA en el precio acordado entre las partes, en un contrato de compraventa.

La entidad consultante es una entidad mercantil que ha adquirido una licencia de comunicación audiovisual radiofónica a otra entidad mercantil. En el contrato de compraventa no se hacía referencia expresa a si la cuota del IVA correspondiente, se encontraba incluida en el precio pactado. Por dicha compraventa no se expidió factura, si bien el contrato de la misma fue intervenido por un funcionario público.

En esta contestación, la DGT recuerda que, en el ámbito privado, la posible inclusión de la cuota del IVA en el precio acordado entre las partes, es una *"circunstancia que deberá determinarse de acuerdo con los pactos acordados entre las partes"* (contestación vinculante, de 4 de julio de 2017, con número de referencia V1716-17).

De hecho, el artículo 78, apartado cuatro de la LIVA contiene una referencia a los supuestos en que no exista repercusión expresa, entendiéndose que la contraprestación no incluyó dichas cuotas, pero sin entrar a determinar si los pactos o contratos entre las partes incluyen o no el Impuesto correspondiente.

Asimismo, la DGT recuerda que para acreditar lo que hubieran pactado las partes habrá que atender a lo dispuesto en los artículos 105 (carga de la prueba) y 106 (normas sobre medios y valoración de la prueba) de la LGT.

Por último, la DGT concluye que el contrato de compraventa intervenido por funcionario público al que hace referencia el consultante no cumpliría los requisitos de contenido previstos en el artículo 6 del Reglamento por el que se regulan las obligaciones de facturación. Por ello, no tendría la consideración de documento justificativo a efectos de la deducción de las cuotas soportadas por el IVA, ni será suficiente para entender cumplida la obligación de facturación impuesta por el artículo 164.Uno.3º de la Ley del IVA.

9. Dirección General de Tributos. Contestación nº V0324-19, de 20 de febrero de 2019.

Sujeción IVA – Bonos polivalentes.

La Asociación consultante representa a los emisores de vales de comidas y otros servicios que son contratados por empresas pagando, además del importe facial del propio vale, una comisión. Los vales de comida pueden ser utilizados en diversos establecimientos de hostelería situados tanto en península como en las Islas Canarias, Ceuta y Melilla.

En esta contestación, la DGT analiza el tratamiento a efectos del IVA de estos bonos o vales de comida.

Para el estudio de esta consulta, la DGT trae a colación su resolución de 28 de diciembre de 2018 obre el tratamiento de los bonos en el Impuesto sobre el Valor Añadido (BOE de 28 de diciembre), aplicable a los bonos emitidos a partir del 1 de enero de 2019.

En particular, la mencionada resolución señala que tendrá la consideración de «bono polivalente» aquel bono que, en el momento de su emisión, no pueda conocerse la tributación a efectos del Impuesto de la entrega de bienes o la prestación de servicios subyacentes a que se refiere el bono.

En consecuencia, considerando que los vales de comida objeto de consulta reúnen las características propias de un bono polivalente cuyo emisor es un empresario o profesional distinto de aquél que va a prestar el servicio de hostelería, la tributación de su entrega a las empresas que contratan dichos vales con los emisores es como sigue:

- La transmisión del vale de comida por parte del emisor no tendrá la consideración de prestación de servicios de hostelería, operación que subyace en el propio bono.

- No obstante, dicha operación quedará grabada por el Impuesto sobre el Valor Añadido como prestación de servicios de distribución o promoción siempre que el emisor tenga su sede de

actividad o un establecimiento permanente que intervenga en la operación situado en el territorio de aplicación del Impuesto.

Si el servicio de promoción o distribución prestado por el emisor está sujeto al Impuesto sobre el Valor Añadido, su base imponible ascenderá a la diferencia entre el precio de venta de dichos vales y la cantidad que este se obliga a abonar al empresario o profesional que va a realizar la prestación del servicio de hostelería a cambio del vale de comida, Impuesto sobre el Valor Añadido incluido, en ambos casos.

Por su parte, el devengo correspondiente a la prestación de servicios de hostelería se producirá en el momento en que se presten materialmente tales servicios al tenedor del vale de comida que lo haya presentado para su canje.

10. Dirección General de Tributos. Contestación nº V0367-19, de 20 de febrero de 2019.

Exención del IVA - Mediación financiera.

La entidad consultante es una entidad de banca privada que presta a sus clientes servicios de asesoramiento puntual en la inversión. En esta contestación, la DGT analiza la consideración de dichos servicios como de intermediación financiera y, por tanto, la aplicación de la exención en el IVA en este tipo de servicios.

El Centro Directivo analiza el concepto de servicio de asesoramiento, de acuerdo con la nueva normativa europea de Mercados De Instrumentos Financieros (MiFID II) de cara a valorar el encaje de los servicios objeto de consulta en la exención prevista en la LIVA para los servicios de mediación en la venta de productos financieros.

En primer lugar, de conformidad con lo dispuesto en el artículo 20, apartado uno, número 18 de la LIVA, la DGT recuerda que estarán exentas, entre otras, las siguientes operaciones financieras: "m) La mediación en las operaciones exentas descritas en las letras anteriores de este número y en las operaciones de igual naturaleza no realizadas en el ejercicio de actividades empresariales o profesionales.".

En este sentido, tal y como se señala en el texto de la Directiva de MiFID II, la prestación de un servicio como el consultado, de asesoramiento puntual en la inversión, no puede considerarse como un servicio de mediación en la colocación de un producto financiero, sino que su naturaleza predominante es la de asesoramiento a un determinado cliente sobre la idoneidad de un determinado producto financiero.

En virtud de lo anterior, la DGT concluye que, los servicios de asesoramiento puntual de inversiones prestados por el consultante no están exentos del Impuesto sobre el Valor Añadido, quedando su prestación sujeta al tipo impositivo general del 21 por ciento.

IV. Country Summaries

Bahrain

Further guidance on VAT issued

Following the implementation of VAT in Bahrain as from 1 January 2019, the National Bureau for Revenue (NBR) (formerly the National Bureau for Taxation) has released additional guidance and clarifications to help businesses better understand the application of the VAT legislation, as follows:

- The NBR announced in February 2019 that nonresidents required to register for VAT may do so;

- The NBR announced (Arabic only) on 20 February 2019 that the Ministry of Finance and National Economy has signed a contract with a third-party provider to begin work on the Bahrain tourist refund scheme (TRS). The TRS would allow visitors to Bahrain to recover a percentage of the VAT paid on eligible purchases made in Bahrain, and is expected to be implemented in 2019;

- A VAT real estate guide issued in March 2019 provides an overview of the VAT treatment of the sale and lease of various types of real estate, including commercial and residential real estate, serviced accommodation, labor accommodation and real estate-related services. The sale or lease of commercial real estate is exempt from VAT in Bahrain (unlike in Saudi Arabia and the United Arab Emirates, where it is standard rated);

- The NBR has updated the taxpayer filing page (Arabic only) on its website with details of the filing, submission and payment process. A schedule of filing deadlines is provided with corresponding tax periods and annual supply thresholds, with separate sections for tax periods in 2019 and those in 2020 and thereafter. The NBR has advised that further details of how to submit VAT return forms to the NBR electronically will be provided nearer to the first filing deadline of 30 April 2019;

- Both the NBR and the National Health Regulatory Authority of Bahrain (NHRA) have indicated that the zero rate of VAT will apply to all registered medicines and approved health products; the NHRA has published a circular confirming this as from 1 January 2019. The NBR has updated its VAT Treatment and Policies website (Arabic only) with links to the NHRA's lists of registered medicine and approved health products under its listing of zero-rated healthcare goods; and

- The NBR has published the Arabic version of the list of food items that are zero-rated for VAT purposes. Businesses in the agriculture, wholesale, grocery and restaurant industries should ensure they comply with the VAT rules and carefully assess the appropriate VAT treatment of supplies according to the criteria in the list.

Canada

Federal carbon "backstop" may apply to provinces/territories

Pricing carbon is one of the strategies by which Canada plans to achieve a low-carbon economy. Provinces and territories that have not designed their own carbon pricing system or have put systems in place that do not meet the benchmarks set by the federal government will be subject to the federal "backstop" scheme from dates that vary depending on the province/territory (as described below). The *Greenhouse Gas Pollution Pricing Act, 2018* (Act) allows the federal government to designate any province or territory as a "listed province" and apply the backstop in that jurisdiction.

Backstop overview

The federal backstop imposes carbon pricing through two mechanisms:

I. **Fuel charge –** The Act would impose a fuel charge on fuels at the time of bringing or importing fuel into the listed provinces and on delivery or use of fuels in certain circumstances in the listed provinces or listed territories; and

II. **Output-based pricing system** – In addition to the fuel charge, the Act imposes an output-based pricing system (OBPS) for emissions-intensive industrial facilities (large emitters). The Minister of Environment is responsible for registering "covered facilities" under the Act and overseeing their reporting and compliance. The rules relating to large emitters came into effect as of January 1, 2019.

At this time, Ontario, New Brunswick, Manitoba and Saskatchewan (the "listed provinces") do not meet the federal benchmarks, and a fuel charge will apply in these provinces on or after April 1, 2019. Yukon and Nunavut have voluntarily chosen to apply the federal backstop in their territories and also are considered to be listed provinces for the purpose of the Act. The federal backstop will apply in these territories as of July 1, 2019. The OBPS for large emitters will apply in Prince Edward Island as of January 1, 2019, supplementing the provincial carbon pricing scheme.

This article summarizes some of the rules with respect to the fuel charge and will not cover the rules under the OBPS.

Fuel charge rates

The fuel rates are set for the period from 2019 to 2022 and will then be reviewed by the federal government. The applicable rates is CAD 20 per tonne of carbon dioxide (CO2) equivalent in 2019. The rates will increase by CAD 10 per tonne of CO2 equivalent annually to CAD 50 per tonne of CO2 equivalent in 2022. The fuel charge applies at the following rates to the selected types of fuel from 2019 to 2022:

Fuel	2019 (CAD 20/tonne CO_2e)	2020 (CAD 30/tonne CO_2e)	2021 (CAD 40/tonne CO_2e)	2222 (CAD 50/tonne CO_2e)
Gasoline	CAD 0.0422/L	CAD 0.0663/L	CAD 0.0884/L	CAD 0.1105/L
Light fuel oil	CAD 0.0537/L	CAD 0.0805/L	CAD 0.1073/L	CAD 0.1341/L
Natural gas (marketable)	CAD 0.0391/m^3	CAD 0.0587/m^3	CAD 0.0783/m^3	CAD 0.0979/m^3
Propane	CAD 0.0310/L	CAD 0.0464/L	CAD 0.0619/L	CAD 0.0774/L
Coal (high heat value)	CAD 45.03/tonne	CAD 67.55/tonne	CAD 90.07/tonne	CAD 112.58/tonne
Coal (low heat value)	CAD 35.35/tonne	CAD 53.17/tonne	CAD 70.90/tonne	CAD 88.62/tonne

Application of the fuel charge

Generally, the fuel charge will apply to fuel imported into, brought into, or delivered in a listed province. "Delivery" of fuel under the Act includes circumstances in which fuel is "made available" to the recipient but may not have been physically delivered.

There are certain exceptions to this rule, including the following (selected listing):

- Registered distributors under the Act do not pay the fuel charge for bringing fuel or importing fuel into a listed province. This exception would only apply to the type of fuel for which the person is a registered distributor; however, a distributor will be required to pay the fuel charge if it uses the fuel;
- The fuel charge does not apply to fuel in a sealed container prepackaged in a factory, provided the volume is 10 litres or less; and
- The fuel charge generally does not apply to fuel brought into or imported into a listed province in a supply tank of the vehicle for use in the operation of the vehicle or an auxiliary of the equipment by registered carriers.

There are special rules applicable to certain types of transportation companies, which may allow qualifying inter-jurisdictional transportation companies to acquire the fuel exempt from the fuel charge. The fuel charge would generally be payable by these entities on trips within a listed jurisdiction. While Yukon and Nunavut territories are listed provinces for the purposes of the Act, the fuel charge does not apply to aviation fuels in these territories.

Notable exemptions

The fuel charge does not apply where fuel is delivered by a registered distributor in listed provinces in some circumstances, including fuel delivered to the following persons:

- A registered distributor;
- A registered specified air carrier, a registered specified marine carrier or a registered specified rail carrier;
- A registered emitter under OBPS;
- A farmer only in the case of qualifying fuel;
- A registered user (for example, the person uses the fuel as a raw material in an industrial process that produces another fuel, another substance or material, or as a solvent or diluent in the production or transport of bitumen or another substance, and there is no combustion);
- A person that acquires the fuel in accordance with the *Ships' Stores Regulations*, designated as ships' store for use on board a conveyance of a class under those regulations; and
- A fisher in specific circumstances.

In most cases, the person claiming an exemption should provide an exemption certificate to its supplier, although there are some exceptions to this requirement.

Any fuel diverted from an exempt use to a non-exempt use generally will be subject to the fuel charge.

Registration

There are a number of mandatory and optional registration requirements under the Act. Some examples include registration as a distributor, registration as an emitter, importer or user of fuel, and registration as a type of carrier.

The scope of mandatory registration as a registered distributor of natural gas is relatively broad. The person will be required to register as a registered distributor in respect of natural gas if the person:

- Produces marketable and non-marketable natural gas in a listed province;
- Imports or brings marketable and non-marketable natural gas into a listed province;
- Delivers marketable or non-marketable natural gas in a listed province; and

- The person measures another person’s consumption of marketable natural gas on a regular basis to invoice the person in the distribution system (i.e., the natural gas distributor).

Based on the current wording of the Act, natural gas traders must register as a distributor if the trade takes place at a trading hub in a listed province. The existing wording of the legislation does not permit nonresident traders acquiring natural gas in Canada for export to register to purchase gas exempt. This is in contrast to the carbon levy regimes in British Columbia and Alberta that do not require natural gas traders to register for the provincial carbon levy.

For other types of fuel (i.e., anything other than marketable or non-marketable natural gas), persons producing fuel in a listed province are currently required to register. However, the Act permits a person to register if they deliver fuel to one or more of the following persons:

- Another person for the purpose of resale;
- A registered distributor in respect of the type of fuel for which the registered distributor is registered;
- A farmer if the fuel is qualifying;
- A fisher if the fuel is qualifying;
- A registered specified air carrier, registered specified marine carrier or a registered specified rail carrier;
- A person who operates a facility that is covered by OBPS;
- A registered user (for example, the person uses the fuel as a raw material in an industrial process that produces another fuel, another substance or material, or as a solvent or diluent in the production or transport of bitumen or another substance, and there is no combustion); and
- Another person if the fuel is, in accordance with the *Ships’ Stores Regulations*, designated as ships’ stores for use on board of a conveyance as prescribed by those regulations.

Rebates

The Act provides a number of rebate provisions. Some examples include the following:

- Fuel removed from a listed province by a registered user, registered importer, registered air carrier, registered marine carrier or a registered rail carrier in certain circumstances in which the charge became payable;

- Fuel brought by a registered emitter for use in a facility that is covered by OBPS, and the fuel charge had become payable at the time of import or bringing into the listed province or certain other circumstances in which the charge became payable;
- Fuel brought by a registered user for use in a facility to be used as a raw material in an industrial process that produces another fuel, another substance or material, or as a solvent or diluent in the production or transport of bitumen or another substance, and the fuel charge had become payable at the time of import or bringing into the listed province or other circumstances in which the charge became payable; or
- The person pays the fuel charge in error.

Assessments and appeals

The standard assessment period under the Act for the fuel charge generally is four years. The Act also provides for filing a Notice of Objection to appeal an assessment to the Minister or appealing the decision of the Minister to the Tax Court.

Other incentives and rebates

To compensate for the increased cost of energy, the federal government intends to provide relief for farmers, fishers, and targeted relief programs. These targeted relief programs would include providing relief for residents of rural and small communities, greenhouse operators, power plants that generate electricity for remote communities, users of aviation fuels in Nunavut and Yukon Territories, and indigenous peoples.

Some considerations going forward

Businesses should prepare their systems to account for the fuel charge on fuel sold in listed in provinces. It is important to ensure that the fuel charge is remitted at the correct rate and for the correct volume of fuel sold in or brought into a listed province. Businesses also should keep track of the fuel that is moved from one province to another province, especially in circumstances in which the fuel charge should be remitted.

Businesses selling fuel should impose standard operating procedures in place to obtain exemption certificates from their customers that claim an exemption and that are required to provide their fuel sellers with the exemption certificate. Failure to obtain the correct certificate from customers claiming an exemption may result in a liability for the fuel charge on the type of fuel sold.

Outstanding questions

There are some outstanding concerns about how the Act will apply to certain industries. One key concern relates to nonresident natural gas traders. The natural

gas traders that only purchase natural gas in Canada for resale outside Canada (i.e. in the US) are not eligible to register as a registered distributor of natural gas. In addition, there is no clear exemption for entities purchasing natural gas for export purposes. Thus, natural gas traders selling natural gas to nonresident exporters of natural gas currently are required to charge the fuel charge on the trade. This would significantly increase the cost of doing business in Canada by nonresident natural gas traders. The Department of Finance and the Canada Revenue Agency (CRA) are aware of this issue, and natural traders are hoping that more information addressing this issue will be released prior to April 2019 to address this issue.

We also note that joint ventures currently face considerable compliance burdens under the Act. The Act defines a person to include a joint venture. This would require the fuel charge compliance to be done at the joint venture level as opposed to at the operator level. For GST/HST and under consumption taxes, generally the compliance for a joint venture is done at the operator level. In the natural resource sector, joint ventures are a commonly-used business structure. It would be administratively impractical to require a separate registration and separate returns to be filed for each joint venture given the number of joint ventures in the natural resource industry. The Department of Finance and the CRA are aware of the issue, and more information will likely be released on this issue soon.

In many industries, there generally is a one-month timing difference between when goods are delivered and sold and when the sale is recognized for accounting purposes. This may result in a gap between the month in which fuel is delivered and the month in which the fuel charge can be reported. The CRA is aware of this timing difference but it has not provided clear guidelines regarding how to address this issue.

China

VAT rates to be reduced as from 1 April 2019

Further to Premier Li Keqiang's announcement in the government work report presentation to reduce value added tax (VAT) rates on 5 March 2019, a press release of the State Council's executive meeting on 20 March provides additional details about the package of VAT policy changes. The changes, which were confirmed in circulars (notably Bulletin 39, the key circular) published by the tax authorities on 21 March, apply as from 1 April 2019.

VAT rates reduction

With effect from 1 April, the VAT rates for VAT taxable supplies and import of goods for general VAT payers will be reduced from 16% to 13% and 10% to 9%, respectively. The 6% VAT rate will remain unchanged (see table).

	VAT rate	
	Before	After
Sales and imports of general goods; provision of processing, repair and replacement services; and provision of leasing services of tangible and movable assets	16%	13%
Sales and imports of specified goods; provision of transportation, postal, basic telecom services, construction services and leasing services of immovable property and sales of land use rights or immovable property	10%	9%
Provision of value-added telecom services, financial services, modern services and lifestyle services; and sales of intangible assets other than land use rights	6%	6%

For a transaction whose original VAT invoice had been issued by a general VAT payer at the 16% or 10% VAT rate before 1 April, if the taxpayer has to issue a "red-letter" VAT invoice (which functions as an amendment to the original invoice to reduce the sales price and VAT amount) after 1 April for that transaction because the relevant goods were returned or an allowance was granted or the original invoice was incorrectly issued, the red-letter VAT invoice must be issued at the original 16% or 10% VAT rate.

If no VAT invoice has been issued for a taxable sale before 1 April and a general VAT payer wishes to issue a VAT invoice after 1 April 2019 for that transaction, the invoice must be issued at the old VAT rate (i.e. 16% or 10%).

Comments

The reduction of the VAT rates aims to further ease the tax burden of businesses and consumers. Considering that the VAT and goods and services tax rates of China's neighboring countries generally are lower than 12%, the rate reduction will reduce the tax rate gap between China and other countries and help to enhance the competitiveness of Chinese businesses.

Given the limited time to prepare for the changes, affected businesses should consider acting immediately to:

- Assess the impact of the rate reductions on the business operations and consider whether prices need to be re-negotiated and the timing of transactions adjusted. Where the VAT-inclusive price remains unchanged, a seller may tend to defer the sale until after the rate reduction to apply the reduced VAT rate; on the contrary, a buyer generally would prefer to carry out a transaction before the rate reduction in order to obtain more input VAT. Businesses may need to consider how to balance the need to maintain pricing competitiveness and enjoy the benefits of the VAT rate reductions.

- Adapt internal systems and arrange the transition for invoice management and VAT filing/calculation to ensure that the relevant documents (including orders, invoices and accounting book) can support the rate changes and contact the competent tax authorities and suppliers of invoicing machines to resolve any practical issues arising from the rate reductions.

Increasing input VAT credit

Passenger transportation services

Under current rules, input VAT associated with the purchase of passenger transportation services is not creditable. This restriction will be removed on 1 April.

Bulletin 39 provides that the following documents may be used to support an input VAT credit arising from the purchase of passenger transportation services:

- VAT special invoices or VAT electronic general invoices issued by transportation service providers, where the creditable input VAT is indicated on the invoice; and

- Qualifying tickets (i.e. itinerary/e-ticket receipt for air transportation, railways/highways/waterway tickets) indicating the passengers' identity on the ticket, where the creditable input VAT would be calculated based on the ticket price and the relevant VAT rates (or VAT collection rates).

Immovable property

For immovable property acquired after 1 May 2016 and treated as fixed assets in financial books or construction work in progress acquired after 1 May 2016, the associated input VAT currently may be credited against the output VAT over a period of two years, i.e. 60% of the input VAT is creditable in the first year and the remaining 40% is creditable in the second year.

"Super credit" of VAT

A qualifying general VAT payer will be granted a "super credit" of VAT for the period 1 April 2019 through 31 December 2021. The super credit, which will be computed as 10% of creditable input VAT, may be used to offset VAT payables. In other words, an additional 10% credit will be granted in addition to the creditable input VAT.

Applicants - The super credit policy applies to general VAT payers that mainly are engaged in providing postal services, telecommunication services, modern services and lifestyle services. An applicant must file a declaration to confirm that its sales from the above service activities accounts more than 50% of total sales (i.e. the "50% sales test") before the applicant can enjoy the credit for the first time in a year.

When applying the 50% sales test to determine whether a taxpayer is eligible for the super credit, (i) the sales percentage for the period April 2018 through March 2019 will be used if the taxpayer was established on or before 31 March; and (ii) the sales percentage for the first three months will be used if the taxpayer is established on or after 1 April.

A taxpayer that meets the test in (i) can enjoy the credit as from 1 April 2019. A taxpayer that meets the test in (ii) can enjoy the credit from the date the taxpayer is registered as a general VAT payer.

After the taxpayer meets the 50% sales test and files the declaration, the taxpayer will be allowed to enjoy the credit until the end of that year. The sales percentage for that year will be used to determine whether the taxpayer continues to be eligible for the super credit for the next year.

Computation - The accrual of the super credit is computed as follows:

Super credit to be accrued for the current period = Creditable input VAT of the current period x 10%

- If the VAT payable is zero for the current period, the super credit accrued for the current period may be carried forward to the next period. However, any unutilized super credit cannot be used to offset against VAT payables after the expiration of the policy (i.e. 31 December 2021).

- Where input VAT may not be credited against output VAT, the super credit will not be available. Where the input VAT has been credited against output VAT but subsequently becomes uncreditable, the accrual of the super credit must be reversed.

- No corresponding accrual of the super credit is allowed for input VAT arising from the purchase of goods and services for export business purposes. If a taxpayer is engaged in both export and domestic sales, the taxpayer must separately account for the input VAT for which an accrual of the super credit is not allowed. If no separate accounting is provided, the taxpayer may have to apportion the total input VAT according to the ratio of exports to total sales.

Comments

In addition to the VAT rate reductions, an adjustment to input VAT credit policies is another important tax tool for the government. The measures to increase the input VAT credit aim to ensure that the VAT burden on all business sectors is reduced, especially the service sector in which most taxpayers' VAT rates will remain unchanged after 1 April.

A group with multiple manufacturing subsidiaries but where each also has a relatively small portion of the service business may wish to consider restructuring to centralize the service business to a member entity to have it qualify for the super credit.

Companies that wish to enjoy the 10% super credits should update their accounting systems and compliance procedures in relation to the input VAT management to avoid over-/under-accrual of super credits.

Affected businesses also should consider whether to adjust their business arrangements to ensure the super credits are fully utilized before 31 December 2021.

Refund of input VAT

A new pilot program will be launched on 1 April to allow qualifying general VAT payers to claim a partial refund of unutilized input VAT (i.e. the portion of creditable input VAT in excess of output VAT). Under the current rules, the unutilized input VAT normally cannot be refunded, and only may be carried forward to offset against future output VAT.

Qualifying taxpayers

To be eligible for the input VAT refund, a taxpayer must meet all the following requirements:

- Starting from the VAT assessment period of April 2019, the newly increased unutilized input VAT has been greater than zero for six consecutive months (or two consecutive quarters if the taxpayer's VAT is assessed on a quarterly basis), and the amount of newly increased unutilized input VAT at the end of the sixth month (or the second quarter) is RMB 500,000 or more. The "newly increased unutilized input VAT" is computed by comparing the unutilized input VAT at the end of an assessment period against that on 31 March 2019;

- The taxpayer has a tax compliance rating of A or B;

- There are no records of tax fraud or noncompliance in relation to the issuance of VAT special invoices, export VAT refunds, etc. for the taxpayer for the 36-month period before the input VAT refund application;

- The taxpayer has not been subject to two or more penalties by the tax authorities due to tax evasion within the 36-month before the input VAT refund application; and

- The taxpayer has not enjoyed certain industry-specific VAT preferential (refund) policies (e.g. refund of VAT for qualifying software products if the VAT burden is greater than 3%) since 1 April 2019.

Computation of refund

Refundable amount of newly increased unutilized input VAT for the current period = Newly increased unutilized input VAT x input VAT component ratio x 60%

The "input VAT component ratio" refers to the percentage of creditable input VAT supported by VAT special invoices (including unified invoices for sales of motor vehicles), customs import VAT certificates and withholding tax clearance certificates, to the total creditable input VAT, for the period 1 April 2019 through the tax assessment period preceding the refund application.

Other

Exporters that are entitled to an export VAT refund under the "Exempt, Credit and Refund" method (notably where a manufacturer exports its products) may enjoy the refund of unutilized input VAT under the pilot program if they meet the relevant requirements.

However, exporters that are entitled to an export VAT refund under the "Exempt and Refund" method (notably where a trading company exports the goods it purchased from domestic suppliers) are not allowed to claim a refund of unutilized input VAT under the pilot program.

Comments

Unlike some countries that allow a refund of unutilized input VAT, the current Chinese VAT rules generally do not allow such a refund; instead, the unutilized input VAT may be carried forward to offset future output VAT. This system has the potential to create cash flow issues for enterprises, especially those with large initial capital investments and long construction cycles. In recent years, the Chinese government has expedited the studies and pilots regarding the refund of unutilized input VAT in specific industries; for example, a one-time refund of unutilized input VAT was granted for various industries throughout the country in 2018. The new pilot program is expanded to cover all industries.

Businesses that intend to apply for an input VAT refund should consider taking the following actions:

- Conduct a self-assessment on an entity basis to examine whether the calculation of input VAT is correct and whether the taxpayer is eligible for the refund, and evaluate the potential costs and benefits of applying for the refund;
- Improve internal control systems to ensure the correct computation of input VAT and that all compliance obligations are fulfilled, so that the taxpayer would not be disqualified for the refund due to noncompliance records; and
- Communicate with the tax authorities to understand the application procedure and apply for the refunds in a timely manner.

Miscellaneous

Export VAT refund rates

The export VAT refund rates will be as follows as from 1 April:

- 13% for goods and services that currently are subject to a 16% VAT rate and a 16% export VAT refund rate; and
- 9% for goods and services that currently are subject to a 10% VAT rate and a 10% export VAT refund rate.

Similar to the previous rounds of adjustments to the export VAT refund rates, a three-month transition period is granted. For exports before 30 June 2019:

- Where the exporter is entitled to an export VAT refund under the "Exempt and Refund" method (notably trading companies), the 16%/10% export VAT refund rate will apply if the goods or services were subject to a 16%/10% VAT rate when they were purchased by the exporter; the 13%/9% export VAT refund rate will apply if the goods or services were subject to a 13%/9% VAT rate when they were purchased by the exporter.
- Where the exporter is entitled to an export VAT refund under the "Exempt, Credit and Refund" method (notably manufacturing companies), the 16%/10% export VAT refund rate will apply.

Comments

Exporters that are trading enterprises should try to avoid a situation where goods were purchased with a higher VAT rate but then exported with a lower export VAT refund rate. Thus, if the goods were purchased when a 16%/10% VAT rate applied, the enterprise should try to export the goods by the end of the transition period. If the trading enterprise does not expect the goods to be exported by the end of the transition period, it should consider arranging the purchase to take place after 1 April 2019. Exporters that are manufacturing enterprises may wish to export as many products as possible before the end of transition period to enjoy a higher export VAT refund rate.

Input VAT calculation rate for agricultural products

As from 1 April, the input VAT calculation rate for a general VAT payer that purchases agricultural products will generally be reduced from 10% to 9%. However, if the taxpayer purchases agricultural products for further producing into products subject to a 13% VAT rate, the input VAT calculation rate should be 10%.

VAT refund rates for goods purchased by overseas tourists ("purchased goods")

As from 1 April, the VAT refund rate for purchased goods will be 11% if the goods are subject to a 13% VAT rate; the refund rate will be 8% if the goods are subject to a 9% VAT rate. A three-month transition period is granted until 30 June 2019 during which the old VAT refund rate is used if the goods were subject to a 16%/10% VAT rate when they were purchased.

Conclusion

As mentioned by Premier Li Keqiang in his presentation of the government work report, the package of VAT policies aims to reduce the VAT burden of enterprises and consumers. Affected businesses should take immediate action to prepare for the implementation by improving internal control systems and VAT management, assess the business impacts and consider possible adjustments to business arrangements.

It is worth noting that the government has indicated that the three VAT rate bands (i.e., 6%, 9% and 13%) after this round of reductions will be further streamlined to two bands in the future. Potentially affected businesses should continue to monitor developments.

We anticipate that the government will continue to issue more guidance about the new VAT policies in the near future. Enterprises should continue to monitor regulatory and practice developments and seek professional assistance where necessary.

European Union

Effect of no-deal Brexit on UK-registered EORI numbers

Should the UK leave the EU on 29 March 2019 without any agreement with the bloc on the future UK-EU relationship ("no-deal Brexit"), UK-registered Economic Operators Registration and Identification (EORI) numbers would become invalid in the remaining EU member states. Only after Brexit may a "new" EU EORI number be granted to companies that currently hold an EORI number that is obtained/registered in the UK.

Introduction

An EORI number enables all agencies of EU member states to identify economic operators in the same manner in terms of EU customs legislation. Economic operators are obliged to use an EORI number when conducting customs activities in the EU. It is not possible to acquire multiple EORI numbers for one entity at the same time. The first EORI number obtained must be used across the entire EU.

Brexit

When the UK leaves the EU, the EORI numbers registered in the UK will no longer be considered as obtained/registered in an EU member state. As a result, where companies also are importing/exporting from one of the remaining 27 EU member states (EU27 member state), they should file requests for "new" EORI numbers in an EU27 member state. Similarly, companies with EORI numbers registered in an EU27 member state that also import/export from the UK will need a "new" UK EORI in a no-deal Brexit scenario.

Since it is not possible to have multiple EORI numbers at the same time, a new EU EORI number cannot yet be granted since the UK is still an EU member state. This means that only after Brexit may a new EU EORI number be granted to companies that currently hold an EORI number that is obtained/registered in the UK. The likelihood that EORI number applications will increase immediately after Brexit is high and may take more time than normal to obtain from the customs authorities. In the meantime, the process of filing customs declarations could be disrupted, which could result in a delay of trade activities.

Approach going forward

EU customs authorities may be willing to adopt a practical approach to deal with potential issues regarding the EORI number application process and the impossibility of acquiring multiple EORI numbers at the same time. The approach is likely to vary between member states.

For example, the Dutch customs authorities recently have taken a practical approach, allowing the filing of a new EORI number application ahead of Brexit to allow the authorities to make the required preparations in advance. The applications will be documented and put on hold, and approved only in the event of a no-deal Brexit. In this case, the EORI number application will be registered and the new number will be released by the customs authorities within a short time following the UK's exit from the EU.

In the UK, the customs authorities (HMRC) recently have indicated that, for a temporary period (in a no-deal scenario), they will continue to recognize existing EU EORI numbers.

Companies that are concerned about their UK/EU EORI numbers and the continuation of trade activities as a result of a possible no-deal Brexit should act promptly.

European Union

ECOFIN agrees implementing rules on VAT regime for ecommerce

At a meeting held on 12 March 2019, EU finance ministers agreed on two proposals published by the European Commission on 11 December 2018, namely, a proposal to amend the VAT directive and Implementing Regulation 282/2011. The aim is to ensure a smooth transition to the new VAT rules for e-commerce that will become effective on 1 January 2021.

From 2021, large online marketplaces will become responsible for ensuring that VAT is collected on sales of goods by non-EU companies to EU consumers taking place on their platforms. The proposals clarify the situations in which online platforms would be considered to have facilitated a supply, and detail the records they would have to keep on sales made via their interface.

The European Commission welcomed the annoucement and indicated that although final adoption of the new rules requires the consultative opinion of the European Parliament, member states can rely on the rules as adopted by the finance ministers to start extending their IT systems.

United Kingdom

Brexit: Announcements on UK tariffs, Irish border controls in event of “no deal"

UK tariff schedule announcement

The government has announced a temporary import tariff schedule that will apply if the UK were to leave the EU without a deal on 29 March 2019. The “day one tariff” will reduce the duty rate to nil on 87% of goods imported into the UK by value. The 0% duty rate will apply to all applicable goods imported into the UK, and not just those imported from the EU. The products retaining tariffs in a no-deal scenario include: agricultural products (beef, lamb, pork, poultry, sugar, cheese, cocoa and some dairy products); automotives; advanced ceramics and fine chinaware; rum; and textiles. For those products entering the UK from countries that benefit from either "rolled-over" EU trade agreements or a preferential scheme (i.e. Generalised System of Preferences) then alternative tariff arrangements will take precedence. The UK will continue to apply certain trade remedy measures to counteract dumping, trade-distorting subsidies and unforeseen surges in imports. The tariff schedule will be temporary, lasting 12 months, while the government commits to a full consultation and review during that period.

Northern Irish/Irish border

The government also has announced a unilateral, temporary approach to checks, processes and tariffs in Northern Ireland if the UK were to leave the EU without a

deal on 29 March 2019. The announcement explains that it would not introduce any new checks or controls on goods at the land border between Ireland and Northern Ireland, including no customs requirements for nearly all goods. However, goods arriving from Ireland still would be subject to the appropriate excise duty (businesses currently registered on the EU excise system would be expected to register on the UK equivalent system), and VAT requirements would continue to apply. Only a small number of customs controls would apply to ensure the UK complies with international legal obligations, requiring importers and exporters of a very limited set of goods declaring trade with the EU.

Other news

Austria

VAT treatment of roaming services provided by foreign telecom companies

The Austrian tax authorities recently started issuing VAT assessments and initiating VAT audits of foreign telecommunications providers based on a November 2018 decision of the Supreme Administrative Court. The court had ruled that the domestic place of supply rule as it applied to telecommunications services was in line with Austrian statutory law and EU law, meaning that foreign telecommunications providers were subject to Austrian VAT under certain circumstances.

When customers of foreign telecommunications providers use their phones or tablets in Austria, two services are provided simultaneously from a VAT perspective. First, an Austrian telecommunications provider operating the mobile network provides a telecommunications (roaming) service to the foreign (non-EU) telecommunications provider. At the same time, the foreign telecommunications provider supplies a service to its (non-EU) customer. Until recently, it was unclear whether either—or both—of these services were subject to VAT in Austria.

Based on article 59(1) of the EU Council Directive 2006/112/EU (VAT), Austria implemented a regulation shifting the place of supply for certain telecommunications services to Austria if the service is used in Austria ("use and enjoyment rule"), even if the customer is established or has its seat in a non-EU country. However, due to various contradictory decisions issued by various Austrian courts, it was unclear if and to what extent the regulation was in line with Austrian and EU VAT law and, consequently, if and to what extent it was applicable.

In November 2018, the Austrian Supreme Administrative Court concluded that the regulation was in line with both national and EU law. Therefore, both services mentioned above are taxable in Austria, resulting in input VAT incurred and VAT payable by foreign telecommunications providers.

It is currently unclear whether the regulation also applies in cases where a comparable tax exists in the foreign country. The Austrian tax authorities apparently are not making a distinction in this regard or at least are shifting the burden of proof to the taxpayer to demonstrate that there is a comparable tax.

The Austrian tax authorities have started to act on the Supreme Administrative Court decision by issuing VAT assessments and initiating VAT audits for foreign telecommunications providers, thus opening the door for potential future financial criminal proceedings against the affected companies, their representatives and employees.

Thus far, the Austrian tax authorities seem to have focused on foreign telecommunications providers that filed input VAT refund claims in Austria in the past and they have obtained complete lists of those that have received roaming services from Austrian telecommunications providers.

Potentially affected companies should register for VAT purposes in Austria and start filing VAT returns for current and previous periods (unless time-barred). At the same time, a voluntary self-disclosure within the meaning of section 29 of the Austrian Financial Criminal Act should be filed with the Austrian tax authorities investigating the company to mitigate the risk of potential fiscal criminal proceedings.

Bahrain

NBR reveals VAT return format

The Bahrain National Bureau for Revenue (NBR) has revealed the format of the Bahrain Value Added Tax (VAT) return in a closed meeting with VAT consultants.

While broadly similar to the format of the VAT return in the Kingdom of Saudi Arabia, the key differences are as follows:

- The VAT return includes the field for supplies to registered customers in other GCC countries which will temporarily be deactivated, until the intra-GCC rules take effect;
- The field for the supplies subject to domestic reverse charge mechanism was added;
- Import of goods subject to VAT paid at customs or deferred will be reported in the same field, which it is advised will auto-populate, based on whether the taxpayer has approval to defer the payment of import VAT; and
- In addition to zero-rated and exempt purchases, purchases from nonregistered taxpayers also must be reported. This is a slightly unusual requirement insofar as VAT regimes go, but given the profile of the Bahrain market, it is seemingly there to help the NBR to monitor compliance amongst smaller businesses.

The VAT return format is expected to be formally released soon, along with guides on VAT returns/payments and nonresident registration.

Bahrain

NBR publishes imports and exports VAT guide

The Bahrain National Bureau for Revenue (NBR) in February has published the first edition of its Value Added Tax (VAT) guide on imports and exports. The guide addresses the applicability of VAT on the import and export of goods and services into/from Bahrain.

Although not legally binding, the guide is important as it provides some insights into the likely approach of the NBR on the VAT treatment, place of supply, liability for payment, VAT recovery, and documentation requirements that any business importing into/exporting from Bahrain is subject to.

The guide broadly sets out the following:

Imports of goods

Imports of goods will be:

- Standard rated in most cases;
- Zero-rated, if the supply would be zero-rated locally;
- Exempt in the following cases:
  - The supply would be exempt if supplied locally;
  - Import of necessities and equipment for persons with special needs, where the importer possesses the required import licences;
  - Goods exempt from customs duties as per the Customs Law under certain specific exemptions; or
  - Import of personal baggage and used household appliances, under certain conditions;
- The importer of record for customs purposes is liable to pay the VAT on the importation of the goods; or
- Import VAT can be recovered as input tax in the tax period during which the importation took place, on the basis that import VAT was paid to Bahrain Customs Affairs, and all conditions for input tax recovery have been met.

Exports of goods

Exports of goods will be:

- Zero-rated if all the following conditions are fulfilled:
  - The goods are shipped from Bahrain to outside the implementing states* within 90 days from the date of supply;
  - The goods have not been changed, used, or sold to a third party before leaving Bahrain; and
  - The supplier retains commercial/official documents providing evidence of the shipment as detailed in the guide.

**Bahrain does not currently recognize any of the GCC states as implementing states; thus, a supply to/from a GCC state is considered to be to/from outside the implementing states.*

Imports of services

Services are considered to be imported if they fulfill the following conditions:

- They are supplied by a nonresident supplier to a recipient resident in Bahrain that is a taxable person;
- The place of supply for VAT is in Bahrain; and
- The recipient (a taxable person) is liable to account for VAT on the supply under the reverse charge mechanism.

VAT is applicable only if the place of supply is Bahrain (i.e. if the customer is a taxable person in Bahrain and not a private individual). If VAT is applicable, the customer is liable to account for VAT under the reverse charge mechanism.

Exports of services

The following conditions will need to apply for the zero-rating of services from Bahrain:

- The customer has no place of residence in Bahrain or any implementing state;
- The customer is not present in Bahrain on the date the services are performed;
- The services do not relate to tangible goods or real estate located in any implementing states when the services are performed; and
- The services are enjoyed outside the territory of the implementing states.

While the above are general provisions, there are many complexities and special rules in the Bahrain VAT legislation that apply only to certain types of import and export transactions. Businesses with any import/export activity into/from Bahrain should ensure that they are fully aware of and compliant with the legislation.

Belgium

VAT remains payable on tenant compensation for own fit-out works

In a circular letter published on 14 March 2019 (Dutch | French), the Belgian tax authorities reiterated their position that where a landlord compensates a tenant for the tenant's own fit out works, VAT is payable on the compensation. This approach conflicts with a previous Supreme Court ruling.

Background

Since 1972, the Belgian tax authorities have taken the position that when a landlord fully or partially compensates a tenant for the tenant's own fit out works in the leased property, a VAT taxable operation is triggered between the two parties. When completing these works, the tenant was presumed to have acted as a "deemed commissionaire" on behalf of the landlord, with the compensation seen as remuneration for the immovable works deemed to have been conducted by the tenant for the landlord's benefit. It was irrelevant whether the compensation consisted of cash or another benefit granted by the landlord to the tenant (e.g. a rent-free period or a temporary rent reduction). The tenant was required to provide the landlord with an invoice on which VAT had been applied or that was subject to VAT under the reverse charge mechanism. Where the lease agreement was exempt from VAT, the landlord was unable to recover the VAT.

In 2013, the Belgian Supreme Court challenged the automatic application of the deemed commissionaire principle. The court ruled that this approach could apply only to the extent the tenant in fact acted as an intermediary on behalf of the property owner in completing the works. According to the court, this is not the case where a tenant carries out fit-out works for the tenant's own purpose, even where compensated for those works by the landlord.

Circular letter

In a (late) reaction to the Supreme Court's ruling, the circular letter drops the "deemed commissionaire" approach, but maintains that VAT is due on the compensation paid by the landlord for works completed by the tenant.

Settled EU case law has ruled that a transaction for consideration only requires that there be a direct link between the supply of goods, or provision of services, and the consideration effectively received by the taxable person. According to the circular,

where the landlord agrees to compensate the tenant for works carried out, there is a "direct link" between the services (i.e. the works carried out) and the remuneration paid that directly constitutes a VAT taxable transaction.

Comment

It is arguable whether the new approach always will satisfy the direct link test. A direct link presumes that there is reciprocal activity, where the remuneration received by the service provider (the tenant) constitutes the value actually given in return for the service supplied to the recipient (the landlord). If the works would purely benefit the tenant's business, it could be questioned whether there would be any value in the works for the landlord. If there is not, there seems to be a missing link between the remuneration and works completed.

Brazil

State of Sao Paulo introduces VAT incentive for automakers

A decree enacted by the state of Sao Paulo on 8 March 2019 and effective immediately (Decree No. 64,130/2019) introduces an ICMS (VAT) incentive for automotive manufacturers that invest in the expansion or creation of industrial plants or the development of new products in Sao Paulo. The duration of the incentive will be determined on a case-by-case basis and will depend on the terms of each investment project's negotiation and government approval.

The new incentive ("IncentivAuto") grants a reduction of up to 25% of the monthly ICMS balance due to the state, i.e. the amount of the monthly ICMS payable after subtracting ICMS credits, depending on the government's analysis and approval of the investment project.

To qualify for the incentive, the automaker must invest more than BRL 1 billion and generate at least 400 new job positions in the state of Sao Paulo.

Comments

The IncentivAuto may not be as effective as the government expects in terms of incentivizing existing Sao Paulo automotive manufacturers to expand their plants in the state or automakers in other states to establish some or all of their industrial activities in Sao Paulo. Where the automotive company carries an accumulated ICMS credit balance (meaning there is no net monthly ICMS payable), the company will not be able to benefit from the main incentive of the program, which is the reduction of the monthly ICMS payable balance by up to 25%.

2019-2020 Manitoba budget highlights, including retail sales tax reduction

The Minister of Finance, the Honourable Scott Fielding, presented the Manitoba 2019 budget on March 7, 2019.

The following is a summary of the economic and tax highlights contained in the budget.

Fiscal/economic outlook

The budgeted deficit is estimated to be CAD 360 million for 2019-2020, with revenues projected to increase by 1.4% and expenditures projected to increase by 0.3%. The 2018-2019 deficit is estimated to be CAD 470 million.

Sales tax measures

- The Manitoba retail sales tax rate will be reduced from 8% to 7%, effective July 1, 2019. There are only three provinces that currently have a provincial retail sales tax, and this change will put Manitoba's rate in line with that of British Columbia and higher than Saskatchewan's 6% rate. The delay in the rate change until July is intended to give businesses time to change their point-of-sale systems. It is estimated by the government that this amendment will save the average household of four individuals CAD 239 in 2019, and approximately CAD 500 annually thereafter.
- The retail sales tax will not be applied to the federal carbon tax that is scheduled to be levied on natural gas and coal beginning on April 1, 2019.
- Effective 2020, large businesses with retail sales tax remittances greater than CAD 5,000 per month will be required to file returns electronically.

Personal tax measures

- There were no changes to personal income tax rates in this budget. The rates for 2019 are noted in the following chart.

Personal combined federal and provincial top marginal rates - 2019

Income	Rate
Interest and regular income	50.40%
Capital gains	25.20%
Eligible dividends	37.78%
Ineligible dividends	46.67%

- The top marginal rate for ineligible dividends is higher than in 2018 as a result of the decrease in the federal tax rate on small business corporations.

- Manitoba intends to harmonize with the federal “TOSI” (tax on split income) rules implemented in 2018. These rules are designed to tax certain types of income at the top federal rate if the income was paid by a related business to family members with lower income. Manitoba residents will pay tax at the top rates noted above if these rules apply.

- As was announced in Budget 2016, Manitoba personal income tax brackets and the basic personal amount are indexed to inflation by the Manitoba Consumer Price Index.

Business tax measures

- There were no changes to corporate income tax rates in this budget. The rates for 2019 are noted in the following chart.

Corporate combined federal and provincial income tax rates - 2019

Income	Rate
General	27.0%
M&P	27.0%
Small business (threshold CAD 500,000)	9.0%

- The refundable portion of the Manufacturing Investment Tax Credit will be reduced from 8% to 7% for qualified property acquired on or after July 1, 2019. This change will not affect the 1% non-refundable Manufacturing Investment Tax Credit. This measure is intended to ensure alignment of the refundable credit with the retail sales tax rate reduction.

- The Film and Video Production Tax Credit that was set to expire on December 31, 2019 has been made permanent.

- The Small Business Venture Capital Tax Credit, set to expire on December 31, 2019, has been extended to December 31, 2022. This credit is available to individuals and corporations that acquire equity capital in eligible Manitoba enterprises.

- The Cultural Industries Printing Tax Credit, set to expire on December 31, 2019, is extended to December 31, 2020.

- The Book Publishing Tax Credit, set to expire on December 31, 2019, is extended to December 31, 2024.

Colombia

Announcement on VAT on cloud computing, sales of goods from free trade zones

Recent VAT developments in Colombia include the following:

- The tax authorities have issued an official opinion in response to queries from business clarifying that the provision of cloud computing services is outside the scope of VAT, regardless of whether the services are provided from Colombia or from abroad. A nonresident cloud computing service provider, therefore, is not required to register for VAT or file a VAT return in Colombia. The recipient is not required to withhold VAT on payments to foreign service providers, where the cloud computing service is the only service provided.

- The government issued a draft decree in March 2019 providing that the VAT base for goods manufactured in Colombia's free trade zones must include the value of locally-sourced raw materials when the goods are sold within Colombia. The value previously was deducted from the VAT base to increase the competitiveness of free trade zone users both in domestic and international markets.

Denmark

VAT exemption for conference fees

The Danish Tax Agency issued a binding ruling regarding the VAT consequences of an international conference held in Copenhagen. (The binding ruling, which is effective immediately, is only binding for the taxpayer in receipt of the ruling.)

The conference is arranged by a non-profit organization with the purpose of refining and improving educational, charitable and scientific objectives. The organizer of the conference has charged a participation fee and is of the view that the fees should be VAT exempt.

In accordance with Danish VAT legislation, the supply of goods or services by a charitable organization is VAT exempt if the following conditions are fulfilled:

- The non-profit organization's activities fall within the scope of specific VAT exemptions;

- The supply of goods or services is in connection with the organization's charitable activities; and

- The application of the VAT exemption does not distort competition.

The Danish Tax Agency recognizes that the organization is funded by membership fees, the activities of the conference are within the purpose of the organization, and any revenue generated by the conference will be used to refine and improve educational, charitable and scientific objectives. Accordingly, the agency believes that the participation fees in connection with this conference qualify for the VAT exemption.

Finland

VAT treatment of server room services referred to CJEU

On 5 March 2019, Finland's Supreme Administrative Court (SAC) referred a case relating to the VAT treatment of server room services to the Court of Justice of the European Union (CJEU).

The case involves a Finnish company that provided server room services to IT businesses in Finland and abroad. The services included a lockable cabinet for the customer's server, as well as electricity, cleaning and an as optimal environment as possible for the server. Customers also could purchase various additional services from the company.

The Finnish company considered the server room services were a supply of services within the scope of article 44 of the EU Council Directive 2006/112/EU (VAT) and were therefore subject to VAT in the jurisdiction(s) where its customers were established, but applied for an advance ruling on the VAT treatment from the Finnish tax authorities. The tax authorities stated that the services were linked to real estate and therefore subject to VAT in the country where the real estate was located, i.e. Finland. Letting of real estate generally is VAT exempt without credit in Finland but with the option to tax under certain circumstances; the VAT treatment of services linked to real estate depends on the nature of the services but the place of supply is determined by where the real estate is located.

The Administrative Court agreed with the company, but the Tax Recipients' Legal Services Unit (an independent organization that oversees the rights of tax recipients in taxation matters and tax appeals) appealed on behalf of the tax authorities on the basis that the place of supply should be the place where the real estate is located.

The SAC asked the CJEU to consider the following questions:

- Is the server room service as described deemed the letting of real estate?
- If not, should the service be deemed a service linked to real estate and, therefore, should the place of supply be the place where the real estate is located?

Guatemala

Mandatory electronic invoicing introduced for certain government suppliers

A resolution (SAT-DSI-243-2019) from Guatemala's Superintendency of Tax Administration that was published in the official gazette on 13 March 2019 and is effective as from 14 March introduces mandatory electronic invoicing for certain government suppliers. The electronic invoice regime (FEL), which applies for VAT and income tax purposes, was introduced in May 2018 and gradually is being rolled out to taxpayers. Taxpayers also may adopt the FEL regime voluntarily.

The resolution requires taxpayers to adopt the FEL regime if they provide goods, works, services or supplies to government entities or agencies and they bid to supply the government entity or agency through one of the following methods:

- Open contract;
- Quote;
- Tender; and
- Electronic reverse auction.

India

Reduction recommended in GST rates for residential properties under construction

At its 33rd meeting held on 24 February 2019, India's goods and services tax (GST) council recommended reductions in the GST rates applicable to residential properties under construction. The new rates will apply as from 1 April 2019, subject to the issue of the relevant notifications. Key changes include the following:

- The GST rate on residential properties under construction (not categorized as affordable housing) will be reduced to 5% without an input tax credit (ITC), from 12% with an ITC; and
- For residential properties under construction within the affordable housing segment, the GST rate will be reduced to 1% without an ITC, from 8% with an ITC.

The definition of affordable housing will be extended to include residential houses/flats valued up to INR 4.5 million with a carpeted area of up to 60 square meters in metropolitan cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata and Mumbai), and up to 90 square meters elsewhere.

The council also recommended exempting development rights, lease premiums and floor space index from GST for residential properties on which GST is payable.

India

GST Council clarifies reduced tax rates on residential housing

Following the recommendations it issued on 24 February 2019 regarding goods and services tax (GST) rate reductions for residential properties under construction, India's GST council provided further clarity on these reductions in its meeting held on 20 March 2019. The rules will be effective from 1 April 2019.

The GST rate of 1% without an input tax credit (ITC) on the construction of affordable housing also will be available for ongoing projects under the existing central and state housing schemes, which currently are eligible for an 8% rate.

The GST rate of 5% without an ITC will be applicable to the construction of houses booked before or after 1 April 2019 (i.e. houses under construction and for which consumers have paid a token amount to the builder). In the case of houses booked before 1 April 2019, the new rate will be available on installments payable on or after 1 April 2019. The 5% rate without an ITC also will be applicable to the construction of shops, offices, etc., having a carpeted area that is up to 15% of the total carpeted area of apartments in a residential real estate project.

The new GST rates on the construction of residential housing will apply if 80% of inputs and input services (other than capital goods, transfer development rights (TDR)/Joint Deveopment Agreement (JDA), floor space index (FSI) or long-term lease (premiums)) are purchased from registered persons. If this requirement is not met, a builder will be required to pay an 18% tax under the reverse charge mechamism. However, for cement procured from unregistered dealers, the rate will be 28%, and for capital goods, other tax rates will apply.

The formula for transitioning the ITC on ongoing residential projects (other than affordable housing) will be on a pro-rata basis in proportion to the number of flats booked and the invoices issued for the booked flats. The ITC of the entire project thus will be determined by extrapolating the ITC taken on the percentage completion of construction as of 1 April 2019.

The ITC on ongoing mixed projects, i.e. projects including residential and commercial construction, will be transitioned on a pro-rata basis in proportion to the carpeted area of the commercial projects to the carpeted area of the total project.

The supply of TDR, FSI or long-term lease (premium) by a landowner on projects commencing after 1 April 2019 will be exempt from GST provided the flats are sold before a completion certificate is issued. However, if the flats are sold after the issuance of a completion certificate, GST on TDR, FSI or a long-term lease

(premium) will be discharged on a reverse charge basis by the builder paying GST at a rate of 1% or 5%, as the case may be.

The ITC rules also will be amended to provide more clarity to the monthly and final determination of the ITC and the reversal thereof in real estate projects.

The promoters of residential real estate projects will be given a one-time option (to be exercised within a prescribed time limit) for the payment of taxes at previous rates on ongoing projects that were not completed by 31 March 2019.

Ireland

Proposed VAT amendments post-Brexit

On 22 February 2019, the Irish government published the "Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019," referred to as the Brexit Omnibus Bill. The bill proposes changes to various aspects of Irish legislation to be ratified in the event of the UK leaving the EU without an agreement.

The changes proposed to the VAT Consolidation Act 2010 are as follows:

Postponed accounting for VAT on imports

The bill provides for the introduction of postponed accounting for VAT for all importers that are registered for VAT in Ireland. Effectively, this means that Irish VAT-registered importers would self-account for the VAT due in their VAT return, rather than pay import VAT upfront at the point of entry into Ireland.

The introduction of postponed accounting would ensure that in a no-deal scenario, imports of goods from the UK would be treated in the same way as goods currently acquired from the UK as intra-Community acquisitions.

While postponed accounting undoubtedly has been proposed to relieve the cash flow impact on businesses that acquire goods from the UK following Brexit, it also would benefit businesses that import goods from other non-EU countries, as initially the scheme would be available to all importers and not just importers of goods from the UK. The legislation provides for the subsequent introduction of certain criteria and conditions that would have to be met by importers for them to continue to benefit from postponed accounting on imports.

Section 56B authorizations

Although not required by Brexit, the bill also proposes changes to section 56 of the VAT act. This section provides for the zero-rating of certain goods and services acquired by qualifying persons, generally exporters that have been issued a 56B authorization by the Irish tax authorities. The Minister for Finance has stated that the section 56 scheme is being modified "to mitigate the potential for abuse and to

retain the purpose of the relief." The proposed amendments include changes to the definition of a "qualifying person" and additional conditions to be fulfilled by qualifying persons.

The updated definition of a "qualifying person" would require a VAT-registered trader to meet the 75% turnover test "for the period of 12 months immediately preceding the making of an application." If implemented, this definition would prevent traders in a start-up scenario from obtaining a section 56B authorization until they have traded for 12 months. Currently, start-up businesses may receive such an authorization on an interim basis if they can establish that they would meet the 75% turnover test in their first year of trading.

The additional conditions provide greater scope for the Irish tax authorities to refuse applications made and constitute a tightening of the rules in relation to section 56B authorizations.

In addition to the above, the draft legislation grants greater powers to the tax authorities to cancel authorizations that already have been issued and to inform the suppliers of that business directly of the cancellation, as well as the ability to publish a notice in the official gazette.

Next steps

The bill has now passed both houses of the Irish parliament and is ready for enactment once signed by the Irish president.

As the outcome of the UK's withdrawal remains uncertain, so too does the introduction of these draft changes to the VAT act. In any event, importers and holders of section 56B authorizations should assess now whether the proposed draft legislation will impact their business in order to be ready for these changes potentially from as early as 29 March 2019.

Ireland

Proposed VAT amendments in event of no-deal Brexit

In its Brexit Omnibus Bill (Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2019) issued on 22 February 2019, the Irish government announced proposed VAT amendments to come into effect post-Brexit in the event that the UK leaves the EU without an agreement. Having been approved by both houses of the Irish parliament, the draft is awaiting ratification by the Irish president in the event of a "no-deal" Brexit.

The Brexit Omnibus Bill sets out provisions for an import VAT postponement scheme that was announced by the Minister of Finance in early February 2019 following negative feedback from various Irish business groups on the Miscellaneous Provisions (Withdrawal of the United Kingdom from the European

Union on 29 March 2019) Omnibus Bill 2019, released in January. These provisions will allow all VAT-registered businesses in Ireland to account for import VAT (on goods imported from the UK and other non-EU countries) in their VAT returns rather than at the point of import. This will be welcome news for Irish businesses from a cash-flow perspective as it will ensure that the VAT treatment of goods being purchased from the UK will remain the same should the UK leave the EU without an agreement in place.

Ireland

New implementation date for Revenue guidance on VAT treatment of food supplements

On 26 February 2019, Irish Revenue issued eBrief No. 034/19, which updated the implementation date of the recently published "VAT treatment of food supplements" guidance as set out in the VAT Tax and Duty Manual.

The guidance, which was initially to apply as of 1 March 2019, was issued to clarify which food supplements (and certain other substances for human consumption) are subject to the standard rate of VAT and which could be zero-rated. Through eBrief No. 034/19, Revenue communicated that, to allow for the enactment of any required legislative changes, an amendment to the VAT Tax and Duty Manual now reflects a delay to the implementation of the guidance until 1 November 2019.

Italy

Guidelines issued on post-Brexit treatment of cross-border movement of goods

The Italian customs authorities released official guidelines on 26 February 2019 on the post-Brexit treatment of the cross-border movement of goods to and from the UK. The UK is scheduled to withdraw from the EU on 29 March 2019.

The guidelines confirm that, from an Italian VAT perspective, dispatches of goods to/from the UK no longer will be considered as intra-EU transactions following Brexit and will be treated as follows:

- Exports to the UK will be zero rated for VAT purposes and will be subject to customs formalities at the time of export; and
- Imports from UK will be subject to the relevant customs formalities, including the payment of customs duties, excise duty and import VAT at the applicable rate, if due.

In terms of Italian VAT obligations:

- Intrastat filings will not be due for dispatches of goods to/from the UK; and

- VAT will not be accounted for under the reverse-charge mechanism for dispatches of goods from the UK to Italy.

The guidelines clarify the treatment of transactions that commence on the UK's exit date and are concluded on a subsequent date; for example:

- Acquisitions of goods from UK suppliers occurring on 29 March 2019 with delivery in Italy on 2 April will be considered as imports to Italy and local VAT must be paid (if due); and

- Supplies of goods to UK customers occurring on 29 March 2019 with delivery in the UK on 2 April 2019 will be considered as VAT zero-rated exports and the Italian taxpayers must be able to provide valid supporting evidence of the exit of goods from the EU territory.

To date, no more specific guidelines are available from the tax or customs authorities on the VAT implications of Brexit, but it is possible that further instructions may be issued.

Italy

First successful results of implementation of e-invoicing announced

The Italian tax authorities published a press release on 18 March 2019, announcing the first successful results of the implementation of VAT electronic invoicing (e-invoicing), which became broadly effective for transactions carried out by resident companies as from 1 January 2019 and is proving to be an effective measure to tackle tax evasion and tax fraud. To date, around 2.7 million operators have sent 350 million e-invoices, and only 3.85% have been rejected by the system.

In just over two months, due to the risk analysis carried out based on the e-invoices and the data from the web portal managed by the tax authorities, a complex system of fraud carried out through false and fictitious invoices between bogus companies was exposed, and fraudulent VAT credits of EUR 688 million were discovered and denied.

Italy

New tax return form approved for quarterly VAT refund claims

Through a ruling (No. 64421) issued on 19 March 2019, the Italian tax authorities approved the updated tax return form for taxpayers to request a quarterly VAT refund or to offset a quarterly VAT credit against another type of tax, together with the relevant instructions and the technical specifications for the electronic transmission of the data. The main changes to the tax return relate to VAT groups, since the first VAT groups in Italy became effective as from 1 January 2019. It was necessary to update the form to take into account the recent VAT law provisions treating a VAT group as a single new taxable person for VAT purposes.

Through the new tax return form, the representatives of VAT groups may request quarterly VAT refunds for periods beginning with the first quarter of 2019. The form must be submitted by the end of the month following the relevant quarter, so refunds for the first quarter of 2019 must be submitted by 30 April 2019. The form may be submitted electronically, either directly by the taxpayer or through an intermediary enabled according to the approved technical specifications from the tax authorities. The instructions for the form also confirm that VAT groups cannot use the new form to request quarterly VAT credits to be offset against debts relating to other types of taxes, based on a specific restriction applicable to VAT groups under a ministerial decree issued on 6 April 2018.

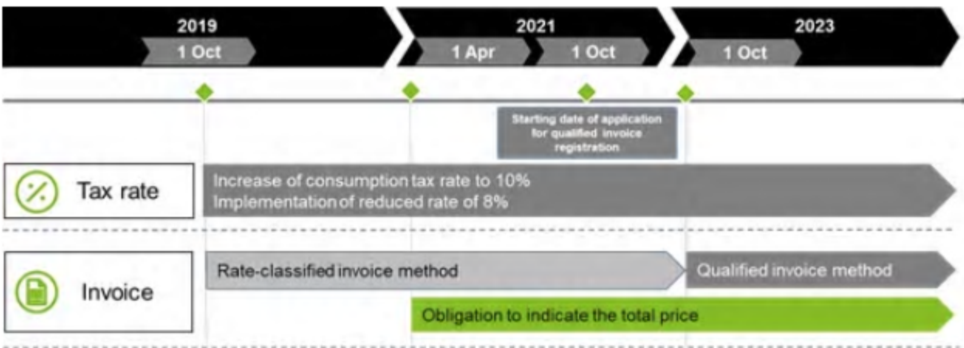
Japan

Consumption tax rates – Special considerations for food and beverages

On 1 October 2019, Japan will introduce a multiple rate system for Japanese consumption tax (JCT) when the standard JCT rate will increase from the current 8% to 10%. Under the new rate structure, an 8% rate (i.e. the reduced rate) will continue to apply to the sale of food and beverages, as well as print newspaper subscriptions. In addition, a rate-classified invoice system[1] will be implemented for the period 1 October 2019 to 30 September 2023 as a transitional measure until a qualified invoice system[2] comes into operation on 1 October 2023. This article outlines some key considerations that may impact businesses operating in Japan, with a special focus on retailers of food and beverages.

1. Timeline

The timeline for implementation of the multi-rate JCT structure and qualified invoice system is shown below.



[1] A rate-classified invoice must differentiate between 8% and 10% items and state the total consideration for each rate, in addition to the information currently required. Sellers are not obliged to issue such an invoice.

[2] In addition to the items required on a rate-classified invoice, a qualified invoice also must state the JCT amount for each rate and the registration number of the qualified issuer. Sellers are required to issue qualified invoices to buyers.

2. Key considerations

With less than eight months to go before the launch of the multi-rate structure, retailers already should have been updating systems and making other preparations based on the lessons learned from the previous rate increase from 5% to 8% in 2014. However, this time a more careful and comprehensive approach likely will be required, taking into account the following:

(1) Price setting and display for food/beverage products

Currently, enterprises are not required to show the JCT-inclusive price of items provided it is clearly stated that the price displayed does not include JCT. With the introduction of the multi-rate system on 1 October 2019, price setting and display will become a significant issue for food and beverage retailers, as take-away orders of food/beverage products will be eligible for the lower rate of 8%, while eat-in orders at restaurants will be taxed at the standard 10% JCT rate.

Enterprises offering both take-away and eat-in food/beverage items generally may set prices themselves and therefore, under certain conditions, may set a higher JCT-exclusive price for take-away items than for eat-in items, with the result that JCT-inclusive prices for both are equal.

(2) Store operations for food/beverage retailers

Stores selling both take-away and eat-in items will be responsible for developing procedures to determine the applicable rate (i.e. 8% or 10%) for each item. Retailers generally will need to make this determination based on the consumer's declaration of whether the items are being purchased to take away or eat in.

However, retailers such as supermarkets that may provide a space with tables and chairs will need to consider how to treat customers who consume on the premises food or beverage products declared as take- away. Guidance on the multiple-rate system issued in November 2018 states that if consumption in such a space is prohibited and no consumption takes place there in practice, the space would not be considered as an eat-in space and the store would be allowed to apply the lower 8% rate to any food/beverage sales.

(3) Own brand items

Retailers generally apply a rate of JCT based on related purchases and therefore do not need to determine the applicable JCT rate independently. However, where retailers sell food/beverages internally developed by themselves (e.g. own brand items), they will need to determine the applicable rate independently, as manufacturers do, because their products may be "mixed items."

(4) Mixed items

A mixed item has a single price but comprises a food/beverage product eligible for the reduced rate of 8% and a non-food/beverage product subject to the standard 10% rate. If the JCT-exclusive price of a mixed item does not exceed JPY 10,000 and the food/beverage element accounts for at least two thirds of the item (calculated on a reasonable basis), the lower rate of 8% will apply to the whole item.

(5) Import JCT

Imported foods/beverages also will be eligible for the lower rate of 8%. Eligibility will be determined based on whether or not the item is imported for human consumption, and the specific rate likely will be determined based on the system of automated codes currently used for import declaration purposes.

3. Other impacts

Businesses not involved in the sale of goods eligible for the lower rate of 8% will need to take certain measures to account for multiple JCT rates, as the multi-rate structure will affect their meal and beverage costs. As the national and local tax portions of the current 8% rate and the proposed 8% reduced rate differ slightly, enterprises may need to set up new tax codes to differentiate between the two.

In addition, for the period from 1 October 2019 to 30 September 2023, both current invoices and rate-classified invoices (a temporary measure before the start of the qualified invoice system on 1 October 2023) may be issued. Therefore, enterprises purchasing goods eligible for the lower rate during this period will need to confirm whether the invoices they receive contain all the information required under this transitional procedure and if not, add to the invoice any missing items (e.g. items eligible for the 8% rate and the total consideration amounts for each rate).

Comments

While retailers have dealt with consumption tax rate increases in the past, the introduction of the new multi-rate system means that food and beverage retailers will need to consider how to update their price labels from October 2019 to treat take-aways and eat-ins appropriately and efficiently. In doing so, they may need to consider updates to their systems, procedures to determine the proper rate, their consumer pricing strategy, as well as methods for monitoring that the rates are being properly applied.

In particular, establishments that offer space where take-away items may be consumed on the premises or those that sell mixed items may face additional complications in determining the correct rate of JCT.

Although guidance has been released on the multi-rate structure, it may not address every issue that businesses may face. With less than eight months to go before the introduction of the multi-rate system, enterprises should consult with their JCT advisors to make informed decisions on how to treat certain transactions for which clear guidance is not provided.

Luxembourg

Draft budget law for 2019 released, including VAT announcements

On 5 March 2019, Luxembourg's Finance Minister presented the draft 2019 budget law and the draft law on multiannual financial planning for the 2019-2022 period, to the Chamber of Deputies. The minister stated that Luxembourg respects the criteria of the EU Stability and Growth Pact and that the draft budget law, together with the multiannual planning, concentrates on the coalition priorities, in particular, social cohesion and competitivity, as well as fairness and sustainability.

The draft budget law follows a temporary budget published in December 2018 to cover the months from January to April 2019, due to the forming of a new government following the autumn elections. It follows on the commitment expressed at the time of the law transposing the EU Anti-Tax Avoidence Directive (ATAD I) into domestic law was voted on to ensure that a rule for tax-integrated groups is adopted for 2019 in connection with the interest expense deduction limitation rule in the ATAD. The draft budget law also includes tax measures designed to strengthen social cohesion and the buying power of individuals, as well as the competitiveness of companies.

The parliament is expected to vote on and approve the draft budget law before the end of April 2019, with some of the tax measures applying retroactively as from 1 January 2019 and others applying as from 1 May 2019.

The following measures are proposed:

Corporate tax

Tax rate reduction

The corporate income tax rate would be reduced from 18% to 17%, while at the same time the income bracket affected by the minimum 15% rate would be increased from EUR 25,000 to EUR 175,000.

The 17% rate would apply to taxable income exceeding EUR 200,000. For amounts between EUR 175,000 and EUR 200,000, corporate income tax would be calculated based on a formula where EUR 26,250 is increased by 31% of the income amount exceeding EUR 175,000. The comments to the draft law include the following example: "*…for a taxable income of EUR 200,000: [EUR 26,250 + (EUR 200,000–175,000) x 31%] = EUR 34,000 of the CIT due.*"

These changes would apply as from the 2019 fiscal year.

Fiscal unity regime

A new article 164*bis* would be introduced in the Income Tax Law in connection with the fiscal unity regime that would consolidate and revise the fiscal unity provisions in the current article 164*bis* and the related Grand Ducal regulation. The new article would specify the scope of application and clarify the determination of taxable income under a fiscal unity.

New article 164*bis* also would introduce the ATAD I option to allow a fiscal unity to apply the interest expense deduction limitation rule at the level of the fiscal unity rather than individually to each entity in the group. Luxembourg implemented the ATAD into its domestic law on 21 December 2018, with the new rules applying for fiscal years starting on or after 1 January 2019. However, the law implementing the directive did not contain the option that would allow fiscal unities to determine excess borrowing costs based at the fiscal unity level (i.e. the rule currently applies only at an individual company level). The draft budget law includes a provision that would allow the deductibility of excess borrowing costs of a fiscal unity up to the higher of 30% of taxable EBITDA (earnings before interest, tax, depreciation and amortization) or EUR 3 million.

The new article would contain the following rules for computing the tax basis for the application of the ATAD interest expense deduction limitation as follows:

- The borrowing costs of the "integrating company" (i.e. the head of the fiscal unity) would be calculated by adding together the borrowing costs of each member of the fiscal unity. Only costs incurred by the tax unity members during the period of consolidation would be taken into account for this purpose.

  Taxable interest income and other economically equivalent taxable income at the level of the integrating company would be calculated by adding together all taxable interest income of each member of the fiscal unity.

  Excess borrowing costs of the integrating company are the excess of the borrowing costs over the taxable interest income. Only tax-deductible borrowing costs would be taken into account.

- The EBITDA of the integrating company would not correspond to the sum of individual group members' EBITDA. EBITDA would be determined based on the total net income of all members of the fiscal unity, increased by the excess borrowing costs as determined at the level of the integrating company and the depreciation/amortization of all members.

  Nondeductible excess borrowing costs in a tax period would be able to be carried forward only by the integrating company for deduction in a subsequent tax period (up to five tax periods).

The safe harbor rule that allows excess borrowing costs up to EUR 3 million to be deducted without limitation would be applicable, and it would be possible to fully deduct excess borrowing costs if it can be demonstrated that the ratio of the equity of the consolidated group to the total assets of all group members is equal to or higher than the ratio of the consolidated group.

The fiscal unity would not be able to deduct excess borrowing costs and unused deduction capacity of a member of the fiscal unity that were accrued before the company joined the consolidated group. Only the group member that incurred the costs would be able to use them, but the costs could be put on hold and used by the entity after it exits the fiscal unity.

Excess borrowing costs that were accrued by a member of the consolidated group before 17 June 2016 or that were used for financing long-term public infrastructure projects would be excluded in computing the amount of excess borrowing costs.

Fiscal unities—both existing and new—would automatically benefit from the above-mentioned treatment at the group level. However, they also would be able to elect to apply the interest expense deduction limitation to each company individually. For new fiscal unities, this option would have to be clearly indicated in the request to set up a fiscal unity and would apply for the duration of the unity (at least five fiscal years). For existing fiscal unities, the option to apply the interest deduction limitation to each company individually could be applied if all companies in the consolidated group submit a joint request for its application before the end of the first financial year for which the interest expense deduction limitation rules apply in Luxembourg (i.e. the tax year beginning on or after 1 January 2019).

Minimum social wage tax credit

The 2019 draft budget law provides that a new minimum social wage tax credit would be introduced as from tax year 2019. This monthly tax credit would be added to the current tax credit available to wage earners (which ranges from EUR 0 to EUR 600 for the tax year).

The credit is designed to benefit employees whose salary is close to the current minimum social wage. It would grant such individuals an additional monthly EUR 100 net remuneration after individual income tax and social security, after the implemented and expected minimum social wage increases for 2019.

Individuals whose salary is slightly above the minimum social wage could benefit from this measure, subject to a linear reduction from EUR 70 to EUR 0 for monthly gross salaries, from EUR 2,500 to EUR 3,000.

The tax credit would be paid to the employee, together with the monthly net after-tax remuneration and only granted by the employer once a month, based on the employee's tax card.

The tax credit also would be granted to part-time employees on a proportional basis, as well as to private household employees and cleaning staff, who are taxed on a lump sum basis under article 137, al. 5 of the Income Tax Law. For the latter, the social security authorities would pay the tax credit based on the computation made by each employer.

VAT

The draft budget law would extend the application of the super reduced (3%) and reduced (8%) VAT rates as follows:

- The 17% standard VAT rate that currently applies to electronic publications (including e-books and e-newspapers) would be reduced to 3% to align with the rate for physical publications. The super reduced rate also would apply to library rentals of publications. This proposal follows the decision of the EU Council of 6 November 2018 to modify the EU VAT Directive to allow member states to apply a reduced VAT rate to electronic publications. It should be noted that Luxembourg had applied the super reduced VAT rate to electronic publications before 1 May 2015 when the Court of Justice of the European Union ruled that reduced rates could not apply to such services. As for physical publications, the super reduced rate would not apply to marketing and pornographic publications or to publications that wholly or predominantly contain video or music content.

- The 3% super reduced VAT rate would be extended to apply to pharmaceutical products normally used for health care, disease prevention and treatment.

- The 8% reduced VAT rate would be extended to plant protection products authorized in organic farming by the Administration of Technical Agricultural Services. This would apply if the requirements laid down in Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and the labelling of organic products and repealing Regulation (EEC) No 2092/91 are complied with.

These measures would apply as from 1 May 2019.

Oman

Excise law published

On 13 March 2019, Royal Decree No. 23/2019 was issued promulgating the Omani excise tax law. The decree was published in the official gazette on 17 March 2019 and will come into force on the day following the expiry of 90 days from the date of publication (i.e. 16 June 2019). Further details and clarification of the operation of the excise tax are expected in the form of executive regulations and guidance from the Ministry of Finance and Secretariat General for Taxation.

Scope and rates

The Ministry of Finance, with approval from the cabinet of ministers, is empowered to determine the type and category of excisable goods and the applicable excise tax rate. It is expected that the tax will apply as folows:

Category of goods	Rate (%)
Tobacco and its derivatives	100
Carbonated drinks	50
Energy drinks	100
Special purpose goods (may include alcohol and pork products)	100

Excise tax is likely to be payable on the production, importation and stockpiling of excisable goods, and the release of excisable goods from a tax suspension situation (e.g. from an excise tax warehouse)

Stockpiling

Based on the interpretation of the provisions in other Gulf Cooperation Council (GCC) member states, it is anticipated that every business (i.e. retailers, wholesalers, hotels, restaurants, etc.) that hold stocks of excisable goods in excess of a certain value just before the implementation date would be required to file a declaration for the types of such goods held in stock within a specified period (likely to be 15 days from the date of implementation) and pay the applicable excise tax within the prescribed period.

Importers, producers and warehouse keepers

Importers and producers already dealing in excisable goods or warehouse keepers intending to set up an excise tax warehouse are expected to have to register for excise tax. They also would be required to periodically file excise tax returns and account for the tax due. Importers generally may be required to pay excise tax at the time of import, whereas producers and manufacturers would account for the tax payable when the excise tax return is filed.

Penalties for noncompliance

Businesses that do not comply with the excise law requirements are expected to be subject to monetary penalties. For certain offenses, strict penalties (including imprisonment) may apply.

Next steps

Businesses likely to be impacted by the introduction of excise tax should consider the following actions:

- Understand and evaluate the transitional impact (e.g. identification of products subject to excise tax, preparation of statements, filing of one-time return, etc.);
- Evaluate the impact of the introduction of excise tax on information technology systems (including any changes required to point-of-sale systems);
- File the required one-time transitional excise tax return, as applicable;
- Register for excise tax with the Secretariat General for Taxation; and
- Prepare for ongoing compliance obligations.

Oman

Update on introduction of VAT

Local media reports in March 2019 quote a senior official from Oman's Ministry of Finance as saying that the date of implementation of VAT in Oman is under review. The official reportedly indicated that the target date had been 1 September 2019 but that this is not confirmed, although the intention clearly remains to implement VAT as early as possible.

Businesses should take this as a cue to continue their VAT implementation plans in Oman, or restart and reinvigorate them if work has been put on hold.

Portugal

Deadlines for compliance with new invoice processing and storage rules postponed

Decree Law No. 28/2019 published in Portugal on 15 February 2019 introduced a number of changes to the rules for electronic invoicing, the Standard Audit File for Tax (SAF-T (PT)), the issuance of invoices, and storage of both hardcopy and electronic invoices, to apply as from 16 February 2019.

Given the limited time available for taxpayers to comply with the new rules, the Secretary of State for Tax Affairs on 1 March 2019 issued an order granting extensions to the deadlines for implementation in relation to the following:

- Taxpayers not previously required to use exclusively invoicing software certified by the tax authorities will not incur penalties provided they do so by 1 July 2019. The extension will allow taxpayers to adapt their systems to meet the certification criterion without unreasonable penalty costs. This delayed deadline also covers new rules applicable to data integrity and the availability of technical documentation.

- The obligation to notify the tax authorities of the place where physical and electronic archives are located also has been postponed from the original deadline of 18 March 2019. Taxpayers generally will be required to submit a declaration of any amendments in activities. However, the existing forms have not yet been updated to accommodate this requirement. The Secretary of State's order specifies that taxpayers are required to fulfill this obligation within 30 days after the publication of the updated forms by the tax authorities.

On 15 March, the tax authorities published a circular letter to clarify the main changes introduced to the VAT code by the decree law. However, it remains to be confirmed whether nonresident companies that are VAT-registered in Portugal must use an invoicing software system certified by the tax authorities to issue invoices.

Additional guidance is expected to be published shortly.

Qatar

First excise tax returns due

Excise tax was introduced in Qatar as from 1 January 2019 on certain goods at rates of 50% or 100%. Businesses holding stocks of excisable goods (notably carbonated drinks, energy drinks, tobacco products, pork and alcohol) as at 31 December 2018 ("stockpilers") were required to submit their transitional excise tax returns before 31 January 2019.

Stockpilers that missed the deadline should submit the returns as soon as possible to minimize penalties for late submission of QAR 500 per day as from 31 January 2019, even where excisable stock was negligible. Businesses that held stock in excess of QAR 50,000 as at 31 December 2018 also must engage a third-party auditor to certify stock levels. Businesses that will be importing or producing, or holding inventories of excisable goods should consider whether the new tax warehouse regime is suitable and available to reduce the compliance requirements and cash-flow burden.

Saudi Arabia

More VAT guidelines translated into English

The Kingdom of Saudi Arabia General Authority of Zakat and Tax (GAZT) has published the English translations of a number of VAT guidelines that originally were published only in Arabic.

- Business promotions: The guide provides additional clarity on the VAT implications of common promotional activities carried out by taxable persons. It covers topics such as the valuation of supplies, monetary and non-monetary consideration, expenses and other taxes, and consideration paid by third parties. It also explains how to calculate and apply the fair market value. The

guide expands upon topics addressed briefly in the VAT legislation (including vouchers) and topics the legislation does not particularly address (including loyalty programs).

- Professional services: The guide covers topics including the place of supply of professional services, the due date of VAT on professional services, common issues such as disbursements and expenses and later adjustments, the treatment of professional events and seminars held in Saudi Arabia, financial advisory services, global contracting and the treatment of intercompany charges.

- Telecommunications: The guide provides further clarity for suppliers of telecommunications services in Saudi Arabia and includes details of supplies that are considered telecommunications services and the VAT treatment of goods and services sold in combination. The place of supply of telecommunications services and the treatment of vouchers and promotions also are addressed.

- Recreation and entertainment: The guide covers topics relevant to suppliers of recreation and entertainment services, including the place of supply rules, the treatment of admission fees, and the VAT liability of supplies made by hotels, restaurants and catering services. It also addresses cases such as sports clubs and other membership fees, and advertising/sponsorships, etc.

While the guides issued by the GAZT are helpful, they cannot be used as a substitute for the law and regulations, and do not cover all potential scenarios. Businesses, therefore, may still need to seek further guidance or support.

Saudi Arabia

GAZT publishes VAT guide on Islamic Finance

The Kingdom of Saudi Arabia (KSA) General Authority of Zakat and Tax (GAZT) has published the Islamic Finance Value Added Tax (VAT) guide (Arabic I English). The new guide provides businesses involved in Islamic finance arrangements with additional clarity on the VAT treatment of a variety of Islamic finance products. The guide will be of particular relevance to banks, insurance companies and any other financial services institutions that supply Islamic finance products, as well as businesses that are recipients of such arrangements.

The guide provides further clarity on the VAT treatment of Islamic finance products and the transactions such products entail. Sections are included for a number of Islamic finance products, including Ijara, Murabaha and Musharaka, with a description of the product and the relevant VAT treatment identified.

In general, as per article 29(3) of the KSA VAT Implementing Regulations, Islamic finance products that are Shariah-compliant and simulate the intention and effectively achieve the same result as a conventional financial product will have the same VAT treatment as a conventional financial product.

As Islamic finance products involve a profit margin rather than charging interest, the implicit profit margin included in the fees under an Islamic finance product may be treated as VAT-exempt even if part of an explicit fee or commission would not be exempt under a conventional finance product.

One of the key concepts of Islamic finance is the transfer of ownership of goods from one party to another without the intention of permanently passing on the ownership of the goods to the recipient. The guide explains the special treatment of such temporary transfer of ownership when it occurs as part of the structure of an Islamic finance product, in addition to providing details on the evidentiary requirements for proving the eligibility of applying the special treatment.

Ukraine

0% VAT rate proposed for international telecommunications services

A draft law presented to the Ukrainian parliament on 26 February 2019 would introduce a 0% VAT rate on international telecommunications and roaming services provided by Ukrainian telecommunications operators to nonresident telecommunications operators. Such services currently are outside the scope of VAT, which means that the provider is unable to recover input VAT.

Zero-rating the supply of international telecommunications and roaming services would allow the supplier to recover the input VAT incurred. According to the explanations to the draft law, the 0% rate would allow the deduction of input VAT against VAT liabilities and is expected to have a positive impact on price, volume and the type of services provided by Ukrainian service providers to nonresidents.

United Arab Emirates

FTA releases additional clarification of VAT, excise tax issues

The United Arab Emirates (UAE) Federal Tax Authority (FTA) has released the following guides and public clarifications to help businesses better understand the application of the VAT legislation:

- Bank interest and dividends: VAT Public Clarification VATP010 discusses the VAT implications of bank deposit interest and dividend income. It explains the need to review whether the income represents consideration for a supply before determining the VAT treatment and concludes that passively earned interest income generated from bank deposits and dividend income received by merely holding shares in a company do not constitute consideration for a supply. Such income, therefore, is outside the scope of VAT and does not need to be reported in the VAT return.

- Donations, grants and sponsorships: VAT Public Clarification VATP011 addresses the VAT treatment of donations, grants or sponsorships received by taxable

persons from third parties, and whether these represent consideration for a taxable supply. The VAT treatment of such payments depends on whether the party making the payment receives any benefit in return. Additionally, where donations, grants and sponsorships are given in the form of goods, deemed supply provisions may apply.

- Digital tax stamps: The FTA has released an overview of the procedural aspects of the Digital Tax Stamps (DTS) scheme, intended to monitor excise tax compliance and prevent illicit trading of tobacco products. From 1 August 2019, no tobacco products may be stored, held out for sale, imported or produced anywhere in the UAE unless they have a digital tax stamp with end-to-end traceability.

United Arab Emirates

FTA publishes financial services VAT guide

The United Arab Emirates (UAE) Federal Tax Authority (FTA) in January 2019 published the Financial Services VAT Guide (VATGFS1).

The guide provides businesses in the financial services (and insurance) industry with further clarity on the VAT qualification of services provided by those businesses, as well as on the right to recover input tax. It applies to businesses active in the financial services industry making both taxable and exempt supplies, such as banks (retail, corporate, investment and all other types of banking), (re-)insurers, funds and fund managers. It also should be of interest to any other business providing intercompany loans and similar activities.

The guide discusses the definition of "financial services" and the FTA's interpretation of the financial services provision in the VAT Decree-Law. The FTA has confirmed that financial services shall be exempt from tax, unless the service provider is remunerated by way of explicit fee, commission, rebate, commercial discount or similar. Appendix A of the guide includes an extensive list of fees per (sub) category of financial services which the FTA considers to be taxable for VAT purposes.

The guide also includes the following key points:

- The financial services provisions in the VAT Decree-Law are not limited only to bodies regulated by the Central Bank of the UAE and also could apply to any businesses providing financial services (such as financing group companies).

- Supplies of financial services remunerated by way of an implicit margin or spread (i.e. where no explicit fee is charged) are exempt from VAT. Appendix A of the guide sets out by banking function the types of financial services treated as exempt from VAT.

- Exported financial services are treated as follows:
  - The supply of financial services to a recipient established outside the GCC is zero rated in the UAE;
  - Supplies of financial services to a recipient registered or registrable for VAT in a GCC implementing state are outside the scope of UAE VAT and the recipient is liable to account for the reverse charge in the GCC member state (assuming that the member states recognize each other as implementing states); and
  - Where financial services are provided to a recipient not registered nor registrable for VAT in the GCC state, the place of supply of those services is the UAE (assuming that the member states recognize each other as implementing states).
- The supply of investment grade precious metals is subject to VAT at the zero-rate and the costs in relation to these supplies can be recovered in full.
- Islamic financial arrangements shall be treated in such a way that the VAT treatment shall be in line with its non-Islamic counterpart. The FTA recognizes that it is not always possible to find a comparable product – particularly with complex Islamic finance products – and that the service provider would need to use the same principles to come to the desired result from a VAT perspective.
- Penalty fees, in general, are standard rated, unless the fee relates to penal interest which is exempt from VAT.
- Option premiums are considered as explicit fees and therefore taxable.
- Input tax apportionment methods (standard and special) shall be calculated in line with the guidance provided by the FTA in the guide to VAT input tax apportionment (VATGIT1).

United Arab Emirates

Duty rates on rebar and steel coil increase to 10%

On 17 January 2019, Dubai Customs published a notice (CN 1/2019) advising of an increase in customs duty on imports of rebar and steel coils from 5% to 10% as from that date. The increased duty rate applies to goods with the following harmonized system (HS) codes:

HS code	Description
72131000	Containing indentations, ribs, grooves, or other deformations produced during the rolling process
72132000	Other, of free cutting steel
72139100	Of circular cross-section measuring less than 14 mm in diameter
72139900	Other
72141010	Of circular cross-section measuring less than 10 mm in diameter
72141020	Of circular cross-section measuring 10 to 32 mm in diameter
72141090	Other Containing indentations, ribs, grooves, or other deformations produced during the rolling process or twisted after rolling
72142010	Of circular cross-section measuring less than 10 mm in diameter
72142020	Of circular cross-section measuring 10 to 32 mm in diameter
72142090	Other Other, of free-cutting steel
72143010	Of circular cross-section measuring less than 10 mm in diameter
72143020	Of circular cross-section measuring 10 to 32 mm in diameter
72143090	Other

The increase in duty rates may have a significant impact on costs within sectors that use these products intensely, such as construction and the energy sector.

Impacted importers may wish to undertake a cost benefit analysis to determine ways in which this increase could be managed or mitigated, for example, through supply chain adjustments, preferential origin, exemption requests or suspension arrangements.

United Kingdom

VAT on electronically supplied services, imported goods in no-deal Brexit explained

An update on VAT issues to be addressed by businesses in the event of a no-deal Brexit.

VAT on electronically supplied services

As from 1 January 2019, UK businesses have been able to account for UK VAT (instead of EU VAT through the "Mini One Stop Shop" (MOSS) simplification scheme) on supplies of telecoms, broadcasting and electronic services to EU consumers up to a total of GBP 8,818 per annum. In the event of a no-deal Brexit, this threshold will be removed by SI 2019/404. Businesses either will need to register for the non-EU MOSS scheme or register and account for VAT where their EU customers usually reside.

The last return via the UK MOSS portal will cover sales made up to 29 March 2019. The portal will remain open until 15 May 2019 to allow changes to the Q1 2019 return, but not to correct earlier returns. Businesses wishing to register for the non-EU MOSS scheme for supplies after 29 March should do so by 10 April 2019 in order to avoid multiple EU VAT registration obligations. Businesses that currently use the UK MOSS scheme will automatically be deregistered from 1 April 2019.

VAT on imported goods

On 6 March 2019, HM Revenue & Customs (HMRC) issued guidance for businesses on accounting for import VAT on goods brought into the UK after a no-deal Brexit. Import VAT will be accounted for on UK VAT returns provided that their VAT or EORI (Economic Operator Registration and Identification) number is shown on the import documentation. Goods in transit from the EU at the time of Brexit should still be accounted for as acquisitions. HMRC have written to VAT registered businesses that trade internationally setting out how to prepare for changes to customs procedures and declarations and VAT, repeating the need to have an EORI number. A new edition of the Partnership Pack with links to a range of quick video guides and a set of information leaflets has been released.

United Kingdom

VAT recovery on specified EU supplies in no-deal Brexit explained

A UK statutory instrument (SI) issued in February 2019 addresses the issue of VAT on financial services following the UK's exit from the EU.

In the event of a no-deal Brexit, SI 2019/408 will change the basis for VAT recovery on specified financial services. Superseding SI 2019/175 (which would have preserved the current EU/non-EU distinction), VAT recovery will be allowed on specified supplies made to customers in the EU. The SI also will override partial exemption special methods to the extent that they allow VAT recovery based on an

EU/non-EU split (to avoid the need to renegotiate such PESMs), and adjust input tax apportionment for businesses supplying financial services alongside their main business.

United Kingdom

VAT on hire purchase contracts

In its 4 October 2017 ruling in a case involving Mercedes-Benz Financial Services UK Ltd. (MBFS), the Court of Justice of the European Union (CJEU) ruled that MBFS's "Agility" personal contract purchase (PCP) deals should be treated as services rather than goods, allowing the taxpayer to account for VAT over the term of the deal rather than at the start.

In Revenue and Customs Brief 1(2019) published on 27 February 2019, HM Revenue & Customs (HMRC) accept that such PCP deals are supplies of services (and a deferral applies) where the option to purchase is at least equivalent to the expected market value of the car at the end of the deal. However, in HMRC's view the interest element of such deals is not exempt (conventional HP deals).

For new deals from 1 June 2019, finance houses will have to consider whether the MBFS ruling applies and charge VAT accordingly. Up to that point, HMRC will allow them to treat PCP deals as supplies of goods, even if they should follow the CJEU judgment (albeit some taxpayers may therefore have to rectify a historical failure to account for VAT on the interest element). Where VAT on the finance outweighs the cashflow advantage from deferring VAT on the asset, finance houses may decide to draw a line under the past and simply withdraw any protective claims. The task for finance houses is now to check how their systems record expected residual values and compare them to option payments.

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