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IV. Country Summaries

US

US increases tariffs on Chinese products and proposes more

The additional duty rate applicable to "List 3" products of Chinese origin has been increased from 10% to 25%, and there is a proposal for additional duty of up to 25% on a proposed fourth list of China-origin imports.

China

Tariffs increased on USD 60 billion worth of US imports

Effective 1 June 2019, the additional tariff rates already imposed on 4,545 US-origin goods will be increased from 10% to 20% or 25% and from 5% to 10%, affecting USD 60 billion worth of imports from the US.

Austria

Tax court rules on VAT treatment of roaming services

Recent court decisions have shed some light on the criteria for determining whether telecommunications services supplied by telecommunications providers established in non-EU countries are subject to Austrian VAT.

India

Levy of GST on "back office" support services upheld

According to an appellate authority ruling, a wide range of back office support services provided by an Indian company to overseas clients should be treated as intermediary services for GST purposes, attracting GST of 18%.

Luxembourg

2019 budget law approved, including VAT measures

The budget law was approved by the parliament on 25 April 2019 and published in the official journal on 26 April, including extension of the application of the super-reduced (3%) and reduced (8%) VAT rates from 1 May 2019.

Singapore

GST reverse charge on imported services

The GST reverse charge on B2B imported services will commence from 1 January 2020. With less than eight months remaining before the new requirement takes effect, businesses yet to start the process of preparing for the reverse charge need to act.

Other news

Austria

Draft bill addresses taxation of digital economy.

Belgium

Belgian customs authorities: non-EU established entities cannot act as exporter.

Belgium

New rules introduced for Tour Operators' Margin Scheme.

Canada

Border Services Agency increases penalties from 1 April 2019.

Colombia

Announcements on VAT procedures, tariffs and anti-dumping measures.

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El Salvador

Mutually recognizes AEO programs with Costa Rica, Guatemala and Panama.

Finland

Supreme Administrative Court rules in two indirect tax cases

Finland

Foreign entities may be required to register for VAT in certain cases

France

CJEU rules failure to respond to VAT information request may be remedied

Germany

Highlights of VAT measures in draft annual tax act for 2019

Greece

Recent VAT changes include implementation of EU vouchers directive

India

Sales tax imposed on royalties received by nonresident companies

India

High Court rules on validity of local entry tax imposed on goods

India

Enhancements to e-way bill for GST purposes and VAT amnesty announced

India

Procedures for sharing information between income tax and GST authorities formalized

Italy

New VAT rules enacted for online marketplaces

Italy

Recent customs and excise developments include guidance on "Fast Corridors"

Mexico

New tax rules for providers of ground transportation and food delivery services

The Netherlands

State Secretary proposes air transportation tax

New Zealand

Changes made to facilitate self correction of tax returns

Poland

Proposed changes to VAT law include introduction of split-payment mechanism

Portugal

New decree makes further revisions to invoicing requirements

Portugal

Mainland and autonomous region VAT rates reduced for electricity and natural gas

Portugal

New tax reporting requirements for inventory

Switzerland

Amendments to VAT and sector information published

Switzerland

Draft VAT publication on foreign entrepreneurs released for consultation

Switzerland

Changes proposed to VAT transport rules to clarify identity of supplier

Switzerland

Draft clarification issued on qualification for electronically supplied services

Thailand

Export control on dual-use items update

United Arab Emirates

Customs authority issues updates on certain policies and procedures

United States

House taxwriters split on tax proposals to address climate change

I. Normativa

1. Propuesta de Directiva del Consejo por la que se modifican la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, y la Directiva 2008/118/CE, relativa al régimen general de los impuestos especiales, en lo que respecta al esfuerzo de defensa en el marco de la Unión.

Esta propuesta de Directiva contempla la modificación de la Directiva 2006/112/CE, del IVA, con el objetivo de armonizar el tratamiento a efectos del IVA de los esfuerzos de defensa en los marcos de la UE y la OTAN.

Estas disposiciones se aplicarían a partir del 1 de julio de 2022.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 10 de abril de 2019. Asunto C-214/18, PSM "K".

Directiva 2006/112/CE — Gestor de notificaciones judiciales y embargos — Ejecución forzosa — Tasas de ejecución determinadas por ley — Práctica administrativa que considera que dichas tasas incluyen el IVA — Principios de neutralidad y de proporcionalidad.

Se pregunta al TJUE si la Directiva IVA y los principios de neutralidad del IVA y de proporcionalidad, se oponen a una práctica administrativa de las autoridades nacionales, según la cual, el IVA relativo a las prestaciones de servicios realizadas por un gestor de notificaciones judiciales y embargos, en el marco de un procedimiento de ejecución forzosa, se considera incluido en las tasas cobradas por éste.

Responde el TJUE que la normativa comunitaria no se opone a dicha práctica. Así, se resalta que, al no ser posible, en virtud del Derecho nacional, añadir al importe de las tasas aplicables un suplemento correspondiente al IVA devengado y dado que la base imponible de una prestación de servicios se determinará, a excepción del IVA, con la totalidad de la contraprestación obtenida por prestador del servicio, debe considerarse que el importe de las tasas en cuestión incluye ya este impuesto.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 11 de abril de 2019. Asunto C-691/17, PORR Építési Kft.

Directiva 2006/112/CE — Derecho a la deducción — Pago erróneo del impuesto por el prestatario de servicios a los prestadores sobre la base de una factura expedida de forma errónea conforme al sistema de tributación ordinaria — Inexistencia de examen por la autoridad tributaria de la posibilidad de devolución del impuesto.

Se plantea al TJUE si la Directiva IVA y los principios de proporcionalidad, de neutralidad fiscal y de efectividad se oponen a que una autoridad tributaria, sin que existan sospechas de fraude, deniegue a una empresa el derecho a deducir el IVA pagado erróneamente al proveedor de servicios sobre la base de una factura expedida acorde al régimen ordinario del IVA, cuando la operación pertinente debía tributar según el régimen de inversión del sujeto pasivo; todo ello sin que la autoridad tributaria:

- antes de denegar el derecho a deducción, examine si el emisor de la factura errónea podía devolver al destinatario de ésta el importe del IVA abonado erróneamente y podía rectificar dicha factura de esta manera regularizarla para recuperar el impuesto erróneamente pagado a la Hacienda Pública; o

- decida devolver por sí misma al destinatario de dicha factura el impuesto pagado erróneamente al emisor de ésta, y que éste ingresó erróneamente en la Hacienda Pública.

El Tribunal establece que ni la Directiva IVA ni los citados principios se oponen a dicha práctica por parte de una autoridad tributaria. No obstante, matiza el TJUE que, para el caso de que se abone el IVA a la Hacienda Pública y a ésta le resulte excesivamente difícil devolverlo al destinatario de los servicios, en particular como consecuencia de la insolvencia del proveedor, el propio destinatario podrá solicitar la devolución directamente a la administración tributaria. En este sentido, los propios Estados miembros deben fijar las herramientas necesarias para que el destinatario de los servicios pueda recuperar el impuesto indebidamente facturado.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 2 de mayo de 2019. Asunto C-133/18, Sea Chefs Cruise Services.

Devolución del IVA — Directiva 2008/9/CE — Solicitud de información adicional formulada por el Estado miembro de devolución — Información que debe facilitarse en el plazo de un mes tras el recibo de la solicitud por parte de su destinatario — Naturaleza jurídica de este plazo y consecuencias de su inobservancia.

Se plantea al TJUE si, el artículo 20, apartado 2, de la Directiva 2008/9/CE, que establece el plazo de un mes para presentar al Estado miembro de devolución la información adicional requerida, se trata de un plazo de caducidad que conlleva, en caso de incumplimiento, que el sujeto pasivo pierda la posibilidad de subsanar su solicitud de devolución mediante la presentación directamente ante el juez nacional de la información adicional que permita justificar la existencia de su derecho a la devolución del IVA.

Concluye el Tribunal que, para el caso de que el plazo previsto en la norma constituyera un plazo de caducidad, una respuesta tardía a una solicitud de información adicional conduciría necesariamente a la denegación de la solicitud de devolución y no a una devolución con retraso, sin el beneficio de los intereses de demora. Por tanto, señala el TJUE que dicho plazo no es un plazo de caducidad y por tanto, que pese a la falta de aportación de documentación en el plazo inicialmente previsto, el sujeto pasivo podrá subsanar su solicitud de devolución presentando la información correspondiente ante el juez nacional.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 2 de mayo de 2019. Asunto C-224/18, Budimex S.A.

Directiva 2006/112/CE — Artículo 66 — Devengo y exigibilidad del impuesto — Momento en que se efectúa la prestación de servicios — Trabajos de construcción y de montaje — Consideración del momento de recepción de los trabajos estipulado en el contrato de prestación de servicios.

Se cuestiona al TJUE si la Directiva del IVA, para el caso de que no se expida o de que se expida tardíamente la factura correspondiente a la prestación de servicios de construcción o de montaje, se opone a que dicha prestación se considere efectuada en el momento de su recepción formal, cuando la normativa del Estado miembro establezca que el impuesto será exigible al término de un plazo que comienza a correr el día en que se efectúe la prestación.

Responde el TJUE aclarando que la base imponible para la prestación de un servicio a título oneroso estará constituida por la contraprestación realmente percibida por el sujeto pasivo. En este sentido, al no poder determinarse la contraprestación debida por el destinatario de los servicios antes de que se reciba la prestación de construcción o montaje, el impuesto relativo a dichos servicios no podrá ser exigible antes de dicha recepción. Además, a juicio del Tribunal, será determinante para considerar efectivamente realizada la prestación del servicio, que la recepción de los trabajos hubiese sido estipulada en el contrato de prestación de servicios y que tal modalidad refleje las normas y las prácticas propias del ámbito en el que se realiza la prestación.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 2 de mayo de 2019. Asunto C-225/18, Grupa Lotos S.A.

Sexta Directiva 77/388/CEE — Directiva 2006/112/CE — Exclusión del derecho a deducción — Adquisición de servicios de alojamiento y restauración — Cláusula de standstill — Adhesión a la Unión Europea.

Se pregunta al TJUE si la Directiva IVA se opone a una normativa nacional que:

- amplía el ámbito de una exclusión del derecho a deducción del IVA, con posterioridad a la adhesión del Estado miembro de que se trata a la Unión, y que implica que un sujeto pasivo que presta servicios turísticos se vea privado, a partir de la entrada en vigor de dicha extensión, del derecho a deducir el IVA por la compra de servicios de alojamiento y de restauración que el sujeto pasivo factura a su vez a otros sujetos pasivos en el marco de la prestación de servicios turísticos y que,

- prevé la exclusión del derecho a la deducción del IVA satisfecho por la compra de servicios de alojamiento y de restauración, introducida antes de la adhesión de ese Estado miembro a la Unión y mantenida tras dicha adhesión, de conformidad con el artículo 176, párrafo segundo, de la Directiva IVA, lo que implica que un sujeto pasivo que no presta servicios turísticos se vea privado del derecho a deducir el IVA por la compra de esos servicios de alojamiento y de restauración que factura a su vez a otros sujetos pasivos.

Establece el Tribunal que la exclusión del derecho a deducción del IVA por la compra de servicios de alojamiento y de restauración, revendidos en una fase posterior a otros sujetos pasivos, sin relación con la prestación de servicios turísticos, debería estar comprendida en el ámbito de aplicación de la cláusula de "*standstill*", bajo la cual se permiten exclusiones, dentro de la normativa interna, al derecho a la deducción que figura en la Directiva para, entre otros, aquellos Estados miembro adheridos a la UE con posterioridad a la aprobación de la Directiva.

Por lo cual, concluye el TJUE que la Directiva IVA es contraria a una norma nacional que extienda la exclusión del derecho a la deducción del IVA, con posterioridad a la adhesión de un Estado miembro a la UE, dado que el sujeto pasivo, prestador de servicios turísticos, se vería privado del derecho a deducir esos servicios adquiridos y que serían posteriormente facturados a otros sujetos pasivos.

Por otro lado, concluye el TJUE que dicha norma nacional no es contraria a la Directiva de IVA si limita el derecho a la deducción del sujeto pasivo, adquirente de los servicios, y que no sería un prestador de servicios turísticos, pese a refacturar los servicios adquiridos a otros sujetos pasivos, siempre y cuando tal norma se hubiese adoptado antes de la adhesión del Estado miembro correspondiente a la Unión

6. Tribunal de Justicia de la Unión Europea. Sentencia de 2 de mayo de 2019. Asunto C-265/18, Jarmuškienė.

Directiva 2006/112/CE — Régimen especial de las pequeñas empresas — Franquicia del IVA en beneficio de las pequeñas empresas cuyo volumen de negocios es inferior al umbral fijado — Entrega simultanea de dos bienes inmuebles mediante una única operación — Superación del límite anual del volumen de negocios habida cuenta del precio de venta de uno de los dos bienes — Obligación de pagar el impuesto por el valor total de la operación.

Se consulta al TJUE si los artículos 282 a 292 de la Directiva del IVA deben interpretarse en el sentido de que, cuando una entrega realizada en favor de un mismo comprador, comprende dos bienes inmuebles, vinculados por su naturaleza e incluidos en un único contrato de compraventa, y se supera el límite anual del volumen de operaciones para que se aplique el régimen especial de las pequeñas empresas, el sujeto pasivo deberá abonar el impuesto basándose en el valor de la totalidad de la entrega de que se trate, es decir, teniendo en cuenta el valor de los dos bienes que son objeto de esa entrega, aun cuando si se tuviese en cuenta el valor de uno de esos bienes no se superaría el referido límite anual.

Concluye el Tribunal que, se entiende por entregas de bienes, "*la transmisión del poder de disposición sobre un bien corporal*" y que en este caso la transmisión se realizó en un único acto jurídico, es decir, se trata de una única entrega pese a que tenga por objeto dos bienes, ya que en base a reiterada jurisprudencia, los componentes de la entrega no se podrían desglosar puesto que resultaría artificial. Por lo tanto, el IVA que se devengará es el correspondiente a la totalidad del importe de la operación.

7. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de mayo de 2019. Asunto C-566/17, Związek Gmin Zagłębia Miedziowego.

Directiva 2006/112/CE — Deducción del impuesto soportado — Principio de neutralidad del IVA — Sujeto pasivo que realiza indistintamente actividades económicas y no económicas — Bienes y servicios adquiridos para la realización a la vez de operaciones sujetas al IVA y de operaciones no sujetas al IVA — Inexistencia de criterios de reparto en la normativa nacional — Principio de legalidad tributaria.

Se interpela al TJUE a que resuelva si la Directiva IVA se opone a una práctica nacional que autoriza al sujeto pasivo a deducir en su totalidad el impuesto soportado por gastos mixtos (es decir, relacionados con sus actividades económicas y no económicas), debido a la inexistencia de

normas específicas relativas a los criterios y métodos de desglose que permitan al sujeto pasivo determinar la proporción de ese IVA soportado que debe considerarse relacionado dichas actividades.

Sentencia el Tribunal que, ante la ausencia de normas específicas, relativas a los criterios y métodos de desglose del IVA soportado entre actividades económicas y no económicas, el sujeto pasivo puede acudir a las autoridades tributarias nacionales competentes y solicitar la respuesta a una consulta tributaria que analice su situación específica y le indique los modos de aplicación correcta de la ley. Además, el sujeto pasivo puede elegir un método adecuado para llevar a cabo dicho desglose. Por lo cual, la inexistencia de normas al respecto, no impide al sujeto pasivo determinar el importe del IVA deducible para este tipo de gastos.

8. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de mayo de 2019. Asunto C-568/17, Geelen.

Directiva 77/388/CEE — Directiva 2006/112/CE — Prestaciones de servicios — Lugar de realización del hecho imponible — Conexión a efectos fiscales — Sesiones interactivas de carácter erótico filmadas y retransmitidas en directo por Internet — Actividad recreativa — Concepto — Lugar en que se ejecutan materialmente las prestaciones.

Se pregunta al TJUE si la Directiva del IVA establece que una prestación de servicios consistente en ofrecer sesiones interactivas de carácter erótico, filmadas y retransmitidas en directo por Internet, constituye una «actividad recreativa» y, en caso de ser así, en qué lugar debe considerarse que la prestación «se ejecuta materialmente»

Concluye el TJUE que, dado que se permite a los clientes contemplar estas sesiones en cualquier lugar por Internet e interactuar con las personas filmadas, se debe considerar una "actividad recreativa". Además, esta prestación de servicios debe considerarse «materialmente realizada» en el lugar desde el que dicho prestador la suministra, es decir, en el lugar donde esté situada la sede de las actividades económicas del prestador de servicios, en el lugar donde este último posea un establecimiento permanente desde el que se suministre dicha prestación de servicios o, en su defecto, en el lugar de domicilio o residencia habitual del prestador.

9. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de mayo de 2019. Asunto C-127/18, A-PACK CZ.

Directiva 2006/112/CE — Impago total o parcial, por parte del deudor, de la cantidad adeudada al sujeto pasivo por una operación sujeta al IVA — Base imponible — Reducción — Principios de neutralidad fiscal y de proporcionalidad.

Se plantea al TJUE si la Directiva IVA se opone a una normativa nacional que prevé que el sujeto pasivo no puede rectificar la base imponible del IVA en caso de impago total o parcial, por parte de su deudor, de una cantidad adeudada por una operación sujeta a dicho impuesto, si el referido deudor deja de ser sujeto pasivo del IVA.

De acuerdo con reiterada jurisprudencia, señala el Tribunal que los Estados miembro podrán establecer obligaciones necesarias para garantizar la percepción del IVA y evitar el fraude, siempre y cuando afecten lo menos posible a los objetivos de la Directiva IVA y al principio de neutralidad del Impuesto. Establece el TJUE que una normativa que excluye la posibilidad de reducir la base imposible y hace que recaiga sobre el acreedor la carga del IVA que no ha percibido en el marco de sus actividades económicas excede los límites de la Directiva del IVA.

10. Tribunal de Justicia de la Unión Europea. Sentencia de 8 de mayo de 2019. Asunto C-712/17, EN.SA. Srl.

Operaciones ficticias — Imposibilidad de deducir el impuesto — Obligación, de quien expide una factura, de pagar el IVA que figura en ella — Multa por un importe igual al del IVA deducido indebidamente — Compatibilidad con los principios de neutralidad del IVA y de proporcionalidad.

Se interpela al TJUE que dilucide si, en una situación en la que unas ventas ficticias de electricidad realizadas de manera circular entre los mismos operadores y por los mismos importes no causaron pérdidas de ingresos tributarios, la Directiva del IVA debe interpretarse en el sentido de que se opone a una normativa nacional que excluye la deducción del IVA correspondiente a unas operaciones ficticias y obliga a quienes mencionen el IVA en una factura a pagar dicho impuesto, incluso en el caso de una operación ficticia.

Recuerda el TJUE que, al tratarse de una serie de operaciones ficticias que obstaculizan el derecho a la deducción del impuesto, el principio de neutralidad del IVA queda garantizado por la posibilidad de corregir cualquier impuesto indebidamente facturado, cuando se demuestre la buena fe del expedidor de la factura o siempre que se haya eliminado al completo, en su momento, el riesgo de pérdida de ingresos tributarios.

Por tanto, concluye que el Derecho comunitario no es contrario a que una norma nacional excluya la deducción del IVA de una operación ficticia, siempre y cuando permita regularizar la deuda si el emisor eliminó el riesgo de pérdida de ingresos tributarios.

Adicionalmente, establece el TJUE que los principios de neutralidad y de proporcionalidad del IVA se oponen a una normativa nacional en la que la deducción ilegal del IVA se sancione con una multa igual o superior al importe de la deducción efectuada.

11. Tribunal de Justicia de la Unión Europea. Sentencia de 15 de mayo de 2019. Asunto C-235/18, Vega International Car Transport and Logistic.

Directiva 2006/112/CE — Artículo 135, apartado 1, letra b) — Entrega de bienes — Exenciones relativas a otras actividades — Concesión y negociación de créditos — Tarjetas de carburante.

Se cuestiona al TJUE si el artículo 135, apartado 1, letra b), de la Directiva IVA debe interpretarse en el sentido de que, la puesta a disposición de sus filiales de tarjetas de carburante por una sociedad matriz, que permite a las filiales abastecer de carburante los vehículos cuyo transporte realizan, puede calificarse como servicio de concesión de un crédito, exento del IVA, o como una operación compleja que tenga como objetivo principal la entrega de carburante y, por tanto, la entrega de un bien, en relación con la cual pueda recuperarse el IVA abonado en Polonia.

En este caso, la empresa matriz factura a sus filiales el carburante entregado para la prestación del servicio de transporte de vehículos con un recargo del 2%.

Pues bien, considera en primer lugar el TJUE que la citada empresa matriz se limita a poner a disposición de su filial polaca, mediante tarjetas de carburante, un mero instrumento que le permite comprar ese carburante, desempeñando así únicamente un papel de intermediario en la operación de adquisición de ese bien. Así, estas operaciones no pueden considerarse como entregas de bienes y, por tanto, deben considerarse prestaciones de servicios.

En segundo lugar, considera el TJUE que, al aplicar el citado recargo, la matriz percibe una retribución por la prestación de servicios destinada a sus filiales, tratándose de una verdadera operación financiera, similar a la concesión de un crédito y que, por tanto, puede disfrutar de la exención del IVA prevista para este tipo de operaciones en el artículo 135, apartado 1, letra b), de la Directiva de IVA.

12. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 2 de abril de 2019, nº recurso 1315/2017.

Modificación de la base imponible – Facturas rectificativas – Pago mediante la entrega de pagarés – Artículo 80.Tres Ley del IVA.

Mediante esta sentencia, el TS declara no haber lugar al recurso de casación interpuesto por la obligada tributara contra la sentencia dictada por la Audiencia Nacional y fija criterios interpretativos en relación con el artículo 80.Tres de la Ley del IVA.

En este sentido, la obligada tributaria plantea esta cuestión con interés casacional ante el TS, consistente en determinar si en las situaciones de declaración de concurso procede modificar la base imponible del IVA y, en tal caso, resulta posible su regularización por la Administración tributaria, en aquellos supuestos en los que se ha procedido a realizar los pagos de las cuotas repercutidas mediante la entrega de pagarés y letras de cambio endosados a terceros, sobre los que se ha constituido una garantía real de crédito a favor del endosatario, pero no del acreedor originario, al considerar que no se ha producido el pago efectivo del crédito.

Pues bien, el TS tras realizar unas consideraciones generales sobre el esquema general de liquidación del IVA cuando se trata de operaciones interiores sujetas al mismo, y pronunciarse sobre el pago mediante pagarés de las cuotas repercutidas y sobre la constitución de una garantía real de crédito en favor del endosatario y sucesivos tenedores del pagaré, viene a concluir que considera conforme a derecho la emisión de las facturas rectificativas en el caso presente. Dicha conclusión es alcanzada con base en los siguientes motivos: (i) la entrega de pagarés no equivale al pago efectivo a los efectos del artículo 80.Tres de la ley del IVA y (ii) para entender cumplido el requisito de que el crédito correspondiente al IVA repercutido, y no satisfecho, esté garantizado con una garantía real es preciso que el crédito sea expresamente el del acreedor originario.

A la vista de los argumentos esgrimidos en el cuerpo de la sentencia, el TS manifiesta el siguiente contenido interpretativo de la misma:

"(…) en situaciones de declaración de concurso es procedente modificar la base imponible del IVA, siendo posible la regularización por la Administración tributaria cuando se hayan pagado las facturas y las cuotas repercutidas mediante la entrega de pagarés, aunque se haya constituido una garantía real, si está no se ha constituido en favor del acreedor originario, puesto que el destinatario de la operación continúa siendo el obligado al pago."

13. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 23 de abril de 2019, nº recurso 1250/2017.

Base imponible – Prestaciones de servicios – Operaciones cuya contraprestación no consista en dinero – Artículo 79.Uno Ley del IVA.

En el presente supuesto, el TS estima recurso de casación interpuesto por la obligada tributaria contra la sentencia dictada por la Audiencia Nacional, casando y anulando la resolución judicial impugnada. En particular, en el caso que nos ocupa se cedió una finca y a cambio el cesionario se comprometió a realizar las gestiones urbanísticas referidas a la misma.

En este sentido, la obligada tributaria plantea esta cuestión con interés casacional objetivo para la formación de la jurisprudencia ante el TS, consistente en determinar si la Administración Tributaria, a la hora de cuantificar la base imponible del IVA de una prestación de servicios, entre partes no vinculadas, cuya contraprestación se pacta en especie (entrega de unos terrenos), puede tomar como referencia el valor de mercado de dichos terrenos, determinado atendiendo a una transacción posterior, en lugar del valor o importe acordado entre las partes para la prestación de servicios.

Así, el TS realiza por un lado, el análisis de la determinación de la base imponible del IVA en las operaciones cuya contraprestación no consista en dinero desde la perspectiva de las directivas del IVA y la perspectiva jurisprudencial y, por otro, el análisis de la Ley del IVA en el marco normativo y jurisprudencial de la Unión Europea, para llegar a la conclusión de que es improcedente aplicar el valor de mercado a la entrega de bienes que operó como contraprestación en un supuesto como el enjuiciado. En particular, el TS señala que tanto si se aplica el artículo 79.Uno de la Ley del IVA en la versión anterior a la Ley 28/2014 (es decir, teniendo en consideración la fecha del devengo del impuesto) como en la versión posterior (que es a la que el auto de admisión parece contraer el interés casacional del asunto), la conclusión es la misma, y es que la sentencia de instancia ha infringido la normativa del IVA.

Por lo tanto, en función de lo razonado el recurso de casación de referencia, el TS procede a declarar lo siguiente:

"El artículo 79.Uno de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido , analizado a la luz de la Directiva 2006/112/CE, del Consejo, de 28 de noviembre de 2006, relativa al sistema común del impuesto sobre el valor añadido y de la jurisprudencia del Tribunal de Justicia de la Unión Europea debe ser interpretado en el sentido de que

a los efectos de cuantificar la base imponible del IVA de una prestación de servicios, entre partes no vinculadas, cuya contraprestación no consista en dinero (entrega de unos terrenos) la Administración tributaria deberá atender al valor o importe acordado entre las partes como contraprestación de la prestación de servicios, sin que resulte posible, en las circunstancias de este caso (ausencia de vinculación entre las partes, y valor de la contraprestación expresado en dinero) tomar como referencia el valor de mercado de dichos terrenos, atendiendo a una transacción posterior..”

III. Doctrina Administrativa

1. Tribunal Económico-administrativo Central. Resolución nº 6015/2015, de 20 de febrero de 2019.

Entregas de objetos publicitarios en los que no se consigna de forma indeleble la correspondiente mención publicitaria - Exclusión del derecho a deducir.

La entidad recurrente adquirió una serie de carpetas que llevaban impresa en su parte exterior el logo de la empresa y que incluían en su parte interior una serigrafía.

La campaña estaba orientada a difundir una imagen de la empresa como responsable con el Medio ambiente y se remitieron a personalidades relacionadas con el ámbito de actuación de la empresa.

La recurrente consideró que el IVA soportado era plenamente deducible. No obstante, en una comprobación posterior, la Administración entendió que no existía derecho a la deducción ya que los objetos entregados no cumplían con los requisitos para ser considerados objetos de carácter publicitario.

Todo ello, en base a los siguientes motivos:

- Los bienes entregados no podían considerarse como de “escaso valor”.
- La mención publicitaria se situaba en la carpeta que contenía el objeto que se entregaba no en el objeto mismo.
- El hecho de que la entrega de material publicitario sirviera para la finalidad de la empresa, no era suficiente para considerar deducibles las cuotas soportadas.

El TEAC coincide con el criterio de la Administración y considera que el hecho de que el logo de la empresa figure únicamente en la carpeta (envoltorio), pero no en la serigrafía (objeto que se entrega) supone que no se cumpla el requisito de que se consigne de forma indeleble la mención publicitaria.

En base a lo anterior, el TEAC concluye que los bienes entregados no pueden encuadrarse dentro de los objetos publicitarios de escaso valor definidos en el artículo 7.4º de la Ley de IVA y, por consiguiente, la cuota de IVA soportada no puede ser objeto de deducción conforme al artículo 96.Uno.5º.

2. Tribunal Económico-Administrativo Central. Resolución 7197/2015, de 20 de febrero de 2019.

IVA. Devoluciones a no establecidos.

La cuestión planteada en el presente caso se centra en determinar si procede denegar la solicitud de devolución del IVA a una entidad no establecida ni identificada ni en el Territorio de Aplicación del IVA (TAI) ni en la Unión Europea (UE), por el hecho de que en las facturas en las que se documenta la repercusión del IVA soportado no se consignó el NIF del destinatario (entidad de fuera de la UE).

En concreto, el TEAC se centra en discernir cómo debe interpretarse la obligación derivada del artículo 6.1.d) 3º del Reglamento sobre obligaciones de facturación, por la que en toda factura en la que se documente una operación que haya de entenderse realizada en el TAI y el empresario o profesional obligado a su expedición deba considerarse establecido en dicho territorio, ha de hacerse constar el NIF del destinatario.

En este sentido, el Tribunal entiende que, aunque dicha obligación se establece con carácter general (sin excepciones), debe acomodarse a las particularidades de los destinatarios no establecidos ni identificados en ningún estado de la UE. Así, para el caso de que la oficina gestora de una solicitud de devolución de IVA de no establecidos albergue dudas acerca de la identidad del solicitante, no puede, sin más, proceder a su denegación por la ausencia del referido NIF en las facturas en las que se documenten las correspondientes cuotas, debiendo haber requerido la aportación de algún número o código que permitiese la identificación inequívoca del solicitante.

En consecuencia, en ausencia de dicha actuación, entiende el TEAC que debe estimarse la reclamación presentada y procederse a la devolución que se solicitó.

3. Tribunal Económico-Administrativo Central. Resolución 9438/2015, de 28 de marzo de 2019.

TPO. Tributación de la transmisión de una unidad económica autónoma.

La cuestión planteada en el presente caso se centra en determinar la tributación de la transmisión de un complejo industrial que constituía una unidad económica autónoma destinada a la comercialización de arroz.

Asimismo, no es objeto de debate que el conjunto de activos transmitidos constituía una unidad económica autónoma capaz de desarrollar una actividad empresarial por sus propios medios, como es el negocio arrocero, en sede de la entidad transmitente.

En base a lo anterior, ambas partes admitieron que la referida operación se encontraba no sujeta al IVA conforme al art. 7.1 de Ley IVA.

No obstante, la cuestión controvertida es la tributación de la operación por la modalidad TPO del ITP y AJD, en la medida en que mientras en los acuerdos impugnados se considera la sujeción al impuesto, la recurrente considera que lo que se ha transmitido es una unidad económica autónoma, pero no la totalidad de un patrimonio empresarial, por lo que, de acuerdo con el art. 7.5 del Real Decreto Legislativo 1/1993 (TR Ley ITPyAJD), la operación no estaría sujeta a dicha modalidad del impuesto.

En este sentido, el Tribunal entiende que, si bien el hecho imponible al que se refiere el art. 7.5 del TR Ley ITPyAJD es la transmisión de la totalidad del patrimonio empresarial, sin que se haga referencia a la transmisión de una rama de la actividad, no procede interpretar de forma literal dicho artículo, sino que debe ser entendido de acuerdo con el espíritu de la norma, que busca la coordinación necesaria entre el IVA y la modalidad TPO del ITPyAJD, para evitar situaciones no deseadas tanto de doble imposición como de no imposición.

Por tanto, la referencia que efectúa el art. 7.5 TR Ley ITPyAJD a la *"transmisión de la totalidad del patrimonio empresarial" debe comprender la "transmisión de un conjunto de elementos corporales y, en su caso, incorporales que, formando parte del patrimonio empresarial o profesional del sujeto pasivo, constituyan o sean susceptibles de constituir una unidad económica autónoma en el transmitente", a la que alude el art. 7.1º de la Ley del IVA para declarar la no sujeción al IVA y que, en términos tanto de la jurisprudencia comunitaria como nacional, se sintetiza en que constituya una "unidad económica autónoma"*.

En consecuencia, se concluye que la operación constituye hecho imponible en el ITPyAJD, modalidad TPO, ya que lo que se transmitió fueron los elementos afectos a una rama de la actividad empresarial de la entidad vendedora susceptible de funcionamiento autónomo, por más que la misma no constituya la transmisión de la totalidad del patrimonio empresarial de la transmitente.

4. Dirección General de Tributos. Contestación nº V0531-19, de 12 de marzo de 2019.

Transmisión del subsuelo realizada por Ayuntamiento – Sujeción al IVA – Exención del IVA.

El consultante es un Ayuntamiento que va a transmitir el subsuelo de una parcela municipal para la construcción en el mismo de un aparcamiento subterráneo.

La DGT recuerda que, conforme a su criterio, las entregas de parcelas o terrenos en general por entidades públicas se realizan en el ejercicio de una actividad empresarial o profesional en los siguientes casos:

1. Cuando las parcelas transmitidas estuviesen afectas a una actividad empresarial o profesional desarrollada por la entidad pública.

2. Cuando las parcelas transmitidas fuesen terrenos que hubieran sido urbanizados por dicha entidad.

3. Cuando la realización de las propias transmisiones de parcelas efectuadas por el ente público determinasen por sí mismas el desarrollo de una actividad empresarial, al implicar la ordenación de un conjunto de medios personales y materiales, con independencia y bajo su responsabilidad, para intervenir en la producción o distribución de bienes o de servicios, asumiendo el riesgo y ventura que pueda producirse en el desarrollo de la actividad.

Así, la transmisión del subsuelo que sea titularidad del Ayuntamiento consultante dentro de los límites establecidos por el planeamiento urbanístico constituirá una operación sujeta al IVA cuando, respecto del terreno al que corresponde o según el aprovechamiento atribuido a aquel, concurra alguno de los supuestos indicados anteriormente y, en particular, cuando pertenece al Ayuntamiento como consecuencia de una reparcelación.

En el supuesto de que la entrega del subsuelo se encuentre sujeta al Impuesto, pudiera resultar aplicable a la misma el supuesto de exención regulado por el artículo 20, apartado uno, número 20º, de la Ley del

IVA, según la clasificación del mismo en el momento de la entrega, sin perjuicio de la posibilidad de renuncia a la exención en los términos previstos en el apartado dos del referido artículo 20.

5. Dirección General de Tributos. Contestación nº V0625-19, de 12 de marzo de 2019.

Edificio compuesto de partes independientes – Exención IVA.

La sociedad consultante, tiene intención de transmitir un edificio de oficinas, el cual constituye una única unidad registral, que no ha sido objeto de división horizontal.

La consultante llevó a cabo obras de rehabilitación a los efectos del artículo 20.Uno.22º, de la Ley del Impuesto sobre el Valor Añadido. Desde la finalización de dichas obras en el año 2016, determinadas oficinas independientes del edificio han sido objeto de arrendamiento sin opción de compra a terceros si bien, en el momento de la transmisión, solo una de esas oficinas ha sido objeto de arrendamiento durante más de dos años.

El adquirente del edificio será un tercero distinto de los arrendatarios que actualmente utilizan los distintos espacios que conforman el inmueble.

Dado que el edificio objeto de la transmisión está compuesto de distintas partes susceptibles de uso autónomo respecto del resto, deberá analizarse el cumplimiento de los requisitos previstos en dicho artículo 20.Uno.22º para cada una de las partes del edificio susceptibles de utilización autónoma e independiente, concretamente, respecto de cada una de las oficinas.

En la medida en que solo una de las oficinas ha sido utilizada ininterrumpidamente durante más de dos años, por persona distinta del futuro adquirente, la entrega posterior de la misma tiene la consideración de segunda entrega, quedando exenta del IVA, sin perjuicio de la posibilidad de renunciar a dicha exención.

Por el contrario, el resto de oficinas respecto de las que concurran los requisitos para tener la consideración de primera entrega de edificación será una operación de entrega de bienes sujeta y no exenta del Impuesto.

6. Dirección General de Tributos. Contestación nº V0716-19, de 29 de marzo de 2019.

Base imponible de servicios de concesión de préstamos – Bonificación de los intereses de financiación.

La sociedad consultante es una entidad mercantil que tiene entre sus actividades la concesión de préstamos a compradores de vehículos. Para promocionar dichas operaciones, esta entidad bonifica los intereses de la financiación de aquellos compradores que opten a la misma. La cuantía bonificada se entregará al concesionario para pagar parte del precio del vehículo financiado.

En esta contestación, la DGT recuerda que de conformidad con lo señalado en el artículo 78.Tres.2º de la LIVA, la base imponible de la operación de concesión de préstamos vendrá determinada por el importe de la contraprestación pactada, minorado por los descuentos o bonificaciones otorgados, que en el caso concreto planteado, será el de los intereses satisfechos por el comprador del vehículo, minorado en el descuento derivado de la bonificación aplicada.

Asimismo, en relación con el devengo de esta operación, la DGT recuerda que, al tratarse el préstamo de una operación de tracto sucesivo, la imputación del descuento deberá realizarse a lo largo del periodo de financiación, en el momento de la exigibilidad de cada cuota de intereses.

Finalmente, la DGT señala que el importe abonado por la entidad consultante forma parte del pago del precio del vehículo, que no se modifica como consecuencia del descuento concedido en la operación financiera. Por consiguiente, el referido descuento no supone una minoración de la base imponible de la entrega del vehículo.

7. Dirección General de Tributos. Contestación nº V0750-19, de 3 de abril de 2019.

Reglas de localización del IVA - Servicios relacionados con bienes inmuebles – Instalación y montaje de maquinaria.

La entidad consultante es una sociedad mercantil establecida en el TIVA-ES, que realiza trabajos de instalación y montaje de maquinaria en dicho territorio, a favor de una sociedad holandesa que las ha fabricado.

En esta contestación, la DGT recuerda la necesidad de interpretar las reglas de localización de los servicios relacionados con bienes inmuebles, a través de una interpretación sistemática del artículo 70.Uno.1º de la LIVA y de la normativa comunitaria aplicable (artículo

47 de la Directiva del IVA 2006/112, artículos 13 ter y 31 bis del Reglamento de Ejecución 282/2011, así como las correspondientes Notas Explicativas de la Comisión Europea, en relación con este tipo de servicios).

De conformidad con lo dispuesto en la citada normativa y teniendo en cuenta que la maquina a instalar constituye, según la información aportada, una instalación de maquinaria para el embalaje, clasificación y control de productos dentro en los almacenes de logística de grandes empresas, la DGT entiende que concurren los requisitos para que dicha maquinaria, una vez instalada, adquiera la naturaleza de bien inmueble.

Por tanto, la DGT concluye que las operaciones necesarias para la instalación de la maquinaria, deben entenderse como servicios directamente relacionados con un bien inmueble, a los efectos del IVA y, por consiguiente, que estos se entienden localizados en el TIVA-ES.

8. Dirección General de Tributos. Contestación nº V0807-19, de 15 de abril de 2019.

Sujeción al IVA – Tipo Impositivo – Comercialización de energía eléctrica en puntos de recarga.

La mercantil interesada tiene por actividad la comercialización de energía eléctrica y va a proceder a la instalación de puntos de recarga de energía para vehículos eléctricos en superficies tales como centros comerciales y aparcamientos.

Para ello, suscribirá acuerdos con los propietarios, para la cesión de plazas de aparcamiento donde instalar los puntos de recarga, así como para el suministro de la electricidad necesaria.

Adicionalmente, la consultante se hará cargo de la ejecución y mantenimiento de las instalaciones y de la prestación de los servicios accesorios relacionados con dichos puntos de recarga. Además, suscribirá un contrato con cada usuario para la prestación del servicio de recarga y su cobro. También responderá frente a los mismos del correcto funcionamiento de los puntos de recarga y, en todo caso, asumirá los riesgos de impago de las recargas efectuadas por los usuarios.

La DGT considera que, del escrito de consulta se deduce que la consultante va a facilitar la realización de entregas de energía eléctrica a través de puntos de recargas de vehículos eléctricos situados en determinados establecimientos a los usuarios destinatarios de recarga.

De acuerdo con la normativa sectorial específica, el servicio de recarga puede prestarse por los titulares de los puntos de suministro, tales como los centros comerciales o aparcamientos referidos en el escrito de consulta, o a través de un tercero, como podría ser la entidad consultante. De la información contenida en el escrito de consulta parece que la consultante realizaría en nombre propio entregas de energía eléctrica a los usuarios del punto de recarga.

Por otra parte, además del suministro eléctrico la consultante va a prestar a sus clientes un conjunto de servicios adicionales que consistirán, fundamentalmente, en la puesta a disposición del cliente de una aplicación móvil que ofrecerá la información relativa a los puntos de recarga disponibles, permitirá reservar dichos puntos de recarga, así como su apertura y pago; por otro lado, también pondrá a disposición de los clientes un centro de atención telefónica especializado para atender las posibles incidencias relacionadas con las recargas de energía eléctrica.

Pues bien, la DGT, en aplicación de la reiterada doctrina del TJUE (Card Protection Plan Ltd (CPP), asunto C-349/96, de 2 de mayo de 1996, entre otras) recuerda 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.

Con base en lo anterior, concluye el Centro Directivo que la entrega de energía eléctrica a través de los puntos de recarga que va a realizar el consultante constituiría la prestación principal, mientras que el resto de servicios expuestos deberían considerarse prestaciones accesorias a la misma y que, consecuentemente, deben seguir el régimen de tributación de la operación principal.

Finalmente, la DGT considera que las entregas de energía eléctrica que realice la interesada a los clientes finales en puntos de recarga situados en el territorio de aplicación del Impuesto en las condiciones señaladas estarán sujetas al Impuesto al tipo impositivo general del 21 por ciento.

9. Dirección General de Tributos. Contestación nº V0902-19, de 24 de abril de 2019.

Derecho a la deducción del IVA – Regularización del IVA soportado en bienes de inversión por cambio de destino previsible.

La consultante, construyó un centro cultural que arrendó a dos Fundaciones con las que tenía vinculación, por lo que dedujo el IVA soportado en su construcción. Se está planteando la integración de una

de las fundaciones arrendatarias en su patrimonio y la afectación de la parte correspondiente del centro cultural a la realización de operaciones no afectas a su actividad no generadoras del derecho a la deducción.

La DGT reitera que de acuerdo con el artículo 95.Uno y Tres de la Ley 37/1992, la deducción de las cuotas soportadas por la adquisición de bienes de inversión, objeto de consulta, depende en primer lugar, del destino previsible del bien adquirido o construido.

Asimismo, se analiza el impacto del cambio de destino previsible del bien de inversión sobre el régimen de deducción aplicado a las cuotas soportadas inicialmente. Para ello, la DGT recuerda que se tiene que examinar si el cambio de destino previsible se ha producido con anterioridad al inicio del periodo de regularización.

- Si el cambio se ha producido con anterioridad, habrá que atenerse a lo previsto en los artículos 99.Dos y 114 de la LIVA y presentar una declaración-liquidación rectificativa en caso de que la rectificación determine una minoración del importe de las cuotas inicialmente deducidas.

- Por el contrario, si dicho cambio se ha producido dentro del periodo de regularización del bien de inversión, será necesario practicar una regularización única de las deducciones practicadas de conformidad con el artículo 110 de la Ley del IVA que grave el uso no empresarial que va efectuar del bien el consultante como consecuencia de su afectación para una actividad no generadora del derecho a la deducción.

Por último, en el caso en que hubiera transcurrido el periodo de regularización, no procederá realizar regularización alguna.

IV. Country Summaries

US

US increases tariffs on Chinese products and proposes more

On 10 May 2019, the US increased the additional duty rate applicable to "List 3" products of Chinese origin from 10% to 25%. The List 3, section 301, duties previously were addressed in Federal Register notices dated 21 September 2018, 28 September 2018, 19 December 2018 and 5 March 2019.

Also on 10 May 2019, the US Trade Representative (USTR) published an Action Notice clarifying that importers with goods exported from China to the US before 10 May 2019 will be able to avoid the increased section 301 duties on those goods if

the goods enter the US before 1 June 2019. Such goods will remain subject to the previously established additional duty of 10% and may be entered under a new subheading in Chapter 99 of the HTSUS (9903.88.09).

The USTR stated via a press release that President Trump ordered the USTR to begin the process of raising tariffs on approximately USD 300 billion additional imports from China. To this end, in another Action Notice issued on 13 May 2019, the USTR proposed an additional duty of up to 25% on a proposed fourth list of China-origin imports. The proposed List 4 covers most products not currently covered by Lists 1-3, but excludes pharmaceuticals, certain pharmaceutical inputs, select medical goods, rare earth materials and critical minerals. The USTR also announced the schedule for the public comment and hearing process for the proposed List 4, as follows:

- 10 June 2019: Due date for filing requests to appear and a summary of expected testimony at the public hearing.
- 17 June 2019: Due date for submission of written comments.
- 17 June 2019: The section 301 committee will convene a public hearing in the main hearing room of the U.S. International Trade Commission, 500 E Street SW Washington DC 20436, at 9:30 a.m.
- Seven days after the last day of the public hearing: Due date for submission of post-hearing rebuttal comments.

The US has attributed the above actions to China's recent retreat from specific commitments agreed in early rounds of trade negotiations between the US and China that have been ongoing since December 2018.

China's response

On 8 May 2019, the Chinese Ministry of Commerce responded to the US actions by signaling its intention to take "necessary countermeasures." Subsequently, on 13 May 2019, the Chinese Foreign Ministry indicated that, effective 1 June 2019, China will increase tariff rates from 10% to 20% or 25% and from 5% to 10% on 5,140 US-origin goods already subject to previously imposed additional tariffs.

Update on US exclusions from section 301 tariffs

Following its prior indefinite postponement of an exclusion process for List 3 tariffs, the USTR contemporaneously announced that it will publish a separate notice describing the product exclusion process for List 3. Further, the USTR announced that it also will be publishing its latest list of product exclusions from List 1, which will take effect retroactively from 6 July 2018, when the List 1 tariffs originally entered into force, and will remain in effect for one year following the publication of USTR's notice.

As of 13 May 2019, the results of the List 1 and List 2 exclusion processes, both of which were closed to new requests in 2018, stand as follows:

- List 1: Of 10,837 exclusion requests submitted, 1,957 (18%) have been granted, 6,005 (55%) have been denied and 2,875 (27%) remain pending.
- List 2: Of 2,920 exclusion requests submitted, none have been granted, 956 (33%) have been denied and 1,964 (67%) remain pending.

If the exclusion requirements for List 3 mirror those that were established for List 2, they would require:

- A detailed description of the physical characteristics of the product;
- The 10-digit subheading;
- The average annual quantity purchased for the last three years;
- The percentage of the importer's total gross sales of the product, or for imports used in the production of final products, the percentage of the total cost of producing the final product and percentage of total gross sales; and
- The rational for the requested exclusion (i.e. whether the product is available from a source outside of China; whether the additional duties would cause severe economic harm to the requestor or other US interest; and/or whether the product is strategically important or related to Chinese industrial programs (i.e. "Made in China 2025").

China

Tariffs increased on USD 60 billion worth of US imports

On 13 May 2019, China's Customs Tariff Commission of the State Council (CTCSC) announced that, effective 1 June 2019, the additional tariff rates which have already been imposed on 4,545 US-origin goods will be increased from 10% to 20% or 25% and from 5% to 10%. This latest round of tariff increases affects approximately USD 60 billion worth of imports from the US. The announcement came after the US government announced on 10 May 2019 that the additional duty rate applicable to "List 3" products of Chinese origin will be increased from 10% to 25%. These tariffs affect approximately USD 200 billion worth of imports from China.

In an effort to mitigate the effects of the tariffs on the Chinese economy, the CTCSC also announced that businesses will be able to apply for an exclusion from the additional tariffs, but did not identify which goods would be considered for this exclusion.

Imposition of additional tariffs

The list of US products affected have been subject to additional tariffs at rates of 5% to 10% since 24 September 2018 (notably, China suspended the additional 5% tariff on certain automobiles and auto parts as from 1 January 2019). However, based on the CTCSC announcement, the tariff rates will increase on certain products from 10% to 25%.

Key goods covered	Number of affected HS code items	Additional duty rate before 1 June 2019	Additional duty rate on and after 1 June 2019
Meat, wheat, sugar, wine, LNG, cotton sportswear, laser printers, keyboards, computer mouse, automatic teller machines, lithium-ion batteries, electric shavers, microwave ovens, electric ovens, routers, solar cells, etc.	2,493	10%	25%
Certain chemicals, toothpaste, dental floss, mouthwash, paper, dictionaries, encyclopaedias, cookers, large and medium sized computers, combine harvesters, toothbrushes, ballpoint pens, pencils, etc.	1,078	10%	20%
Corn starch, chicken breast, tomato sauce, textiles, wigs, sunglasses, treadmills, baby diapers, etc.	974	5%	10%
Digital mobile communication switches, certain airplanes, syringes, stethoscope, dentures, vehicle seat equipment, etc.	595	5%	5%

Exclusion from duties

The CTCSC also announced a program under which businesses can request an exclusion from the additional tariffs during a specific period. While the list of goods is expected to be announced soon, certain procedures for the application are outlined below.

Applicants	Enterprises in China or their industries/business associations engaged in the importation, production or use of affected goods
Scope	Applicants may apply for the exclusion of goods from the following two batches of goods subject to the additional tariffs: **Batch 1** - Tariff list 1 in CTCSC Announcement [2018] No. 5 and Tariff list 2 in CTCSC Announcement [2018] No. 7 **Batch 2** - List in Attachment 1 to 4 of CTCSC Announcement [2018] No. 6 An exclusion will not be available in cases where the imposition of the additional tariffs has been suspended or discontinued. For example, an exclusion will not be available for certain automobile and auto parts whose additional 5% tariff is already suspended.
Online application website	http://gszx.mof.gov.cn
Application period	Applicants may submit applications during the following periods: **Batch 1** - 3 June to 5 July 2019 **Batch 2** - 2 September to 18 October 2019
Application requirements	An application form must be submitted for each HS code. Facts and data must be provided to justify the exclusions with respect to the following: • Difficulties faced in identifying alternative sources of products; • Serious economic damage to the applicant caused by the additional tariffs; and • Major negative structural impact on related industries (including impacts on industry development, technological progress, employment, environmental protection) or serious social consequences caused by the additional tariffs.
Effects	• An exclusion from the additional tariffs will apply for one year starting from the date the exclusion is granted. • If the tariff has been imposed and collected before the exclusion is granted, the amount of the tariff can be refunded provided certain conditions are met. In this case, the business must request a refund within six months from the date the exclusion is announced. However, a refund will not be allowed where the additional tariffs are suspended or discontinued before the exclusion is announced.

Comments

China's announcement of an exclusion process may indicate that the government is considering ways to mitigate the negative impact of the increased tariffs on the domestic economy and to protect domestic consumers and businesses. However, with the 1 June 2019 commencement date for the additional tariffs, companies have only a short time to plan for the new rates (such as doing a comprehensive cost-benefit analysis to help determine whether adjustments may be needed to supply chains). Importers that are considering applying for the exclusion should have valid supporting documentation and be able to provide a numerical analysis to demonstrate the negative impact of the additional tariffs on the business. It may be useful in certain cases to approach industry associations to better understand industry issues caused by the additional tariffs.

Austria

Tax court rules on VAT treatment of roaming services

Recent decisions of the Austrian Court on Tax Matters (BFG) have shed some light on the criteria for determining whether telecommunications services supplied by telecommunications providers established in non-EU countries are subject to Austrian VAT.

When non-EU 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.

Austria implemented a regulation based on the EU VAT directive that shifts 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. In November 2018, the Austrian Supreme Administrative Court concluded that the regulation was in line with both national and EU law. Therefore, both of the services described above are taxable in Austria, resulting in input VAT incurred and VAT payable by foreign telecommunications providers. However, it has been unclear whether the regulation also applies in cases where a comparable tax exists in the foreign country.

In two recent decisions, the BFG reaffirmed that the telecommunications services are subject to Austrian VAT only if they are *not* subject to a comparable tax in the non-EU country. The court also stated that a 10% foreign tax does not constitute a comparable tax, while a 14% tax is considered comparable. The Austrian tax authorities, however, now appear to take the view that a tax must be at least 15% (the minimum standard VAT rate under the EU VAT directive) to be considered comparable and have appealed the court's decision to Austria's Supreme

Administrative Court. It should be noted that the tax has to apply to the roaming services provided in Austria (i.e. calls from Austria to any other country) to be comparable.

Comments

It is unclear when the Supreme Administrative Court will issue its decision in the case and whether it will share the views of the BFG.

Based on the BFG's decisions, telecommunications companies from non-EU countries should consider whether they need to register for VAT purposes in Austria and file VAT returns for current and previous periods (unless time-barred). At the same time, affected companies may need to file a voluntary self-disclosure within the meaning of section 29 of the Austrian Financial Criminal Act with the Austrian tax authorities to mitigate the risk of potential fiscal criminal proceedings.

India

Levy of GST on "back office" support services upheld

In a ruling dated 26 February 2019, the Maharashtra Appellate Authority for Advance Rulings (AAAR) agreed with the earlier ruling of the Maharashtra Authority for Advance Rulings (AAR) that a wide range of back office support services provided by an Indian company to overseas clients should be treated as intermediary services for goods and services tax (GST) purposes.

Background

The taxpayer is an Indian company that provides various back office support services including:

- Creating and arranging documentation (e.g. purchase orders, sales contracts, pro forma invoices, etc.) to be exchanged between clients and their suppliers/customers;
- Processing payments for clients;
- Maintaining client employee records, payroll processing, accounting of payments made by clients to suppliers etc.;
- Arranging for original documents to be sent to clients/customers;
- Liaising with suppliers/inspection authorities on behalf of clients;
- Arranging inspection certificates for clients; and
- Coordinating with the client's suppliers/customers to execute sale and purchase contracts.

The taxpayer asked the Maharashtra AAR to rule on whether the services it provided to its client would qualify as the export of services under the GST law, which would be zero-rated. The case before the AAR concerned services provided under a contract with a client in Hong Kong.

The AAR held that the wide range of back office support and accounting services provided by the Indian company to clients outside India are in the nature of "arranging and facilitating" the supply of goods or services between its clients and their customers. These would be treated as intermediary services for purposes of India's GST law, attracting GST at the 18% rate.

The taxpayer appealed the AAR's ruling to the Maharashtra AAAR. The taxpayer reiterated the submissions made before the AAR, maintaining that the services provided are outside the scope of intermediary services because the services are provided on a principal-to-principal basis. The taxpayer took the position that any supply of goods between a client and the client's customers is incidental to the principal service of back office support and/or accounting services provided to the client. Further, the taxpayer argued that the AAR was incorrect to rule that the taxpayer fell within the scope of the term "any other person" in relation to the definition of intermediary and that an intermediary only is a person whose services are similar to those of an agent or a broker. Finally, the taxpayer posited that the AAR's ruling, if adopted more widely, would have a detrimental effect on the back office support sector in India—levying GST on such services would make Indian entities economically ineffective and the business would transfer to other countries.

Ruling of the AAAR

The AAAR examined the contract between the taxpayer and the Hong Kong client and observed that the taxpayer was providing additional services to facilitate the supply of goods between the client and its customers. These services went beyond the scope of back office support and accounting services. The AAR further observed that the taxpayer was receiving a specified additional amount based on the number of sale and purchase transactions that it handled, implying that the taxpayer was engaged in the facilitation of the supply of goods. The AAAR noted that the supply of goods between the client and its customers was facilitated by the taxpayer; the goods were not being supplied by the taxpayer on its own account. Accordingly, the taxpayer's services were held to be intermediary services.

The AAAR determined that the principal supply was the facilitation of the supply of goods between the client and its customers, and that the back office support services are incidental to the principal supply.

Notably, the AAAR also held that rulings of the AAR are based on the facts and circumstances of the specific case and cannot have a broader impact on the relevant sector.

Comments

Despite the AAAR's comment, the decision may be expected to increase litigation in respect of services that could fall within the scope of intermediary services, considering that information technology-enabled services are a major export of the Indian economy. Although the AAAR emphasized that advance rulings apply only to the applicant and do not have a binding effect across an industry or sector, it is possible that the Indian tax authorities may rely on the ruling as precedent in future proceedings.

Entities involved in the back office support services sector also may wish to reassess the cross-charge mechanism, since the manner of remuneration was considered an important factor when determining services to be intermediary services.

Luxembourg

2019 budget law approved, including VAT measures

Luxembourg's 2019 budget law was approved by the parliament on 25 April 2019 and published in the official journal on 26 April. Most measures in the budget will become applicable as from 1 May 2019, although some provisions apply retroactively as from 1 January 2019.

The draft budget law follows a temporary budget published in December 2018 covering the period from January to April 2019, which had been introduced by the new government formed after the fall elections. It ensures that a rule for tax-integrated groups related to the interest expense deduction limitation rule in the EU Anti-Tax Avoidance Directive (ATAD I) is adopted from 2019, as agreed when parliament voted to transpose the ATAD into domestic law. The law also includes other tax measures designed to strengthen social cohesion and individuals' purchasing power, as well as the competitiveness of companies, in line with the priorities set out by the new government coalition.

The following tax measures are introduced:

Corporate tax

Tax rate reduction

As from the 2019 fiscal year, the corporate income tax rate is reduced from 18% to 17% while the income bracket affected by the minimum 15% rate is increased from EUR 25,000 to EUR 175,000. As a result, companies closing their taxable year on or after 1 January 2019 will benefit from this new lower tax rate.

The 17% rate applies to taxable income exceeding EUR 200,000. For amounts between EUR 175,000 and EUR 200,000, corporate income tax is calculated based on a formula, adding EUR 26,250 (i.e. EUR 175,000 x 15%) and 31% of the income

amount exceeding EUR 175,000. The comments to the law provide 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 CIT due*."

Fiscal unity regime

A new article 164*bis* is introduced in the Income Tax Law (ITL) in connection with the fiscal unity regime that consolidates and revises the fiscal unity provisions in the previous article 164bis and the related Grand Ducal regulation. The new article specifies the scope of application of the fiscal unity regime and clarifies how taxable income of a fiscal unity should be determined.

New article 164bis also introduces the ATAD I option allowing a fiscal unity to apply the interest expense deduction limitation rule at the the fiscal unity level instead of the individual entity level. Luxembourg implemented the ATAD into its domestic law on 21 December 2018, with the new rules applying for fiscal years beginning on or after 1 January 2019. However, the law implementing the directive did not contain the option allowing fiscal unities to determine excess borrowing costs at the fiscal unity level (i.e. the rule applied only at the individual entity level). The new budget law includes a provision allowing the deductibility of a fiscal unity's excess borrowing costs up to the greater of 30% of taxable EBITDA (earnings before interest, tax, depreciation and amortization) or EUR 3 million.

The new article contains the following basis computation rules for the ATAD interest expense deduction limitation:

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

- The integrating company's taxable interest income and other economically equivalent taxable income are calculated by adding all taxable interest income of each member of the fiscal unity.

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

- The taxable EBITDA of the integrating company does not correspond to the sum of individual group members' EBITDA. EBITDA is determined based on the total net income of all members of the fiscal unity, increased by (i) the excess borrowing costs of the integrating company and (ii) the depreciation/amortization amounts of all members.

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

The safe harbor rule allows excess borrowing costs up to EUR 3 million to be deducted without limitation. In addition, it is possible to fully deduct excess borrowing costs if it can be demonstrated that the ratio of the integrated group members' equity over their total assets is equal to or greater than the equivalent ratio of the consolidated group for financial accounting purposes.

A fiscal unity is not allowed to deduct the 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 is allowed to use them, but the costs may be set aside and used by the entity after it exits the fiscal unity.

Loans which were concluded by a member of the consolidated group before 17 June 2016 or loans used to finance long-term public infrastructure projects are excluded in computing the amount of excess borrowing costs.

These rules apply automatically to all fiscal unities—both existing and new—at the group level. However, if they prefer to apply the interest expense deduction limitation at the individual entity level instead, they may elect to do so. For new fiscal unities, this option must be clearly indicated in the request to establish a fiscal unity and will apply for the duration of the unity (at least five fiscal years). For existing fiscal unities, the option (individual application of the interest limitation rule) is available if all companies in the consolidated group submit a joint request for its application before the end of the first fiscal year for which the new rules apply (i.e. the tax year beginning on or after 1 January 2019).

Minimum social wage tax credit

A new minimum social wage tax credit is introduced as from tax year 2019. The monthly tax credit is added to the current tax credit available to wage earners, which ranges from EUR 0 to EUR 600 per tax year.

The credit is designed to benefit employees whose salary is close to the current minimum social wage. It grants such individuals an additional EUR 100 net remuneration per month after individual income tax and social security charges and after the increase in the minimum social wage for 2019. Individuals whose salary is slightly above the minimum social wage may benefit from this measure also, subject to a straight-line reduction from EUR 70 to EUR 0 for monthly gross salaries between EUR 2,500 and EUR 3,000. The tax credit will be paid by the employer to the employee once a month, together with the employee's monthly after-tax remuneration.

The tax credit also will 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 ITL. For the latter, the social security authorities will pay the tax credit based on the computation made by the employer.

Taxpayers are eligible for this tax credit if their employment income is subject to the compulsory social security system in Luxembourg or another country with which Luxembourg has a bilateral or multilateral social security agreement.

Taxpayers whose employment income is taxable in Luxembourg but who are not subject to Luxembourg wage tax based on a tax card, can, upon request, receive the minimum social wage tax credit from the Luxembourg tax authorities after the applicable calendar year.

VAT

The application of the super-reduced (3%) and reduced (8%) VAT rates are extended as from 1 May 2019 as follows:

- The 17% standard VAT rate for electronic publications (including e-books and e-newspapers) is reduced to 3% to align with the rate for print publications. The super-reduced rate also applies to publications borrowed from a library. This extension follows the EU Council Directive 2018/1713 of 6 November 2018, amending the EU VAT Directive 2006/112 and allowing EU member states to apply a reduced VAT rate to electronic publications. It should be noted that Luxembourg applied the super reduced VAT rate to electronic publications until 1 May 2015, when the Court of Justice of the European Union ruled that reduced rates could not apply to them. With respect to print publications, the super reduced rate does not apply to advertising and pornographic material. Also, in accordance with the directive, it does not apply to publications that wholly or predominantly contain video content or audible music.

- The 3% super-reduced VAT rate is extended to pharmaceutical products normally used for health care, disease prevention and medical and veterinary treatment, including contraceptive and feminine hygiene products.

- The 8% reduced VAT rate is extended to plant protection products authorized for organic farming by the Administration of Technical Agricultural Services. This applies to taxpayers complying with the requirements of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and the labelling of organic products, which repealed Regulation (EEC) No 2092/91.

Singapore

GST reverse charge on imported services

The Goods and Services Tax (GST) reverse charge on business-to-business (B2B) imported services will commence in Singapore from 1 January 2020. As there are less than eight months remaining before the new requirement takes effect, businesses that have yet to start the process of preparing for the reverse charge need to act. Businesses that already are on the journey should ensure that they are following a structured and methodical approach to confirm they have complete coverage of the potential issues and scenarios.

Affected businesses

Examples of businesses that will be subject to the GST reverse charge include the following:

- Taxable businesses that make substantial exempt supplies, such as where interest is received from intercompany loans;
- Partially exempt businesses, such as developers of mixed-use properties, banks and other financial institutions;
- Fully taxable businesses that do not make any exempt supplies but that are GST-group registered with partially exempt group members;
- Charities and voluntary welfare organizations that receive outright grants, donations and sponsorships and provide free/subsidized services; and
- Investment-holding companies that derive dividend income.

Next steps

Not every business is the same and the complexity and level of effort required to prepare for the GST reverse charge will differ from one business to another. However, applying a structured and methodical approach to implementation, such as the following three-phased approach, may reduce the likelihood of critical issues being missed:

- Phase one—Impact assessment:
    - Undertake a pre-assessment of whether the business is in-scope for the reverse charge, and identify impacted business units and systems.
    - Perform a gap analysis to identify gaps based on current reporting, systems and processes.
    - Assess the potential cost impact.

- Develop an implementation plan and identify resourcing needs to execute the plan.

- Phase two—Implementation:
  - Implement system and process changes.
  - Train affected personnel.
- Phase three—Post-implementation:
  - Carry out a post-implementation review to test the effectiveness of the system enhancements and process changes.

Other news

Austria

Draft bill addresses taxation of digital economy

On 4 April 2019, the Austrian Federal Ministry of Finance (MOF) released a draft bill on the taxation of the digital economy. The bill's proposals would introduce a new 5% digital services tax (DST) on online advertising services and make broad changes to Austrian VAT law, including new documentation and reporting requirements.

The bill is based to some extent on the EU's draft proposals on the taxation of the digital economy issued on 21 March 2018, which to date have not been supported by a majority of the EU member states. The draft bill was subject to a period of public consultation, which ended on 9 May 2019. The MOF now will evaluate the comments received and possibly make changes to the draft bill before it is passed by parliament, which is expected shortly.

DST

The proposed introduction of a DST generally aims to reflect the growth of the digital economy in the Austrian tax framework, to balance the tax treatment of businesses providing digital services with the treatment of more traditional businesses. The DST is expected to apply as from 1 January 2020.

Online advertising services (e.g. the placement of advertisements on search engines and online banner advertisements) would be considered "covered services" and would be subject to the DST where the services are provided in Austria for consideration and the advertisement is directed—at least partly—at Austrian users. A covered service would be deemed to be provided in Austria if the advertisement is displayed on the device of a user with an Austrian IP address.

Companies providing covered services would be subject to the DST only if their worldwide revenues exceed EUR 750 million and their revenues from Austrian-source covered services exceed EUR 25 million. For multinational groups, these thresholds would apply to consolidated revenues.

The DST rate would be 5%, in line with the existing rate of Austrian advertising tax (which currently does not cover online advertising). The DST would be self-assessed, with payments due to the competent Austrian tax office by the 15th day of the second month following the month in which the service was rendered. The draft bill does not impose the DST liability on the covered service recipient.

VAT measures

The draft bill contains measures that would amend Austria's VAT rules to ensure taxation of supplies of goods by foreign companies to Austrian residents, especially via online platforms and mail order sales.

Under current rules, parcels delivered from third countries (i.e. non-EU member states) are subject to VAT in Austria only if the value of the delivered goods exceeds EUR 22 (i.e. "low-value" parcel deliveries are VAT exempt). The draft bill would eliminate this threshold, so that all parcel deliveries would be subject to Austrian VAT regardless of their value. This measure aims to address concerns of the government that under the existing VAT rules many deliveries from third countries are declared VAT exempt even though their value exceeds the threshold, thus creating advantages for nonresident sellers over resident sellers.

For mail order deliveries from third country businesses, the bill would deem the online platform through which the order was placed liable for the Austrian VAT on the delivered goods where the goods are valued below EUR 150 or are supplied within the EU by non-EU resident businesses (and would impose a VAT registration obligation on the online platform). This provision would be effective as from 1 January 2021.

Online booking platforms—including those operating in the "sharing economy"—would be subject to new documentation and notification requirements as from 1 January 2020, under which all information relevant for tax assessment in Austria would need to be documented and electronically provided to the Austrian tax authorities upon request. Electronic submission of such information would be mandatory for online booking platforms with annual revenues exceeding EUR 1 million. Details on the information to be reported would be announced in a special decree to be issued by the MOF, and companies that do not comply with the above requirements would be liable for the VAT if the provider of the underlying service does not comply with its Austrian tax obligations. (However, if the booking platform complied with its reporting obligation and the provider of the booking service failed to comply with its Austrian VAT obligations, the booking platform would not be liable for the Austrian VAT.)

Currently, Austria's VAT "mini one-stop-shop" (MOSS) regime is available only for supplies of certain electronic services (e.g. telecommunications, broadcasting, etc.) by businesses to consumers (B2C). As from 1 January 2021, the bill would extend the MOSS (i.e. the ability to register for VAT, file VAT returns and make payments in a single member state) to all B2C services and goods supplied via mail order from other EU member states, as well as to mail order imports (goods supplied via mail order from non-EU countries). Finally, as from 1 January 2021, Austria's current threshold for intra-community distance sales to Austrian private consumers would be eliminated (currently, the annual threshold is EUR 35,000). Mail order imports generally would be subject to Austrian VAT if the delivery or shipment ends in Austria, even if the item is imported into another EU member state (or if the new VAT one-stop-shop for mail order imports is applied by the taxpayer).

Belgium

Belgian customs authorities: non-EU established entities cannot act as exporter

Introduction On 3 April 2019, the Belgian customs authorities published an update on their interpretation of the UCC in the form of a Q&A. One of the biggest changes outlined in this update is the reference in box 2 for the definition of "exporter". Change to legal definition A key criterion to be an exporter out of the EU for customs purposes is to be established in the EU customs territory, including holding a valid EORI number. The legal definition for establishment in the customs territory of the union includes persons having a permanent establishment in the customs territory of the Union.

In the update, the Belgian customs authorities confirmed that non-EU established entities cannot act as exporter for customs purposes. Consequently, they should no longer be mentioned in box 2 of the Single Administrative Document (SAD), even if they are using indirect representation.

From a technical point of view, PLDA would not reject export declarations whereby non-EU established companies are mentioned in box 2.

What does it mean for you? Non-EU established companies must take appropriate measures to remain compliant.

As the PLDA-system will not block (Non-EU established) users or display any error messages, it is critical for affected companies to assess their position and adjust their procedures, or instruct their brokers accordingly to avoid potential penalties.

Belgium

New rules introduced for Tour Operators' Margin Scheme

A law modifying the EU Tour Operators' Margin Scheme (TOMS) was published in Belgium's official journal on 15 May 2019 (Dutch|French). The key change is the extension of the scheme to apply in a business-to-business (B2B) context, whereas previously in Belgium it applied only in the context of business-to-consumer (B2C) supplies. The law enters into force on 25 May 2019 and the Belgian tax authorities are expected to issue new guidance in the near future.

The amendments align Belgian VAT legislation with the 8 February 2018 decision (C-380/16, French│German) of the Court of Justice of the European Union (CJEU). In that case, the CJEU stated that the word "traveller" in articles 306 to 310 of Council Directive 2006/112/EC (VAT) should be interpreted in a broader sense and should not be limited to individuals. By interpreting traveller in such a way to exclude supplies of travel services to business customers from the TOMS, the CJEU found that Germany had infringed its obligations under the directive.

To comply with the CJEU ruling and the intention of the EU legislation, and to avoid further confusion over the interpretation of traveller, the new law modifies the wording of the Belgian VAT code by replacing traveller with "recipient." By doing so, it is now clear that the TOMS is applicable to both B2B and B2C supplies of travel services.

The practical impact of the changes is not yet clear but tour operators, travel agents and other businesses providing components of travel packages may wish reassess their current VAT position once additional details are available. Companies that organize meetings, incentives, conferences and events (MICE businesses) also may wish to reevaluate their VAT position.

Canada

Border Services Agency increases penalties from 1 April 2019

On 5 March 2019, the Canada Border Services Agency (CBSA) published Customs Notice 19-05, announcing that, effective 1 April 2019, the penalty amounts for 22 contraventions relating to noncompliant importers will be increased.

What is the AMPS?

Canada's Administrative Monetary Penalty System (AMPS) is implemented by the CBSA with the objective of deterring noncompliance with Canada's trade programs by businesses that participate in international trade. Penalties are levied on importers, exporters and other entities (such as brokers and freight forwarders)

that fail to comply with the various requirements under the Customs Act, Customs Tariff and related regulations. Examples of violations that may be subject to penalties include failure to pay duties, failure to report goods and failure to provide necessary information to the CBSA.

What is new under the AMPS?

The increases announced on 5 March 2019 are in response to the 2017 Report of the Auditor General of Canada in which the AMPS was criticized as being too lenient, providing penalties that are too low to encourage compliance with Canada's trade programs. As a result, the penalty amounts for 22 contraventions were increased by 300% or more. For example, the level one (i.e. first-time) penalty for contravention C152 (importer or owner of goods failed to furnish the proof of origin upon request) used to be CAD 150; as from 1 April 2019, the level-one penalty is increased to CAD 500. Levels two (i.e. second) and three (i.e. third and subsequent) penalties also are increased. The maximum penalty amount for a first-time/level-one contravention remains CAD 25,000 (per occurrence).

In relative terms, the penalty increases are significant (over three times the previous amounts). However, when looking at the actual amounts, a level-one penalty of CAD 500 may not be considered material by some businesses. Nevertheless, it should be noted that the CBSA is taking action to encourage businesses to be more compliant by both increasing the AMPS amounts and by being more focused on customs audits and targeting certain importers (e.g. nonresident importers, importers of goods from related entities, importers that use transfer pricing as value for customs, etc.). In some cases, level-three penalties can be as high as CAD 400,000. Therefore, taxpayers should ensure compliance with customs requirements.

Colombia

Announcements on VAT procedures, tariffs and anti-dumping measures

Recent VAT and customs developments in Colombia include the following:

- The tax authorities have released an official opinion clarifying that to apply the tariff and VAT exemptions for imports made in connection with alternative energy sources and energy-efficiency projects, the importer must have the required certification from the Environmental Licenses Authority.

- Another official opinion states that in accordance with the 2018 tax reform, all parties involved in the distribution of sugar sweetened beverages must charge VAT, not only importers and producers.

- The tax authorities have released Resolution 20/2019 (Spanish only) confirming which taxpayers are required to issue e-invoices, specifying the criteria that determine the deadline for implementing e-invoicing and setting

out the various deadlines. According to the resolution, the following individuals and entities will be required to issue e-invoices: (i) those liable for VAT or consumption tax; (ii) those carrying out a trade or profession or rendering services linked to a profession, or selling goods from livestock or agricultural activities (excluding those not required to issue invoices or equivalent documentation); (iii) those who choose to issue e-invoices voluntarily; and (iv) taxpayers registered in the SIMPLE tax regime. The criteria used to determine the deadline for implementing e-invoicing include the last digit of the taxpayer's tax identification number and their International Standard Industrial Classification (ISIC) code.

- Congress has approved the National Development Plan, which includes the following tariffs for the import of textiles classified in chapters 61 and 62 of the Harmonized Tariff Schedule (HTS): (i) 37.9% when the free on board (FOB) price declared does not exceed USD 20 per gross kilo; or (ii) 10% ad valorem tariff plus USD 3 per gross kilo, where the FOB price is at least USD 20. The plan also amends the VAT rates on products including liquid oil fuels (reduced from 19% to 5%), and rice (to be exempt from VAT). The plan must be approved by the president to become law.

- The Ministry of Industry and Commerce has confirmed that importers of casing and tubing pipes classified under HTS 7304.29.00.00 must submit a non-origin certificate in support of the import declaration. The certificate is required to ensure that the antidumping duties imposed on imports of such products from China are correctly applied.

El Salvador

mutually recognizes AEO programs with Costa Rica, Guatemala and Panama

On 26 April 2019, the General Customs Office (DGA) of the Treasury Department of El Salvador signed a mutual recognition arrangement with the customs authorities of Costa Rica, Guatemala and Panama to recognize each other's authorized economic operator (AEO) programs. This is the first arrangement of this kind signed by El Salvador. The arrangement is effective as from 26 April; however, the online platform that El Salvador's customs authorities will implement to support the arrangement is not yet operational, and there is not yet a specific timeline for when it will be ready for use.

The arrangement aims to facilitate international trade and strengthen the security of customs operations. The main benefits of the arrangement for companies authorized as AEOs are expedited customs inspection procedures, priority in the clearance of goods and priority service and mobilization of cargo at land border crossings.

In the four countries, a total of 120 companies have AEO certification, only two of which are Salvadorian companies. Accordingly, it is important for Salvadorian companies to understand in greater detail the framework for AEOs, the benefits of being certified as an AEO and the steps for requesting authorization, so that they are able to take advantage of the benefits of the mutual recognition arrangement.

AEO status

AEO status is a certified authorization granted by the customs authorities, under which a business is deemed to meet certain standards relating to the logistics chain, such as safety and security, assessment and management of risk, systems for managing commercial records and compliance with customs rules and regulations.

AEO certification may encourage other parties in the logistics chain to do business with the operator, since the customs authorities have determined that the AEO is following practices that may decrease the risks involved in foreign trade.

Benefits of AEO status

The direct benefits of AEO status in El Salvador include the following:

- Priority status in customs, with a specifically designated "window";
- Reduction in the percentage of immediate verification of goods;
- Priority service and mobilization of cargo at border crossings;
- Priority in the application of customs controls to shipments that are selected for inspection;
- Right to receive personalized attention by an AEO specialized technician, with respect to customs operations;
- Priority in receiving specialized training on customs procedures and security measures for means of transportation, facilities and the handling of goods, provided by the customs service or by international entities that support the DGA; and
- Reciprocal recognition as an AEO by other countries that have an AEO program or a similar program and that have signed a mutual recognition arrangement with El Salvador.

Steps for being certified as an AEO

To be certified as an AEO, an applicant must submit a request that contains certain specific information, as established in El Salvador's AEO program manual. Among other documents, a self-evaluation questionnaire must accompany the application, in which the applicant evaluates its level of compliance with the different customs provisions to which it is subject.

The applicant must provide documentation to support that it fulfills the following criteria:

- It has a minimum level of international trade operations, as established in the regional and national customs legislation;
- It has sufficient financial solvency to meet its commitments, based on the nature and characteristics of the type of economic activity to be performed;
- It has not reported losses in the three years prior to the date of filing the application; and
- It can demonstrate administrative, tax, customs and judicial compliance during the three years prior to the date of filing the application, or in accordance with such other term established in the regional and national customs legislation.

Once all documentation is submitted, the AEO section of the DGA will examine the information presented to determine whether the application complies with all program requirements. The applicant will be notified within a period of 150 days of whether the application is accepted, and if it is accepted the applicant's facilities will be inspected to verify that all requirements are met.

When the DGA concludes its review of the application, it will issue a resolution notifying the applicant of the result, which could be one of the following:

- Approved;
- Reevaluation needed; or
- Not approved.

To avoid a resolution indicating that the application is need of reevaluation or is not approved, it is important for a company interested in obtaining AEO certification to perform a self-diagnosis to evaluate its compliance with the requirements, so that it is able to correct any issues before filing the application.

If the resolution indicates an approval of the application, the applicant will be certified as an AEO for a term of three years, with the possibility of renewal for additional consecutive three-year periods. To request a renewal, an application must be filed at least 90 days in advance of the expiration date of the AEO certification. The customs authorities will verify that the company still complies with the requirements of the program before granting the renewal.

Additional mutual recognition arrangements for the AEO program are expected to be signed with the customs authorities of the Dominican Republic, Mexico, Peru, Taiwan and the US to increase the competitiveness of El Salvador as a location for international trade.

Finland

Supreme Administrative Court rules in two indirect tax cases

On 11 April 2019, Finland's Supreme Administrative Court (SAC) published decisions in two cases involving indirect taxes, one addressing the application of insurance premium tax (IPT) and the other the VAT treatment of demolition services. Both decisions follow preliminary rulings in the cases issued by the Court of Justice of the European Union (CJEU).

Insurance premium taxes

In one case, the SAC addresses the IPT treatment of warranty and indemnity insurance in connection with company acquisitions. The decision follows the CJEU's decision issued on 17 January 2019 and confirms that IPT is levied in the country where the policyholder is established, and not in the country where the target of a merger and acquisition transaction is located.

VAT treatment of demolition services

The second SAC decision involves the VAT treatment of demolition services and follows the CJEU's decision issued on 10 January 2019.

The company in the case sold demolition services and, according to the agreement concluded with its client, also was responsible for processing and disposing of the resulting materials and waste. Some of the waste was scrap metal, which the company could sell, and the company took the value of the scrap metal into account when pricing the demolition services.

The company also purchased from its client, among other items, old machines, equipment and other movable goods. According to the agreement concluded with its client, the company was responsible for dismantling these items, and for disposing of any resulting waste outside a specified distance from the client's premises. The company factored the estimated costs of dismantling, disposal and appropriate processing of the goods it purchased into the purchase price offered to its client.

The SAC ruled that in each situation, the company was considered to sell demolition services to, as well as purchase goods from, its client. Therefore, the company was liable not only for VAT on the supply of the demolition services but also on the purchases of the scrap metal and other goods under the reverse charge scheme.

In essence, the SAC's ruling confirms that the company's sales of services actually consisted of two transactions, i.e. the sale of demolition services and the purchase of goods. Since the company factored in the amount it likely would receive from the resale of the scrap metal when determining the price it was able to offer for the service to its client, the taxable base of the transaction as a whole was deemed to consist of the price of the service and the price of the goods.

Likewise, both a sale of a service and a purchase of goods were deemed to take place when the company considered the estimated dismantling, disposal and processing costs when determining the price it offered its client for the machines, equipment, etc.

Finland

Foreign entities may be required to register for VAT in certain cases

The Finnish tax administration has issued an announcement on its website that, as from 1 May 2019, foreign entities (not domiciled in Finland) must register for VAT purposes where the entity:

- Purchases construction services or other services in Finland to which the VAT reverse charge can be applied; or
- Imports goods from non-EU countries in addition to conducting zero-rated intra-Community sales and intra-Community acquisitions.

Previously, foreign entities were only subject to a "notification duty," which means they were required to submit VAT returns for intra-Community supplies and acquisitions and EC Sales Lists for intra-Community supplies, but were otherwise treated similarly to nontaxable entities in Finland, and were not required to make a full VAT registration.

Foreign entities that are not registered for VAT may continue to register only for notification duty where the entity conducts only intra-Community sales and/or acquisitions in Finland.

The announcement also clarifies that a foreign entity can be registered for notification duty if it has a fixed establishment in Finland but does not conduct activities subject to VAT from the fixed establishment. Foreign entities that are registered for notification duty can carry out the following activities in Finland:

- Sales to which the VAT reverse charge is applied;
- Sales to the Finnish government; and
- Sales that are VAT-exempt in Finland if these sales do not affect the company's right to make VAT exempt intra-Community acquisitions.

In effect, the tax administration's announcement means that going forward, companies registered only for notification duty in Finland cannot report VAT on their Finnish VAT returns, but only the net amounts of intra-Community acquisitions or supplies. Companies that need to report VAT will need to complete a full VAT registration. The change from a notification duty registration to a VAT registration potentially could lead to quicker VAT refunds, where applicable. It is not yet known what, if any, actions are required by affected companies or whether the tax authorities will make the necessary changes *ex officio*.

France

CJEU rules failure to respond to VAT information request may be remedied

The Court of Justice of the European Union (CJEU) issued a decision (available in French) on 2 May 2019 concerning EU companies not established in France that submit VAT refund claims for VAT incurred in France and whose claims are rejected on the grounds that the companies have not responded within one month to a request for additional information from the tax authorities.

This situation may arise, in particular, when the email address indicated at the time of filing the refund request is no longer valid or when the person receiving the email is absent.

The French Montreuil Administrative Court had referred this matter to the CJEU. In his opinion delivered on 17 January 2019, CJEU Advocate General (AG) Hogan stated that failure to respond within the one-month period provided for in article 20 section 2 of EU directive 2008/9/EC could not result in the forfeiture of the right to a refund and that the taxpayer was entitled to remedy the situation.

The CJEU followed the AG's opinion and ruled that the one-month period for providing the refunding member state with the additional information requested is not a mandatory time period. Therefore, if the one-month period is exceeded or if there is no response to a request for additional information, the taxpayer should be given the opportunity to regularize its VAT refund claim. This may be done by filing an appeal with the competent domestic administrative court and providing additional information to establish the existence of the right to a VAT refund.

The CJEU decision will affect cases pending before the French Montreuil Administrative Court.

Germany

Highlights of VAT measures in draft annual tax act for 2019

On 8 May 2019, Germany's Federal Ministry of Finance submitted a draft bill for the 2019 annual tax law to the tax associations (organizations that represent the interests of business and industry on tax matters) for comments. The draft bill contains numerous changes that would affect various types of taxes, including VAT. Its objectives include promoting electro mobility, simplifying and digitizing tax procedures, combatting tax avoidance through structuring transactions and responding to jurisprudence and changes in EU law. The main changes relating to VAT would amend the domestic law to implement the following provisions of EU law and decisions of the Court of Justice of the European Union (CJEU):

- The "quick fixes" package for the EU VAT system, which would affect direct supplies for transfers to a consignment warehouse, chain transactions and intracommunity supplies;

- The principles of a CJEU decision on margin taxation for travel services;

- The VAT exemption from the EU VAT directive for services provided by independent associations of persons to their members; and

- The reduced VAT rate for audiobooks and electronic books (e-books) permitted under an EU directive adopted on 6 November 2018 that allows the VAT rules for electronic and physical publications to be aligned.

After the comment period for the tax associations ends on 5 June 2019, the draft bill will be forwarded to the federal cabinet for its decision on the bill. The legislative procedures are expected to be completed by the end of 2019, and the new law would enter into force on 1 January 2020.

Quick fixes

The proposed amendments to the VAT Act are part of the implementation of EU Council Directive 2018/1910 of 4 December 2018 into domestic law. The draft bill would introduce a provision relating to direct supplies to a consignment warehouse that is intended to ensure uniform handling of consignment warehouses in the EU member states. In relation to chain transactions, the draft bill would replace certain wording in the VAT Act (in section 3(6)) to regulate more clearly the allocation of the transport or dispatch of goods to a supply within the chain. The draft bill also would introduce an additional substantive requirement for intracommunity supplies, under which an intracommunity supply would be considered to occur only if the customer uses a valid VAT identification number issued to that customer.

Margin taxation for travel services

The margin taxation of travel services would be modified to comply with a CJEU decision released on 8 February 2018 (C-380/16, *Commission v. Germany*). Business-to-business (B2B) transactions no longer would be excluded from the special EU tour operators margin scheme. In addition, the simplified methods for calculating an overall margin (pursuant to section 25(3) of the VAT Act) would be disallowed in the future, meaning that the margin would have to be determined individually for each travel service provided.

VAT exemption for services provided by independent associations of persons to members

The EU VAT directive provides for a VAT exemption for services provided by independent associations of persons to their members, but so far Germany has implemented the exemption only for certain healthcare professions. The draft bill

would broaden the exemption for services provided by independent associations of persons to their members, to comply with a CJEU decision issued on 21 September 2017 (C-616/15, *Commission v. Germany*).

Reduced VAT rate for audiobooks and e-books

Publications in electronic form would be eligible for the reduced VAT rate (7%, rather than the standard rate of 19%) if they functionally correspond to conventional books, newspapers, periodicals or other products referred to in specified provisions of the VAT Act (in an annex to section 12).

Greece

Recent VAT changes include implementation of EU vouchers directive

There have been a number of significant VAT changes in Greece, including the implementation of the EU directive on the treatment of vouchers; the introduction of a "use and enjoyment" rule for the short-term hiring/lease of professional vessels used for leisure, in response to a European Commission infringement procedure; and changes to the supplies eligible for the reduced and super-reduced VAT rates.

VAT treatment of vouchers

Law 4607/2019, which was published in the government gazette on 24 April 2019 (FEK A' 65/24.04.2019), incorporates the provisions of Council Directive (EU) 2016/1065 regarding the treatment of vouchers into the Greek VAT code (Law 2859/2000) through the introduction of new articles (article 12a and article 19 paragraph 1a). The new provisions apply retroactively as from 1 January 2019 for vouchers issued after 31 December 2018. An overview of the new provisions is below.

A "voucher" is defined as an instrument that a supplier is required to accept as full or partial consideration for a supply of goods or services. The goods or services to be supplied or the identities of the potential suppliers must be indicated either on the instrument itself or in related documentation, including the special terms and conditions of use of the instrument.

According to parliament's explanatory report on the new law, a voucher may have either an electronic or a tangible nature/form (such as a code purchased to download games through the internet, prepaid phone cards, gift cards, etc.) and is substantially different from a payment instrument.

There are two different types of vouchers:

- A "single-purpose voucher" is a voucher where the place of supply of the goods or services to which the voucher relates and the VAT amount due on those supplies of goods or services are known at the time when the voucher is issued; and

- A "multi-purpose voucher" is a voucher other than a single-purpose voucher.

Single-purpose vouchers

Each transfer of a single-purpose voucher made by a taxable person acting in its own name will be considered as a supply of the goods or services to which the voucher relates. The actual supply of the goods or the actual provision of the services in exchange for a single-purpose voucher that is accepted as full or partial consideration by the supplier will not be regarded as a separate (independent) transaction.

Where a transfer of a single-purpose voucher is made by a taxable person acting in the name of another taxable person, the transfer will be regarded as a supply of the goods or services to which the voucher relates, carried out by the other taxable person in whose name the taxable person is acting.

Where the supplier of goods or services is not the taxable person that, acting in its own name, issued the single-purpose voucher, the supplier will be deemed to have carried out the supply of the goods or services related to the voucher to that taxable person.

Multi-purpose vouchers

The actual supply of goods or the actual provision of services in return for a multi-purpose voucher that is accepted as full or partial consideration by the supplier will be subject to VAT, whereas any preceding transfers of that multi-purpose voucher will not be subject to VAT.

Where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person carrying out the transaction subject to VAT, any supply of services that can be identified, such as distribution or promotion services, will be subject to VAT.

The taxable value of the supply of goods or services provided in exchange for a multi-purpose voucher will be equal to the consideration paid for the voucher or, in the absence of any information/details on such consideration, will be equal to the monetary value stated on the multi-purpose voucher itself or on the relevant validation for the voucher, reduced by the amount of the VAT corresponding to the goods or services supplied.

According to parliament's explanatory report on the new law, the main difference between a single-purpose voucher and a multi-purpose voucher is that *each transfer* of a single-purpose voucher should be considered as a supply of goods or services subject to VAT, whereas in a case where a multi-purpose voucher is transferred more than once, only the *actual supply* of the goods or services that the voucher represents at the time of redemption should be be subject to VAT.

Areas in need of clarification

No further guidelines on the application of the new provisions have been issued yet by the VAT department of the Ministry of Finance. Therefore, there are several "grey areas" that need further clarification, given that the explanatory report from parliament on the new law does not provide additional details. These areas include the type/form that a voucher may have, particularly a multi-purpose voucher, since the explanatory report from parliament provides only a few examples; the main differences between a voucher and a payment instrument; and how the time of redemption is determined in the case of a multi-purpose voucher, espectially in the case of a multi-party arrangement. Other questions or issues may arise in practice, depending on the facts of each case.

Short-term hiring/lease of professional vessels

Law 4607/2019 also introduces a use and enjoyment rule regarding the short-term hiring/lease of professional vessels used for leisure (in article 14, paragraph 15 of the VAT code). The new rule is effective as from 24 April 2019.

More specifically, the rule provides that, in the case of a short-term hiring/lease (i.e. the continuous use or possession of a vessel for a period up to 90 days) of professional vessels used for leisure that are put at the disposal of the customer within the territory of Greece (which are, in principle, subject to Greek VAT if they are set at the disposal of the customer in Greece), VAT should not be imposed to the extent that the vessels actually are used outside the EU in international waters or in the territorial waters of non-EU countries.

The amendment to the VAT code is in response to an infringement procedure launched by the European Commission against Greece (Violation No. 2017/2143) in March 2018. The commission found that the rule replaced by the use and enjoyment rule, under which a partial VAT exemption for the chartering/lease of professional vessels used for leisure was determined by applying a percentage that depended on specific criteria (such as the type of the vessel, etc.) rather than based on the actual use of the vessel, was not in compliance with the principal EU VAT directive.

Parliament's explanatory report on the new law provides as follows regarding the scope of the amendment:

Generally speaking, the types of hiring of vessels covered by the amendment are treated for VAT purposes either as transportation services, if the vessel is provided along with its personnel or as a lease, if only the vessel is provided. According to the VAT code, passenger transportation services are subject to VAT to the extent of the distance traveled within Greece, while the total cost of the short-term hiring/lease of a means of transportation is subject to Greek VAT, provided the means of transportation are put at the disposal of the customer in Greece. To correct the violation against Greece and in an effort to apply equal VAT treatment

to passenger transportation services and to the hiring/lease of means of transportation, the use and enjoyment rule has been introduced. Under the rule, the short-term hiring of professional vessels used for leisure is subject to Greek VAT only to the extent that the vessels are used in Greece.

Changes in VAT rates applicable for several types of goods/services

Law 4611/2019, which was published in the government gazette on 17 May 2019 (FEK B' 73/17.05.2019), introduces several amendments to annex III of the VAT code, which specifies the goods and services that fall under the reduced (13%) or super-reduced (6%) VAT rate (depending on the case). The amendments to the VAT rates apply from 20 May 2019.

More specifically:

- The following goods and services are reclassified from the standard 24% VAT rate to the reduced 13% VAT rate:

- Specific food products, such as all types of pasta, bread, fish and crustaceans, coffee, tea, natural juices from fruits and vegetables, salt, vinegar, several nutrition products made from cereals, flour products and starch products, as well as products relating to dressings/sauces, soups, etc.;

- The services of cafeterias, pastry shops, restaurants, taverns and similar establishments that supply restaurant services, with the exception of services provided by night clubs and the sale of alcoholic and nonalcoholic beverages (other than natural and artificial mineral waters) and juices; and

- The services of boarding schools, as well as of other establishments for persons with special needs or persons with mental disabilities, psychological issues or substance addiction, which are provided in the context of social welfare, in cases where a relevant VAT exemption does not apply.

- The following goods are reclassified from the reduced 13% VAT rate to the super-reduced 6% VAT rate: the supply of electrical energy under Combined Nomenclature (CN) Code 2716, the supply of natural gas under CN Code EX 2711 and teleheating.

India

Sales tax imposed on royalties received by nonresident companies

The Maharashtra sales tax authorities are issuing notices for payment of sales tax to foreign entities receiving royalty income from Indian subsidiaries for the transfer of the right to use intangible assets.

The action follows a ruling by the Maharashtra Sales Tax Tribunal on 11 March 2016, that a German company with an Indian subsidiary is subject to sales tax in India on royalty income received from the subsidiary for the transfer of the right to use a trademark. The main issue in dispute was whether sales tax can be levied on the royalties, which depends on the "situs of sale" for sales tax purposes. The appellant previously had unsuccessfully appealed the orders passed by the Assistant Commissioner of Sales Tax before the Deputy Commissioner of Sales Tax (Appeals).

The appellant (the German company) took the position that the amount of the royalty was dependent on sales and exports, and not linked to the use of the trademark. It submitted that the agreement was executed in Germany. It further contended that as the trademark is intangible and registered in Germany, the situs of sale would be Germany and the State of Maharashtra had no right to impose tax. The appellant referred to a previous Supreme Court judgment where the court stated that "…. where the goods are available for the transfer of the right to use, the taxable event on the transfer of the right to use any goods is on the transfer which results in the right to use, and the situs of sale would be the place where the contract is executed and not where the goods are located for use …."

The tribunal held that the earlier judgment did not apply as it related to the deemed sale of tangible property, while the case in hand concerned intangible property (i.e. the use of a trademark). On a deemed sale of tangible property, the right to use the assets may be transferred on a per asset basis, but with intangible assets, the owner may transfer the right in the asset to different customers simultaneously. The analogy given in the earlier case, therefore, was not appropriate.

In reaching its decision, the tribunal also relied on the definition of situs in the authoritative source of "Halsbury's Law," namely "The situs of intangible property, including intellectual property such as copyrights, trademarks and patents but also goodwill, is where the property is registered, or, if not registered, where the rights to the property can be enforced within territorial waters."

The tribunal reviewed the agreement between the parent company (the licensor) and the subsidiary company (the licensee) and highlighted the following:

- The licensee has exclusive rights to use the trademark in India and Nepal;
- The agreement is registered with the Mumbai Trade Mark Registry, under the Trade and Merchandise Act, 1958;
- In the event of a dispute, arbitration proceedings are to be held in Mumbai under the provisions of the Indian Arbitration and Conciliation Act, 1996; and
- The agreement is enforceable only with approval from the Reserve Bank of India.

Based on these findings, the tribunal held that the trademark is registered in Mumbai for its use and on the basis of the trademark, an agreement is executed between the licensor and licensee, and the royalty is paid in Mumbai. These circumstances are sufficient to conclude that, as far as the right given to the licensee is concerned, the situs of sale would be in Mumbai and the Commissioner of Sales Tax, Mumbai therefore has jurisdiction to levy tax.

The tribunal dismissed the appeal, stating that the agreement is for the transfer of the right to use a trademark for consideration by way of a royalty, and directed the appellant to pay the appropriate sales tax at 4% as assessed by the assessing officer on the amount received.

India

High Court rules on validity of local entry tax imposed on goods

In a 4 March 2019 decision, the Bombay High Court ruled on the validity of a local entry tax imposed on goods coming into the state and whether imposing the tax in addition to octroi (a cess on entry of goods into the municipal limits of a city for consumption, use or sale) resulted in double taxation. Both taxes were subsumed into GST as from July 2017 and the decision will assist in closing pending litigation on the issue.

An appeal against the imposition of the entry tax had been made to the High Court, which was asked by the appellants to consider three specific questions. The court dismissed the appeal, ruling on the three questions as follows:

1. The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 did not violate India's constitution. The tax did not discriminate against importers because the act provided for credit for entry tax paid against VAT, with any balance being repayable, effectively putting importers in the same position as manufacturers purchasing from local suppliers.

2. India's constitution permits the levy of tax on entry of goods into "local areas" but nothing in Indian legislation requires that the taxes levied be used only to benefit the area into which the goods have entered. The State of Maharashtra is composed of a number of local areas and spending for the purposes of the state (e.g. on schemes for the improvement of roads, rivers and other means of transport and communication), therefore, is spending for the local areas.

3. No double taxation arose from the levy of octroi and entry tax on the same goods; octroi and entry taxes were imposed by different authorities and for two entirely different purposes. Octroi had been consistently levied, collected and utilized by local areas in respect of the entry of goods into the communes within those areas that were local political units. The entry tax was levied and collected by the Maharashtra state government and not distributed to the local areas. This neither led to double taxation nor violated India's constitution.

Enhancements to e-way bill for GST purposes and VAT amnesty announced

Recent developments in goods and services tax (GST), value added tax (VAT) and customs in India include the following:

GST update

The GST Council has set up a committee to examine the feasibility of e-invoicing. As part of its work, the committee will study the systems in place in other countries, including Korea (ROK) and some Latin American countries.

The National Informatics Center on 25 April 2019 introduced the following enhancements to the e-way bill (EWB) system to ease the process of generating EWBs by taxpayers and transporters. An EWB is a document required by a person responsible for the transport of a consignment of goods with a value exceeding INR 50,000.

- The EWB portal has a facility allowing the distance between the departure and delivery destinations to be calculated based on the postal index numbers (PIN codes) before generating the bill;
- Dealers can view a list of EWBs that are due to expire within four days and use the information to ensure that that the goods reach their destination within the validity period;
- The validity period of an EWB can be extended via the EWB portal while the consignment is in transit. Users will be prompted to select whether the consignment is in transit when applying for the extension; and
- EWBs with invalid PIN codes are flagged for review by the tax authorities.

As from 21 June 2019, taxpayers that fail to file at least two consecutive monthly GST returns will be unable to provide certain mandatory details while generating an EWB and the bill will be invalid.

VAT update

To reduce litigation and recover VAT arrears after the GST rollout, the Indian states of Karnataka, Kerala, Maharashtra and West Bengal have implemented a VAT amnesty, enabling them to settle tax disputes by waiving interest and penalties. Details of the procedure for making applications under the amnesty scheme have been issued by the individual states.

Customs update

The Central Board of Indirect Taxes and Customs on 25 April 2019 introduced the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019. The regulations apply to the export of goods from all customs stations where the Indian Customs Electronic Data Interchange System is in operation and replaces the Electronic Integration Declaration Regulations, 2011. Key features of the updated regulations are as follows:

- An authorized person may submit the electronic integrated declaration and upload the supporting documents on the ICEGATE portal by using a digital signature or visit one of the service centers authorized by the Commissioner of Customs to arrange the necessary submissions.

- The shipping bill is considered to be filed and the self-assessment completed when a shipping bill number is generated by the Indian Customs Electronic Data Interchange System. The bill is generated after the submission of the electronic integrated declaration on the ICEGATE or via a service center.

- Once the assessment is completed, any duty or cess, etc. due paid and any goods for export examined (if required), an order endorsing clearance under specific provisions is made. This is recorded on ICEGATE and an electronic notification sent to the authorized person, custodians and any others designated by the authorized person.

- The authorized person must retain the assessed copy of the shipping bill and the originals of all documents used to prepare the electronic integrated declaration for five years from the date the shipping bill is presented. The documents must be produced before the customs authorities in the event of any legal proceedings.

- An authorized person may request an authenticated copy of a shipping bill if required to ensure compliance with the record-keeping requirements.

- Any authorized person who breaches or fails to comply with any of the provisions of the regulations may incur a penalty of up to INR 50,000.

India

Procedures for sharing information between income tax and GST authorities formalized

India’s Central Board of Direct Taxes (CBDT) issued an order on 30 April 2019 that formalizes the procedures for the sharing of information between the income tax and goods and services tax (GST) authorities.

Background

The CBDT has the power under section 138 of the Income-tax Act, 1961 to provide information received or obtained by income tax authorities to any officer, authority or body performing any functions under any law relating to the imposition of tax, duty or cess. The recent order exercises these powers by confirming the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), New Delhi as the specified income tax authority and requiring them to supply certain income tax return forms (ITR) and other information to the Nodal Officer, Goods And Services Tax Network (GSTN). The order provides for the exchange on request of information reported in the ITR, including:

- Whether or not an ITR has been filed;
- Turnover;
- Total gross income,
- Turnover ratio;
- Gross total income range; and
- Turnover range.

The spontaneous and automatic exchange of information also is permitted, and includes information other than that provided in the ITR. In all cases, the procedures for the information exchange are to be determined by the relevant authorities.

When providing the information, the income tax authority must be satisfied that sharing the information is necessary to enable the GSTN to perform its functions in accordance with the GST legislation.

To facilitate the sharing of information, the income tax authority would enter into a memorandum of understanding with the GSTN that would address:

- Procedures for exchanging data;
- Maintaining confidentiality;
- The mechanism for secure retention of data;
- Processes for identifying and removing data after it has been used; and
- A timeline for supplying information.

Comments

The CBDT order formalizes the procedure for sharing certain income tax related information with the GST authority and is a move towards ensuring alignment of the information reported in different tax returns and other tax filings. It will provide the GST authority with additional data to verify and cross-check the information reported for GST purposes.

Key points to note include the following:

- Taxpayers should take the necessary steps to ensure that the information they provide to the tax authorities in complying with their tax reporting obligations is consistent (e.g. on GST returns, ITR forms, Form 3CD, etc.). Where the information does not reconcile, the reasons for any variations should be identified and appropriately documented;

- It is likely that the income tax authorities will share relevant information submitted for income tax purposes with the GST authorities for GST purposes; and

- Information in relation to GST required to be compiled as from 1 April 2019 under Clause 44 of Form 3CD (the tax audit report) should correspond with the GST returns. Reasons for any variations should be identified and appropriately documented.

Italy

New VAT rules enacted for online marketplaces

Italy enacted new VAT rules for online sales through electronic marketplaces through Law Decree No. 34 of 30 April 2019, which are effective for the period from 1 May 2019 until 31 December 2020. The rules impose a reporting obligation in relation to certain distance sales of online marketplaces, and may render the online marketplace liable for the applicable VAT if the marketplace does not comply with the reporting obligation and cannot demonstrate that the supplier paid the VAT on a distance sale. The rules also modify certain rules for online marketplaces that were introduced by Law Decree No. 135/2018, which entered into force on 13 February 2019.

Under the new rules in Law Decree No. 34/2019, online marketplaces that facilitate distance sales of any kind of imported goods, or distance sales of goods within the EU, are required to submit the following information on each supplier carrying out these types of transactions to the tax authorities on a quarterly basis:

- The supplier’s name, address and email address;

- The total number of units sold in Italy; and

- Either the total sales price for all units sold in Italy, or the average sales price for each unit sold in Italy.

The director of the revenue agency will issue guidance regulating the measures for online marketplaces to adopt for the submission of the relevant information, with the first submission due in July 2019.

If an online marketplace does not submit the required information on distance sales, or submits incomplete information, it may be deemed liable for VAT on the distance sales if it does not demonstrate that the supplier paid the VAT.

Law Decree No. 34/2019 also modifies rules introduced by Law Decree No. 135/2018, which became effective on 13 February 2019. In particular:

- The application of rules regarding the distance sales of mobile phones, tablets, laptops and games through online marketplaces, which deem the online marketplace to have received and supplied the goods itself under certain circumstances, is postponed. The rules will be effective as from 1 January 2021, rather than from 13 February 2019, as originally provided.

- Under transition rules, online marketplaces that facilitated distance sales within the scope of Law Decree No. 135/2018 during the period from 13 February 2019 to 1 May 2019 will be required to submit the relevant information in July 2019, based on implementing measures that will be released by the tax authorities.

Italy

Recent customs and excise developments include guidance on "Fast Corridors"

The Italian customs authorities issued guidance during April and May 2019 on topics including the "Fast Corridors" procedures for containers imported into Italy, the start of the testing phase for the electronic filing system for "simplified accompanying documents" (E-SAD) for excisable goods and clarifications relating to excise warehouse guarantees.

Fast Corridors procedures

Under specific Fast Corridors procedures, containers imported into Italy can be moved quickly from their arrival point to the place designed/approved by the customs authorities, while being electronically monitored and controlled. Note No. 42621, dated 30 April 2019, provides revised instructions for operators to follow to use these procedures. The revised instructions are updated to reflect the provisions of the EU Union Customs Code that has been in effect since May 2016.

Testing phase for E-SAD

As from 1 January 2020, the simplified accompanying document necessary for products subject to excise to circulate within the EU must be filed electronically with the customs authorities through the E-SAD system. Note No. 46242, dated 17 April 2019, provides procedural guidelines for the testing phase of the system—available from 20 May 2019—to allow operators to test the new system prior to the entry in force of the new rules. The testing phase will be limited to goods circulated within Italy.

Excise warehouse guarantee clarifications

Resolution No. 1, dated 10 May 2019, clarifies the obligation for operators of excise warehouses to provide a guarantee for storing products on behalf of third parties without marketing the products. In particular, the customs authorities have confirmed that the excise warehouse operator must sign the guarantee, even if its activity is limited to storing goods.

The resolution also contains provisions on the calculation of the guarantee amount and the increase or decrease of the amount.

Mexico

New tax rules for providers of ground transportation and food delivery services

El 29 de abril se publicó en el Diario Oficial de la Federal la Resolución Miscelánea Fiscal para 2019, la cual entrará en vigor el 30 de abril y estará vigente hasta el 31 de diciembre de 2019.

Como parte de dicha Resolución, se publicaron ciertas reglas que amplían el régimen de prestadores de servicio de transporte terrestre de pasajeros o entrega de alimentos. Actualmente, dicho régimen obliga a las personas morales residentes en México o residentes en el extranjero con o sin establecimiento permanente en el país, así como a las entidades o figuras jurídicas extranjeras, que proporcionen el uso de plataformas tecnológicas a personas físicas residentes en México para prestar el servicio de transporte terrestre de pasajeros o entrega de alimentos preparados a efectuar la retención por concepto del ISR e IVA por los ingresos obtenidos por dichas personas físicas.

Dicho régimen contempla cambios a la regla vigente y seis nuevas reglas, quedando como sigue:

Retención de ISR e IVA

Esta regla establece que la retención se deberá efectuar de forma mensual respecto de cada persona física que preste los referidos servicios a través de plataformas tecnológicas la cual se efectuará sobre el total de los ingresos que el operador de la

plataforma efectivamente cobre a los usuarios que recibieron en servicio por parte de la persona física. La tasa de retención del ISR varía dependiendo del ingreso mensual y que va de un 3% a un 5%, y la del IVA será siempre del 8%. El impuesto deberá ser enterado al SAT a más tardar el día 17 del mes inmediato siguiente al mes por el que se efectuó la retención.

La regla también menciona que los retenedores deberán de proporcionar a cada persona física a la que hubieran efectuado la retención un CFDI de retenciones e información de pagos conteniendo los ingresos por viajes, el cual deberá ser acompañado de su complemento "Servicios Plataformas Tecnológicas" en el que se desglose los viajes y los ingresos en efectivo cobrados por la persona física.

Adicionalmente, dichos retenedores deberán enviar al usuario del servicio de transporte terrestre de pasajeros o de la entrega de alimentos preparados, el CFDI que ampare el monto de la contraprestación, para que pueda deducir el gasto y acreditar el IVA correspondiente.

Para tales efectos, las personas físicas residentes en México deberán solicitar su inscripción en el RFC o presentar el aviso de actualización de actividades económicas y obligaciones, para que presenten sus declaraciones de ISR e IVA pagando el impuesto correspondiente a sus servicios. Por otra parte, las personas morales residentes en el extranjero sin establecimiento permanente en el país, así como las entidades o figuras jurídicas extranjeras deberán solicitar su inscripción en el RFC exclusivamente con el carácter de retenedor del ISR e IVA que se le cobre al usuario del servicio.

También podrán aplicar este régimen las personas morales residentes en México, que proporcionen el uso de plataformas tecnológicas a personas físicas para prestar el servicio de transporte terrestre de pasajeros o entrega de alimentos preparados siempre que manifiesten a la autoridad que optan por aplicar lo dispuesto en este régimen. Asimismo, dichas personas morales deberán cumplir con los requisitos antes mencionados.

Es importante mencionar que las transferencias de recursos que reciban las personas morales residentes en el extranjero con o sin establecimiento permanente en el país, así como las entidades o figuras jurídicas extranjeras, que realicen el entero de las retenciones, no se considerarán como ingreso acumulable siempre que se encuentren respaldados con el comprobante de entero a la autoridad por concepto de retenciones de terceros, por lo que dichas personas o entidades extranjeras no pagarán impuestos en México por los ingresos que perciban indirectamente de los usuarios.

Obligaciones para las personas físicas residentes en México que presten el servicio de transporte terrestre de pasajeros o entrega de alimentos

Las seis nuevas reglas de este régimen se refieren a las obligaciones fiscales que tienen que cumplir las personas físicas y morales residentes en México, así como

los extranjeros, entre ellas, que las personas morales residentes en México y los extranjeros presenten un aviso para retener el ISR e IVA; y en el caso de las personas físicas residentes en México que prestan el servicio, manifestar a las personas morales residentes en México y los extranjeros que optan por aplicar en lugar del esquema de retención general uno más benéfico en donde se les hace una retención menor de ISR e IVA, de conformidad con la Ley de Ingresos de la Federación.

Disposición transitoria

Mediante disposición transitoria se establece que las personas morales residentes en México o residentes en el extranjero con o sin establecimiento permanente en el país, así como las entidades o figuras jurídicas extranjeras que proporcionen el uso de plataformas tecnológicas a personas físicas para prestar el servicio de transporte terrestre de pasajeros o entrega de alimentos preparados, podrán expedir el "CFDI de Retenciones" marcando la clave de retención "25 Otro tipo de retenciones", y sin incorporarle el complemento "Servicios Plataformas Tecnológicas", hasta en tanto entre en vigor este último. El complemento "Servicios Plataformas Tecnológicas" entrará en vigor 30 días después de que el SAT lo publique en su portal.

The Netherlands

State Secretary proposes air transportation tax

On 14 May 2019, the Dutch State Secretary for Finance published a draft bill proposing a national per-passenger airline tax of EUR 7, as well as a tax based on weight and noise levels on air cargo transport. The new taxes would be levied directly on airlines for passenger and cargo flights departing the Netherlands. The bill comes amid the Dutch government's lobbying for an EU-level air transportation tax to address climate change and create a "greener" and more sustainable aviation sector.

Green taxation and an EU solution

In an effort to combat greenhouse gas emissions and global warming, the Dutch government has encouraged various initiatives at the EU-level to tax the aviation sector. In addition, since many EU member states unilaterally tax air transportation, an EU tax would allow for fairer competition and cooperation in the aviation sector across the EU. Currently, the Dutch government does not tax international air travel, but does tax (through VAT and excise taxes) other means of transport, including car, bus and train.

If no EU solution is reached, beginning on 1 January 2021, the Netherlands would levy a tax on airlines of EUR 7 per passenger departing from an airport in the Netherlands. Transit passengers (i.e. passengers transferring flights) would be exempt. The rate will be indexed to inflation upon actual introduction, but the State Secretary's expectation is that the rate should remain under EUR 7.50.

In addition to the flight tax, air cargo would be taxed at EUR 3.85 per ton, with the rate reduced to EUR 1.925 for quieter planes. According to the State Secretary, approximately 85% of cargo flights currently would be classified in the higher bracket.

Anticipated actions

The expected revenue of the proposed bill is EUR 200 million. The legislative proposal will be discussed in both chambers of the Dutch parliament, but if approved, the law would enter into force by Royal Decree only if no action is taken at the EU level.

New Zealand:

Changes made to facilitate self correction of tax returns

Taxpayers in New Zealand may self-correct errors in subsequent tax returns, provided the error is minor or not material. With effect from 18 March 2019, a new "non-material error" threshold rule has been introduced that is intended to make it easier for taxpayers to self-correct errors in income tax, goods and services tax (GST) and fringe benefits tax (FBT) returns.

Non-material errors

Under the new rule, an error can be self-corrected if the total tax discrepancy in the assessment (that is discovered after 18 March 2019) is equal to or less than the lower of:

- NZD 10,000 of annual gross income (for income tax and FBT returns) or output tax (in the case of a GST return); and
- 2% of the taxpayer's annual gross income (for income tax and FBT returns) or output tax (in the case of a GST return).

This new rule will not apply if the Inland Revenue considers a taxpayer is applying the new NZD 10,000 threshold with the main purpose of delaying the payment of tax.

Minor errors resulting in no more than NZD 1,000 tax payable

The previous NZD 1,000 rule has been retained, but slightly modified. Errors can be corrected where the total discrepancy is NZD 1,000 or less. This is similar to how the rule worked previously, except the NZD 1,000 threshold now is available without the requirement that it be caused by a "clear mistake, simple oversight or mistaken understanding."

Comments

The specific words of the new rule are slightly confusing, however we have confirmed with Inland Revenue that both the NZD 10,000 and NZD 1,000 amounts are both tax effected amounts. This new rule is welcome and will help reduce compliance costs for taxpayers. It should reduce the incidence of taxpayers needing to make formal voluntary disclosures or the need to request the Commissioner make amended assessments for smaller value errors that do not breach the above thresholds. However, care should be taken to ensure the rules are applied correctly.

Poland

Proposed changes to VAT law include introduction of split-payment mechanism

On 16 May 2019, Poland's Ministry of Finance published a draft bill that would make changes to the VAT law, including the introduction of a split-payment mechanism. If approved, the proposed rules are expected to become effective generally as from 1 September 2019. The proposed changes are intended to close the "VAT gap" (i.e. the difference between expected VAT revenues and VAT actually collected), as the current reverse-charge mechanism has not been effective.

The main changes included in the draft bill primarily address rules relating to a new split-payment mechanism. The reverse-charge mechanism for domestic supplies, including the obligation to submit related returns (VAT-27), would be abolished. Instead, taxpayers would be required to use a split-payment mechanism for the purchase of certain goods and services (the goods and services currently subject to the reverse-charge or joint and several liability as listed in a newly introduced Appendix No. 15) when the single value of these payments, regardless of the number of payments, exceeded PLN 15,000.

The obligation to apply the split-payment mechanism would be extended to entities not established in Poland, but registered for VAT purposes in Poland. This change would require such entities to open and maintain bank accounts in Poland, to which a special VAT subaccount would be assigned. Any documented costs of opening and maintaining a bank account in the Polish bank would be reimbursed upon submission of a quarterly official request.

Sanctions and penalties also would apply in certain circumstances. If a taxpayer did not apply the split-payment mechanism to a particular payment when required, additional liability could result of up to 100% of invoice VAT value. An additional tax liability of 100% of the tax amount from the invoice could apply when the transaction is subject to the split-payment mechanism and the wording "split payment mechanism" is not included on the document. Furthermore, a fine of up to 720 times the daily rate (or if a minor offence, the fine for a tax offence) could be imposed on private individuals where a taxpayer required to provide a payment using the split-payment mechanism does not fulfill its obligation (apart from any VAT consequences).

A purchaser would be jointly and severally liable for the supplier's tax arrears where a transaction concerns goods listed within the new Appendix No. 15 that are not subject to the obligatory split-payment mechanism and where the value of the purchased goods exceeds PLN 12,000.

Taxpayers would be allowed to make aggregate payments with the split-payment mechanism for more than one invoice and pay other tax and public insurance liabilities from the VAT account.

Portugal

New decree makes further revisions to invoicing requirements

Following the decree published on 15 February 2019 that established rules for electronic invoicing for tax purposes, on 15 May 2019, Portugal's Ministry of Finance published a new decree that eliminates the requirement for taxpayers to print and submit paper invoices or electronically provide the content of such invoices to consumers in business-to-consumer (B2C) transactions. The new rules, which are effective as from 16 May 2019, may be applied at the option of the taxpayer.

Under the May decree, taxpayers that opt not to print paper invoices or provide their content electronically to consumers in B2C transactions can do so only if the following requirements are met:

1. Invoices are issued via invoicing software certified by the tax authorities;

2. The invoices are reported in real time to the tax authorities; and

3. The taxpayer is in compliance with the mandatory monthly reporting requirements for the Standard Audit File for Tax (SAF-T (PT)) invoicing file.

However, taxpayers that do not fulfill the condition in 2) still will be allowed to apply the new rules, provided they meet the following requirements in addition to 1) and 3) above:

- The taxpayer provides the invoice to the consumer in real time; and

- The taxpayer reports the e-invoice to the tax authorities via the mandatory monthly invoicing SAF-T (PT) file.

Notwithstanding the new rules, taxpayers are required to print and submit paper invoices or electronically provide their content to consumers upon the consumer's request.

The decree represents Portugal's next step in moving toward full e-invoicing and real time reporting of transactions. The rules will have a substantial impact on indirect taxes, particularly VAT.

Portugal

Mainland and autonomous region VAT rates reduced for electricity and natural gas

Following the authorization granted by the 2019 state budget and the mandatory approval from the European Commission, on 13 May 2019, the Portuguese government published a decree that reduces the VAT rate from 23% to 6% in Mainland Portugal, 5% in Madeira and 4% in the Azores for certain supplies of electricity and natural gas.

The new rates apply to the fixed component of supplies of electricity where the contracted power does not exceed 3.45 kVA, and to low-pressure consumption of natural gas not exceeding 10,000 cubic meters per year.

The reduced rates will apply as from 1 July 2019 to transactions carried out from that date. Therefore, for statements or payments relating to supplies/services rendered both before and after 1 July, the supplier will be required to issue two invoices to reflect the appropriate VAT rates, one for the supplies/services carried out before 1 July 2019 and one for those carried out on or after 1 July 2019.

Portugal

New tax reporting requirements for inventory

A decree published by the Portuguese government on 2 May 2019 sets out new requirements for reporting stock/inventory to the Portuguese tax authorities for purposes of corporate income tax and VAT. Under the decree, taxpayers will be required to submit in a separate filing an inventory table to the authorities that identifies each item and its market value, as well as other information.

The new rules will be effective as from 1 January 2020, and will apply for stock/inventory held by taxpayers as from the 2019 fiscal year.

Switzerland

Amendments to VAT and sector information published

On 16 April 2019, various minor amendments/practice clarifications on VAT and sector information were published on the website of the Swiss Federal Tax Administration. The modifications relate to:

- Flat rate for banks (sector info no. 15);
- Private use (VAT info no. 8);
- Subsidies and donations (VAT info no. 5);
- Culture (sector info no. 23); and

- Sport (sector info no. 24).

Switzerland

Draft VAT publication on foreign entrepreneurs released for consultation

On 2 May 2019, the Swiss Federal Tax Administration released a draft VAT publication on foreign entrepreneurs for consultation. The publication compiles all relevant information necessary for foreign entrepreneurs to assess their VAT status in Switzerland, but the only anticipated change concerns foreign entrepreneurs' reporting of their worldwide revenue.

As from 1 January 2018, foreign entrepreneurs have been required to declare their worldwide revenue in their periodical VAT returns or, by way of simplification, once a year via a corrective VAT return to be filed for the period in which the 180th day following the closing of the account falls (that is due by 31 August of the following year for businesses closing their accounts on 31 December).

The draft VAT publication clearly states that the reporting obligations may no longer be required for foreign businesses with retroactive effect as from 1 January 2018. However, the worldwide revenue of foreign businesses will remain relevant to assess these businesses' VAT registration obligations in Switzerland.

Although the publication is in draft form, it is not likely to be opposed.

Comments on the consultation must be submitted by 30 May 2019.

Switzerland

Changes proposed to VAT transport rules to clarify identity of supplier

The Swiss Federal Tax Administration has proposed amending sector information No. 9 related to transport by adding a "Taxi" section in a draft publication released for consultation on 2 May 2019.

The new section seeks to clarify who is deemed to supply transport services within the framework of transportation contracts involving multiple suppliers. Under Swiss VAT law, the supplier of a service should be the person who appears to be the supplier to a neutral third party, not the person listed as such in the contractual agreement.

The draft publication contains an example of a person ordering a taxicab via a mobile application or a call center and concludes that, to the extent the identity of the driver is not known at the time of booking, the call center or the business operating the mobile application should be deemed to provide the transportation services.

This position could have an impact on the qualification of mobile application services, so potentially affected businesses should assess whether their electronically supplied services could be impacted.

Comments on the consultation must be submitted by 30 May 2019.

Switzerland

Draft clarification issued on qualification for electronically supplied services

On 11 April 2019, the Swiss Federal Tax Administration released draft clarifications for services to qualify as electronic services for VAT purposes.

The current VAT guidelines do not clearly define electronic services--instead, they list various services that are considered to be electronic services. The FTA has embarked on a project to revise its practices in this area and that would include changes to sector information No. 13 relating to telecommunication and electronically supplied services.

As part of this project, the FTA announced three cumulative conditions that would have to be satisfied for a service to qualify as electronic:

- The service must be provided through the internet or another electronic network;
- The provision of the service must be automated and there must be minimal human intervention by the supplier; and
- The service could not be provided without information technologies.

The list of services that can qualify as electronic would remain unchanged.

Thailand

Export control on dual-use items update

Introduction

The *Trade Controls of Weapons of Mass Destruction Act* ("TCWMD Act") was passed in the National Legislative Assembly ("NLA") earlier this year and recently received the approval of his Majesty the King. The Act will now certainly enter into force on 1 January 2020.

The purpose of this Act is to provide regulation on the export control of weapons of mass destruction ("WMD") and dual-use items ("DUI").

What to know?

The NLA approved the draft TCWMD Act in February 2019 and it was officially published on 30 April 2019 in the Royal Gazette announcing entry into force on 1 January 2020.

According to the latest version of the draft Act approved by the NLA, a few key changes have been made from the previous published version, as follows:

	Previous draft Act	NLA approved draft Act
Civil Liability	• An exporter who violates the rules under this Act, to the extent that such illegally exported goods are used as part of WMD which is the cause of death/ harm/ damage, will be responsible for paying victims' compensation; • Apart from actual damage, the court has the power to determine compensation for mental distress.	• An exporter who violates the rules under this Act by knowing that the goods will be used for illegal purposes by the end user which will cause danger to life or body of others, will be responsible for paying victims' compensation; • The clause on compensation for mental distress has been removed.
Criminal Charges	• For violating license provision (e.g. export without proper license, etc.), such exporter would be subject to imprisonment not exceeding 10 years, or fine not exceeding 10 million THB, or both; • If such violation leads to use of DUI as part of WMD, or use in design/development/modification/delivery/storage of WMD, which causes danger to others, such exporter would be subject to imprisonment not exceeding 20 years, or fine not exceeding 20 million THB, or both; • If such violation leads to use of DUI as part of WMD which causes death, such exporter would be subject to imprisonment not exceeding 30 years, or fine not exceeding 30 million THB, or both. • Provide false statement to authority of conceal any facts that should be informed to the authority in order to issue the license, such exporter would be subject to imprisonment not exceeding 1 year, or fine not exceeding 1 million THB, or both.	• For violating license provision (e.g. export without proper license, etc.), such exporter would be subject to imprisonment not exceeding 2 years, or fine not exceeding 200,000 THB, or both; • If such violation leads to use of DUI as part of WMD, or use in design/development/modification/delivery/storage of WMD, which causes danger to others, such exporter would be subject to imprisonment not exceeding 10 years, or fine not exceeding 1 million THB, or both; • The clause on violation of license provision which leads to use of DUI as part of WMD which causes death has been removed. • Provide false statement to authority of conceal any facts that should be informed to the authority in order to issue the license, such exporter would be subject to imprisonment not exceeding 1 year, or fine not exceeding 100,000 THB, or both.

Apart from civil liabilities and criminal charges under the TCWMD Act, exporting goods without proper license may lead to criminal charges under Customs Act B.E. 2560. Such exporter may be subject to imprisonment not exceeding 10 years or fine not exceeding 500,000 Baht, or both, according to Section 244 of Customs Act B.E. 2560

Even though the draft Act has been passed by the NLA, the updated list of controlled goods under this Act has not been released yet. It is expected that the updated list of controlled goods, including relevant regulations under TCWMD Act, will be announced before the Act comes into force.

In summary, based on the draft TCWMD Act and information previously provided by the Department of Foreign Trade ("DFT"), Thailand's Export Control on Dual-use Items regime would be as follows:

- There will be 3 lists of controlled goods; DUI List, HS Code List (Self-certification List), and Military List;
- Prior to exportation of goods under the DUI List, the exporter will be required to obtain a license issued by DFT or other certain authority (e.g. Ministry of Public Health, Ministry of Defense, etc.) ;
- In exporting goods under HS Code List, the exporter will need to self-certify that such goods are not DUI and obtain a certificate before exportation;
- Goods under the Military List may also require approval from a Government authority before export out of Thailand. , However details on the procedure and issuing authority have not been confirmed yet;
- DFT has introduced an e-TCWMD system, which is a system designed to support the exporter in classifying the controlled goods, including facilitating issuance of licenses and certificates for controlled goods;
- Thailand will also impose catch-all controls. Even if goods destined for export are not specifically mentioned in any of the three lists, they can still be subject to control, if authorities suspect that they will be used in making WMD or are for terrorism purposes. The catch-all control obliges exporters to always perform sufficient due diligence on its exports concerning the final use of the goods, the destination, and the recipient. As an exporter, you are required to prove that the goods will not be used for any of the suspected reasons;
- There are 2 type of licenses; license per shipment and annual license;
- Exporters who operate the Internal Compliance Program (ICP), a program for self-screening and monitoring trade transactions, can apply for an annual export license;

- In case of non-compliance with the Act, authorities can impose both criminal charges and civil liabilities on the exporter as mentioned above.

As the regulations under TCWMD Act have not yet been announced, there is a possibility that the abovementioned provisions/ procedures related to Export Control on DUI regime might change.

What to do?

Companies should start reviewing their process, business partners, and end-use of their products in the destination countries. Considering goods to be exported overseas, companies may perform a preliminary classification of the goods as to whether they are under controlled lists by using the beta version of e-TCWMD system (http://test1.dft.go.th). The lists under current e-TCWMD system are based on the lists announced in 2015 which have not been updated yet, but a preliminary classification of the goods will help companies in determining if the goods are likely to be controlled by this Act or not.

The possible benefits of acquiring an annual license should be considered for companies which export significant quantities of goods under controlled lists. If this option is worthwhile, the company may start reviewing its ICP and preparing annual license application as the application process may be administratively burdensome.

As export control on DUI is new to Thailand, raising employees' awareness on export control of DUI and how it impacts the company's business might be needed for some companies. Deloitte can provide bespoke training for commercial, logistics and supply chain functions of any company to make them aware of Thailand's export control regime and its impact on your business processes and procedures.

United Arab Emirates

Customs authority issues updates on certain policies and procedures

Dubai Customs have published a number of notices confirming the operation of certain aspects of customs procedures.

Virtual stock guarantees

On 25 March 2019, Policy Notice DCP 46/2019 on the availability of the Virtual Stock Guarantee (VSG) facility was published. The VSG is a new customs facility to manage the required customs duty guarantee for qualifying re-exports of goods from free zones and customs warehouses when using ports of exit throughout Dubai. It follows a memorandum of understanding (MoU) signed between Dubai Customs and the Dubai Free Zone Council. Following the signing of the MoU, it has been reported that AED 455 billion in bank and cash guarantees may be released under VSG initiatives.

To utilize the facility, free zone companies and customs warehouse holders must file the relevant application form with Dubai Customs (in respect of free zone companies, this form should be attested by the relevant authority). As of the date of publication, the application form is not yet available online.

Intellectual property rights

Notice CN 3/2019 published on 2 April 2019 specifies additional fees in respect of certain intellectual property services provided by Dubai Customs. The increased fees will apply as from 14 May 2019 to certain registration, protection, verification and inspection services for intellectual property.

Alcohol and tobacco products are excluded from the facility. The VSG does not impact obligations under the relevant customs laws and regulations.

Clearing procedures for courier companies

Also on 2 April 2019, Dubai Customs published Notice CN 4/2019 on the value thresholds and clearance procedures applicable to courier shipments. Certain declarations with a value not exceeding AED 3,000 can be finalized via the online system by using approved forms. The notice applies as from 1 July 2019.

Tobacco, tobacco products and certain e-nicotine products

Notices CN 5/2019 and CN 6/2019 published on 2 April 2019 are relevant to the importers of tobacco, tobacco products and e-nicotine products.

CN 5/2019 instructs all relevant customs centers that from 1 May 2019 the importation of cigarettes without a digital tax stamp is to be prevented in the UAE. Importers of cigarettes are advised to follow the procedures of the Federal Tax Authority to obtain the required digital stamps before 1 May 2019.

CN 6/2019 applies as from 15 April 2019 and confirms that vaping and e-smoking tools and devices covered by the tariff numbers below are subject to 5% customs duty. These products shall not be released without obtaining approval from the Emirates Authority for Standardization and Metrology (ESMA).

Type	HS Code	Customs tariff
E-cigarettes	8543 7031	5%
E-waterpipe “Shisha”	8543 7032	5%
Other	8543 7039	5%

House taxwriters split on tax proposals to address climate change

A 15 May 2019 US House Ways and Means Committee hearing on the economic and health impacts of climate change saw members weigh in on the use of the tax code to address the issue and drew a stark policy line between the two parties.

Democrats back carbon tax

The panel's Democrats generally pointed to carbon pricing as a reasonable way to reduce emissions, although most did not endorse a particular proposal for how such pricing might be implemented.

The most detailed proposal discussed at the hearing was the Baker-Shultz Carbon Dividends Plan championed by witness Ted Halstead, chairman and CEO of the Climate Leadership Council (CLC), and developed by former Republican Secretaries of State James Baker III and George Shultz. The CLC is backed by a number of large corporations – including from the energy industry – and environmental groups, and its proposal would implement an escalating fee on companies' carbon emissions – beginning at USD 40 per ton – in exchange for a rollback of regulations on greenhouse gases (or "regulatory certainty"). The fees collected would be returned to US households in the form of quarterly dividend payments, which the CLC estimates would begin at USD 2,000 a year for a family of four. The plan also calls for a border adjustment system for carbon.

"Our plan is not a carbon tax," Halstead emphasized. "It is a dividend."

An uphill fight?

Ways and Means member Rep. Don Beyer, D-Va., the sponsor of a carbon cap-and-dividend bill, declared himself a "big fan of carbon pricing" during the hearing and said it is encouraging that there are big energy companies supporting something like the CLC's proposal. However, he also said his office hears much more from industry about tax breaks than it does about climate change and questioned whether businesses might be using their participation in CLC as "greenwashing" while continuing to oppose solutions.

"There's going to be a hesitancy on the part of our Ways and Means Committee and the general Congress to vote for something that's a fee, that could be characterized as a tax, that could put us at risk in the next election," Beyer said. "Having the cover of the corporations will be really, really essential."

Republicans back clean energy incentives

Republicans, for their part, argued that "a carbon tax is not the solution to address our environmental challenges," as ranking member Kevin Brady, R-Texas said in his opening statement. "Other countries that have implemented a carbon tax impact on

global emissions have been negligible. . . . Instead of raising taxes on working families in America who can least afford it, the answer to decreasing emissions is found by empowering American innovators to create global clean energy solutions."

Such a stance did not come as a big surprise: less than a year ago, the Republican-controlled House passed a resolution saying a carbon tax "would be detrimental to American families and businesses, and is not in the best interest of the United States."

Brady and his fellow committee Republicans instead used the hearing to call for new tax incentives for clean energy development and federal investment in innovative technologies.

Rep. Tom Reed, R-NY, said he is preparing legislation that will offer new technology-neutral tax credits that reward clean energy sources, along the lines of the Energy Sector Innovation Credit Act (H.R. 7196) that he introduced in late 2018. Similarly, Rep. David Schweikert, R-Ariz., said he favors "disruptive technology" solutions such as those incentivized by legislation passed in the last Congress that reformed and expanded Internal Revenue Code section 45Q tax credits for carbon storage.

Flap over witness list

The hearing generated a bit of a partisan kerfuffle even before it took place, with Ways and Means Chairman Richard Neal, D-Mass., initially inviting former Republican taxwriter Carlos Curbelo (who was defeated in the 2018 election) to appear as a witness but then rescinding the invitation following complaints from House Democratic leadership.

While still in Congress, Curbelo, who represented a district in southern Florida, was among the few Republicans who supported a carbon tax – and one of just six in the party who voted against the anti-carbon tax resolution the House passed in 2018. Democratic taxwriters had hoped that his presence on the witness panel would help sway current Republican lawmakers; however, because Curbelo has not ruled out running again for his former seat, Democratic leadership blocked him from speaking. It's not clear that Curbelo's participation on the panel would have made a difference, though, since almost all of his fellow Republicans still appear to be set against a carbon tax proposal.

Rep. Jason Smith, R-Mo., entered into the *Congressional Record* the statement that Curbelo prepared before he was disinvited, but told the *Washington Examiner*, "I probably don't agree much with what's in Carlos' testimony."

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

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