



**Julio, Agosto y  
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Boletín de IVA

Deloitte Legal  
Departamento de IVA, Aduanas e Impuestos  
Especiales

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##### **Czech Republic**

###### **Generalized reverse charge mechanism**

The European Commission has released a proposal for a council implementing decision to allow the Czech Republic to apply a generalized reverse charge mechanism for VAT purposes to combat fraud. The European Council will now consider the proposal.

## **Ireland**

### **Brexit Contingency Action Plan update**

The Irish government has published a Contingency Action Plan Update that sets out preparations for a no-deal Brexit. The update contains guidance on VAT, recognizing that post-Brexit VAT on imported goods will have a cash flow impact for businesses.

## **Malaysia**

### **Service tax on imported digital services**

There have been official clarifications and confirmations regarding the implementation of service tax on digital services supplied by foreign service providers to Malaysian customers, and confirmation that the tax will apply from 1 January 2020.

## **Singapore**

### **GST consultations and e-guide issued**

Consultations have been launched on a draft GST e-tax guide on digital payment tokens and the draft GST Amendment Bill 2019. The Inland Revenue Authority of Singapore also has issued an e-tax guide on the Overseas Vendor Registration regime.

## **South Africa**

### **Update on New Customs Acts Program**

The South African Revenue Service has announced that it will be rolling out the next phase of the New Customs Acts Program to modernize the customs rules, which will focus on a new Registration, Licensing and Accreditation system.

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The 2019 edition of the Guide to fiscal information: Key economies in Africa 2019 is now available for download. The guide provides overviews of the tax (including VAT), investment and exchange control regimes in 45 key African economies.

## Europe

### **European VAT refund guide 2019**

For businesses operating in countries in which they are not VAT-registered, the Deloitte European VAT refund guide 2019 summarizes the rules and procedures for nonresident businesses to obtain a VAT refund. It covers 31 European countries.

## Belgium

### **Post-Brexit trade guidance**

The Belgian customs authorities have published additional guidance on the practicalities of trade between the UK and Belgium in a no-deal Brexit scenario. Their aim is to reduce potential operational delays or disruption as a result of Brexit.

## India

### **Reduced GST rates for electric vehicles**

India's GST Council at its 36th meeting held on 27 July 2019 made recommendations that will be introduced by notifications and will apply as from 1 August 2019, including a reduction in the GST rate on electric vehicles from 12% to 5%.

## Other news

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### **Australia**

Weekly tax round-up (5 August 2019), including GST

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## **September 2019**

### **Argentina**

#### **Foreign currency control rules imposed**

The executive branch issued a decree on 1 September 2019 imposing currency controls on companies and individuals. The currency control regulations, which respond to the rapid devaluation of the Argentine peso, will apply from 1 September 2019 to 31 December 2019.

### **Australia**

#### **Offshore suppliers of hotel accommodation**

The GST law has been amended from 1 October 2019 to require offshore suppliers of rights to use commercial accommodation (e.g. hotel accommodation) in Australia to include these supplies in calculating GST turnover, to determine whether they must register for GST.

### **China**

#### **Preferential VAT refund policy expanded**

A more favorable VAT refund policy applies to certain manufacturing businesses from 1 June 2019. Designed to stimulate investment in various manufacturing industries, it will allow qualified businesses to obtain larger VAT refunds and to obtain them earlier.

### **India**

#### **Measures to boost economic growth and exports**

Finance Minister Nirmala Sitharaman has announced measures to boost economic growth and exports, including an automated process for the refund of GST input tax credits, digital processes for export clearances, and other trade incentives and simplifications.

### **Mexico**

#### **2020 budget**

On 8 September 2019, the president presented to Congress a series of proposed tax measures as part of the 2020 budget, including changes to the VAT law to require foreign providers of digital services to collect VAT from Mexican users and pay it to the tax authorities.

## **The Netherlands**

### **2020 budget**

On 17 September 2019, the Ministry of Finance published the government's tax proposals for 2020, including indirect tax measures related to VAT (including electronic publications and the EU 'quick fixes'), real estate transfer taxes, and exemptions for insurance premium tax.

### **Other news**

#### **OECD**

Tax policy reforms 2019 report released

#### **Argentina**

Supply of certain basic foods to end consumers now zero rated

#### **Australia**

Full Federal Court issues decision on fuel tax credits

#### **Australia**

ATO releases tax gap estimate for small business

#### **Australia**

Luxury car tax removed from reimportations of luxury cars

#### **Australia**

Weekly tax round-up (28 August 2019), including GST

#### **Australia**

Weekly tax round-up (9 September 2019), including GST

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## **India**

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## **South Africa**

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## **United States**

State Tax Matters (23 August 2019), including indirect tax developments in Colorado, Nebraska, South Carolina and Washington

## **United States**

State Tax Matters (30 August 2019), including indirect tax developments in Alabama, Arizona, Louisiana and Wisconsin

## **United States**

State Tax Matters (6 September 2019), including indirect tax developments in Alaska, Arizona, Arkansas, Illinois, Iowa, New Hampshire and New Mexico

## **United States**

State Tax Matters (13 September 2019), including indirect tax developments in Alabama, California, Connecticut, Illinois, Minnesota and South Carolina

## **United States**

State Tax Matters (20 September 2019), including indirect tax developments in Arkansas and Massachusetts

## I. Jurisprudencia.

### 1. Tribunal de Justicia de la Unión Europea. Sentencia de 12 de junio de 2019. Asunto C-185/18, Oro Efectivo, S.L.

*Directiva 2006/112/CE — Artículo 401 — Principio de neutralidad fiscal — Adquisición por una empresa a los particulares de piezas de oro y de otros metales preciosos con vistas a la reventa — Impuesto sobre transmisiones patrimoniales*

Se requiere al TJUE que dilucide si la Directiva IVA y el principio de neutralidad fiscal se oponen a una normativa española que somete al Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (ITP y AJD), en su modalidad de Transmisiones Patrimoniales Onerosas (TPO), la adquisición por una empresa a particulares de oro, plata y otros metales preciosos, cuando estos bienes se van a destinar a la actividad económica de dicha empresa, reintroduciéndolos en el circuito empresarial (mediante operaciones sujetas al IVA), impidiéndosele la deducción del ITP y AJD soportado en la compra de esos bienes a los particulares.

Concluye el TJUE, basándose en su anterior jurisprudencia, que un impuesto como el ITP y AJD -modalidad TPO- no tiene la naturaleza de un impuesto sobre el volumen de negocios a efectos de lo dispuesto en el artículo 401 de la Directiva del IVA, siendo compatible por lo tanto con esta última. Por otro lado, concluye el Tribunal que no cabe oponer al ITP y AJD el principio de neutralidad fiscal ya que este principio solo se impone en el marco del sistema armonizado establecido en la Directiva del IVA; esto es, al tratarse el ITP y AJD de un impuesto no armonizado de acuerdo con la Directiva del IVA, no es posible vulnerar el principio de neutralidad.

### 2. Tribunal de Justicia de la Unión Europea. Sentencia de 13 de junio de 2019. Asunto C-420/18, IO.

*Directiva 2006/112/CE — Artículos 9 y 10 — Sujeto pasivo — Actividad económica realizada con "carácter independiente" — Concepto — Actividad como miembro del consejo de vigilancia de una fundación.*

Se cuestiona al TJUE si los artículos 9 y 10 de la Directiva del IVA deben interpretarse en el sentido de que un miembro del Consejo de Vigilancia de una fundación realiza una actividad económica con carácter independiente en el sentido de dichas disposiciones y, por consiguiente, debe ser considerado sujeto pasivo del IVA.

Responde el TJUE que la actividad de miembro del Consejo de Vigilancia de una fundación, tiene naturaleza de actividad empresarial. No obstante, considera que no puede ser considerada una actividad económica con carácter independiente a efectos del IVA, puesto que (i) no hay relación de subordinación jerárquica frente al órgano de dirección de la fundación, pese a que no actuaba bajo su condición de asalariado; (ii) no soporta individualmente ni la responsabilidad derivada de los actos de dicho consejo ni la responsabilidad por los daños y perjuicios ocasionados a terceros en el ejercicio de sus funciones, por lo que estaría actuando bajo su propia responsabilidad y (iii) por su condición de miembro del Consejo, percibe una retribución fija, que no se encuentra subordinada a sus horas de trabajo efectiva o asistencia a reuniones, por lo que no existe un riesgo económico como consecuencia del ejercicio de su actividad.

### **3. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de junio de 2019. Asunto C-291/18, Grup Servicii Petroliere SA.**

*Directiva 2006/112/CE — Artículo 148, letras a) y c) — Exenciones relativas a los transportes internacionales — Entrega de plataformas de perforación marina autoelevables — Concepto de "buques afectados a la navegación en alta mar" — Alcance.*

El TJUE analiza la posibilidad de aplicar la exención del artículo 148, letras a) y c), de la Directiva del IVA, relativa a los buques afectos a la navegación marítima en alta mar, a la entrega de estructuras flotantes, como las plataformas de perforación marina autoelevables, que se utilizan de manera principal en posición inmóvil, para explotar yacimientos de hidrocarburos en el mar.

El TJUE deniega la posibilidad de que aplique esta exención a esta operación, ya que la expresión «buques afectados a la navegación en alta mar» que figura en dicho artículo 148 no se aplica a la entrega de dichas plataformas. En esencia, porque son unidades móviles de perforación marina constituidas por un pontón flotante, al que se fijan varios brazos móviles retirados durante la operación de remolque hasta el sitio de perforación, y que, cuando se encuentran en posición de perforación, se colocan a varias decenas de metros por encima del nivel del mar por medio de esos brazos desplegados que se apoyan en el fondo del mar, para formar una plataforma estática. Así, estas plataformas de perforación marina no se utilizan principalmente para fines de navegación, precisamente porque tienen por función principal explotar, en posición inmóvil, yacimientos de hidrocarburos en el mar.

**4. Tribunal de Justicia de la Unión Europea. Sentencia de 27 de junio de 2019. Asunto C-597/17, Belgisch Syndicaat van Chiropraxie y otros.**

*Directiva 2006/112/CE — Artículo 132, apartado 1, letra c) — Exenciones — Profesiones médicas y sanitarias — Quiropráctica y osteopatía — Artículo 98 — Anexo III, puntos 3 y 4 — Medicamentos y dispositivos médicos — Tipo reducido — Suministro en el marco de intervenciones o tratamientos con fines terapéuticos — Tipo normal — Suministro en el marco de intervenciones o tratamientos con fines estéticos — Principio de neutralidad fiscal — Mantenimiento de los efectos de una normativa nacional incompatible con el Derecho de la Unión.*

En primer lugar, se consulta al TJUE acerca de si el artículo 132, apartado 1, letra c), de la Directiva IVA, sobre la exención prevista para las operaciones de asistencia a personas físicas por profesionales médicos o sanitarios, debe interpretarse en el sentido de que exige que la exención se aplique únicamente a las prestaciones realizadas por quienes ejerzan una profesión médica o sanitaria regulada por la normativa del Estado miembro.

El TJUE niega que dicho precepto de la Directiva del IVA haya interpretarse de esa forma. Por lo cual, no es conforme a la Directiva que una norma nacional no permita aplicar la exención a quiroprácticos y osteópatas, permitiendo únicamente su aplicación a personas que practiquen una profesión médica o sanitaria regulada.

En segundo lugar, concluye el TJUE que el artículo 98 de la Directiva (tipos reducidos), en relación con el anexo III, puntos 3 y 4 (productos farmacéuticos y equipos médicos) no se opone a una normativa nacional que establece una diferencia de trato entre, por una parte, los medicamentos y los dispositivos médicos suministrados en el marco de intervenciones con fines terapéuticos y, por otra, los medicamentos y dispositivos médicos suministrados en el contexto de intervenciones o tratamientos con fines meramente estéticos, excluyendo a estos últimos del tipo reducido del IVA que sí resulta aplicable a los primeros.

**5. Tribunal de Justicia de la Unión Europea. Sentencia de 3 de julio de 2019. Asunto C-242/18, UniCredit Leasing EAD.**

*Base imponible — Reducción — Principio de neutralidad fiscal — Contrato de arrendamiento financiero rescindido por impago de las cuotas — Liquidación complementaria — Ámbito de aplicación —*

*Operaciones imponibles — Entrega de bienes efectuada a título oneroso — Pago de una «indemnización» de rescisión hasta la fecha de extinción del contrato — Competencia del Tribunal de Justicia.*

En primer lugar, se plantea al Tribunal si, a la luz del artículo 90.1 de la Directiva, cabe la modificación a la baja de la base imponible del Impuesto con la rescisión del contrato, cuando dicha base imponible fue calculada mediante liquidación complementaria por la Administración tributaria del Estado miembro y ésta ha devenido firme. Responde afirmativamente el TJUE a esta primera cuestión, señalando que, en el supuesto, después de haberse convenido la transacción, una parte o su totalidad ha quedado impagada, por lo que el hecho de que exista un acto administrativo de liquidación firme respecto de unas cuotas del IVA devengadas, no impide efectuar la reducción de la base imponible del Impuesto cuando posteriormente se produce la rescisión del contrato de leasing por impago de las rentas arrendaticias.

En segundo y tercer lugar, se plantea al TJUE si nos encontramos ante una "rescisión" de la operación o ante un "impago" del precio de la misma cuando, por un lado, no se pagan las cuotas adeudadas correspondientes al periodo comprendido entre el cese de los pagos y la rescisión del contrato de leasing y, por otro, tampoco se paga por el arrendatario la indemnización exigible en caso de rescisión anticipada del contrato y correspondiente a las cuotas impagadas respecto de todo el periodo de vigencia del contrato, teniendo en cuenta que el Estado miembro en cuestión no prevé en su normativa la reducción de la base imponible del IVA en caso de impago del precio -solo lo prevé en caso de anulación o rescisión de la operación-.

En cuanto a las cuotas arrendaticias adeudadas durante el periodo comprendido entre el cese de los pagos y la rescisión del contrato, el TJUE concluye que constituye un supuesto de impago parcial. Dado que la normativa nacional no contempla la reducción del IVA en estos casos de impago, el Tribunal, apoyándose en su anterior jurisprudencia (caso Di Maura, fundamentalmente), concluye que la excepción prevista en el apartado 2 del artículo 90 de la Directiva (que permite, en principio, a los Estados miembros no contemplar la reducción de la base imponible del Impuesto en los casos de impago total o parcial) no puede aplicarse en un caso como el enjuiciado en el que habían transcurrido 9 años desde que las rentas se dejaron de pagar, por lo que parece acreditada una probabilidad razonable de que la deuda no se saldará. De esta forma, el Tribunal parece contemplar la posibilidad de recuperar las cuotas del IVA impagadas correspondientes a estas rentas.



Sobre el impago de la indemnización exigible en caso de rescisión anticipada del contrato, y que se corresponde con las cuotas impagadas de todo el periodo de vigencia del contrato, concluye en primer el TJUE que no se trata de una indemnización sino una cantidad que es contraprestación de la operación de leasing y está sujeta al IVA como tal, al entender el Tribunal que el pago del importe adeudado en caso de rescisión anticipada del contrato permite al arrendador percibir los mismos ingresos que habría percibido de no producirse esta, por lo que la rescisión no modifica la realidad económica de la relación contractual. Una vez determinada la sujeción al Impuesto, concluye el TJUE de igual manera que en párrafo anterior, entendiéndose que nos encontramos ante un caso de impago por el que no resultaría de aplicación el apartado 2 del artículo 90 de la Directiva y, por tanto, el Tribunal parecería contemplar de nuevo la posibilidad de recuperar las cuotas del IVA impagadas correspondientes a estas rentas.

**6. Tribunal de Justicia de la Unión Europea. Sentencia de 3 de julio de 2019. Asunto C-316/18, The Chancellor, Masters and Scholars of the University of Cambridge.**

*Deducción del impuesto soportado — Gastos de gestión de un fondo de dotación que realiza inversiones con el fin de cubrir los costes del conjunto de operaciones efectuadas con posterioridad por el sujeto pasivo — Gastos generales.*

Se cuestiona al TJUE si el artículo 168, letra a), de la Directiva del IVA debe interpretarse en el sentido de que un sujeto pasivo que ejerce tanto actividades sujetas al IVA como actividades exentas, que recibe determinadas donaciones y dotaciones recibidas para invertir las en un fondo, utilizando los ingresos que dicho fondo genera para cubrir los costes del conjunto de dichas actividades, puede deducir, en concepto de gastos generales, el IVA soportado y relativo a los gastos vinculados a dicha inversión.

Responde el TJUE que la Universidad en el ejercicio de la actividad consistente en la recaudación y percepción de las donaciones y dotaciones no actúa en su condición de empresario o profesional a efectos del IVA, puesto que son abonadas por motivos subjetivos, con fines benéficos y de manera aleatoria. Por tanto, no constituyen contraprestación de ninguna actividad económica, por lo que su recaudación y percepción no se encuentran comprendidas en el ámbito de aplicación del IVA. En este sentido, el IVA soportado por los gastos realizados para la recaudación de donaciones y dotaciones, no es deducible, al no tener tampoco la condición de gastos generales vinculados a su actividad económica.

**7. Tribunal de Justicia de la Unión Europea. Sentencia de 10 de julio de 2019. Asunto C-26/18, Federal Express Corporation Deutsche Niederlassung.**

*Directiva 2006/112/CE — Artículos 2, apartado 1, letra d), y 30 — IVA a la importación — Devengo del impuesto — Concepto de "importación" de un bien — Exigencia de entrada del bien en el circuito económico de la Unión Europea — Transporte de dicho bien a un Estado miembro distinto de aquel en que ha nacido la deuda aduanera.*

Se pregunta al TJUE si los artículos 2, apartado 1, letra d), y 30 de la Directiva del IVA deben interpretarse en el sentido de que, cuando se introduce un bien en el territorio de la Unión, basta que dicho bien haya sido objeto de infracciones a la normativa aduanera en un determinado Estado miembro para considerar que dicho bien ha entrado en el circuito económico de la Unión en dicho Estado miembro.

Recuerda el Tribunal que, según reiterada jurisprudencia, a la deuda aduanera puede añadirse la correspondiente al IVA si, en base a la conducta ilícita, es factible presumir que la mercancía ha entrado en el circuito económico de la Unión y, por lo tanto, ha podido ser objeto de consumo gravado por ese Impuesto. No obstante, esta presunción puede ser desvirtuada si se acredita que, pese a haberse producido un incumplimiento de la normativa aduanera en un Estado miembro, el bien ha sido introducido en el circuito económico de la Unión a través del territorio de otro Estado miembro, en el que se ha consumido, devengándose por tanto el IVA a la importación en este último.

**8. Tribunal de Justicia de la Unión Europea. Sentencia de 10 de julio de 2019. Asunto C-273/18, SIA Kuršu zeme.**

*Directiva 2006/112/CE — Derecho a la deducción del IVA soportado — Artículo 168 — Cadena de entregas de bienes — Denegación del derecho a la deducción por la existencia de dicha cadena — Obligación de la autoridad tributaria competente de determinar la existencia de una práctica abusiva.*

Se consulta al TJUE acerca de si el artículo 168, letra a), de la Directiva del IVA debe interpretarse en el sentido de que, para denegar el derecho a deducir el IVA soportado, la circunstancia de que una adquisición de bienes se produjera tras una cadena de operaciones de venta sucesivas entre varias compañías, y de que el sujeto pasivo adquiriera la posesión de los bienes de que se trata en las instalaciones del primer vendedor de esa cadena, el cual es distinto del proveedor que se indica en la factura que recibe, es por sí misma suficiente para

constatar la existencia de una práctica abusiva por parte del sujeto pasivo o de las demás personas implicadas en dicha cadena, o si tal restricción exige demostrar asimismo cuál es la ventaja fiscal indebida de que disfrutaron ese sujeto pasivo o esas otras personas.

Concluye el Tribunal que la mera existencia de una cadena de operaciones y el hecho de que se haya entregado la posesión de los bienes en las instalaciones por el primer vendedor, en vez de haber sido recibidos efectivamente de quien se indica en la factura como proveedor de los bienes, no pueden por sí solos justificar la conclusión de que el sujeto pasivo no adquiriera dichos bienes y que, por lo tanto, la operación de adquisición entre ambas sociedades no tuvo lugar. En este sentido, para poder denegar el derecho a la deducción del IVA soportado es necesario que la administración tributaria en cuestión aporte pruebas sobre la existencia de una práctica abusiva.

**9. Tribunal de Justicia de la Unión Europea. Sentencia de 29 de julio de 2019. Asunto C-388/18, “B”.**

*Directiva 2006/112/CE — Artículo 288, párrafo primero, punto 1, y artículo 315 — Régimen especial de las pequeñas empresas — Régimen especial de los sujetos pasivos revendedores — Sujeto pasivo revendedor comprendido en el ámbito de aplicación del régimen del margen de beneficio — Volumen de negocios anual que determina la aplicabilidad del régimen especial de las pequeñas empresas — Margen de beneficio o importes cobrados.*

Se plantea al TJUE si el artículo 288, párrafo primero, punto 1, de la Directiva del IVA, que establece que la cifra del volumen de negocios que sirve de referencia para la aplicación del Régimen Especial de las Pequeñas Empresas estará constituida por “*la cuantía de las entregas de bienes y de las prestaciones de servicios, siempre que estén gravadas*”, debe ser interpretado en el sentido de que, para empresarios cuyas operaciones tributan en el Régimen Especial de Bienes Usados dicho volumen de negocios debe calcularse en atención a los márgenes de beneficios obtenidos por las ventas de los vehículos o sobre el importe total de las contraprestaciones obtenidas por esas ventas.

El TJUE concluye -atendiendo a una interpretación literal, sistemática y teleológica de la norma comunitaria- que la Directiva se opone a una práctica nacional según la cual el volumen de negocios, que sirve de referencia para la aplicación del Régimen de Franquicia a un empresario -cuyas operaciones tributan en el Régimen Especial de Bienes Usados-, se calcula teniendo en cuenta solo el margen de beneficio obtenido. En opinión del Tribunal, dicho volumen de negocios debe establecerse sobre la base de los importes totales de contraprestación cobrados o por

cobrar por el revendedor con motivo de las ventas de los vehículos, toda vez que ambos regímenes especiales son autónomos e independientes entre sí, dada su génesis y finalidad.

**10. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 5 de julio de 2019, nº recurso 535/2017**

*Nulidad de pleno derecho – Real Decreto 529/2017, por el que se modifica el Reglamento del IVA*

En el presente supuesto, el TS estima recurso de casación interpuesto por el colegio de economistas de Pontevedra contra el Real Decreto 529/2017 declarando su nulidad de pleno derecho. En concreto, el mencionado Real Decreto introdujo dos nuevas disposiciones transitorias (cuarta y quinta) que modificaron el Reglamento del IVA, con el objeto de establecer un régimen transitorio y extraordinario para 2017 de bajas y renunciaciones en la aplicación del llamado régimen de devolución mensual y del régimen especial del grupo de entidades, así como la imposibilidad de que los sujetos pasivos acogidos al régimen simplificado pudieran optar por la aplicación del SII.

En el presente caso, en el procedimiento de elaboración del Real Decreto impugnado se produjo la inobservancia de lo dispuesto en el artículo 22.3 de la Ley Orgánica del Consejo de Estado, por el cual se establece la intervención preceptiva del Consejo de Estado en el procedimiento de elaboración de reglamentos o disposiciones de carácter general, así como sus modificaciones, mediante la emisión de dictamen preceptivo. Asimismo, tampoco se realizó el trámite de consulta pública previa ni el trámite de audiencia e información públicas.

Teniendo en cuenta las circunstancias anteriores, el TS establece que: “la ausencia del dictamen preceptivo del Consejo de Estado en el procedimiento de elaboración de una disposición general debe reputarse un vicio sustancial que determina la nulidad de pleno derecho de la disposición general que lo padezca.”

En consecuencia, el TS declara nulo de pleno derecho el Real Decreto 529/2017, y, por ende, las disposiciones transitorias referidas líneas arriba. Esta declaración de nulidad podría plantear dudas respecto de la situación en la que se encuentran los contribuyentes que se acogieron a las citadas disposiciones transitorias.

## II. Doctrina Administrativa

### 1. Tribunal Económico-Administrativo Central. Resolución 5598/2015, de 23 de abril de 2019.

*Devengo pagos anticipados - Aportaciones efectuadas por sus comuneros a comunidades de bienes que promueven la construcción de edificaciones.*

En la presente resolución, el TEAC se pronuncia en relación con el momento en que debe entenderse producido el devengo del IVA cuando se produzcan aportaciones efectuadas por comuneros a la comunidad de bienes con el objetivo de sufragar los gastos de promoción de unas determinadas viviendas.

En concreto, en el caso analizado, los comuneros constituyeron una comunidad de bienes para edificar y adjudicarse a partes iguales unas viviendas.

En atención a lo anterior, el TEAC se pronuncia siguiendo el criterio del Tribunal Supremo, entiendo que se devenga el impuesto en el momento en que se producen las aportaciones por parte de los comuneros a la comunidad de bienes para sufragar los gastos de financiación. En este sentido, considera que las aportaciones constituyen pagos anticipados a cuenta de la ulterior entrega de lo construido, siendo la comunidad de bienes quien debe repercutir el impuesto a los comuneros, siendo la base imponible el total de la aportación.

Finalmente, siguiendo con el anterior criterio, el TEAC concluye que el IVA se devenga con ocasión de los pagos anticipados realizados al contratista de la obra a cuenta de la ulterior entrega de lo así construido y no con la entrega final de la construcción.

### 2. Tribunal Económico-Administrativo Central. Resolución 0043/2015, de 22 de mayo de 2019.

*Concepto de establecimiento permanente. – Consideración de establecimiento permanente de un bien inmueble cedido en arrendamiento.*

En la presente Resolución, el TEAC analiza si la mera titularidad de un inmueble arrendado a una sociedad filial permite considerar la existencia de un EP a efectos de IVA o no.

En este sentido, a efectos de la jurisprudencia comunitaria (TJUE), para que se considere la existencia de un EP a efectos del IVA deben concurrir las siguientes condiciones:

- Presencia física en un Estado Miembro materializada como un conjunto de medios suficientes para prestar los servicios.
- Permanencia en el tiempo.
- Realización efectiva de una actividad económica por parte del establecimiento permanente, en el sentido de la independencia en la asumiendo el riesgo económico derivado de su actividad.
- Consistencia mínima y/o suficiente para prestar los servicios de forma independiente y estable o con continuidad.

Por ello, el TEAC concluye que dicha sucursal no constituye un EP a efectos de IVA en el TAI ya que el mero hecho de tener en dicho territorio un inmueble en propiedad arrendado a la filial no permite cumplir las condiciones anteriores.

### **3. Tribunal Económico-Administrativo Central. Resolución 9911/2015 de 25 de junio de 2019.**

*Plazos para la rectificación de las cuotas impositivas repercutidas cuando la rectificación determine una minoración de las cuotas.*

La cuestión planteada en la presente resolución versa sobre el plazo que tiene el sujeto pasivo para llevar a cabo la rectificación a la baja de las cuotas inicialmente repercutidas cuando la rectificación viene determinada por circunstancias que han dado lugar a la modificación de la base imponible.

La Ley del IVA establece el plazo de cuatro años para modificar la base imponible desde que se produzcan las circunstancias que determinen la modificación en el art. 80 de la misma.

Asimismo, la Ley del Impuesto, en el artículo 89, determina las opciones que puede elegir el sujeto pasivo para, en el caso de rectificación efectuada suponga una minoración de las cuotas inicialmente repercutidas, llevar a cabo la rectificación.

En este sentido, el TEAC interpretando dicho artículo, entiende que:

- a) La rectificación de las cuotas del IVA repercutidas como consecuencia de la modificación de la base imponible con arreglo a lo dispuesto en el art. 80 puede efectuarse en el plazo de cuatro años que establece dicho artículo.
- b) Asimismo, una vez producida tal rectificación, si la misma supone una minoración de las cuotas inicialmente repercutidas, el sujeto pasivo cuenta con el plazo de un año para regularizar la situación

tributaria mediante la inclusión de las cuotas en su declaración periódica del IVA (sin perjuicio de que éste pueda iniciar un procedimiento de solicitud de devolución de ingresos indebidos).

#### **4. Dirección General de Tributos. Contestación nº V0915-19, de 29 de abril de 2019.**

*Sujeción al IVA de las operaciones intermediación para el arrendamiento de servidores informáticos destinados a la minería de criptomonedas.*

La sociedad consultante es una mercantil establecida en el territorio de aplicación del Impuesto que ha suscrito un contrato de intermediación, en nombre propio, con una mercantil establecida fuera de la Comunidad para comercializar el arrendamiento de servidores informáticos. Partiendo de la base de que los clientes de dichos arrendamientos respecto de los que va a intermediar el consultante se encuentran establecidos tanto en Europa como en Estados Unidos y van a destinarlos a la minería de criptomonedas, la consultante desea saber si dichas operaciones están sujetas a IVA.

En primer lugar, este Centro Directivo, comienza analizando la tributación de las actividades de minado de criptomonedas. En este sentido, reitera jurisprudencia concluyendo que no es una actividad sujeta al IVA y que quienes la realizan no tendrían la condición de empresario o profesional a efectos de dicho impuesto debido a la falta de una relación directa entre el servicio prestado y la contraprestación recibida.

En segundo lugar, en relación con la naturaleza de los arrendamientos de servidores, este Centro directivo cita la contestación vinculante, de 31 de mayo de 2013, con número de referencia V1808-13, en la que se concluye que la cesión y el arrendamiento de servidores debe calificarse como servicio prestado por vía electrónica.

En tercer lugar, partiendo de la calificación de servicios prestados por vía electrónica a destinatarios no profesionales, la DGT concluye, en virtud de las reglas de localización establecidas en el artículo 70, apartado uno, números 4º y 8º, que se entenderán prestados en el territorio de aplicación del Impuesto en los siguientes supuestos:

- Cuando el destinatario de los mismos no sea un empresario o profesional actuando como tal, siempre que éste se encuentre establecido o tenga su residencia o domicilio habitual en el territorio de aplicación del Impuesto.

- Cuando el prestador esté establecido en otro Estado miembro y el importe total, excluido el Impuesto, de dichas prestaciones de servicios a destinatarios que se encuentren establecidos o tengan su residencia o domicilio habitual en el territorio de la Comunidad excluido el Estado miembro del prestador, haya excedido durante el año natural precedente la cantidad de 10.000 euros o su equivalente en su moneda nacional.

Por último, se hace mención al criterio de gravamen económico basado en la utilización o explotación efectiva de determinados servicios para los cuales las reglas de localización de servicios determinarían la no sujeción al Impuesto. Así pues, se concluye que en virtud del Reglamento de Ejecución, según la redacción introducida por el Reglamento 2017/2459 del Consejo, cuando el valor total de tales servicios, excluido el IVA, prestados por un sujeto pasivo desde la sede de su empresa o desde un establecimiento permanente ubicado en un Estado miembro no exceda de 100 000 EUR o su contravalor en moneda nacional, durante el año civil corriente y el anterior, la presunción será que el cliente está establecido o tiene su domicilio o residencia habitual en el lugar que sea determinado como tal por el prestador basándose en un elemento de prueba de los enumerados en el artículo 24 septies, letras a) a e), facilitado por una persona, distinta del prestador y del cliente, que intervenga en la prestación de los servicios.

## **5. Dirección General de Tributos. Contestación nº V0936-19, de 29 de abril de 2019.**

*Localización de diversos servicios de publicidad por una filial a la matriz establecida en Suiza y, en caso de localizarse en el territorio de aplicación del impuesto, procedimiento para recuperar las cuotas del IVA soportadas por la consultante.*

La consultante es una mercantil del sector biofarmacéutico establecida en Suiza que desarrolla y comercializa tratamientos oncológicos y que cuenta con una filial en el territorio de aplicación del Impuesto que le va a prestar servicios de publicidad y marketing y también será la encargada, en su caso, de la venta de los medicamentos en dicho territorio.

En primer lugar, esta Dirección señala que al no ser de aplicación a los servicios de publicidad y marketing recibidos por la consultante descritos en el supuesto de hecho ninguna de las reglas especiales de localización establecidas en el artículo 70, apartado uno de la Ley de IVA, las prestaciones de servicios referidas no se entenderían realizadas en dicho territorio en virtud de lo dispuesto en el artículo 69, apartado uno, ordinal 1º.



No obstante, la DGT analiza la aplicación del artículo 70, apartado dos, de la Ley de IVA, el cual establece un criterio de gravamen económico basado en la utilización o explotación efectiva de determinados servicios para los cuales las reglas de localización de servicios determinarían la no sujeción al Impuesto.

Así, la DGT señala que para apreciar la aplicabilidad del criterio de uso efectivo de los servicios objeto de consulta en el territorio de aplicación del Impuesto, habrá de actuarse en dos fases:

1ª) Han de localizarse las operaciones a las que sirva o en relación con las cuales se produzca la utilización o explotación efectiva del servicio de que se trate. Únicamente si esta localización conduce a considerar dichas operaciones realizadas en el territorio de aplicación del Impuesto cabrá la aplicación de lo dispuesto en el artículo 70.Dos de la Ley de IVA.

2ª) Ha de determinarse la relación de tales operaciones con la prestación de servicios que se trata de localizar, al efecto de apreciar si efectivamente se produce la utilización o explotación efectivas de la misma en la realización de las operaciones a que se refiere el ordinal anterior o no es así. Esta relación puede ser directa o indirecta.

Junto con lo anterior, se menciona que, para aplicar la regla del uso efectivo y disfrute a los servicios objeto de consulta, ha de tenerse en cuenta las últimas conclusiones de la Comisión Europea la cual señala que es necesario que el servicio sea utilizado por el destinatario en la realización de operaciones sujetas al IVA en el territorio de aplicación del Impuesto. Esto último así podría deducirse del contenido de la consulta, en la medida en que parece que transmitirá los productos a la filial para su comercialización por esta última en dicho territorio, por lo que dichas entregas se encontrarían sujetas al IVA en el mismo, con independencia de que el sujeto pasivo pudiera resultar la propia entidad filial en aplicación de lo dispuesto en el artículo 84.Uno.2º, letra a) de la Ley de IVA.

Por último, la entidad consultante podrá obtener la devolución de las cuotas del IVA que hubiera soportado cuando concurren las condiciones previstas en el artículo 119 bis de la Ley y 31 bis del Reglamento del Impuesto en las condiciones establecidas en el acuerdo de reciprocidad suscrito con Suiza.

**6. Dirección General de Tributos. Contestación nº V1054-19, de 17 de mayo de 2019.**

*Naturaleza de la operación de entrega a efectos del IVA.*

Un productor de aceite establecido en TAI realiza a favor de la entidad francesa consultante entregas de bienes que serán transportados al territorio francés tras un período de almacenamiento para lo cual la adquirente concede a la consultante la autorización correspondiente.

De la información contenida en el escrito de la consulta, parece inferirse que la adquisición del poder de disposición sobre los bienes por parte de la entidad consultante se produce con carácter previo a su salida hacia otro Estado miembro, en la medida que previamente van a ser objeto de prestaciones de servicios, embotellamiento de la mercancía, con carácter previo a su salida, y por tanto, dicha entrega estará sujeta al IVA de conformidad con lo dispuesto en el artículo 68.Uno de la LIVA pues los bienes no son objeto de transporte para su puesta a disposición, produciéndose éste con posterioridad y finalizadas las prestaciones de servicios de embotellamiento.

En esta contestación, recuerda la DGT que la aplicación de la exención contemplada en los artículos 25 de la LIVA y 138 de la Directiva 2006/112/CE exige la existencia de una transmisión de bienes que son transportados, por el vendedor o el adquirente, empresario o profesional, o por cuenta de los anteriores, a otro Estado miembro sin que se precise en dichas disposiciones que los bienes deban salir de forma inmediata hacia el Estado miembro de destino.

No obstante, la vinculación del transporte intracomunitario a la entrega efectuada por la consultante debe quedar debidamente acreditada pues, aun cuando los bienes son objeto de una única transacción, de no estar el transporte vinculado con la entrega efectuada por la consultante, el adquirente podría estar efectuando una transferencia de bienes desde el TAI hasta el Estado miembro de destino tal y como preceptúa el artículo 9.3º de la LIVA.

En este sentido, concluye la DGT que teniendo en cuenta las condiciones en que se desarrollan las referidas entregas y el proceso que siguen ulteriormente los bienes, debe considerarse que, en relación con las mencionadas entregas, se cumple el requisito de la existencia de un transporte de los bienes con destino a otro Estado miembro de la Comunidad directamente relacionado con las mismas, sin que ello pueda quedar desvirtuado por el hecho de que dicho transporte tenga lugar después de que los bienes hayan sido objeto de determinadas prestaciones de servicios, efectuadas por cuenta de la consultante que adquirió los bienes, durante el espacio de tiempo que transcurre entre el

momento en el proveedor efectúa la entrega y el momento en que los bienes, después de haber sido objeto de los referidos servicios de embotellamiento, son expedidos con destino a otro Estado miembro de la Comunidad por cuenta del empresario comunitario adquirente.

En todo caso, el transporte de los bienes embotellados o cualquier otro producto resultante deberá justificarse en la forma prevista en el artículo 13 del Reglamento del IVA.

**7. Dirección General de Tributos. Contestación nº V1062-19, de 17 de mayo de 2019.**

*Aclaración de la contestación vinculante de 15 de febrero de 2019, nº consulta V0324-19.*

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

En la presente consulta, la Asociación consultante plantea una aclaración de la contestación vinculante nº V0324-19, de 15 de febrero de 2019. A modo de colación, en la citada contestación vinculante, la DGT concluyó que los vales de comida debían de ser considerados como bonos polivalentes por ser aptos para su utilización tanto en Península, e Islas Baleares, como en las Islas Canarias, Ceuta y Melilla (territorios donde se aplica el IGIC e IPSI respectivamente). En este sentido, la DGT concluye que dichos bonos debían de ser considerados polivalentes, puesto que, aun siendo conocido el tipo impositivo aplicable a dichos servicios en cada territorio donde se redimen, no se puede determinar en el momento de su emisión si serían canjeados en el territorio de aplicación del Impuesto, o no.

En este sentido, la consultante desea confirmación sobre si la naturaleza univalente o polivalente de un bono que puede ser potencialmente utilizado en todo el territorio español y por tanto, en el territorio de aplicación del Impuesto, Canarias, Ceuta y Melilla, pudiera quedar condicionada al hecho de que el adquirente del bono que los transmite a sus tenedores finales que van a canjearlo, tuviera la certeza de que únicamente van a ser utilizados en una parte del territorio español; o, por el contrario, dicha naturaleza se deriva del diseño del bono por parte de su emisor con base a los acuerdos que haya suscrito con los proveedores de los servicios, con independencia del lugar en que, finalmente, sean efectivamente redimidos por bienes o servicios.

A estos efectos, concluye la DGT que la naturaleza del bono polivalente deberá ser conocida en el momento de su emisión y dependerá de que, en función de los potenciales bienes y servicios que puedan ser entregados o prestados con la redención del bono que, por otra parte, deben ser conocidos en el momento de la emisión por constar en el propio instrumento o en la documentación correspondiente, incluidas las condiciones de uso del instrumento, no pueda conocerse la tributación a efectos del IVA de la entrega de bienes o la prestación de servicios subyacentes a que se refiere el bono. En particular, porque la redención del bono pueda dar lugar a entregas de bienes o prestaciones de servicios que se entiendan realizadas dentro o fuera del territorio de aplicación del Impuesto, o a entregas de bienes o prestaciones de servicios gravadas a distintos tipos impositivos.

Lo anterior será de aplicación, con independencia de que el adquirente del bono que los transmite a sus tenedores finales, o estos últimos tenedores finales que van a canjearlo, tuvieran la certeza en el momento de la adquisición de que únicamente van a ser utilizados en una parte del territorio español y sujetos a un tipo impositivo determinado.

## **8. Dirección General de Tributos. Contestación nº V1137-19, de 24 de mayo de 2019.**

*Concesión de préstamos en línea – Exención del IVA.*

En esta resolución a consulta vinculante, la DGT se pronuncia sobre la aplicación de la exención del IVA por las operaciones de mediación en la contratación de servicios financieros a través de una página web.

En el presente supuesto, la consultante es una entidad que se dedica a la concesión de préstamos en línea. En el transcurso de su actividad contrata con su matriz, establecida en Letonia, las labores de captación de clientes a través de una plataforma en línea propiedad de la entidad matriz.

La Ley del IVA recoge la exención en la comercialización de productos financieros en el art. 20.uno. 18º. Asimismo, la letra m) de dicho artículo, recoge como exención la mediación en la comercialización de los mismos.

La Ley del impuesto no define como tal el concepto de mediación. Por ello, la DGT, siguiendo la jurisprudencia del TJUE establece los dos requisitos que deben concurrir para apreciar la existencia de una actividad de mediación:

- 1) Que el prestador del servicio de mediación sea un tercero independiente distinto del comprador y del vendedor de las partes, conocido por ambos y, conocida y aceptada su actividad;
- 2) Que las funciones que realiza vayan más allá del mero suministro de información y la recepción de solicitudes, debe haber un elemento activo adicional.

En este sentido, la DGT con base en las resoluciones del TEAC, recoge que, para que haya ese elemento activo adicional, debe realizar, al menos, alguno de los siguientes servicios:

- Concluir un contrato como agente de la entidad;
- Asesorar y negociar los términos del contrato en nombre y por cuenta del cliente para la conclusión del contrato.

Es decir, que realice una labor activa y haga lo necesario para que dos partes celebren un contrato, bien de manera directa, bien de manera indirecta en el propio sitio web, aunque al final no se lleve a cabo la operación.

Por el contrario, no podrá ampararse en la exención aquéllas actividades de publicidad, entendida como la difusión de un mensaje sobre la existencia o cualidades de un producto. En estos supuestos, el objeto de la empresa es conseguir que sean los potenciales clientes los que contacten con el proveedor del servicio financiero y realice la contratación.

En el caso de los servicios en línea, constituyen actividades de publicidad el mero cliqueo en un anuncio o página que te redirige a otra página web, donde se formalizará la contratación.

Tampoco se considera mediación la inserción de anuncios personalizadas en función de las preferencias del destinatario de la información derivada de la información sobre su navegación en la red.

Por tanto, la DGT concluye que en la medida en que la labor de dicho tercero permita la contratación directa o indirecta de los productos financieros, dicha labor podrá ser considerada como mediación en los términos previstos en el apartado anterior y estará sujeta y exenta del IVA.

**9. Dirección General de Tributos. Contestación nº V1211-19, de 29 de mayo de 2019.**

*Contrato de arrendamiento de vivienda y lugar de actividad profesional – Sujeción al IVA la totalidad del inmueble o parte –Exención.*

La consultante es una persona física que ha suscrito un contrato de arrendamiento de una vivienda que será su vivienda habitual y donde ejercerá su actividad empresarial la sociedad de la que es administradora la consultante. Se detalla en el contrato que se destinará un 60% de los metros útiles a la vivienda y un 40% a la actividad empresarial.

En esta contestación, la DGT analiza los criterios a seguir en relación con la aplicación de la exención al arrendamiento de vivienda cuando el arrendatario no sea el usuario de dicha vivienda porque permita el uso a otra persona. La DGT hace referencia a su doctrina relativa a la posibilidad de que un arrendamiento de vivienda, que a su vez sea objeto de una cesión posterior por parte de su arrendatario, pueda quedar o no exento, siendo indispensable que dicha cesión no se enmarque dentro del ejercicio de una actividad empresarial, para que pudiese aplicar la exención recogida en el artículo 20.Uno. 23º letra b).

En este sentido, remite el criterio contenido en V4618-16, en la que la DGT sostiene que para que se aplique la exención, debe acreditarse que no existe un negocio jurídico posterior al contrato de arrendamiento por el que se cede el uso de la vivienda.

Analizada también las recientes resoluciones del TEAC al respecto, concluyendo que su doctrina es también ratificada y que, en la medida en que cuando se arriende una vivienda a un empresario o profesional para subarrendarla o ceder el uso a terceras personas, tal arrendamiento estará sujeto y no exento del Impuesto sobre el Valor Añadido.

Ahora bien, a la luz de las citadas resoluciones del TEAC de 15 de diciembre de 2016, matiza la DGT que cabe entender que no concurre tal subarrendamiento cuando quede acreditado, por cualquier medio de prueba admitido en Derecho, que no existe intención de explotar el bien arrendado por parte del arrendatario sino destinarlo directamente a un uso efectivo y propio como vivienda por parte de una persona física concreta, la cual debe figurar necesariamente como usuaria en el propio contrato de arrendamiento, y que, por tanto, no puede destinarse a su uso por persona distinta al tener prohibida el arrendatario la facultad de subarrendar o ceder la vivienda a terceros.

No obstante, este supuesto especial no se produce en el caso objeto de consulta puesto que parte del inmueble arrendado va a afectarse al desarrollo de una actividad empresarial por parte una entidad mercantil.

Por consiguiente, la DGT concluye que en el supuesto objeto de la consulta no resulta aplicable la exención toda vez que el arrendamiento no se destina exclusivamente a vivienda y, por consiguiente, debe quedar sujeto al tipo general del 21 por ciento.

**10. Dirección General de Tributos. Contestación nºV1393-19, de 12 de junio de 2019.**

*Transmisión inmueble – Primera entrega de edificación – Segunda y ulteriores entregas de edificación – Exención.*

La consultante es una persona física que va a adquirir la vivienda en la que llevaba residiendo cuatro años de forma ininterrumpida, en virtud de sucesivos contratos de arrendamiento sin opción de compra.

La DGT se centra en analizar si se cumplen los requisitos de la exención recogida en el artículo 20.uno.22º de la Ley 37/1992, que establece que estarán exentas las segundas o ulteriores entregas de edificaciones.

Se razona si la utilización como vivienda habitual del inmueble por la consultante durante cuatro años podría entenderse como una utilización superior a dos años ininterrumpida, tal como exige el artículo 20.uno.22º LIVA, siendo dicho arrendamiento calificado como primera entrega, aunque el contrato de arrendamiento se ha realizado con una entidad mercantil que es quien lo subarrienda a la consultante.

La DGT concluye que no se puede considerar primera entrega la subsiguiente compraventa. Esto se debe a que la ley excluye del concepto de primera entrega los supuestos donde la segunda entrega se efectúa a favor de quien ha venido haciendo uso de la edificación en el período previo y superior a dos años.

Por ello, se concluye que:

- El arrendamiento, superior a dos años de forma ininterrumpida, por parte de la consultante no se puede considerar primera entrega.
- La subsiguiente compraventa por parte de la consultante será considerada como primera entrega y, por tanto, estará sujeta y no exenta.

Asimismo, estará sujeta y no exenta al tipo impositivo reducido del 10 por ciento.

### III. Country Summaries

#### July 2019

##### Australia

###### **Imported goods: Country of origin documentation waiver**

From 28 June 2019, businesses accredited as "trusted traders" by the Australian Border Force (ABF) have access to a potentially valuable new benefit.

The benefit relates to dutiable goods imported from Chile, Japan, Korea, Malaysia, Singapore and Thailand. It allows trusted traders to claim preferential customs duty rates for those goods under the relevant bilateral free trade agreement (FTA) with Australia, without being required to obtain or present country of origin certification documents (e.g. a certificate of origin provided by a certifying authority or, where permitted under the relevant FTA, a declaration of origin provided by the manufacturer, grower, etc.).

Prior to the introduction of this benefit, all importers (including trusted traders) who experienced difficulty obtaining country of origin certification documents from a supplier in one of these countries - whether due to administrative holdup, cost to the supplier, oversight or other reason - have faced either delaying shipments until origin documents were obtained, or foregoing access to preferential duty treatment under the relevant FTA and paying duty at the prevailing rate under the customs tariff instead (i.e. 5%). Only in cases where the origin certification documents were subsequently provided by the supplier, would a duty refund be available.

It is important to recognize that this new benefit is merely a concession in relation to the document requirements; it does not change the requirement that the goods must meet the country of origin requirements set out in the relevant FTA.

The ABF has indicated that trusted traders claiming preferential treatment under one of the six bilateral FTAs without obtaining origin certification documents must keep (generally for five years) evidence that the imported goods comply with the relevant rules of origin (e.g. contracts with suppliers/ growers/manufacturers, statements from manufacturers about manufacturing processes, components, inputs, etc.) and produce such evidence to the ABF on request.

In practice, it would be prudent for trusted traders taking advantage of this new benefit to first satisfy themselves that a delay or failure of a supplier to provide origin certification documents for particular goods is not due to the goods failing to meet, or being at risk of failing to meet, the relevant origin requirements.



## **Other benefits for trusted traders**

The ABF currently offers a range of other benefits to trusted traders, including:

- Priority treatment at the Australian border resulting in faster cargo clearance for imports;
- Priority processing in relation to ruling applications, duty refund and drawback claims, etc.;
- Recognition as an authorized economic operator/trusted trader by customs authorities in countries with whom Australia has a mutual recognition arrangement (MRA) (i.e. China, Singapore, Korea, Hong Kong, Thailand, Canada, New Zealand and Japan), ensuring that trusted traders' exports from Australia receive faster import clearance and delivery into the relevant foreign market;
- The opportunity to defer paying Australian import duty on most goods until the following month, paid as a consolidated monthly payment;
- The ability to lodge a single import declaration for consolidated consignments for all sea and air cargo types, with payment of only one import processing charge required;
- For imports covered by the China-Australia FTA (ChAFTA), the opportunity to obtain a single special advance ruling, valid for five years, covering goods classified under multiple tariff classifications and consignments which meet ChAFTA rules of origin and consignment rules enabling declarations of origin to be used instead of certificates of origin;
- Monthly cargo reports from the ABF;
- A single point of contact within the ABF; and
- Certain visa-related benefits in relation to applications for Temporary Skilled Shortage visas for skilled workers from overseas, and for senior personnel within the trusted trader travelling regularly to certain countries in the Asia Pacific region.

## **Trusted trader program background**

The program is a voluntary trade facilitation initiative for businesses able to demonstrate a secure supply chain and compliant trade practices. Accreditation is available to businesses importing or exporting goods, as well as businesses providing international trade support services such as logistics, transport and customs brokerage. As at early June 2019, almost 410 businesses had obtained trusted trader accreditation from the ABF.

## Czech Republic

### **Update on proposal to implement generalized reverse charge mechanism**

On 21 June 2019, the European Commission released a proposal for a council implementing decision to allow the Czech Republic to apply a generalized reverse charge mechanism (GRCM) for VAT purposes, i.e. a mechanism under which VAT is self-charged by the recipient of the supply, since the existing measures that the Czech Republic has implemented to combat VAT fraud (including a reverse charge mechanism for certain sectors) have proven insufficient. The European Council will consider the proposal and issue its decision on whether the Czech Republic may apply a GRCM.

The Czech Republic has asked the EU in the past whether EU member states could be allowed to introduce a GRCM. On 20 December 2018, the European Council adopted Directive (EU) 2018/2057, providing member states that meet certain criteria the option to apply for a temporary authorization to apply the GRCM for certain transactions (above EUR 17,500), until 30 June 2022.

The Czech Republic asked the European Commission for such an authorization, and provided information to demonstrate that it fulfills the relevant criteria, as well as a draft of a proposal for a council implementing decision. The European Commission granted its approval and published its proposal for a council implementing decision on 21 June.

The proposal will now be discussed by the European Council. If the council decides that the Czech Republic is allowed to apply the GRCM, the Czech VAT Act would have to be amended to implement the mechanism. It is difficult to predict how long the legislative process would take or when and how the Czech Ministry of Finance actually would implement the GRCM.

## Ireland

### **Brexit contingency action plan update provides VAT guidance**

The Irish government published a Contingency Action Plan Update on 9 July 2019 that sets out preparations for a no-deal Brexit, which could take place on 31 October 2019.

The update contains guidance on VAT, recognizing that post-Brexit VAT on imported goods will have a significant impact on the cash flow for businesses. The update discusses postponed accounting for VAT on UK imports, duty free sales and the VAT retail export scheme, all measures addressed in the Brexit Omnibus Bill issued on 22 February 2019.

## Malaysia

### **Update on implementation of service tax on imported digital services**

A recent discussion at a meeting of the Malaysian chapter of the American Chambers of Commerce with Malaysia's Ministry of Finance (MOF) and Royal Malaysian Customs Department (RMCD) resulted in some official clarifications and confirmations regarding the implementation of service tax on digital services supplied by foreign service providers to Malaysian customers. A significant clarification is that foreign service providers would have to register and collect service tax on digital services supplied to both businesses and consumers in Malaysia, i.e. on both business-to-business (B2B) and business-to-consumer (B2C) transactions. In addition, the MOF has confirmed that there will be no deferral of the "go-live" date for services tax on digital services, which will apply as from 1 January 2020.

The expansion of the service tax to foreign service providers that provide digital services to Malaysian customers was announced during the Budget 2019 speech on 2 November 2018. The Service Tax (Amendment) Bill 2019, which was introduced before the parliament on 4 April 2019, outlines the framework for the new rules. The bill has been passed by both houses of parliament, but must receive royal assent from the king and be published in the official gazette to be enacted into law.

The bill would grant the RMCD the power to make regulations on "all matters relating to digital services," so additional and more detailed rules may be introduced to address the issues clarified in the discussion with the MOF and RMCD, as well as other implementation and enforcement matters.

### **Scope of the tax**

The tax would be charged and levied on any digital service provided to any consumer by a foreign service provider that is registered for service tax.

### **Digital services**

Under the bill, a "digital service" would mean any service that is delivered or subscribed for over the internet or other electronic network, if the service cannot be obtained without the use of information technology and the delivery of the service is essentially automated.

The discussion with the RMCD confirmed that the scope of taxable digital services would be as broad as possible. Any service using an electronic infrastructure (e.g. information technology-enabled services) would be included in the scope. Other clarifications from the authorities include the following:

- There would be a possibility of exemptions from service tax for certain industries (e.g. health or education) for services that are not taxable services if they are delivered non-electronically—the exemption also would be granted to the electronic delivery of such services to harmonize the treatment of electronic and non-electronic mediums for delivering services.
- To ensure that there is no double taxation, a blanket exemption would be granted to service tax-registered entities from applying the reverse charge to account for service tax on a transaction for imported taxable digital services if they receive an invoice from a foreign entity indicating that service tax was imposed by the foreign entity on the transaction.

### **Foreign service providers**

Under the bill, a “foreign service provider” would mean any person outside Malaysia providing any digital service to a consumer. This would include any person outside Malaysia operating an online platform for buying and selling goods or providing services (whether or not such person provides any digital services) and that carries out transactions for the provision of digital services on behalf of any person.

### **Consumers**

Regarding the definition of a “consumer,” the discussion with the MOF clarified that the MOF intends to apply a “residence test” comprising a primary and a secondary test. Having a place of residence in Malaysia would be the primary test to be considered a consumer in Malaysia, but the customer also would have to meet a secondary test of acquiring the digital services through one of the following methods:

- Using an internet protocol (IP) address registered in Malaysia or a mobile phone with a telephone number with a country code assigned to Malaysia; or
- Using a payment facility provided by a company in Malaysia (e.g. a credit card issued by a financial institution in Malaysia).

This would be a refinement of the requirements provided in the bill, which does not distinguish between a primary and a secondary test.

The bill is unclear as to whether the definition of a consumer is intended to apply only to private individuals, but the discussion with the authorities confirmed that service tax also is intended to apply to B2B supplies of digital services by foreign service providers.

## **Rate and value**

The applicable service tax rate is not stated in the bill, but is expected to be 6% and would be applied on top of the value charged by the service provider for the service. There are no new provisions in the bill covering the conversion of foreign currency amounts for the purpose of reporting and collection, so it would appear

that the current practice requiring the use of the Bank Negara Malaysia (Malaysian Central Bank) selling rate on the date the service is provided would continue to apply.

## **When to account for service tax**

Tax would be due and payable for the period in which the payment is received from the consumer. The bill would introduce provisions that would give the Director General of the RMCD the discretion to allow a registered person to account for service tax on an invoice basis; however, these do not appear to cover foreign service providers supplying digital services.

## **Registration and invoicing**

The threshold for registration is not stated in the bill, but is expected to be MYR 500,000 per year of turnover from digital services provided to Malaysian consumers. A foreign service provider generally would be required to assess its turnover in relation to digital services provided to Malaysian consumers on a historical and prospective basis (on a rolling 12-month basis) to determine whether the threshold is exceeded. Where the threshold is exceeded, the foreign service provider would need to apply to the RMCD for registration and then would be required to file a quarterly (three-month period) return. A registered foreign service provider also would be required to issue invoices to consumers for any taxable digital services.

Foreign service providers that currently are providing digital services to Malaysian consumers and expect to exceed the registration threshold (based on projected prospective turnover for the 2020 calendar year) would be required to submit a registration application to the RMCD three months before the commencement of the tax on 1 January 2020, i.e. on 1 October 2019. The RMCD would have the discretion to register the foreign service provider with effect from 1 January 2020, or such later date as the RMCD may determine.

The formats of the application form, the service tax return and the invoice to be issued by foreign service providers have not yet been made available.

The discussion with the authorities provided the following clarifications:

- Registration for service tax on digital services supplied by foreign service providers would be open from 1 October 2019. The invoicing requirements would remain the same as what is required locally (i.e. listing the service tax registration identification number, the service tax amount, etc.).
- The RMCD may provide some leeway to assist foreign service providers in facilitating a smooth implementation process for the services tax. The RMCD also will be organizing roadshows to assist foreign service providers with the implementation process.
- The RMCD expects to make a finalized guide on the service tax on digital services available in July 2019.

### **Transition rules**

Under the bill, if digital services are provided for a period that begins before 1 January 2020 but continues up to or after the 1 January 2020 commencement date for the service tax, there generally will be a need to apportion and collect tax for the services attributable to the period on or after 1 January 2020. However, for payments received before 1 January 2020 in respect of digital services that will be provided on or after 1 January 2020, service tax is not chargeable.

### **Comments**

The requirement for foreign digital service providers to register and collect tax on both B2B and B2C transactions represents a major shift from the proposed B2C-only digital taxation guidelines released by the OECD, and from what generally has been implemented in Malaysia's region and globally.

The implementation time frame for businesses will be short, with only about four to five months to prepare. We observe that some of the critical challenges will be in relation to classification and system configuration (including configuring invoices).

The provision of an exemption from the reverse charge for service tax-registered customers that receive an invoice with service tax could pose issues, depending on how the exemption is framed and how it will be applied.

### **Singapore**

#### **GST consultations launched, e-guides and clarification of OVR regime issued**

On 5 July 2019, public consultations were launched in Singapore on a draft Goods and Service Tax (GST) e-tax guide on digital payment tokens and the draft GST Amendment Bill 2019. The Inland Revenue Authority of Singapore (IRAS) also has issued an e-tax guide and additional clarification on the Overseas Vendor Registration (OVR) regime.

## **Draft GST guide on digital payment tokens**

The IRAS has released for consultation a draft e-Tax Guide "GST: Digital Payment Tokens," setting out its suggested GST treatment of the use and issuance of such tokens. The draft guide includes the following proposed changes that would apply as from 1 January 2020:

- The use of digital payment tokens as payment for goods or services will not give rise to a supply of those tokens; and
- The exchange of digital payment tokens for fiat currency or other digital payment tokens will be exempt from GST.

A summary of the GST treatment of digital payment tokens before 1 January 2020 and as from 1 January 2020 is provided in Appendix A of the draft e-tax guide.

The consultation period runs until 26 July 2019. Interested parties should submit the template in Annex 1 of the draft e-tax guide via:

- Email to [gstfeedback@iras.gov.sg](mailto:gstfeedback@iras.gov.sg); or
- Post to:
  - Goods & Services Tax Division  
Inland Revenue Authority of Singapore  
55 Newton Road  
Singapore 307987

## **Draft GST Amendment Bill 2019**

On 5 July 2019, the Ministry of Finance launched a public consultation on the draft GST Amendment Bill 2019. The draft includes the following proposed changes:

- Refine the design parameters for GST on imported services:
  - Reverse charge (applicable as from 1 January 2020):
    - To clarify that the scope of the reverse charge applies to all businesses that are registered or liable for registration, and are not entitled to input GST claims in full; and
    - To grant the Comptroller of GST the power and discretion to impose conditions for group registration applications for businesses subject to the reverse charge.

- OVR regime:
  - To allow GST group registration for businesses registered under the OVR pay-only regime;
  - To allow a local marketplace to account for GST on digital services made by underlying suppliers to GST-registered customers (i.e. B2B supplies) via OVR; and
  - To clarify that while GST-registered overseas entities must appoint a local representative to act on behalf of their GST matters, overseas suppliers registered under the OVR pay-only regime are not required to do so.
- Introduce an offense of misrepresentation of information where a customer provides false information and that information may be used by the supplier under OVR to determine whether GST is chargeable.
- Update the GST treatment of digital payment tokens (subject to the ongoing public consultation).
- Amend the reporting of proceedings and decisions of tax cases heard by the High Court and Court of Appeal. To align with the principle of open justice and in keeping with international trends (such as the approach adopted in Canada and the UK), cases in these courts no longer will be heard in private by default and taxpayers' details will not be redacted in published decisions. The change does not extend to hearings held before the boards of review for income tax and GST.

The consultation period runs until 26 July 2019. Interested parties should submit their feedback using the template provided via:

- Email to [pc\\_gstabill@mof.gov.sg](mailto:pc_gstabill@mof.gov.sg);
- Fax to 6337 4134; or
- Post to:
  - Ministry of Finance  
100 High Street, #10-01  
The Treasury  
Singapore 179434  
Attention: Tax Policy Directorate



## **OVR regime**

As from 1 January 2020, GST will apply to imported digital services in the context of business-to-consumer (B2C) transactions by way of the OVR regime. On 4 February 2019, the IRAS published an e-tax guide "GST: Taxing imported services by way of an overseas vendor registration regime."

Under the OVR framework, overseas companies with global annual turnover exceeding SGD 1 million that supply digital services to non-GST registered customers in Singapore are liable for GST registration under OVR. Companies must notify the IRAS if they are liable for GST registration under the OVR regime by completing and submitting the "GST registration application form for Overseas Vendors" and providing the requested information.

Overseas companies with a branch in Singapore that supply digital services within the scope of OVR are not required to register for GST separately under the OVR regime if the Singapore branch already is GST registered. The IRAS additionally has clarified that if the head office and the Singapore branch are constituted as a single legal entity, that legal entity generally would be considered a full taxable person for Singapore GST purposes if the branch already is GST registered in Singapore. Consequently, the head office that is making the supply of digital services within the scope of OVR is not required to register for GST separately for OVR.

## **Comments**

The clarification provided by the IRAS is welcome and the view taken is consistent with the IRAS's existing position on head offices and branches for GST purposes. Singapore companies or branches may wish to consider the business activities carried out by their overseas branches or head offices to assess the potential implications of the implementation of the OVR regime.

## **South Africa**

### **Update on New Customs Acts Program**

On 1 July 2019, the South African Revenue Service (SARS) announced that it will be rolling out the next phase of the New Customs Acts Program (NCAP) to modernize the customs rules, which will focus on a new Registration, Licensing and Accreditation (RLA) system. The system is expected to be implemented in September 2019 and will permit the electronic submission of certain registration and licensing applications. The SARS also published draft amendments to the Customs and Excise Act, 1964 (Customs Act) relating to the new system on 19 June 2019 and comments on the draft amendments may be submitted to the SARS by no later than 19 July 2019.

The SARS has rewritten the current Customs Act and split it into three separate pieces of legislation: the Customs Control Act, 2014 (CCA), the Customs Duty Act,

2014 (CCD) and the Customs and Excise Duty Amendment Act, 2014 (EDA, which will amend the Customs Act and change its name to the Excise Duty Act, 1964). The new customs legislation was promulgated in July 2014 but has not yet entered into effect. The new legislation will come into law on a date to be determined by the president. The implementation of the new legislation is in progress through the NCAP: through various amendments to the current Customs Act and the related rules thereto, the NCAP has begun with the phased roll out of aspects of the new legislation.

The primary objective of the proposed amendments published on 19 June is to provide for the electronic submission of applications for registration and licensing and the electronic updating of registration and licensing details by persons intending to engage in activities regulated by the Customs Act or that have categories of premises regulated by the act (e.g. customs and excise warehouses). The electronically based processing system will be developed and implemented in a phased approach, and will be available only for certain application types in its initial phase. The manual submission of registration and licensing applications (through paper forms and annexures) still will apply in respect of other application types that are not covered by the electronic system at the point in time when the application is submitted.

## Other news

### Australia

#### **Weekly tax round-up (22 July 2019)**

Parliament this week

The Australian parliament returns this week (22 August 2019) for a two-week sitting. After that, the next sitting dates are from 9 September. The draft House of Representatives legislation program lists the following bills for debate on Thursday (25 August):

- Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019 dealing with the following:
  - Thin capitalization integrity rules;
  - GST on online hotel bookings; and
  - Luxury car tax changes on reimportation.
- Treasury Laws Amendment (2018 Measures No. 2) Bill 2019: This bill contains “fintech sandbox” measures and amends the venture capital and early stage investor provisions to ensure that they operate as intended in relation to capital gains tax transactions, managed investment trusts (MITs) and the early stage investor tax offset as well as amending the definition of public trading trust;

- Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019: This bill introduces offenses and other measures to combat illegal phoenixing operations including allowing the ATO to collect GST estimates, impose Director Penalty Notices in respect of GST, and retain tax refunds in more circumstances;
- Treasury Laws Amendment (Putting Members' Interests First) Bill 2019: This bill introduces opt-in insurance rules for low-balance and young member superannuation accounts.

The draft Senate legislation program also lists the Multinational Tax Bill (above) for debate on Thursday, pending a House vote. The parliamentary sitting calendar can be accessed [here](#).

### **New ATO advice under development**

The Australian Taxation Office (ATO) has advised of the following new advice under development:

- GST providers of financial supplies – determining the extent of creditable purpose – Draft addendum to GSTR 2006/3 – to clarify areas of the ruling; and
- GST apportionment of acquisitions that relate to certain financial supplies – Draft PCG announced.

### **Significant ATO guidance released**

- Rental property owners toolkit: The ATO has issued a toolkit focusing on areas where mistakes are commonly made;
- LCR 2019/2 Consolidation: churning of joining entities;
- TD 2019/12 Income tax: what type of costs are debt deductions within the scope of subparagraph 820-40(1)(a)(iii) of the Income Tax Assessment Act 1997?; and
- PCG 2019/D2 Compliance approach for large Australian Prudential Regulation Authority-regulated superannuation funds in respect of pension tax bonuses not included in members' opening account balances on commencement of a pension.

## **Brazil**

### **New rules allow reduced import duty rate on used capital goods**

On 24 June 2019, Brazil's Ministry of Economy enacted Ministerial Ordinance No. 309/2019 establishing new rules regarding the "ex-tariff" regime. Although the

effective date of the ordinance was originally the date of publication, due to concerns raised by Brazilian producers, the effective date has been postponed to 31 August 2019.

Under the ex-tariff regime, import duties are reduced on capital goods and information technology and telecommunication goods if similar goods are not manufactured in Brazil. Additionally, the goods must not be included on the "common external tariff" list published by the Ministry as part of the MERCOSUL regional trading bloc.

The ordinance extends the ex-tariff regime to apply to used goods, as well as new goods. Brazilian producers have expressed concern over the potential loss of competitiveness if imported used products can benefit from the reduced import duties under the ex-tariff regime.

The ordinance does not impose any time limits on the rate reduction, which is a deviation from prior rules allowing a temporary reduction for two years, renewable upon request. Concerns have been raised over the uncertainty a permanent import duty rate reduction would bring to the local economy.

Finally, the ordinance shortened the time to file an appeal from 30 days to 20 days from the date of denial of an application for a tariff reduction.

## **Brazil**

### **States allowed to extend ICMS incentives**

On 11 July 2019, the Brazilian National Council of Finance Policy (CONFAZ) published regulations (ICMS Agreement No. 133/2019) allowing the states to extend deadlines for granting certain tax incentives. CONFAZ is the government agency made up of finance representatives from all states and is responsible for promoting unity among the states regarding the ICMS (the state value-added tax on goods and services).

The regulations, effective from the date of publication, apply to more than 180 ICMS incentives approved by CONFAZ until 30 April, 31 October and 31 December 2020 (depending on the tax incentive). Such incentives include presumed credits, reduction of the ICMS calculation base, exemptions and deferrals.

The regulations will allow taxpayers to continue to benefit from tax incentives that reduce the ICMS burden. However, any extensions will continue to be subject to specific regulation by each state.

## EU

### **European Commission publishes Taxation Trends in the European Union 2019**

On 1 July 2019, the European Commission published the 2019 edition of Taxation Trends in the European Union. This report contains a detailed statistical and economic analysis of the tax systems of the 28 EU member States, plus Iceland and Norway.

Part 1 contains an analysis of Europe-wide trends and also provides data on top personal and corporate statutory tax rate developments, effective average tax rates and the "tax wedge."

Part 2 comprises individual country chapters covering the EU member states, plus Iceland and Norway. For each country, the report provides:

- A summary table of the country's tax revenues covering revenues from direct and indirect taxes, social contributions etc., the structure of taxes by level of government, as well as revenues by economic function (consumption, capital, labor taxes). Indicators of revenues from energy, environmental and property taxes, implicit tax rates and payable tax credits also are included; and
- The latest tax reforms announced, legislated or implemented during the calendar year 2018. The reforms are categorized by type of measure (VAT, corporate income tax, personal income tax, etc.) and a brief description is provided along with the direction of change of the reform (base increase/decrease, rate increase/decrease).

## EU

### **European Commission publishes July 2019 infringements package**

On 25 July 2019, the European Commission issued its July 2019 infringements package indicating cases where the Commission is pursuing legal action against EU member states for failing to comply with their obligations under EU law.

The first step in the infringement procedure is a "letter of formal notice." If the Commission is not satisfied with the response and concludes that the member state is failing to fulfill its obligations under EU law, the Commission may move to the second stage of the procedure, which is to send a "reasoned opinion," i.e. a formal request to comply with EU law. If the member state still does not comply, the Commission can refer the case to the Court of Justice of the European Union (CJEU).

## **Letters of formal notice**

### **Austria, Ireland - implementation of ATAD interest limitation measures**

The Commission decided to send a letter of formal notice to Austria and Ireland demanding the implementation of the earnings before interest, tax, depreciation and amortization (EBITDA)-based limitations on interest deductibility provided for in article 4 of the EU anti-tax avoidance directives (ATAD 1 and ATAD 2) into domestic law. If Austria and Ireland do not act within the next two months, the Commission may issue a reasoned opinion to their authorities.

### **Germany - recognition of profit and loss transfer agreements concluded with corporations established under the laws of another EU/EEA Member State**

The Commission is to send a letter of formal notice to Germany for refusing to recognize profit and loss transfer agreements that form a precondition for tax consolidation purposes entered into by companies relocating their place of management to Germany. Corporations established under the laws of another EU/EEA member state, but which transfer their place of management to Germany, cannot meet the formal registration requirements for the recognition of such agreements. This is because the German tax administration requires that the agreement is registered at the seat of the company, while refusing to recognize that registration with a commercial registrar in another EU/EEA member state is equivalent to registration with a domestic commercial registrar. The group of companies therefore is treated less favorably than groups all of whose members have their registered offices in Germany and may deter companies established in another EU/EEA state from establishing a business in Germany. Germany already has modified its law but the legislative amendments have no impact in practice if the German tax administration continues to refuse the benefits of the tax consolidation because the formal requirements of the profit and loss transfer agreement have not been met. These rules are, therefore, likely to dissuade corporations from exercising their treaty rights relating to the freedom of establishment (article 49 of TFEU and article 31 of the EEA Agreement). If Germany does not act within the next two months, the Commission may send a reasoned opinion to the German authorities.

### **Poland - VAT rules for cash processing services**

The Commission has decided to send a letter of formal notice to Poland for exempting various cash processing services from VAT, for example escorting of cash, preparing cash supplies for cash machines, storage of cash and extraction of excess cash. Council Directive 2006/112/EC (VAT) does not allow VAT exemption for these services. If Poland does not act within the next two months, the Commission may send a reasoned opinion to the Polish authorities.

## **Reasoned opinions**

### **Denmark - implementation of ATAD controlled foreign company measures**

Denmark was issued with a reasoned opinion for its failure to notify the implementing measures of the controlled foreign company (CFC) rules prescribed by article 7 ATAD. If Denmark does not act within the next two months, the matter may be referred to the CJEU.

### **Greece - deductibility of foreign losses**

The Commission also decided to send a reasoned opinion to Greece regarding its rules on deductibility of foreign losses. Under Greek tax legislation, while both business profits originating domestically and those originating in another EU/European Economic Area (EEA) member state are subject to taxes in Greece, the treatment of foreign losses is limited. The Commission considers that the difference in treatment constitutes a restriction to the right of establishment under article 49 of the Treaty on the Functioning of the European Union (TFEU). If Greece does not act within the next two months, the Commission may decide to bring the case before the CJEU.

### **Spain - obligation for nonresident taxpayers to appoint a tax representative**

A reasoned opinion is to be sent to Spain for obliging nonresident taxpayers to appoint, in certain cases, a tax representative domiciled in Spain. CJEU case law has established the obligation implies that the taxpayer must bear the cost of remunerating the and the requirement for the representative to reside in Spain impedes the freedom to provide services for persons and undertakings established in other EU/EEA member states. These legal obligations violate the free movement of workers, the freedom of establishment, the freedom to provide services and the free moment of capital (articles 45, 49 and 56 of TFEU), as they impose additional costs on nonresident taxpayers that may discourage them from taking up activities or investment in Spain. If Spain does not act within the next two months, the Commission may decide to bring the case before the CJEU.

### **Closing of infringement procedures**

The Commission has decided to close infringement procedures against Belgium, Cyprus, Czech Republic, France, Greece, Portugal and the United Kingdom, all of whom have notified the Commission of national measures implementing the ATAD provisions.

## EU

### **Abolition of the domestic sale concept in the EU**

In October 2018, the European Union (EU) Member States agreed within the European Commission's Customs Expert Group (CEG) to abolish the "domestic sale" concept related to the customs value determination, which was introduced by the Union Customs Code (UCC). While this abolition has not yet come into effect for all EU Member States, some Member States, such as Belgium, have already decided to take action. This creates an uneven playing field for market operators in the EU.

### **Determination of the customs value in the EU**

Using the transaction value for the customs valuation of goods, the value is determined on the basis of the sale for export, which is the sale occurring immediately before the goods are brought into the customs territory of the EU. This fundamental principle was introduced by the UCC, embedding a change compared to the first sale for export approach in its predecessor: the Community Customs Code. In its contested guidance document on "customs valuation" of 28 April 2016, the European Commission established that a sale between two entities established in the EU, the so-called "domestic sale", could not qualify as a sale for export to the EU.

In October 2018, however, the EU Member States agreed within the European Commission's CEG to abolish the "domestic sale" concept, which requires that the European Commission update its guidance document accordingly.

### **Customs Expert Group takes action**

During the CEG meeting on 11 and 12 October 2018, the European Commission presented an updated version of its guidance document on customs valuation. The European Commission removed all references to domestic sales, a concept that does not exist in customs legislation. The European Commission also promised to include additional practical examples of cases where a sale between two parties, both established in the EU, could be regarded as a sale for export.

Despite an agreement at the CEG level, the updated guidance document has not yet been published.

Some Member States, including Belgium, have already begun implementing this change by issuing national guidance; whereas, others will continue applying the concept until the updated guidance document abolishing this concept is published. A disparate approach is therefore observed across the EU.



## **Practical change in determining sale for export**

With the abolition of the domestic sale concept, a sale between two entities established in the EU can qualify as a sale for export, as long as this sale fulfills the conditions in Article 70 UCC / Article 128 UCC IA.

A direct impact is likely on businesses designating an earlier transaction as the last sale before import, or on businesses with only a sale between two EU established entities. This will particularly affect:

- Companies working with pre-order or back-order models, as one or more transactions have often already been concluded within the EU before goods are manufactured in a third country:
- Sectors that manufacture goods to order such as the automotive industry; and
- Groups distributing goods throughout the EU from a central imported that is included in every import flow.

Designating a different and later sale in the supply chain because of the abolishment of the domestic sale concept may have a direct customs duty impact. VAT consequences are also likely.

### **What to do?**

The removal of the domestic sale concept could have a direct impact on companies' customs valuation methodology. In view of these changes, companies should assess their customs valuation approach. Considering current differences between Member States in the concept's application, the impact of these differences on flows of goods should be mapped.

Deloitte's Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above. Specifically, the Global Trade Advisory team monitors the latest developments on this matter and can support companies in determining their customs valuation methodology and application. The team can provide local advice on the approach across the different Member States.

## **Guatemala**

### **Update on digitalization of tax administration**

The tax authorities in Guatemala and around the world are in the process of adapting to the use of information and communications technology and the digitalization of the economy. The Guatemalan authorities have begun digitalizing

tax administration by implementing electronic filing for tax returns, and they gradually are rolling out mandatory electronic invoicing. The next step will be to require taxpayers to submit electronic accounting records to the tax authorities, and a law (Decree 4-2019) published in Guatemala's official gazette on 30 April 2019 provides that the first group of taxpayers that will be subject to this obligation will be exporters that participate in the new regime allowing them to request VAT credit refunds electronically. The tax authorities have not yet announced the date from which the new obligation will apply or any details regarding the systems that will be used to implement electronic accounting, but Decree 4-2019 requires the tax authorities to have the relevant digital infrastructure in place by the end of October 2019.

For tax administration to become fully digitalized in a jurisdiction, the tax authorities must complete several levels of work to convert a variety of processes from traditional paper-based systems to electronic systems and must implement the following: electronic tax returns; electronic transactions and document submissions; electronic accounting; electronic audits; electronic audit adjustments; and electronic resolution of tax controversies.

"Electronic accounting" or "digital accounting" refers to an obligation for taxpayers to manage and submit their accounting books, documents and records to the tax authorities through technological platforms. Once a jurisdiction implements electronic accounting, the information that becomes available to the tax authorities facilitates the introduction of electronic tax audits and audit adjustments.

In Guatemala, the digitalization of tax administration began in 2011 with the introduction of electronic tax return filing and the online payment of taxes. All types of tax returns are now required to be filed electronically, for both companies and individuals.

The tax authorities introduced a new online electronic invoice regime (FEL) for VAT and income tax purposes in May 2018, and are implementing the mandatory use of the FEL gradually by groups of taxpayers. Groups already required to use the FEL include government suppliers and "special" taxpayers (a classification made by the tax authorities, normally based on taxpayers' sales volumes).

Taxpayers registered for the FEL, as well as those that wish to claim VAT credit refunds electronically (which also will be required to register for the FEL) are required to use an electronic accounting system for recording transactions and documentation; however, the electronic accounting records are not yet required to be submitted electronically to the tax authorities. The full implementation of electronic accounting is expected to be the next step in the process of the digitalization of tax administration in Guatemala.

Decree 4-2019 provides that the new electronic system will require taxpayers that wish to claim VAT refunds electronically to electronically submit the following to the tax authorities: inventory books, journals, general ledgers, financial statements, VAT books and other records to be determined by the tax authorities. It is expected that the new electronic system gradually will be rolled out to more groups of taxpayers.

To date, the tax authorities have not defined the formats or tools for submitting the accounting books or other information that is of interest to them. Although most accounting programs generate records in formats with common characteristics, in certain cases it may be necessary to implement and make specific changes in the reporting. This would require time, internal approvals and changes to the systems for certain taxpayers. Accordingly, it is important for taxpayers to be on the alert for developments regarding the formats or systems that the tax authorities will use for implementing electronic accounting.

Companies required to use electronic accounting should consider the following actions to facilitate general compliance with the rules:

- Ensure that the chart of accounts is related to the nature of the accounting entries;
- Maintain the details of the specific accounts;
- Retain supporting documentation for assets, liabilities, revenues, costs and expenses, in accordance with the applicable tax treatment;
- Retain narratives regarding the nature, documentation and explanations of accounts, with the specific tax treatment;
- Ensure that the accounting information matches the information reported in the tax returns; and
- Cross-check sources of information that could be subject to review by the tax authorities.

## **India**

### **Highlights of FY 2019-20 budget for nonresidents**

India's new Finance Minister presented the budget for the 2019-20 financial year (FY) in parliament on 5 July 2019. The budget sets out a road map for the government's investment policy, with a focus on further improving the social infrastructure of the country. The finance bill now will be discussed in parliament and must be approved by both the upper and lower houses before being sent to the Indian president for his assent. Once signed by the president, the bill will become law.

The key tax and regulatory proposals announced in the budget that are most relevant to nonresidents are outlined below. Unless otherwise noted, the tax proposals generally would apply with retroactive effect as from 1 April 2019.

The finance minister is continuing with the phased rationalization of the headline corporate tax rate of 30%.

### **Key tax proposals**

- **Corporate tax rate:** For financial year (FY) 2019-20, the reduced corporate tax rate of 25% (plus a surcharge and cess) would apply to Indian companies whose FY 2017-18 turnover (gross receipts) did not exceed INR 4 billion (approximately USD 60 million), increased from FY 2016-17 turnover of INR 2.5 billion (approximately USD 35 million) for applying the reduced corporate tax rate of 25% for FY 2018-19. With the proposed change, 99.3% of Indian companies would be eligible for the 25% rate. This would result in an effective tax rate (ETR) of 29.12% for companies with turnover less than INR 4 billion and 26% where turnover is less than INR 10 million. The ETR for companies with turnover exceeding INR 4 billion and limited liability partnerships (LLPs) would continue to be 34.94% (i.e. 30% corporate tax rate plus a surcharge and cess).
- **Tax rate for individuals, trusts and other non-corporates:** A surcharge of 25% is proposed on individuals, trusts and other non-corporates (excluding partnerships) whose income is between INR 20 million and INR 50 million. A 37% surcharge would apply where the income exceeds INR 50 million. This would result in an ETR of 39% (previously 35.88%) where the income is between INR 20 million and INR 50 million and 42.744% (increased from 35.88%) where the income exceeds INR 50 million.
- **Buy-back tax:** As from 5 July 2019, the buy-back tax (payable by a company on profits distributed to shareholders by way of a buy-back of shares) would be extended to apply to listed shares. This is an anti-abuse measure already applicable to unlisted companies designed to prevent companies using a buy-back as a means of distributing profits to shareholders. Capital gains arising on a buy-back would be subject to tax at rates of 10% or 15% (or may be exempt in accordance with the provisions of a relevant tax treaty), whereas the payment of dividends would be subject to dividend distribution tax of approximately 20.5%. Since the buy-back tax is levied on the Indian company, the shareholder would unlikely be able to claim tax treaty benefits, although the income would be exempt for the shareholder. This also would result in double taxation because the buy-back tax would be charged on the difference between the buy-back price and the original issue price of the shares (rather than the cost of the shares in the hands of the shareholder).

- **Non-banking finance companies (NBFCs):** Interest income received by NBFCs from non-performing assets would be taxed on a receipts basis, bringing the treatment of NBFCs in line with banks. Correspondingly, interest payable to NBFCs would be allowed as a business deduction only on a paid basis.
- **Withholding tax:** An Indian taxpayer required to withhold tax on a payment to a nonresident who fails to withhold the tax due no longer would be penalized once the nonresident recipient of the income pays the necessary taxes and files the relevant income tax return in India. All applications to the tax authorities for certificates allowing payments to nonresidents to be made subject to a reduced/nil rate of withholding tax would need to be made online.
- **Transfer pricing:** Significant changes are proposed to the secondary transfer pricing adjustment provisions introduced in Finance Act 2017, that require an actual cash movement where a primary adjustment is made to ensure a transfer price is an arm's length price. India's transfer pricing rules require a nonresident associated enterprise to repatriate to India an amount equal to the amount of the primary adjustment within a specific period of time or pay an additional tax on "imputed interest." Measures proposed in the budget include (i) an option, as from 1 September 2019, to pay a one-time final tax at 18% (plus a surcharge) on the excess cash where the cash is not repatriated to India within the prescribed period, and (ii) a retroactive amendment as from assessment year 2018-19 allowing flexibility to repatriate excess cash from any nonresident associated enterprises of the taxpayer. Additionally, a measure also would be introduced to confirm that every constituent entity of a multinational group would be required to submit a master file even where there are no cross-border transactions undertaken by that constituent entity.
- **Digital economy:** To promote the digital economy, all businesses with total turnover or gross business receipts exceeding INR 500 million (approximately USD 7 million) would be required to provide a facility for accepting electronic payments or be subject to a penalty. A 2% withholding tax would be imposed on total cash withdrawals exceeding INR 10 million per bank account per fiscal year ending 31 March.
- **International Financial Services Centre (IFSC):** A number of incentives would be introduced to further promote the IFSC, including (i) a 100% profit-linked deduction for 10 years (currently, a 100% deduction is available for the first five years, reducing to 50% for the next five years); (ii) an extension of the exemption from dividend distribution tax to dividends paid out of past profits; (iii) a tax exemption for interest income arising to a nonresident from monies lent to a unit set up in the IFSC and (iv) an extension of the tax exemption for capital gains on specified securities to Category III alternative investment funds.

- **Business start-ups:** Start-ups issuing shares in excess of fair market value (FMV) currently are exempt from paying tax on the excess, provided certain requirements are met. It is proposed that where the start-up fails to comply with the requirements, the excess of the sales consideration over the FMV would be taxable income of the year in which the failure takes place.
- **Demergers and spinoffs:** One of the prerequisites for a tax-neutral demerger or spinoff is that properties and liabilities must be transferred at their book value as recorded in the books of demerged company before the demerger. Under the budget proposals, the requirement for the resulting company to record properties and liabilities at book value would not apply if the resulting company complies with IndAs (Indian accounting standards).
- **Gifts:** It is proposed that any income arising from property situated in India and gifted on or after 5 July 2019 by an Indian resident to a nonresident would be deemed to arise or accrue in India and taxable under Indian domestic law. The same provision would apply to property transferred at below market value. However, a tax treaty would continue to prevail over domestic law in the event of a conflict.
- **Tax audits:** Tax audits (scrutiny assessments) currently involve significant interaction between the taxpayer or the taxpayer's representative and tax officers. It is proposed to establish an e-assessment framework allowing the scrutiny to be completed on the basis of documents and other information provided by the taxpayer via the online income tax portal without the need for face-to-face interaction with the tax authorities.
- **Goods and services tax (GST):** To promote the use of electronic payments and reduce the number of cash transactions, certain suppliers would be required to offer the option of electronic payment to their customers. It is proposed to establish a National Appellate Authority for Advance Rulings to hear appeals against conflicting advance rulings on the same question issued by the appellate authorities of two or more states. The National Anti-profiteering Authority would be empowered to levy penalties up to 10% of the profiteered amount.

### **Key policy announcements**

- The key policy announcements in the budget include the following:
- Launch of an action plan to strengthen the long-term bond market;
- Changes in customs duties to promote the "Make in India" initiative;
- Creation of a Legacy Dispute Resolution Scheme to expedite closure of service tax and excise tax-related litigation;

- Launch in FY 2019-20 of a scheme for electronic assessment (tax audits) involving no human interface;
- Relaxation of local sourcing rules for foreign direct investment in single brand retail;
- Increase in the minimum public shareholding threshold for listed companies from 25% to 35%;
- Establishment of a separate “social” stock exchange to list social and nonprofit enterprises and improve their access to funds;
- Proposed increase in foreign investment limits in the aviation, media and insurance sectors;
- Capital injections from the government for public sector banks and rationalization of the rules for NBFCs;
- Incentives to set up reinsurance branches of foreign companies in the international finance services sector; and
- Simplification of “know your customer” requirements for foreign portfolio investors (FPIs) and allowing FPIs to invest in listed Indian companies up to the cap for the relevant sector (currently investment by FPIs is restricted to 24% of the Indian company’s share capital).

## **Comments**

The 2019-20 budget contains no significant changes to Indian tax legislation, in part because the government only was reelected some six weeks ago. In addition, a committee established to redraft the Income-tax Act, 1961 is expected to submit its report near the end of July 2019.

Various stakeholder demands such as reducing the corporate tax rate to 25% for all companies irrespective of turnover, extending the sunset clause relating to tax benefits available to units in a special economic zone to new units established after 31 March 2020, and the reduction or abolition of the alternative minimum tax were not considered.

More progressive changes to the tax laws are expected to be announced during the year and in the FY 2020-21 budget that will take place in the first week of February 2020.

## India

### **Dbriefs Asia Pacific webcast: Special Edition – India Spotlight (8 July 2019)**

#### **Special Edition – India Spotlight**

##### **India Budget 2019: Will it herald a new wave of economic reforms?**

India Budget 2019 is one of the much-awaited announcements in the recent times. As the government sets foot in its second term, there is a lot riding on the full budget to set the tone for growth in the next five years. The focus is to drive measures to boost the economic growth, and enhance the investment climate. A road map to spur job creation, increase private investments, and improve consumer demand is the government's priority in its second innings. To strike a fine balance between fiscal consolidation and monetary measures is essential to accelerate economic growth. Goods and Services Tax (GST) will touch its second anniversary mark, and hopes are pinned to see an improved compliance in the GST taxation process. There are expectations around potential easing of corporate taxes and start-up taxation reforms. Will the new Finance Minister's maiden budget set the tone for path-breaking reforms and growth? Join our Deloitte specialists for an in-depth analysis of the 2019 India Budget.

## Ireland

### **Update to guidelines for VAT registration**

On 14 June 2019, Irish Revenue issued eBrief No. 114/19 to communicate changes to the Tax and Duty Manual to reflect the introduction of the first phase of a Two-Tier VAT Registration System.

As from 15 June 2019, VAT registration applicants are required to specify whether they are applying for “domestic only” or “intra-EU” status. Where an intra-EU status application is required, enabling the applicant to make zero-rated intra-Community acquisitions, additional information has to be included on the application form.

Taxpayers with active VAT registrations granted prior to the introduction of this system should be aware that they will be treated as having “intra-EU” status under the new system.

Revenue also communicated in this eBrief that there will be further changes to the VAT registration process in September 2019 with the aim of further accelerating VAT registration applications.



## Italy

### Simplifications made to VAT e-invoicing procedures

Decree No. 34/2019, converted into law by the Italian parliament on 27 June 2019, introduces a number of simplifications to the process of e-invoicing and the electronic transmission of daily payment data to the Italian tax authorities (ITA) that first applies for transactions carried out by certain resident companies as from 1 January 2019. A subsequent Circular letter No. 15/E issued on 29 June 2019 provides additional guidance on the electronic transmission of daily payment data.

The most significant simplifications include the following:

- **Extended timing for the issuance of invoices:** As from 1 July 2019, taxpayers may issue invoices within 12 days from the tax point date (extended from 10 days).
- **Extended timing for the submission of daily payment data:** Retailers required to electronically record and submit daily payment data must submit the data within 12 days from the tax point (extended from the tax point date). The requirements apply as from 1 July 2019 for retailers whose 2018 turnover exceeds EUR 400,000 and as from 1 January 2020 for all other retailers (except those qualifying for an exemption). For the first six months after the introduction of the new rules, the data may be submitted by the end of the month following the month in which the tax point occurs provided that the following conditions are met:
  - A daily record of payment data is created temporarily (in the absence of a proper electronic cash register) either by using the existing cash register or the issue of tax receipts;
  - The receipts are provided to the customer; and
  - The ledger of payments is maintained until a proper electronic cash register is installed, which must be by 31 December 2019 at the latest.
- **Simplification of quarterly reports on VAT calculations:** Taxpayers may provide the quarter four (Q4) VAT calculation data in the annual VAT return.
- **Identification of e-invoices subject to stamp duty:** As from 1 January 2020, the automated checks performed on the nature and amount of e-invoices transmitted through the interchange system (SDI) will allow the ITA to identify those invoices in respect of which stamp duty is due.
- **Simplification of the zero VAT rated "usual export regime":** As from 1 January 2020:

- A usual exporter no longer will be required to provide the supplier with a copy of the letter of intent e-filed with the ITA together with the relevant proof of filing;
  - The supplier no longer will need to provide in the annual VAT return details from a letter of intent received;
  - The invoice issued by the supplier must show the protocol number (the sequential number attributed to the invoice) resulting from the receipt of submission of the letter of intent; for imports, the protocol number must be reported on the import bill; and
  - Where a zero-rated VAT invoice is issued before the appropriate checks have been conducted to verify the actual submission of the letter of intent sent by the counterparty to the ITA, penalties ranging from 100% to 200% of the VAT due will apply.
- **New e-invoicing requirements for transactions with San Marino:** As part of the process of digitalization and simplification, invoices issued to counterparties in San Marino will have to be issued electronically (from a date yet to be specified), in accordance with guidelines to be issued by the Ministry of Economy and Finance.

## Italy

### Methods for paying customs duties and penalties updated

Law No. 58, dated 28 June 2019 and effective as from 30 June 2019, sets forth an updated list of the permissible methods for paying customs duties and penalties to the Italian customs authorities, taking into account the current framework of payment technology. The payment methods now allowed for these purposes are the following:

- Debit, credit and prepaid cards, as well as other available means of electronic payment (newly added to the list of permissible payment methods);
- Bank transfers;
- Postal transfers;
- Cash (normally limited to payments of no more than EUR 300); and
- Non-transferable checks (in particular cases).

These methods may be used to pay all duties to be collected by the customs authorities, including amounts not directly linked to customs transactions (e.g. anchorage tax, a tax paid by certain boats carrying out commercial transactions in Italian harbors and beaches, as provided for under specific domestic provisions); the same methods may be used to provide customs guarantees.

The director of the customs and monopoly agency will issue implementing procedures relating to the updated list of payment methods.

## Oman

### Excise tax updates

Oman's Secretariat General for Taxation (SGT) released announcements on 13 June 2019 and 20 June 2019, providing updates to the Excise Tax Law that was published in the official gazette on 17 March 2019 and came into effect on 15 June 2019 (Royal Decree 23/2019). The SGT had previously released on 26 May 2019 an Implementation Guide and a set of frequently asked questions regarding the new law.

The current list of excise goods and the respective rates are:

- **Tobacco and tobacco products are subject to a 100% rate.** The definition covers all tobacco products set forth in Chapter 24 of the Unified Customs Coding (UCC) of the Gulf Co-operation Council (GCC) imported or grown and produced in Oman.
- **Pork products are subject to a 100% rate.** The definition covers all port meat, parts, pig fat and all its byproducts that are edible whether fresh, cooled, frozen, dried, salted and other byproducts of pork that are categorized as Goods of Special Nature in the UCC of the GCC.
- **Alcoholic beverages are subject to a 100% rate, but the SGT has confirmed that the rate is temporarily reduced to 50% for six months.** The definition covers drinks that contain a specific percentage of alcohol, including alcoholic beverages that are categorized as Goods of Special Nature in the UCC of the GCC.
- **Energy drinks are subject to a 100% rate.** The definition covers any drinks that contain stimulant materials, or motivate the brain or body, and includes caffeine, taurine, jinxing and juana. Also, any concentrates, solutions, gels or extracts that may be converted to energy drinks also are considered energy drinks.
- **Carbonated drinks are subject to a 50% rate.** Any manufactured drinks that have preservative items, gases and flavors added that give it a unique taste that is different from another kind. Any concentrates, solutions, gels or extracts that may be converted to carbonated drinks also are considered carbonated drinks.

Excise tax is levied on the higher of the retail sale price (as determined by the taxpayer) or the standard price (as defined from time to time by the SGT). The retail sale price does not include the "service" element or value-added when the

good is sold in a restaurant or hotel, but it will include other taxes such as VAT when it is introduced. The SGT released an import declaration form containing the standard price list.

Businesses that produce or import excisable goods, release excise goods for consumption, hold excise goods for which tax due has not been paid or are licensees that operate tax warehouses for the purpose of producing, transferring, possessing, storing or receiving excise goods are required to register for excise taxes and keep accurate records to verify information disclosed in tax returns. Noncompliance may result in audits and penalties, including three years' imprisonment and a fine of OMR 20,000 for tax evasion.

Taxpayers may use the SGT's electronic system for registration, submission of tax returns and payment of tax.

For taxpayers required to submit transitional excise tax returns and pay any tax due by 30 June 2019, the SGT has indicated that the deadline for filing such returns has been extended by 15 days. However, it is not clear whether the extension will apply to payments of excise tax.

## **Portugal**

### **Implementation deadlines for new invoice processing/storage rules further extended**

On 27 June 2019, Portugal's Secretary of State for Tax Affairs issued Order no. 254/2019-XXI, which further postpones certain deadlines for taxpayers to comply with the new invoice processing and storage rules that originally were set to take effect earlier this year.

Decree-Law no. 28/2019 published on 15 February 2019 made several changes to the rules for electronic invoicing, the Standard Audit File for Tax (SAF-T (PT)), the issuance of invoices, the requirement to use an invoicing program certified by the Portuguese tax authorities, and the storage of hardcopy and electronic invoices. Some of the rules were to apply as from 16 February 2019; however, on 1 March 2019, the Secretary of State for Tax Affairs issued an order that granted extensions to the implementation deadlines. The new order issued on 27 June grants additional deadline extensions.

The new order provides the following:

- The deadline to use a certified invoicing software (by entities not already required to do so) is postponed from 1 July 2019 to 1 January 2020;
- The deadline to submit information to the tax authorities about i) the establishments where invoices are issued; ii) the equipment used to issue invoices; iii) the certificate number of the invoicing software used; and iv)

the supplier of the invoicing software is postponed from 30 June 2019 to 31 October 2019 (where the taxpayer commences activities on or after 1 October 2019, the deadline is 30 days after activities commence);

- The tax authorities must release guidelines no later than 1 October 2019 that clarify several aspects of the new rules, including whether nonresident entities that are registered for VAT purposes in Portugal (as well as public entities, non-profit making bodies, private institutions of social solidarity or other entities fully engaged in VAT exempt transactions that will no longer benefit from the non-obligation to issue invoices) are required to use certified invoicing software; and
- The tax authorities must make available, as soon as possible, a free application on their website that enables the issuance of invoices by taxpayers, complies with all mandatory requirements and may be used by any entity required to issue invoices through certified software.

## **Qatar**

### **New electronic tax management system introduced**

On 23 May 2019, Qatar's General Tax Authority (GTA) disclosed to tax advisors in Qatar a new online tax management system known as "Dhareeba." The new system should be available to taxpayers near the end of 2019, with all taxpayers expected to be registered before 1 January 2020, at which time Dhareeba will replace the current Tax Administrative System (TAS).

Dhareeba is developed on an SAP platform that will be more user friendly and efficient to navigate. Taxpayers will be able to access Dhareeba from outside Qatar using multi-factor authentication (e.g. validation through text and phone messaging) unlike the TAS, which is not accessible from outside Qatar. Notifications and acknowledgements will be available through email and text messaging, and tax declaration forms will be automated.

In addition:

- Taxpayers will be able to obtain tax identification numbers immediately.
- Dhareeba will be integrated with the Ministry of Commerce and Industry portal and information will be automatically shared including commercial registration numbers, trade names, trade licenses and expiration dates.
- Upon initial registration, taxpayers will provide information such as beneficial ownership, ownership percentage, profit sharing percentage and identification of related parties.

- Transfer pricing documentation, including the country-by-country report, master file and local file may be uploaded directly onto Dhareeba by taxpayers.
- Taxpayers will be able to voluntarily register for VAT and elect to form or join a VAT group.
- Taxpayers will have a dashboard view of current and upcoming compliance obligations.
- Taxpayers will be able to offset overpayments of tax with other types of tax liabilities (e.g. offset VAT liability with overpayment of income tax).
- Taxpayers will be able to provide bank information, which should result in quicker tax refunds.
- Tax payments will be able to be made through Dhareeba via credit card, debit card or bank wire transfers.

## Switzerland

### **Electronic VAT filing to become mandatory in 2020**

The Swiss Federal Tax Administration (FTA) released a new publication regarding electronic VAT return filing in Switzerland on 28 June 2019.

Currently, almost 50% of VAT-registered companies use the online platform "AFC SuisseTax" to submit their VAT returns. Sometime in 2020, the electronic filing of VAT returns will become mandatory in Switzerland and the FTA will no longer send paper VAT returns to taxpayers unless specifically requested.

In addition to the AFC SuisseTax platform, the FTA will introduce a new platform, "Décompte TVA easy," in 2020 to allow taxpayers to file VAT returns online without having to register with an individual account. Taxpayers also will be able to complete a VAT return online and print it for signature before filing the printed version. This feature will be particularly useful if a fiscal representative files a return on behalf of a taxpayer.

<b>Features of both e-filing options</b>	
<b>AFC SuisseTax</b>	<b>Décompte TVA easy</b>
Secured online access – 24/24h	Secured online access – 24/24h
User registration with individual account	User registration without individual account
Tax data entry and automatic calculation of VAT	Tax data entry and automatic calculation of VAT
Email reminders	Various reminder functions
Corrective and annual reconciliation of VAT return possible	Signature of VAT return possible if prepared by a third party
Tracking of work in progress	
Request for deadline extension	
User management	
Request for entrepreneurship and VAT registration certificates	
Direct data transfer from ERP system to AFC SuisseTax	

VAT-registered companies already can apply for online filing through AFC SuisseTax to be ready for the change in 2020.

## **United Kingdom**

### **New regulations on VAT treatment of credit notes**

The Value Added Tax (Amendment) Regulations 2019 (Statutory Instrument (SI) 2019/1048) issued on 25 June 2019 brings in changes to the VAT treatment of credit notes in the UK as from 1 September 2019.

Despite some changes from the consultation draft, the SI still essentially seeks to limit reductions in VAT output tax to situations where cash has been repaid to customers. The SI also prescribes the form of credit notes and sets out time limits for them to be issued.

The SI is motivated by the UK tax authorities' desire to prevent attempts "to manipulate the existing provisions in order to achieve a tax advantage." However, every business that issues credit notes will be affected by the rules. A Revenue & Customs Brief will be published, which hopefully will provide more detail on the practical issues that these changes may cause.

## **United Kingdom**

### **Changes in accounting for VAT after prices altered**

Revenue and Customs Brief 6 (2019) has been issued to explain the changes to the UK rules on VAT credit and debit notes that will come into effect on 1 September 2019, although it provides little additional information to what was published in Statutory Instrument (SI) 2019/1048. The key change is that suppliers have to pay

refunds to customers before processing credit notes--an obligation to pay will not be sufficient. The Revenue and Customs Brief confirms that suppliers can issue credit notes before a refund is paid to a customer (but they are effective only after the refund is paid).

The changes will not affect retailers or other suppliers that are not obliged to issue VAT invoices, and the rule allowing fully taxable suppliers and customers not to issue VAT credit notes remains in place.

Taxpayers should ensure that their systems are configured to issue credit notes that display all the details that will be required.

## **United Kingdom**

### **CJEU rules on VAT recovery on managing endowment fund**

On 3 July 2019, the Court of Justice of the European Union (CJEU) ruled that a university could not recover any VAT input tax on costs relating to the management of its GBP 1 billion endowment fund (Case C-316/18).

The CJEU found that collecting donations and endowments for the fund was not an economic activity, and that the management of the fund was part of that same non-business activity. Crucially, the CJEU then ruled that the investment management costs were not linked to the university's general business because they generated funds that were used to subsidise the university's services. They could not therefore be a "cost component" of those services as they reduced the price rather than contributed to additional turnover, meaning that there was no direct and immediate link between those costs and the activities of the university as a whole.

This approach echoes arguments rejected in previous cases, and the Court of Appeal will hopefully explain how to reconcile these judgements when the case returns to the UK.

## **United Kingdom**

### **Consultation on simplification of VAT rules**

Following the Office of Tax Simplification's report in November 2017, HM Revenue & Customs have published a call for evidence on the simplification of partial exemption and the capital goods scheme (CGS). The call for evidence invites suggestions for any improvements in this area, but focuses particularly on whether the requirement for prior approval of partial exemption special methods (PESM) should be removed. This might avoid the considerable challenges of agreeing a PESM, but could increase the likelihood of disputes arising at a later stage. The call



for evidence also considers whether framework agreements should be used more widely, how the de minimis threshold should be changed (or removed), and whether the threshold for capital goods scheme items should be increased and the number of CGS intervals varied.

## **United States**

### **State Tax Matters (28 June 2019)**

The 28 June 2019 edition of US State Tax Matters includes coverage of the following:

- Administrative developments in Louisiana and Wisconsin;
- Income/franchise tax developments from the US Supreme Court and in Iowa, Louisiana, Maine, Mississippi, New Jersey, New York, Ohio and Tennessee;
- Credits/incentives developments in Connecticut; and
- Indirect tax developments in Alabama, Arkansas, Maine and New York.

The newsletter also features a recent Multistate Tax Alert: *Washington Updates Requirements for Investment Management Companies to Qualify for Reduced B&O Tax Rate.*

## **United States**

### **State Tax Matters (5 July 2019)**

The 5 July 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in California, Connecticut, Florida, Maine, Maryland, New Jersey and Texas;
- Credits/incentives developments in West Virginia; and
- Indirect tax developments in California, Connecticut, Illinois, New Mexico, New York and Pennsylvania.

The newsletter also features a recent Multistate Tax Alert: *Minnesota Enacts Broad Tax Changes Including Retroactive IRC Conformity.*

## **United States**

### **State Tax Matters (12 July 2019)**

The 12 July 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Connecticut, Kentucky, New York, North Carolina, Rhode Island, Tennessee and Texas;
- Credits/incentives developments in Maine and New Jersey; and
- Indirect tax developments in California, Indiana, Iowa, Kentucky, Rhode Island and Wisconsin.

The newsletter also features a recent Multistate Tax Alert: *Illinois Legislature Adopts Substantial Changes to Tax Laws.*

## **United States**

### **State Tax Matters (19 July 2019)**

The 19 July 2019 edition of US State Tax Matters includes coverage of the following:

- Constitutional limits on the state taxation of trusts;
- Income/franchise tax developments in Colorado, Delaware, Hawaii, Louisiana, Missouri, Montana, Rhode Island and Tennessee;
- Credits/incentives developments in the District of Columbia and Minnesota; and
- Indirect tax developments in Vermont.

The newsletter also features recent Multistate Tax Alerts:

- *Arizona Updates Internal Revenue Code Conformity and Enacts Economic Nexus.*
- *California FTB Proposes New Method for Sourcing Receipts from Asset Management Services.*
- *California FTB Proposes Additional Amendments to Market-Based Sourcing Rules.*
- *Colorado Enacts Sales Tax Legislation.*
- *Texas Comptroller Proposes to Amend Franchise Tax Rule for Retail or Wholesale Trade.*

## **August 2019**

### **Africa**

#### **Guide to fiscal information: Key economies in Africa 2019**

The 2019 edition of the Guide to fiscal information: Key economies in Africa 2019 is now available for download.

The guide provides overviews of the tax, investment and exchange control regimes in 45 key African economies. Details of each country's income tax, VAT (or sales tax) and other significant taxes are set out in the publication. In addition, investment incentives available and certain basic economic statistics are covered.

Unless otherwise indicated, the fiscal information is current as at February 2019. The economic statistics have been obtained from information available during May/June 2019.

Visit the Deloitte Africa page for the guide for more information and to download current and past issues of the guide.

### **Europe**

#### **Deloitte European VAT refund guide 2019**

Businesses operating in countries in which they are not established or VAT-registered (i.e. nonresident businesses) can incur significant amounts of VAT on expenses paid in those countries. In principle, nonresident businesses should be able to recover some or all of the VAT incurred, thereby reducing their costs. The 2019 European VAT refund guide (current through 1 March 2019) summarizes the rules and procedures to obtain a VAT refund in 31 European countries.

### **Belgium**

#### **Customs authorities release additional guidance on post-Brexit trade**

On 5 August 2019, the Belgian customs authorities published additional guidance on the practicalities of trade between the UK and Belgium in a no-deal Brexit scenario. The guidance is based on the following three assumptions:

- The UK becomes a "third country," outside the single market;
- Goods arriving from the UK are subject to the Union Customs Code; and
- The UK joins the Common Transit Convention.

The Belgium customs authorities have stated that their aim is to reduce, to the greatest extent possible, any potential operational delays or disruption as a result of Brexit.

## **Key developments**

The guidance addresses:

- Single administrative document (SAD) utilization - the SAD will be used by the UK post-Brexit, and box 1.1 should be completed with "EU";
- Summary entry declaration into the EU - it will be mandatory to submit a summary declaration two hours in advance of the vessel's arrival at the first port of entry in the Union's Customs Territory. This requirement should be assessed in view of a company's supply chain and movement of goods;
- Declaration for temporary storage;
- Transit shipments;
- Procedure for empty trailers and containers;
- Arrival at exit for partial shipments;
- Returning goods currently having Union status - it will not be possible to return to the EU under the regular EU returning goods procedure goods that are in the UK at the point of Brexit. However, there will be alternative options available to avoid double taxation of Union goods;
- Verification procedure;
- Emergency procedure application process;
- Working hours of the Customs offices;
- Cross-border customs authorizations; and
- Export of dual-use goods.

Companies should be prepared to use the emergency procedures in case of *PaperLess Douanes et Accises* (PLDA) or transit (NCTS) system failures, caused by a substantial increase in declarations overloading those systems.

Businesses also may wish to consider the potential benefits of holding an Authorized Economic Operator certificate, type C (AEO-C) that includes the possibility for certified operators to submit declarations outside of standard customs business hours.

## Comments

It is important that both Belgian and UK-established companies prepare appropriately for Brexit, to remain compliant and operational during and beyond this period of change.

## India

### **GST council recommends reduced GST rates for electric vehicles**

India's goods and services tax (GST) council at its 36<sup>th</sup> meeting held on 27 July 2019 made the following recommendations that will be introduced by notifications and will apply as from 1 August 2019:

- A reduction in the GST rate on electric vehicles from 12% to 5%;
- A reduction in the GST rate on chargers or charging stations for electric vehicles from 18% to 5%; and
- An exemption from GST on the hiring of electric buses with a capacity of more than 12 passengers by local authorities.

## Other news

### Albania

#### **New requirements to regulate cash economy introduced**

On 10 July 2019, legislation amending the law on tax procedures was published in Albania's official gazette. The purpose of the amendments is to reduce the size of the cash economy, whilst at the same time increasing regulation in situations where cash continues to be used. The changes are effective as from 25 July 2019.

Under the revised law, the following taxpayers must open business bank accounts and declare them to the tax authorities:

- Individual traders who are registered for VAT;
- Legal entities, regardless of their annual turnover; and
- Not-for-profit organizations registered with the tax authorities.

#### **Deadlines**

Newly-registered taxpayers must set up a bank account for their business or organization and notify the tax authorities within 20 days following the day after the taxpayer has registered with the National Business Center and the tax authorities.

Existing taxpayers already registered with the National Business Center and the tax authorities on 25 July 2019 must open and declare their bank accounts by 23 October 2019.

## **Penalties**

Taxpayers that fail to comply with the new requirements are liable to penalties as follows:

- ALL 25,000 - individual traders who are VAT-registered and whose annual turnover does not exceed ALL 8 million;
- ALL 50,000 - legal entities, regardless of their annual turnover and individual traders whose annual turnover exceeds ALL 8 million; and
- ALL 37,000 - not-for-profit organizations.

The penalties are doubled where taxpayers continue to fail to comply after the first penalty is imposed.

## **Australia**

### **Weekly tax round-up (5 August 2019), including GST**

#### **Parliamentary update**

The Australian parliament sat from 29 July to 1 August 2019. The next sitting fortnight is scheduled for 9–19 September 2019.

Last week the House of Representatives passed two tax-related bills:

- Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019.
  - The bill proposes changes to the thin capitalization rules, the Goods and Services Tax (GST) treatment of online hotel bookings, and removal of luxury car tax relating to reimported, refurbished cars.
- Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019. The bill proposes:
  - Allowing disclosure by the Australian Taxation Office (ATO) of business tax debts;
  - Tax integrity measures in respect of deductions for vacant land, circular trust distributions in family trusts, partnership assignments and concessional loans; and

- Measures to prevent employers from using employee's salary sacrifice contributions to reduce their own superannuation guarantee contributions.

The Senate Economics Committee is currently undertaking two inquiries:

- An inquiry into the Performance of the Inspector-General of Taxation. Submissions close on 30 August 2019. The report is due by 2 December 2019; and
- An inquiry into the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019. Submissions close on 15 August 2019. The report is due by 5 September 2019.

### **Treasury releases draft legislation on increased refunds of luxury car tax**

On 1 August 2019, Treasury released draft exposure draft legislation and an explanatory memorandum in respect of increased refunds for eligible primary producers and tourism operators of luxury car tax.

In the 2019-20 budget, the government announced that eligible primary producers and tourism operators will be able to apply for a refund of any luxury car tax paid, up to a maximum of AUD 10,000, for vehicles acquired on or after 1 July 2019. Currently, primary producers and tourism operators may be eligible for a partial refund of any luxury car tax paid on eligible four wheel or all wheel drive cars, up to a maximum of AUD 3,000. The eligibility criteria and types of vehicles eligible for the current partial refund will remain unchanged under the new arrangements.

Consultation closes on 14 August 2019.

### **ATO consultation – company tax return instructions**

The ATO has opened a new consultation process on Improving the 2020 Company Tax Return Instructions. This review is expected to continue until October 2019. The consultation is being undertaken with the intention of improving online usability, removing duplicated information, and streamlining the guidance for more timely preparation of the tax return.

### **ATO releases corporate plan**

On 31 July 2019, the ATO released its Corporate Plan for 2019-20. The two main aspirations for 2024 were building trust and confidence, and being streamlined, integrated and data-driven.

The ATO set out several strategic objectives, which included:

- Building community confidence by sustainably reducing the tax gap and providing assurance across the tax and superannuation systems;

- Designing for a better tax and superannuation system to make it easy to comply and hard not to;
- Client experience and interactions are well designed, tailored, fair and transparent;
- Using data, information and insights to deliver value for our clients and inform decision-making across everything we do; and
- Using technology and digital services to deliver a reliable and contemporary client experience.

### **Significant ATO guidance released**

The ATO has released the following significant guidance and tools:

- Division 7A calculator and decision tool - updated for the benchmark interest rate for the year ending 30 June 2020;
- Getting small business expenses right - the toolkit covers information about home-based business expenses, motor vehicle expenses and business travel, together with Single Touch Payroll for small employers; and
- Online hotel bookings - administrative treatment: the ATO has provided advice on how it will administer the amendments to the GST treatment of online hotel bookings, which are contained in Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019. The bill currently is before the Senate and will have retrospective effect from 1 July 2019.

## **Brazil**

### **Regulations issued for REPETRO manufacturing regime**

On 17 July 2019, the Brazilian tax authorities published regulations (Normative Instruction No. 1901/2019) on the REPETRO manufacturing regime, a special regime for the domestic manufacturing of goods used in the exploration, development and production of oil, gas and other hydrocarbon fluids. The regulations are effective from the date of publication.

The REPETRO manufacturing regime grants the suspension of certain federal taxes, including import duties (II), federal excise taxes (IPI), social integration contributions (PIS) and social security contributions (COFINS) to Brazilian companies that import or locally acquire raw materials, intermediary products and packaging materials (goods) to be used in the manufacturing/production of the finished products indicated as eligible for REPETRO/REPETRO-SPED regimes by the Brazilian tax authorities. The manufacturing regime also suspends the taxes for local sales of the finished products, provided the products are intended for companies benefiting from REPETRO or REPETRO-SPED.



The beneficiaries of the REPETRO manufacturing regime are manufacturers of end products to be supplied directly to a REPETRO or REPETRO-SPED beneficiaries, and intermediary manufacturers of goods to be supplied directly to such end-product manufacturers.

To qualify for the tax suspension, the manufacturer must meet the following requirements:

- Prepare separate tax books for each transaction performed under the regime;
- Incorporate the "Block K" file (detailed information on manufacturing, production, inventory) into the taxpayer's SPED file (electronic tax file), including a bill of material (BOM) and the percentages related to production losses;
- Issue a "NF-e" (mandatory electronic invoice) for all inbound and outbound goods; and
- Provide contractual proof of at least one REPETRO or REPETRO-SPED beneficiary.

Certain issues were not addressed in the regulations that were raised in a public consultation that took place on 4 June 2019, including the treatment of items imported or acquired under other special customs regimes that are transferred to the REPETRO manufacturing regime.

The regulations delegate certain authority to the Brazilian states, including the creation of new CFOP codes that describe business transactions, and implementation of Block K filing; therefore, state tax regulation in this area is expected.

## India

### **CBIC clarifies GST position on supply of IT enabled services to overseas entities**

Circular No. 107/26/2019-GST issued by India's Central Board of Indirect taxes and Customs (CBIC) on 18 July 2019 clarifies various issues raised by businesses related to the goods and services tax (GST) position in respect of the supply of information technology-enabled services (ITeS services) to overseas entities. The circular also clarifies when ITeS services may qualify as exports of services for GST purposes, subject to fulfilling the necessary conditions.

There is no definition of ITeS services in the GST law, and the circular refers to Rule 10 of the Income Tax Rules, 1962, which define ITeS services in connection with the safe harbor rules for international transactions, as business process outsourcing services provided with the assistance or use of information technology (including

back office operations, call centers or contact center services, payroll, remote assistance, revenue accounting, etc.). Research and development (R&D) services specifically are excluded, whether or not in the nature of contract R&D.

The circular clarifies the GST treatment of ITeS services supplied in three scenarios, as follows:

Scenario	Nature of supply	Analysis
I	Supply of ITeS services by a supplier on its own account to an overseas client or a customer of the client on the client's behalf	Services would not be treated as intermediary services and, therefore, would not be subject to GST
II	Supplier of back office or similar services arranges or facilitates the supply of goods and/or services by a client located outside India to the client's customers. Services may include support services before, during and after delivery of the supply (e.g. order placement, delivery and logistical support; obtaining relevant government clearances; transportation of goods; post-sales support and other services, etc.)	Services of arranging or facilitating the supply of goods and/or services between a client and its customers would be intermediary services, subject to GST at 18%
III	Supply of ITeS services by a supplier on its own account together with arranging or facilitating the supply of various support services before, during and after delivery of those services for and on behalf of a client located outside India	Treatment of the supply of ITeS services as intermediary services would depend on the particular facts and circumstances of each case and which set of services is determined to be the principal/main supply

As illustrated in scenario I, ITeS services provided by a supplier on its own account to an overseas entity are not regarded as intermediary services. Such services may qualify as exports of services for GST purposes if the following conditions, as specified in the Integrated Goods and Services Tax Act, 2017, are fulfilled:

- The supplier of the services is located in India;
- The recipient of the services is located outside India;
- The services are supplied outside India;
- Payment for the services is received by the supplier in convertible foreign exchange; and
- The supplier and recipient of the services are not merely establishments of a "distinct person" in accordance with explanation 1, section 8 of the act.

## Comments

The circular indicates that the CBIC may wish to initiate enquiries to examine in more detail the supply of ITeS services to overseas entities. The circular also appears to include in the definition of intermediary the provision of services that are

not ITeS services in accordance with the definition adopted from Rule 10. There is potential for litigation in connection with the determination of a principal supply under scenario III. Businesses involved in this industry may wish to reassess their approach to ITeS services and outsourced services supplied to overseas entities.

## Italy

### **Clarifications on letters of intent, extraction of goods from VAT warehouses**

Law No. 58, dated 28 June 2019 and effective as from 30 June 2019 in Italy, converts Law Decree No. 34/2019 (dated 30 April 2019) into law and includes a variety of indirect tax measures. Two notes published by the customs authorities on 16 July 2019 (No. 69283/2019 and No. 73328/2019) provide clarification on the changes introduced by Law No. 58 and on the VAT electronic invoicing (e-invoicing) rules that have been in effect since 1 January 2019, including clarifications relating to letters of intent for imports and self-invoices for the extraction of goods from VAT warehouses.

#### **Letters of intent**

As clarified by Note No. 69283/2019, as from 1 January 2020, letters of intent may be issued with reference to an amount covering more than the value of one import.

#### **Self-invoices for extraction of goods from VAT warehouses**

Note No. 73328/2019 provides clarifications about the issuance of self-invoices for the extraction of goods from VAT warehouses. In particular, self-invoices generally may be issued electronically via the interchange system (SDI) (this is optional). However, in the case of a mismatch between the value of goods at the time of introduction into the VAT warehouse and the value of the same goods at the time of extraction from the VAT warehouse (e.g. because of processing activities), self-invoices must be issued electronically via the SDI (this is mandatory).

## Italy

### **Implementing measures issued for transmission of data by online**

A ruling (No. 66061) issued by Italy's tax authorities on 31 July 2019 provides the implementing measures for the new quarterly reporting obligation under the VAT rules for certain distance sales through online marketplaces that are effective from 1 May 2019 until 31 December 2020. The ruling also provides implementing measures for the reporting obligation under transition rules that apply to online marketplaces that facilitated distance sales of certain goods during the period from 13 February 2019 to 30 April 2019.

Law Decree No. 135/2018, which became effective on 13 February 2019, introduced rules regarding distance sales of mobile phones, tablets, laptops and games through online marketplaces, which deemed the online marketplace to have received and supplied the goods itself under certain circumstances. However, Law Decree No. 34 of 30 April 2019 ("growth decree"), which was converted into law in June 2019, postponed the effective date of the rules until 1 January 2021. Law Decree No. 34 also introduced a reporting obligation requiring the quarterly transmission of data relating to online sales of any type of goods through electronic marketplaces, under rules that are effective from 1 May 2019 until 31 December 2020.

Under Law Decree No. 34, online marketplaces that facilitate distance sales of any kind of imported goods, or distance sales of any kind of goods within the EU, are required to transmit specific data for each supplier carrying out these types of supplies to the tax authorities on a quarterly basis (a reporting obligation).

If an online marketplace does not submit the required information on distance sales, or if it 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.

Ruling No. 66061 provides the following implementing measures for the transmission of data for 2019 and 2020:

- Transmissions will be due on a quarterly basis (by the end of the month following each quarter);
- The first transmission of data relates to the period from 1 April 2019 to 30 June 2019 and will be due by 31 October 2019;
- The transmission of data related to the last quarter of 2020 will be due by 31 January 2021; and
- Under the transition rules for online marketplaces that facilitated distance sales within the scope of Law Decree No. 135/2018 during the period from 13 February 2019 to 30 April 2019, these marketplaces will be required to transmit the relevant data by 31 October 2019.

The ruling clarifies that to fulfill the new quarterly reporting obligation, foreign online marketplaces without an Italian permanent establishment will be required to register for VAT purposes in Italy.

Ruling No. 66061 also clarifies that online marketplaces within the scope of the new reporting obligation are those that directly or indirectly take part in the following activities:

- Determination of the general sales conditions for goods;
- Collection of the payment from the buyer; or

- Fulfillment of purchase orders or delivery of goods.

In contrast, online marketplaces will fall outside the scope of the new reporting obligation if they carry out only the following types of activities:

- Processing of payments in connection with the sale of goods;
- Cataloging or advertising of goods; or
- Redirection or transfer of buyers to other electronic interfaces through which goods are sold, without further intervention in the sale.

## **Poland**

### **New VAT rules announced for cash registers**

On 30 April 2019, Poland's Minister of Finance announced new VAT regulations relating to cash registers, including cash registers that report sales information electronically "online" directly to the VAT authorities. The rules generally are effective as from 1 May 2019.

### **Background**

Polish businesses carrying out business-to-consumer (B2C) transactions are required to use VAT-compliant cash registers and comply with certain recordkeeping requirements. Older versions of cash registers use paper printouts or electronic memory storage, both of which require storing the paper or electronic copies of the receipts for a specific period of time. Newer versions of cash registers also send electronic copies "online" to the tax authorities.

Although the new rules allow businesses to continue using older cash registers for a certain period of time, the Ministry of Finance intends to have businesses gradually replace the older versions with newer cash registers that report sales information electronically.

### **Statement of recordkeeper**

The regulations require that the individuals responsible for keeping the taxpayer's records of sales using the cash register confirm in a statement that he/she has read the instructions and rules on proper recordkeeping and issuing receipts, as well as the consequences of noncompliance with these obligations. The statement must be completed prior to the start of the recordkeeper's responsibilities (or by 31 May 2019 if the responsibilities have already started), with one copy given to the taxpayer and one copy retained by the recordkeeper. The statement need not be submitted to the tax authorities. A template of the statement is attached to the new regulations.

## **Letter designations for tax rates**

The cash register should attribute letter designations from A to G to the relevant tax rates as follows:

- Letter A – 22% or 23%;
- Letter B – 7% or 8%;
- Letter C – 5%;
- Letter D – 0%;
- Letter E – Tax exemption; and
- Letters F and G – Other tax rates including 0% (technical zero) for sales of tourism services or the supply of second-hand goods, works of art, collectors' items and antiques.

The designations must be completed by 31 July 2019.

## **Other changes**

The new rules make several other changes, including the following:

- For automatic vending machines, the taxpayer must display the details of the transaction for the buyer on the automatic vending machine; in such cases, the receipt may not be issued to the buyer.
- The taxpayer is required to place the cash register display in a place where the buyer can read the displayed data.
- The National Fiscal Administration will establish a national list of authorized maintenance technicians for use by taxpayers.
- Where advance payments are made, receipts must be issued upon receipt of cash (including a payment card). However, where a noncash payment is received by mail or through a bank to the taxpayer's account, the receipt should be issued immediately after the payment is credited to the taxpayer's account, but not later than the last day of the month in which the payment was credited to that account, and if the sale was made before the end of that month, not later than at the time the payment was made.

## South Africa

### **Provisional anti-dumping duty imposed on certain products originating from China**

The South African Revenue Service (SARS) published a notice on 2 August 2019 in response to an investigation by the International Trade Administration Commission of South Africa (ITAC) on the necessity of imposing anti-dumping duties on polyethylene terephthalate originating in or imported from China. Polyethylene terephthalate is a type of bottle-grade resin used to manufacture, among other things, clothing, liquid and food containers and unframed glass mirrors.

The notice announces that, during the period 2 August 2019 through 2 February 2020, polyethylene terephthalate classifiable under tariff subheading 3907.60 and originating in or imported from China will attract a provisional anti-dumping duty of 22.90%.

The provisional payment will have to be paid at the time of import as security in case the investigation results in a decision to actually impose the anti-dumping duty. However, should the investigation result in a decision not to impose such duty, importers who paid a provisional payment will be able to apply for a refund from SARS.

The provisional payment will be in addition to any applicable general customs duties paid at the time of import on polyethylene products originating in or imported from China. The general customs duty rate on polyethylene terephthalate in liquid or paste form imported into South Africa is "FREE." However, polyethylene terephthalate, regardless of viscosity, other than polyethylene terephthalate in liquid or paste form, attracts a 10% general customs duty rate.

## Switzerland

### **Foreign entrepreneurs need not report worldwide revenue in Swiss VAT return**

On 8 August 2019, the Swiss Federal Tax Administration (SFTA) published the approved German version of the new VAT publication on foreign entrepreneurs (VAT info n° 22). It confirms that foreign entrepreneurs no longer have to report their worldwide revenue in their Swiss VAT returns. This change in the SFTA's guidelines applies retroactively as from 1 January 2018. However, the SFTA recommends that foreign entrepreneurs that provide VAT-exempt supplies or receive subsidies continue to declare their worldwide revenue in their VAT returns.

Going forward, foreign entrepreneurs who are VAT-registered in Switzerland can stop reporting their 2018 worldwide revenue, whether they already have declared it in their Swiss VAT returns or not. However, worldwide revenue remains relevant to assess foreign entrepreneurs' Swiss VAT registration obligations.

## **Other developments**

On 25 July and 8 August 2019, several minor amendments/practice clarifications of VAT and sector publications were released on the SFTA website. The modifications relate to:

- Betting and gambling games (VAT info n° 4);
- Tourism tax (Sector info n° 8);
- Supplies related to insurance (VAT info n° 4); and
- Supply of services related to an immovable good (Sector infos n° 4 and 17).

## **Trinidad and Tobago**

### **Tax amnesty available for various direct and indirect taxes**

Trinidad and Tobago's Miscellaneous Provisions (Tax Amnesty, Pensions, National Insurance, Central Bank, Companies and Non-Profit Organizations) Act, 2019 was assented to on 25 June 2019. Among other things, the legislation brings a tax amnesty for interest and penalties into effect for various types of direct and indirect taxes. The pertinent provisions are as follows:

- The amnesty period commenced on 15 June 2019 and ends on 15 September 2019 (or such other date as the Minister of Finance may prescribe, by order).
- The tax amnesty applies to the taxes and levies listed below that are imposed under the following acts:
  - Corporation Tax Act: Corporation tax and business levy (on companies);
  - Income Tax Act: Income tax (including income tax withheld through payroll), business levy (on self-employed individuals) and withholding tax;
  - Petroleum Taxes Act: Petroleum profits tax and supplemental petroleum tax;
  - Unemployment Levy Act: Unemployment levy;
  - Health Surcharge Act: Health surcharge;
  - Value Added Tax Act: Value added tax;
  - Stamp Duty Act: Stamp duty;
  - Section 54 of the Property Tax Act: Land and building taxes (assessed under the Lands and Buildings Taxes Act and part V of the Municipal Corporations Act);



- Parts IX, XI, XIII, XIV and XV of the Miscellaneous Taxes Act: Financial services tax, hotel accommodation tax, insurance premium tax, green fund levy and online purchase tax;
- Registration of Clubs Act: Gaming tax; and
- Tourism Development Act: Tourism project transfer tax.
- The tax amnesty provides for a waiver of the following:
  - All interest and penalties due in respect of outstanding tax, for tax years ending up to 31 December 2018, where the tax is paid prior to or within the amnesty period; and
  - All penalties due in respect of outstanding returns, for tax years ending up to 31 December 2018, where the returns are filed prior to or within the amnesty period.

The tax amnesty does not affect the following:

- Principal tax payments due by the taxpayer; or
- Any interest and penalties paid before 15 June 2019.

Additionally, the tax amnesty does not apply to national insurance contributions.

Where any taxes or returns remain outstanding after 15 September 2019, the related interest and/or penalties that would have been payable in relation to the taxes or returns without the tax amnesty will become payable as if the waiver under the amnesty never entered into force.

## **United Kingdom**

### **VAT recovery on farming subsidies**

On 29 July 2019, the UK Supreme Court issued its judgement in a case involving the recovery of input tax incurred on the purchase of Single Farm Payment Entitlements (SFPEs).

The taxpayer is a farming company that farms 200 hectares near Aberdeen and spent GBP 7.7 million on SFPEs, entitling it to subsidies which made up more than 90% of its income.

The court ruled that the company should be able to recover input tax incurred on buying the SFPEs. Managing the subsidies was not a separate “non-business” activity that broke any link between the SFPEs and the farming activity.

Drawing from a line of Court of Justice of the European Union (CJEU) cases, the court arrived at seven principles for input tax recovery. Applying them to this case, it found that the First-tier Tribunal had been entitled to decide that the subsidies were producing funds that were to be invested in a windfarm, new farm buildings and the acquisition of neighbouring farmland. On that basis the VAT paid on the purchase of the SFPEs should be recoverable as it was a cost component of taxable activities.

## United States

### **State Tax Matters (26 July 2019), including indirect tax developments in Idaho, Louisiana, New Hampshire, Ohio, Pennsylvania, South Carolina and Texas**

The 26 July 2019 edition of US State Tax Matters includes coverage of the following:

- Administrative developments in Rhode Island;
- Income/franchise tax developments in New Jersey, New York, Ohio and Oregon;
- Credits/incentives developments in Ohio; and
- Indirect tax developments in Idaho, Louisiana, New Hampshire, Ohio, Pennsylvania, South Carolina and Texas.

The newsletter also features recent Multistate Tax Alerts:

- *2019 Sales Tax Holidays for Back-to-School Purchases*
- *California Conforms to Several Federal Tax Reform Provisions*
- *Massachusetts Appeals Court Uses an Entity Level Transactional Approach in Applying Cost of Performance Rules*

## United States

### **State Tax Matters (2 August 2019), including indirect tax developments in California, Massachusetts and North Carolina**

The 2 August 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments from the US Supreme Court, as well as in Oregon and Pennsylvania; and
- Indirect tax developments in California, Massachusetts and North Carolina.

The newsletter also features recent Multistate Tax Alerts:

- *California Releases Legal Ruling Addressing Requests for Variance from Standard Apportionment Formulas*
- *Connecticut Enacts Broad Tax Changes During 2019 Legislative Session*
- *New Wisconsin Law Requires Marketplace Providers Meeting Economic Nexus Thresholds to Collect Tax Beginning October 1, 2019*

## **United States**

### **State Tax Matters (9 August 2019), including indirect tax developments in Iowa and Kansas**

The 9 August 2019 edition of US State Tax Matters includes coverage of the following:

- Tax amnesty developments in Illinois;
- Income/franchise tax developments in California, Florida and Indiana; and
- Indirect tax developments in Iowa and Kansas.

The newsletter also features recent Multistate Tax Alerts:

- *New York Releases Revised Draft Corporate Regulation on Market-Based Sourcing for Investment Managers.*
- *New York 2019-2020 State Budget Bill Enacted.*
- *New York Enacts New Treatment of GILTI and Changes to SUT Economic Nexus Threshold.*

## **United States**

### **State Tax Matters (16 August 2019), including indirect tax developments in the US Senate (a reintroduced bill in relation to online sales tax following the Wayfair case), Colorado and Idaho**

The 16 August 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Georgia, Idaho, Massachusetts and Tennessee; and
- Indirect tax developments in the US Senate, Colorado and Idaho.

The newsletter also features recent Multistate Tax Alerts:

- *U.S. Supreme Court Holds for Trust in Due Process Case*
- *Florida Legislative Update*
- *Ohio Governor DeWine Signs Biennial Budget Bill*

## **September 2019**

### **Argentina**

#### **Foreign currency control rules imposed**

Argentina's executive branch issued a decree (Decree No. 609/2019) on 1 September 2019 that imposes currency controls on both companies and individuals. On the same day, the central bank (BCRA) issued a communication (Communication "A" 6770) that sets out details of how the exchange control procedures will operate in practice. The currency control regulations, which respond to the rapid devaluation of the Argentine peso, will apply from 1 September 2019 through 31 December 2019.

Under the regulations, exporters are required to enter and convert foreign currency obtained into Argentine pesos, and both companies and individuals are required to obtain authorization from the BCRA to purchase foreign currency on the local foreign exchange market (MULC) or to transfer funds abroad in certain situations. The BCRA will regulate transactions involving bonds and other instruments to prevent circumvention of the currency control rules.

The main provisions of the BCRA communication are as follows:

**Funds relating to the export of goods and services:** Foreign currency obtained on the export of goods as from 2 September 2019 must be converted into Argentine pesos by the following deadlines: (i) 15 days for transactions between related parties and/or the export of certain products (mainly commodities); and (ii) 180 days for all other transactions. However, foreign currency relating to export transactions must be converted into Argentine pesos in the MULC within five business days from the date the funds were received.

Export transactions carried out before 2 September and where payment is pending after that date must be converted into Argentine pesos in the MULC within five business days from the date of receipt or disbursement abroad or locally.

Foreign currency obtained from the export of services must be converted into Argentine pesos in the MULC within five business days from the date of receipt or disbursement abroad or locally.

**Dividends and profits payments:** BCRA approval is required to transfer profits and dividends abroad.

**Transfer of funds abroad:** BCRA approval is required to transfer funds abroad to purchase assets and/or to enter into hedging transactions using financial derivatives. Individuals can purchase foreign currency of up to the equivalent of USD 10,000 per month without BCRA approval; approval is required for any higher amount.

**Cross-border financing:** Funds acquired via new borrowing must be converted into Argentinean pesos. Evidence must be provided of the initial injection of funds in order for Argentine borrowers to access the MULC to make repayments of capital and interest. The borrower also must show that the liability was declared in the most recent report relating to external assets and liabilities to access the MULC to settle foreign financial debt.

BCRA authorization is required where a person intends to cancel capital or interest on a debt more than three business days before the due date.

**Payments to nonresidents for goods and services:** Where debts owed to foreign related parties for imports of goods exceed USD 2 million per month, prior approval of the BCRA must be obtained in order to access the MULC to repay the debts. No such threshold applies in relation to the repayment of commercial debts to unrelated parties at their due date.

Prior authorization is required to pay off a debt connected to the import of goods and services before the due date and to pay for the import of services between related parties, except for credit card issuers and tourism and travel operators.

It must be demonstrated that the liability was declared in the most recent report relating to external assets and liabilities to obtain access to the MULC to settle foreign commercial debt.

Where imports of goods are paid for in advance, the goods concerned must enter Argentina within 180 days after the importer made the payment via the MULC.

**Domestic transactions:** The MULC may not be used to repay debts and other liabilities between residents relating to transactions concluded after 1 September 2019.

**Miscellaneous rules:** To access the MULC, companies and individuals are required to submit an affidavit on the nature of the relevant transactions and compliance with the new rules. Criminal penalties may apply for failure to comply with the exchange control rules.

## Australia

### **GST change for offshore suppliers of Australian hotel accommodation**

Australia's goods and services tax (GST) law has been amended as from 1 October 2019. The change requires offshore entities supplying rights to use commercial accommodation in Australia to include those supplies in calculating their GST turnover. If the GST turnover of such offshore suppliers equals or exceeds the GST registration threshold (currently, turnover of AUD 75,000 per 12-month period), then GST must be remitted to the Australian tax authorities for taxable supplies made.

This amendment is in response to Australian and overseas consumers increasingly booking Australian hotels and other forms of commercial accommodation using overseas-based online service providers. The amendment aims to ensure neutrality in the GST treatment of Australian commercial accommodation regardless of whether the right to use the accommodation is purchased directly through an Australian supplier or from an offshore supplier.

Under the amendments, affected suppliers are required to determine whether they meet or exceed the GST registration threshold by taking into account supplies of rights to Australian commercial accommodation for which consideration was first received on or after 1 July 2019 or, before receiving consideration, an invoice was issued on or after 1 July 2019.

The amendments do not apply to supplies of rights to use commercial accommodation that are merely facilitated by an offshore entity acting as the agent of an accommodation provider.

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## China

### **Preferential VAT refund policy expanded for certain manufacturing businesses**

On 4 September 2019, China's Ministry of Finance and the State Taxation Administration released a bulletin (Bulletin 84) that introduces a more favorable refund policy of "newly increased unutilized input VAT" for certain manufacturing businesses, retroactively effective as from 1 June 2019. The new policy, which is designed to stimulate investment in various manufacturing industries, allows qualified businesses to obtain larger VAT refunds and to obtain them earlier.

The new preferential refund policy introduced by Bulletin 84 applies only to businesses that manufacture and sell non-metallic mineral products, computers, communications equipment and other equipment. In addition, the taxpayer's sales from such products and equipment must exceed 50% of its total sales.

A qualifying manufacturing business may apply for the increased refund opportunity as of 1 June 2019 for the July 2019 filing period and thereafter.

## **Background**

Prior to 1 April 2019, when a taxpayer had unutilized input VAT (i.e. creditable input VAT in excess of output VAT), normally its only option was to carry forward the unutilized input VAT to offset against output VAT incurred in the subsequent tax period; in other words, it was not possible to obtain a refund of unutilized input VAT.

Bulletin 39 introduced a pilot program, effective as from 1 April 2019, that allowed qualified businesses to obtain a partial refund of unutilized input VAT. This partial refund amount is calculated for a current period by multiplying the "newly increased unutilized input VAT" by the "input VAT component ratio" and then by a further 60%.

The "newly increased unutilized input VAT" is computed by comparing the unutilized input VAT at the end of an assessment period against that on 31 March 2019. The "input VAT component ratio" is the percentage of creditable input VAT supported by VAT special invoices (including unified invoice for sales of motor vehicles), customs import VAT certificates and withholding tax clearance certificates to the total creditable input VAT for the period from 1 April 2019 through the tax assessment period preceding the refund application.

- The pilot program required that the following conditions be fulfilled:
- The "newly increased unutilized input VAT" must be greater than zero for six consecutive months (computed by comparing the unutilized input VAT at the end of an assessment period against that on 31 March 2019) and the amount of newly increased unutilized input VAT at the end of the sixth month must be RMB 500,000 or more;
- The taxpayer must have an "A" or "B" tax credit rating;
- The taxpayer must not have any record of tax fraud on export VAT refunds or refunds of unutilized input VAT, or certain noncompliance with respect to the issuance of VAT special invoices, during the 36-month period before the input VAT refund application;

- The taxpayer must not have been subject to penalties for tax evasion more than one time during the 36-month period before the input VAT refund application; and
- The taxpayer must not have benefited from certain industry-specific VAT preferential (refund) policies (e.g. refund of VAT for qualifying software products if the VAT burden is greater than 3%) since 1 April 2019.

### Preferential treatment for manufacturing businesses

Bulletin 84 states that qualifying manufacturing businesses do not need to fulfil the six-month interval requirement. Furthermore, there is no minimum RMB 500,000 requirement for the newly increased unutilized input amount, and no 60% cap.

### Comparison of refund policies

	Bulletin 39	Bulletin 84
	All industries	Qualifying manufacturing industries
Limitation on application period	<ul style="list-style-type: none"> <li>• The newly increased unutilized input VAT must be positive for six consecutive months. Since the policy came into effect on 1 April 2019, the first application can be no earlier than the filing period of October 2019.</li> <li>• To fulfill the above condition, there must be a six-month interval between two applications. Thus, the second application could be no earlier than the filing period of April 2020.</li> </ul>	<ul style="list-style-type: none"> <li>• The newly increased unutilized input VAT must be positive, and the first application can be made in the filing period of July 2019.*</li> <li>• A six-month interval is not required. The taxpayer can apply for a refund of the unutilized input VAT (if any) in the next filing period.</li> </ul>
Limitation of amount	<ul style="list-style-type: none"> <li>• The unutilized input VAT amount must be positive for six consecutive months, and the unutilized input VAT at the end of the sixth month must be no less than RMB 500,000.</li> <li>• The refund amount is capped at 60% (i.e. the refundable unutilized input VAT equals the newly increased unutilized input VAT multiplied by the input VAT component ratio further multiplied by 60%).</li> </ul>	<ul style="list-style-type: none"> <li>• There is no minimum requirement for the unutilized input VAT amount and no cap.</li> </ul>

\* As Bulletin 84 was released in early September, the first opportunity to file an application will be the filing period of September or October.

### Comments

Manufacturing businesses may apply for larger refund amounts at an earlier stage if they meet the requirements in Bulletin 84. The bulletin also stresses that the tax authorities should ensure that taxpayers receive their refunds in a timely manner by issuing VAT refund confirmation letters and providing the same to the office that issues the refunds.



## India

### **Finance Minister announces measures to boost economic growth and exports**

Speaking at a press conference on 14 September 2019, India's Finance Minister Nirmala Sitharaman announced several measures to boost economic growth and exports. Key proposals include the following:

- The Merchandise Exports from India Scheme (MEIS) would be replaced by Remission of Duties or Taxes on Export Product (RoDTEP):
  - The textiles sector would continue to receive incentives under the MEIS and the Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) until 31 December 2019; and
  - All other sectors (including textiles) that are eligible for incentives up to 2% in addition to the benefit under the MEIS would be transitioned to RoDTEP as from 1 January 2020;
- A fully automated process for the refund of GST input tax credits is to be implemented by the end of September 2019;
- Manual procedures for export clearances are to be replaced by digital processes to reduce the lead time to export;
- A free trade agreement (FTA) utilization mission would be established to work with the Federation of Indian Export Organizations and export houses to ensure utilization of concessional tariffs under each FTA;
- The awareness of preferential duty benefits available under FTAs is to be enhanced among micro, small and medium-sized enterprises; and
- Compliance requirements (e.g. rules of origin, certificate of origin, etc.) are to be simplified for importers and exporters, and an online Origin Management System launched for obtaining certificates of origin to improve the ease of doing business for exporters.

Notifications giving effect to the Finance Minister's announcements are expected to be issued shortly.

### **Comments**

The World Trade Organization (WTO) has been reviewing India's export incentives to assess whether the incentives comply with the WTO Agreement on Subsidies and Countervailing Measures. As a consequence, India's Ministry of Commerce and Industry set up a panel to review the special economic zone scheme, as well as

other export schemes and subsequently proposed the RoSCTL scheme, announced in March 2019 for exports of textiles and also to be adopted for other exports.

Since the RoDTEP scheme is proposed to replace the MEIS and the RoSCTL scheme, it is expected to provide a rebate of embedded taxes and duties (e.g. noncreditable taxes, such as excise duty on fuel used in transportation, compensation cess on coal used in the production of electricity, input taxes in the transport sector, etc.). The important feature will be the amount of the benefit of RoDTEP for key sectors, since this will determine the actual impact of the new scheme compared to the MEIS. Exporters will need to consider factoring the sunset of the MEIS and the introduction of the new scheme into the pricing of goods that are being exported, since the MEIS benefit likely would have been factored into the current price.

The Ministry of Commerce and Industry also has invited suggestions on formulating a new foreign trade policy, expected to be released shortly and to contain significant changes from an export perspective.

## **Mexico**

### **Budget proposals for 2020 include comprehensive tax reform measures**

On 8 September 2019, Mexico's president presented to Congress a series of proposed tax measures as part of the 2020 budget, including changes to the Income Tax Law, the Value Added Tax (VAT) Law and the Federal Tax Code (FTC). No changes are proposed to the existing tax rates (i.e. corporate, VAT or personal tax rates), but there are various measures to tackle tax avoidance and/or evasion, based on the recommendations of the OECD under the BEPS action plan, including restrictions on the deduction of interest, hybrid arrangements and the definition of a permanent establishment (PE). Further, the government is proposing the taxation of foreign providers of digital services—such providers would be required to collect VAT from Mexican users and pay it to the Mexican tax authorities (SAT) and operators of digital platforms would have to withhold income tax on certain payments to Mexican resident individuals. Unless otherwise noted, most of the proposed measures are expected to become effective on 1 January 2020.

Congress will discuss the proposed legislation in October and November, and it is possible that modifications may be made during that time. A final bill is expected to be signed by the president and published in the official gazette before the end of 2019.

### **Income tax**

#### **Foreign legal vehicles and foreign transparent entities**

Rules are proposed that would treat foreign vehicles that do not have their own legal personality (i.e. trusts or partnerships) and foreign transparent entities (i.e. disregarded entities) as legal entities that are subject to tax in Mexico, and that

also could be treated as Mexican residents subject to tax in Mexico for tax purposes if their business is primarily managed and controlled in Mexico.

Mexican residents (both entities and individuals) would have to pay tax on income generated through foreign legal vehicles (whether or not transparent) and through foreign transparent entities in proportion to their participation in such entities, even if the income is taxed abroad. (Payments made by Mexican residents to such entities could be subject to income tax (and withholding tax) if the income is generated in Mexico.)

### **Limits on deduction of interest expense**

New thin capitalization rules would be introduced in line with the recommendations under action 4 ("Limiting Base Erosion Involving Interest Deductions and Other Financial Payments") of the BEPS project to provide that net interest expense exceeding 30% of adjusted taxable income for the fiscal year would be nondeductible.

Net interest expense for the fiscal year would consist of accrued interest expense for the fiscal year net of interest income for the same period. Adjusted taxable income would be defined as taxable income plus interest deductions and investment deductions (i.e. depreciation and amortization). Foreign exchange losses would not be considered interest for purposes of this definition unless they were related to an instrument that treats them as such.

A safe harbor rule would apply to the first MXN 20 million of interest expense, applicable to all members of a group in proportion to their income. Other exceptions to the restriction on interest deductibility would apply to interest on loans for public infrastructure projects, construction in Mexico, and the oil, gas, electricity and water industries, and loans to state-owned companies.

The thin capitalization rules would apply if nondeductible interest calculated under the proposed rules is greater than that calculated under the current rules, which apply a 3:1 debt-to-equity ratio.

Any nondeductible net interest expense would be able to be carried forward for up to three fiscal years.

### **Other restrictions on deductibility of payments**

The legislative proposals include new tax haven rules that generally would apply to payments made to low-tax jurisdictions. A country would be treated as a tax haven if it meets certain requirements with respect to its effective corporate or individual income tax rates (i.e. income tax rates are less than 75% of what the rates would be in Mexico).

The proposed rules would provide that payments made to a related party or through a “structured agreement or arrangement” would be nondeductible for the Mexican-resident payer if the income received by the related party is considered subject to tax in a tax haven. These rules also would apply if the party that directly or indirectly receives the payment uses at least 20% of it to make deductible payments to another member of the group or through a structured agreement or arrangement, and the payment is considered subject to tax in a tax haven. An exemption from the rules would apply where income is derived from an active business or if the recipient is resident in a country that has concluded a broad exchange of information agreement with Mexico.

### **Anti-hybrid rules**

The proposed rules on hybrid arrangements would revise the current anti-hybrid rules that were introduced as part of the 2014 tax reform and would provide for further implementation of the recommendations under BEPS action 2 (“Neutralizing the effects of hybrid mismatch arrangements”).

Hybrid arrangements involve the use of entities, instruments, agreements or payments that result in a deduction in Mexico and no or only partial taxation to the nonresident counterparty. Payments related to hybrid arrangements and that are considered subject to tax in a tax haven would be nondeductible.

Payments made to dual residents and to nonresidents with a PE in Mexico also would be nondeductible, unless such persons recognize and accrue the income generated in Mexico in the other state.

### **Foreign tax credit for dividends**

The indirect foreign tax credit (second tier credit) for dividends would be disallowed if the nonresident payer can claim a deduction for the dividends paid.

A direct foreign tax credit (first tier credit) for dividends could be disallowed if the tax is creditable in another country or jurisdiction, unless the credit derives from a second tier credit or also is taxed as income in that other country or jurisdiction.

### **Application of controlled foreign company (CFC) rules**

Changes are proposed to the application of the CFC regime, particularly with respect to the definition of “control.”

The CFC rules would apply if a Mexican resident has effective control over a nonresident entity, which would be deemed to exist if the resident:

- Owns more than 50% of the voting rights or value of shares of the foreign entity;

- Has rights to more than 50% of the entity's assets and profits in a capital redemption or liquidation;
- Owns a greater than 50% interest in the entity's combined assets and profits;
- Files consolidated financial statements with the nonresident entity; or
- May make unilateral decisions, directly or indirectly, at shareholders' or board meetings. Related parties would be taken into account for these purposes.

An 80% or greater active income ("entrepreneurial activities") exception would apply but less than 50% of this income would have to be sourced in Mexico or be deductible there, directly or indirectly.

Nonresident financial entities would be allowed to ask the SAT if they could be exempted from these rules.

Due to the proposed measures relating to foreign legal vehicles and foreign transparent entities, those rules would prevail over the CFC rules when a taxpayer has a direct participation in such entities or vehicles. The CFC rules still would apply for foreign entities that are not transparent.

### **Shelter maquiladoras**

The rules for "shelter maquiladoras" (i.e. Mexican companies providing contract manufacturing services to multiple unrelated entities) would be made permanent.

Maquiladoras are foreign-owned Mexican companies that process, transform, assemble or repair imported materials, parts and components into finished goods that subsequently will be exported out of the country. The maquiladora regime grants certain tax benefits to qualifying maquiladoras and provides protection for the foreign parent company from exposure to Mexican tax (i.e. protection from PE status) as a result of its relationship with the maquiladora. Based on current rules that were introduced in 2016, nonresidents that manufacture products using a shelter maquiladora can provide machinery, equipment and certain services to unrelated parties without creating a PE for the foreign parent in Mexico for up to eight years (an initial four-year period, followed by a possible additional four years).

The current proposal would make these rules permanent.

### **Permanent establishment**

The proposed legislation would expand the definition of a PE in Mexico's income tax law to bring it in line with the recommendations in action 7 ("Preventing the artificial avoidance of permanent establishment status") of the BEPS project to

counter strategies used to prevent the existence of a PE, including through agency or commissionaire arrangements:

- The PE definition would include situations where a dependent agent habitually concludes and executes contracts on behalf of a nonresident enterprise or performs a principal role leading to the conclusion of contracts by the nonresident enterprise, where the contracts are for the transfer or leasing of goods (tangible or intangible) or the performance of services.
- The definition of an independent agent would be expanded to include situations in which an independent agent acts exclusively or almost exclusively on behalf of a nonresident related party.
- The PE exception for auxiliary activities would not apply if a nonresident performs activities in one or more business locations in Mexico that are complementary to, and part of a cohesive business operation of the nonresident's Mexican PE, a Mexican resident or the PE of a related nonresident. The auxiliary activities exception also would not apply if the nonresident or a related party has a place of business in Mexico where such complementary activities are carried out, but their overall effect lacks an auxiliary character.

### **Intermediation through online applications**

Residents and nonresidents with or without a PE in Mexico that provide online intermediation services between sellers of goods or service providers and customers, as well as entities that provide, directly or indirectly, the use of online applications (i.e. online platform operators), would be required to withhold income tax from individuals resident in Mexico who use those applications to facilitate the sale of goods or the provision of services, including lodging. Special withholding tax rates between 2% and 17% would apply depending on the activity. Those that earn less than MXN 300,000 per year would have the option to pay the tax directly.

However, residents and nonresident intermediaries without a PE in Mexico and online platform operators would be required to:

- i. Register with the SAT as withholding agents;
- ii. Provide proof of withholding to resident individuals;
- iii. Provide VAT information to the SAT, as further detailed below;
- iv. Pay the withholding tax to the SAT by the 17th day of the month following the month of the transaction; and
- v. Maintain documentation of withholding and payment for statute of limitations purposes.

If requirements (i), (iii) and (iv) are not met, penalties similar to those under the VAT rules would apply (see below).

If enacted as currently proposed, these provisions would be effective on 1 April 2020. The SAT is expected to issue related regulations by 1 March 2020, although affected parties would not have to register with the SAT until 30 April 2020 at the latest.

## **VAT**

Two significant VAT-related measures are included in the proposed legislation.

### **Taxation of digital services provided by nonresidents**

The definition of "services" in the VAT law would be expanded to include digital services provided by nonresidents. Beginning on 1 April 2020, nonresident entities that provide digital services to recipients located in Mexico would be subject to VAT (at the 16% standard rate) in situations where the service is provided over the internet or via an "app."

Digital services would be broadly defined to include services provided through any online application, such as (i) video, images or audio streaming; (b) ring tones; (c) news, including traffic, weather and statistical analysis; (d) the provision of intermediation services (i.e. connecting service providers with customers), including advertising; (e) online clubs and dating sites; (f) data storage; and (f) teaching, testing and exercise sites.

A service recipient would be deemed to be located in Mexico in the following cases:

- He/she indicates that Mexico is his/her country of residence;
- Payment for the service is made through an intermediary; or
- The recipient's IP address is located in Mexico.

Nonresidents without a Mexican PE that provide digital services in Mexico would be required to:

- Register with the SAT by 30 April 2020;
- Issue VAT invoices and collect the VAT due;
- List digital service recipients located in Mexico from whom they collect VAT;
- Notify the SAT of the transactions carried out in a particular month by the 17th day of the following month;
- Collect and pay output VAT by the 17th day of the month following the collection month;
- Issue invoices to service recipients upon request; and



- Appoint a legal representative and provide a business address in Mexico for notification purposes.

The provision of digital services would not be deemed to create a PE in Mexico for the nonresident.

Failure to comply with the registration, legal representation and payment requirements would result in fines, as well as suspension from using Mexico's public telecommunications grid until these requirements are met.

Nonresidents without a PE in Mexico that act as intermediaries between service providers and recipients would be required to:

- Post prices and VAT separately;
- When the sales price and VAT are collected, withhold and pay 50% of the VAT to the SAT by the 17th day of the month following the collection month;
- Provide proof of withholding to service recipients;
- Register with the SAT; and
- Provide certain information about service providers to the SAT by the 10th day of the month following the month the services are provided.

Service providers that earn less than MXN 300,000 per year would be allowed to treat the withholding as final or pay the tax directly, subject to certain requirements.

If enacted as currently proposed, these provisions would be effective at the same time as the income tax provisions.

### **Recovery of input VAT**

The rules providing that input VAT may be recovered only as an offset to output VAT or through a refund request would be incorporated into the VAT law.

### **Federal Tax Code**

The proposed legislation contains several changes to the FTC:

#### **General anti-avoidance rule**

A GAAR would be introduced under which transactions that lack business purpose and that generate a tax benefit could be recharacterized for tax purposes according to their economic benefit, regardless of whether this economic benefit is actually pursued or deemed to be non-existent.

A lack of business purpose would be presumed to exist in the following cases:

- The quantifiable present or future economic benefit is lower than the tax benefit (and a tax benefit would not be considered part of the economic benefit); and
- The economic benefit could be achieved in fewer steps but results in higher taxes.

Tax benefits would include a tax reduction, elimination or temporary deferral.

In case of a tax audit by the SAT, the taxpayer would be notified of a recharacterization in the final decision issued following the review process.

### **Offsetting of taxes**

Taxpayers would be able to offset favorable tax balances only against the same kind of taxes.

### **Reporting of tax planning arrangements**

Mandatory reporting of certain tax planning arrangements would be introduced. "Tax advisors" (as defined) would have to register with the SAT and report certain tax planning arrangements, with secondary reporting defaulting to the taxpayer in some cases.

A tax advisor would be defined as a resident individual or entity, or a nonresident with a PE in Mexico, which in the ordinary course of its business, (i) is responsible for or is involved in the design, commercialization, organization, implementation or administration of a "reportable transaction" (as defined below); or (ii) makes such a transaction available for a third party to implement.

If a nonresident tax advisor has a related party in Mexico, the related party would be deemed to provide the tax advice. The same presumption would apply if a Mexican resident provides tax advisory services under the same "brand" as the nonresident.

A transaction would have to be reported regardless of the taxpayer's country of residence as long as there is a tax benefit in Mexico. If several tax advisors are required to report the same transaction, all would be considered to have complied with the reporting obligation if one advisor reports on behalf of the others. If an individual provides tax advice through an entity, it would not have to report the transaction as long as the entity reports.

Taxpayers would have to report a tax arrangement themselves in the following cases:

- The tax advisor does not provide the reportable transaction ID number;

- The taxpayer has designed, organized, implemented or administered the transaction;
- The tax arrangement is designed, commercialized, organized, implemented or administered by a non-tax advisor;
- The tax advisor is a nonresident; or
- There is a legal impediment to reporting the transaction.

Taxpayers with a reporting obligation would include Mexican residents and nonresidents with a PE in Mexico if their tax returns reflect the tax benefit, as well as taxpayers that engage in transactions with nonresident related parties that benefit from the arrangement.

A reportable transaction would be defined as a transaction that generates or could generate, directly or indirectly, a tax benefit in Mexico, and that meets certain conditions specified in the FTC. Any transaction intended to avoid any of the tax reform rules also would be reportable.

The following information relating to a reportable transaction would have to be disclosed:

- Name and tax ID of the tax advisor or taxpayer;
- Name of the legal representative of the tax advisor and the taxpayer;
- Detailed description of the transaction and applicable legal provisions;
- Name and tax IDs of the parties involved;
- Fiscal years in which the transaction was or is to be implemented;
- Description of the tax benefit;
- In the case of a transaction designed to avoid an exchange of information, the relevant tax or financial information; and
- Any other information relevant to the transaction.

Reporting a transaction would not imply that the SAT either approves or rejects the transaction, nor would it imply the commission of a crime. The reporting requirement would be subject to tax confidentiality rules.

A reportable transaction would have to be disclosed to the SAT on an information return within 30 business days of the arrangement being made available to the taxpayer for implementation, or the first step in the implementation of the

transaction, whichever is first. However, a transaction could be disclosed as soon as its design is final.

Once a transaction has been reported, a number would be assigned to it (transaction ID) and the tax advisor or the taxpayer would receive a copy of the information return, a receipt and a certificate with the assigned number.

A committee comprised of members of the SAT would review the transaction and could request additional information from the tax advisor or the taxpayer; such information would have to be produced within 30 business days (or the tax advisor or taxpayer would have to state that the information is not available). If the committee does not receive a response to a request, it would be authorized to initiate a tax audit.

The committee would have eight months to issue an opinion on the transaction, which would be legally binding on the tax advisor, the taxpayer and the SAT. If the commission does not issue an opinion, the tax benefits under the transaction would be deemed to be legal until an opinion to the contrary is issued.

If the committee determines that an arrangement is legitimate, it would be excluded from the list of reportable transactions and a public version of the arrangement would be published on the SAT website. If the committee finds that the arrangement is contrary to the law, the tax advisor and the taxpayer would have to stop implementing it and the taxpayer would have 60 business days to rectify the situation (i.e. reverse the transaction); otherwise, the SAT could initiate a tax audit. A public version of illegal arrangements also would be published on the SAT website.

The taxpayer would have to include the number assigned to a transaction on its annual tax return for the year in which the first step in the transaction is implemented and all other years impacted by the transaction.

If enacted as currently proposed, these rules would become effective on 1 July 2020. Reportable tax arrangements would include those designed, commercialized, organized, implemented or administered as from 1 January 2020 or older arrangements that have an impact as from such date.

## **The Netherlands**

### **2020 budget includes changes to indirect taxes**

On 17 September 2019, the Dutch Ministry of Finance published the government's tax proposals for 2020, including indirect tax measures related to VAT and real estate transfer taxes. The proposals will be discussed by parliament and likely finalized by the end of 2019, so the measures can take effect as from 1 January 2020.

## **Electronic publications**

It is proposed to level the playing field between print and electronic publications by aligning the VAT treatment of the two types of publications. The current reduced VAT rate of 9% that applies to print publications also would apply to the supply or lending of electronic publications, including books, newspapers, magazines, and subscriptions to databases and websites of, for example, those newspapers. To qualify for the reduced rate, the electronic publications would need to be similar to traditional print publications, although it would not be necessary for each electronic publication to have a print equivalent.

The reduced VAT rate would be applicable to:

- Products involving services that are primarily aimed at providing access to a database containing, for example, books, newspapers and magazines;
- Digital educational information provided by electronic means provided the information is exclusively or almost exclusively intended for the transfer of information for educational purposes; and
- Websites on which news, current events and background information can be read and the same reading content is available for every customer (refreshment of sites and preferred selection of articles does not preclude this). This would include, for example, mobile apps for daily newspapers.

The reduced VAT rate would not be applicable to:

- Publications delivered electronically consisting of dynamic and technological elements such as interactive maps, reviews, responses from readers, games and communication options;
- Payments for a transaction other than the supply or lending of publications, such as for omitting advertisements;
- Products involving services aimed at making information accessible, such as the ability to search and organize information; and
- Publications and websites used predominantly for advertising purposes, or containing predominantly music or video content.

## **Implementation of VAT “quick fixes” relating to EU cross-border supply of goods**

The legislative proposals would introduce simplifications to the cross-border supply of goods within the EU, also known as the “quick fixes.” These simplifications are a result of an EU directive on the harmonization and simplification for trade between member states. The quick fixes relate to VAT rules regarding:

- Where a business ships stock to a warehouse in another member state and the business knows the identity of the customer requiring the goods upon shipment (due to data exchange issues this rule will not be operational before 1 April 2020);
- Uniform criteria to simplify the VAT rules on “chain transactions” to determine in which part of the chain the cross-border transaction takes place;
- A common framework for documentary evidence of proof of intra-Community transport of goods to other member states in order to claim an exemption for such supplies; and
- A substantive requirement to ascertain the validity of a VAT identification number for the person acquiring the goods to benefit from a VAT exemption for an intra-EU supply of goods.

### **Increase in standard rate of real estate transfer tax**

The real estate transfer tax is levied on the acquisition of real property in the Netherlands (or rights to such property). It is proposed to increase the current standard rate of the tax from 6% to 7%, but only for nonresidential buildings, such as industrial buildings, business spaces, land earmarked for housing development and hotels and guesthouses. This increase would come into effect as from 1 January 2021. The reduced rate of 2% that currently applies to the acquisition of residential housing would remain the same, although more developments in that regard are expected in November 2019.

### **New exemptions for insurance premium tax**

Two new exemptions from the insurance premium tax would be available as from 1 January 2020:

- Insurance obtained by employers to cover potential financial obligations (the proposal is a formality since the exemption already applies in practice); and
- Weather insurance taken out by farmers to cover monetary damages caused by weather conditions.

The Netherlands has sought and obtained confirmation from the European Commission that the introduction of the exemptions is in line with (non-tax related) EU legislation.

## Other news

### OECD

#### **Tax policy reforms 2019 report released**

On 5 September 2019, the OECD announced the publication of Tax Policy Reforms 2019: OECD and Selected Partner Economies, the latest edition of its annual report identifying major tax policy trends. The report covers the 36 OECD countries, plus Argentina, Indonesia and South Africa.

The report highlights that fewer countries have introduced comprehensive tax reform packages in 2019 compared to previous years, with the most comprehensive reforms in the Netherlands. Other significant tax changes implemented were in Lithuania (labor taxes), Australia (personal income taxes), Italy (corporate income tax) and Poland (personal and corporate income taxes).

Other key findings include:

- Corporate tax rate cuts have continued but are less significant than those introduced in 2018. The countries introducing the most significant reductions tend to be those with higher initial tax rates, leading to further convergence in corporate tax rates across countries.
- Efforts to fight corporate tax avoidance have progressed with the adoption of significant reforms in line with the OECD/G20 Base Erosion and Profit Shifting (BEPS) project. The tax challenges arising from the digitalization of the economy continue to create concerns, with some countries adopting unilateral measures while global efforts to achieve a consensus-based multilateral solution continue.
- Several countries have continued to lower personal income taxes, particularly for low- and middle-income earners and the elderly. Some also have expanded tax incentives to support pension savings and small savers.
- Once again this year, there were very few changes to property taxes.
- Standard VAT rates continue to stabilize across countries, as observed in the last few years.
- The pace of environmentally-related tax reforms has slowed.

## Argentina

### **Supply of certain basic foods to end consumers now zero rated**

In an effort to mitigate the effects of the recent devaluation in the Argentine currency, the government has reduced the VAT rate on basic foods sold to end consumers. A decree (Decree 567/2019) published in the official gazette on 16 August 2019 reduces the VAT rate on the following categories of food:

- Sunflower, corn and blend oils;
- Rice;
- Sugar;
- Preserved fruits, vegetables and legumes;
- Corn and wheat flour;
- Eggs;
- Milk (both whole and skim);
- Yogurt (both full and low fat);
- Bread;
- Bread crumbs and batter;
- Dried pasta; and
- Yerba mate, heated mate and tea.

The normal VAT rates applicable to such goods are 21% and 10.5%. The zero rate will apply from 16 August to 31 December 2019.

## Australia

### **Full Federal Court issues decision on fuel tax credits**

On 21 August 2019, the Full Federal Court handed down its decision in *Linfox Australia Pty Ltd vs. Commissioner of Taxation* [2019] FCAFC 131.

The court considered two issues in relation to fuel tax credits (FTCs) claimed by the taxpayer. Broadly stated, these issues were:

- Does the Road User Charge (RUC) apply to fuel used by heavy vehicles while travelling on toll roads so as to reduce the amount of the FTCs claimed; and
- In relation to the statutory four-year limitation period for FTC claims, is the only way to stop the clock for FTCs claimed in an earlier tax period, but in an



incorrect amount, to include the under-claimed amounts in a fuel tax return within four years?

These issues were heard by way of appeal from an earlier decision of the Administrative Appeals Tribunal.

### **Toll road issue**

This issue centered on whether a toll road is a "public road" for the purposes of the fuel tax law and thus whether FTCs claimed for fuel used in heavy vehicles for toll road travel must be reduced by the amount of the RUC. Broadly, the taxpayer argued that the term "public road" is to be construed having regard to the statutory purpose of the RUC, being to ensure that heavy vehicles contribute to the cost of road maintenance.

The taxpayer did not succeed on this issue.

The Full Court favored the view that the words "public road," as they appear throughout the Fuel Tax Act 2006, should be given a broad meaning, being one that includes roads generally accessible by the public. The Full Court observed:

There is nothing in the ordinary meaning of "fuel to use, in a vehicle, travelling on a public road" which suggests that the capacity or entitlement of the public to use the road is not the central concept. There is a broad correspondence between off-road and non-public roads and on-road and roads which the public uses.

The language does not readily bring to mind issues of liability to maintain the road. The effective incidence of fuel tax, as explained... above, does not suggest those issues. Instead, it appears that wider purposes are sought to be effected.

This means that taxpayers with heavy vehicles travelling on toll roads should continue to apply the RUC when calculating the FTC claim for the relevant fuel. For the avoidance of doubt, this also means that light vehicles travelling for business purposes on a toll road continue to be unable to claim any FTC for the fuel used.

### **Four-year limitation issue**

The taxpayer was successful on this issue.

The Full Court rejected the Commissioner of Taxation's position that the only way for a taxpayer to stop the clock in respect of FTCs claimed in an earlier tax period, but in the incorrect amount, would be to include the under-claimed amounts in a return filed within the four-year period.

The outcome on this issue does not assist the taxpayer in relation to recovery of under-claimed FTC amounts referable to the toll road issue. However, it has wider importance for the operation of the four-year limitation period for FTC claims generally and the analogous four-year limitation period for input tax credit claims

under the GST law, including in cases where taxpayers have lodged a valid objection to an indirect tax assessment within four years.

Subject to the Commissioner deciding to appeal to the High Court on this issue, we anticipate that he will finalize the text of his draft ruling about time limits for claiming an input tax credit or FTC with substantial revisions reflecting the Full Court's decision.

## **Australia**

### **ATO releases tax gap estimate for small business**

On 27 August 2019 the Australian Taxation Office (ATO) released for the first time estimates of the tax gap for small business. Tax gaps are broadly the ATO's estimate of the difference between the tax collected for a particular segment and the amount that would have been collected if everyone was compliant with the law.

The ATO estimates the 2015-16 income tax gap for the small business sector to be approximately 12.5%, or AUD 11.1 billion, with over AUD 7 billion (or over 64% of the total value of the gap) being attributed to black economy behaviour.

Whilst not strictly comparable, the ATO advised that small business tax gaps released overseas range from 9% to 30%.

About 87.5% of income tax from small businesses is paid voluntarily or with little intervention from the ATO.

Video of Deputy Commissioner Deborah Jenkins discussing key aspects of the small business income tax gap is available here: <https://www.ato.gov.au/Media-centre/>.

### **Small business profile**

The ATO estimates that there are over four million small businesses in Australia. They contribute 30% of income tax paid. The small business population comprises a diverse range of structures and operations and is defined within the ATO as turnover of up to AUD 10 million.

The ATO noted the significance of the sector to the economy stating that "small businesses make up more than 99% of all Australian businesses. They contribute \$380 billion to the economy each year and employ around five million people".

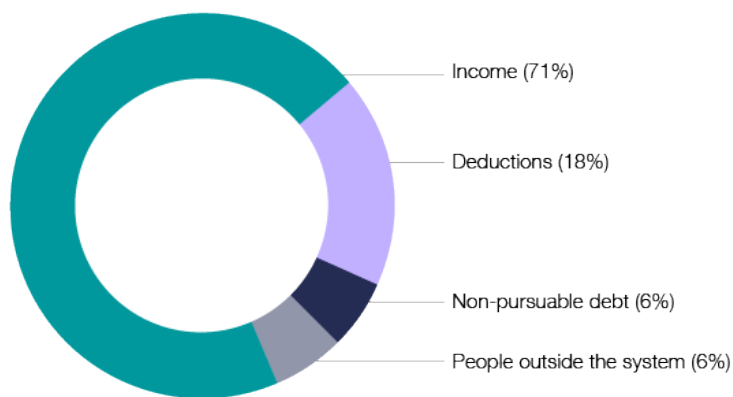
The estimate for 2015-16 is based on a sample of 1,398 taxpayers.

### **Causes of the gap**

The ATO noted that the main issues driving the gap were businesses:

- Not declaring all income;
- Failing to account for private use of business assets or funds; and
- Not understanding their tax obligations.

The below chart sets out the causes of the gap for small business. These relate to omission of income, over-claimed deductions, people outside the tax system (for example, cash-only businesses operating without an ABN), and non-pursuable debt (that is not economical for the ATO to pursue).



The ATO observed a range of behaviours relating to the adjustments, including:

- Poor record keeping and lack of reconciliation processes;
- Carelessness;
- Business owners appearing to deliberately avoid paying the right tax (e.g. making minimal effort to comply with their obligations); and
- Deliberate attempts to avoid paying the right tax (that is, exhibiting black economy behaviour).

### **Black economy impact**

The tax effect of the black economy for small business in 2015–16 is estimated to be AUD 7.7 billion (or around 64% of the gross income tax gap). The majority of black economy activity (AUD 6.5 billion) is associated with deliberate under-reporting of business income and over-claiming of business deductions.

### **The context**

The tax gap estimates are extremely important because they provide context to the debate around levels of compliance for different taxpayers and different taxes. They

also serve as a guide for where ATO compliance resources are required to be focused.

A summary of the various tax gaps as released by the ATO is below. Based on percentage of tax paid and also on absolute figures, this indicates that the small business sector has the largest tax gap out of all the market segments tested to date.

<b>Tax gap estimate</b>	<b>Amount reported or paid (AUD million)</b>	<b>Net gap (AUD million)</b>	<b>Net gap</b>	<b>Year of calculation</b>
Fuel tax credits	6,287	-20	-0.3%	2016-17
Wine equalization tax	896	5	0.5%	2015-16
Large superannuation funds	8,166	127	1.5%	2015-16
Fuel excise	17,415	331	1.9%	2016-17
PAYG withholding	169,333	3,356	1.9%	2015-16
PRRT	845	18	2.0%	2015-16
Small superannuation funds	1,240	40	3.2%	2014-15
<b>Large corporate groups income tax</b>	<b>39,775</b>	<b>1,833</b>	<b>4.4%</b>	<b>2015-16</b>
Superannuation guarantee levy	54,781	2,790	4.8%	2015-16
Tobacco	9,928	594	5.6%	2015-16
Individuals not in business income tax	128,310	8,761	6.4%	2014-15
Goods and services tax	60,962	5,264	7.9%	2016-17
<b>Small business tax gap</b>	<b>77,398</b>	<b>11,087</b>	<b>12.5%</b>	<b>2015-16</b>

The ATO is still to release tax gaps in respect of Medium Business, High Wealth, Alcohol Excise, Luxury Car Tax, Fringe Benefits Tax, Product Stewardship for Oil and the Higher Education Loan Program.

## Australia

### Luxury car tax removed from reimportations of luxury cars

Australia's luxury car tax (LCT) law has been amended as from 1 October 2019. The amendment removes liability for LCT on the reimportation of luxury cars that have been sent out of Australia for alteration, repair, renovation, etc.

More particularly, the amendments allow a luxury car to be brought back into Australia as a nontaxable importation, in circumstances where:

- The car has been exported from Australia and is returned to Australia;
- The car has been subject to "any treatment, industrial processing, repair, renovation, alteration or any other process" following its export; and

- The ownership of the car has not changed during the time period beginning immediately before the car's export and ending when the car is returned to Australia.

Although the amendments are operative from 1 October 2019, they apply to luxury cars reimported into Australia on or after 1 January 2019 (including cars exported from Australia before that date).

The amendments are to ensure consistency of LCT treatment for luxury cars that are subject to alteration, repair, renovation, etc., regardless of whether the car remains in Australia, or is sent outside of Australia, for that purpose. This measure was announced in the 2018-19 federal budget.

The amendments do not affect the rules in the LCT law for determining the LCT value of, and therefore the LCT liability for, a taxable supply (e.g. sale) of the luxury car made in Australia. For example, in circumstances where a taxable supply of a luxury car is made and, under an arrangement with the supplier, the car will be sent outside Australia for modification and reimportation, the LCT value of the car for the purposes of calculating LCT on the taxable supply includes the value of the modifications.

The LCT threshold for the 12 month period ending 30 June 2020 is AUD 75,526 for fuel-efficient cars, and AUD 67,525 for other cars.

## **Australia**

### **Weekly tax round-up (28 August 2019), including GST**

#### **Board of Taxation reviews**

##### **Corporate residency rules**

Australia's Board of Taxation has announced that it will conduct a review of the operation of Australia's corporate tax residency rules. The purpose of the review is to ensure that the rules operate appropriately, in light of modern, international board practices and international tax integrity rules.

The terms of reference set out by the Treasurer are for the board to consider whether the existing rules:

- Minimize commercial uncertainty and ambiguity;
- Are consistent with and aligned with modern day corporate board practices;
- Protect the tax system against multinational profit shifting; and
- Otherwise support Australia's tax integrity rules as they apply to multinational corporations.

The board is due to report back to the government before 31 December 2019.

### **Post-implementation review of the Voluntary Tax Transparency Code (VTTC)**

The board expects to submit its post-implementation review of the VTTC report to government in September.

### **Review of fringe benefits tax compliance costs and international practice**

The board is preparing a report to government, which outlines the board's recommendations for reducing the compliance costs associated with providing fringe benefits and the board's key research findings. The board expects to sign off on this report and submit it to the government in the coming months.

### **ATO tax transparency report coming soon**

The Australian Taxation Office (ATO) has announced that it will begin sending letters in mid-September 2019 to entities whose tax information will be disclosed in the report of entity tax information.

The report will be published in late 2019, and will contain details from entities' tax returns lodged for the 2017-18 income year. The entities included in the report are:

- Australian public entities or foreign-owned entities with total income of at least AUD 100 million;
- Australian private companies with total income of at least AUD 200 million; and
- Entities which report petroleum resource rent tax (PRRT) payable.

### **Full Federal Court decision – FITO and treaties**

The Full Federal Court handed down its decision in *Burton v Commissioner of Taxation* on 22 August 2019. This case involved an Australian tax resident, who derived capital gains from investments in the United States. Mr. Burton paid US tax under US tax law.

The Commissioner applied the foreign income tax offset (FITO) rules under Australian law, assessing Mr. Burton using an "apportionment approach," and allowing him a partial tax offset of 50% of the US tax paid. This was because the gains qualified for the capital gains tax (CGT) discount of 50% under Australian taxation law. Mr. Burton's appeal argued that he ought to receive an offset for the entire of the US tax paid.

The Full Court dismissed Mr. Burton's appeal, agreeing with the Commissioner's application of the FITO rules. The court also undertook an extensive analysis of Article 22 of the Australia-US tax treaty, but on a 2-1 majority basis, concluded that this did not permit any additional tax credit in Australia, beyond that provided by the FITO rules.

### **Significant ATO guidance released**

- GST governance and record keeping - financial supplies: The ATO has developed guidance about GST governance and record keeping for financial suppliers and insurers;
- PCG 2019/D3 ATO compliance approach to the arm's length debt test; and
- TD 2019/D5 Tax incentives for early stage investors: what is an "expense" that is "incurred" for the early stage test?

## **Australia**

### **Weekly tax round-up (9 September 2019), including GST**

#### **Parliament resumes**

Both Australian Houses of Parliament resume the week beginning 9 September 2019, and will sit until 19 September 2019.

The draft House of Representatives legislation program lists the following tax related bills for debate:

- Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019; and
- Treasury Laws Amendment (Putting Members' Interests First) Bill 2019.

The draft Senate legislation program lists the following tax related bills:

- Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019; and
- Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019.

#### **Multinational tax bill passes both houses**

On 9 September, the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019 passed the Senate. The bill is likely to receive royal assent in the coming days.



The measures in this bill include:

- Removing the ability to revalue assets for thin capitalization purposes;
- Ensuring certain groups with foreign operations are treated as both outward and inward investing entities;
- Requiring offshore suppliers of accommodation to include those supplies in goods and services tax (GST) turnover calculations; and
- Removing luxury car tax liability for refurbished and reimported vehicles.

### **Committee hearings**

The Senate Economics Committee has been undertaking a legislative inquiry into the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019. A report was issued on 5 September 2019 relating to this bill. The committee recommended that the bill should be passed, subject to the following qualifications:

- Vacant land deductions: the Australian Taxation Office (ATO) and Treasury should address any unintended consequences for property owners whose property is unusable for reasons outside their control; and
- ATO disclosure of business tax debts: the ATO should engage with the Inspector-General of Taxation and the Tax Ombudsman to address the range of concerns raised regarding this measure.

### **Board of Taxation releases consultation paper on corporate residency**

The Board of Taxation has released a consultation paper on its review into the corporate tax residency rules. The Treasurer's terms of reference for the board include considering whether the current rules:

- Minimize commercial uncertainty and ambiguity;
- Are consistent and aligned with modern day corporate board practices;
- Protect the tax system against multinational profit shifting; and
- Otherwise support Australia's tax integrity rules applying to multinational corporations.

The board is seeking input via written submissions until 4 October 2019 and will hold three roundtable discussions:

- Sydney (September 2019);
- Melbourne (September 2019); and

- Perth (16 October 2019).

### **Treasury releases miscellaneous bill for consultation**

On 6 September 2019, Treasury released a Miscellaneous Amendments Bill and Regulations for consultation. Key changes include:

- **Fringe benefits:** The draft bill amends the definition of "taxi" in the Fringe Benefits Tax (FBT) Assessment Act 1986 to resolve administrative difficulties with the former definition which resulted from ride sharing providers entering entry into the market. The new law replaces references to a taxi with "a car used for taxi travel (other than a limousine)" and will apply from the date of royal assent; and
- **Company loss recoupment rules :** The draft bill makes amendments to ensure that the interposition of a holding company between the tested company and a less than 10% direct stakeholder does not, of itself, cause a failure of the continuity of ownership test. This amendment applies to the interposition of an entity that occurs on or after 1 July 2018.

### **Productivity Commission – recommendations on remote area tax concessions**

The Productivity Commission delivered its draft report on Remote Area Tax Concessions and Payments on 4 September 2019. The commission has assessed the zone tax offset (ZTO), remote area allowance (RAA) and FBT concessions given to individuals and businesses in remote areas. The commission has called for a major overhaul to ensure targeted and fair tax concessions, stating that the current arrangements are outdated, inequitable and poorly targeted.

The key tax recommendations include:

- **Abolition of the ZTO** (personal tax). This offset has major issues, including:
  - Outdated zoning (nearly half of claimants live in Townsville, Cairns, Darwin or Mackay);
  - Little to no effect as intended – it has no measured effect on where people choose to live or work; and
  - Lack of rationale – its introduction (in the 1940s) was to compensate to work remotely, which the market now provides;
- **Remote business tax concessions would be unwarranted** – the commission views any geographically-targeted offset to be distortionary and costly; and

- **Remote area FBT concessions require overhaul** – the general focus of FBT recommendations is that concessions should exist where there is an 'operational reason' for the benefit provided by an employer:
  - **Employer-provided housing exemptions** are excessive and benefit high-income earners – the commission recommends this be reduced to a 50% concession at most (this exemption applies to eligible employees' main residences), and that provisions allowing employers to claim housing exemptions solely because it is "customary" to do so should be removed;
  - Employee-sourced housing concessions should be removed;
  - **Concessions on residential fuel** associated with employer-provided housing should be retained, but eligibility should be tightened;
  - **Exemptions for meals for primary production employees** should be retained, but eligibility should be tightened;
  - **Partial concessions on holiday transport** should be removed; and
  - **FBT remote area boundaries** should be refined.

### **Significant ATO guidance released**

The ATO has released the following significant guidance:

- PCG 2019/D4 – Draft Practical Compliance Guideline in respect of expansion of estimates regime to GST, LCT and WET; and
- GSTR 2019/D2 – Goods and services tax: supply of anything other than goods or real property connected with the indirect tax zone (Australia).

### **China**

#### **Free Trade Zone expansion launched in Shanghai**

On 20 August 2019, China's State Council officially launched the Lingang area as a new part of the Free Trade Zone in Shanghai, which will be set up south of the Dazhi River and east of the port of Jinhui, and will include Xiaoyangshan Island and the southern part of Pudong International Airport. The Lingang area will be launched in phases with the first phase covering 119.5 square kilometers, which will include the southern part of the Lingang area, Xiaoyangshan Island and the southern part of Pudong International Airport.

Based on the plan issued by the State Council, the Lingang area will be comparable to some of the most competitive free trade zones in the world, including Hong Kong, Singapore and Dubai.

Various preferential policies will be granted to companies operating in the zone, including the following tax incentives:

- A reduced enterprise income tax rate of 15% (rather than the standard 25%) for the first five years from establishment of qualified enterprises engaged in manufacturing and research and development in key fields such as integrated circuits, artificial intelligence, biomedicine and civil aviation;
- Expanded preferential VAT policies (e.g. zero-rated treatment) for the export of services;
- Tax subsidies for foreign personnel working in the Lingang area; and
- Export tax refunds to domestically-manufactured ships registered at Yangshan Port and used in the international transportation business.

The local government in Shanghai also will study and pilot certain tax policies in the Lingang area to encourage the development of outbound investment and offshore business.

## **Czech Republic**

### **VAT amendments include certain rate reductions**

Recent VAT developments in the Czech Republic include the approval of reduced VAT rates for certain goods and services and the presentation of proposed amendments to the VAT Act that would significantly alter the conditions for the cross-border trade of goods within the EU.

#### **Tax rates**

An amendment has been approved to the VAT Act to decrease the VAT rate as from 1 April 2020 or 1 May 2020 (depending on the date of its promulgation in the collection of laws) from the standard 21% rate or the reduced 15% rate (depending on the item) to the reduced 10% rate. Affected items include catering services, including serving draught beer; the supply of e-books and audiobooks; water and sewer charges; hairdressing and barber services; repairs of bicycles; footwear; tailoring and repairs of clothing; and textile products.

#### **Intracommunity trade in goods**

A draft amendment to the VAT Act was presented to the Chamber of Deputies for its first reading, which would significantly alter the conditions for cross-border trading of goods within the EU. This would include the implementation of “quick fixes” to the VAT system agreed upon at the EU level. As from 1 January 2020, changes would include new conditions to qualify for the VAT exemption for intracommunity supplies of goods, new procedures for the allocation of

transportation in chain supplies of goods and new rules simplifying deliveries via a consignment warehouse.

The substantive law conditions that must be fulfilled to apply the VAT exemption for intracommunity supplies of goods would include a specific requirement for the customer to provide its tax identification number and for the intracommunity supplies to be included in the EC sales lists.

The amendment would allow less flexibility for decisions about the allocation of transportation in chain supplies of goods, and it would set forth a list of documents that should be accepted by the tax authorities as sufficient evidence to prove the actual performance of the transportation.

The functioning of the call-off stock simplification in the Czech Republic would be completely different from what businesses currently are accustomed to; for example, VAT would not be self-assessed as of the time of the relocation of goods to the consignment warehouse.

## **Denmark**

### **CJEU rules transfer of land with an old building is VAT-exempt**

On 4 September 2019, the Court of Justice of the European Union (CJEU) issued a decision (C-71/18) in a Danish case, concluding that a transfer of land including an “old” building is VAT-exempt even where the clear intention at the time of transfer is that the purchaser or a subsequent purchaser of the land will demolish the building. An old building broadly is defined as one that is more than five years old, subject to certain exceptions.

### **Background**

Under Danish VAT legislation, the supply of a land including an old building is VAT-exempt, whereas the supply of building land is subject to VAT at the standard rate (currently 25%). These rules apply to all transactions irrespective of the purpose for which buildings on the land will be used.

The case before the CJEU concerned a Danish municipality that in 2012 adopted an urban plan for the regeneration of a port area that included the partial demolition of an existing warehouse to enable the construction of residential property on the site. The taxpayer, a Danish project development and construction company, made a conditional purchase of the warehouse, and then entered into agreements with a general housing association to sell the warehouse and subsequently execute a project to construct a youth housing unit on the site. The taxpayer did not actively participate in the demolition of the warehouse.

The taxpayer requested a binding ruling from the National Tax Board as to whether the two sales of the warehouse were VAT-exempt as the supply of an old building.

The board answered both questions in the negative, stating that the supply of land with an existing building qualifies as building land (and is subject to VAT), if it is agreed that the seller will demolish the building or if it appears from the contract of sale that the building is acquired for demolition by the purchaser. The taxpayer appealed the decision to the National Tax Tribunal.

The tribunal held there was no basis for categorizing the property as building land, since there was an old building on the site at the time of both sales. As a result, the sales were VAT-exempt. The tribunal's reasoning was that the demolition work did not involve the seller, but was instead to be carried out by the purchaser at its own expense and risk.

The Ministry of Taxation then brought an action against the tribunal's decision before the Herring Court (a Danish court of first instance) that referred the case to the High Court of Western Denmark, which in turn referred the question to the CJEU.

### **CJEU ruling**

The CJEU concluded that the practice adopted by the Danish tax authorities is not compatible with the EU VAT directive. The authorities, therefore, must change their approach so that a supply of land with an old building is VAT-exempt and does not constitute a sale of building land even though the purchaser intends to demolish the old building to permit construction of a new building.

### **Comments**

Since the VAT rules on the supplies of building land came into effect in 2011, the Danish tax authorities have taken a broad view of what constitutes building land. The parties to such transactions have addressed the associated VAT issue in various ways and as a result of the CJEU's decision, the Danish government now must take the necessary action to clarify the position in all cases with retroactive effect.

In some transactions, the supplier (seller) can reclaim repayment of VAT from the tax authorities and in others the right to reclaim VAT lies with the purchaser. The tax authorities will only repay VAT that is otherwise irrecoverable (i.e. if the newly-constructed building is used for housing or other VAT-exempt activities).

The Danish tax authorities generally issue guidance on the administrative and procedural implications of rulings on a timely basis, but because of the statute of limitations (that may in some cases only be three years), taxpayers may wish to assess immediately the potential implications of the decision in their own circumstances and take any necessary action as soon as possible.

## Denmark

### **Tax authorities rule on VAT treatment of voucher**

Denmark implemented the EU voucher directive (Council Directive (EU) 2016/1065) on 1 July 2019. On 2 September 2019, the Danish tax authorities published the first binding ruling applying the directive. The ruling provides useful clarification of how the Danish tax authorities are applying the voucher directive in practice.

The ruling concerns the Danish Tourist Card (DTC) that can be purchased online or in a number of shops in Denmark. The card gives the purchaser access to bus travel and various tourist attractions and activities provided by a range of suppliers. At the time a DTC is issued, it cannot be determined whether the purchaser will use the DTC for VAT-taxable activities, VAT-exempt activities or both. In accordance with the EU voucher directive, the DTC can be defined as “an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services.”

The Danish tax authorities concluded that the DTC cannot be allocated primarily to one activity. The tax authorities ruled that the voucher should be considered a multi-purpose voucher in accordance with the EU voucher directive, since there is more than one possible supplier and more than one VAT rate (0% or 25%) that may apply to the services supplied. As a result, any VAT due is payable when the voucher is redeemed and not at the time of issuance of the voucher.

## Denmark

### **Tax authorities rule on VAT treatment of supply of fuel to ships on the high seas**

In a binding ruling issued on 3 September 2019, the Danish tax authorities held that the transfer of ownership from a civil law perspective does not necessarily coincide with a VAT taxable supply.

The supply of fuel to maritime ships operating on the high seas is VAT exempt if the fuel is supplied to the final user, which often is the owner of the ship or the shipping company. In the case at hand, the sale is made via an intermediary. The ship's crew contact an intermediary when they need to refuel. The intermediary investigates the market to find a supplier offering an acceptable price and requests the supplier to deliver the fuel directly to the ship.

From a civil law perspective, there is one agreement regarding the supply of fuel between the supplier and the intermediary and a second agreement between the intermediary and the ship's owner.

In their ruling, the Danish tax authorities state that if legal ownership of the fuel transfers to the intermediary at the earliest at the same time as the fuel is supplied to the ship, the supply (from a VAT perspective) is considered to be directly from the supplier to the ship's owner. On that basis, the sale is considered to be zero-rated, in accordance with CJEU ruling C-526/13.

The tax authorities do not address how the intermediary should treat the supply of fuel to the customer or to which entity the supplier should issue the invoice.

## **El Salvador**

### **Amendments to law on industrial and commercial free trade zones**

El Salvador's legislative assembly has passed four legislative decrees (Nos. 332, 397, 398 and 404) during 2019 amending the law on industrial and commercial free trade zones (FTZs), to modernize the FTZ regime and increase certainty relating to the application of the rules. Legislative Decree No. 332 was published in the official gazette on 28 May 2019 and became effective on 7 June 2019. The three other legislative decrees were passed in August 2019 but have not yet been published in the official gazette; they will become effective eight business days after they are published.

Developers and "users" of FTZs (persons that establish and operate a company carrying out specified activities within an FTZ) authorized by the Ministry of Economy are eligible for tax and customs incentives, including a total income tax exemption for a period of 10 or 15 years, depending on the location of the FTZ. The exemption may be extended for an additional period if certain conditions are fulfilled, although in some cases only a partial income tax exemption is available for users for the additional period. The amendments will increase the additional period for a full income tax exemption from five to 10 years for qualifying users, among other changes.

#### **Legislative Decree No. 332**

This decree amends provisions of the law (articles 10 and 11) relating to the requirements and rights for developers:

- The minimum area required for new FTZ projects is decreased from 69,880 square meters to 35,000 square meters.
- The land that can be used to expand the area authorized as an FTZ is increased from a five-kilometer radius of the previous FTZ to a 10-kilometer radius.
- The requirements that developers must meet to obtain the benefits of the FTZ for an additional five-year period are amended. Developers' facilities must be expanded by a minimum of 25,000 square meters, which is a decrease with respect to the previous requirements (55,904 square meters).



### **Legislative Decree No. 397**

This decree was passed by the legislative assembly on 15 August 2019 and includes clarifying amendments providing an official interpretation of certain provisions of the law:

- Under article 3-A, goods to be traded may directly enter an authorized area such as an FTZ being consigned either to a merchant or to a logistics operator that is authorized under the International Services Law and that is contracted with for such purpose.
- Under article 17, authorized activity performed by a merchant may occur regardless of the way in which the merchant formalizes its operations. The merchant may put the goods to use upon arrival in the country as an indirect user qualifying under the International Services Law or as a user qualifying under the industrial and commercial free trade zones law; in both cases, an income tax exemption applies.

### **Legislative Decree No. 398**

This decree, also passed by the legislative assembly on 15 August 2019, will amend various provisions of the law, including the following:

- It specifies that the goods imported under the FTZ customs regime of temporary admission for inward processing and final importation duty-free may be remitted to a logistics operator authorized under the International Services Law, under the temporary admission customs regime established in that law.
- It details the process to be followed for requesting the destruction of raw materials, supplies, compensating products or finished products that, due to their condition or state, cannot be industrially or commercially used.
- It provides that requests for the expansion of inward processing warehouse (DPA) facilities will be approved, provided the new facilities are used to carry out authorized activities.
- It will decrease the minimum area required for companies engaged in the breeding and trading of amphibians and reptiles to operate as a DPA, from 34,940 square meters to 15,000 square meters.

### **Legislative Decree No. 404**

This decree was passed by the legislative assembly on 29 August 2019. It will amend article 17 of the law, to provide that once the initial tax exemption period granted to the users of FTZs expires, the users will have the right to an additional 10-year full income tax exemption period (extended from the current five-year period), provided they demonstrate that in the last five years the company has met either of the following requirements:

- Increased its qualifying investment by 100%, compared to its initial investment; or
- Increased its hiring of personnel by 100%, compared to the initial number of contracted personnel.

The ability to obtain the additional exemption period through an increase in the hiring of personnel is a new option introduced by the decree.

## France

### **Tax authorities rule on VAT treatment of public offerings of tokens**

The French tax authorities (FTA) issued a public ruling on 7 August 2019, confirming the VAT treatment of public offerings of tokens, such as initial coin offerings (ICO) and initial token sales (ITS). The ruling clarifies that:

- When the tokens are used by their beneficiaries to obtain specific goods or services from the issuing company, the supply is subject to VAT.
- However, the FTA took into account a 2015 decision of the Court of Justice of the European Union (C-174/14), in which the court held that a direct link in an exchange of services will be established as soon as there is no uncertainty between the reciprocal supplies. In particular, when utility tokens only allow the purchaser the right to potentially benefit from a future supply of services or goods, the ICO is not subject to VAT because there is no direct link with any supply of goods or services.
- This treatment does not affect the issuing entity's ability to claim a full VAT deduction for its general or overhead expenses.
- Transactions where tokens are used to obtain goods or specified services from the issuing entity are subject to VAT under the normal rules. The amount of VAT remains based on the ICO's counterpart value at issuance, independent of any increase or decrease in the resale value of the coins after issuance.
- However, where the tokens are used as a counterpart but their value is not commensurate with the services provided, the services are, in effect, free or provided for only a notional value and the issuing entity should adjust its own input VAT accordingly.
- If the tokens grant access to a set of goods or services determined at the time of issuance, the VAT rules on vouchers may apply.

- On the other hand, when the tokens grant the purchaser the right to participate in the decisions of the issuing entity and to receive dividends, the transaction is not subject to VAT, as the tokens should be treated as shares in such cases.
- Cryptocurrencies and tokens that qualify as financial instruments from a regulatory perspective are not to be treated as vouchers for VAT purposes.
- The exchange of cryptocurrencies with traditional currencies is exempt from VAT based on CJEU jurisprudence (C-264/14).

### **Guidelines regarding vouchers**

The FTA also published VAT guidelines (in French) regarding vouchers on 7 August 2019 (BOI-TVA-CHAMP-10-10-10, BOI-TVA-CHAMP-10-10-40-50 and BOI-TVA-BASE-20-40 n° 270 à 290).

The FTA commented on the definition of vouchers (single and multi-purpose) and their corresponding VAT treatments. These comments are in line with the EU voucher directive (Council Directive (EU) 2016/1065).

### **Germany**

#### **Audits focusing on insurance premium tax relating to intragroup contributions**

Multinational enterprises are facing increased inquiries from the German tax authorities during their income tax audits regarding payments of insurance premiums made to foreign insurers or for insurance covering foreign parent companies for risks relating to Germany. The inquiries generally relate to the insurance premium tax (IPT), and aim to ensure the proper application of section 1(3)(3) of the Insurance Premium Tax Act (IPT Act) that has been in effect since 1 January 2013.

The IPT is levied on insurance premiums paid to an insurance company for insurance contracts that cover risks relating to Germany, as defined by law. The statutory tax rate is 19%. In principle, the insurance company is required to file a tax return and is responsible for the actual payment of the IPT if it is resident in the EU/European Economic Area (EEA). The policyholder is the tax debtor and may be liable for unpaid IPT. However, if neither the insurance company nor a representative authorized to receive the insurance premiums has a registered office or permanent establishment (PE) in the EU/EEA, the obligation to file tax returns and pay IPT is shifted to the policyholder, even if the policyholder is not resident in Germany.

Under section 1(3)(3) of the IPT Act, a German tax liability may arise for a nonresident policyholder with respect to insurance relationships with insurers established outside the EU/EEA that directly or indirectly relate to enterprises, PEs or other institutions located in Germany that are within the scope of the German IPT Act. In particular, this covers insurance for companies that protects the facilities and employees of German enterprises or PEs against direct or indirect risks, such as comprehensive general liability insurance and professional liability insurance.

Fiscal years as from 2013 currently may be subject to income tax audits, in which the application of section 1(3)(3) of the IPT Act also is increasingly being examined. This affects, in particular, German companies with parent companies resident in a non-EU/EEA country (especially in the US), which usually on-charge part of the insurance premium to their subsidiaries in the course of an intragroup allocation.

As noted above, if insurance relationships are concluded with insurance companies that are established outside the EU/EEA and the insurance covers German risks, the policyholder is liable to pay the IPT (under section 7(6) of the IPT Act), regardless of the policyholder's place of residence. For example, if a US parent company concludes a general liability insurance contract that also covers a German subsidiary or German PE, the US corporation is liable to pay German IPT.

In addition, the German subsidiary may be liable to pay IPT (under section 7(7)(3) of the IPT Act) if the subsidiary pays a fee to its foreign parent that is the policyholder in exchange for insurance coverage. This is likely to be the case on a regular basis, as premium shares usually are passed on to insured subsidiaries in the course of intragroup allocations.

Even though IPT cannot be determined by the local tax offices (since the federal tax office (FTO) has had this responsibility since 1 July 2010), the necessary tax information to calculate the tax often is requested during the course of income tax audits by the local offices, and forwarded to the FTO via a control mechanism.

In the case of groups of companies, existing insurance relationships should be reviewed and, if necessary, any relevant premiums and IPT amounts should be reported to the FTO.

## Greece

### **Framework for e-books digital platform released for public consultation**

On 1 August 2019, the Greek Independent Authority of Public Revenue (IAPR) published the framework for the operation of the digital platform, myDATA, for public consultation, which will last until 6 September. The platform will enable companies to maintain electronic books (e-books) and record invoice and tax receipt data, as well as certain other data.

The following describes the key features of the e-books process:

### **Categories of e-books**

The myDATA platform will include two categories of e-books:

1. An analytical entries book (analytical book) where companies will record a summary of all tax documents supporting their revenues/expenses, characterize the nature of their transactions and make all necessary year-end accounting entries to determine their annual accounting and tax results; and
2. A summary reporting book (summary book) where companies will report aggregate monthly and annual accounting and tax results and any related tax liabilities.

### **Data to be transmitted**

E-books will be used for the following:

- Transmitting and recording a summary of a company's revenue and expense documents for tax purposes, including information on counterparties to a transaction, the value of each transaction, applicable taxes, stamp duties, miscellaneous duties and deductions, but without any analytical distinction made regarding the kinds of goods sold or the nature of services provided;
- Characterizing recorded transactions, including classifying expense/revenue transactions related to the purchase/sale of goods, services, fixed assets, etc.; and
- Recording all necessary accounting entries, e.g. payroll, depreciation, year-end accrued revenues/expenses, etc. to determine annual accounting and tax results.

These data will be referred to collectively as "standardization of tax document data." A company's revenue will be updated in its e-books as it transmits a summary of all relevant tax documents that it has issued (i.e. invoices and receipts for the sale of goods and the provision of services) and, simultaneously, the receiving company's expenses will be updated in its own e-books.

A company will have to transmit a summary of tax documents that it has received only in certain cases, such as when it receives an invoice for the purchase of goods or services from a party that is not required to maintain books under Greek law (e.g. individuals, foreign companies, etc.) or when the issuer is required to maintain books under Greek law but has failed to transmit its summary of invoices by the applicable deadline.

A company still will be required to transmit the other data mentioned above (characterization of recorded transactions and necessary accounting entries for the determination of accounting and tax results).

### **Method of data transmission**

Various methods will be available to transmit tax documents:

- A company's accounting-enterprise resource planning (ERP) software. An intermediate software (Application Programming Interface (API)) is under development to facilitate the interaction between the myDATA platform and companies' accounting-ERP software. API will allow accounting software developers to update their software in order to have e-books posted in real time or at specific intervals. To this end, a cloud-based interface (RESTAPI) will be available through IAPR, thus enabling ERPs and other accounting software to be linked to the IAPR's platform efficiently and continuously;
- A special platform on [www.aade.gr/myDATA](http://www.aade.gr/myDATA) allowing manual uploads (for companies that have a limited number of tax documents and that do not use accounting-ERP software);
- Tax machines for retail transactions directly linked to IAPR (this alternative is not expected to be available right away and, in the interim, all retail transactions will be recorded collectively through accounting-ERP software or the special platform); or
- E-invoicing, where all electronically issued invoices will be transmitted automatically to the myDATA platform.

For each successful transmission, the IAPR will provide a Unique Recording Number (URN), irrespective of the transmission method used.

### **Data transmission deadlines**

IAPR is considering the 20th day of the month that VAT returns are filed as the potential deadline to transmit standardized tax document data. As a result, all data would have to be transmitted monthly by companies keeping double entry books and quarterly by companies keeping single entry books.

The deadline to transmit all necessary year-end accounting entries (for the determination of accounting and tax results) will be the same as the deadline for filing the corporate income tax return.

### **Cross-checks of data between filed tax returns and e-books**

All companies will continue to submit their tax returns based on the data recorded in their statutory books, which they will continue to maintain as is the current practice. However, based on the new process, all data included in filed tax returns

will be cross-checked against e-books data. The initial cross-check will take place the day following the tax return submission deadline. If a discrepancy is discovered, the IAPR will send an automated message to the company to make all necessary corrections over a two-month "harmonization period" (e.g. coordination with the relevant counterparty for transmission of pending tax documents, filing of amended tax returns, etc.). For example, if a company has received an expense tax document that has not been recorded in its analytical book, it will include the corresponding expense in its tax returns and harmonize the data in the tax returns with its e-books through the process described above. The following table below illustrates the two-month harmonization period:

Two-month harmonization period		
Returns for VAT, withholding tax, stamp duty, etc.		Corporate income tax returns
1st quarter	From 1 May to 30 June	Within two months following the corporate income tax return deadline
2nd quarter	From 1 August to 30 September	
3rd quarter	From 1 November to 31 December	
4th quarter	From next year's 1 February to 31 March	

Immediately after the expiration of the two-month harmonization period, data from the relevant tax returns will be again compared with e-books data. This second comparison will show either:

1. Consistency;
2. Justifiable inconsistency; or
3. Unjustifiable inconsistency that may lead to a tax audit or penalties depending on the severity of the discrepancies.

Furthermore, a company that transmits data from tax documents that it received from a domestic company due to the latter's noncompliance will cause a discrepancy in the issuing company's e-books, which may trigger a tax audit.

Timetable for implementation of the new program

The IAPR plans to run a pilot of the digital platform in the autumn of 2019 and the IAPR's governor has announced that the platform will be fully operational by 2020, at which time all companies and freelancers as well will be required to maintain e-books.

### **Objectives, concerns and next steps**

The main objectives of the e-books system are the automation of the tax return preparation and filing process, reduction of companies' administrative costs,

elimination of suppliers/customers statements (i.e. MYF statements), acceleration of tax refunds and optimization in the selection of cases for tax audit, which should deter tax evasion.

However, it is common for such programs to create, at least in their initial stage, various difficulties and potential additional costs for companies' accounting departments, depending on their organizational and operating structure and the specifics of their business and tax position. Therefore, challenges may arise as companies prepare for the new program and during its implementation.

No draft legislative bill has been published, only the framework for the operation of the platform and procedures to be followed. Nevertheless, companies should consider preparing as soon as possible for the upcoming changes.

We will provide updates on legislative or other developments as they occur.

## **India**

### **Supporting manufacturer not entitled to export incentives benefit for direct exporter**

In an order dated 27 August 2019, the Indian Supreme Court held that a supporting manufacturer is not on a par with a direct exporter for the purpose of computing the benefit under section 80HHC of the Income-tax Act, 1961 (ITA).

#### **Facts of the case**

The taxpayer is a supporting manufacturer to an Indian company (the export or trading house) and earns profits from the manufacturing and sale of carpets to the export house.

The explanation to section 80HHC of the ITA defines "profits of the business" as profits reduced by, among other deductions, 90% of specific export incentives listed in the ITA. For purposes of calculating the deduction for export-related profits, direct exporters broadly may increase the profits eligible for the relief by 90% of the export incentives received (with the result that the incentives are substantially tax-free). Supporting manufacturers, however, are not entitled to this benefit.

The taxpayer received export incentives in the form of duty drawback and included these incentives in the taxable income reported on its income tax return. The taxpayer contended that because it exports goods via export houses it is entitled to include 90% of export incentives in the profits of the business for computing the deduction under section 80HHC of the ITA, as for a direct exporter. The Indian assessing officer disagreed and denied the addition of 90% of the export incentives in calculating the profits available for the deduction under section 80HHC.



The Commissioner of Income Tax (Appeals) (CIT(A)) found in the taxpayer's favor and the CIT(A)'s decision was upheld by the Income Tax Appellate Tribunal (ITAT).

The Punjab and Haryana High Court also decided the issue in favor of the taxpayer, relying on an earlier Supreme Court decision that a supporting manufacturer may include export house premium in the profits of the business when computing the deduction under section 80HHC of the ITA, on the grounds that the premium is an integral part of the sale price realized from an export house.

The tax authorities appealed the High Court's decision to the Supreme Court.

### **Ruling of the Supreme Court**

The Supreme Court was asked to consider whether the taxpayer (a supporting manufacturer who receives export incentives such as duty drawback, duty entitlement pass book, etc.) is entitled to a deduction in line with a direct exporter for the purposes of section 80HHC of the ITA.

The court held that a direct exporter stands on a different footing to a supporting manufacturer for the purpose of computing the deduction under section 80HHC. The specific parameters and scheme for claiming the deduction applicable to direct exporters as defined in the legislation are completely different from those for supporting manufacturers.

The court further held that its previous decision relating to the inclusion of export house premium in the profits of a business addressed a different issue, and could be distinguished from the case at hand.

The Supreme Court also overruled its own earlier decision in a 2012 case allowing a supporting manufacturer the benefit of 90% of export incentives when computing the deduction under section 80HHC of the ITA, but only by relying on the decision now distinguished by the court.

The court remanded the case to the ITAT to determine any deductions available in situations where the taxpayer could prove that it was a direct exporter.

### **Comments**

The Supreme Court has interpreted the provisions of the ITA and concluded that they do not allow supporting manufacturers to benefit from the deduction for export incentives under section 80HHC of the ITA available to direct exporters. The decision brings clarity to the issue and also overrules an earlier decision.

## India

### **Dbriefs Asia Pacific webcast: India Spotlight (12 September 2019)**

#### **India Spotlight**

##### **Significant rulings under GST: Story so far and what lies ahead**

Anti-profiteering and advance ruling, two key limbs of the Goods and Services Tax (GST) framework, are perhaps the most debated and deliberated topics at present. While advance ruling assumes significance in the context of providing clarifications to ambiguities that taxpayers might have in relation to the new tax reform, the concept of anti-profiteering has been made part of India's indirect tax regime for the first time. Recently, there has been a spate of rulings pertaining to both the subjects, and emergence of additional complexities and confusion for taxpayers at large. Certain adverse orders by the National Anti-Profiteering Authority have seen widespread dissension in light of absence of a well-defined legislative framework to govern anti-profiteering investigations. On the other hand, a series of advance rulings pertaining to issues such as inter-office services, intermediary services, employer-employee transactions seem to violate the basic provisions of the GST law, and have therefore not meeting the very purpose of providing clarifications to taxpayers. In addition, it is important to assess the rationale adopted by the authorities in the context of the said anti-profiteering orders and advance rulings, as the same may be applied in case of other taxpayers. Keep up to date with the latest developments regarding advance rulings and anti-profiteering in India and how they may affect your organization.

## Korea

### **Commissions received on wire transfer services subject to VAT**

Korea's tax tribunal issued a decision on 22 July 2019 concluding that commissions for services that allow users to wire funds without financial authentication certificates via mobile apps are subject to VAT.

#### **Background**

The case before the tribunal involved a company that provides app users with various financial service advertisements via apps ("financial product promotion services") and receives commissions from the advertising financial companies when transactions between the app users and those companies are completed.

In addition, the company created and operates a system that allows app users to complete wire transfers without financial authentication certificates via the app. (In Korea, a financial authentication certificate generally is needed to verify the identity of the online user making the wire transfer.) The app user is subject to a service fee where the wire transfer service is utilized more than five times a month.

The company originally reported the wire transfer service as being subject to VAT for the second half of 2016 and the first half of 2017. However, on 19 March 2018, the company requested a refund of the VAT paid on the wire transfer services, arguing that the service is an incidental financial service provided by a business in a non-financial industry and, therefore, the services should be VAT exempt.

The tax authorities rejected the company's request, and the company appealed to the tax tribunal on 6 July 2018.

### **Tribunal decision**

The tax tribunal ruled that the wire transfer services are subject to VAT for the following reasons:

- Although the service is similar to "domestic exchange services," which are exempt under the VAT law, domestic exchange services are carried out by banks, whereas in the case at issue, the company functions as a broker between banks and customers and receives a commission for the service.
- The company's argument that the wire transfer service is incidental and provided only to expand the app user base in connection with its main business (financial product promotion services) is unsupported:
  - The documents and information provided by the company did not substantiate a concrete relationship between the financial product promotion services and the wire transfer services;
  - The company did not produce objective evidence that the wire transfer services directly affected the revenue growth of the main business; and
  - The ratio of revenue from the wire transfer services to the company's total sales revenue is significant.

## **Korea**

### **2019 tax reform proposals announced**

On 25 July 2019, Korea's Ministry of Strategy and Finance released the government's tax reform proposals for 2019. The proposed measures aim to encourage investment, innovative growth and job creation by expanding various tax credits, deductions and other incentives. The tax reform also includes proposals to increase tax revenue, notably measures that would tax royalties on patents registered outside of Korea. If enacted, most of the tax reform proposals would apply as from 1 January 2020.

## Measures to encourage investment

- Tax credits granted for investments made in qualified “facilities for improving productivity” from 1 January until 31 December 2020 would be increased to 2% (from 1%) for large conglomerates, 5% (from 3%) for medium-scale leading enterprises and 10% (from 7%) for small and medium-sized enterprises (SMEs).
- The types of qualifying facilities for improving productivity would be expanded to include advanced pharmaceutical manufacturing facilities and advanced logistics facilities.
- Industrial disaster prevention facilities, such as oil pumping, hot water pipelines, liquefied petroleum gas and other hazardous facilities, would be added to the types of facilities that qualify for the tax credit for safety facilities, and facilities that are not directly related to safety would be excluded.
- The accelerated depreciation tax incentive for investments in plant and equipment would be expanded as follows:
  - For SMEs and medium-scale leading enterprises, accelerated depreciation would be available for investments in plant and equipment made through 30 June 2020 (currently, the incentive is available for investments made through 31 December 2019); and
  - For large conglomerates, investments made between 3 July and 31 December 2019 in facilities for improving productivity and saving energy would qualify for accelerated depreciation.
- Translation services, business consulting, call centers and telemarketing businesses would be added to the types of qualifying small or medium-sized start-up businesses that are eligible for a tax exemption.
- The requirements to qualify for tax incentives relating to capital gains of SMEs that relocate factories to certain areas within Korea would be relaxed. In particular, relocated factories that operate for more than two years would be allowed to pay the tax due on capital gains from the transfer of the factory site and/or buildings in equal installments over the five-year period starting from the fifth year following the transfer.
- The calculation of a taxpayer’s total capital gain or loss on securities would include capital losses from transfers of foreign shares (currently, capital losses on foreign shares may not offset capital gains on certain securities).

- The loss carryforward deduction limitation would be increased from 60% to 100% of taxable income for corporations that execute a business restructuring plan pursuant to Korea's Corporate Restructuring Promotion Act.
- The threshold for the immediate deduction of repair costs would be increased from KRW 3 million to KRW 6 million per asset.

### **Measures to expand tax revenue**

- Payments made by a domestic corporation to a foreign corporation or individual for the use in Korea of patents that are registered outside of Korea would be treated as Korea-source income and subject to 20% Korean tax.

### **Measures to encourage spending and exports**

- The requirements for exporting SMEs and medium-scale leading enterprises to defer payment of import VAT would be relaxed to include those enterprises that had taxes in arrears but paid them in full within 15 days after the original payment due date. In addition, the application deadline for import VAT payment deferral would be extended from one month to three months after the corporate income tax or VAT filing due date.
- SMEs and medium-scale leading enterprises that import machinery and materials to produce and process export goods would be eligible for a reduction in customs duty.

### **Measures to support innovative growth**

- The research and development (R&D) tax credit on investments made for new growth and fundamental technology would be extended as follows:
  - Innovative growth-related technology (e.g. biobetter technology, design and manufacturing of system semiconductors, etc.) would be eligible for the R&D tax credit;
  - The R&D tax credit carryforward period would be extended from five years to 10 years; and
  - R&D costs incurred by an overseas enterprise that is controlled by a domestic corporation would be eligible for the R&D tax credit.
- Capital gains derived from the transfer of shares of small and medium-sized high technology start-up companies to small investors through crowd funding would be tax exempt.

- Expatriates who meet certain requirements (i.e. have a PhD in the sciences or engineering and at least five years of work experience with a foreign research institution or in an R&D department) would be entitled to a 50% reduction in individual income tax for five years.
- A domestic corporation that makes a capital investment in a “venture business” would be able to claim 5% of the invested amount as a tax credit until 31 December 2022.

### **Measures to support job creation**

- Large conglomerates that contribute to a SME’s in-house labor welfare fund or joint labor welfare fund would be entitled to a tax credit of 10% of the contribution.
- Tax credits for investments in business assets relating to “projects for creating local job opportunities for mutual growth” would be increased to 10% (from 3%) for SMEs and 5% (from 1-2%) for medium-scale leading enterprises.
- The list of industries in which young adults (as defined) who work for SMEs are eligible for tax reductions would be expanded to include creative arts, sports, libraries, historic sites and other recreational purpose services industries.
- The requirements for tax incentives for businesses that re-employ career-interrupted women would be relaxed. The qualifying reasons for interruption of a career would be expanded to include marriage and child education, and the tax incentives would apply even where the individual is re-employed by a different company, provided the new employer is in the same industry as the previous employer.
- SMEs and medium-scale leading enterprises that change the employment status of a fixed-term or temporary employee to indefinite term would continue to be entitled to tax credits (KRW 10 million per employee for SMEs, and KRW 7 million for medium-scale leading enterprises) until 31 December 2020.
- Housing loans provided by SMEs to employees no longer would be deemed taxable income of the individual.

### **Measures to protect rights and interest of taxpayers**

- The following measures are proposed to ease the burden of corporate and individual taxpayers that file returns after the due date:

- Taxpayers that file their tax returns late would be allowed to file amended returns to adjust the tax base; and
- In the case of late filings, the applicable non-filing penalties would be reduced as follows: (i) a 50% reduction where the return is filed within one month after the due date; (ii) a 30% reduction where the return is filed up to three months after the due date; and (iii) a 20% reduction where the return is filed up to six months after the due date.
- No penalty would be imposed for a failure to file offshore accounts where a majority of the fine levied as a result of the failure is paid. (Currently, the penalty is not imposed only if the taxpayer faces criminal charges).
- The applicable penalty would be decreased from 2% to 1% for businesses with more than two registered places of business on VAT invoices mistakenly issued by the wrong place of business.

### **Other measures**

- To prevent companies from paying executives excessive amounts of severance pay, the applicable retirement income limit would be reduced.
- Businesses or individuals that generate KRW 48 million or more of income would be subject to a penalty of 2% on incorrect VAT invoices issued or received.

## **Malaysia**

### **Dbriefs Asia Pacific webcast: Special Edition – Indirect Tax (6 September 2019)**

#### **Special Edition – Indirect Tax**

#### **Malaysia Service Tax: New rules for foreign digital services providers**

The fast-growing digital economy has prompted countries to act on issues arising from the interaction of its existing GST/VAT/Indirect tax rules and e-commerce. Malaysia has decided to follow suit by expanding its service tax regime from 1 January 2020 to tax foreign digital service providers who provide services to Malaysian customers. However, unlike other jurisdictions, Malaysia has made the decision to apply these rules to both B2B and B2C transactions as well as adopting a very wide definition for "digital services". Join us to understand how these important developments in indirect tax will impact your business.

## **New Zealand**

### **What's in the Tax Policy Work Programme?**

In August 2019, the New Zealand government released its updated tax policy work programme (“work programme”). This was significant as it was the first real signpost after the release of the government’s response to the Tax Working Group report as to where the government’s tax priorities sit.

The work programme suggests that it will continue to be a busy time for tax policy, with 11 key areas of priority. The work programme is slightly different from previous versions in that, in many instances, items are merely suggested as items which could *possibly* be included within a tax package, rather than a more committed stance to review something.

That said, the work programme is always a list that can never be achieved within an 18-month timeframe. An item being on the work programme has never been a guarantee of it happening.

### **What are the work streams?**

(1) Land – Following the outcome of the Tax Working Group process and, in particular, the abandonment of a capital gains tax, refinements to deal with the taxation of land were always going to be on the agenda. The work programme confirms that the land rules will be reviewed, particularly in relation to investment property and speculators, land banking and vacant land. There are a number of initiatives specifically highlighted that could be looked at in both the short and longer term, including looking at the deductibility of holding costs of land, reviewing exemptions from the rules to deal with habitual renovators, improving information flows to facilitate compliance with the existing land tax rules and considering whether the existing rules are creating inefficient “lock-in effects.”

(2) Business – Enhancing economic performance and minimising the impact of the tax system on businesses are stated as being priorities for the government. The work programme for businesses applies two lenses, a general business and a small business lens (albeit tax changes for either could apply to both). The work programme simply lists “examples of items that could be considered for inclusion” for business and small business, so it is far from clear what might be progressed. However, those that get a mention for businesses generally are:

- Seismic strengthening;
- Loss carryforward rules and trading when ownership changes;
- Tax treatment of innovative spending (feasibility and blackhole expenditure);
- Research and development;
- Purchase price allocation;
- Cross-border employment;
- Financial arrangement issues; and



- Other integrity issues.

For small business, the following are listed:

- Closely-held company issues;
- Compliance and enforcement issues;
- Simplifying Fringe Benefit Tax (FBT);
- Tax disputes for small taxpayers;
- Tax compliance for self-employed;
- Considering issues around the sharing economy/platforms;
- Options for assisting businesses to become more digital; and
- A review of the Accounting Income Method (AIM).

(3) Infrastructure – This project will consider whether the tax system should have a role in driving infrastructure investment and will consider a recommendation of the Tax Working Group to develop a tax regime that encourages investment into nationally-significant infrastructure projects.

(4) Information collection and use – Better information can contribute significantly to the integrity and fairness of the tax system. This work stream will consider the overall data strategy; information sharing; automatic exchange of information; repeat collection of large datasets; and the collection and public release of information to support policy advice, evaluation and public debate on policy issues.

(5) Business transformation – We are part way through the transformation of Inland Revenue's systems and work will continue to complete this process. Some further work could be undertaken on items which can be better handled by the new system, such as a review of the Prescribed Investor Rate (PIR), the taxation of lump sum payments (e.g. ACC compensation) and changes to withholding taxes to minimise over/under withholding.

(6) Reforms and remedials – This work stream is an essential part of the tax system. It represents the tidy-up work which is sometimes required when there are legislative errors or unintended consequences. This work programme item could include a GST remedial issues paper, Base Erosion and Profit Shifting (BEPS) remedials and other general maintenance work.

(7) Social policy including government response to welfare overhaul – Inland Revenue will continue to work closely with officials at the Ministry of Social Development (MSD) and other agencies on the government's response to the welfare overhaul. This work will touch on Working for Families, child support, student loans and KiwiSaver.

(8) Environment/sustainable economy – This will include cross-agency work on areas such as the Emissions Trading Scheme (ETS), water quality, waste disposal levies and congestion charging, all of which are less traditional “tax” areas for Inland Revenue to be involved with. From a more traditional tax standpoint, there will be consideration of how specific tax regimes, like FBT, might achieve positive environmental outcomes (e.g. promoting public transport), and regimes which may impact on natural capital may come under the microscope (petroleum mining is singled out as the first regime to undergo review).

(9) Charities – Before the end of 2019, there will be a report to ministers to address some of the Tax Working Group’s recommendations for charities (including a review to ensure that intended social outcomes are being achieved). At the same time, the Department of Internal Affairs (DIA) has undertaken a review of the Charities Act and the government’s response to that review will also influence what work is undertaken for tax purposes. Potential issues that will be looked at include accumulation, business activity for significant charities, GST and not-for-profits, imputation credit refundability and rules for donating trading stock.

(10) Tax exemptions – This is the development of a coherent framework for determining when an entity should be eligible for an income tax exemption. The purpose of this review is to provide more consistency.

(11) International – We will see New Zealand continuing to support multilateral work being undertaken at the OECD, as well as considering further changes to New Zealand’s tax rules to address BEPS issues. This work stream also includes double tax agreement (DTA) negotiations and assisting with free trade agreements.

### **What next?**

At the same time as the work programme was released, a Tax and social policy engagement framework (“engagement framework”) was released that governs how engagement will be undertaken on tax policy issues delivered by Inland Revenue. The engagement framework represents a move away from how tax policy consultation has been traditionally undertaken (e.g. large detailed discussion documents), to a more agile approach where there may be earlier and more frequent engagement and a greater variety of engagement methods used with a greater range of stakeholders. The engagement framework should see a flow of information back to submitters, allowing them to understand whether any changes have been made as a result of their submissions and why or why not.

The engagement framework represents a step in the right direction in ensuring that everyone has the ability to contribute thoughts to the design of tax policy in New Zealand.

As noted above, the work programme is very full and requires prioritisation. We will see some things progress quickly and some may continue to sit waiting to be picked up (a number of potential work programme items are carried forward from

previous work programmes). At this stage, there has not been any further signalling as to what will happen or when, so we will have to wait and see.

## **New Zealand**

### **Customs is also interested in your transfer pricing**

Importers who find they need to change the value of goods after importation can be subject to fines and penalties on underpaid GST and customs duty in New Zealand. Where goods are imported from an associated party (such as a parent company or a subsidiary), the value may have to change later due to the transfer pricing rules, which may result in a different amount of GST or customs duty being payable. As from 1 October 2018, some importers have been able to use the provisional value scheme to avoid penalties and interest on these adjustments.

### **What is transfer pricing?**

Transfer pricing is the process of setting prices for the transfer of goods, services, money or intangibles with associated parties in different tax jurisdictions.

### **How are transfer pricing and custom duties interlinked?**

For customs purposes, the transfer price between associated enterprises of goods and certain "add-ons" such as royalties can have a direct impact on determining the customs value and import GST. For goods imported by associated enterprises, due to the special relationship, the transaction value of goods imported may differ from the value of similar goods due to competing incentives. The lower the transfer price, the lower the customs value and import GST. Custom duties and, to a certain extent, import GST can be a toll on a company's profits and competitiveness.

However, there is no convergence between the OECD transfer pricing methods and the methods contained in the World Customs Organisation Valuation Agreement, which can lead to potential difficulties for importers.

### **Customs and Excise Act 2018**

The provisions in the Customs and Excise Act 2018 (Act) came into effect on 1 October 2018. The 1996 Act had become out of step with modern business practices. One of the changes made in the Act relates to importers who cannot determine the value of imported goods at the time of importation or know that the customs value is likely to change after importation. The Act allows for registered importers to use a provisional customs value in an entry for imported goods.

Importers need to determine if the provisional value scheme is appropriate for their circumstances. If it is, importers need to determine whether they automatically qualify and only need to notify NZ Customs, or whether the importer needs to apply to use the scheme.

Without applying the provisional value scheme, under the Act, adjustments post importation would be subjected to compensatory interest on the GST and duty shortfall and late payment penalties also may arise.

The Act specifies three instances when importers can automatically qualify to use provisional values. These are:

- (1) There is transfer pricing that is governed by an advance pricing agreement;
- (2) The importer pays royalties and licence fees in respect of the imported goods; or
- (3) The importer pays "further proceeds" to another party.

If the provisional value scheme is used, you must provide Customs with a final value within 12 months **after** the end of the financial year in which the provisional values were made. For example, where the year end is 31 March 2019, you have until 31 March 2020 to declare the final customs value for all imports made for that income year and the duty balance is then paid or refunded. No compensatory interest is charged on the difference between the provisional duty and the final duty.

### **What does it mean if you do not qualify automatically?**

You can apply and if your application is approved, you may still use provisional values to determine the customs value of the imported goods.

The Act has led to greater collaboration between Customs and the transfer pricing team at Inland Revenue in order to conform compliance with both regimes.

### **It's never too late...**

If you have a transfer pricing arrangement that involves the supply and acquisition of goods (i.e. the supplier is an associated party and you have a cross-border arrangement for the importation of goods), you should consider the provisional value scheme as it is not too late to apply. Documentation is required to support the transfer pricing method applied to determine the provisional value and to explain why the final value at the time of importation is not available.

## **South Africa**

### **Certain customs duty rates to reduce in line with SADC-EU EPA**

Effective 1 January 2020, South Africa will amend the rates of customs duties on the following products:

- For fish classified under tariff subheadings (TSH) 0302.13, 0302.14, 0303.14 and 0305.41, the customs duty will be reduced by 17% of the most favored nation (MFN) rate of customs duty. The effect will be a reduction of the customs duty rate for TSH 0302.13 and 0302.14 from 8.25% to 4.25%. TSH 0303.14 will reduce from 15% to 12.5%, and TSH 0305.41 from 8.25% to 4.26%.
- For other fish products classified in chapters 3 and 16 of the Harmonized Customs Tariff book, the customs duty will be reduced by 50% (based on the MFN rate). The effect will be a reduction of the customs duty rate from 25% to 12.5% in general.

The reductions are based on the terms of the Economic Partnership Agreement (EPA) between the EU and the South African Development Community (SADC), which entered into force in October 2016. The agreement requires South Africa to amend the customs duty for different types of products listed in schedule 1, part 1 of the Customs and Excise Act No. 91 of 1964 on an annual basis.

## South Africa

### Round up of recent tax developments (July 2019)

Below is a summary of some recent tax developments in South Africa, including the issuance of draft provisions to be included in the 2019 Taxation Laws Amendment Bill that require additional consultation, as well as draft amendments to the customs and excise rules.

### Legislation

**Draft Taxation Laws Amendment Bill:** On 10 June 2019, National Treasury issued a media statement announcing the publication of an initial batch of provisions to be included in the 2019 draft Taxation Laws Amendment Bill and an explanatory memorandum on the bill, and soliciting public comments (which were due by 25 June 2019). The initial batch of provisions includes amendments on the following topics that the National Treasury considers more urgent than other provisions to be included in the bill and that require additional consultation:

- Addressing abusive arrangements aimed at avoiding the anti-dividend stripping rules; and
- Aligning the effective date of tax-neutral transfers between retirement funds with the effective date of retirement reforms.

National Treasury expects to publish the full text of the draft bill, including a revised version of the initial batch of provisions, in mid-July 2019, and there will be an additional period for comments on the full bill.

## Customs and excise rules

**Draft rule amendment notice:** A draft rule amendment notice was released for comments on certain changes to the customs and excise rules, which would mainly allow certain registration and licensing applications to be submitted in either electronic or paper format by introducing an electronic submission system through a phased approach. Drafts were issued on 19 June 2019 of the proposed amendments to the rules (rules under sections 8, 59A and 60 of the Customs and Excise Act, 1964), and additional proposed amendments that are consequential to the proposed amendments to the rules. Comments on the draft rule amendment notice are due by 19 July 2019.

## South African Revenue Service (SARS) guidance

**Binding General Ruling (BGR) No. 51: Cancellation of registration of a foreign electronic services supplier:** The purpose of this ruling, dated 4 June 2019, is to make arrangements under section 72 of the Value-Added Tax Act to allow a foreign electronic services supplier that will have taxable supplies of a value not exceeding ZAR 1 million in a 12-month period to apply to cancel its VAT registration.

## United States

### State Tax Matters (23 August 2019)

The 23 August 2019 edition of US State Tax Matters includes coverage of the following:

- Tax amnesty developments in Illinois;
- Income/franchise tax developments in California, the District of Columbia, Georgia, New Jersey and Utah; and
- Indirect tax developments in Alabama, Arizona, Louisiana and Wisconsin.

The newsletter also features recent Multistate Tax Alerts:

- *Illinois passes credit reforms*
- *San Francisco updates – superior court rejects challenges to Commercial Rents and Homelessness Gross Receipts Taxes and other developments*

## United States

### State Tax Matters (30 August 2019)

The 30 August 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Florida, Illinois, Massachusetts and New Jersey;
- Credits/incentives developments in Puerto Rico; and
- Indirect tax developments in Colorado, Nebraska, South Carolina and Washington.

## United States

### **State Tax Matters (6 September 2019)**

The 6 September 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Kentucky, Maine and Texas; and
- Indirect tax developments in Alaska, Arizona, Arkansas, Illinois, Iowa, New Hampshire and New Mexico

## United States

### **State Tax Matters (13 September 2019)**

The 13 September 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Alabama, Connecticut, Florida, Kentucky, Mississippi, New Hampshire, New Jersey, New York City and Utah; and
- Indirect tax developments in Alabama, California, Connecticut, Illinois, Minnesota and South Carolina.

The newsletter also features a recent Multistate Tax Alert: *Texas Franchise Tax Rule tightens qualifications for reduced retail/wholesale rate*

## United States

### **State Tax Matters (20 September 2019)**

The 20 September 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in California, Florida, Illinois, Nebraska, Vermont and Wisconsin; and
- Indirect tax developments in Arkansas and Massachusetts.

The newsletter also features recent Multistate Tax Alerts:

- *Illinois revises definition of compensation paid in state, employer withholding requirements*

*Texas enacts provisions creating a phased-in deduction for certain costs relating to federal government contracts*



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