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Constitutional Court revokes tax reforms

The Court has ruled that most of the 2019 tax reform law was unconstitutional due to procedural defects. The decision will apply as from 1 January 2020, but the tax reform law will remain in effect during 2019. New law will be presented to the Congress.

Denmark

Rejected VAT refund claims reopened

A court has held that the tax authorities incorrectly denied VAT refunds to non-resident taxable persons who had failed to provide additional information to the tax authorities within the required one-month period in connection with a VAT refund application.

India

GST council recommends GST changes

Key recommendations of the GST Council at its 37th meeting held on 20 September 2019 include changes to the GST rates on various goods and services (to be introduced by notifications effective as from 1 October 2019) and amendments to GST law and procedures.

The Netherlands

Ability to act as exporter

From 1 December 2019, only companies established in the EU customs territory will be able to act as exporter; this only applies with respect to the export of Union goods. Non-EU established companies should assess supply chains, Incoterms, and contracts.

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New Zealand

Snapshot of recent developments (October 2019), including GST

New Zealand

GST rules for nonresident retailers selling low value goods to New Zealand consumers (Contact: Allan Bullot)

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I. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 4 de septiembre de 2019. Asunto C-71/18, KPC Herning.

Directiva 2006/112/CE — Venta de un terreno sobre el que, en el momento de la entrega, se levanta un edificio — Calificación — Artículos 12 y 135 — Concepto de "terreno edificable" — Concepto de "edificio" — Apreciación de la realidad económica y comercial — Evaluación de los elementos objetivos — Intención de las partes».

Se plantea al TJUE si el artículo 12, apartados 1, letras a) y b), 2 y 3, y el artículo 135, apartado 1, letras j) y k), de la Directiva del IVA deben interpretarse en el sentido de que una operación de entrega de un terreno sobre el que, en el momento de la entrega, se levanta un edificio puede calificarse de entrega de un «terreno edificable» cuando las partes tienen la intención de que el edificio sea demolido total o parcialmente con objeto de dejar espacio para un nuevo edificio.

Concluye el Tribunal que la entrega de un terreno sobre el que ya se levanta un edificio que se encuentra en perfecto estado de uso, y la posterior reventa de ese bien, son económicamente independientes y no forman una operación única pese a que la intención de las partes fuera la demolición total o parcial del edificio a fin de dejar espacio para un nuevo edificio. Por consiguiente, no podrá calificarse como entrega de un terreno edificable la venta de un terreno junto con un edificio, supeditada a la posterior venta y demolición del edificio.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 5 de septiembre de 2019. Asunto C-145/18, Regards Photographiques.

Directiva 2006/112/CE — Tipo reducido del IVA — Objetos de arte — Concepto — Fotografías tomadas por el artista y reveladas e impresas por el autor o bajo su control, firmadas y numeradas dentro del límite de treinta ejemplares — Normativa nacional que limita la aplicación del tipo reducido de IVA únicamente a las fotografías de carácter artístico.

Se cuestiona al TJUE qué requisitos deben reunir las fotografías para ser consideradas objetos de arte que pueden beneficiarse del tipo reducido de IVA, con arreglo al artículo 103, apartados 1 y 2, letra a), de la Directiva del IVA, en relación con el artículo 311, apartado 1, punto 2, de dicha Directiva y con su anexo IX, parte A, punto 7, y, en particular, si a tal efecto deben presentar carácter artístico.

En primer lugar, responde el TJUE que tales criterios deben ser criterios objetivos. Especifica el Tribunal que las fotografías deben haber sido tomadas por el autor de las mismas, reveladas e impresas por él o bajo su control, firmadas y numeradas con un límite de treinta ejemplares en total, no pudiendo ser consideradas objetos de arte cuando su origen provenga de una producción masiva sin un control del fotógrafo.

Concluye el Tribunal que es contraria al Derecho de la Unión una normativa nacional que limita la aplicación del tipo impositivo reducido del Impuesto a las entregas de fotografías de carácter artístico, si esta última condición se supedita a una valoración de la administración tributaria nacional que no se ejerce de acuerdo con unos criterios objetivos, claros y precisos, fijados por la normativa nacional.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 18 de septiembre de 2019. Asunto C-700/17, Peters.

Directiva 2006/112/CE — Artículo 132, apartado 1, letras b) y c) — Exenciones — Hospitalización y atención médica — Prestaciones sanitarias a personas físicas realizadas en el ejercicio de profesiones médicas y sanitarias — Inexistencia de relación de confianza entre quien presta la asistencia y el paciente.

En primer lugar, concluye el TJUE que la exención del IVA establecida en el artículo 132, apartado 1, letra c), de la Directiva 2006/112 comprende las prestaciones de asistencia realizadas por un médico especialista que lleva a cabo análisis y diagnósticos clínicos en un laboratorio, pese a que estas prestaciones no reúnan todos los requisitos tasados en la letra b) de dicho artículo (que regula la exención de las prestaciones de servicios de hospitalización y asistencia sanitaria realizadas por entidades de Derecho público o por establecimientos hospitalarios, centros de cuidados médicos y de diagnóstico y otros establecimientos de la misma naturaleza debidamente reconocidos).

Esto se debe a que no se respetaría el principio de neutralidad fiscal del IVA si los análisis clínicos prescritos por médicos generalistas quedaran sometidas a distintos regímenes del IVA dependiendo del lugar en que se efectuaran, pese a ser iguales, teniendo en cuenta la formación profesional con la que cuentan quienes los llevan a cabo.

Establece igualmente el Tribunal que esta exención del IVA no está supeditada al requisito de que la prestación de asistencia de que se trate se realice en el marco de una relación de confianza entre el paciente y quien presta la asistencia. Y ello de acuerdo con la Sentencia

del TJUE correspondiente al asunto Krüger (C-141/00), en la que se precisaron los requisitos a los que quedaba supeditada la exención del IVA prevista, sin incluirse entre ellos la existencia de una relación de confianza entre el paciente y el que presta la asistencia.

II. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V2118-19, de 12 de agosto de 2019 y nº V2179-19, de 14 de agosto de 2019.

Intermediación para la contratación de tarjetas de crédito por vía telefónica — Si dicha actividad está exenta del Impuesto sobre el Valor Añadido.

En la CV nº V2118-19, la consultante es una entidad mercantil que presta servicios de intermediación para la contratación de tarjetas de crédito por vía telefónica. Las bases de datos a partir de las cuales se identifican a los potenciales clientes y se comienza con el proceso de intermediación pueden ser de terceros o bien de la propia entidad financiera con respecto a la que se intermedia a cambio de una contraprestación.

En la CV nº V2179-19, la consultante es una entidad mercantil que presta servicios de intermediación para la contratación de tarjetas de crédito a través de dos canales: puntos de venta presenciales o venta telefónica. En la modalidad de venta telefónica, las bases de datos a partir de las cuales se identifican a los potenciales clientes y se comienza con el proceso de intermediación pueden ser de terceros o bien de la propia entidad financiera con respecto a la que se intermedia a cambio de una contraprestación.

Para ambos supuestos, la DGT realiza el mismo análisis y expone las mismas conclusiones.

En primer lugar, este Centro directivo comienza analizando la tributación de la comercialización de productos financieros. En este sentido, a la luz del artículo 20. Uno.18º letra m) de la Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido se establece que se hallará exenta la mediación de las operaciones financieras descritas en letras anteriores del mismo número. No obstante, el mencionado precepto es trasposición al derecho interno de lo dispuesto por el artículo 135 de la Directiva 2006/112/CE del Consejo, de 28 de noviembre de 2006, relativa al sistema común del Impuesto sobre el Valor Añadido (DO L 347 de 11.12.2006).

En este sentido, el acuerdo comunitario hace alusión al concepto de “negociación” en lugar de “mediación”. Este Centro directivo, de conformidad con la jurisprudencia del Tribunal de Justicia de la Unión Europea y del Tribunal Supremo entiende que ambos conceptos deben de conciliarse.

Por otro lado, este Centro directivo dilucida si la labor desarrollada por la consultante puede definirse como mediación, o, por el contrario, debe catalogarse como un mero suministro de información o publicidad del consultante.

En concreto, entiende que el objetivo de la publicidad es que sean los potenciales clientes los que contacten con el propio proveedor del servicio o del producto, agotando sus efectos en un estadio previo al de la contratación. A diferencia de la mediación no hay labor de introducción ni posible asesoramiento del producto.

En relación con la diferencia entre suministro de información y mediación establece que la última no puede limitarse a la mera recolección de información y añade que puede entenderse que existe intermediación cuando se realiza al menos alguno de los siguientes servicios:

1º. El mediador concluye un contrato como agente de la entidad;

2º. El mediador asesora y negocia los términos del contrato en nombre y por cuenta del cliente para la conclusión del contrato;

3º. O, el mediador pone en contacto al cliente con la entidad para la formalización del contrato.

Se concluye alegando que nada obsta para que resulte de aplicación la mencionada exención siempre y cuando se cumpla con los requisitos necesarios para gozar de la condición de intermediaria financiera.

2. Dirección General de Tributos. Contestación nº V2125-19, de 12 de agosto de 2019.

Ejecuciones de obra de bienes muebles como entrega de bienes o prestación de servicios.

La consultante es una sociedad mercantil con sede en el territorio de aplicación del impuesto (sociedad A) que forma parte de un grupo empresarial de la industria química del que también forman parte otras dos sociedades (la sociedad B y la sociedad C), ambas con sede en la República Federal de Alemania. La sociedad B encarga a la sociedad A la fabricación de un producto utilizando un componente químico que le remite previamente. La sociedad B remite igualmente de forma gratuita

a la consultante los envases en los que la misma deberá remitir a la sociedad B el producto final. El valor del componente químico remitido no supera el 40 por ciento de la base imponible del producto final. Puede ocurrir también que la sociedad C sea la que contrate la fabricación con la sociedad B que, a su vez, lo subcontratará con la sociedad A. En ese caso, el componente químico es remitido directamente por la sociedad C a la sociedad A, así como también los envases necesarios para el transporte del producto terminado con destino directo a la sociedad C. Tampoco en este caso el importe de los materiales aportados supera el 40 por ciento de la base imponible del producto final. Por último, en la fabricación de alguno de los productos encargados por la sociedad C a la sociedad B y ésta, a su vez, a la consultante, los componentes químicos suministrados por la sociedad C a la consultante suponen la parte mayoritaria de la materia prima total utilizada por la consultante para su fabricación.

En primer lugar, este Centro Directivo, aborda la cuestión de si dichas operaciones habrían de calificarse como entregas de bienes de acuerdo con el artículo 8 de la Ley de IVA o como prestación de servicios de acuerdo con el 11 de la citada Ley. En este sentido, cita distintas consultas vinculantes como la V3218-15 que abordan la naturaleza de las ejecuciones de obra sobre bienes muebles.

Así pues, en la citada consulta se concluye que habría que valorar en cada caso concreto la importancia de la materia prima respecto del aditivo para determinar si se está ante una u otra operación. No obstante, si la materia prima aportada por el cliente representa algo más de la tercera parte del valor final del producto, y el aditivo representa una tercera parte del valor del producto, y el resto se corresponde con la imputación de los costes del servicio de producción efectuado por la consultante, cabría entender que la consultante realiza una prestación de servicios.

Aplicando lo anterior al supuesto objeto de consulta, las operaciones de fabricación en cada uno de los casos se calificarían de la siguiente manera:

- Las efectuadas por la consultante para la sociedad B, que aporta una cantidad de materiales de hasta el 40% del valor total del producto acabado tendrán la calificación de entregas de bienes, salvo que la parte de materiales aportados por la consultante en relación con el valor final de producto acabado fuera inferior al coste de las operaciones de fabricación en cuyo caso tendría que calificarse como prestación de servicios.

- Si las operaciones son encargadas por la sociedad C a la sociedad B y ésta, a su vez, la subcontrata con la consultante, la sociedad A. En algunos casos, el componente químico remitido a la consultante para la obtención del producto final, representa una parte mayoritaria del producto final, en cuyo caso la fabricación efectuada por la sociedad consultante habría de ser calificada como de prestación de servicios. Sentado lo anterior, debe indicarse que, en aquellos casos en que el pedido sea efectuado por la sociedad C a la sociedad B y ésta, a su vez, a la sociedad A, la consultante, se debe entender que se efectúan dos operaciones diferenciadas.

En segundo lugar, concluye que siendo operaciones localizadas en el TIVA-ES en virtud del artículo 68 de la Ley de IVA, las entregas de bienes efectuadas por la consultante a la sociedad B y transportadas a las instalaciones de esta última en Alemania, estarán sujetas y exentas del impuesto cuando concurran los requisitos previstos en los artículos 25 de la Ley del impuesto y 13 del Reglamento.

No obstante lo anterior, para los supuestos en los que se efectúan dos operaciones diferentes y un único transporte (en aquellos casos en que el pedido sea efectuado por la sociedad C a la sociedad B y ésta, a su vez, a la sociedad A), deberá determinarse con cuál de las transacciones está relacionado el transporte pues sólo esa operación estará exenta de conformidad con lo dispuesto en el artículo 138 de la Directiva y el artículo 25 de la Ley. A este respecto, es criterio de este Centro directivo que el análisis del vínculo del transporte intracomunitario a una u otra entrega debe efectuarse en cada caso concreto, debiéndose tener en cuenta lo establecido en relación con la prueba en el capítulo V del título I del libro IV del Código Civil, así como lo dispuesto en los capítulos V y VI del título I del libro II de la Ley de

Enjuiciamiento Civil. Concretamente, el artículo 299 de la Ley 1/2000 enumera los medios de prueba.

Aplicando lo anterior al supuesto objeto de consulta y teniendo en cuenta las circunstancias en las que se producen las entregas, parece inferirse que el transporte intracomunitario del producto final está vinculado con la entrega efectuada por la consultante a favor de la sociedad B, su cliente, estando por tanto sujeta y exenta del impuesto.

Por tanto, la entrega efectuada por la sociedad B a favor de la sociedad C estará no sujeta al IVA.

3. Dirección General de Tributos. Contestaciones nº V2153-19, V2156-19 y V2182-19 de 13 y 14 de agosto de 2019.

Indemnización.

En las presentes contestaciones vinculantes, la DGT se ha pronunciado sobre los siguientes supuestos:

Una sociedad cooperativa figura como tomador de un contrato de seguro agrario de daños, y en otros casos como tomador y beneficiario de un contrato de seguro agrario combinado. En caso de siniestro por daños en la explotación agraria, la cooperativa percibe la indemnización de la entidad aseguradora, que, a su vez, transfiere a los socios.

Recuerda la DGT que es criterio reiterado de este Centro directivo que, con carácter general, para determinar si existe una indemnización a los efectos del IVA, es preciso examinar en cada caso si la cantidad abonada tiene por objeto resarcir al perceptor por la pérdida de bienes o derechos de su patrimonio o, por el contrario, si su objetivo es retribuir operaciones realizadas que constituyen algún hecho imponible del Impuesto. Es decir, habrá que analizar si el importe satisfecho por la entidad aseguradora se corresponde con un acto de consumo, esto es, con la prestación de un servicio autónomo e individualizable, o con una indemnización que tiene por objeto la reparación de ciertos daños o perjuicios.

La DGT argumenta sus contestaciones vinculantes siguiendo el criterio asentado por el TJUE en la sentencia de 29 de febrero de 1996, asunto C-215/94 (sentencia Mohr), sentencia de 18 de diciembre de 1997, asunto C-384/95 (sentencia Landboden), y sentencia de 3 de marzo de 1994, asunto C-16/93 (sentencia Tolsma). En esa última sentencia, el TJUE estableció que una prestación de servicios sólo se realiza «a título oneroso» en el sentido del número 1 del artículo 2 de la Sexta Directiva y, por tanto, sólo es imponible si existe entre quien efectúa la prestación y su destinatario una relación jurídica en cuyo marco se intercambian prestaciones recíprocas y la retribución percibida por quien efectúa la prestación constituye el contravalor efectivo del servicio prestado al destinatario.

En base a lo anterior, en el supuesto objeto de consulta, la cantidad percibida por la cooperativa, que es objeto de posterior repercusión a sus socios por daños sufridos en los bienes asegurados de estos últimos, no constituye contraprestación de ninguna operación efectuada sujeta al IVA. La función de dichas cantidades es resarcir a los asegurados los daños que el siniestro les ha causado.

De acuerdo con lo expuesto, concluye la DGT que dichos importes tienen la consideración de indemnización a efectos del IVA y no forman parte de la base imponible de ninguna operación sujeta a dicho Impuesto. En consecuencia, la cooperativa no debe repercutir el IVA con motivo de la transferencia de las referidas indemnizaciones a sus socios.

4. Dirección General de Tributos. Contestación nº V2158-19, de 13 de agosto de 2019.

Intermediación financiera – Exención artículo 20.Uno.18º de la Ley del IVA.

La consultante es una entidad mercantil titular de una aplicación informática a la que se puede acceder vía móvil o por la página web. Esta aplicación permite al público la gestión de sus finanzas, poniendo a su disposición información de entidades financieras y la posibilidad de contratar productos financieros en línea.

A su vez, la sociedad consultante es la matriz de un grupo de entidades, donde dos de ellas tienen como actividad principal la mediación en la comercialización de tarjetas de crédito y concesión de préstamos.

En esta consulta, la DGT analiza la posible aplicación de la exención establecida en la letra m) del artículo 20.Uno.18º de la Ley del IVA, en relación con los servicios de intermediación financiera, publicidad y cesión de datos realizados por las dos entidades filiales de la consultante.

Para dar contestación a las múltiples cuestiones suscitadas en esta consulta, la DGT reitera los criterios expresados previamente en consultas anteriores y que, asimismo, recogen el criterio establecido por la jurisprudencia del TJUE (sentencias CSC Financial Services, Ltd, asunto C-235/00 y Volker Ludwig, asunto C-453/05) y la doctrina del TEAC (Resolución de 25 de octubre de 2018). En virtud de lo anterior, la DGT concluye y reitera que:

- Puede entenderse que existe intermediación en el sentido de la letra m) del artículo 20.Uno.18º de la Ley del IVA, cuando se realiza al menos alguno de los siguientes servicios:

  1º. El mediador concluye un contrato como agente de la entidad;

  2º. El mediador asesora y negocia los términos del contrato en nombre y por cuenta del cliente para la conclusión del contrato;

  3º. O, el mediador pone en contacto al cliente con la entidad para la formalización del contrato.

- La existencia de vinculación no desvirtúa la aplicación de la exención del citado artículo.

- Resulta posible la existencia de un servicio de mediación en cadena, siempre que cada una de las entidades que actúe como intermediario en la cadena, realice un servicio de intermediación exento en los términos de la letra m) del artículo 20.Uno.18º de la Ley del IVA.

- El resto de servicios prestados entre las partes, tales como publicidad, marketing y cesión de datos sobre los usuarios, no tendrán la naturaleza financiera, ni se pueden calificar como accesorios de los mismos, de manera que no quedarían amparados por la exención de la letra m) del artículo 20.Uno.18º de la Ley del IVA.

5. Dirección General de Tributos. Contestación nº V2240-19, de 20 de agosto de 2019.

Modificación base imponible – Concurso de acreedores – Entidades vinculadas.

La consultante es partícipe de una Sociedad Agraria de Transformación, sin que su grado de participación le permita ejercer directa o indirectamente el control sobre la toma de decisiones. A su vez la Sociedad Agraria de Transformación es socio mayoritario de una Sociedad Limitada declarada en concurso voluntario.

La entidad consultante tiene un crédito con una Sociedad Limitada dependiente de la Sociedad Agraria de Transformación declarada en concurso voluntario, y se plantea la posibilidad de modificar la base imponible, en virtud de lo dispuesto en el artículo 80. Tres de la Ley del IVA.

En su análisis, la DGT recuerda la imposibilidad de modificar la base imponible relativa a créditos con personas o entidades vinculadas en situación de concurso, en virtud de lo dispuesto en la letra c) del artículo 80. Cinco. 1ª de la Ley del IVA.

Asimismo, la DGT precisa que para valorar si existe vinculación en estos supuestos, deberá acudirse al concepto de vinculación establecido en el artículo 79. Cinco de la Ley del IVA.

6. Dirección General de Tributos. Contestación nº V2262-19, de 20 de agosto de 2019.

Servicios prestados por una agrupación sin ánimo de lucro – A.I.E. - Exención artículo 20.Uno.6º de la Ley del IVA.

La entidad consultante es una organización empresarial de ámbito estatal representativa del sector sanitario. Diferentes centros sanitarios van a constituir una agrupación sin ánimo de lucro, la cual prestará, única y exclusivamente a sus miembros, servicios de desinfección específicos de centros sanitarios.

La consultante plantea la aplicación de la exención recogida en el artículo 20.Uno.6º de la Ley del IVA a los servicios de desinfección prestados por la agrupación sin ánimo de lucro a sus partícipes.

Por su parte, la DGT comienza aclarando la naturaleza de la prestación de servicios como "de desinfección" y no "de limpieza" con vistas a iniciar el análisis de la aplicación de la mencionada exención del IVA.

Pues bien, haciendo referencia a otras contestaciones a consultas vinculantes, tales como la V2164-11, de 21 de septiembre de 2011 y V1279-14, de 13 de mayo de 2014, la DGT detalla los siguientes requisitos necesarios para que dicha exención sea de aplicación:

a) La actividad realizada deberá de tratar de prestación de servicios.

b) El prestador deberá de ser una unión o agrupación que se constituya sin ánimo de lucro (ej. AIE).

c) La agrupación debe de realizar una actuación auxiliar, necesaria para el desarrollo de las actividades ejercidas por sus socios que no tenga carácter de servicios generales, tales como la limpieza, seguridad, asesoramiento jurídico y/o consultoría.

d) La actividad deberá ser prestada de forma exclusiva a sus socios.

e) La forma asociativa podrá ser cualquiera a excepción de las sociedades mercantiles del artículo 122 del Código de Comercio.

f) Los miembros deberán de ser exclusivamente personas que ejerzan actividades exentas o no sujetas que limiten el derecho a deducción.

g) Los servicios deberán de ser necesarios para el desarrollo normal de la actividad ejercida por sus socios.

h) La actividad ejercida deberá de ser distinta de las señaladas en los números 16.º, 17.º, 18.º,19.º, 20.º, 22.º, 23.º, 26.º y 28.º del apartado Uno del artículo 20 de la Ley del IVA.

Con base en lo anterior, la DGT concluye que la exención contemplada en el artículo 20.Uno.6º de la Ley del Impuesto resulta de aplicación a los servicios de desinfección (y no de limpieza) objeto de consulta en el ámbito de los servicios de hospitalización.

III. Country Summaries

Colombia

Constitutional Court revokes most of recent tax reform due to procedural defects

On 16 October 2019, Colombia's Constitutional Court ruled that the 2019 tax reform law (Law 1943 of 2018) was unconstitutional. The court announced its decision (C-481/19) in Official Communique D-3207.

The court revoked the Financing Law almost in its entirety due to procedural defects because the law was not properly reviewed in Congress and the draft submitted for review by the Senate to the Chamber of Representatives contained errors, which breached constitutional publication guidelines and the legislative process. Certain segments of the law were not revoked, including the measures addressing the dividend withholding tax on registered business groups, the audit group created to review free trade zones and the measures on tax sustainability. The Constitutional Court's decision will not affect the tax treatment of transactions that already have been carried out under the tax reform law.

The decision will apply as from 1 January 2020, but the tax reform law will remain in effect during 2019. The government has announced that a new law would be presented to the Congress, which may ratify, abolish or modify the provisions of Law 1943 of 2018.

If Congress does not approve and publish the new proposed law by 31 December 2019, the rules abolished or modified by Law 1943 of 2018 will become effective again as from 1 January 2020.

Denmark

Court rules certain previously rejected VAT refund applications may be reopened

In a 9 September 2019 ruling, a Danish court of first instance held that the Danish tax authorities had incorrectly denied VAT refunds to taxable persons resident in another EU member state who had failed to provide additional information to the

tax authorities within the required one-month period in connection with a VAT refund application. As a consequence of the decision, taxpayers may request the reopening of refund applications dating from 2014.

EU directive 2008/09/EC (formerly the eighth directive) enables businesses established and registered for VAT purposes within the EU to request a refund of the VAT incurred on business expenses in other EU member states, subject to certain conditions. If necessary, the member state issuing the refund may request additional information, which the applicant must provide within one month of the request.

In a Danish case, the taxpayer did not receive the request for additional information from the Danish tax authorities and consequently failed to provide the information by the deadline. The tax authorities rejected the refund application. The taxpayer brought an action against the decision to the Danish National Tax Board. The board found in favor of the tax authorities and the taxpayer then appealed to a Danish court of first instance. The taxpayer requested the court to postpone its decision until the Court of Justice of the European Union (CJEU) had issued its judgement in a case (C-133/18) that had been referred by the French Montreuil Administrative Court, concerning EU companies not established in France that had submitted VAT refund claims for VAT incurred in France and whose claims had been rejected on the grounds that the companies had not responded within one month to a request for additional information from the tax authorities.

The CJEU issued its ruling on 2 May 2019, concluding that the one-month period to provide additional information requested in connection with a refund application is not a mandatory time period. If the one-month period is exceeded or the applicant fails to reply, the applicant does not lose the possibility of amending the refund application by subsequently providing the additional information to establish the right to the VAT refund.

Applying the principles of the CJEU judgement, the Danish tax authorities concluded that the Danish practice of rejecting VAT refund claims based on a failure to provide additional information within the one-month period is not compatible with EU law. The Danish court of first instance now has reached the same conclusion.

Taxpayers whose refund application has been rejected by the Danish tax authorities on this basis now may apply to reopen the refund claim. In accordance with Denmark’s statute of limitations, claims may be made in respect of previously rejected applications dating from 2014.

India

GST council recommends changes to rates and compliance procedures

Key recommendations of India's goods and services tax (GST) council at its 37th meeting held on 20 September 2019 include changes to the GST rates on various goods and services, and amendments to GST law and procedures.

Goods and services

The council's recommendations in relation to goods and services will be introduced by notifications effective as from 1 October 2019 and include the following:

Goods

- An increase in the GST rate on caffeinated beverages from 18% to 28%, with an additional 12% compensation cess;
- An increase in the GST rate on goods falling under chapter 86 belonging to the rail coach industry from 5% to 12%, with no refund of accumulated input tax credit (ITC);
- An exemption from GST until 2024 for imports of certain defense goods not manufactured in India;
- A reduction to 5% in the various GST rates applicable to specified goods used for petroleum operations undertaken under the Hydrocarbon Exploration Licensing Policy;
- A reduction in the compensation cess from 15% to 3% and 1% for diesel and petrol vehicles, respectively, designed to carry 10-13 passengers, with an engine capacity of 1,500cc (diesel) and 1,200cc (petrol), and a length not exceeding four meters;
- The introduction of a system allowing concessions on spare parts temporarily imported by foreign airlines to repair aircraft while in transit in India, in accordance with the Chicago Convention on Civil Aviation;
- The introduction of an option to pay GST at 18% of the transaction value at the time of disposal of certain goods used in petroleum operations, provided GST at 5% was paid at the time of the original supply and that the goods are certified as non-serviceable by the Directorate General of Hydrocarbons; and
- A restriction on the refund of compensation cess on tobacco products where the inverted duty structure applies.

Services

- A reduction in the GST rate on hotel tariffs as follows:

Daily tariff	Current GST rate	Proposed GST rate
Up to INR 1,000	Nil	Nil
INR 1,001 to INR 2,500	12%	12%
INR 2,501 to INR 7,500	18%	12%
Over INR 7,500	28%	18%

- A reduction in the GST rate on outdoor catering services provided by hotels with a published daily tariff not exceeding INR 7,500 from 18% with ITC, to 5% without ITC;

- A reduction from 18% to 12% in the GST rate on most supplies of machine job work, e.g. in the engineering industry;

- An exemption from GST on warehousing and storage of certain foodstuffs including cereals, pulses, fruits, nuts and vegetables, spices, rice, coffee and tea;

- An extension until 30 September 2020 of the conditional GST exemption for goods exported by air or sea;

- A GST exemption for services provided by an intermediary to a supplier or recipient of goods where both the supplier and recipient are located outside India;

- The issue of a notification in respect of certain research and development (R&D) services provided by Indian pharmaceutical companies to foreign recipients to be the location of the recipient;

- Clarification that the place of supply of chip design software R&D services provided to foreign clients by using sample test kits in India is the location of the recipient; and

- The introduction of an option for authors registered for GST to pay tax on royalties received from publishers on a forward charge basis.

The council proposed measures to facilitate trade, including the payment of integrated goods and services tax (IGST) at 18% on securities lending under the reverse charge mechanism and the payment of 5% GST on vehicle rental under the reverse charge by corporate entities when the rental agreement is with a GST-registered person other than a body corporate.

The council also recommended that the scope of "services of exploration, mining or drilling of petroleum crude or natural gas or both," and the taxability of passenger service and user development fees levied by airport operators be clarified.

Law, procedure and clarifications

The council made a number of recommendations in the area of GST law and procedure, to be introduced by subsequent notifications and orders, including the following:

- Waiver of the requirement for composition dealers (required to pay GST at a specific rate on total sales) to file annual returns on Form GSTR-9A for the financial years 2017-18 and 2018-19 and making filing of an annual return (Form GSTR-9) optional for regular taxpayers with turnover not exceeding INR 20 million;

- Establishment of a Committee of Officers to consider simplification of the annual return forms and reconciliation statement;

- Deferral of the requirement to file returns in the new format until April 2020. The current forms GSTR-1 and GSTR-3B would continue to be used until March 2020;

- Proposed restrictions on the utilization of ITC by the recipient where the supplier does not provide details of outward supplies;

- Extension of the deadline for filing appeals against orders of the Appellate Authority before the GST Appellate Tribunal;

- Introduction of an integrated refund system as from 24 September 2019, with payment of refunds by a single authority;

- Clarification regarding the supply of information technology-enabled services made by the supplier on its own account or as an intermediary (superseding Circular No. 107/26/2019-GST issued on 18 July 2019);

- Clarification regarding the GST treatment of secondary or post-sales discounts and the withdrawal with retroactive effect of Circular No. 105/24/2019-GST issued on 28 June 2019; and

- Introduction of a mandatory requirement for taxpayers claiming a refund of GST to have an Aadhaar (a unique 12-digit identification number). A decision in principle already has been taken linking the Aadhar with GST registration.

The Netherlands

Non-EU companies can no longer act as exporter from the Netherlands as per December 1, 2019

In short this will mean it will no longer be allowed to report a non-EU established company as 'exporter' of the goods in Box 2 of the customs export declaration as of December 1, 2019.

Please note that the requirement for the exporter to be established in the customs territory of the EU only applies in case Union goods are being exported. Non-EU established companies can still be reported as 'exporter' in respect of the re-export of non-Union goods.

For the more technical aspect of this matter we would like to refer to our previous publication of July 2018. For more background, please check the Guidance Documents provided by the European Commission in July 2019 on the definition of exporter and the specific requirements.

VAT implications

In the Netherlands the application of the VAT zero rate for exports is not automatically linked to being the exporter. It is however important to maintain a proper audit trail (in Dutch 'boeken en bescheiden') to substantiate that the transaction for which the VAT zero rate is applied can be linked to the export transaction. We advise to make sure that the export declaration can still be part of this audit trail.

Next steps

Non-EU established companies need to prepare for the upcoming enforcement by the Dutch customs authorities. Please note that this could also be of importance from a customs, VAT and regulatory compliance point of view in relation to Brexit in case UK established companies export goods from the Netherlands.

Furthermore, non-EU established companies are advised to assess their supply chain, Incoterms and contractual arrangements with third parties in order to ensure no problems arise from the new approach of the Dutch customs authorities as of December 1, 2019.

Other news

OECD

Publications released on various tax administration and policy issues

During September 2019, the OECD released a number of publications relating to tax administration and policy, including the following:

- The 2018/19 annual report from Tax Inspectors Without Borders (report|related news release), an initiative to address tax avoidance by multinational enterprises in developing countries, which was released on 25 September 2019 and which indicates that the initiative has resulted in nearly USD 500 million in additional revenue for developing countries from its launch in 2015 through April 2019;

- *Tax Administration 2019* (report | related news release), released on 23 September 2019, which provides comparative data on tax systems and their administration in 58 advanced and emerging economies and indicates that tax authorities increasingly are moving to electronic administration and using technology to increase tax compliance;

- A report released on 11 September 2019 (report | related news release) that addresses the relationship between tax certainty and tax morale (the intrinsic willingness to pay tax), particularly in developing countries; and

- A working paper released on 9 September 2019 on the potential of individual tax record microdata to make new forms of tax policy analysis possible.

The OECD also announced on 20 September 2019 that a report (*Taxing Energy Use 2019*) that will be available from 15 October 2019 will indicate that taxes on polluting fuels are too low to provide an incentive to move to cleaner energy to reduce the risks and effects of climate change and air pollution.

SACUM-UK

SACU and Mozambique conclude new economic partnership with UK

On 11 September 2019, the five countries of the Southern African Community Union (SACU, namely Botswana, Eswatini, Lesotho, Namibia and South Africa), plus Mozambique (SACUM) announced the conclusion of a new economic partnership agreement (EPA) with the United Kingdom in the event that the UK leaves the EU without an agreement (a "no-deal Brexit"). The new trade agreement will be known as the SACUM-UK-EPA.

Bilateral trade between the UK and SACUM countries currently is facilitated under the terms of the Southern African Development Community (SADC)-EU EPA. The SACUM-UK-EPA effectively will replicate the trading terms of the SADC-EU EPA for the UK with regards to tariffs, quotas, rules of origin, and health and safety regulations to ensure that trade between the two groups of countries (SACUM and the UK) is not disrupted in the event of no-deal Brexit.

Albania

Legislation on free customs zones and tax payments amended

On 2 and 13 August 2019, amendments to legislation in respect of customs and tax procedures, respectively, were published in Albania's official gazette.

Free customs zones

The official gazette published on 2 August 2019 includes a 31 July decision of the Council of Ministers updating provisions of Albania's customs code. The decision sets out the regulatory provisions for the free customs zones, including the general conditions of operation and the applicable procedures for granting authorization to operate in one of the zones.

The amended provisions apply as from 3 August 2019.

Installment payments

The official gazette published on 16 August 2019 includes a 13 August instruction issued by the Minister of Finance and Economy amending an existing instruction on tax procedures.

As from 14 August 2019, the amendment allows taxpayers to agree on installment payment of VAT liabilities resulting from self-assessment or a reassessment by the tax authorities. However, installment payments will not be allowed for:

- Income tax liabilities withheld and self-assessed by the taxpayer; or
- Social and health insurance contributions, collected or withheld by the taxpayer.

Australia

Fuel tax credits denied for fuel lost from service station storage tanks

On 25 September 2019, the Australian Federal Court (Moshinsky J) gave reasons for judgment in Coles Supermarkets Australia Pty Ltd v Commissioner of Taxation [2019] FCA 1582.

Outcome in brief

The taxpayer did not succeed in its claim for entitlement to fuel tax credits on fuel that had leaked or evaporated from storage tanks at its network of Coles Express fuel retailing/convenience stores.

However, His Honor included obiter remarks in the reasons indicating that he disagreed with the Commissioner's view that the statutory four-year time limit had a role in time-limiting fuel tax credit claims asserted by means of objecting to an assessment that did not take the credits into account.

Main issues

Broadly stated, the fuel tax law does not permit fuel retailers to claim fuel tax credits for fuel purchased for resale to customers (i.e. taxable supplies of the fuel). This dispute concerned whether the taxpayer was entitled to claim fuel tax credits in respect of fuel purchased for resale at its Coles Express sites, to the extent such fuel leaked or evaporated from the fuel storage tanks at each site and therefore was not resold. The taxpayer generally lost about 0.3% of the fuel it acquired for resale.

The dispute raised a related issue about the scope of the four-year time limit on entitlements to fuel tax credits as set out in section 47-5 of the Fuel Tax Act 2006 (FTA), particularly whether section 47-5 interacts with the objection and appeal processes provided by part IVC of the Taxation Administration Act 1953 (TAA).

Was the lost fuel for "use" in the taxpayer's enterprise?

The statutory question was whether the fuel acquired by the taxpayer, and later lost through leakage or evaporation, was "acquired for use in carrying on [the taxpayer's] enterprise." An entitlement to claim a fuel tax credit depends on fuel satisfying this "use" test.

Moshinsky J, in finding against the taxpayer on this issue, held that:

- Making a taxable supply of fuel is outside the concept of "use" for the purposes of the FTA.
- It would be artificial to divide the total volume of fuel acquired by the taxpayer into two portions and ascribe a use for resale for one portion and a separate "use" - for leakage/evaporation - for the other portion.
- The loss of the fuel was a largely unavoidable part of the fuel being delivered and stored in tanks at each site for the purpose of resale. The loss was wholly incidental to the taxpayer's activity of reselling the fuel.
- Accordingly, the purpose of acquiring the lost fuel should be characterized in the same way as the purpose of acquiring the bulk of the fuel - namely, for use in making a taxable supply (reselling). This is not a "use" that gives rise to a fuel tax credit entitlement for the lost fuel.

His Honor also found against the taxpayer in relation to the taxpayer's alternative argument that it was entitled to claim a decreasing fuel tax adjustment for the lost fuel, under section 44-5 of the FTA. Briefly, section 44-5 is operative in

circumstances where actual use of fuel differs from the use intended when the fuel was acquired. His Honor held that the word "use" is used in the same sense in both section 41-5 and section 44-5, and in keeping with the reasoning above that the lost fuel shared the same use as the bulk fuel (i.e. being for resale), no change of use occurred.

Four year time limit on FTC claims – role of section 47-5

Although finding against the taxpayer in relation to any entitlement for fuel tax credits for the lost fuel, Moshinsky J considered it appropriate to address the submissions of the parties in relation to the section 47-5 issue.

Section 47-5 places a four-year time limit on entitlements to fuel tax credits. Broadly, taxpayers cease to be entitled to a fuel tax credit "to the extent that it has not been taken into account" in an assessment during the four-year period following the day the taxpayer was required to give the Commissioner a fuel tax return for the relevant fuel tax period.

In relation to fuel lost during the monthly tax periods from July 2012 to January 2014, the taxpayer did not quantify fuel tax credits and include them in the relevant monthly fuel tax returns. Nor did it include them in any subsequent fuel tax returns. Instead, in 2016 the taxpayer claimed an entitlement to fuel tax credits in respect of the lost fuel by objecting to the assessments for the tax periods in question (i.e. the assessments deemed to have been made by the Commissioner upon lodgment of the returns for the July 2012 to January 2014 fuel tax periods).

One of the issues in relation to section 47-5 was whether, as the Commissioner contended, it applies to extinguish entitlement to fuel tax credits that have not been taken into account in an assessment or amended assessment before the end of the four-year period in all cases - even when a taxpayer has initiated the objection and appeal processes in Part IVC of the TAA to preserve claimed entitlements.

His Honor expressed a clear preference for the contentions of the taxpayer, particularly those based on the legislative history of section 47-5. In particular, that:

- Section 47-5 is intended to prevent an unending entitlement to claim credits in a later return where a return has not been lodged or credits have not been claimed;
- Part IVC of the TAA provides for a separate dispute resolution mechanism (i.e. objection and review) once a return has been lodged or an assessment otherwise issued; and

- Once a return has been lodged and objected to, there is no scope for section 47-5 to operate to disentitle a taxpayer to fuel tax credits, as the rights of the taxpayer and the Commissioner are, relevantly, preserved and protected by various provisions of the TAA.

Australia

Director penalty notice and ATO estimates regimes; expansion to GST

Snapshot

The Treasury Laws Amendment (Combatting Illegal Phoenixing) Bill 2019 is currently before the Australian Federal Parliament awaiting debate. The bill contains several measures announced in the 2018-19 budget to counter illegal phoenixing activity.

The tax measures in the bill are likely to take effect from 1 January 2020. They will provide the Australian Taxation Office (ATO) with additional levers to improve goods and services tax (GST) collections, and enable the ATO to act more promptly and with greater pressure applied to taxpayers.

While the bill is broadly concerned with illegal phoenixing, it is important to note that the tax measures in particular, are not confined in their application to circumstances involving phoenixing activity. For this reason, all company directors should familiarize themselves with the scope and potential impact of the measures, both for their company and for themselves.

The bill also come at a time when the ATO has been increasing its focus on assuring GST collections, including by means of its Justified Trust reviews of larger taxpayers. Justified Trust reviews include the evaluation of evidence relevant to the ATO reaching a conclusion about whether the taxpayer is paying the correct amount of GST, and have involved an increased focus by the ATO on board level controls over tax governance.

Overview of the amendments before parliament

The bill proposes a range of amendments to the tax and corporations laws that will have significant implications for company directors. These include:

- In certain circumstances (outlined below), making a company’s directors personally liable for outstanding payments of GST, luxury car tax (LCT) and wine equalization tax (WET);

- Allowing the Commissioner of Taxation to estimate an entity’s "net amount" for a tax period (i.e. the sum of the entity’s GST, LCT and WET liabilities, after necessary adjustments and available credits) and recover the estimated net amount from the entity. This measure applies to GST registered entities of all types, not just companies;

- Authorizing the Commissioner to retain a tax refund that is otherwise payable to an entity if the entity has any outstanding tax returns or has failed to provide other information that it is required to provide to the Commissioner. This discretion is in addition to the Commissioner's existing discretion to retain refunds where a return or other information required under the Single Touch Payroll, BAS or petroleum resource rent tax provisions is outstanding. While the explanatory material accompanying the bill indicates that the government "envisions" that the Commissioner will apply this new discretion in relation to entities identified as "a high risk," including those engaged in illegal phoenixing activity, the amending provisions do not expressly limit the exercise of the discretion in this way. This measure applies to entities of all types. The Commissioner is likely to release guidance material that will clarify the circumstances in which entities would be considered a high risk;

- Preventing directors from improperly backdating resignations in breach of the rule requiring notification be given to the Australian Securities and Investment Commission (ASIC) within 28 days of the resignation date, and preventing directors ceasing to be a director when doing so would leave the company without any directors; and

- Introducing new phoenixing offences to prohibit creditor-defeating dispositions of company property (i.e. transfers of company assets for less than market value [or the best price reasonably obtainable], that prevent, hinder or significantly delay creditors getting access to the company's assets in liquidation). This also includes introducing penalties for persons engaged in or facilitating creditor-defeating dispositions; allowing recovery of such property by liquidators and the ASIC; and allowing recovery of compensation from company officers and others responsible for creditor-defeating dispositions.

Expansion of the director penalty regime

The director penalty regime in Division 269 in Schedule 1 to the Taxation Administration Act 1953 (TAA) currently applies in relation to pay as you go (PAYG) withholding and superannuation guarantee charge (SGC) payment obligations. It operates to enforce the duty of a company's directors to ensure that the company either meets its obligation to pay PAYG withholding and SGC amounts to the Commissioner or, recognizing that the company may be insolvent, goes promptly into voluntary administration or liquidation (director's obligation).

The bill expands the regime to provide for penalties to apply to company directors when a company has an unsatisfied liability to pay an assessed net amount or, in relevant cases, a GST installment amount. Under the GST self-assessment regime, an entity's net amount is deemed to be assessed when the entity lodges the GST return for the tax period.

Coming on top of existing measures in respect of unpaid PAYG withholding and SGC liabilities, these changes have the potential to increase substantially the level of financial exposure for individual directors. They are clearly intended to sharpen the focus of directors on whether their company is meeting its GST, LCT and WET obligations in a timely way, and if not, to take speedy and appropriate action to address the situation.

Specific measures include the following:

- A director will have an obligation to ensure that the company either pays an assessed net amount or GST installment, or is put into voluntary administration/wound up. The director's obligation will arise on the last day of the tax period (the "initial day").

- The director will become liable to a director penalty at the end of the day that payment of the net amount or GST installment is due (the 'due day') if the director has not met their obligation by the due day. In general, the due day is:

  - For GST taxpayers with monthly tax periods, the 21st day of the following month; amd

  - For GST taxpayers with quarterly tax periods (including GST installment taxpayers), the 28th day of the month following the end of the quarter.

- At any time after the due day, the Commissioner will be able to issue a director penalty notice (DPN) for the penalty, if the director's obligation remains unsatisfied.

- The amount of the penalty will be equal to the company's unpaid net amount or GST installment. The general interest charge (GIC) may be applicable.

- The director will have 21 days, beginning when the Commissioner issues the DPN, to satisfy the liability.

- A director that ceases to be a director after the initial day remains subject to the obligation, even if their directorship ceases before the due day.

The expanded DPN regime also applies to companies for whom the Commissioner has estimated net amounts under the expanded estimates regime (see below). That is, directors may also be liable should the Commissioner estimate the company's net amount – for example, in circumstances where the company has not lodged its GST return for the tax period.

Remittance of director penalties

A director penalty generally is remitted if the director complies with their obligation, either before the DPN is issued or within 21 days of it being issued, by:

- The outstanding liability being paid; or
- The company being put into voluntary administration or winding up begins.

However, a lockdown rule applies to director penalties. This effectively prevents their remission (in full or in certain cases in part) if:

- Compliance is by means of the company being put into administration or beginning to be wound up; and
- This action occurs more than three months after the due day for payment of the assessed net amount or GST installment.

That is, if the director is too slow to initiate insolvency action, they will continue to be liable for payment of the director penalty.

The director penalty rules also apply to new directors appointed to companies, even when appointment occurs after the due day for payment of a net amount or GST installment. New directors appointed after the due day have 30 days, starting on the day of their appointment, before they become liable to a director penalty.

Defenses

Several defenses are available to a director in respect of a director penalty issued by the Commissioner:

- Inability to comply with the director's obligation due to illness or other good reason;
- The director having taken all reasonable steps to comply with the obligation, or there were no reasonable steps the director could have taken to ensure compliance with the obligation; or
- The penalty was due to the company adopting a reasonably arguable position (RAP) and it took reasonable care in applying the GST law.

In relation to these defenses, it is worth noting the importance of having contemporaneous documentation that evidences relevant circumstances or actions. This would include, for example, a RAP paper is prepared whenever a potentially contentious GST position is taken by a company.

Expansion of the estimates regime

The estimates regime in Division 268 in Schedule 1 to the TAA currently allows the Commissioner to make and collect estimates of PAYG withholding and SGC liabilities. This regime targets taxpayers who fail to report and pay these liabilities.

The bill expands the regime to allow the Commissioner also to collect estimated "net amounts." This measure will enable the Commissioner to collect GST, LCT and WET liabilities in a more timely way from taxpayers who fail to lodge GST returns.

Where a net amount is estimated by the Commissioner:

- The estimated net amount is deemed to arise and be payable on the day the taxpayer was required to lodge its GST return for the tax period; and
- The GIC applies to an estimate of a net amount if the liability remains unpaid after seven days following the entity's receipt of the estimate notice. Where applied, GIC accrues from the day the GST return was due.

A taxpayer may reduce the amount of an estimated net amount by making a sworn statement that its actual net amount for the tax period was less than the estimate, and providing relevant information including details of its taxable supplies (including taxable supplies of luxury cars), creditable acquisitions, and assessable dealings and wine tax credits for WET purposes.

Importantly, the liability to pay the estimated net amount is distinct from the taxpayer's underlying liability to pay its actual net amount for the tax period (whether the latter has been assessed or not). What this means is that the liabilities exist in parallel. An estimate together with an assessment for the same underlying net amount can both be payable. However, an entity discharging one of these net amount liabilities, by payment or via a credit arising under the tax law, discharges the other liability to the same extent.

When this expansion of the estimates regime is layered with the expanded director penalty regime, the expanded powers of the ATO become much more impactful. In the case of a company with an estimated net amount outstanding, the directors of the company will also be subject to the expanded DPN regime.

Timing

Provided that parliament passes the bill by the last sitting day of 2019 (i.e. 5 December 2019), the tax measures should become operative from 1 January 2020.

Comment

The expansion of the estimates and director penalty regimes should facilitate faster and more effective recovery of GST, LCT and WET from noncomplying taxpayers. The new measures, in conjunction with other recent changes to the GST law, including those targeted at the residential property and precious metals sectors, are likely to make a sizeable contribution to reducing the GST gap.

The ATO's most recent estimate of the GST tax gap was a figure in excess of AUD 5.3 billion (i.e. the difference between the ATO's view of the amount of GST payable under the law and the amount actually collected). (The estimated tax gap (2015-16) for PAYG withholding payments is AUD 3.4 billion, and AUD 2.8 billion for SGC payments).

The fact of the large GST gap is influencing changes to the ATO's administration of GST. There are several indicators that the ATO has been sharpening its focus on assuring accurate and timely GST collections from large corporate taxpayers. Recent changes to the ATO's organizational structure and to its conduct of Justified Trust/Top 100/Top 1000 assurance reviews indicates that the ATO is moving away from dealing with GST compliance in isolation, and has moved to a whole of tax approach with taxpayers. GST assurance reviews will increasingly be run in parallel with Top 100/Top 1000 reviews and, from July 2020, GST will become part of fully integrated tax reviews. Further, the makeup of the Top 100/Top 1000 taxpayer lists is being modified to take account of taxpayers of GST-consequence that have previously not been included.

While driven by the government's reform agenda around illegal phoenixing activity, the tax measures are not worded in a way that limits their application to taxpayers engaged in such activity. The expanded estimates regime will enable the Commissioner to identify and seek to collect outstanding GST, LCT and WET liabilities, with much greater speed than previously, in any case where a company (or other type of entity) has failed to lodge its GST return by the due date for the tax period. In the case of company taxpayers, the expanded director penalty regime will also serve to increase the pressure with which the Commissioner can collect or otherwise pursue outstanding net amount liabilities.

Draft guidance issued by the Commissioner on 6 September 2019 indicates that he intends to use the power to make estimates of unpaid net amounts only in cases where there are reasonable grounds to believe that the taxpayer or related entities are involved in phoenix activity or they are taking action to defeat creditors. The draft guidance also indicates that estimates of unpaid net amounts will generally not be made unless multiple attempts have been made to contact the taxpayer and the taxpayer either fails to engage or refuses to cooperate.

There has been some alarmist reporting in the media, suggesting that the Commissioner will be able to "dream up" any estimated net amount figure he chooses, with no requirement for it to reflect the taxpayer's actual trading activity. The law does require however that an estimate be one that the Commissioner considers reasonable. Further, as has been judicially noted, while the Commissioner has the scope to take a broad-brush liberal approach to making an estimate, the recipient of an estimate – being the one who has all the relevant information – is immediately able to cause the estimate to be reduced by giving a sworn statement

to the Commissioner. The requirement of reasonableness is addressed in the draft guidance, together with examples of information that the Commissioner anticipates may be relevant to making estimates of unpaid net amounts.

In practical terms, the expansion of the estimates and director penalty regimes will add an extra overlay of responsibility for all company directors, and an extra layer of potential personal financial exposure. It is essential for directors of all companies, regardless of size, listing status or business sector, to:

- Familiarize themselves with the scope and potential impact of the measures, both for their company and for themselves personally;
- Understand the key timing aspects of the measures. This will be critical, particularly in relation to taking appropriate action promptly, in order to avoid director penalties becoming locked down (i.e. unable to be remitted);
- Understand the potential implications of these measures in circumstances of accepting appointment as a new director of an existing company and/or retiring as a director;
- Reflect on their level of comfort that their company is fully compliant with its GST reporting and payment obligations (and any LCT and/or WET obligations). If the company has not already reviewed its GST risk management and governance framework, and the efficacy of its GST compliance systems and processes, this is a timely point to do so; and
- Be aware of the importance of producing and retaining contemporaneous documentation that can be relied on as evidence of compliance in the event of a DPN being issued.

Australia

GST apportionment: Credit card issuing businesses

On 4 October 2019, the Australian Taxation Office (ATO) published a draft practical compliance guideline outlining the ATO's proposed goods and services tax (GST) compliance approach in relation to certain credit card/charge card issuing businesses.

The guideline is proposed to apply from 1 January 2020.

Overview

The guideline is broadly concerned with the apportionment of input GST incurred by taxpayers on acquisitions that relate to certain financial supplies that they make (input taxed supplies) and also relate to their taxable and/or GST-free supplies. The

apportionment methods applied by these taxpayers serve to determine the extent to which their acquisitions are made for a "creditable purpose," and thus how much of the input GST they have incurred can be claimed as input tax credits.

At this stage, the guideline only applies to taxpayers making supplies in credit card issuing businesses - in particular, those that issue credit or charge cards in a four-party (open loop) payment system (see diagram below). However, the guideline indicates that the ATO intends to expand the guideline's scope in the future to include other financial supply circumstances.

As to its purpose, the guideline is expressed in terms of informing taxpayers about the framework the ATO intends to use to assess the compliance risk associated with the apportionment methods taxpayers use to determine their extent of creditable purpose. It is also to provide taxpayers with the opportunity to self-assess against the framework to determine their level of compliance risk in the eyes of the ATO and understand the likely intensity of attention from the ATO in the face of the risk level assessed.

Risk assessment framework

The framework set out in the guideline comprises five risk zones/levels, summarized as follows:

Zone	Risk level	Taxpayer approach to apportionment in relation to credit card issuing business (determines risk zone rating)	Approach
White	Unnecessary to assess risk	Customer-owned banking institutions (e.g. credit unions) using an extent of creditable purpose (ECP) rate of 18%, per PCG 2017/15; or there is an agreed approach to apportionment (e.g. private ruling; recently concluded review by ATO resulting in a "low risk" rating) and no material changes have been made by the taxpayer since	No review
Green	Low	Uses ECP rate of no more than 35% (weighted average across all acquisitions for use in the credit card issuing business)	Obtain confirmation that zone requirements are met
Blue	Low to moderate	Uses ECP rate >35%, and the method used to determine the ECP rate meets each of nine, highly prescriptive, requirements	Gain assurance the zone is correct
Yellow	Moderate	Uses ECP rate >35% and not in Blue or Red zones	Possible review/testing of approach
Red	High	Uses ECP rate >35% and any of eight requirements listed is not met	Likely review of the approach, as a priority

Taxpayer actions in response to the guideline

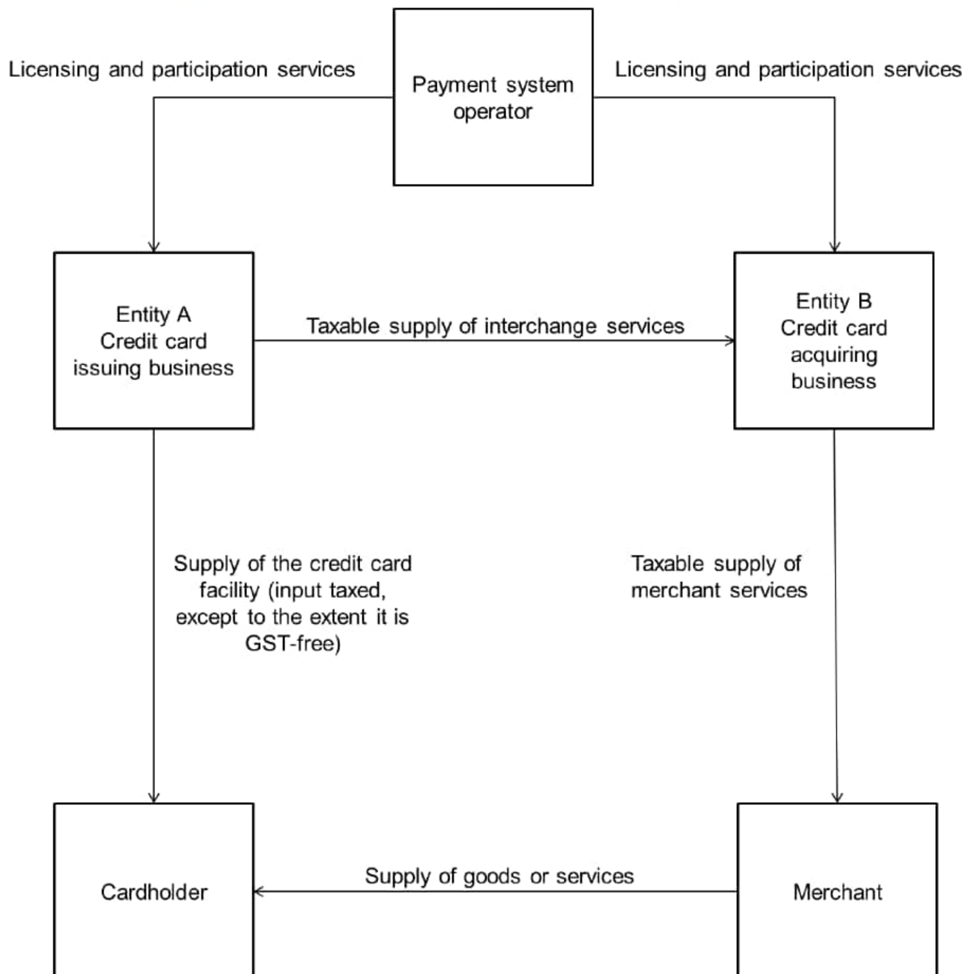
The guideline indicates that, once operative, the ATO will expect taxpayers to use it to self-assess their risk rating annually and, on request, to inform the ATO of the risk rating determined.

The ATO anticipates that some taxpayers will respond to the guideline by adjusting their apportionment methodology to bring themselves within the Green zone. In those cases, if the taxpayer meets certain requirements, the ATO will offer several incentives. These include temporary placement into the White zone, and reduced penalties and interest for downward adjustments to input tax credits claimed on previous returns.

Taxpayers affected by the guideline

As noted above, the guideline initially will apply only to taxpayers issuing credit card/charge cards in a four-party (open loop) payment system. This form of payment system is illustrated as follows:

Diagram 1 – supplies made in a four-party payment system



Source: ATO, Draft Goods and Services Tax Determination GSTD 2018/D1

However, the guideline will not apply to all taxpayers operating in a four-party (open loop) payment system. For example, smaller financial sector taxpayers that cannot access direct estimation methods to allocate or apportion acquisitions to their credit card issuing business, and who use an entity-based general formula instead.

Comments

The guideline states that the apportionment methods set out are for risk assessment purposes only and should not be treated as a requirement to use a specific method. In practice however, the guidelines are likely to apply pressure to taxpayers to either:

- Use an ECP rate of no more than 35% (weighted average), per the Green zone rating; or
- Use an ECP rate above 35% calculated in strict accordance with nine requirements, per the Blue zone rating.

This will particularly disadvantage taxpayers that have developed a "fair and reasonable" apportionment methodology, and yet self-assess themselves to be in the Blue, Yellow or Red zones. For those that are either lacking in or unwilling to expend resources to deal with an ATO review of their apportionment methodology, the guideline could operate in a de facto sense to require the use of a methodology prescribed by the ATO.

In this respect, the guideline strongly suggests a departure from the ATO's long-standing approach to apportionment compliance (i.e. whereby the ATO has accepted any fair and reasonable method used by a taxpayer, provided it reflects the taxpayer's intended use of its acquisitions, and the method is appropriately documented).

The ATO has invited stakeholders to make submissions about the guideline by 1 November 2019.

Australia

Weekly tax round-up (23 September 2019)

Progress of tax bills through parliament

Both Australian houses of parliament passed two bills in the week ending 20 September 2019, which now await royal assent:

- Treasury Laws Amendment (Putting Members' Interests First) Bill 2019
  - Prevents super funds providing opt-out insurance to members under 25 years old, and members with balances below AUD 6,000.

- The bill passed with an amended commencement date of 1 April 2020.

- Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019
  - Allows certain high-income employees with multiple employers to opt-out of the superannuation guarantee charge (SGC).
  - Integrity measures in respect of non-arm's length expenses and limited recourse borrowing arrangements.

New bills introduced to the House of Representatives:

- Treasury Laws Amendment (International Tax Agreements) Bill 2019
  - Gives the force of law to the Australia-Israel double tax treaty.
  - Introduces a domestic source of income rule in the ITAA 1997 to ensure Australia's treaty taxing rights.
- Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019
  - Provides a one-off amnesty to encourage employers to self-correct SGC noncompliance.
  - Limits the Commissioner's ability to remit penalties for SGC noncompliance if an employer fails to disclose.
- Currency (Restrictions on the Use of Cash) Bill 2019
  - Introduces offences for entities that make or accept cash payments of AUD 10,000 or more (a black economy measure).
- Treasury Laws Amendment (2019 Measures No. 2) Bill 2019
  - Extends concessional treatment for genuine redundancy and early retirement scheme payments to dismissed or retiring individuals over 65, who are below the pension age.
  - Provides full refunds of luxury car tax to primary producers and tourism operators up to a cap of AUD 10,000 for eligible vehicles.
  - Allows the Australian Taxation Office (ATO) to pay interest on superannuation amounts it holds and reunifies into individuals' active super accounts.

Senate Economics Committee – new consultations

The Senate Economics Committee has been referred two new bills for consultation:

- The Currency (Restrictions on the Use of Cash) Bill 2019 will face a public inquiry:
  - Submissions to the inquiry close on 15 November 2019.
  - The Committee will report by 7 February 2020.
- The Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 public inquiry
  - Submissions to the inquiry close on 3 October 2019.
  - The Committee will report by 7 November 2019.

ATO issues online guide to offshore sellers of accommodation

The ATO has updated its website with an online guide regarding the new goods and services tax (GST) measure introduced by the Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019, which received royal assent on 13 September 2019.

Broadly, this amendment requires offshore suppliers of the right or option to use commercial accommodation in Australia to include those supplies in their GST turnover calculation. The amendments apply to sales of accommodation paid for on or after 1 July 2019.

The online guide informs taxpayers on who must pay, GST requirements, concessional arrangements, compliance and penalties involved.

ATO administrative guidance on partnership measure before Parliament

The ATO has updated its website with its proposed administrative treatment of a measure within the Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019 (currently before the Senate).

This amendment intends to refuse access to the small business CGT concessions to partners in partnerships, if their income is alienated by creating, assigning or otherwise dealing in rights to future partnership income. The changes have been announced to apply to capital gains tax (CGT) events occurring after 8 May 2018.

Broadly, the ATO's position will be to accept tax returns as they are lodged, until the legislation is given effect. Taxpayers may need to review their positions on tax returns dating back to the 2017-18 income year.

Significant ATO guidance released

- TD 2019/D8 – Income tax: what is an 'employee share trust'?

- TR 2019/4 – Income tax: capital allowances: expenditure incurred by an entity that collects, processes and provides multi-client seismic data.

Australia

Weekly tax round-up (14 October 2019)

Parliament this week

Both Houses of Parliament resume in the week beginning 14 October 2019. The House of Representatives sits until 24 October 2019 and the Senate until Thursday 17 October. Senate Estimates hearings will be held from 21 to 25 October.

The draft House of Representatives legislative program lists the following tax-related bills for debate this week:

- Treasury Laws Amendment (2018 Measures No. 2) Bill 2019
  - Amends venture capital and early-stage investor provisions relating to capital gains tax (CGT), managed investment trusts (MITs) and the early-investor tax offset; and
  - Amends the definition of public trading trusts.
- Treasury Laws Amendment (2019 Measures No. 2) Bill 2019
  - Extends concessional treatment for genuine redundancy and early retirement scheme payments to pension age;
  - Increases luxury car tax refunds for eligible primary producers and tourism operators; and
  - Enables the Commissioner to pay interest on super amounts held by the Australian Taxation Office (ATO).
- Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019
  - Enables the Commissioner to collect estimates of anticipated GST liabilities and make company directors personally liable for unpaid GST in certain circumstances; and
  - Enables the ATO to retain tax refunds where taxpayers fail to lodge a return or provide information relevant to their refund amount.
- Currency (Restrictions on the Use of Cash) Bill 2019
  - Introduces offenses for entities that make or accept cash payments of AUD 10,000 or more.

The draft Senate legislative program lists the following tax-related bills for debate this week:

- Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019
    - Removes a tax deduction upon repayment of a principal under a concessional loan by certain privatized entities;
    - Amends small business CGT concessions in relation to partnerships;
    - Limits tax deductions for expenses relating to holding vacant land;
    - Extends anti-avoidance provisions for circular trust distributions to family trusts;
    - Allows the ATO to disclose the tax debt information of taxpayers to credit reporting bureaus; and
    - Ensures that individuals' salary sacrifice super contributions cannot be used to reduce employer SG contributions.
- Treasury Laws Amendment (2019 Measures No. 2) Bill 2019
- Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019
- Treasury Laws Amendment (2019 Measures No. 2) Bill 2019.

Committee hearings

The Senate Economics Committee inquiry into the Performance of the Inspector-General of Taxation is scheduled to hold a public hearing on Friday 18 October 2019. The Committee is expected to hear from Treasury, the ATO, the Inspector-General of Taxation and an ATO whistleblower. The inquiry is due to report by 2 December 2019.

ASIC warns on suitability of SMSF structures

On 11 October 2019, the Australian Securities and Investments Commission (ASIC) issued a warning to Australian investors considering establishing their own self-managed superannuation fund (SMSF), to consider the downside of such an investment strategy. ASIC has identified eight "red flag" situations which, together or in part, ASIC believes would make it extremely unlikely for an investor to gain any advantage from using SMSFs to create and safeguard their intended retirement lifestyle. More details can be found here.

Significant ATO guidance released

- TD 2019/D10 Income tax: can capital gains be included under subparagraph 770-75(4)(a)(ii) of the *Income Tax Assessment Act 1997* when calculating the foreign income tax offset limit?

Brazil

Ruling addresses tax base calculation for PIS and COFINS

On 11 October 2019, the Brazilian tax authorities issued Normative Ruling No. 1,911/2019 amending and consolidating the social security regulations for unemployment insurance (PIS) and retirement and health care contributions (COFINS).

The ruling primarily addresses the calculation of sales tax amounts charged to customers (ICMS) that are deducted from the tax base used to calculate PIS and COFINS. The base generally is determined using the total sales amount for goods and services. The Supreme Court ruled in March 2017 that the full ICMS amount stated on invoices should not be included in the calculation base of PIS and COFINS since it does not represent an economic benefit to the taxpayer (i.e. the ICMS charged to the customer is transferred to the government).

The Brazilian tax authorities issued a private letter ruling in 2018 (COSIT No. 13/2018), in which it stated that the amount to deduct from the PIS and COFINS tax base should be the amount of ICMS the taxpayer pays to the government (i.e. the balance after offsetting ICMS credits and debits), and not the full amount of ICMS stated on the invoices. Furthermore, the tax authorities stated that the taxpayer needs to apportion the ICMS among the type of revenue based on the CST (Tax Situation Code). This methodology—which is less favorable to taxpayers—has been criticized by taxpayers since it technically does not represent an exclusion of the ICMS from the PIS and COFINS tax base; according to taxpayers, the methodology was created by the tax authorities in an attempt to reduce the tax effects of the Supreme Court decision on PIS and COFINS tax collection.

The Attorney General’s Office has requested an appeal of the Supreme Court’s decision in order to have the court to clarify certain points and approve the methodology created by the tax authorities. The appeal is scheduled to be heard on 5 December 2019.

The new normative ruling follows the same methodology as in the private letter ruling, and, although it contains administrative rules whose effects are limited by law, its existence makes it easier for the tax authorities to assess taxpayers that are not following the calculation methodology prescribed by the tax authorities. In addition, the ruling confirms that a 3% penalty will be applied for inaccurate, incomplete or omitted information (e.g. not using the prescribed calculation methodology), which is based on the value of the relevant transaction.

Brazil

ICMS deferral granted on imports into state of Rio de Janeiro

On 1 October 2019, the state of Rio de Janeiro issued a decree (Decree no. 46,781) that grants an ICMS (state VAT) deferral on imports of raw materials to be used in a manufacturing process and on imports of goods for resale, provided the customs clearance is processed in the state. The deferral aims to encourage imports into the state and minimize the accrual of ICMS tax credits.

The extent of the ICMS deferral depends on whether the raw materials or goods are directly or indirectly imported (i.e. whether they are brought into the state by the importer or by a third party or intermediary). For direct imports, the importer will be entitled to a partial ICMS deferral for qualifying direct imports, under which the importer will be required to pay ICMS at a reduced 4% rate during customs clearance instead of the normal 18% rate. ICMS on qualifying indirect imports will be fully deferred. To qualify for the deferral, the imported good must be resold within 60 days of import and, for raw materials imported for manufacturing purposes, the manufactured goods must be sold within 120 days of import. The deferred ICMS will be payable on the subsequent resale of the imported good or sale of the manufactured good by the taxpayer.

The deferral will not apply to the following:

- Imports of consumables;
- Imports of fuels, lubricating oils and chemicals included on the list attached to the decree; and
- Companies electing to be taxed under Brazil's simplified tax regime *(Simples Nacional)*.

To apply for the deferral, the taxpayer must submit an application to the state tax authorities and meet the following requirements:

- Be established as an importer in the state of Rio de Janeiro;
- Have a valid RADAR license (the import and export license granted to Brazilian companies);
- Comply with all applicable state of Rio de Janeiro tax filing and payment obligations; and
- Have a tax clearance certificate from the state.

The decree will apply as from 1 December 2019. However, the state tax authorities may change, suspend or revoke the decree within 90 days of its effective date.

Brazil

Supreme Court allows purchasers IPI credit on exempt goods

On 20 September 2019, the Brazilian Supreme Court published a decision (Extraordinary Appeal No. 592,891) ruling that taxpayers purchasing goods from suppliers in the Manaus Free Trade Zone (ZFM) may obtain excise tax (IPI) credits even though the suppliers are exempt from IPI on such goods manufactured within the ZFM.

Companies established in the ZFM and granted certain tax incentives are exempt from IPI on the sale of goods manufactured within the zone. However, an issue arose as to whether purchasers of goods from these companies could recover IPI credits.

The court stated that the ZFM is a special tax area created in 1957 under constitutional and tax principles aimed at improving the local economy and regional development. In support of these principles, the court held that IPI credits should be allowed. The decision covers the purchase of IPI exempt goods manufactured in the ZFM.

It should be noted that, in addition to being a tax measure, the IPI also functions to regulate the markets, in that the government may increase or decrease IPI rates through unilateral administrative acts (rather than by the passage of law). When rates are decreased, taxpayers that purchase goods from suppliers in the ZFM are affected due to the decreased amount of the IPI credits that may be used. Some products have been subject to reduced IPI rates, which may mitigate the fiscal impact of the court’s decision on the government.

China

First batch of tariff exclusion lists released

On 11 September 2019, China's Tariff Commission of the State Council (CTCSC) released the first batch of exclusion lists on additional tariffs on US-origin goods. The additional tariffs will be suspended for goods on these exclusion lists (of which there are 16 eight-digit HS codes) from 17 September 2019 through 16 September 2020.

Background

To date, the CTCSC has released three lists of US-origin goods subject to additional tariffs:

	Import amount of US-origin goods involved	Date of implementation	Additional tariff rate(s)
List 1	USD 50 billion	6 July 2018; 23 August 2018	25%
List 2	USD 60 billion	24 September 2018	5%, 10%, 20%, 25%
List 3	USD 75 billion	1 September 2019; 15 December 2019	5%, 10%

The CTCSC announced a trial process in May 2019 to accept applications to exclude certain goods from the additional tariffs. For goods on List 1, the exclusion application process was open to applicants for the period from 3 June 2019 through 5 July 2019.

According to CTCSC guidance, one of the following conditions must be satisfied for goods to be excluded:

- There is no alternative source of the goods available from non-US countries/regions or domestic manufacturers;
- The imposition of additional tariffs would cause severe economic damages to the applicant; or
- The imposition of additional tariffs would have significant negative impacts on associated industries.

Exclusion lists

The first batch consists of two exclusion lists for the goods on List 1:

	HS codes	Suspension of additional tariffs	Refund of additional tariffs collected
List A	12 eight-digit HS codes: Shrimp seedlings, lucerne (alfalfa), fish meal, lubricating oils, certain anticancer drugs, linear accelerators for medical use, etc.	From 17 September 2019 through 16 September 2020	Refund is available only if applied for within a six-month period from 11 September 2019
List B	4 eight-digit HS codes: Whey for fodder use, mold release preparations, basic oils for lubricating oils, etc.	From 17 September 2019 through 16 September 2020	No refund is allowed

- The goods in the first batch of exclusion lists are closely related to the health of the population (e.g. anti-cancer drugs) and the development of certain industries. It is difficult to identify alternative sources of supply for these goods other than those from the US.

- Among the 16 eight-digit HS codes on the exclusion lists:
  - There are eight codes for which all the goods under the code are eligible for the exclusion.
  - For the remaining eight codes, only some of the goods are eligible for the exclusion; therefore, even if the goods were classified under the code, customs officials must review further the goods' names and descriptions to determine whether an exclusion could be granted.
  - For the four codes on List B, no refund is allowed for additional tariffs collected; customs officials have assigned 10-digit codes for these goods to specifically identify them for customs classification purposes in the future.
- There are several excluded items that appear on both List 1 and List 3. For the one-year tariff suspension period (i.e. 17 September 2019 through 16 September 2020), both the 25% tariff for List 1 and the 5%/10% tariff for List 3 will be suspended for these items.

Comments

The exclusion measures are designed to help limit the negative impact to domestic industries from the additional tariffs on US imports. It is expected that China will release more batches of exclusion lists in due course. It also is noted that qualified importers benefit from the exclusion lists and should, within six months from the date of announcement of the exclusion lists, apply for a refund of additional tariffs that have been collected.

Denmark

Law program for 2019/20 contains VAT proposals

On 1 October 2019, the Danish government announced its law program for 2019/20, which includes proposed changes to Danish VAT legislation.

The proposals specifically include the implementation of the EU's four VAT "quick fixes" that are part of the EU VAT reform. The quick fixes are designed to simplify the cross-border supply of goods within the EU, relating to call-off stock, chain transactions, identification of VAT number and intra-Community supplies, will be implemented in Denmark as from 1 January 2020.

The government also is proposing to implement a protection rule for travel agents that use the special scheme for travel agents. The purpose is to ensure that the correct amount of VAT is paid and prevent fraud. The Danish parliament currently is awaiting permission from the EU Commission to introduce the new rule, which is not expected to be implemented before 1 July 2020 at the earliest.

Other proposals would amend the VAT rules for imported goods sold to private individuals in the EU. Denmark does not impose import VAT or customs duty on imported goods with a value below DKK 80 (excluding freight costs) other than wine, liquor, cigarettes or perfume. The law program proposes to abolish the import limit to harmonize the distance selling threshold for sales to individuals within the EU. This is expected to broaden the existing One-Stop-Shop system and limit the current customs/import VAT advantage of internet shops located outside the EU selling goods with a value below DKK 80 to customers in Denmark.

El Salvador

Update on amendments to law on industrial and commercial free trade zones

During August 2019, El Salvador's legislative assembly passed three legislative decrees to amend 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. One decree has now entered into effect; however, the president has sent the other two decrees back to the legislative assembly:

- Legislative Decree No. 397 was approved by the president and published in the official gazette on 16 September 2019, and is now in effect. The decree includes clarifying amendments providing an official interpretation of certain provisions of the law, such as the circumstances in which goods to be traded may enter an authorized area such as an FTZ and the ways in which a merchant may carry out an authorized activity and obtain an income tax exemption.

- Legislative Decree No. 398 was challenged by the president on the grounds that an amendment was improperly drafted and could lead to interpretation issues, and was returned to the legislative assembly on 6 September 2019 for review and further analysis. The decree provided specifications regarding requests for the expansion of the facilities of an inward processing warehouse (DPA) and the process to request the destruction of certain raw materials, supplies and compensating or finished products, among other things.

- Legislative Decree No. 404 was vetoed by the president on 16 September 2019; thus, it also was returned to the legislative assembly. The decree would have provided that once the initial income tax exemption period granted to the users of FTZs expires, the users would have had the right to an additional 10-year full income tax exemption period (extended from the current five-year period) if certain requirements relating to an increase in qualifying investment or the hiring of personnel were met. The president's veto was based on the view that providing the additional exemption period would negatively affect the long-term financial situation of the country.

The legislative assembly now must reanalyze Legislative Decree Nos. 398 and 404, considering the positions taken by the president, and determine whether the decrees will be amended so that they may be approved by the president.

France

Mandatory electronic invoicing for B2B transactions in 2023-25 proposed

Electronic invoicing currently is mandatory in France only in public procurement, i.e. business-to-government (B2G) transactions. The 2020 finance bill released on 27 September 2019 contains proposals that would gradually extend electronic invoicing to business-to-business (B2B) transactions, with the following objectives:

- Securing the commercial relationship between companies;
- Strengthening measures against VAT fraud through automated cross-checking between issued and received invoices; and
- Mitigating the administrative burden on companies by reducing paper processing and allowing the pre-filling of VAT returns.

The bill plans the publication of a report in September 2020 that would help the government and parliament in their decision-making regarding the terms and schedule that should apply to electronic invoicing.

At this stage, the finance bill proposals provide that the extension of electronic invoicing to B2B transactions would apply as early as 1 January 2023 and no later than 1 January 2025.

Germany

European Commission requests Germany to amend VAT obligation for digital marketplaces

On 9 October 2019, the European Commission issued its October 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 Commission has decided to send a letter of formal notice to Germany in relation to its new legislation on distance sales of goods sold through digital marketplaces. The rules were introduced as part of the 2018 annual tax act. In accordance with the law, as from 1 October 2019, a marketplace becomes jointly and severally liable for the VAT due on goods being sold by traders in Germany, the EU or EEA via its platform when transport for the goods begins or ends in Germany. The liability will not be imposed where marketplace operators can provide certain documentation, including a hardcopy of the certificate of tax registration issued by the German tax authorities to businesses selling on their electronic platform.

In the Commission's opinion, this measure is inefficient and disproportionate and hinders the free access of EU businesses to the German market in violation of EU law. EU member states already have agreed on common and more efficient measures to combat VAT fraud as part of the EU VAT e-commerce package that will come into force on 1 January 2021 and in the Commission's view, the obligations imposed by Germany on marketplace operators to avoid joint and several liability go beyond what is provided for by the EU rules and are at odds with the goals of the Digital Single Market Strategy for Europe.

If Germany does not act within the next two months, the Commission may send a reasoned opinion to the German authorities.

Germany

CJEU rules that ATM-related services are not VAT exempt

On 3 October 2019, the Court of Justice of the European Union (CJEU) issued a decision (C-42/18) in which it ruled that certain automated teller machine (ATM)-related services supplied to banks are not VAT exempt. The issue had been referred to the CJEU by the German federal tax court (BFH).

Background

In the case at hand, the supplier (a German company) provided ATM operation services to a bank. The supplier was responsible for the operation of cash machines that it set up in designated locations, which had software and hardware bearing the bank's logo. The supplier was responsible for filling the cash machines with the bank's funds, exchanging the relevant data between the cardholder and the bank and, in cases where a transaction was approved, dispensing cash from the ATM.

The supplier claimed a VAT exemption for the services provided to the bank on the basis that they should be considered as services relating to "payment transactions" under article 135(1)(d) of the EU VAT directive, but the German tax authorities denied the VAT exemption. However, the German financial court (FG) concluded that the supplier could benefit from the VAT exemption. On appeal, the BFH had doubts as to whether the services should be exempt from VAT and considered that clarification from the CJEU was necessary. This was due to the fact that, in the interest of harmonization at an EU level, the domestic VAT law must be in conformity with the provisions of the EU VAT directive in force during the year in question. If there is any doubt as to the interpretation of the directive, a court such as the BFH is required to submit a preliminary ruling request to the CJEU for clarification on the matter.

CJEU decision

In line with its previous case law and with the CJEU advocate general's opinion in the case delivered in May 2019, the CJEU held that a payment or transfer service

that is eligible for a VAT exemption essentially consists of the transfer of a sum of money from one bank account to another. It is particularly characterized by a resulting change in the legal and financial situation that exists between the person giving the order and the recipient. The functional aspect of such a service, thus, is the effective transfer of money. In other words, the service must encompass the specific and essential functions of a transfer of money, entailing the movement of funds and changes in the parties' legal and financial situation. A payment service must be distinguished from the mere supply of a physical or technical service, which is not eligible for a VAT exemption.

In the case at hand, the supplier did not debit accounts and did not authorize transactions, meaning that it lacked the authority to decide whether a transfer would be carried out. The physical payment of cash by the supplier was not sufficient, as the bank transferred the legal ownership to the cardholder. The supplier merely provided data to the bank to enable its execution of the underlying transfers. The dataset with the daily ATM transactions transferred by the supplier to the bank was carried out only for information purposes, and therefore was found not to result in a transfer of money. The fact that the services of the supplier were indispensable to the transfer did not mean that its services necessarily qualified as payment services, since they lacked the essential elements of a transfer of money. Therefore, the CJEU ruled that the operational ATM services rendered by the supplier could not be deemed VAT-exempt transfer services, so they remained subject to VAT.

Impact of the decision

In particular, the ruling affects the engagement of external service providers by banks and payment institutions. If external service providers have been involved in the performance of tasks for these companies for reasons of cost optimization, it should be considered whether the cost advantages achieved to date are likely to be maintained after the CJEU's ruling.

In addition to outsourcing cases, internal bank or payment service provider structures also could be affected; for example, where a company's own personnel carry out the activities in question. If the operation of ATMs is carried out by a company's own staff, this activity is essentially identical to that provided by the external service provider. Based on the CJEU's decision, cash dispensing also could be subject to tax in this situation.

Guatemala

Guidance issued on "bill-to ship-to" commercial transactions

On 28 August 2019, Guatemala's Superintendency for Tax Administration (SAT) published guidance on its website (Institutional Tax Opinion No. 3-2019) on the income tax treatment of costs, expenses and income relating to goods acquired and resold abroad. Specifically, the opinion covers cases where the goods are not

nationalized (i.e. not granted the right to enter Guatemala by the payment of import duties) and are not exported from Guatemala. The opinion was issued in response to the uncertainty that many taxpayers have had regarding the treatment of commercial transactions commonly referred to as "bill-to ship-to" transactions, where goods are billed to one address and shipped to another.

One type of bill-to ship-to transaction, which is covered in the SAT's opinion, occurs when a Guatemalan taxpayer purchases goods from nonresident suppliers to sell them to nonresident customers, without having the goods enter the Guatemalan territory. This type of transaction has gained relevance in regional purchase-sales operations and has implications in terms of trade, taxes and customs. Such transactions have become common for both multinational and domestic companies that are trading in products and goods located outside of the Guatemalan national territory and that seek to increase their efficiency.

The steps of this type of bill-to ship-to transaction are as follows:

- **Step 1:** The Guatemalan entity purchases and pays for goods from a foreign supplier, which issues an invoice to the Guatemalan entity for the cost of the acquisition.
- **Step 2:** The foreign supplier sends the goods directly to the Guatemalan entity's customer, which is located abroad.
- **Step 3:** The Guatemalan entity issues an invoice to the nonresident customer for the sale of the goods, and the customer pays the Guatemalan entity.

The SAT's opinion addresses the income tax treatment of the Guatemalan entity's costs and expenses relating to this type of bill-to ship-to transaction, as well as the related income.

Costs and expenses

The opinion covers costs and expenses incurred by taxpayers duly registered and domiciled in Guatemala for the purchase of goods abroad that are resold abroad (and are not nationalized and not exported from Guatemala).

The opinion provides that the costs and expenses incurred for the purchase of goods in this type of bill-to ship-to transaction are not deductible when determining taxable income and calculating the income tax in Guatemala. This is because these costs and expenses do not meet the deductibility requirement under the domestic law of being useful, necessary, pertinent or indispensable for producing or preserving a productive source of taxable income. In addition, the costs and expenses must relate to the generation of taxable income for the taxpayer in order to be deductible. This requirement is not met in this type of bill-to ship-to transaction, since the sale of goods occurs abroad and to companies located

abroad, which indicates that the income derived in this manner does not originate in Guatemala's national territory. In other words, the income is not Guatemalan-source income and is not subject to income tax under Guatemala's territorial tax system.

Income

The opinion covers income derived from products purchased from nonresident suppliers by taxpayers duly registered and domiciled in Guatemala and resold to customers located abroad (without being nationalized or exported from Guatemala).

The opinion provides that income derived by taxpayers in this type of transaction is not subject to the payment of Guatemalan tax on income from trade or business activities, when the transaction is carried out entirely abroad. This is the case as long as the goods are not nationalized or exported from Guatemala's national territory.

Comments

It is important to note that the opinion does not cover the applicability of the VAT to this type of bill-to ship-to transaction. However, since the goods in question are not located in Guatemala's national territory, there should be no taxable event for VAT purposes, based on the definition of a "sale" provided in the VAT law (article 2(1) of Decree 27-92, as amended).

Guernsey

2020 budget recognizes need for revenue-raising measures

At midnight on 7 October 2019, the States of Guernsey Policy& Resources Committee announced the publication of the 2020 budget report.

The Committee's president, Gavin St. Pier, clearly set the theme of this year's budget in his message in the published press release:

> "In recent years we have steadied the ship, delivering budget surpluses and savings with the backdrop of a growing economy and substantial reserves. We are in as a good a place as we could hope to be as these challenges become real and a very good place compared to so many other jurisdictions. We have increased the contributions from companies and created a more progressive tax system which asks those most able to contribute to take on a bigger burden in funding public services. We will take those measures further in this year's Budget, but we have to be realistic and recognise that we are running out of room to raise more revenue in this way. The government must continue to be responsible in its spending, but the truth is continued financial restraint, whilst still necessary, will not produce the kind of funding we need to meet the growing demands we face."

The budget confirms that while income remains strong, and there is growth in key areas, there is unprecedented pressure on the cost and demand for public services. In section 2 of the report, a number of specific proposed policy investment needs are listed including the sustainability of the long term care scheme, changes to the funding of NICE drugs and the introduction of a secondary pension scheme. The report notes that these projects along with the ongoing fact of an ageing population, and the need to take action to address the impact of climate change, all are putting pressure on the economy and the cost of public services.

The clear message is that the financial effect of these measures cannot be met from existing resources and there is now a need to consider raising revenues – Guernsey is "on the cusp of a major challenge." The proposed response is to undertake a review of the current fiscal policy framework to be submitted to the States no later than January 2020.

Fiscal policy review

In the report, the States are asked to endorse the intention of the Policy & Resources Committee to submit a revised "Review of the Fiscal Policy Framework" policy letter to the States for consideration no later than January 2020 including:

- Addressing what the appropriate long-term aggregate limit on States' revenues (including all forms of taxation and social insurance contributions) should be, taking into account the known and estimated long term expenditure pressures; and
- Terms of reference for a review to examine options to increase revenues from corporate taxes and for the introduction of new taxes in areas such as a ring fenced health tax, consumption taxes, etc. in order to raise sufficient revenues.

It seems clear that this proposal is borne out of internal needs to raise revenue as opposed to any external pressure. In order to deliver on a number of significant projects in Guernsey, the report explains that changes in fiscal policy are needed and bearing in mind the various changes already made to the taxation of individuals and companies in recent years, it makes sense to look at this in a broad sense (whilst disregarding certain items such as capital and inheritance taxes which the report confirms would remain outside the scope of any review).

Deputy St Pier concludes:

> "The public discussion we have between this Budget and the January debate on the new Fiscal Policy Framework will determine how able we are to provide the services Islanders need and expect. Getting this right is crucial to our future and it cannot wait any longer."

Key corporate tax measures

Company higher rate of income tax of 20%

This would be extended to include:

- Income from licensed activity of cultivation of cannabis plants and income from the use of those cultivated plants or parts of those cultivated plants for any licensed production of industrial hemp, supplements, cannabidiol fibre, medicinal products or other products; any licensed processing or a any other licensed activity or use; and

- Where prescribed by the Policy & Resources Committee, income from the licensed production of controlled drugs and the use of those controlled drugs or parts thereof.

Legislation to give effect to this decision would take effect from 1 January 2020.

Company intermediate rate of income tax of 10%

This would be extended to the income from the activity of operating an aircraft registry with the necessary legislation to take effect from 1 January 2020.

Key individual tax measures

Personal allowances

- An increase in the personal allowance from GBP 11,000 to GBP 11,575 is proposed for those aged under 65 and increases to the supplementary allowances also are proposed;

- The personal allowance for those aged over 65 is increased as the removal of age related allowances is completed;

- The annual tax free lump sum for a pension scheme of up to 30% of the fund value is to be set at GBP 203,000 for 2020 (currently GBP 198,000);

- Minor changes to the legislation defining when an individual is eligible to pay the standard charge to confirm that notwithstanding the practical effect of the standard charge the individual remains liable to Guernsey income tax on his or her worldwide income. There should be no change in practice for standard charge individuals; and

- The legislation setting out what is covered by the tax cap will be amended to exclude triviality payments as well as such amounts of lump sum payments from pension schemes or annuity schemes which are chargeable to tax as being over the tax free limit.

Other taxes and duties

Item	Duty/rate	Comments
Tobacco	Cigarettes – Increase of 6.9% Cigars – Increase of 6.9% Other tobacco products – Increase of 9.4%	This will add an average of 37p onto the cost of a packet of 20 cigarettes. It is anticipated these changes will raise an additional GBP 200,000
Alcohol	Alcohol duty - Increase of 5%	This increases the price of a pint of beer/cider by almost 3p, bottles of wine by 10p and bottles of spirits by 70p
Petrol	Motor fuel – Increase of 2.2p to 72.3p per litre Petrol for marine use – 49.2p per litre	Diesel for marine (and other non-road) use would remain exempt from duty and the concessionary rate of duty on petrol for marine use would be 48.1p per liter from publication of the report and 49.2p per liter from 1 January 2020
Tax on real property (TRP)	A range of revenue raising proposals and options covering domestic and commercial building and land	Including proposals that, over a period of five years, the tariff for the general office and ancillary accommodation category is increased to the same as that for regulated finance industries, legal services, accountancy and non-regulated services

Indonesia

Plans for tax reform announced

In early September 2019, the Indonesian government announced plans to introduce legislation that would make several key changes to existing tax laws in an effort to boost the economy and make the tax system more competitive to attract foreign investment. The legislation process is still in its initial stage and a draft law is expected to be published in the last quarter of 2019.

The following measures are expected to be included in the draft legislation:

- The corporate income tax rate would be reduced gradually from 25% to 22% for fiscal years 2021 and 2022, and would be reduced further to 20% as from fiscal year 2023. Newly listed Indonesian companies would be granted an additional 3% reduction in the headline tax rate for their first five years.
- Dividends received by a resident corporate taxpayer from a less than 25%-owned local subsidiary or from a foreign subsidiary could be exempted from income tax if the dividends are re-invested in Indonesia for a certain period of time. This exemption also would be available for dividends received by resident individuals.
- Tax residence for Indonesian citizens would be determined based on a physical presence test instead of nationality.

- The worldwide income tax system would be replaced with a territorial tax system.

- Some interest and administrative penalties would be reduced to encourage voluntary tax compliance.

- The requirement to claim input VAT would be relaxed, i.e. taxpayers would be allowed to claim input VAT before they are confirmed as taxable entrepreneurs, which is not possible under current VAT rules. Taxpayers also would be able to claim an input VAT credit for the procurement of taxable goods or services before these are delivered (currently, this is limited to capital goods). Input VATs that were not reported in VAT returns but that were found during a tax audit, or inputs VATs collected through the tax assessment process (principal only), also could be credited.

- Foreign digital companies, including sellers, as well as service and platform providers, would be required to register for VAT purposes in Indonesia and would be required to collect and report VAT on the supply of intangible goods or services. These companies would be allowed to appoint a representative in Indonesia to fulfil their VAT obligations.

- The definition of permanent establishment would be expanded to cover the concept of "significant economic presence" to allow the Indonesian government to tax the profits of foreign digital companies that do not have a physical presence in Indonesia.

New Zealand

Snapshot of recent developments (September 2019)

Policy and legislative developments

New UOMI rates now applying

New UOMI rates started to apply as from 29 August 2019. The rate charged on underpaid tax increased from 8.22% to 8.35%, while the rate for overpayments of tax decreased from 1.02% to 0.81%.

Trusts Bill receives Royal Assent

On 30 July 2019, the Trusts Bill received Royal Assent. Broadly, the Trusts Act 2019 will come into force on 31 January 2021 (18 months after the date of Royal Assent). The transition period is to allow trustees to review their existing trusts and deeds before the Act comes into force.

Swiss DTA updated

In early August 2019, New Zealand and Switzerland signed a protocol that will update the double tax agreement (DTA) between the two countries. The main purpose is to include model treaty provisions to prevent tax treaty abuse and improve dispute resolution as recommended by the OECD and the G20. The amended agreement will come into force once both countries have introduced the necessary domestic legislation.

Special report on GST on low-value imported goods

A special report on the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 was released to provide early information on the new rules applying to "distantly taxable" goods supplied to consumers in New Zealand from 1 December 2019. Nonresident suppliers will be able to apply to be registered as from 1 September 2019, with the registration taking effect as from 1 December 2019. The registration form and information about registering for GST will be located on the Inland Revenue website. For general enquiries, or to apply for the Commissioner of Inland Revenue to exercise various discretions included in the rules, an email address has been provided: info.lvg@ird.govt.nz.

Further measures to be added to the KiwiSaver Bill

In August, Supplementary Order Paper (SOP) No 293 was introduced in order to add further measures to the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill. The SOP proposes further changes to the KiwiSaver Act 2006 to create a new withdrawal category to allow persons with a life-shortening congenital condition to withdraw their savings early. Members would be able to apply for a withdrawal under this new category if they have medical evidence to verify that they have a condition that is listed in the regulations. Alternatively, they would be able to apply if they have medical evidence to verify that they have a condition that is a life-shortening congenital condition.

On 23 August 2019, Revenue Minister Stuart Nash announced an intention to introduce a legislative amendment to ensure that payments received by a land owner from the grant of a land right (such as a licence or a limited term easement) continue to be taxable. These changes also will be made by way of an SOP yet to be introduced.

Finalised Inland Revenue items

Income tax - employer issued crypto-assets provided to an employee – BR Pub 19/03

Inland Revenue has released the finalised public ruling, BR Pub 19/03: Income tax - employer issued crypto-assets provided to an employee. It considers how the fringe

benefits tax (FBT) applies where cryptocurrency issued by an employer is provided to an employee. In particular, it covers the situation where the crypto-assets are subject to conditions that the employee must satisfy to become entitled to the crypto-assets.

Commissioner's statements on using a kilometre rate - OS 19/04a and OS 19/04b

In late August, Inland Revenue released two operational statements: OS 19/04a: Commissioner’s statement on using a kilometre rate for business running of a motor vehicle – deductions, where a person intends to claim an expense deduction for a motor vehicle that is used partly for business purposes and partly for non-taxable purposes; and OS 19/04b: Commissioner’s statement on using a kilometre rate for employee reimbursement of a motor vehicle, which explains the acceptable method to establish the tax-exempt portion of an amount paid to an employee as reimbursement of expenditure incurred by that employee where the employee uses his/her private motor vehicle in the employer’s business. These statements also have been updated with the recently announced kilometre rate figures.

Finalised Public Guidance work programme 2019-20

The new 2019-20 Public Rulings work programme of the Office of the Chief Tax Counsel has been finalised. This work programme sets out guidance (e.g. rulings, questions we’ve been asked, operational statements, etc.) that Inland Revenue will produce over the coming year. The new programme contains items rolled over from the previous programme as well as some new items. This will be updated monthly.

New Zealand

Snapshot of recent developments (October 2019)

Policy Developments

Protocol amending the TIEA with Guernsey signed

On 18 September 2019, a protocol amending the tax information exchange agreement (TIEA) was signed. This updates the TIEA to include model treaty provisions to prevent tax treaty abuse and improve dispute resolution as recommended by the OECD and G20.

Inland Revenue Items

GST treatment of supplies by hunting outfitters and taxidermists

Inland Revenue has released a draft interpretation statement, PUB00307: GST - Supplies by New Zealand hunting outfitters and taxidermists to overseas hunters, and three associated factsheets for public consultation.

This draft interpretation statement considers the GST treatment of supplies made by New Zealand hunting guides or outfitters and taxidermists to overseas hunters. It explains which supplies of goods and services to overseas hunters are standard-rated and which are zero-rated for GST purposes. PUB00337 is accompanied by three fact sheets - one each for overseas hunters, outfitters and guides, and taxidermists. The fact sheets briefly summarise the conclusions reached in the interpretation statement.

IR calling 'time' on cheques

Inland Revenue has announced that from 1 March 2020, it will no longer process any cheques if customers have an alternative payment option available as the technology used to process cheques will come to the end of its working life. Inland Revenue also is not accepting post-dated cheques dated 1 March 2020 or later.

Finalised item – employee contribution to a fringe benefit

On 30 August 2019, Inland Revenue released the finalised QB 19/12: What is the fringe benefit tax, GST and income tax treatment of an employee contribution to a fringe benefit. QB 19/12 explains the fringe benefit tax, GST and income tax treatment of an employee contribution to a fringe benefit. The tax treatment depends on whether the employee makes a full or partial contribution to the value of the fringe benefit, and who the employee makes the payment to.

Finalised item – Business Premises

On 30 August 2019, QB 19/13: Income tax - when does the business premises exclusion to the bright-line test apply, and QB 19/14: Income tax – When does the business premises exclusion in s CB 19 apply, were finalised and released by the Inland Revenue. QB 19/13 explains when the business premises exclusion applies to land that would otherwise be "residential land" and subject to the section CB 6A bright-line test. QB 19/14 considers when the section CB 19 business premises exclusion applies to sales of land that would otherwise be taxable under sections CB 6 to CB 11 of the land taxing provisions. These QWBAs have been redrafted to reflect submissions raised.

Finalised ruling on crypto-assets

On 30 August 2019, Inland Revenue released the finalised public ruling, BR Pub 19/04: Income tax – application of the employee share scheme rules to employer issued crypto-assets provided to an employee. This new ruling considers whether the provision of the crypto-assets by an employer (or other group company) to employees is an "employee share scheme" as defined in section CE 7. BR Pub 19/04 will apply for a period of three years beginning on 1 December 2019.

Commissioner’s Operational Position - treatment of a beneficiary as a settlor in certain circumstances

On 27 August 2019, the Commissioner issued an operational position on new section HC 27(6) - treatment of a beneficiary as a settlor in certain circumstances. Section HC 27 of the Income Tax Act 2007 was amended by the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 to ensure that beneficiaries whose current account balances at the end of the income year are not greater than NZD 25,000 do not become settlors. This amendment comes into force on 1 April 2020, and does not have retrospective effect.

New Zealand

GST rules for nonresident retailers selling low value goods to New Zealand consumers

A reminder for nonresident retailers selling to New Zealand consumers that they may be required to register for and charge New Zealand GST starting 1 December 2019.

New legislation will soon apply to offshore suppliers who make supplies (or expect to make) supplies of “distantly taxable goods” to New Zealand end consumers of NZD 60,000 or more in a 12-month period. Electronic marketplaces and re-deliverers also have a requirement to register and comply with the new rules.

"Distantly taxable goods" are defined as imports with a customs value of NZD 1,000 or less (excluding GST). Suppliers who reasonably expect 75% or more of their supplies to New Zealand to be under the NZD 1,000 threshold can also make an election to charge GST on supplies over the NZD 1,000 threshold. Tariffs and cost recovery charges will no longer apply to supplies covered by the new rules (alcohol and tobacco are excluded from these rules).

NZD 60,000 is currently equivalent to: AUD 55,800; USD 38,200; GBP 29,700; EUR 34,400; CNY 269,700

NZD 1000 is equivalent to: AUD 930; USD 637; GBP 496; EUR 573; CNY4,496

The New Zealand Inland Revenue is now actively reaching out to international organisations that may have an obligation to register for and charge GST after 1 December 2019. Registrations are now open.

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

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

Offshore suppliers will not be required to return GST on supplies to New Zealand GST-registered businesses; however, they will have the option to charge GST if they reasonably expect that over 50% of the value of supplies made to New Zealand customers will be to end consumers. This will simplify processes for offshore suppliers who predominantly supply consumer goods. The offshore supplier will be able to issue a tax invoice in order for a New Zealand business to claim back the GST charged.

An offshore supplier will not have to charge GST if the recipient notifies the supplier that they are GST-registered or provides a GST registration number or New Zealand Business Number. An offshore supplier can also enter into an agreement with the Commissioner of Inland Revenue on an alternative method to determine whether the supply is made to a GST-registered person (for example, if the supplier sells goods of a type that are only purchased by businesses).

Nonresident marketplaces

When certain conditions are satisfied, an operator of an online marketplace may be required to register and return GST on supplies made through the marketplace instead of the underlying supplier.

A marketplace would be required to register when customers would normally consider the marketplace to be the supplier, and this is reflected in the contractual arrangements between the parties; for example, if the marketplace authorises the charge to the customer, authorises delivery to the customer, or sets any of the terms and conditions of the transaction.

A marketplace would need to return GST to the New Zealand Inland Revenue and seek to recoup this amount from the actual supplier. If the marketplace is unable to collect the amount and writes off the amount outstanding as a bad debt, it will be able to recoup the GST as an input tax credit in the next New Zealand GST return.

Re-deliverers

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

These businesses will be liable to register for GST and will need to collect the 15% GST on the value of the goods as well as their services (regardless of whether this includes international transport).

The sting in the tail for customers using re-delivery services is that they may end up being double taxed with New Zealand GST being added to a supply that also may have had an overseas domestic sales tax applied due to the local delivery address being provided to the supplier.

Supplies above NZD 1,000

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

If multiple goods are purchased in one transaction, with the total transaction value exceeding NZD 1,000, then GST should be charged on all individual goods costing less than NZD 1,000 by the offshore supplier. For example, if six items costing NZD 200 each are purchased (NZD 1,200 total), GST of NZD 180 should be charged by the offshore supplier. If a consignment includes a mixture of above and below NZD 1,000 items, then GST may be collected at the border by NZ Customs Service rather than being charged by the offshore supplier, depending on whether the election has been made to charge GST on all sales (see above).

Compliance requirements

It will be necessary for offshore suppliers to provide a GST receipt to customers that provides specific details about the supplies. It will also be necessary for the offshore supplier to ensure that the New Zealand Customs Service has the following details available when the goods reach the New Zealand border:

- The name and registration number of the supplier;
- Details of the goods supplied with GST charged; and
- Details of any goods supplied that do not have GST charged.

Offshore suppliers who are required to register under these rules will be able to apply on a simplified "pay-only" registration basis, or alternatively may undertake a full registration allowing them to claim back any New Zealand GST incurred in making New Zealand sales.

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

GST returns will be due in quarterly instalments (March, June, September and December), with the first return period being a transitional period from 1 December 2019 to 31 March 2020.

Key issues for suppliers

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

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

- Can total sales be easily tracked by jurisdiction?
- Will the level of supplies to New Zealand end consumers exceed the registration threshold?
- What type of supplier are you and what specific rules will apply – actual supplier, online marketplace operator or re-delivery service?
- What modifications would you need to make to your website or business processes in order to determine whether New Zealand GST should apply? This could include:
  - Determining the delivery address of the customer;
  - Determining whether the customer is an end consumer or a GST-registered business;
  - Determining the NZD value of the transaction;
  - Being able to remove any local sales tax and replacing it with 15% GST;
  - Including freight charges when calculating GST;
  - Determining how returned or replaced goods need to be treated for GST purposes; and
  - Determining whether invoicing processes need to change.
- Based on the level of expected supplies, what reporting period and compliance obligations will apply?
- Does the business wish to continue shipping to New Zealand or effectively outsource the compliance to a marketplace or re-delivery business?

Portugal

Invoice processing and storage rules clarified

A circular letter (No. 30213) issued by the Portuguese tax authorities (PTA) on 1 October 2019 aims to clarify certain changes to the rules governing the issuance and storage of invoices (and other documents for tax purposes) made by Decree Law No. 28/2019 that was published on 15 February 2019.

The tax authorities were required to issue guidelines no later than 1 October 2019 to clarify several aspects of the new rules, including whether nonresident entities that are registered for VAT purposes in Portugal are required to use certified invoicing software.

The circular letter confirms the following:

- Nonresident companies that are only VAT-registered in Portugal will be required to use invoicing software certified by the PTA to issue invoices as from 1 January 2021; and
- The PTA will provide a new free invoicing software program to be used, if necessary, by taxpayers for invoice processing. However, until the new program is made available, taxpayers can issue invoices through the PTA's website.

It should be noted that details regarding some aspects of the new rules governing invoice processing are pending, such as the procedures concerning the QR code to be disclosed on documents issued by taxpayers (which is mandatory as from 1 January 2020).

Qatar

GTA issues procedures for making tax payments

On 18 September 2019, Qatar's General Tax Authority (GTA) issued Circular 2 of 2019 detailing the procedures for making tax payments, which will include payments by cash, cheque or bank transfer to the GTA's bank accounts at the Qatar National Bank (QNR).

The circular provides the following instructions:

- The taxpayer must present its tax card to the QNR;
- The taxpayer must provide the tax file number and indicate the type of payment that will be used (e.g., cash, cheque or bank transfer);
- The taxpayer must reference the tax year for which the tax is being paid and provide the payment reference number from the GTA's online portal (i.e. the Tax Administrative System (TAS)); and
- The taxpayer must make payment to a specific GTA bank account as follows:
    - Payment of corporate income tax in Qatari riyals:
        - Bank account number: 0013-293246-060
        - IBAN number: QA80 QNBA 0000 0000 0013 2932 4606 0
        - SWIFT code: QNBAQAQA

- Payment of excise tax in Qatari riyals:
  - Bank account number: 0013-293246-061
  - IBAN number: QA80 QNBA 0000 0000 0013 2932 4606 1
  - SWIFT code: QNBAQAQA
- Payment related to petroleum activities in Qatari riyals:
  - Bank account number: 0013-0488-9805-2
  - IBAN number: QA78 QNBA 0000 0000 0013 0488 9805 2
  - SWIFT code: QNBAQAQA
- Payment related to petroleum activities in United States dollars:
  - Bank account number: 0013-0488-9805-3
  - IBAN number: QA80 QNBA 0000 0000 0013 0488 9805 3
  - SWIFT code: QNBAQAQA

Saudi Arabia

Expansion of excisable godos

On 15 May 2019, Saudi Arabia's General Authority of Zakat and Tax (GAZT) expanded the scope of excise goods to include the following categories:

- Sweetened drinks (effective from 1 December 2019) at a rate of 50%;
- Electronic devices and tools used for smoking, vaping and similar activities (effective from 15 May 2019) at a rate of 100%; and
- Liquids used in electronic devices and tools used for smoking, vaping and similar activities (effective from 15 May 2019) at a rate of 100%.

Sweetened drinks are defined as any product in which a source of sugar or other sweetener has been added for purposes of drinking whether the product is ready for drinking or is a concentrate, powder, gel, extract or any other form that can be transformed into a drink.

Businesses that import, manufacture or stockpile the sweetened drinks in Saudi Arabia must register for excise tax before the applicable effective date.

If already registered, businesses will need to determine whether their products fall within the expanded scope of excise goods. Businesses with existing inventories of such goods are required to file a single transitional excise return following the applicable effective date, with the excise tax return submitted and the excise tax paid within 45 days from such effective date.

Serbia

Amendments to the Law on Value Added Tax

We hereby wish to inform you that National Assembly of the Republic of Serbia has adopted the Law on Amendments to the Law on Value Added Tax, during its session held on October 7, 2019.

The key amendments refer to:

- regulation of tax treatment of vouchers;
- clarification of the conditions for VAT registration of foreign entities;
- new provisions on the place of supply of food and drinks for consumption on ship, aircraft or train;
- clarification of the provisions on the tax point for services directly related to the services of transfer, assignment, and use of copyright and related rights;
- prescribing a VAT zero rate for supplies and imports of goods performed within the framework of the implementation of infrastructure projects;
- new provisions on determination of pro rata deduction;
- more detailed provisions on the possibility of correcting incorrectly computed VAT.

The overview of the aforementioned amendments will be presented in a more detailed way below. For any questions regarding the application of the amendments to the Law on Value Added Tax, please contact **Pavle Kutlesic, LL.M., Manager in Tax Department (Indirect Taxes)** via: pkutlesic@deloittece.com.

Vouchers

First of all, within these amendments introduce a differentiation between single-purpose vouchers and multi-purpose vouchers. Accordingly, **a single-purpose voucher** is considered to be the voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services in line with the Law, **are known at the time of issue of the voucher**;

Regarding this, **each transfer of a single-purpose voucher made by a taxable person acting in his own name shall be regarded as a supply of the goods or services to which the voucher relates**. The actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher accepted as consideration or part consideration by the supplier **shall not be regarded as an independent transaction**.

Additionally, where a transfer of a single-purpose voucher is made by a **taxable person acting in the name of another taxable person**, that transfer shall be regarded as a supply of the goods or services to which the voucher relates **made by the other taxable person in whose name the taxable person is acting**. However, where the supplier of goods or services is not the taxable person who, acting in his own name, issued the single-purpose voucher, **that supplier shall however be deemed to have made the supply of the goods or services related to that voucher to that taxable person**.

On the other hand, a **multi-purpose value voucher** is a value voucher other than a single-purpose voucher. It may be in hard copy or electronic format, and it does constitute an instrument that entitles the holder to the right to use a price coupon discount, which does not include the right to purchase goods or services, transport tickets, admission tickets, postage stamps, or similar items.

In this regard, **the actual handing over of the goods or the actual provision of the services in return for a multi-purpose voucher accepted as consideration or part consideration by the supplier shall be subject to VAT in line with Law, whereas each preceding transfer of that multi-purpose voucher shall not be subject to VAT.** Besides, where a transfer of a multi-purpose voucher is made by a taxable person other than the taxable person performing the actual handing over of goods or the actual provision of the services in line with the provisions proposed, **any supply of services that can be identified, such as distribution or promotion services, shall be subject to VAT in line with the Law**.

The above-mentioned amendment will be particularly significant to VAT payers who perform the transfer of vouchers considering the fact that precise rules for their transfer from a VAT perspective have been introduced.

VAT registration of foreign entities

The proposed amendments provide a more precise definition of supply performed by a foreign person in the Republic of Serbia, subject to an obligation to register for VAT, i.e. that this obligation exists for **VAT taxable supplies** and **for zero-rated supplies** exclusively.

The above-mentioned amendment will be particularly significant to foreign taxpayers who perform the supply of goods and services in the Republic of Serbia considering the fact that more precise definition of the registration obligation has been introduced.

Place of supply and tax point

Place of supply of goods

The proposed amendments provide that for **supplies of goods performed on ships, aircraft or trains during passenger transportation**, the place of supply would be the **point of departure**, which is in these cases considered to be the first scheduled moment of embarkation of passengers. In the case of transportation in both directions, the return transport would be considered as a separate transport.

Place of supply of services

The proposed amendments provide that for the **supply of services of providing food and beverage for consumption on ships, aircraft or trains, the place of supply would be the point of ship, aircraft or train departure, which is in these cases considered to be the first scheduled time of embarkation of passengers**. In the case of transportation in both directions, the return transport would be considered as a separate transport. The proposed amendments also provide that in case that permanent and temporary residence of the service provider i.e. recipient are not in the same place, the place of supply of the service should be the place of temporary residence.

In order to eliminate possible double taxation, i.e. double non-taxation, the proposed amendments will regulate the matter of determination of the place of supply of telecommunication, radio, and television broadcasting services and services provided electronically to non-VAT payers in a more detailed way *via* the criteria and assumptions regulated by a by-law.

Due to the introduction of the new provisions, the amendments will be particularly significant to VAT payers who perform the above-mentioned supply of goods i.e. services on ships, aircraft or trains, and to VAT payers who provide telecommunication and similar services to individuals.

Tax point

The proposed amendments provide that one of the tax points would be the day of issuance for invoices for the supply of services directly related to the services of transfer, assignment and use of copyright and related rights, patent, licenses, trademarks, and other intellectual property rights, **regardless of the supplier of those services**. The same possibility is proposed for the supply of technical support services when using the software, hardware and other equipment for a specified period.

The aforementioned amendment will be particularly significant to suppliers of technical support services and recipients of these services when using the software, hardware, etc. considering the fact that tax liability for those services will occur on the day of invoicing.

Zero-rated supply and import of goods

The proposed amendments provide for zero-rated taxation of the **supply of goods and services, and to eliminate the obligation of paying VAT on the import of goods as well, which is performed within the framework of the implementation of highway construction projects** of a public interest importance established by a special law. In addition, VAT shall not be paid on the import of goods based on repair within the warranty period, and the harmonization of the Law with the provision of the Customs Law.

Additionally, the proposed amendments provide for a **reduction of the total value of goods for which a foreign passenger could be entitled to the right to a VAT refund from EUR 100 in RSD equivalent at the middle exchange rate of the National Bank of Serbia to RSD 6,000 including VAT**. In addition, the proposed amendments also regulate the obligation of sellers to issue documentation on the basis of which passengers can obtain a VAT refund on the request of these passengers, and the extension of the deadline for submission of evidence that the passenger has dispatched goods abroad to 12 months from the date of dispatch of goods in question.

The aforementioned amendments will be significant to VAT payers who perform supply of goods and services within the framework of infrastructure projects, to VAT payers who perform a supply of goods to foreign passengers who are dispatching goods abroad in personal luggage, due to increase in supply volume, and to those foreign passengers as well.

Pro rata deduction

The proposed amendments provide that the following **should not be taken into account when determining pro rata deduction: the occasional real estate supplies, the occasional supplies of services in the field of monetary and capital transactions, and investments in facilities intended for the purpose of performing the activity for which the fee is charged**. In this regard, occasional real estate supplies and occasional supplies of services shall be considered two real estate supplies at the most i.e. two supplies of the aforementioned services at the most in one calendar year.

The aforementioned amendments will be particularly significant to VAT payers who perform the business activity which involves VAT taxable supplies along with the VAT exempted supplies to a much lesser extent, since, *inter alia*, they will not have an obligation to divide the input tax if the determined percentage of the proportional tax deduction is at least 98%.

Correcting incorrectly computed VAT and determination of the tax debtor

The proposed amendments further regulate the procedure for correcting incorrectly stated amount of VAT **in a more detailed way, which involves issuing a new invoice with a corrected amount of VAT, i.e. an invoice without stated VAT, along with the note that that invoice replaces the previously issued invoice** and a document issued by recipient of the invoice as a proof that the VAT stated in the preceding invoice has not been used as an input tax.

The aforementioned amendment is particularly significant to VAT payers that issue or receive erroneous invoices, considering the fact that this amendment regulates the procedure for invoice cancellation more precisely, and at the same time clarifies persons who are not entitled to right to correct the amount of VAT stated in the invoice, which are non-VAT payers exclusively. The preceding provision involved also persons who did not perform a supply.

Spain

Draft rules implementing EU VAT "quick fixes" published

On 1 October 2019, the Spanish tax authorities published a preliminary draft law and a draft royal decree that would implement into domestic law the provisions of Council Directive (EU) 2018/1910 modifying certain VAT rules to resolve specific problems relating to intra-community trading in goods.

The amendments contained in the directive, also referred to as "quick fixes," were adopted by the EU Council in October 2018 to improve the current cross-border VAT regime pending the introduction of the "definitive" VAT system, which is not expected until 2022. The quick fixes include:

- Simplified and uniform treatment of call-off stock arrangements;
- Uniform criteria to simplify the VAT rules on chain transactions;
- A common framework for documentary evidence of proof of transport required to claim a VAT exemption for intra-EU supplies; and
- A substantive requirement to ascertain the validity of a VAT identification number for the person acquiring the goods in the VAT Information Exchange System (VIES) to benefit from a VAT exemption for the intra-EU supply of goods.

The preliminary draft law is now subject to public discussion and changes could be made before the parliament approves a final draft. The directive requires EU member states to adopt the quick fixes by 31 December 2019 and apply the quick fixes as from 1 January 2020.

Sweden

2020 budget bill proposal presented by the government, Centre Party and Liberal Party

On 18 September 2019, Sweden's Finance Minister presented the 2020 budget bill to parliament. The bill contains a wide range of proposed measures, including a "green tax exchange" concept under which various environmental taxes would be increased in exchange for lowering income and other types of tax, the abolition of the surtax on high-income earners, a special tax for banks and reduced taxes on pensioners.

Background

One year has passed since the last parliamentary election. The election was followed by a relatively turbulent government formation where the Moderate Party and the Christian Democrats' budget was voted through. In January 2019, the current government (the Social Democrats and the Green Party) signed an agreement ("January agreement") with the Centre Party and the Liberal Party agreeing to cooperate on policies of substance. Now, nine months later, the January agreement still is intact and on 18 September 2019, a joint budget bill (a comprehensive proposal presented by the four parties) was published for 2020.

Green tax exchange

The budget bill includes a "green tax exchange" concept, under which various environmental taxes would be increased in exchange for lowering income and other types of tax, and also introduces other environmental taxes as required by EU law. An example of the concept is the proposal in the bill for a tax reduction of SEK 1,650 for individuals living in the provinces of North Sweden and in the northwest of Svealand to provide regional incentives to make it more attractive for people to live and work in these parts of the country.

The bill contains the following environmental tax proposals:

- **Tax on waste incineration:** A new excise tax on waste incineration is proposed to apply as from 1 April 2020. The tax rate would be SEK 125 per ton of waste, subject to deductions for waste, substance or objects that have ceased to be waste and removed from the incineration plant. The waste incineration plant would be liable for the tax and responsible for reporting and paying the tax.

- **Adjusted fuel tax**: Plans to announce a future proposal to reduce the carbon tax and energy tax levied on gasoline and diesel fuel as from 1 January 2020 are noted in the budget bill.

- **Tax on plastic bags:** Based on the EU Packaging Directive, a new tax levied on plastic bags is proposed to apply as from 1 May 2020. Plastic bag manufacturers and importers would be subject to a tax of SEK 3 per plastic bag used by consumers to pack and carry goods, with a lower rate applying where certain smaller and thinner bags (mainly used in grocery stores) are used. As with other excise taxes, approved warehouses would need to be used to qualify for deferral of the tax.

- **Chemical tax on foreign sellers:** Currently, certain sales by foreign sellers directly to Swedish consumers are exempt from the chemical tax. The chemical tax is levied on certain electronic products based on their category and weight, but limited to SEK 440 per product. When the chemical tax was introduced, the exemption for foreign sellers mainly was motivated by the practical problems of implementing the tax. Reflecting the fact that the exemption has been criticized by several industry organizations and companies, a memorandum with proposals will be presented during 2019 outlining how an amendment to the exemption may be devised. Critics of the exemption argued that it constitutes unauthorized state aid, with foreign companies being taxed more favorably than Swedish companies.

Other proposals

Enhanced basic protection for pensioners

The budget bill contains various proposals relating to individuals over 65 years of age, including an increased amount of care for the elderly, reduced taxation and strengthened basic protection for such individuals with a guaranteed pension.

There have previously been increases in the basic tax deduction for low income individuals over 65. The budget bill proposes that the basic deduction for individuals over 65 with a higher pension also should be increased to reduce the differences between salary and pension income. Furthermore, it is also proposed that the basic protection for pensioners should be increased. This would increase the level of guaranteed pension and housing supplement. The amendments are proposed to apply as from 1 January 2020.

Labor market entry deductions

The spring budget bill focused on reducing employer contributions for the first employees of sole proprietors and individuals between the ages of 15 and 18. The 2020 budget bill continues this theme by announcing a future proposal to reduce employer contributions for individuals who, for various reasons, find it difficult to obtain employment. This measure (known as the “entry deduction”) would apply as from 1 July 2020 (to include salaries paid after 30 June 2020) and would be valid for the first 24 months of employment. As a result of the deduction, the employer's

contributions and the general payroll tax would be reduced so that only the old-age pension contribution would be payable during the first 24 months of employment (for compensation up to SEK 23,500 per employee per month).

Abolition of additional surtax on high-income earners

The additional surtax on high-income earners would be abolished from 1 January 2020. The elimination of the surtax should result in about 345,000 individuals with taxable income exceeding SEK 700,000 being able to reduce their tax cost by SEK 17,700 per year. The amendment is proposed to apply as from 1 January 2020.

Economic employer concept for temporary work in Sweden

Individuals working in Sweden for a foreign employer for temporary periods are generally assessed for tax based on a "183-day rule," with the assessment based on employment by the "formal" employer. From 1 January 2021, it is proposed that the assessment would be based on the "economic" employer concept common in other jurisdictions, i.e. the employer who "benefits" from the individual's work, rather than the employer with whom the individual has a formal contract of employment. The effect is that such individuals would be liable to tax on their Swedish earnings from their first day in Sweden. A legislative amendment is expected during 2020 that would come into effect as from 1 January 2021.

Tax deferral in connection with sale of private property

Before the rules allowing tax deferral of capital gains were temporarily abolished in 2016, an individual who made a profit from the sale of a residence could apply for a deferral of taxation up to a maximum of SEK 1,450,000 upon acquiring a new residence. To increase mobility in the housing market, the budget bill proposes an increase in the deferral amount to SEK 3 million from 1 July 2020 when the cap is due to be reintroduced. Furthermore, a standard interest amount would be levied on the deferred tax.

Bank tax to be introduced

A bank tax is proposed to be introduced from 1 January 2022 to finance the Swedish military defense by SEK 5 billion annually from 2022. The government will provide further information on the proposal language. According to the government, the future proposal will be compatible with the EU regulations on state aid.

Enhanced relief for employers' social security contributions for employees engaged in R&D

Under current legislation, a 10% deduction of the employer's contribution basis is allowed for employees working on qualified R&D activities. To further increase the incentives to employ individuals working on R&D, the budget bill proposes

additional reductions of the basis for employer’s contributions as from 1 April 2020. More details will be published in the memorandum to be presented during autumn 2019.

Reduced tax on advertising

The budget bill contains a proposed reduction in the tax on advertising, from 7.65% to 6.9%, as well as an increase in the annual threshold for the liability to pay advertising tax from SEK 60,000 to SEK 100,000. These changes are proposed to apply as from 1 January 2020, with the goal eventually to abolish the tax on advertising.

Tobacco tax

Under the harmonized excise tax legislation in the EU, it is normally required that for tobacco to be classified as taxable smoking tobacco, it must be "cut or otherwise split, twisted or pressed into" and that it "can be smoked without further industrial processing." These criteria have been addressed by the Court of Justice of the European Union but the case law has been interpreted in different ways in the EU member states, and is unclear. This has given rise to lengthy processes for deciding whether tobacco should be taxed, and tobacco that previously was classified as raw tobacco now is classified as taxable smoking tobacco, leading to a risk of double taxation. The Swedish government has decided to review the issue and, if necessary, return with proposals for new measures.

Competitive neutrality and actions to reduce welfare fraud

The budget bill contains initiatives to reduce tax evasion and welfare fraud. Among other things, an increase is proposed to the annual grants to the Enforcement Authority, the Swedish Economic Crime Authority, the Swedish Tax Agency and the Swedish Work Environment Authority to counter welfare fraud and rule violations.

It also is proposed that, from 1 January 2020, electronic payment requirements for RUT (cleaning, maintenance and laundry) and ROT (repairs, conversion and extension) deductions, which are available when hiring a person to carry out repairs, conversion, cleaning, etc., would be introduced.

Changes in VAT legislation regarding e-commerce

As a second step of the implementation of the EU VAT e-commerce package, several changes are proposed with regard to which the government intends to submit a legislative proposal in early 2020:

- The import VAT exemption on low value shipments would be abolished as from 1 January 2021.

- In certain situations, businesses operating electronic interfaces, such as marketplaces or platforms, would be deemed to be the supplier of goods sold to customers in the EU, meaning that they would have to collect and pay the VAT on such sales.
- The mini one stop shop, an arrangement that allows a VAT taxable person to account for and pay VAT in just one EU member state, which currently applies to electronic services, would be extended to apply to all services and to certain sales of goods.
- The current threshold for distance sales of goods from other EU member states would be abolished. Instead, the EU common threshold for determining which member state has the right to tax electronic services should apply.

Staffing services in healthcare sector

The government announced that it intends to investigate ways to neutralize the effects of recent developments that bring the hiring of health care personnel with in scope of VAT.

Comments

There has been considerable uncertainty as to whether the January agreement would continue between the government, the Centre Party and the Liberal Party, which has in turn given rise to uncertainty about future tax policy and likely amendments expected. During the past year, several political proposals have been published, reflecting the compromises of the January agreement. The budget bill is a clear continuation of that agreement aimed at obtaining a state budget with a holistic approach. In some parts, it is clear that mutual agreements have overridden ideology. The proposal to introduce a bank tax from 2022 suggests that the parties to the January agreement intend to continue their political cooperation for some time to come.

Switzerland

Supreme Court confirms financial sector intermediary services are VAT-exempt

In two recent cases (17 July and 19 September 2019), the Swiss Federal Supreme Court examined and confirmed the current practice of the Federal Tax Administration (FTA) to grant a VAT exemption for intermediary services (negotiations) provided by a third party in connection with financial services (article 21 para. 2 num. 19, let. a. to e. of the VAT Law (VATL)).

According to the FTA's current practice, financial negotitations do not necessarily require a direct representation arrangement (proxy) to qualify as VAT-exempt without credit intermediary services. This practice, which has been used by the FTA since 2010 and not been subject to legislative change, has been the subject of discussions during VAT audits. The Supreme Court stated that negotiations should contribute to the conclusion of a specific contract and are distinct from activities earning a finder's fee, which are taxable services.

The Supreme Court case is important as it provides legal support to the FTA's current practice and aligns with EU VAT legislation regarding financial intermediary services.

Switzerland

Place of supply of services to groups of persons without legal personality clarified

The Swiss Federal Tax Administration (FTA) clarified on 20 August 2019 that the "headcount principle" applies to determine the place of supply of services (place of the recipient, article 8 paragraph 1 of the Swiss VAT Law) rendered to groups of persons without legal personality (e.g. simple partnerships, group of heirs). Therefore, if at least half of the service recipients are domicilied in Switzerland, the services will be deemed to be supplied in Switzerland.

The FTA already applies this rule to determine the place of supply of services to trusts and foundations.

United Arab Emirates

New excise tax reporting requirements

The United Arab Emirates (UAE) Federal Tax Authority recently published new excise tax reporting requirements in the updated Excise Tax User Guide and the Excise Tax Return User Guide. The current period excise tax return, which is due on 15 September 2019, should be completed based on the new reporting requirements.

The new reporting requirements affect all excisable goods that are imported, manufactured, distributed or stockpiled in the UAE, which currently are carbonated beverages, energy drinks, and tobacco and tobacco products.

The new reporting requirements include additional declarations, as well as new procedures to separate the reporting of goods released from designated zones, the movements of goods into, within and between designated zones, and local purchases and transfers of ownership within designated zones.

United States

State Tax Matters (27 September 2019)

The 27 September 2019 edition of US State Tax Matters includes coverage of the following:

- Tax amnesty developments in Illinois;
- Income/franchise tax developments in California, Massachusetts, Michigan, Oregon and South Dakota; and
- Indirect tax developments in Alabama, Massachusetts, Rhode Island and Washington.

United States

State Tax Matters (4 October 2019)

The 4 October 2019 edition of US State Tax Matters includes coverage of the following:

- Corporate income tax nexus developments in Pennsylvania and Wisconsin;
- Income/franchise tax developments in Delaware, Florida, New Hampshire and Texas; and
- Indirect tax developments in Illinois, Kansas, Maine, Maryland, Minnesota, North Dakota, Texas and Wisconsin.

In addition, the newsletter features a recent Multistate Tax Alert: *New Mexico enacts sweeping tax legislation*.

It also features an Inside Deloitte article: *Kaestner Family Trust Opinion: Grappling With the Patchwork of State Laws*

United States

State Tax Matters (11 October 2019)

The 11 October 2019 edition of US State Tax Matters includes coverage of the following:

- Corporate income tax nexus developments in Hawaii;
- Income/franchise tax developments in Kansas, Maryland, Massachusetts, Montana, New York and New York City; and
- Indirect tax developments in Colorado, Maine, Massachusetts, New Jersey and Utah.

The newsletter also features recent Multistate Tax Alerts:

- *New Alabama law implements financial institution excise tax reforms*
- *Oregon "Corporate Activity Tax" now effective law, applies to tax years beginning on or after January 1, 2020*
- *Texas Comptroller proposes new treatment to economic nexus threshold to incorporate Wayfair*

United States

State Tax Matters (18 October 2019)

The 18 October 2019 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Louisiana, Ohio and Rhode Island; and
- Indirect tax developments in Arizona, California and Virginia.

Uruguay

Decree implements 2015 MERCOSUR decision on FTZs into law

Decree 253/2019, issued by Uruguay's government on 2 September 2019 and published in the official gazette on 12 September, implements MERCOSUR Decision 33/2015, which states that goods entering a free trade zone (FTZ) from one MERCOSUR country to another (including storage in warehouses) will not be subject to the External Common Duty applicable to imports from non-MERCOSUR countries.

MERCOSUR is a South American trading bloc of which Uruguay is a member (other full members are Argentina, Brazil and Paraguay (Venezuela has been suspended) and associate members Bolivia, Chile, Colombia, Ecuador, Guyana, Peru and Suriname).

Uruguay has several FTZs with a range of tax exemptions and other benefits including:

- An exemption from corporate income tax, net worth tax and VAT;
- No withholding tax on payments to nonresidents of dividends, interest, royalties or technical services fees; and
- Allowing foreign employees to elect not to contribute to social security and, if they choose this option, they have the option of paying nonresidents' income tax (at a flat rate of 12%) instead of personal income tax (at progressive rates of up to 36%).

MERCOSUR Decision 33/2015, which entered into force on 21 July 2019 after the last MERCOSUR country's approval, allows goods passing through MERCOSUR countries via FTZs (including storage in warehouses) to keep their original certificate of origin to avoid the External Common Tariff applicable to non-MERCUSOR countries. Certain requirements must be met, including:

- The FTZs must be under the customs control of the respective country; and

- Transactions related to the goods are limited to commercialization, conservation, fractionation in lots or volumes or other operations provided the tariff classification or the original character of the goods consigned in the original certificate of origin with which they entered the FTZ is not altered.

Decree 253/2019, which implemented MERCOSUR Decision 33/2015 in Uruguay, established that Uruguay's customs authority (DNA) will be the agency in charge of issuing certificates of origin and is authorized to establish formalities, requirements, controls and procedures related to such certificates. The DNA likely will issue further guidance on the process.

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

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

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