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8. Directiva (UE) 2019/2235 del Consejo de 16 de diciembre de 2019 por la que se modifica la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, y la Directiva 2008/118/CE, relativa al régimen general de los impuestos especiales, en lo que respecta al esfuerzo de defensa en el marco de la Unión.

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4. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 17 de diciembre de 2019. Nº de recurso 6274/2018.

5. Audiencia Nacional. Sala de lo Contencioso-Administrativo. Sentencia de 11 de octubre de 2019, nº de recurso 558/2017.

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IV. Country Summaries

January

European Union

VAT "quick fixes

VAT rules for cross-border supplies of goods within the EU changed on 1 January 2020 with the implementation of the four "quick fixes", part of a package of measures to improve the cross-border VAT regime pending introduction of the "definitive" VAT system, expected in 2022.

China-US

Phase One trade agreement

On 13 December 2019, China and the US reached a "Phase One" trade agreement, under which both countries agreed to suspend additional tariffs scheduled to take effect on 15 December 2019. The Phase One agreement is a step forward in resolving the China-US trade dispute.

United States

Senate clears USMCA trade deal

The US Senate on 16 January 2020 voted to approve President Trump's signature rewrite of the North American Free Trade Agreement (NAFTA), known as the United States-Mexico-Canada Agreement (USMCA). The president is expected to sign the measure into law.

Barbados

VAT on online transactions

From 1 December 2019, nonresident suppliers may be required to register in Barbados for VAT purposes and to collect and remit VAT on online purchases of goods and services for consumption in Barbados. VAT return filings and remittances were due by 21 January.

Ecuador

Tax Simplicity and Progressivity Law

The Tax Simplicity and Progressivity Law contains direct and indirect tax reform measures aimed to simplify the tax system and raise tax revenue. It generally is effective as from 1 January 2020. It imposes VAT on digital services, among other things.

Switzerland/Italy

Campione d'Italia

From 1 January 2020, the Italian municipality of Campione d'Italia is included in the EU customs territory. Campione d'Italia remains outside the scope of the EU Principal VAT Directive and a local consumption tax will be introduced, aligned with the Swiss VAT rates.

Other news

European Union

European Commission issues progress report on implementation of Union Customs Code

European Union

European Commission issues letters of formal notice for failure to adopt quick fixes

Albania

2020 fiscal package enacted

Argentina

Tax reform measures enacted

Australia

Customs duty: 33% error rate in import declarations

Australia

Weekly Tax Round-up (13 January 2020), including GST

Australia

Weekly Tax Round-up (20 January 2020), including indirect tax

Belgium

New monthly VAT refund regime for "starters"

Belgium

New statistical reporting obligations for large VAT groups introduced

Bulgaria

Tax legislation changes for 2020

China

2020 tariff adjustments announced

Colombia

Amended tax reform legislation enacted

Czech Republic

Update on implementation of VAT changes

France

2020 finance law includes changes to VAT rules

Greece

Changes to indirect tax rules aim to stimulate the economy

India

GST council recommends changes to procedures and rates

India

FAQs on e-invoicing under GST published

Ireland

Guidance issued on EU VAT "quick fixes"

Ireland

VAT Tax and Duty Manual updated reflecting rate change on food supplement products

Italy

VAT highlights of decree converted into law

Italy

2020 budget law introduces new consumption taxes on plastic and sugar

Kenya

Finance Act 2019 enacted

The Netherlands

Tax authorities provide guidance on VAT returns, verification, and reverse charge

Romania

VAT split payment mechanism abolished

South Africa

Taxpayers may be required to apply for carbon emissions license

United Arab Emirates

Year-end VAT adjustments for input tax and capital assets

United Kingdom

Legislation and guidance on EU VAT "quick fixes" issued

United States

State Tax Matters (10 January 2020), including indirect tax developments from the Streamlined Sales Tax Governing Board and in Alaska, Colorado, Illinois, Michigan, Minnesota, Ohio, South Dakota, Texas and Utah

United States

State Tax Matters (17 January 2020), including indirect tax developments in Washington

United States

State Tax Matters (24 January 2020), including indirect tax developments in California, Louisiana, New Jersey, New York and Washington

February

Australia

Free trade agreements

Free trade agreements between Australia and Peru (Peru-Australia Free Trade Agreement (PAFTA)) and Australia and Hong Kong (Australia-Hong Kong Free Trade Agreement (A-HKFTA)) entered into force on 11 February 2020 and 17 January 2020, respectively.

Chile

Tax authorities sign first-ever APA

Chile’s Internal Revenue Service and the National Customs Service have entered into the country’s first-ever advance pricing agreement with a taxpayer. The APA is the first in the world in which the country’s customs authority is a party to the agreement.

China-US

Phase One trade agreement signed

On 15 January 2020, China and the US signed the Phase One trade agreement where both countries agreed to suspend additional tariffs that were to take effect on 15 December 2019. The signing is a step toward alleviating trade tensions between the two countries.

Greece

Changes to indirect tax rules

The changes aim to stimulate the economy, and include a VAT suspension regime for newly developed real estate, reclassification of certain goods to qualify for reduced VAT rates, and guidelines for the adjustment of input VAT deducted for certain unused assets.

India

Court rules on IGST

The Gujarat High Court has held in a decision addressing a number of writ petitions that integrated goods and services tax may not be levied on ocean freight, and declared that the relevant notifications imposing the tax issued by the tax authorities were unconstitutional.

United Arab Emirates

Free zones

The United Arab Emirates Abu Dhabi Global Market and Dubai International Financial Centre respectively have issued guidance on the implementation of the economic substance regulations in their free zones with respect to certain ES reporting requirements.

Other news

European Union

European Commission publishes annual survey on tax policies in the EU

UK – SACUM

Update on Brexit and new SACUM-UK economic partnership agreement

Argentina

Implementation of measures to promote knowledge economy suspended

Australia

Customs duty dispute resolved for vitamin and weight loss pastilles

Australia

Victorian residential property: Foreign purchaser additional duty change

Belgium

CJEU rules Belgian stock exchange tax is not contrary to EU law

China-US

Update on section 301 tariff reductions

China

Tariffs to be reduced on certain US imports

China

Emergency tax measures implemented to address novel coronavirus outbreak

China

Temporary import exemption granted for goods donated in response to novel coronavirus

Colombia

Tax authorities issue guidance on application of "general anti-abuse" rule

Colombia

Executive orders under revoked law requiring e-invoicing are unenforceable

Czech Republic

Tax amendments now in effect include changes affecting income and consumption taxes

Guatemala

New electronic forms available for exporters requesting VAT credit refunds

India

High Court holds that notice pay recovery is outside the scope of service tax

India

Change in classification and new import duty for medical devices

Ireland

VAT Tax and Duty Manual updates changes to treatment of blood plasma products

Italy

Clarification needed on application of VAT "quick fixes"

Japan

Fact-finding is key to successful tax appeals

Mexico

2020 Omnibus Tax Resolution incorporates recently enacted cross-border tax rules

The Netherlands

E-identification not required for 2020 VAT return filings

The Netherlands

Implementation of VAT e-commerce package by 1 January 2021 unlikely

Norway

Guidance issued on new VAT regime for low-value goods

Saudi Arabia

Customs authority announces self-correction initiative for customs declarations

United States

State Tax Matters (31 January 2020), including indirect tax developments in Kansas, Louisiana, and Texas

United States

State Tax Matters (7 February 2020), including indirect tax developments in Georgia, Nevada, North Carolina, Pennsylvania, South Carolina, Utah, and Washington

United States

State Tax Matters (14 February 2020), including indirect tax developments in Alaska, Colorado, Illinois, Massachusetts, Pennsylvania, and Washington

United States

State Tax Matters (21 February 2020), including indirect tax developments in Colorado, Louisiana, Pennsylvania, Texas, and Washington

I. Normativa

1. Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales.

Con fecha 5 de febrero de 2020 se publicó en el Boletín Oficial del Estado el Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales.

En relación con el IVA, los artículos 214 y 216 de dicho Real Decreto-ley contemplan modificaciones en la Ley del IVA y en el Reglamento del impuesto, aprobado por el Real Decreto 1624/1992, de 29 de diciembre.

Dichas modificaciones tienen como finalidad la incorporación del Derecho de la Unión Europea al ordenamiento interno, en concreto, de la Directiva (UE) 2018/1910, del Consejo, de 4 de diciembre de 2018, por la que se modifica la Directiva 2006/112/CE en lo que se refiere a la armonización y la simplificación de determinadas normas del régimen del impuesto sobre el valor añadido en la imposición de los intercambios entre los Estados miembros, y la Directiva (UE) 2019/475 del Consejo, de 18 de febrero de 2019, por la que se modifican las Directivas 2006/112/CE y 2008/118/CE en lo que respecta a la inclusión del municipio italiano de Campione d'Italia y las aguas italianas del Lago de Lugano en el territorio aduanero de la Unión y en el ámbito de aplicación territorial de la Directiva 2008/118/CE.

Exponemos a continuación dichas modificaciones que son de aplicación, salvo en los supuestos que se indican, a partir de 1 de marzo de 2020.

A) Ventas de bienes en consigna.

Las comúnmente denominadas operaciones de ventas en consignación son, esencialmente, contratos en virtud de los cuales el proveedor remite bienes a un adquirente conocido de antemano sin transferirle en ese momento la propiedad de los bienes, sino que esta se efectúa en un momento temporal posterior cuando el adquirente retira los bienes de manera discrecional, según sus necesidades.

Con la modificación de la Ley del IVA (artículos 9.3º, 9 bis, 15, 75.Uno.8º y 164.Uno.5º) así como del Reglamento del IVA (artículos 66.1.3º, 66.2 y 3, 79, 80.1.4º y 80.2 y 3), se simplifica la aplicación de la exención en las transferencias de existencias de reserva (call-off stocks) de los denominados "acuerdos de venta de bienes en consigna" (art. 9 bis de la Ley del IVA).

Con esta simplificación, se logra que el proveedor que realiza la entrega no tenga obligación de registro alguna en el Estado miembro de llegada de los bienes.

La nueva regulación establece que las entregas de bienes efectuadas en el marco de un acuerdo de ventas de bienes en consigna darán lugar a una única operación: *una entrega intracomunitaria de bienes exenta en el Estado miembro de partida efectuada por el proveedor, y a una adquisición intracomunitaria en el Estado miembro de llegada llevada a cabo por el cliente cuando este retire las mercancías del almacén.* En concreto, el devengo de la operación se producirá el 15 del mes siguiente a aquel en el que los bienes se pongan a disposición del adquirente, o en la fecha en que se expida la correspondiente factura de ser anterior.

En todo caso, los empresarios o profesionales podrán optar por no acogerse a la simplificación incumpliendo las condiciones previstas para su aplicación, que son las siguientes:

- Los bienes se transporten al Estado miembro fijado en el acuerdo de ventas en consigna, por el vendedor, o por un tercero en su nombre y por su cuenta, para ser adquiridos posteriormente a su llegada por un empresario o profesional habilitado por dicho acuerdo.

- El vendedor no tenga la sede de su actividad económica o un establecimiento permanente en el Estado miembro de llegada.

- El empresario que va a adquirir los bienes tenga un NIF-IVA en el Estado miembro de llegada.

- El vendedor conozca en el momento del inicio del transporte el NIF-IVA, nombre y apellidos, razón o denominación social completa del adquirente.

- El vendedor haya incluido el envío de los bienes en el Libro registro de determinadas operaciones intracomunitarias -art 66 del Reglamento del IVA- y en el modelo 349 -arts 79 y 80 del Reglamento del IVA-.

- En el plazo de 12 meses desde la llegada de los bienes al Estado miembro de destino debe haberse producido alguna de las siguientes situaciones:

    - Los bienes son adquiridos por el empresario indicado en el acuerdo de ventas en consigna.

    - Los bienes son adquiridos por un empresario que sustituye al destinatario inicial cuando disponga de un NIF-IVA en el Estado miembro de llegada y el vendedor incluya la sustitución en el Libro registro de determinadas operaciones intracomunitarias y en el modelo 349.

- Los bienes sean devueltos al territorio de aplicación del IVA español sin que se haya transmitido el poder de disposición y el vendedor incluya tal devolución en el Libro registro de determinadas operaciones intracomunitarias.

Se entenderá que se ha producido una transferencia de bienes (art. 9.3º de la Ley del IVA) cuando dentro del plazo de doce meses, o bien una vez superado dicho plazo, se incumplan cualquiera de las condiciones señaladas anteriormente, en particular:

- Cuando los bienes no hubieran sido adquiridos por el empresario o profesional al que iban destinados inicialmente los mismos, salvo que se adquieran por quien le sustituya.

- Cuando los bienes fueran expedidos o transportados a un destino distinto del Estado miembro fijado en el acuerdo de ventas de bienes en consigna.

- En el supuesto de destrucción, pérdida o robo de los bienes.

B) Operaciones en cadena.

Las usualmente conocidas como "operaciones en cadena" consisten esencialmente en dos o más entregas de bienes –efectuadas a menudo de forma casi simultánea- en las que hay un único transporte de aquellos entre dos jurisdicciones fiscales distintas.

Con el fin de determinar correctamente el tratamiento a efectos del IVA de estas operaciones, es necesario vincular el transporte a una de las entregas que se realizan, tal y como se ha encargado de remarcar la jurisprudencia del TJUE; ejercicio, en ocasiones, nada sencillo cuando el que efectúa el transporte es un operador intermediario y no el primer proveedor de los bienes o el cliente final.

Con la modificación del art 68.Dos.1º de la Ley del IVA, en ese tipo de operaciones, el transporte se imputará a la primera entrega de la cadena, es decir, la que realice el primer proveedor a favor del intermediario. Esta entrega se considerará una entrega intracomunitaria de bienes exenta del IVA.

No obstante, dicho transporte se entenderá vinculado a la entrega efectuada por el intermediario a su cliente cuando concurran las siguientes circunstancias:

- el intermediario comunique al proveedor un NIF-IVA español; y

- el intermediario transporte los bienes, por sí mismo, o por medio de un tercero que actúe por su cuenta, desde TAI español a otro estado miembro.

En este caso, la entrega efectuada por el primer proveedor al intermediario será interior a efectos del IVA (sujeta y no exenta), siendo la entrega intracomunitaria de bienes exenta la realizada por el intermediario a su cliente.

C) Nuevos requisitos materiales para la aplicación de la exención en las entregas intracomunitarias de bienes: NIF-IVA del adquirente y obligación de presentar correctamente el estado recapitulativo de operaciones intracomunitarias por el vendedor.

Se modifica la Ley del IVA –arts 25, 84.uno.2º.c´) y 164.uno.5º- para ampliar los requisitos que habrá que cumplir para la aplicación de la exención del IVA en las entregas intracomunitarias de bienes. En concreto, serán requisitos materiales y no formales:

- Que el empresario adquirente comunique al proveedor un NIF-IVA atribuido por un estado miembro distinto del Reino de España; y

- Que el proveedor haya incluido la operación en la declaración recapitulativa de operaciones intracomunitarias (modelo 349).

Por otra parte, para que el cumplimiento del segundo requisito se aproxime en el tiempo a la fecha de la operación, se suprime la posibilidad de presentación anual de la citada declaración recapitulativa (art. 81.4 y 5 del Reglamento del IVA).

D) Armonización de los elementos probatorios que deben facilitarse por los empresarios respecto de la efectiva realización del transporte de mercancías, a fin de eximir del IVA a las operaciones de entregas intracomunitarias de bienes.

Con la modificación del art 13 del Reglamento del IVA se establece que, con efectos de 6 de febrero de 2020, la expedición o transporte de los bienes al Estado miembro de destino se justificará por cualquier medio de prueba admitido en derecho y, en particular, mediante los elementos de prueba establecidos en el Reglamento de Ejecución (UE) nº 282/2011.

Desde el 1 de enero de 2020, el Reglamento de ejecución (UE) nº 282/2011 - art 45 bis- establece una serie de reglas, en forma de presunciones *iuris tantum*, que otorgan una mayor certeza en los elementos probatorios que permitan demostrar que el transporte de los bienes se ha realizado; elementos probatorios que varían en función de si este transporte es efectuado por el proveedor o por el adquirente de los mismos (o por un tercero en nombre de cualquiera de estos dos).

En todo caso, las Administraciones tributarias podrán refutar estas presunciones.

E) Ámbito de aplicación territorial del IVA (art. 3.Dos.1º. a) y b) de la Ley del IVA)

A partir del 6 de febrero de 2020, el municipio italiano Campione d'Italia y las aguas italianas del Lago de Lugano pasan a formar parte del territorio aduanero de la Unión y del ámbito de aplicación de la Directiva 2008/118/CE del Consejo, a efectos de los Impuestos Especiales, pero quedan fuera del ámbito de aplicación territorial del IVA.

2. Orden HAC/174/2020, de 4 de febrero, por la que se modifica la Orden EHA/769/2010, de 18 de marzo, por la que se aprueba el modelo 349 de declaración recapitulativa de operaciones intracomunitarias, así como los diseños físicos y lógicos y el lugar, forma y plazo de presentación, se establecen las condiciones generales y el procedimiento para su presentación telemática, y se modifica la Orden HAC/3625/2003, de 23 de diciembre.

Esta Orden realiza determinadas modificaciones en la declaración repatitulativa de operaciones intracomunitarias, modelo 349, para adecuarla a las modificaciones realizadas tanto en la Ley del IVA como en el Reglamento del Impuesto, realizadas por el Real Decreto-ley 2/2020, anteriormente comentado, en relación con los denominados acuerdos de ventas de bienes en consigna (artº 9 bis de la Ley del IVA).

Dichas modificaciones, que entraron en vigor el 1 de marzo de 2020 y serán aplicables, por primera vez, a las declaraciones recapitulativas de operaciones intracomunitarias correspondientes a 2020 que se presenten a partir de 1 de marzo de este año, podemos concretarlas de la siguiente forma:

- Se aprueba el modelo 349, de formato electrónico, cuyo contenido se ajustará a los diseños físicos que figuran en el anexo de la Orden que lo regula.

- Se añaden las transferencias de bienes expedidos o transportados desde el territorio de aplicación del Impuesto con destino a otro Estado miembro en el marco de acuerdos de ventas de bienes en consigna, a las operaciones que se deben consignar en esta declaración.

    - Su forma de presentación se remite a lo dispuesto en la Orden HAP/2194/2013, de 22 de noviembre, por la que se regulan los procedimientos y las condiciones generales para la presentación de determinadas autoliquidaciones, declaraciones informativas, declaraciones censales, comunicaciones y solicitudes de devolución, de naturaleza tributaria.

    - Se suprime el plazo de presentación de carácter anual de esta declaración.

3. Real Decreto-ley 18/2019, de 27 de diciembre, por el que se adoptan determinadas medidas en materia tributaria, catastral y de seguridad social.

Con fecha 28 de diciembre de 2019 se ha publicado en el Boletín Oficial del Estado el Real Decreto-ley 18/2019, de 27 de diciembre, por el que se adoptan determinadas medidas en materia tributaria, catastral y de seguridad social.

En relación con el IVA, el artículo 4 de dicho Real Decreto-ley contempla el mantenimiento para el año 2020 de los mismos límites o magnitudes, tanto de volumen de ingresos como de volumen de compras y servicios, que delimitan la aplicación del régimen especial simplificado y el régimen especial de la

agricultura, ganadería y pesca en el IVA, al igual que en los ejercicios 2016, 2017, 2018 y 2019, es decir, dichos límites quedan fijados en 250.000 euros para 2020.

Asimismo, como consecuencia de las prórrogas que se introducen en los límites excluyentes del régimen simplificado y del régimen especial de la agricultura, ganadería y pesca del IVA, la disposición transitoria primera de este Real Decreto-ley fija un nuevo plazo para presentar las renuncias o revocaciones a los citados regímenes especiales, que será de un mes a partir del día siguiente al de la publicación de aquel.

4. Orden HAC/1270/2019, de 5 de noviembre, por la que se aprueba el modelo 318, "Impuesto sobre el Valor Añadido. Regularización de las proporciones de tributación de los periodos de liquidación anteriores al inicio de la realización habitual de entregas de bienes o prestaciones de servicios" y se determinan el lugar, forma, plazo y el procedimiento para su presentación.

El artículo 29 de la Ley 12/2002, de 23 de mayo, por la que se aprueba el Concierto Económico con la Comunidad Autónoma del País Vasco, fue modificado por el artículo único de la Ley 10/2017, de 28 de diciembre, por la que se modifica la Ley 12/2002, de 23 de mayo, por la que se aprueba el Concierto Económico con la Comunidad Autónoma del País Vasco.

La nueva redacción de este artículo establece que en los supuestos en los que los contribuyentes hubieran estado sometidos a la competencia exaccionadora de una Administración tributaria, foral o común, en los períodos de liquidación anteriores al momento en que inicien la realización habitual de las entregas de bienes o prestaciones de servicios correspondientes a su actividad y a otra diferente en los períodos de liquidación posteriores, o cuando haya variado sustancialmente la proporción en la que tributan a las distintas Administraciones, común o forales, en los mencionados períodos de liquidación, procederán a la regularización de las cuotas devueltas en los términos previstos en el apartado Nueve del citado artículo 29.

La regularización a la que se refiere el párrafo anterior se efectuará de conformidad con los porcentajes de tributación a cada una de las Administraciones afectadas correspondientes al primer año natural completo posterior al inicio de la realización habitual de las entregas de bienes o prestaciones de servicios correspondientes a su actividad.

Para ello, los sujetos pasivos presentarán una declaración específica ante todas las Administraciones tributarias afectadas por la regularización, en el mismo plazo en que corresponda presentar la última declaración-liquidación del primer año natural completo posterior al inicio de la realización habitual de las entregas de bienes o prestaciones de servicios correspondientes a su actividad.

Para hacer efectivo el cumplimiento de la nueva obligación establecida por el apartado Nueve del artículo 29 de la Ley 12/2002, de 23 de mayo, por la que se aprueba el Concierto Económico con la Comunidad Autónoma del País Vasco, esta Orden, que entró en vigor el 1 de enero de 2020, aprueba el

correspondiente modelo de declaración a presentar ante la Administración tributaria del Estado, el modelo 318, "Impuesto sobre el Valor Añadido. Regularización de las proporciones de tributación de los periodos de liquidación anteriores al inicio de la realización habitual de entregas de bienes o prestaciones de servicios".

Los modelos de declaración a presentar ante las Diputaciones Forales del País Vaco serán los que correspondan de acuerdo con la normativa foral.

5. Orden HAC/1274/2019, de 18 de diciembre, por la que se modifican la Orden EHA/3111/2009, de 5 de noviembre, por la que se aprueba el modelo 390 de declaración-resumen anual del Impuesto sobre el Valor Añadido y la Orden HAP/2194/2013, de 22 de noviembre, por la que se regulan los procedimientos y las condiciones generales para la presentación de determinadas autoliquidaciones, declaraciones informativas, declaraciones censales, comunicaciones y solicitudes de devolución, de naturaleza tributaria.

Esta Orden, en relación con el IVA, modifica la Orden HAP/2194/2013, de 22 de noviembre, por la que se regulan los procedimientos y las condiciones generales para la presentación de determinadas autoliquidaciones, declaraciones informativas, declaraciones censales, comunicaciones y solicitudes de devolución, de naturaleza tributaria, para suprimir la presentación telemática mediante mensaje SMS de la declaración-resumen anual del Impuesto sobre el Valor Añadido, modelo 390. Esta modificación ya será aplicable para la declaración informativa correspondiente al ejercicio 2019.

Por otra parte, esta Orden da nueva denominación a la casilla 662 del citado modelo 390. Esta casilla tiene por objeto reflejar las cuotas a compensar generadas en el ejercicio en alguno de los períodos de liquidación distintos del último cuando no estén incluidas en la casilla 97 del mismo modelo 390, es decir, cuando no se hubiesen trasladado al resto de periodos de liquidación del ejercicio. A tal efecto, esta casilla se cambia su denominación por la de «Cuotas pendientes de compensación generadas en el ejercicio y distintas de las incluidas en la casilla 97».

6. Directiva (UE) 2019/1995 del Consejo de 21 de noviembre de 2019 por la que se modifica la Directiva 2006/112/CE en lo que respecta a las disposiciones relativas a las ventas a distancia de bienes y a ciertas entregas nacionales de bienes.

Esta Directiva tiene como objetivo establecer normas adicionales necesarias para apoyar las modificaciones realizadas en la Directiva del IVA, que serán aplicables a partir del 1 de enero de 2021, por la Directiva (UE) 2017/2455 del Consejo, de 5 de diciembre (en lo sucesivo, «la Directiva del IVA en el comercio electrónico»). Se trata, en particular, de las disposiciones relativas a: i) las interfaces electrónicas que faciliten las entregas de bienes a personas que no tienen la condición de sujetos pasivos en la UE efectuadas por sujetos pasivos no establecidos en la UE, y ii) los regímenes especiales para la declaración y

liquidación del IVA sobre las importaciones en caso de que no se utilice la ventanilla única para las ventas a distancia de bienes importados desde terceros territorios o terceros países.

7. Reglamento de Ejecución (UE) 2019/2026 del Consejo de 21 de noviembre de 2019 por el que se modifica el Reglamento de Ejecución (UE) nº 282/2011 en lo que respecta a las entregas de bienes o las prestaciones de servicios facilitadas por interfaces electrónicas y a los regímenes especiales aplicables a los sujetos pasivos que presten servicios a personas que no tengan la condición de sujetos pasivos o que realicen ventas a distancia de bienes o determinadas entregas nacionales de bienes.

Este Reglamento de ejecución tiene como objetivo establecer normas de aplicación detalladas necesarias para apoyar las modificaciones realizadas en la Directiva del IVA, que serán aplicables a partir del 1 de enero de 2021, por la Directiva del IVA en el comercio electrónico.

En particular, dichas modificaciones se refieren a: i) intervención indirecta del proveedor en la expedición o el transporte en relación con las ventas a distancia de bienes, ii) disposiciones relativas a las interfaces electrónicas, iii) disposiciones relativas a la ampliación del ámbito de aplicación de la ventanilla única, y iv) otras disposiciones.

8. Directiva (UE) 2019/2235 del Consejo de 16 de diciembre de 2019 por la que se modifica la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido, y la Directiva 2008/118/CE, relativa al régimen general de los impuestos especiales, en lo que respecta al esfuerzo de defensa en el marco de la Unión.

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

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

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de noviembre de 2019. Asunto C-400/18, Infohos.

Directiva 77/388/CEE— Artículo 13, parte A, apartado 1, letra f)— Exenciones— Prestaciones de servicios realizadas por agrupaciones autónomas de personas— Servicios prestados a los miembros y a los no miembros

Se plantea al TJUE si el artículo 13, parte A, apartado 1, letra f), de la Sexta Directiva se opone a una norma nacional que supedita la exención del IVA al requisito de que las agrupaciones autónomas de personas (AAP) presten servicios exclusivamente a sus miembros. Por lo cual, aquellas agrupaciones que también presten servicios a quienes no son miembros deben considerar como sujetas y no exentas sus prestaciones de servicios, incluso aquellas realizadas a sus miembros.

El Tribunal concluye que esa norma nacional es contraria al Derecho de la Unión dado que, de no permitir la aplicación de la exención del IVA en las prestaciones de servicios efectuadas por una AAP a sus miembros, por el mero hecho de realizar también prestaciones a terceras entidades que no son miembros de la misma, supondría una limitación general del ámbito de aplicación de la exención.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 19 de diciembre de 2019. Asunto C-707/18, Amărăşti Land Investment.

Directiva 2006/112/CE — Hecho imponible — Deducción del impuesto soportado — Adquisición de bienes inmuebles no inmatriculados registralmente — Asunción por el comprador de los costes de inmatriculación registral — Contrato con sociedades terceras especializadas — Mediación en una prestación de servicios o gastos de inversión efectuados para las necesidades de una empresa.

En un primer lugar, se cuestiona al Tribunal si se entendería que una sociedad presta un servicio de inmatriculación registral de los terrenos a favor de los vendedores (en nombre propio, pero por cuenta ajena), pese a que las partes hubieran acordado que los costes derivados del cumplimiento de la normativa administrativa serían asumidos por el adquirente, por lo que en el precio de la compraventa de los terrenos no se tuvo en cuenta este coste.

Señala el TJUE que el requisito de inmatriculación registral de los inmuebles es una obligación legal del vendedor, por lo que, si las partes acuerdan que el comprador realice los trámites necesarios para el cumplimiento de dicho requisito, debe considerarse que dichos trámites se efectuaron por la adquirente en nombre propio, pero por cuenta de terceros (los vendedores). Por tanto, tendría lugar la realización de un hecho imponible por el servicio de inmatriculación registral de los terrenos por la sociedad adquirente en favor de los vendedores de los terrenos, pese a que no se realizase a título oneroso.

Posteriormente, se requiere al TJUE que aclare si la Directiva del IVA se opone a que las partes de una operación de compraventa de inmuebles convengan que sea el futuro comprador quien soporte los gastos vinculados con las formalidades administrativas de la operación (inmatriculación registral del inmueble) y, por tanto, se opone también a que se le otorgue al comprador el derecho a la deducción del IVA soportado en dichos gastos.

En este respecto, el Tribunal recuerda que pese a que la Directiva del IVA no restringe la libertad de las partes para fijar quien debe soportar los gastos, la exigencia de que los propietarios realicen la inmatriculación de los inmuebles y su inscripción registral escapa a la autonomía de la voluntad de las partes, ya que derivan de una obligación legal que recae sobre los vendedores. De esta forma, la existencia de ese pacto no determina, por sí mismo, el derecho a la deducción de la sociedad adquirente del IVA soportado por los gastos de inmatriculación registral de los terrenos.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 19 de diciembre de 2019. Asunto C-715/18, Segler-Vereinigung Cuxhaven.

Directiva 2006/112/CE — Artículo 98 — Facultad de los Estados miembros de aplicar un tipo reducido del IVA a determinadas entregas de bienes y prestaciones de servicios — Anexo III, punto 12 — Tipo reducido del IVA aplicable al arrendamiento de emplazamientos en terrenos para campings y de espacios de estacionamiento de caravanas — Cuestión de la aplicación de ese tipo reducido al arrendamiento de amarres para embarcaciones en un puerto de recreo — Comparación con el arrendamiento de espacios para el estacionamiento de vehículos — Igualdad de trato — Principio de neutralidad fiscal.

Se requiere al TJUE que dilucide si el artículo 98, apartado 2, de la Directiva IVA, en relación con el anexo III, punto 12, de la propia norma debe interpretarse en el sentido de que el tipo reducido del IVA, previsto en esa disposición para el alquiler de emplazamientos en terrenos para campings y de espacios de estacionamiento de caravanas, resulta también de aplicación al alquiler de amarres para embarcaciones.

Entiende el Tribunal que no es conforme con el Derecho de la Unión la asimilación entre el arrendamiento de amarres para embarcaciones y el arrendamiento de emplazamientos en terrenos para campings y espacios de estacionamiento de caravanas, puesto que en esencia cumple con funciones distintas. Además, añade que el alquiler de amarres para embarcaciones no se encuentra directamente relacionado con el concepto de "alojamiento" puesto que, pese a que el servicio de arrendamiento de amarres tenga relación con la inmovilización o aseguramiento de las embarcaciones en el muelle, no por ello consistiría en un servicio estricto de alojamiento, como tal. Por lo cual no aplicaría el tipo reducido a los servicios consistentes en el alquiler de puntos de amarre para las embarcaciones.

4. Tribunal Supremo. Sala de lo Contencioso. Sentencia de 17 de diciembre de 2019, nº recurso 6274/2018.

Artículo 70.Dos de la Ley del IVA – servicios de consultoría de marketing y asesoramiento – juego on-line – destinataria establecida en Gibraltar.

En el presente supuesto, el TS desestima recurso de casación interpuesto por un contribuyente contra la sentencia del TSJ de Madrid núm 347/2018 en relación con la localización de los servicios de consultoría de marketing y asesoramiento prestados por la entidad recurrente, establecida en el TIVA-ES. En particular, los servicios prestados por la recurrente consistían en publicidad y servicios de captación de clientes que participen en juegos on-line en el TIVA-ES. Dichos juegos son organizados por sociedades localizadas en Gibraltar, destinatarias de los servicios de consultoría prestados por la entidad recurrente.

Por ello, el punto discutido en el presente recurso es si la utilización o la explotación efectivas de los servicios mencionados en el párrafo anterior se han de entender localizados o no en el TIVA-ES. Si se entienden realizados en el TIVA-ES están sujetos al IVA, de lo contrario, quedarían no sujetos al Impuesto.

Teniendo en cuenta el escenario descrito, el TS fundamenta su decisión en los siguientes argumentos recogidos en la sentencia del TJUE Athesia Druck C-1/08:

- Una prestación consistente en servicios de publicidad por un proveedor establecido en la Unión, en favor de un destinatario, final o intermedio, situado en un tercer Estado, se considera efectuada en el territorio de aplicación del impuesto, siempre y cuando la utilización y explotación efectivas, se lleven a cabo en el interior del Estado Miembro de que se trata.

- La lógica que subyace en las disposiciones relativas al lugar de prestación de servicios a los efectos del IVA exige que la imposición se efectúe en la medida de lo posible en el entorno en el que se consumen los bienes y servicios.

En consecuencia, el TS declara el siguiente contenido interpretativo:

"(…) procede declarar que se encuentran sujetos al IVA los servicios de publicidad, consultoría, marketing y asesoramiento prestados por una empresa como la recurrente, establecida en el territorio de aplicación del impuesto, cuando siendo la destinataria de los servicios otra empresa que no está establecida en dicho territorio (sino en Gibraltar) y que se dedica a la prestación de servicios de juego on-line a través de plataformas digitales, esta última empresa utilice o explote en el territorio de aplicación del impuesto los servicios prestados por la primera."

5. Audiencia Nacional. Sala de lo Contencioso-Administrativo. Sentencia de 11 de octubre de 2019, nº de recurso 558/2017.

Simulación – Actividades exentas – Deducibilidad de las cuotas de IVA soportadas.

Mediante esta sentencia, la Audiencia Nacional acuerda la desestimación de las reclamaciones económico administrativas interpuestas contra un acuerdo de liquidación por el concepto de IVA, y contra un acuerdo de imposición de sanción, valorando la posible nulidad de la referida Resolución y los actos administrativos de los que trae causa.

La parte recurrente, cuya actividad consiste en la promoción inmobiliaria, adquirió un solar, construyó el hospital de Elche y posteriormente lo arrendó a otra sociedad del grupo, que es quien lleva a cabo la explotación del mismo. Ambas sociedades, pertenecen a un grupo en el que la sociedad matriz es socia única de todas las entidades del grupo y cuya actividad principal consiste en la

prestación de servicios sanitarios y cuyas actividades adicionales se encuentran relacionadas con alquileres de locales industriales, cafetería y bares y servicios financieros y contables.

A este respecto, la entidad actora (esto es, la adquirente del solar) comienza su demanda haciendo referencia a una sentencia de 20 de enero de 2017, recurso 363/2015, que confirma la decisión de la Inspección de rechazar la deducibilidad de las cuotas soportadas por la adquisición del suelo y la construcción de inmuebles destinados a hospitales en Elche y Murcia, al entender que existe simulación en las operaciones realizadas y que el verdadero régimen de deducción de la entidad no es el correspondiente a una compañía promotora, sino a una entidad dedicada a la prestación de servicios sanitarios exentos.

De lo anterior se desprende que la simulación relativa a intervención de la empresa que adquirió el solar-que carecía, de los recursos necesarios, de los medios personales y materiales, y de la infraestructura precisa- obedecía a la sola intención de obtener una ventaja fiscal y deducir el IVA soportado que realmente la sociedad matriz no podía deducir, por realizar una actividad sanitaria exenta del IVA, por lo que este hecho se considera cosa juzgada y se ratifica por la Audiencia Nacional.

Por otro lado, en cuanto al contrato de arrendamiento suscrito entre la entidad adquirente y la otra compañía del grupo, como sociedad arrendadora, la Audiencia entiende que es simulado porque su causa no es real, no es la propia del arrendamiento, sino que éste tiene como finalidad obtener una ventaja en el IVA, las devoluciones de las cantidades satisfechas por la sociedad matriz, en la promoción y construcción del Hospital de Elche.

Por tanto, estas sociedades son interpuestas con la única finalidad de obtener una ventaja fiscal, creada una para figurar como adquirente del hospital y ceder su uso a la otra, ocultando que realmente es la propia sociedad matriz la que construye y explota el hospital y que fracciona artificialmente la actividad a realizar (explotación de hospitales) en promoción-construcción por un lado y posterior arrendamiento a otra empresa del grupo para su explotación.

6. Audiencia Nacional. Sala de lo Contencioso-Administrativo. Sentencia de 19 de julio de 2019, nº de recurso 625/2017.

Simulación — Establecimiento permanente - Inversión del sujeto pasivo.

En el presente supuesto, la Audiencia Nacional desestima el recurso presentado por la parte recurrente frente a la resolución dictada por el TEAC, que desestimaba la reclamación económico-administrativa interpuesta contra el Acuerdo de liquidación de la Dependencia Regional de Inspección de la Delegación Especial de Canarias.

La Administración, en el procedimiento de inspección, considera que la recurrente ha declarado un establecimiento permanente simulado en el territorio de las Islas Canarias, desde el que declara que está prestando servicios de telecomunicación.

En el proceso de inspección se considera que dicho establecimiento permanente carece de "motivo empresarial válido", pues ningún empresario del sector de las telecomunicaciones se constituiría en Canarias para prestar servicios en la Península. Además, los medios personales y materiales hallados en el establecimiento no se consideraban suficientes para poder realizar la actividad. Ello queda ratificado por la AN.

La recurrente, al haberse considerado como no residente en el territorio de aplicación del IVA, no soportaba ni repercutía IVA a sus clientes, pues los servicios quedaban sujetos al mecanismo de inversión del sujeto pasivo. Esto, en palabras de la Administración confirmadas por la Audiencia Nacional, constituye una ventaja competitiva frente a sus competidores, dado que, al no repercutir IVA en las facturas expedidas, puede rebajar el precio de sus servicios en detrimento de sus competidores.

La recurrente argumenta asimismo que el mecanismo de la inversión se estaba aplicando como medida anti-fraude, lo cual no es aceptado por la Audiencia Nacional, que desestima el recurso de la parte recurrente, entendiendo que la aplicación del mecanismo de inversión del sujeto pasivo ha llevado a la compañía a conseguir la citada ventaja competitiva.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución 1178/2017, de 21 de noviembre de 2019.

Regla de prorrata – Sectores diferenciados: aseguradoras – Tratamiento de los gastos originados por las operaciones derivadas de los siniestros.

La reclamante dispone los siguientes sectores diferenciados de actividad:

- Arrendamientos, al que aplica una prorrata del 100%.
- Régimen especial del grupo de entidades, modalidad avanzada.
- Actividad aseguradora, por la que declara una prorrata general del 1% en un ejercicio y del 2% en otros.

Dentro del sector asegurador, la Sociedad entiende que se incardinan operaciones que no generan derecho a la deducción (el seguro remunerado con la prima) y operaciones que sí lo generan (el cobro de la comisión por el Consorcio de Compensación de Seguros).

La Sociedad deduce las cuotas de IVA soportadas en los gastos derivados de los siniestros asegurados (reparaciones de vehículos, gastos de peritos, abogados, etc.) según la prorrata general del sector de la actividad aseguradora. Todo ello porque entiende que dichas cuotas se encuentran relacionadas tanto con la actividad exenta como la no exenta ya que la recaudación del recargo es intrínseca a la contratación del seguro.

Por el contrario, la Inspección entiende que a la Sociedad le resulta de aplicación la prorrata especial y considera no deducibles los gastos derivados de siniestros. Todo ello porque:

- No aprecia relación entre los gastos controvertidos y el cobro de la comisión por el Consorcio; y

- Entiende que esos gastos se soportan exclusivamente como consecuencia de la suscripción del contrato de seguro.

En definitiva, la cuestión a dilucidar es si los gastos de los siniestros deben considerarse directa y exclusivamente afectos a las operaciones de seguros (operativa exenta sin derecho a deducción) o afectos conjuntamente a la actividad de gestión de cobranza (actividad no exenta que sí genera derecho a la deducción).

En primer lugar, el TEAC clarifica que, sin perjuicio de que la actividad de gestión de cobro sea accesoria la actividad aseguradora, ello no implica necesariamente que los bienes adquiridos en una actividad lo vayan a ser para la otra.

Así, en línea con la Inspección, el TEAC concluye que los bienes y servicios adquiridos por el obligado tributario para hacer frente a los siniestros del asegurado no son deducibles ya que son consecuencia directa y exclusiva de la relación entre la entidad aseguradora y el asegurado y no existe relación alguna con la actividad de gestión del cobro del recargo.

2. Tribunal Económico-Administrativo Central. Resolución 0028/2016 de 21 de noviembre de 2019.

Exención en la intermediación en operaciones financieras.

En la presente resolución, el TEAC analiza si los servicios de externalización de las redes de venta prestados por una compañía a diversas entidades financieras en relación con la venta de tarjetas de crédito, deben entenderse subsumidos en la exención recogida en el artículo 20.Uno.18.m) de la Ley del IVA relativa a las operaciones de intermediación financiera.

En concreto, según se desprende de los contratos firmados con las diferentes entidades financieras, la entidad recurrente presta sus servicios (i) de manera presencial (i.e. en stands situados en centros comerciales o mediante visitas "puerta fría"), (ii) en puntos de venta (i.e. estaciones de servicio) o (iii) a través de *telemarketing* (i.e. por teléfono).

Asimismo, en la documentación aportada, se observa como, en todo caso, la compañía se presenta a los clientes como intermediario financiero actuando como "mediador autorizado" en campaña para cada una de las entidades financieras.

En base a lo anterior, el TEAC analiza los requisitos que deben cumplirse para poder aplicar la referida exención atendiendo a los conceptos de "negociación" a nivel comunitario, y de "intermediación" a nivel nacional. En concreto, a la luz de lo establecido por el TJUE a tal efecto, concluye que deben cumplirse los siguientes requisitos:

a) Que el prestador del servicio de negociación sea un tercero, distinto del comprador y del vendedor en la operación principal y que actúe de manera independiente, en el sentido de ausencia de vínculo jurídico estable y permanente.

b) Que las funciones que realiza vayan más allá del suministro de información y la recepción de solicitudes. Dichas funciones han de plasmarse en la indicación de las ocasiones en las que se puede realizar la operación, y, una vez existen dichas ocasiones, hacer lo necesario para que ambas partes celebren un contrato sin que tenga el mediador un interés propio respecto del contenido.

Asimismo, el TEAC añade que la labor de mediación ha de diferenciarse de la mera subcontratación mediante la cual una de las partes solicita de un tercero la realización de un segmento de su actividad.

Por todo ello, siguiendo con el criterio anterior, el TEAC concluye que la reclamante demostró que cumplió ambos requisitos por cuanto:

a) Actuó como un tercero independiente llevando a cabo labores de acercamiento entre las partes que, en ocasiones se plasmaban en un contrato posterior entre el consumidor y la entidad financiera, y

b) Siempre se identificaba como un tercero independiente o un mediador autorizado por la entidad financiera, de manera que, cuando una persona contrataba con la reclamante, era consciente de que estaba contratando con un intermediario financiero y no con la propia entidad financiera.

En consecuencia, el Tribunal considera que los servicios prestados por la recurrente a las entidades financieras, deben considerarse sujetos y exentos del IVA.

3. Dirección General de Tributos. Contestación nº V2724-19, de 7 de octubre de 2019.

Requisitos que deben concurrir para que la entrega efectuada por la consultante esté exenta en virtud del artículo 21 de la Ley del IVA, así como la forma en la que debe cumplimentarse el DUA para acreditar la salida efectiva del producto fuera de la Comunidad.

La consultante es una sociedad mercantil con sede en Suiza que encarga a una filial, con sede en el TAI, la fabricación, en régimen de maquila, de un medicamento.

Para ello la entidad suiza envía a la filial la materia prima que esta última utilizará para la obtención del medicamento final. Durante todo el proceso productivo la entidad suiza conserva la propiedad de la materia prima necesaria para la obtención del producto terminado.

Una vez finalizada la fabricación, la consultante lo transmite a terceros enviando el producto terminado fuera de la Unión Europea. En el Documento Único Administrativo de Exportación (en adelante, DUA) figura la entidad fabricante como exportadora.

Respecto de la primera cuestión, la DGT concluye que la entrega efectuada por la consultante estará sujeta y exenta del IVA cuando concurran los requisitos exigidos por los artículos 21 de la Ley del IVA y el artículo 9 del Reglamento del IVA y, en particular, cuando quede acreditada la salida efectiva de los bienes fuera del territorio de la Comunidad.

En lo relativo a la segunda cuestión, la DGT concluye que la consultante deberá presentar una declaración aduanera (DUA) para vincular los productos farmacéuticos terminados al régimen de exportación, correspondiendo la condición de exportador, en la medida en que la consultante no parece estar establecida en el territorio aduanero de la Unión, a cualquier persona establecida en dicho territorio a quien la consultante hubiera facultado para decidir que los productos han de ser conducidos fuera de dicho territorio o, en su defecto, cualquier persona establecida en dicho territorio que fuera parte del contrato que ampara la salida de los productos fuera del territorio aduanero de la Unión.

A este respecto, debe tenerse en cuenta que, en aquellos casos, como ocurre en el supuesto objeto de consulta, en los que el poder de disposición de los bienes a exportar pertenezca a una persona no establecida en el territorio aduanero de la Unión, las partes afectadas por el acuerdo comercial deben designar a la persona establecida que será quien figure como exportador en el referido DUA. Dicha persona puede ser un transportista o un representante aduanero o cualquier persona que cumpla con los requisitos previstos en el Reglamento y acepte asumir dicha función.

Aplicando lo anterior al supuesto objeto de consulta, podría ser la filial de la consultante a la que correspondiera la condición de exportador, siempre que estuviera facultada para decidir que las mercancías sean transportadas fuera del territorio aduanero de la Unión, como parece ocurrir en el supuesto de consulta.

4. Dirección General de Tributos. Contestación nº V3224-19, de 22 de noviembre de 2019.

Tributación en el IVA y deducibilidad de las cuotas soportadas de las operaciones objeto de consulta.

La consultante es una sociedad mercantil con sede en el TAI que ha sido contratada por una entidad aseguradora francesa para desarrollar un proyecto consistente en la creación de una red de clínicas en Egipto.

El desarrollo de dicho proyecto implica la realización de las siguientes actuaciones: elaboración del proyecto arquitectónico de las primeras 8 clínicas de la red; definición del equipamiento médico que necesitarán las clínicas y supervisión de la instalación de los mismos; consultoría estratégica, técnica y médica necesarias para la creación de la red de clínicas así para desarrollar los servicios médicos que deben prestarse en ellas, definición de las necesidades de recursos humanos por parte de la red de clínicas, creación de organigrama y estructura, definición de las tecnologías de la información necesarias que deben instalarse y utilizarse en los equipos de las clínicas.

Para el desarrollo de dichas actuaciones la consultante subcontrata, a su vez, a proveedores terceros que efectúan para la consultante las operaciones anteriores.

En primer lugar, este Centro Directivo, aborda la cuestión de si dichas operaciones habrían de determinarse como dos o más prestaciones distintas o de una prestación única. En este sentido, concluye que ninguna de las prestaciones, individualmente consideradas, constituyen para el destinatario un fin en sí mismo, sino que más bien parecen ser accesorias a la prestación principal que parece consistir en la consultoría estratégica y médica necesarias para la creación, con éxito, de una red de clínicas en el país egipcio, incluyendo incluso el diseño del modelo de edificio que debe albergar dichas clínicas.

En segundo lugar, atendiendo a las reglas de localización establecidas en los artículos 69, 70 y 72 de la Ley de IVA, este Centro determina que los servicios de consultoría técnico-médica prestados por la consultante a favor de la entidad aseguradora francesa no estarán sujetos al IVA por no tener la entidad francesa la sede de su actividad económica en el TAI ni contar en el mismo con un establecimiento permanente o, en su defecto, el domicilio o residencia habitual que fueran destinatarios efectivos del servicio (sin perjuicio de que deba emitir la correspondiente factura).

En tercer lugar, este Centro califica los servicios prestados por terceros proveedores de la siguiente manera:

- En cuanto a los servicios consistentes en el diseño y elaboración de los planos arquitectónicos para las clínicas a construir, de acuerdo con el artículo 70.Uno.1º junto con el artículo 13 ter y 31 bis del Reglamento de ejecución nº 282/2011, el lugar de realización dependerá de si los planos efectuados se refieren o no a un terreno específico. Así, si los edificios son diseñados con independencia a su ubicación final, de forma que simplemente se fija el modelo arquitectónico a repetir para todas las clínicas con independencia de su ubicación concreta, puede concluirse que dichos servicios no estarían relacionados con ningún bien inmueble y, por ende, su lugar de realización será la sede del destinatario (dichos servicios estarían sujetos al IVA por tener la consultante la sede de su actividad económica en el TAI).

Si, por el contrario, los planos arquitectónicos levantados por el proveedor se refieren a una ubicación y un terreno específicos, entonces, dicho servicio no estaría sujeto al IVA por no encontrarse dichos terrenos situados en el TAI.

- En caso de tratarse de proveedores no establecidos en el TAI, aplicarían las reglas de inversión del sujeto pasivo.

En cuarto y último lugar, este Centro directivo se pronuncia en lo relativo a la deducibilidad del IVA de las cuotas soportadas señalando que la consultante podrá deducir las cuotas del impuesto devengadas con ocasión de la adquisición de los servicios objeto de consulta, con independencia de que en dichas operaciones corresponda a su cliente la condición de sujeto pasivo del impuesto.

En todo caso, las cuotas satisfechas o devengadas del impuesto podrán ser deducidas por la consultante cuando concurran los restantes requisitos previstos en el Título VIII de la Ley del impuesto, y en particular, lo dispuesto en el artículo 95.Uno de la Ley del impuesto que establece que no podrán deducirse "las cuotas soportadas o satisfechas por las adquisiciones o importaciones de bienes o servicios que no se afecten, directa y exclusivamente, a su actividad empresarial o profesional.".

5. Dirección General de Tributos. Consulta Vinculante V3225 -19, de 22 de noviembre de 2019.

Sujeción al IVA de los servicios prestados por la entidad dominada por la consultante a esta última.

La entidad consultante es una sociedad mercantil estatal que no tiene la consideración de medio propio personificado de ninguna entidad del sector público. La consultante participa en el 100 por cien del capital social de otra entidad mercantil que presta a la consultante servicios consistentes en la formalización de DUAS que la consultante presenta en nombre propio, pero por cuenta de los destinatarios de los bienes importados en el TAI, y demás trámites aduaneros necesarios para el despacho a libre práctica de dichos bienes transportados por la consultante.

Ante este supuesto de hecho, este Centro directivo se pronuncia estableciendo que los citados servicios no se incluyen entre los mencionados en el listado de actividades contenido en la letra F) del artículo 7. 8º de la Ley de IVA. Por tanto, no se encuentran sujetos al impuesto de conformidad con el apartado E) del mismo precepto.

Lo anterior, se dispone con independencia de la sujeción al impuesto de los servicios, de la misma naturaleza, que la entidad pudiera prestar a terceros distintos de la consultante y de la tributación que proceda en el caso de que la entidad preste servicios de transporte a la luz de las letras a´) a m´) del apartado F de dicho precepto, que deberán estar sujetas al impuesto cualquiera que sea el destinatario.

Por otro lado, el derecho a la deducción del IVA podrá ejercerse siempre que se cumplan la totalidad de requisitos y limitaciones reconocidos en la ley del impuesto. Es el caso que nos acontece, deberá atenderse, de acuerdo con lo establecido en el artículo 93 apartado Cinco, a la proporción que representa el importe total, excluido el IVA, determinado para cada año natural, de las entregas de bienes y prestaciones de servicios sujetas al impuesto, respecto de los ingresos que obtenga el sujeto para cada año natural por el conjunto de su actividad. Es preciso recalcar que no serán deducibles en proporción alguna las cuotas soportadas o satisfechas por las adquisiciones o importaciones de bienes o servicios destinados exclusivamente a la realización de operaciones no sujetas a las que se refiere el artículo 7. 8º de la Ley de IVA.

6. Dirección General de Tributos. Consulta Vinculante V3294-19, de 28 de noviembre de 2019.

Si los servicios prestados tienen la consideración de servicios prestados por vía electrónica a efectos del IVA. Base imponible de los servicios prestados. Devengo del impuesto. Obligaciones de facturación.

La consultante es una entidad establecida en el TAI que ha desarrollado una plataforma virtual informática que permite a los usuarios con medios electrónicos o telemáticos el acceso a diversos juegos de habilidad en los que los usuarios-jugadores compiten entre ellos.

Los jugadores deberán realizar una aportación dineraria mediante un depósito que les permite participar en las partidas o torneos que se organicen. Del depósito se reserva una parte para el premio de los ganadores y otra queda para la entidad consultante.

En primer lugar, la DGT concluye que los servicios prestados por la entidad consultante son servicios prestados por vía electrónica conforme con el artículo 69. Tres 4º de la Ley 37/1992, y el punto 4 del Anexo I del Reglamento (UE) n 282/2011, que en su letra d), incluye como servicios prestados por vía electrónica "el acceso automatizado a juegos en línea que dependen de Internet, o de otra red similar, en los que los jugadores se encuentran en lugares diferentes."

Seguidamente, este Centro Directivo explica que los servicios objeto de consulta, se entenderán realizados en el TAI cuando el destinatario (no empresario o profesional) se encuentre establecido en TAI o se cumplan los requisitos citados en el artículo 70.Uno.8º de la Ley del IVA.

En base a la jurisprudencia del TJUE, en particular, su sentencia de 5 de mayo de 1994, asunto C38-93, Glawe, y su sentencia de 19 de julio de 2012, Asunto C- 377/11, International Bingo, la DGT concluye que la base imponible de los servicios prestados por la consultante estará determinada por el importe de los depósitos realizados por los jugadores con detracción de aquella parte que vaya a ser destinada a premios.

En efecto, la propia peculiaridad de la operación objeto de la consulta precisa entender que las cantidades retenidas por la consultante por la organización del juego incluyen el Impuesto exigible en las mismas. De modo que para el cálculo de la base imponible deberá minorarse el importe del depósito recibido en la parte correspondiente al IVA.

En lo relativo al devengo de los servicios, la DGT concluye que se producirá cuando se ejecute o se preste el servicio de organización el cual, con carácter general, coincidirá con el inicio del torneo o partida respectiva.

No obstante lo anterior, en el momento de realizarse los depósitos de cada uno de los jugadores se producirá el devengo anticipado del IVA ya que la entidad consultante conoce que parte de dicho depósito constituye la contraprestación de su servicio.

Finalmente, la DGT concluye que el obligado tributario deberá emitir factura por las prestaciones de servicios realizadas. Podrá emitir factura simplificada cuando cumpla los requisitos previstos en el artículo 4 del Reglamento por el que se regulan las obligaciones de facturación, en particular cuando su importe no exceda de 400 euros o, excediendo dicho importe, el Departamento de Gestión Tributaria autorice la emisión de dichas facturas.

7. Dirección General de Tributos. Contestación nº V3326-19, de 4 de diciembre de 2019.

Asesoramiento puntual en inversiones – Comisión de suscripción de participaciones - Exención de servicios financieros.

En la presente consulta, la DGT amplía el análisis realizado en su contestación vinculante número V0367-19, de 20 de febrero de 2019, sobre el tratamiento de servicios de asesoramiento puntual en inversiones, con la particularidad de que la consultante no cobra cantidad alguna por el mismo. Adicionalmente, se estudia el tratamiento que tendría la comisión que cobra a sus clientes por la suscripción de participaciones.

En primer lugar, conviene tener presente que la contestación de la que trae causa la que ahora se analiza establecía que la prestación de un servicio de asesoramiento puntual en la inversión no puede considerarse como un servicio de mediación en la colocación de un producto financiero, sino que su naturaleza predominante es la de asesorar a un determinado cliente sobre la idoneidad de un determinado producto financiero. Así, se concluía que estos servicios no quedan exentos del IVA, debiéndose repercutir el Impuesto al tipo impositivo general del 21 por ciento.

En lo relativo a la gratuidad de estos servicios de asesoramiento, la DGT entiende que dichas prestaciones constituirían unos autoconsumos de servicios sujeto y no exento del IVA. De acuerdo con artículo 79.Cuatro de la Ley del IVA, su base imponible se determinaría sobre la base del coste de prestación de los servicios.

Finalmente, con respecto a la "comisión de suscripción" percibida por la consultante, se señala que la misma se cobra a los clientes a los que presta servicios de asesoramiento puntual como a aquellos a los que no se les presta servicios de asesoramiento, pues ya tenían una relación de asesoramiento con un tercero.

En ambos casos, la DGT concluye que dicha comisión está comprendida dentro del ámbito del artículo 20.Uno.18º, letra k) de la Ley del IVA, por lo que la prestación de tales servicios quedará, en todo caso, sujeta y exenta del Impuesto.

8. Dirección General de Tributos. Contestación nº V3359-19, de 10 de diciembre de 2019.

Intermediación financiera – Exención artículo 20.Uno.18º de la Ley del IVA– intermediario socio y administrador de una de las partes.

En el presente supuesto, la entidad consultante es socia y administradora de una sociedad gestora de Instituciones de Inversión Colectiva a la que presta servicios de captación de clientes. Su retribución consiste en una comisión en función del volumen de inversión mantenido por cada cliente.

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 mediación financiera cuando existe cierto tipo de vinculación entre la mediadora y la entidad financiera.

Para dar contestación a la cuestión suscitada en esta consulta, la DGT reitera el criterio establecido por la jurisprudencia del TJUE (sentencias CSC Financial Services, Ltd., asunto C-235/00 y Volker Ludwig, asunto C-453/05) así como el criterio mantenido en resoluciones previas a consultas vinculantes (véase, entre otras, la V2186-11 de 22 de septiembre y V2158-19 de 13 de agosto). En este sentido, la DGT 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:

- El prestador del servicio de intermediación sea un tercero independiente, distinto del comprador y del vendedor en la operación principal y,

- Que las funciones que realice el mediador vayan más allá del mero suministro de información y recepción de solicitudes, haciendo todo lo posible para que la operación se efectúe.

En particular, la DGT establece que si bien el concepto de tercero independiente no puede restringirse a la prestación de servicios por entidades vinculadas cuando las mismas tengan personalidad jurídica distinta e independiente, no resulta adecuado defender esa independencia cuando la condición de prestador y beneficiario coinciden en la misma persona.

Por tanto, la DGT concluye que la condición de administradora de la sociedad gestora impide reconocer que los servicios sean prestados en régimen de independencia y autonomía propios de un mediador en los términos citados anteriormente.

En consecuencia, la DGT finaliza su contestación determinando que los servicios objetos de consulta estarán sujetos y no exentos del Impuesto sobre el Valor Añadido.

9. Dirección General de Tributos. Contestación nº V3458-19, de 17 de diciembre de 2019.

Establecimiento permanente y destinatario efectivo de los servicios.

La consultante es una sociedad noruega con sede de su actividad económica en dicho país y comercializadora de productos obtenidos a partir de materia prima obtenida del mar.

Dicha sociedad tiene suscrito un contrato de maquila con una entidad española en virtud del cual, la materia prima extraída en Noruega se transforma en el producto final, que posteriormente es comercializado en el TIVA-ES, en otros Estados miembros y en países terceros. Como consecuencia del proceso de fabricación, se obtiene además un subproducto que la consultante vende a un cliente belga.

Asimismo, la consultante suscribe un contrato de arrendamiento para almacenar en España la parte de la materia prima que no puede ser recibida por la empresa de fabricación, así como los servicios de logística necesarios para la recepción o el envío de la mercancía almacenada.

Conviene en primer lugar señalar que esta contestación anula la consulta anterior V3363-19.

En primer lugar, la Dirección General concluye que tanto los trabajos de maquila como el arrendamiento y las operaciones de logística, deben calificarse como prestaciones de servicios.

De acuerdo con criterio reiterado de la DGT, considera que la entidad noruega cuenta con un establecimiento permanente en el TIVA-ES, en la medida en que es titular de un derecho de uso de parte de un almacén situado en el mismo, y que cuenta con los medios humanos necesarios para su utilización efectiva, subcontratados al propio arrendador del almacén.

Finalmente, la DGT concluye que, en la medida en que dicho establecimiento permanente interviene en el proceso productivo de la consultante y las necesidades propias del mismo, es el destinatario efectivo del servicio de fabricación en maquila y que, por consiguiente, el referido servicio está sujeto al Impuesto sobre el Valor Añadido.

10. Dirección General de Tributos. Contestación nº V3480-19, de 20 de diciembre de 2019.

Holding Mixta – deducibilidad de gastos relacionados con la compra de las acciones de su entidad participada.

La consultante es una entidad holding que mantiene el 48,59% de una entidad participada. A su vez, esta entidad holding es y actúa como consejero delegado de la entidad participada, percibiendo por ello una retribución anual. Dicha entidad consultante adquirió el 100% del capital de la sociedad participada y, por ello, ha soportado diversos gastos de intermediarios financieros y asesoramiento legal.

En su análisis, la DGT recuerda que, de acuerdo con la reiterada jurisprudencia del TJUE (entre otras, el asunto C-60/90, Polysar Investments, el asunto C-496/11, Portugal Telecom y el asunto C-320/17, Marle Participations), la condición de empresario o profesional de una entidad holding vendrá delimitada por la actividad realizada por la misma, es decir, si se trata de una "holding pura" o mera tenedora de participaciones, o si, por el contrario, se trata de una "holding mixta", con intervención en la gestión de tales participaciones.

De la propia jurisprudencia del TJUE, la DGT entiende que la tenencia de participaciones sí supondrá el ejercicio de una actividad económica sujeta al IVA, cuando la misma suponga una intervención directa o indirecta en la actuación de la entidad participada, de acuerdo con una serie de requisitos citados en la contestación vinculante.

En consecuencia, la DGT concluye que en la medida en que las funciones realizadas por la consultante supongan el uso del patrimonio empresarial o profesional y los servicios prestados supongan una intervención en la situación de la sociedad participada, se podrá concluir que la entidad consultante actúa como una sociedad "holding mixta", con la condición de empresario o profesional, cuando realice la gestión de la participación en los términos señalados por el TJUE.

Por lo que respecta a la deducibilidad de las cuotas soportadas del IVA, atendiendo a la jurisprudencia del TJUE, la DGT concluye que la entidad holding tendrá, en principio, derecho a la deducción del IVA soportado en la adquisición de bienes y servicios que estén relacionados con la prestación de servicios a su entidad filial, en definitiva, relacionados con la prestación de servicios de gestión sujetos al IVA.

IV. Country Summaries

January

European Union

EU VAT "quick fixes" apply as from 1 January 2020 ATO releases GST analytical tool

The VAT rules for the cross-border supply of goods within the EU changed in all EU member states as from 1 January 2020 with the implementation of the four "quick fixes" included in a package of measures adopted by the EU Council in 2018 to improve the cross-border VAT regime pending the introduction of the "definitive" VAT system, which is not expected until 2022. In December 2019, the EU Commission published detailed explanatory notes containing practical guidance on the application of the new rules.

The quick fixes are as follows:

- Simplified and uniform treatment for 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.

China-US

China-US reach Phase One trade agreement

On 13 December 2019, China and the US reached a "Phase One" trade agreement, under which both countries agreed to suspend additional tariffs scheduled to take effect on 15 December 2019. In China's case, this included delaying the imposition of additional tariffs on certain products (e.g. wheat, corn, toys, electronics, etc.) and the reinstatement of additional tariffs on cars and car parts.

Background

Over the last 18 months, both China and the US have announced various lists of additional tariffs. The following table summarizes the lists announced by China:

	Import amount (USD billion)	Additional tariff rates	Effective date	Regulation
Batch 1 (List 1)	34	25%	6 July 2018	Bulletin [2018] No.5
Batch 1 (List 2)	16	25%	23 August 2018	Bulletin [2018] No.7
Batch 2	60	5%, 10%, 20%, 25%	24 September 2018	Bulletin [2018] No.8
Batch 3	75	5%, 10%	1 September 2019 (Appendix 1); 15 December 2019 (Appendix 2)	Bulletin [2019] No.4

Notes:

- China has suspended the imposition of the additional tariffs on cars and car parts originating from the US since 1 January 2019.

- The rates originally applied for Batch 2 were 5% and 10%, and adjusted to 5%, 10%, 20% and 25% as from 1 June 2019.

- The additional tariff for Batch 3 (Appendix 2) has been suspended.

The trade dispute between the two countries escalated in mid-2019. On 15 August 2019, the US government announced it would impose 10% (later increased further to 15%) additional tariffs on USD 300 billion of imports originating from China beginning 1 September 2019 and 15 December 2019. As a retaliatory measure, the Chinese government announced an additional tariff list covering USD 75 billion of US goods and stated it would terminate the suspension of the additional tariffs on cars and car parts as from 15 December 2019.

Highlights of interim agreement

The Phase One trade agreement covers areas such as intellectual property, technology transfers, agriculture, financial services, currency and foreign exchange, expanding trade, dispute resolution, etc.

As part of the agreement, the US has agreed to halt the additional tariffs planned to be imposed on approximately USD 180 billion of imported Chinese goods annually starting on 15 December 2019. However, the US will continue to levy the 25% tariff on approximately USD 250 billion of Chinese imports, along with the 7.5% tariff on approximately USD 120 billion of imported Chinese goods.

China's Tariff Committee of the State Council (CTCSC) issued Bulletin [2019] No. 7 on 15 December 2019, announcing that it will delay implementation of the planned additional 5% or 10% tariffs on Batch 3 (Appendix 2) goods and continue to suspend the additional tariff on certain cars and car parts originating from the US. The following table summarizes the information relating to cars and car parts:

	Number of HS code items of affected cars/car parts	Planned additional tariff rate
Batch 1 (List 1)	28	25%
Batch 1 (List 2)	116	25%
Batch 2	67	5%

Other additional tariff measures will continue to be implemented, as will the tariff exclusion processes for imports from the US.

Comments

The Phase One agreement is a significant step forward in resolving the China-US trade dispute, but it will take time to entirely remove the previously imposed additional tariffs between the two countries and eliminate the negative impact of the tariffs. Affected Chinese businesses should re-assess the impact of the adjusted additional tariffs on the supply chain and take appropriate steps to manage tariff costs:

- Companies involved in the import of cars and car parts or products that are subject to additional tariffs that were postponed should take advantage of the tariff suspension window but also make contingency plans in the event the additional tariffs are reinstated.

- Companies impacted by the additional tariffs should continue to monitor future developments relating to the China-US trade negotiations and make any necessary adjustments to mitigate the impact of the tariffs on the supply chain.

- Although the window for filing an application for a Batch 1 and 2 tariff exclusion on US goods subject to the additional tariffs has closed, the CTCSC's work on approving tariff exclusions for imports from the US will be ongoing. Companies that have submitted applications for exclusions and for which no decision has been made should monitor the progress of the application. Companies that wish to apply for exclusions should begin to prepare for the next application window. The first exclusion list was issued in September 2019, with more expected in the coming period. Affected companies may request a tariff refund from the customs office if the relevant products are included on the exclusion list.

- Companies exporting goods from China to the US should monitor and re-assess the impact of the Phase One agreement, particularly in light of the fact that as part of the agreement, the US has agreed to modify its tariff measures under Section 301 of the 1974 Trade Act (the statutory measure used by the US to enforce its rights under trade agreements and address impediments to US exports).

It should be noted that both sides still need to sign the text of an agreement.

United States

Senate clears USMCA trade deal

The US Senate on 16 January 2020 voted 89-10 to approve President Trump's signature rewrite of the North American Free Trade Agreement (NAFTA), known as the United States-Mexico-Canada Agreement (USMCA). Under the Trade Promotion Authority (TPA) process under which it was moved, the USMCA's implementing language was unamendable and subject to limited debate. The language had been previously approved by the US House of Representatives on 19 December 2019 after more than a year of negotiations among the three countries. The president is expected to sign the measure into law.

The trade bill's relevance to the tax world revolves mainly around its prior status as a potential tax vehicle. Late in 2019 – when it was not clear whether a spending bill would be capable of carrying a tax title – the USMCA was occasionally discussed as an alternative vehicle. (Because the TPA process precludes amendments, any tax changes would have had to move alongside the trade bill as part of a separate legislative "side-car," rather than within the trade bill itself.)

In the end, the fiscal year 2020 appropriations legislation that came together and was signed into law late in December 2019 carried a number of long-stalled tax priorities, including extensions of expired and expiring tax provisions, repeal of some revenue provisions enacted in the Patient Protection and Affordable Care Act of 2010, retirement security measures, fixes to some of the policy changes made by the 2017 tax overhaul known as the Tax Cut and Jobs Act (TCJA, P.L. 115-97), and tax relief for victims of certain federally declared natural disasters.

On a prospective basis, the passage of the USMCA removes the trade deal as a potential vehicle to carry extensions of temporary tax provisions, technical corrections to the Republican 2017 tax code overhaul, or other tax proposals that lawmakers may hope to advance in 2020.

Barbados

Nonresident suppliers now required to collect VAT on certain online transactions

Nonresident suppliers should be aware that a communique released by the Barbados Revenue Authority (BRA) on 22 November 2019 and that is effective as from 1 December 2019 may require them to register in Barbados for VAT purposes and to collect and remit VAT on online purchases of goods and services for consumption in Barbados. The first VAT return filings and remittances of VAT will be due to the BRA by 21 January 2020 for transactions carried out in December 2019.

Background

The introduction of VAT on certain online transactions was announced in the June 2018 Barbados budget. The Value Added Tax (Amendment) Act, 2019-09 ("Act") was enacted in March 2019 to amend the VAT law (Value Added Tax Act, Cap. 87) to require suppliers to collect VAT on certain online purchases of goods and services for consumption in Barbados. However, the Act did not provide a specific date for when this requirement would be imposed.

The BRA originally intended for VAT on online transactions to be implemented effective from 1 May 2019, but the effective date was deferred. The communique released on 22 November 2019 that sets forth some terms and conditions for the implementation of VAT on online purchases ("e-commerce collection management system") announced the effective date of 1 December 2019.

BRA communique

Relevant provisions of the BRA communique include the following:

- The Act provides, in certain cases, for the collection of VAT on goods and services purchased online for consumption in Barbados. The term "for consumption in Barbados" is not defined in the Act or the communique. The BRA previously had indicated that it would impose tax only on transactions where there is a high certainty of the goods or services being consumed in Barbados (e.g. hotel rooms, villas and rental vehicles), but neither the communique nor the Act includes a specific provision to that effect.

- The Act is applicable to overseas merchants conducting, facilitating or participating in transactions utilizing any type of payment method (such as credit cards, debit cards, charge cards or prepaid cards) for the purchase of goods or services for consumption in Barbados.

- The overseas merchants to which the Act applies will be required to register in the BRA's Tax Administration Management Information System (TAMIS). The BRA has not indicated whether there is a registration deadline.

- Overseas merchants must comply with the requirements under the Value Added Tax Act, Cap. 87.

- Overseas merchants are required to file VAT returns with the BRA. Accordingly, they must implement the necessary accounting systems and processes to account for VAT and file accurate and timely VAT returns.

- Effective as from 1 December 2019, VAT must be charged, collected and remitted to the BRA by overseas merchants to which the Act applies. They also must immediately notify the BRA in writing where VAT on goods and services is incorrectly charged and collected.

- Appointment of a local agent to assist with tax matters in Barbados is not required.

- Overseas merchants that are required to register in TAMIS due solely to the Act (i.e. those that have no presence in Barbados) will be registered solely for the purpose of enabling the filing of VAT returns and the remittance of VAT on online purchases of goods and services. Accordingly, there is no need for other tax registrations or obligations in Barbados. We understand that an overseas merchant would not be required to register with the Corporate Affairs and Intellectual Property Office (CAIPO) or to file corporation tax returns with the BRA.

- VAT returns must be filed quarterly, and VAT must be remitted to the BRA by the 21st day of January, April, July and October.

Provisions of the Act

The Act includes some noteworthy provisions that are not specifically covered in the communique, including the following:

- Definitions are provided of the following terms:

    - "Foreign vendor" means a person outside of Barbados that sells goods or services online for delivery to a person in Barbados or for consumption or use in Barbados, and includes persons selling on online platforms.

    - "Imports" mean goods and services purchased online from a place outside Barbados for consumption in Barbados.

    - Where goods or services are purchased online from a vendor outside Barbados for consumption in Barbados, the VAT on the supply of those goods and services is payable at the time of purchase. An electronic invoice indicating the amount of VAT paid must be issued to the purchaser by the foreign vendor at the time of payment.

    - Where a foreign vendor fails to remit VAT to the BRA, the BRA may direct any internet service provider to block that foreign vendor from entering the internet jurisdiction of Barbados or the Barbados internet market. A foreign vendor that is blocked may challenge the block by contacting the internet service provider, which will notify the BRA.

    - VAT is payable on transactions subject to the Act even if the goods or services sold have a value of less than BBD 20 (generally, supplies with a value of less than BBD 20 are not subject to VAT). An electronic invoice also must be issued indicating the amount of VAT paid.

    - Where the invoice issued is produced as evidence of payment, no tax will be payable on the delivery of goods and services where tax was paid online for those goods or services.

Additional comments

Deloitte requested clarifications from the BRA on some of the points mentioned in the communique. The BRA confirmed the following:

- An "overseas merchant" (the term used in the communique) is the same as a "foreign vendor" (the term used in the Act).

- An overseas merchant will be permitted to register in TAMIS even if the overseas merchant has no legal presence in Barbados. Such registration is solely for the purpose of remitting the VAT collected as required by the Act. Additional guidance is expected to be issued to provide overseas merchants the appropriate instructions to facilitate the registration.

- The International Air Transport Association will handle the VAT registration of overseas merchants in the airline industries, as it relates to international transport services.

However, if an airline company also offers other VAT-able services online, such as accommodation, tours, etc., it will need to register in TAMIS.

Ecuador

Tax Simplicity and Progressivity Law enacted

On 30 December 2019, Ecuador's National Assembly approved a bill submitted by the president and enacted it as the "Tax Simplicity and Progressivity Law," which contains numerous direct and indirect tax reform measures that generally aim to simplify the tax system and raise tax revenue. The law was published in Ecuador's official gazette on 31 December 2019 and generally is effective as from 1 January 2020.

The law includes tax measures that affect the withholding tax rules for dividends paid by resident companies and the deductibility of interest expense, impose a temporary additional tax on companies with high taxable revenue, eliminate the requirement for companies to make advance payments of income tax (prepaid income tax) and impose value added tax (VAT) on digital services, among other things.

The National Assembly rejected a previous version of the bill in November 2019, which included non-tax measures that aimed to stimulate employment and strengthen the monetary and financial systems and the responsible management of public finances. The enacted law is focused mainly on tax issues, but there are some differences between the tax proposals in the previous version of the bill and the enacted law.

The principal tax reforms in the enacted law are as follows:

Income tax

Income and withholding tax treatment of dividends

The taxable income from dividends distributed by resident companies is now equal to 40% of the dividends distributed, and the withholding tax rate varies depending on the beneficial owner:

- A 25% income tax (resulting in an effective tax rate of 10% on the gross payment) must be withheld on the taxable portion where dividends are distributed by resident companies to nonresident companies that do not have Ecuadorian resident individual beneficial owners.

- In the case of dividends distributed directly to Ecuadorian resident individuals or to nonresident companies that have Ecuadorian resident individual beneficial owners, the withholding income tax rate is up to 25% (effective rate of 10%) on the taxable portion (the specific rate will be based on tax regulations to be issued by the government).

- A 35% withholding income tax (resulting in an effective tax rate of 14% on the gross payment) applies if the payer corporation has not duly disclosed the complete chain of its shareholders up to the ultimate beneficial owner to the tax authorities.

- Previously, dividends paid to a nonresident out of profits that were subject to corporate income tax generally were not subject to withholding tax, but dividends paid to a nonresident company recipient with an Ecuadorian resident individual beneficial owner

were subject to a 7% or 10% withholding tax, as were dividends paid in cases where the payer corporation had not duly disclosed the complete chain of its shareholders up to the ultimate beneficial owner to the tax authorities. Dividends paid to a resident individual were subject to withholding tax at a rate equal to the difference between the maximum progressive personal income tax rate and the applicable corporate income tax rate for the year to which the dividends related (22%, 25% or 28%, depending on the year).

- Another change in the enacted law is that reinvestments of profits will not be considered as a dividend distribution (previously, certain reinvestments of profits could be considered as dividend distributions). Therefore, any reinvestment of profits is exempt from income tax.

Deductibility of interest

The restriction on the deduction of interest on related party foreign loans granted for banks, insurance companies and financial sector entities within the "popular" and "community-based" economy (a micro sector within the financial sector) remains at 300% of equity. For other companies and self-employed individuals or entrepreneurs, the restriction is changed to 20% of the business's profit before employee profit-sharing, plus interest, corporate income tax, depreciation and amortization.

Regarding domestic loans, the restriction under which interest expense is not deductible to the extent that the interest rate on the loan exceeds a maximum rate set by the central bank for domestic loans is now applicable only to banks, insurance companies and financial sector entities within the popular and community-based economy.

Advance income tax

Payment of advance income tax by companies, which formerly was mandatory, has become voluntary. Where a company opts to pay advance income tax, the calculation of the tax is changed from the previous formula (which was based on specified factors relating to assets, equity, revenues and total costs/expenses) to 50% of the tax liability from the previous fiscal year, less any income tax withheld.

Other income tax changes

- The limit on the deduction of publicity and advertising costs and expenses remains at 20% of taxable revenue. However, if the advertising or sponsorship expenses are incurred in relation to athletes, sports programs or projects previously approved by Ecuador's states, the limit will not apply and the expenses incurred are 100% deductible.

- Expenses related to the organization and sponsorship of artistic and cultural events are deductible up to 150% of the actual cost, meaning that the taxpayer benefits from an additional deduction equal to 50% of the total expenses incurred.

- Accruals made for retirement or severance benefits that have been considered as a deductible expense by the employer but that have not been effectively paid to the employees must be considered as Ecuadorian-source income (additional clarification from the tax authorities is expected on this provision).

- As from 1 January 2021, accruals made relating to employees' severance will be considered a deductible expense if such accruals are supported by reports submitted by registered actuaries. The same tax treatment will apply in the case of retirement/pension accruals for:

- Employees with more than 10 years of seniority; and

- Specialized fund management companies duly registered on the Ecuadorian stock market.

    - Hospital infrastructure, educational and cultural and artistic services are included as part of the priority sectors that are eligible for an income tax holiday of a minimum of five years.

    - The special income tax rate regime for banana sector activities is modified with respect to activities relating to the production, local sale and export of bananas grown in Ecuador.

    - A special income tax rate regime is introduced for agricultural and livestock activities relating to local production and/or marketing, or to exports.

    - Individuals with annual net income exceeding USD 100,000 are allowed to deduct only personal expenses related to "catastrophic," "rare" or "orphan" diseases duly certified by Ministry of Health. The deduction may not exceed 50% of individuals' annual taxable income and also may not exceed 1.3 times the first bracket of the progressive income tax chart for individuals (for 2020, the limit will be USD 14,709 (USD 11,315 x 1.3)).

    - The provision establishing the right to claim the underlying tax paid by a company as a tax credit on an individual's global income in relation to dividends received from the company is eliminated.

    - The number of taxpayers required to act as withholding agents for income tax purposes will be limited. The tax authorities will identify taxpayers required to act as withholding agents based on conditions that will be provided in tax regulations issued subsequently.

Temporary additional tax on certain companies

Companies with taxable revenues exceeding USD 1 million in fiscal year 2018 will be required to pay an additional tax/contribution calculated based on the following table in fiscal years 2020, 2021 and 2022:

Taxable revenue (USD)	Tax
1 million up to 5 million	0.10%
5,000,001 up to 10 million	0.15%
Over 10 million	0.20%

The additional tax may not exceed 25% of the company's income tax liability declared or determined for fiscal year 2018.

The declaration and payment of the tax must be made by 31 March of each fiscal year from 2020 to 2022.

The tax paid cannot be claimed as a tax credit or as a deductible expense for purposes of the determination and settlement of other taxes.

Special tax regime for microenterprises

A new tax regime for microenterprises (entities with no more than nine employees and gross sales below USD 300,000 annually) is introduced that applies for income tax, VAT and excise duty purposes. Taxpayers providing professional, construction, urbanization, land division and independent occupational services; those under an employment contract; and those whose only income is received from capital are not eligible for the regime.

Under the regime, income tax is calculated by applying a 2% rate on the gross income for the fiscal year originating solely from the entity's business activity.

VAT and excise duty returns must be filed biannually under the regime; otherwise, those returns are filed monthly.

Entities eligible for the regime will not be required to act as withholding agents for income tax or VAT purposes, except in limited cases (e.g. to withhold income tax on employee payroll, payments abroad and dividends, and to withhold VAT where the reverse charge applies).

VAT

Digital services supplied by nonresidents to residents will be subject to VAT at the standard 12% rate, with the taxable event being the time of payment for the services. There will be exemptions from VAT for the provision of web page domain names, hosting services and cloud computing services.

Delivery and dispatch services provided or contracted for through the internet for tangible movable property also are treated as digital services, and commissions on such services are considered taxable for VAT purposes.

The importers of digital services (including both business and private consumers) will be liable for payment of the VAT. If nonresident digital services providers are not registered with Ecuador's tax authorities, the importer of services will be responsible for paying the VAT; however, if the payment for the services is made through an intermediary that is a credit card issuer, the issuer will act as the withholding agent on the payment.

To support the relevant costs and expenses upon the importation of digital services, taxpayers must issue "settlement of purchase of goods and provision of services" invoices, or they will be unable to deduct the costs.

Additional details relating to the VAT on digital services will be provided in tax regulations relating to its application. The VAT on digital services will enter into force 180 days after the publication of the law in the official gazette (as from 1 July 2020), to allow the tax authorities time to publish the regulations.

Other changes relating to VAT include the following:

- The goods subject to a 0% VAT rate are expanded to include flowers, newsprint paper, insulin pumps, pacemakers, glucose test strips, boats, machinery, navigation equipment and materials focused on artisanal fisheries, as well as tractor tires for tractors with up to 300 horsepower (HP) (previously 200 HP).

- The number of taxpayers required to act as withholding agents for VAT purposes will be limited. The tax authorities will identify taxpayers required to act as withholding agents based on conditions that will be provided in tax regulations issued subsequently.

Excise duties (ICE)

- Amendments are made to the tax base to include a 30% presumptive minimum marketing margin.

- Additional goods and services are subject to tax, namely, plastic bags and mobile telephone services provided to individuals.

Overseas remittance tax (ISD)

All remittances abroad are subject to the ISD, a 5% special tax charged by the bank transferring the funds, which is then declared to the tax authorities. The tax is deductible for the company transferring the funds abroad. Payments made from overseas, whether for goods or services, also are subject to the ISD. The changes to the ISD include the following:

- Exemptions apply for loans with a term of 180 days or more destined for investments in assets or rights representing capital.

- Dividends paid abroad generally are exempt from the ISD unless they are distributed to foreign entities that have individuals or companies resident or domiciled in Ecuador in their shareholder chain that also are shareholders of the company distributing the dividends.

Other reforms

- The tax authorities will identify taxpayers required to apply control mechanisms to identify, mark, authenticate, track and trace assets.

- Exporters will be able to benefit from a simplified procedure for tax reimbursements on foreign trade.

- The government will promote telecommunications projects through the relevant regulatory entity, to reduce the digital gap.

Switzerland/Italy

Change to customs and VAT territory leads to creation of local consumption tax

As from 1 January 2020, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano are included in the EU customs (and excise) territory pursuant to Council Directive (EU) 2019/475 of 18 February 2019. Historically, Campione d'Italia was considered an Italian enclave in the Swiss customs territory.

However, Campione d'Italia remains outside the scope of the EU VAT Directive (Council Directive 2006/112/EC). Therefore, Italy and Switzerland have agreed to introduce a local consumption tax in Campione d'Italia that is aligned with the Swiss VAT rates to ensure a level playing field between economic operators established in Switzerland and those established in Campione d'Italia. It should be noted that the Swiss Federal Tax Administration is not responsible for enforcing and collecting the local consumption tax; this will be the responsibility of the municipality of Campione d'Italia.

The change in Campione d'Italia's customs status has led to the creation of a new customs border between Italy and Switzerland. The authorities of both countries have agreed to open a new customs office on the new border to enable economic actors and private individuals to proceed with the newly required customs formalities. The Swiss customs office is located in the municipality of Bissone. As in other customs offices located on the border between the two countries, the Swiss Federal Customs Administration can verify the passage of goods through the new customs office in Bissone.

Taxable persons doing business with or out of Campione d'Italia should review their trade flows and determine whether their business processes need to be modified following this change.

As a general reminder, the territory where Swiss VAT applies includes the territory of the Swiss Confederation, foreign customs enclaves incorporated into the Swiss customs territory pursuant to international treaties (i.e. Principality of Lichtenstein and municipality of Büsingen), Sammaun and Sampuoir valleys with respect to services (excluded from the Swiss customs territory for the supply of goods), and the Swiss sector of Basel-Mulhouse airport (except for infrastructure work, which is always deemed to be performed in the French territory).

Other news

European Union

European Commission issues progress report on implementation of UCC

On 13 December 2019, the European Commission published its first annual progress report on the implementation of the Union Customs Code (UCC).

The UCC entered into effect on 1 May 2016 and various amendments to the Union Customs Code Delegated Act (UCC-DA) were published by the Commission on 30 July and 13 August 2018. The UCC is the main legal framework for customs rules and procedures in the EU customs territory and prescribes moving fully to a paperless environment for customs formalities. This requires the Commission and the member states to upgrade most of their existing electronic systems, interconnect some of these systems at trans-European level and introduce a number of new systems to complete the full automation of the customs procedures and formalities.

This first annual report from the Commission on progress in developing the electronic systems describes the developments over the transitional period since the UCC entered into force. The report concludes that while tangible progress is being made, with a number of electronic systems already deployed and fully operational, the Commission and member states face challenges in ensuring the full deployment of the UCC electronic systems by the

relevant deadlines. There are resource issues in member states, the systems are complex and interconnected, and there must be a smooth transition from existing systems to upgraded ones, so that the impact on trade is minimized. However, the remaining systems generally are on track and planned to be completed during 2020-25 in line with the planning of the projects defined in the UCC work program.

European Union

European Commission issues letters of formal notice for failure to adopt quick fixes

On 24 January 2020, the European Commission issued "letters of formal notice" to 12 EU member states that failed to implement the four VAT "quick fixes" in connection with intra-Community supplies contained in EU Directive 2018/1910 as from 1 January 2020. The quick fixes (concerning call-off stock arrangements, chain transactions, and application of the VAT exemption for intra-EU supplies of goods) were included in a package of measures adopted by the EU Council in 2018 to improve the cross-border VAT regime pending the introduction of the "definitive" VAT system, which is not expected until 2022.

Letters of formal notice have been issued to Belgium, Cyprus, Czech Republic, Denmark, France, Greece, Italy, Luxembourg, Portugal, Slovakia, Spain, and the United Kingdom. In certain cases, the member states have issued the necessary legislation or regulations but only in draft form, with the intention that they would have retroactive effect once finalized and enacted.

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

Albania

2020 fiscal package enacted

On 31 December 2019, amendments to legislation included in the fiscal package for 2020 were published in Albania's official gazette. This article considers the key changes relating to income tax, VAT, and tax procedures that apply as from 15 January 2020. Changes to the law on the electronic invoicing and turnover monitoring system (a combination of technology and regulations enabling the Albanian tax authorities to monitor taxpayers' turnover in real time), and associated changes to the laws on income tax, VAT, and tax procedures to align with those amendments will be addressed in a future article.

Income tax

Tax incentives and reliefs

- **Automotive industry:** The corporate income tax rate for the automotive industry is reduced from 15% to 5%. The Council of Ministers is expected to clarify the activities and processes that qualify for the reduced rate, and the necessary criteria.

- **Tax loss carryforwards:** Where taxpayers invest in business projects valued at more than ALL 1 billion, the tax loss carryforward period is extended from three to five years, with the earlier years' losses utilized first. The Minister of Finance and Economy is expected to set out the conditions and procedures to apply this rule.

- **Sporting sponsorships:** The incentive for companies whose taxable profit exceeds ALL 100 million and that sponsor sports teams or some of the activities of sports federations is enhanced. Prior to the amendments, such sponsorships were treated as deductible expenses up to 3% of pretax profit. Qualifying companies now may claim a deduction for corporate income tax purposes of three times the sponsorship expense, recognized within the 3% cap. Any excess unrelieved expense may not be carried forward. To benefit from the incentive, qualifying companies must obtain "sponsorship authorization" from the General Tax Director, in line with procedures expected to be confirmed by the Minister of Finance and Economy.

- **Representation expenses for exporters:** The deduction for representation costs abroad (for participating in international fairs or exhibitions) is increased from 0.3% to 3% of annual turnover for exporters that have earned more than 70% of their revenue from exports in the previous three years (excluding manufacturers working under inward processing models).

Change of ownership

The second tranche of the 2019 fiscal package amendments (published in the official gazette on 21 and 28 December 2018), introduced a new provision for the payment of tax on "deemed profits" by certain legal entities following a direct or indirect change of ownership of more than 20% of the entity's capital or voting rights. The legal entity is treated as if it had sold and immediately reacquired the relevant proportion of its assets at market value and is subject to profit tax on the profit from the deemed sale. The 2019 amendment also included an obligation for the entity to notify the tax authorities of the change in ownership within a specified period, with penalties for a failure to notify. The 2020 fiscal package clarifies that the change of ownership provisions do not apply where a double tax treaty is in place between the jurisdictions in which the parties to the transaction are resident.

Earnings from more than one employment

Individuals with more than one employment must file an annual income tax return even where their total earnings during the year do not exceed ALL 2 million. Previously, only individuals with gross annual income of at least ALL 2 million were required to file a return. The individuals must declare their total annual income from employment, the aggregate annual total of their monthly personal income tax liabilities as calculated by the individual, and the total annual personal income tax withheld by the employer on a monthly basis. Where the tax withheld by the employer is insufficient, the individual will have to pay the additional tax due.

Transfer of property ownership rights between family members

The transfer of ownership rights to a building and/or land through the donation or waiver of those rights is exempt from personal income tax where the transfer is made between family members. The exemption is restricted to one transfer per beneficiary.

VAT

Reduced rates and exemptions

- **VAT exemptions for the reconstruction process:** Further incentives are introduced for expenses incurred in response to the earthquakes in Albania in November 2019, in addition to those that entered into force during December 2019. The following supplies are exempt from VAT during the period for which the "state of natural disaster" was declared and the reconstruction period:

  - Construction services supplied as part of the reconstruction program by contractors authorized by the General Tax Director;

  - Services and goods supplied to authorized contractors and used by them for reconstruction processes; and

  - Materials, equipment and temporary buildings imported by state bodies, charities and other philanthropic organizations.

  A decision of the Council of Ministers is expected to determine the process for authorizing contractors and applying the provisions.

- **Reduced rate for electric vehicles:** The 2019 fiscal package introduced a reduced VAT rate of 6% until 31 December 2021 and 10% thereafter for the supply of electric mini buses for public transport (i.e., that can carry at least nine passengers). The 2020 fiscal package fixes the rate at 6% and introduces a VAT exemption for the supply of new electric vehicles not previously registered in another country.

New deadline for reverse charge invoices

Where services are received from foreign suppliers and the place of supply is considered to be in Albania, the recipient of the services must account for VAT under the reverse charge mechanism. The deadline for issuing a self-invoice for VAT purposes is brought forward by four days to the 10th day of the following month.

Tax procedures

Offset of tax credits and liabilities

In certain circumstances, taxpayers may offset tax overpaid to the customs authorities against tax payable to the tax authorities, and vice versa. The Minister of Finance and Economy is expected to issue an instruction specifying the eligibility criteria and relevant procedures to benefit from the relief.

Reimbursement of VAT in installments

The tax authorities may make VAT refunds in installments in certain cases, provided this is agreed in advance with the taxpayer. The tax authorities are not required to pay interest at the standard rate otherwise applicable to late repayments of tax. A decision of the Council of Ministers is expected to determine the criteria for applying the provision and implementation procedures.

Unannounced visits of the tax authorities

The tax authorities may visit a taxpayer's premises without prior notice to verify:

- Registration of taxable persons;
- Documentation of goods in storage, use and transport;
- Sales documentation for goods or services;
- Issuance of tax invoices; and
- Registration of employees, etc.

Forced collection of unpaid tax liabilities

Special departments within the General Tax Directorate may enforce the collection of unpaid tax. The Minister of Finance and Economy is expected to confirm amendments regarding the tax authorities' power to request commercial banks to block taxpayers' bank accounts and also to raise security charges on the tax liabilities in favor of the tax authorities to ensure that such amounts are paid. A joint instruction of the Minister of Justice and the Minister of Finance and Economy is expected to determine new procedures for confiscating taxpayers' assets.

Irrecoverable tax liabilities

The Regional Tax Directorates and the General Tax Directorate are to set up special commissions that may assess tax liabilities as irrecoverable. The Minister of Finance and Economy is to issue further details on the functioning of the commissions, who will have the power to declare tax liabilities as irrecoverable as follows:

- Regional Tax Director - amounts not exceeding ALL 1 million;
- General Tax Director - amounts between ALL 1 million and ALL 5 million; and
- Minister of Finance and Economy - amounts over ALL 5 million.

Self-employed individuals

Previously, if a person over 16 years of age was identified as not registered as an employee following an onsite inspection at the premises of a self-employed individual, that individual had to prove within five calendar days that the person was an unpaid family member or legally living with the self-employed person, within the meaning of the Civil Code. The tax authorities now are responsible for verifying on the e-Albania portal via the family certificate of the self-employed person, whether or not the person found at the workplace fulfills the conditions to be considered as an unpaid family member or cohabitant within the meaning of the Civil Code.

Argentina

Tax reform measures enacted

Law 27,541 passed by the Argentine Congress and published in the official gazette on 23 December 2019 and Decree 99/2019 issued by the Executive Power on 28 December introduce a number of reforms to the tax system. Key measures for companies are the postponement of the planned corporate tax rate reduction and the linked increase in the dividend withholding tax rate.

The most significant amendments introduced by the reforms include the following:

Income tax

The reduction in the corporate income tax rate from 30% to 25% that was scheduled to apply for fiscal years (FYs) starting on or after 1 January 2020 is postponed and now will apply for FYs starting after 1 January 2021. For FYs starting on 1 January 2021, the 30% rate will continue to apply. The linked increase in the dividend withholding tax rate from 7% to 13% also is postponed for the same period.

The inflation adjustment for tax purposes for the first two FYs starting in 2019 and 2020 must be recognized equally over six fiscal years (previously, the adjustment was to be recognized over three years). The inflation adjustment was introduced with effect from FYs starting in 2018 and requires companies to make appropriate adjustments in calculating their taxable income where changes in the inflation index exceed prescribed thresholds.

Interest from fixed term deposits and certain securities traded on the domestic market, and capital gains derived from such assets, are exempt from tax for resident individuals and all nonresidents as from 1 January 2020.

Personal asset tax

Personal asset tax (a type of worth tax) is imposed on the worldwide property and assets owned by individuals who are resident in Argentina at the end of the calendar year. Previously, the personal assets tax applied to individuals domiciled in Argentina irrespective of their residence status. Equity interests in Argentine companies also are subject to the tax even if owned by nonresidents. The reforms introduce changes to the rates as from FY 2019, including the following:

- The rate on equity interests in Argentine companies is increased to 0.5% (from 0.25%) for both residents and nonresidents; and

- For resident individuals, the progressive rates are increased to a maximum of 1.25% for assets located in Argentina and 2.25% for foreign assets. The higher rate for foreign assets may not be payable provided certain conditions are fulfilled, including, for financial assets, that at least 5% of the asset is converted into cash and repatriated before 1 April of the following FY.

Special tax on foreign payments

A special tax of 30% is introduced for five years as from 23 December 2019 on payments in foreign currency made overseas with credit cards, debit cards or similar payment instruments, payments for international passenger transport and payments for foreign services acquired from local travel agencies. A reduced 8% rate applies to digital services.

Export duties

The law allows the Executive Power to introduce or increase export duty on the following goods up to the stated maximum rate:

- Soybeans: 33%;
- Industrial goods and services: 5%;
- Hydrocarbons and mining: 8%;
- Goods taxed at a 0% rate as at 2 September 2018: 15%; and
- Agroindustry goods from regional economies: 5%.

The rate of the additional statistical charge to support Argentina's National Institute of Statistics and Censuses is set at 3%, subject to certain exceptions and limits.

Other taxes

Other measures include the following:

- Employers' social security contributions are maintained at the 2019 rates of between 24% and 26.4% for 2020 and the progressive changes to converge to a single rate by 2022 will not continue to be implemented. The nontaxable monthly employee salary amount also remains unchanged at ARS 7,003.

- As from 23 December 2019, the rate of tax on debits and credits to bank accounts is increased from 0.6% to 1.2% for cash withdrawals made by companies (other than small or micro enterprises).

- As from 2 January 2020, the exemption for vehicle excise tax purposes is reduced to ARS 1.3 million and the maximum excise tax rate for the most expensive vehicles is increased to 35%.

Australia

Customs duty: 33% error rate in import declarations

On 5 December 2019, the Australian Border Force (ABF) published its most recent Goods Compliance Update.

The update includes the results of the ABF's compliance monitoring program for the five quarters to 30 September 2019. Among other things, the program involves the ABF checking a sample of import declarations for accuracy and quality to assess overall levels of industry compliance.

For the most recent quarter, 1 July to 30 September 2019, the ABF found an error rate of almost **33%** in the import declarations sampled. The errors related to a range of matters including several likely to affect the amount of customs duty paid/payable on the goods imported, including tariff classification, valuation, and country of origin errors, and the incorrect use of tariff concessions.

The error rate on import declarations sampled for the four quarters from 1 July 2018 to 30 June 2019 was lower, although still substantial, at 25%.

Both results will be of concern to government, given the importance of accurate import declarations in ensuring that the correct amount of duty and GST is collected on imported goods.

The results should also be of special interest to businesses importing goods into Australia, whether for use as trading stock, as inputs to manufacture or otherwise for use or consumption in business operations. Inaccurate import declarations made by or on behalf of a business can result in additional costs for the business. For example:

- Overpaid import duty (a net cost)

- Penalties for underpayment of import duty

- Penalties can also be applied simply for including incorrect information in import declarations, even without any underpayment of duty resulting.

The results should prompt businesses that import goods into Australia to reflect on their level of confidence about the accuracy of their own import declarations and, more broadly, whether they have enough oversight and control over their customs compliance in general.

Australia

Weekly Tax Round-up (13 January 2020)

Parliamentary schedule

Both Australian Houses of Parliament resume on Tuesday 4 February 2020.

Bushfire support and relief

On 8 January 2020, the Treasurer announced that disaster relief payments being made to individuals and businesses impacted by the bushfires are tax exempt. This will include:

- Disaster Recovery Allowance payments made to individuals; and

- Payments that would otherwise be taxable under the Disaster Recovery Funding Arrangements, such as grants that may be made to small businesses and primary producers.

The government also has announced that Rural Fire Service Volunteers in New South Wales who are self-employed or work for small and medium businesses, and who have been called out for more than 10 days this fire season, can apply for government payments for lost income which will be tax free.

The Australian Taxation Office (ATO) also has released the following information in respect of bushfire relief:

- List of declared disasters and disaster relief fund lists; and

- Details of bushfire relief including automatic deferrals for lodgments and payments for bushfire-impacted postcodes.

Reportable tax position schedule 2019

The ATO has published the reportable tax position schedule instructions 2019.

Individual taxpayer compliance profiling activity in respect of lifestyle assets

On 18 December 2019, the ATO announced it will be requesting a further five years' worth of policy information from over 30 insurance companies about taxpayers who own marine vessels, thoroughbred horses, fine art, high value motor vehicles and aircraft. The ATO expects to receive information about assets owned by around 350,000 taxpayers from 2015–16 to 2019–20 as part of its data-matching program of work.

Disclosure of tax debts

On 23 December 2019, Taxation Administration (Tax Debt Information Disclosure) Declaration 2019 was registered, which will come into force on 21 February 2020. This is the last legislative step required before measures which allow the ATO to share outstanding debt information to credit reporting bureaus come into effect. The relevant legislation to allow disclosure was passed last year in Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019.

Broadly the ATO will only disclose tax debt information of a business if the business meets all the following criteria:

- It has an Australian business number (ABN), and is not an excluded entity;

- It has one or more tax debts, of which at least AUD 100,000 is overdue by more than 90 days;

- It is not effectively engaging with the ATO to manage its tax debt; and

- The Inspector-General of Taxation is not considering an ongoing complaint about the proposed reporting of the entity's tax debt information.

The ATO will notify a business in writing if it meets the reporting criteria and give 28 days to engage with the ATO and take action to deal with their debt.

Board of Tax reports released

On 12 December 2019, the government announced that the following Board of Taxation reports are available on the Board of Taxation's website:

- Reforming Individual Tax Residency Rules: a model for modernization (completed September 2018)

- Review of Small Business Tax Concessions (completed March 2019)

- Introducing Asset Merger Rollover Relief (completed February 2017)

- Income Tax Treatment of Certain Forms of Deferred Consideration (completed September 2018)

The government has not yet provided a response to the board's recommendations.

MLI update: Australia-Netherlands treaty synthesized text released

The ATO has released a synthesized text of the Australia-Netherlands tax treaty and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI entered into force on 1 January 2019 for Australia.

Whistleblower provisions update

On 20 December 2019, the Australian Securities and Investments Commission (ASIC) reminded public companies, large proprietary companies, and corporate trustees of superannuation entities regulated by the Australian Prudential Regulation Authority that they are required to have a whistleblower policy and make it available to their officers and employees by 1 January 2020.

ASIC plans to survey whistleblower policies from a sample of public companies, large proprietary companies, and corporate super trustees during 2020 to review compliance with the legal requirements and the extent to which these companies are implementing good practices.

- On 13 November 2019, ASIC released a guide to help these entities establish a whistleblower policy that complies with their legal obligations. It also contains good practice guidance on implementing and maintaining a whistleblower policy.

- From 1 July 2019, the new regime for corporate whistleblowing including a new tax whistleblower regime commenced.

Is land used for storage an active asset?

On 20 December 2019, the Federal Court handed down a decision that considered whether land used for storage of materials by a construction company was an "active asset" as defined in section 152-40(1) of the Income Tax Assessment Act 1997 in respect of entitlement to the small business capital gains tax concessions. The Commissioner funded this case under the ATO Test Case Litigation Program.

The land was adjacent to the family home and contained two 4 meter x 3 meter sheds, as well as a 2 meter high block wall and gate to secure the property. The two sheds were used for the storage of work tools, equipment and materials. The open space on the property was used to store materials that did not need to be stored under cover, including bricks, blocks, pavers, mixers, wheel barrows, drums, scaffolding and iron. Work vehicles and trailers were parked on the property, tools and items were collected on a daily basis.

The Federal Court found that In order for an asset's use to be "in the course of carrying on a business" as required in section 152-40(1), the use must have a direct functional relevance to the carrying on of the normal day-to-day activities of the business which are directed to the gaining or production of assessable income. In that sense the use must be a constituent part or component of the day to day business activities and may in that way be described as "integral" to the carrying on of the business.

The ATO succeeded in arguing that in this case, the use of the land did not have that character. At best, the use was "in relation to" the course of carrying on of a business. The court stated that the facts stated in the scheme could not have fallen within the meaning of the scope of the statutory expression "used … in the course of carrying on a business," and the tribunal erred in concluding otherwise.

Taxpayer residency resolved under Australia-Thailand treaty tie-breaker

On 24 December 2019, the Federal Court handed down a decision, finding in a complex set of facts, that the taxpayer was a resident of Australia in the relevant years. However, as the taxpayer also was a resident of Thailand from 2009 to 2014, the result under the treaty tie-breaker provisions was that he was a resident of Thailand during those years.

The taxpayer was born in Zimbabwe, and together with his partner and sons moved to Australia in March 2005. In March 2006, he travelled to Thailand and was offered and took up a position, based in Thailand. Over the ensuing eight years, the taxpayer continued to be based in Thailand for employment purposes. He maintained both a home in rented accommodation in Thailand and in Australia with his family. In February 2009, the taxpayer and his family were granted Australian permanent residency. The taxpayer became an Australian citizen in 2014, was subsequently issued with an Australian passport and also enrolled on the electoral roll. In 2014, he relocated to Tanzania for employment purposes and in early 2016, he relocated for employment purposes to Dubai in the United Arab Emirates (UAE). When returning to Australia, the taxpayer always returned to the home where his partner and their sons were located and regarded this as the family home. He was physically present in Australia between four and six occasions in each year from 2009 to 2014, for between 23% and 42% of each tax year. He also financially supported his partner and family during this period.

The court noted that where a person has a close family, the exigencies of business might require that they reside in two places, the one where work is available; the other where their family is located, dividing their time as best they can between the two. In terms of considering a permanent place of abode, occupancy of rented accommodation is not inconsistent with a conclusion that a person is settled in a particular place.

The court considered that the taxpayer was a resident of Australia, according to the ordinary meaning of that word. On and from his taking up employment in Thailand, he had a place of abode in, successively, Thailand, Tanzania and the UAE. However, Australia had also, at the same time, been his place of abode, at least in the sense of an indefinitely continuing residence here.

In considering the tie-breaker provisions of the Australia-Thailand double tax treaty in respect of dual residency, the taxpayer was considered to have a permanent home and a habitual abode in both countries. His residency thus needed to be determined in terms of where "personal and economic relations" were the closer.

The court noted that whilst the taxpayer's closer personal relations were with his family in Australia, his economic relations were closer to Thailand. When considered conjunctively, his personal and economic relations were for the purposes of the treaty tie-breaker test, closer to Thailand than Australia, between 2009 and 2014.

ATO rulings and guidance

The following significant rulings and guidance were issued:

- GSTR 2019/2: Goods and services tax (GST): determining the creditable purpose of acquisitions in a credit card issuing business;

- TR 2019/6: Income tax: the "in Australia" requirement for certain deductible gift recipients and income tax exempt entities;

- PCG 2019/8: ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies; and

- PS LA 2019/D2: Administering general anti-abuse rules, such as a principal or main purposes test, included in any of Australia's tax treaties.

Australia

Weekly tax round-up (20 January 2020)

Bushfire crisis: government announces tax relief for individuals and businesses

On 20 January, the Australian government announced temporary concessions to affected businesses for the 2019-20 income year. The Australian Taxation Office (ATO) issued a media release with further details of the concessions.

The announcement indicates that the commissioner has agreed to provide assistance measures to certain bushfire-affected postcodes to alleviate cashflow pressures during the disaster recovery. These measures include:

- An extension until 28 May 2020 to lodge and pay business activity statements and income tax returns;

- Remission of interest and penalties applied to individual and business tax debts since the commencement of bushfires;

- Reissuing any documents with the ATO for people who have had documents destroyed;

- The ATO will not initiate debt recovery action until at least 28 May 2020 for affected taxpayers; and

- Businesses paying pay as you go (PAYG) installments quarterly may vary their December 2019 installment to zero; and may claim a refund for any installments paid in the September 2019 quarter.

State government tax concessions announced

New South Wales: Revenue NSW has announced several tax concessions, including:

- Time extensions for lodgment of any documents or returns, payment deadlines, or objections and reviews to tax assessments;

- Agreements not to charge interest or to enter debt payment agreements;

- Refunds of motor vehicle duties on replacement vehicles lost in bushfires; and

- Exemptions from payroll tax for wages paid or payable to bushfire-fighting or emergency volunteers.

Victoria: The premier has announced several concessions for the bushfire-affected, including:

- Businesses and individuals whose property has been destroyed or damaged may receive ex-gratia relief from 2020 land tax assessments;

- Land tax will be waived on eligible properties used to provide free accommodation for those fleeing fires;

- Individuals who do not rebuild their destroyed homes may receive (maximum) AUD 55,000 relief from stamp duty on purchasing a new home elsewhere; and

- Individuals who lost motor vehicles may receive up to AUD 2,100 in ex-gratia relief from duty on up to two replacement vehicles.

South Australia: Revenue SA has reminded employers that wages paid to employees that are absent while volunteering as fire fighters may be exempt from payroll tax. Further, the SA treasurer has announced tax relief measures for bushfire-affected individuals, including:

- Ex-gratia tax relief for stamp duty payable on replacement homes and motor vehicles; capped at AUD 48,830 for homes, AUD 1,940 for passenger vehicles, and AUD 1,470 for commercial vehicles;

- Ex-gratia relief from 2019-20 and 2020-21 land tax liabilities for properties that have been directly affected by bushfires; and

- Debt collection amnesty for emergency services levy debts.

New exposure draft legislation: DGR status for men's and women's sheds

Treasury has released exposure draft legislation and explanatory materials relating to a 2019 federal budget measure: allowing community sheds to receive deductible gift recipient (DGR) status. Consultation is open on the draft materials until 14 February 2020. The new measure is intended to apply to gifts or contributions made to eligible community sheds made on or after 1 July 2020.

Significant ATO guidance released

- PCG 2017/3: Income tax - supporting the implementation of the changes to the taxation of transition to retirement income streams; and

- TD 2020/1: Income tax -value of goods taken from stock for private use for the 2019-20 income year.

Belgium

New monthly VAT refund regime for "starters"

The Belgian VAT authorities published a circular letter (Dutch | French) on 11 December 2019 that provides guidelines on new provisions enabling taxpayers at the start of their economic activity (referred to as "starters") to request a refund of their outstanding VAT credit on a monthly basis for the first two years, provided certain conditions are fulfilled. The new monthly VAT refund regime entered into force as from 1 January 2020. The regime applies automatically to eligible taxpayers and no prior authorization from the VAT authorities is required.

Purpose of the new starters regime

New businesses often will be in a VAT credit position owing to the deduction of input VAT incurred on start-up expenditure in connection with the commencement of their activities. In principle, this VAT credit is carried forward to the next reporting period. However, if certain conditions are fulfilled, it can be reimbursed to taxpayers who submit refund requests, either on a quarterly or monthly basis.

The monthly VAT refund regime is available only to taxpayers that generally are in a VAT credit position, i.e. mainly taxpayers whose activities are largely VAT exempt ("zero rated") but that incur VAT on their purchases. The majority of taxpayers, therefore, only are eligible to obtain a quarterly VAT refund for which the repayment is made, at the latest, three months after the end of the period to which the quarterly or monthly VAT return relates. This timeframe can lead to liquidity issues for starters. A new monthly refund regime intended to address these issues was introduced by royal decree and the recent circular letter provides additional guidance for taxpayers on the new regime.

Eligible taxpayers

The term starter includes:

- New taxpayers that have not previously registered for VAT purposes and that submit a declaration of activity commencement (form 604A);

- Taxpayers that have ceased their activity and submitted a form 604C, and subsequently started a new activity. A three-month period must have expired between the date the previous activity ceased and the date on which form 604A in respect of the new activity is submitted;

- Taxpayers that submit a form 604A and opt for the exemption regime for small enterprises but subsequently change to the standard regime during the first two years of their activity (such taxpayers are deemed starters until the two-year period has expired); and

- New VAT groups (even if the individual group members have all previously been registered for VAT) that submit a form 606A.

Holders of a "global" VAT number commencing with BE0796.6 or BE0796.5 are not considered as starters. Global VAT numbers remove the need for nonresident businesses carrying out certain types of transaction in Belgium to register for VAT in Belgium. Such businesses may instead use the VAT number of a representative in Belgium that acts for a number of clients under a single (global) VAT number.

Conditions

For a starter to benefit from the new monthly VAT refund regime, all of the following conditions must be fulfilled:

- The VAT credit must relate to a period included in the 24 months following the date the economic activity commences, as specified in the form 604A or 606A;

- The monthly VAT refund regime applies only to starters who file VAT returns on a monthly basis; it is not applicable to quarterly VAT filers;

- The VAT credit should amount to at least EUR 245. Credits of less than this amount are carried forward to the next reporting period;

- The monthly VAT return must be submitted by the 20th day of the following month, without any tolerance (see also below);

- The VAT return must be submitted electronically via the INTERVAT application (paper returns are not accepted); and

- The taxpayer must explicitly request a refund of the outstanding VAT credit by checking the relevant box on the return.

A starter's right to claim a monthly VAT refund may be temporarily or permanently revoked if the conditions are no longer fulfilled or if the Belgian VAT authorities detect any anomalies in the returns that may result in a tax liability.

Conditions for holders of monthly VAT refund licenses

Taxpayers other than starters that have obtained a monthly VAT refund license must file their Belgian VAT return by the 20th day of the following month to claim a reimbursement. Previously, the Belgian VAT authorities applied an administrative tolerance for holders of monthly VAT refund licenses, accepting VAT returns submitted before the end of the following month. However, it appears that as from 1 January 2020, the statutory submission deadline must be strictly respected, even during the summer holiday period where the Belgian VAT authorities typically anticipate some tolerance.

Entry into force

The new provisions enabling starters to obtain a VAT refund on a monthly basis and the stricter conditions applicable to holders of monthly VAT refund licenses apply to the first VAT return submitted in 2020 (i.e. the return relating to transactions carried out in December 2019 to be submitted by 20 January 2020). Further practical guidance from the Belgian VAT authorities is awaited.

Belgium

New statistical reporting obligations for large VAT groups introduced

A royal decree of 11 December 2019, published in Belgium's official journal (Dutch and French only) on 14 January 2020, introduces from 2020 additional statistical reporting obligations for members of a large VAT group (i.e., a group with annual turnover of at least EUR 15 million). A breakdown of the information contained in the group VAT return must be reported at the individual legal entity level to the National Bank of Belgium (NBB) to facilitate more accurate statistical accounts. The first declaration, for the first quarter figures for 2020, must be submitted through Onegate, the NBB's electronic portal, by 20 April 2020.

Information required

Each member of a Belgian VAT group with annual turnover of at least EUR 15 million must provide the NBB with a quarterly summary of the following figures reported on its behalf in the group's VAT return:

- For sales: all VAT return data from individual boxes 00 to 49; and

- For purchases: the figures reported in boxes 81, 82, and 83 of the VAT return, per box.

Procedure

The information must be reported on a quarterly basis from the first quarter of 2020 by the 20th day of the following quarter.

The VAT group representative may file the information on behalf of the group members but each individual member remains responsible for the reporting.

This new reporting obligation applies in addition to the VAT reporting obligations of the representative member (VAT return at the group level) or the individual members (European Sales Listing, annual client listing, etc.).

Comments

Statistical reporting often was necessary by VAT groups prior to 2020, requiring a breakdown per member of the information in the group VAT return. However, this was only at the specific request of the NBB and on an annual basis. The NBB requests focused purely on cross-border transactions, whereas the information required from 2020 has a different scope—broader for sales but with less detail on purchases.

Tax legislation changes for 2020

Broad-based changes to Bulgaria's tax laws were published in the state gazette on 6 December 2019 and generally apply as from 1 January 2020. The amendments include implementation of the exit tax provisions of the EU Anti-Tax Avoidance Directive (ATAD 1), the majority of hybrid mismatch provisions of ATAD 2, and the EU VAT "quick fixes." The most significant amendments affecting companies are summarized below.

Corporate income tax

Hybrid mismatches

Amendments are made to Bulgarian legislation to implement the provisions of ATAD 2, other than the provisions governing reverse hybrid mismatches that are expected to be implemented later in 2020. ATAD 2 aims to prevent multinational companies from using "hybrid" arrangements to limit the taxation of their profits, and also applies to hybrid mismatches with non-EU countries, extending the scope of the anti-hybrid provisions of ATAD 1. The directive also aims to ensure a harmonized and coordinated approach in the EU to the implementation of action 2 of the OECD BEPS project (Neutralizing the Effects of Hybrid Mismatch Arrangements). The new rules apply where:

- There is a deduction from the taxable result of the payer of income/amounts due without a corresponding increase in the taxable result of the recipient for the amount of that income/amount receivable (deduction/no inclusion, D/NI); or

- Because of the specific tax status of one of the parties to the transaction (e.g., a transparent entity or a company that is a member of a tax group), the same income is deducted from the results of two companies/entities subject to taxation in different countries (double deduction).

A typical D/NI outcome that falls within the scope of the new rules is the use of hybrid instruments, namely financial instruments that trigger a tax-deductible expense (e.g., interest expense) for their issuer without leading to corresponding taxable income for the investor/lender (e.g., nontaxable dividend income), due to differences in their classification for tax purposes in different countries.

The application of the new provisions is limited in scope, requiring the introduction of a special definition for "related parties," and a description of the types of structured agreement covered in the legislation for the first time.

Exit taxation

The exit tax provisions of ATAD 1 are transposed into domestic law for transfers involving a permanent establishment (PE). Previously, exit tax applied only on transfers between a Bulgarian PE and another part of the same enterprise located outside the country. The amendments extend the scope of the provisions by adding three scenarios that could lead to exit taxation, namely the transfer of:

- Assets from a head office in Bulgaria to a foreign PE;

- Assets, where an entity changes its tax residence (but not to assets that continue to be effectively connected to a Bulgarian PE); and

- A business carried out from a PE in Bulgaria to another country.

Taxation may arise only where Bulgaria loses its right to tax the result of a subsequent disposal of the transferred asset.

The result of each transfer is calculated as the market value of the transferred asset less the tax value. Where the result is positive, this amount is added to the accounting result for the purposes of determining the taxable result. Where the outcome is negative, this amount is deductible, leading to a decrease in the taxable result.

Special rules apply to temporary transfers (for a period of less than 12 months). There also are provisions allowing for the deferral of the resulting corporate income tax payable, provided certain conditions are fulfilled.

Other amendments

An explanatory regulation has been issued on the application of the thin capitalization regime to interest paid on loans for which the collateral is provided both by the borrower and a related party. In such cases, the interest expense corresponding to the part of the collateral provided by the borrower would not be subject to limitation under the thin capitalization regime. Where the market price of the collateral provided by the borrower exceeds the principal of the loan, all interest expense would be excluded from the regime, even where additional collateral is provided by a related party.

Expenses incurred on the repair of technical infrastructure that is public state or public municipal property are recognized for tax purposes. The accounting cost of the construction and improvement of such infrastructure is not recognized for tax purposes but is capitalized as a separate tax depreciable asset. It is sufficient that the costs relate to the business activities of the entity, regardless of whether other entities/individuals also may use the infrastructure. The specific tax treatment does not apply where the taxpayer receives any remuneration in return for undertaking the repairs. Qualifying expenses incurred in the period 2015-2019 may be recorded as tax depreciable assets as at 1 January 2020.

Transfer pricing

Amendments to the Tax and Social Security Procedure Code (TSSPC) refine the criteria for taxpayers required to prepare annual transfer pricing documentation. Taxpayers now are exempt from the obligation if, as at 31 December of the prior year, they do not exceed two of the following thresholds:

- Net book value of assets: BGN 38 million;

- Net sales: BGN 76 million; and

- Average number of employees during the reporting period: 250.

VAT

Quick fixes: Changes in the treatment of cross-border intra-EU supplies of goods

Changes to the VAT Act implement the four quick fixes required to be adopted in all EU member states as from 1 January 2020 in line with an EU directive adopted by the EU Council in 2018 to improve the cross-border VAT regime pending the introduction of the "definitive" VAT system, that is not expected until 2022. The quick fixes apply in four areas:

- **Chain supplies:** Where goods are resold among three or more entities in different EU member states but only transported between two EU member states, the new rules aim to identify which supply in a chain transaction should be treated as the intra-Community supply and, therefore, which of the suppliers is entitled to apply the zero rate on intra-Community supplies. The transport generally is allocated to the supply of goods made to the intermediary operator. An exception applies where the intermediary operator provides its direct supplier with its VAT number issued by the EU member state from which the goods have been dispatched or transported, in which case the supply from the intermediary operator to its direct customer is considered as the intra-Community supply.

- **Call-off stock:** This regime applies where a supplier in one EU member state transports its own goods to a warehouse in another EU member state, and knows the identity of the buyer at the time of transport. Ownership of the goods is transferred only when the buyer "withdraws" the goods from the warehouse. The suppliers are not required to register for VAT purposes in the state where the goods are stored, and the acquisition of the goods is reported by the client, who must self-assess the VAT. The amendments introduce an additional obligation to maintain a special register of the goods sent/received under a call-off stock regime.

- **VAT number of the recipient:** The amendments introduce two requirements to apply the zero rate on intra-Community supplies; namely (i) a valid VAT number for the customer in the EU member state where the goods are delivered, and (ii) submission of a correct VIES return including the VAT number.

- **Proof of intra-Community supply:** A presumption is introduced, according to which the intra-Community transport of goods is accepted to have taken place where the supplier possesses specific documents listed in the legislation. The documents listed differ from those previously required under the Regulation for the Implementation of the VATA, and all Bulgarian companies that ship goods to other EU member states should verify whether the documents they routinely collect in the course of their activity meet the new conditions.

Treatment of goods in the continental shelf and Exclusive Economic Zone (EEZ)

The receipt of goods intended for activities in the continental shelf or the EEZ is subject to VAT under the general rules, including when the goods are re-exported. VAT is self-assessed and paid by:

- The person for whom the goods have been placed under a customs procedure for re-export and, when brought into Bulgarian territory, have been temporarily stored, placed in a free zone or under any of the special customs regimes (customs warehousing, inward processing, temporary admission with full relief from import duties and external transit); or

- The recipient, where the goods arrive directly in the continental shelf or EEZ from a third country or territory, or from another EU member state where there has been no intra-Community acquisition.

Taxpayers also must notify the Bulgarian tax authorities electronically of their intention to impose tax on goods intended for the continental shelf or EEZ and are entitled to deduct input VAT under the general rules.

These changes affect exploration activities in the Black Sea and affected taxpayers may need to amend the format of their sales and purchase ledgers and align their accounting software with the new rules.

VAT registration for foreign taxpayers

The VAT registration threshold of BGN 70,000 for foreign taxpayers without a presence in Bulgaria but that make taxable supplies in Bulgaria is removed. Such taxpayers must register for VAT purposes in Bulgaria no later than seven days prior to the date on which the tax in respect of their first supply in Bulgaria becomes due.

Other amendments

A number of other amendments and clarifications are introduced in the VATA with the adopted legislation, including an explicit stipulation that the gratuitous provision of public infrastructure elements, that are state or municipal property, is not a supply for the purposes of the VATA when used by the supplier in its economic activity.

The basis of calculation of taxable turnover for VAT registration purposes is amended where two or more related persons carry out in succession an equivalent business in the same commercial premises.

Local taxes and fees

Amendments to the Local Taxes and Fees Act include the following:

- The municipal tax authorities may determine the tax base of real estate owned by legal entities where the declared gross book value of the real estate is not in accordance with the provisions of the accounting legislation. The amended tax value is calculated as set out in the TSSPC. The taxpayer must bear any costs of an additional valuation (e.g., if the municipality uses the services of experts/licensed appraisers).

- Former provisions regulating the declaration of assets acquired through a donation for which no notary validation is required (e.g., forgiven/written-off debts) are reinstated. The tax return filing and payment deadline remains two months after the taxable event.

By 29 February 2020, procuring entities must submit data to determine the real estate tax payable on newly constructed buildings subject to commissioning that have been built as at 31 December 2019 but not commissioned or for which no use permit has been issued.

China

2020 tariff adjustments announced

On 23 December 2019, China's Tariff Commission of the State Council announced the 2020 Tariff Adjustment Plan, which revises import tariffs affecting the agriculture, pharmaceutical, heavy industry and information technology (IT) sectors. Export tariffs remain unchanged.

Most-favored-nation (MFN) tariff rates

The MFN tariff rates for 176 items of IT products will be reduced from 1 July 2020.

Interim import tariff rates

Interim tariff rates on imported goods generally are lower than the MFN tariff rates, encouraging imports of such goods. These rates typically are reviewed and updated on an annual basis. Interim import tariff rates on more than 850 products will apply as from 1 January 2020. The most significant changes are summarized below:

Types of adjustments	Examples of goods	Reasons
Newly added or further reduced interim rates	Frozen pork, frozen avocado and non-frozen juice	Government policy is to improve the standard of living and consumption choices for the population
Newly added or further reduced interim rates	Semiconductor inspection and sorting tape machines, high-pressure turbine gap control valves, torque converters and aluminium valve cores for automatic transmissions, ferroniobium, multi-element integrated circuit memory, raw materials for large-scale films, dispersion for photoresist, and culture mediums	Government policy is to encourage imports of certain advanced equipment and its components to support the development of high-tech industries
Newly added or further reduced interim rates	Certain wood and paper products	Government policy is to encourage imports of certain resource products
Newly added zero-rated items	Alkaloids for the treatment of asthma and raw materials for the production of new diabetes medicines	Government policy is to endeavor to make medical treatment more accessible and promote new drug production
Eliminated interim rates	Government policy is to endeavor to make medical treatment more accessible and promote new drug production	Government policy is to ensure environmental protection from the import of these products, and this change aligns with adjustments made to the import waste management catalogues

For IT products subject to the reduction of MFN tariff rates on 1 July 2020, the interim rates will be adjusted accordingly at that time.

Conventional tariff rates

China has concluded bilateral or multilateral free trade agreements (FTAs) with more than 20 jurisdictions. The importation of goods originating from these jurisdictions enjoy preferential tariff rates (referred to as "conventional tariff rates"), which normally are lower than the MFN tariff rates. The main changes in the 2020 conventional tariff rates include the following:

- As from 1 January 2020, the conventional tariff rates for certain goods will be reduced according to the FTAs between China and Australia, Chile, Costa Rica, Georgia, Iceland, Korea (ROK), New Zealand, Pakistan, Peru, Singapore and Switzerland, as well as the Asia-Pacific Trade Agreement.

- As from 1 July 2020, the conventional tariff rates for certain goods will be reduced according to the FTA between China and Switzerland and the Asia-Pacific Trade Agreement.

The adjustment plan also clarifies that, where the MFN rate is different from the conventional rate, the lower rate will apply unless the relevant agreement provides otherwise.

Special preferential tariff rates

Special preferential tariff rates, which generally are lower than the MFN tariff rates and granted to goods originating from least developed countries, will continue to apply in 2020. As of 1 January 2020, the special zero-rate treatment for goods from Equatorial Guinea is no longer available.

Comments

Companies should examine whether and how the 2020 tariff adjustments may affect their businesses, including the effect on their supply chain and transfer pricing policies.

As the application of tariff rates is based on the HS code of the goods and the country of origin (COO), companies also should regularly review the HS codes they currently use and the COO status to address any potential customs compliance risks. Where appropriate, companies should consider looking into advance rulings to help manage these compliance risks.

According to the most recent press conference held by the Ministry of Finance, China has entered into 17 FTAs with 25 jurisdictions and is in the process of negotiating 11 new or revised FTAs with 28 jurisdictions. Due to this expanded FTA network, companies should closely monitor future developments and consider leveraging applicable agreements to help improve their supply chain efficiency.

Amended tax reform legislation enacted

The Colombian president signed Law 2010 of 2019 (Economic Growth Law) on 27 December 2019, following approval by Congress. The legislation—which is effective as from that date—contains many of the provisions originally contained in the 2018 tax reform law (Law 1943 of 2018, Financing Law) that was held to be unconstitutional by the Constitutional Court on 16 October 2019, including the following:

- Progressive corporate income tax rate reduction;

- Progressive reductions in the presumptive annual minimal income for companies and individuals;

- Introduction of a withholding tax on dividends distributed as nontaxable income to resident companies, an extraordinary equity tax and a "normalization tax;"

- Taxation of indirect share transfers;

- Worldwide taxation for Colombian permanent establishments (PEs); and

- Various tax incentives, including the Colombian holding companies regime and the "mega investments" regime.

This article highlights the key changes to the previous legislation contained in the new reform law.

Income tax

- The income tax regime for indirect share transfers is amended so that on a subsequent indirect disposal, the cost for tax purposes is the amount proportionally paid for the shares, participations or rights of the foreign entity that owns the underlying assets located in Colombia. Where a merger or spinoff between foreign entities involves an indirect transfer, the transfer is treated as a sale for tax purposes unless the assets transferred represent less than 20% of the total group assets (article 319-8 of the Tax Code).

- The scope of the term "effective beneficiary" is defined in the context of provisions relating to private capital funds and collective investment funds. An individual who owns, controls or benefits directly or indirectly from a legal person or structure without legal status is regarded as an effective or real beneficiary. A registry of effective, final or real beneficiaries is to be created and overseen by the tax authorities.

- Modifications are made to the tax rate applicable under the "SIMPLE" regime to fees for professional, consulting and scientific services that are primarily of an intellectual nature, rather than a manual nature. To ensure continuity of the regime, taxpayers who qualify for the regime as at 27 December 2019 and who registered for the regime by the prescribed deadline are not required to reregister for 2020. Taxpayers who opt for the SIMPLE regime must adopt electronic invoicing within two months after their registration in the tax registry.

- A 4% income tax surcharge for financial institutions is introduced for FY 2020, reducing to 3% for FYs 2021 and 2022, payable in full in advance.

- The Tax Code provision (article 256-1) that granted a 50% tax credit for investment in research, technological development and innovation projects, and for the remuneration costs of certain highly-qualified employees, is abolished.

- Public service companies regulated and controlled by the Superintendency of Public Services established as new corporations to preserve the continuity of the provision of public services may transfer to the new corporations any brought forward unused tax losses from the predecessor companies.

- The alternative minimum tax based on an annual presumptive minimum income gradually is being eliminated. Law 2020 of 2019 reduces the presumptive income tax rate from 1.5% to 0.5% for 2020 and to 0% as from 2021 (as proposed by Law 1943 of 2018).

- All types of exempt income are consolidated in article 235-2 of the Tax Code, including employer contributions to pension funds on behalf of employees and other amounts initially omitted by Law 1943 of 2018.

Individual income tax

- Self-employed professionals are entitled to a tax deduction for expenses incurred in deriving fee income or other payments for personal services.

- The first 12,500 tax value units (UVT) of compensation received under a life insurance policy is considered an exempt capital gain.

- The marginal rate applicable to nontaxed dividends (paid out of profits taxed at the corporate level) in excess of 300 UVT paid to resident individuals is reduced from 15% to 10%. Dividend income of up to 300 UVT is tax-free.

Withholding tax

- The withholding tax rate applicable to dividends distributed as nontaxable income is increased from 7.5% to 10% for nonresident entities and individuals, and PEs of foreign companies.

Tax on financial transactions

- Disbursements or payments made to third parties in respect of emoluments, services, supplies, the acquisition of goods or payment of obligations are subject to the tax on financial transactions. Credit card payments by individuals and finance lease payments made via finance companies or banks where the contact includes an option to purchase are exempt from the tax.

- Amendments are made to the provisions of the Tax Code that exempt factoring activities, purchase discount and portfolio discount from the tax. Individuals and other entities performing factoring operations may denote up to 10 bank accounts, electronic savings and deposit accounts, simplified processing savings accounts, collection

accounts, trust accounts, trust commission accounts, accounts or collective investment funds, and private equity accounts and their funds, as destined solely and exclusively for the collection, disbursement and payment of funding, and therefore exempt from the tax.

- An exemption is introduced for transfers and withdrawals in full or in part of severance payments and interest on severance payments made via payments to savings accounts, in cash and/or by company check.

VAT

- Foreign services providers who are not Colombian tax residents are not required to issue a physical invoice or equivalent documentation for the provision of electronic or digital services; electronic invoicing only will be acceptable.

- The amount of bank and other deposits or financial investments taken into account when determining whether an individual is liable for VAT is derived exclusively from VATable activities.

- Taxpayers subject to the new "SIMPLE" tax regime (broadly, those with gross income in the previous taxable year of less than 80,000 UVT) will not be responsible for VAT where they trade only through small stores, mini-markets, micro-markets and other similar outlets.

- The taxable base for imports of finished products manufactured abroad or in a Colombian free-trade zone with domestic components that are exported and subsequently reimported, is clarified.

- The list of VAT-exempt goods is modified to include items related to medicines and pharmaceutical preparations. Beauty treatments and cosmetic surgery are considered health services and, hence, exempt from VAT.

- A VAT compensation mechanism is introduced for the most vulnerable individuals. This is a bimonthly payment of a fixed amount paid by the national government directly to the most vulnerable people based on the VAT typically paid by households on average or low income.

- A three-day VAT-free period will be available each year (to be determined by the National Tax Administration) during which no VAT will be payable on certain assets disposed of within Colombia that otherwise would be subject to VAT.

- The list of goods that, in principle, fall within the scope of VAT but that are specifically excluded from VAT in article 424 of the Tax Code is extended to include real estate property and electric bicycles.

Miscellaneous

- The rate of the normalization tax (effectively equivalent to a tax amnesty) is increased from 14% to 15%. The tax applies on the basis set out in Law 1943 of 2018 and subsequent Decree 874 and is payable on 25 September 2020. The tax broadly applies

to taxpayers that, on 1 January 2020, either have omitted to report assets to the tax authorities or claimed relief for nonexistent liabilities. (Under Law 1943 of 2018 and Decree 874, the tax was to have applied to omitted assets held as at 1 January 2019.)

- The annual return of overseas assets is mandatory where the value of such assets as at 1 January of the relevant year exceeds 2,000 UVT.

- The national consumption tax on the sale of real estate is abolished.

- The taxable event for tourism tax purposes is the time of purchase of international airline tickets for flights departing outside Colombia with a final destination of Colombia.

- In addition to the advisory commission set up to examine the territorial tax system established by Decree 873 of 2019, a second commission is to be established to assess the appropriateness of the current tax incentive rules. Both commissions must deliver their proposals towards the end of June 2020.

Tax incentives

- The number of direct jobs that must be generated to qualify for the "mega investment regime" (a special tax regime for taxpayers that, under Law 1943 of 2018, would have been required to generate at least 250 direct jobs and make new investments of at least 30 million UVT in a commercial, industrial and/or service activity in Colombia) is increased to 400. Taxpayers must make the investment within five years after the date the project is approved. Mega investment projects may be established in free-trade zones, but investors involved in the evaluation, exploration and exploitation of nonrenewable natural resources are not eligible for the regime.

- Under the "works for taxes" mechanism, taxpayers may satisfy a portion of their tax liability through investments in certain public works (projects or infrastructure). Law 2010 of 2019 clarifies that companies engaged solely in the exploration and exploitation of minerals and hydrocarbons, and large taxpayers whose only business is port operation, may not undertake public works that are related to their income-generating activities. References in the National Development Plan Law to this payment mechanism should be understood as made to article 800-1 of the Tax Code that legislates for the tax payment mechanism for public works.

- Employers may deduct 120% of the salary payments made to employees who are under 28 years of age, up to a maximum of 115 UVT per month, provided it is the employee's first job.

- The requirement for companies to have their main residence, administrative and operational headquarters in the municipality or municipalities in which they invest to be eligible for the tax incentive for the development of the Colombian countryside is abolished. A minimum direct employment requirement is introduced of between one and 51 employees depending on the investment amount and expected annual taxable income. The minimum investment amount is reduced from 25,000 UVT to 1,500 UVT.

Tax administration and procedural issues

- For electronic communications, the time limit for replying to or appealing an action of the tax authorities begins to run five days after the date of delivery of the electronic communication and not the date that the taxpayer confirms receipt, as proposed in Law 1943 of 2018.

- Taxpayers may amend their tax returns within three years after the filing date provided no notification of special requirements or statement of objections has been issued by the tax authorities. Previously, the time limit was one year after the filing date where the amended return resulted in a reduced tax liability or increased tax repayment; otherwise, the deadline was two years after the filing date.

- The statute of limitations for income tax returns in which tax losses are assessed or offset, and income tax returns of taxpayers subject to the transfer pricing regime is reduced from six years to five years.

- Where mutual agreement procedures are used to resolve tax and customs disputes, taxpayers may settle the liability in installments over a maximum period of 12 months from the agreement date.

- The statute of limitation is reduced to six months for income tax returns for financial year (FY) 2020 and 2021 for taxpayers whose income tax liabilities have increased by at least 30% over the previous year. For FY 2019 the provisions of Law 1943 of 2018 apply.

- The penalties for late filing of the return of overseas assets are reduced. The monthly penalty is reduced from 1.5% to 0.5% where the taxpayer has not been notified by the tax authorities of the requirement to file a return, and from 3% to 1% where the return has been requested but the liability has not been resolved. The maximum penalty is reduced from 25% of the value of the overseas assets to 10%. Transitional provisions are introduced further reducing the rates for taxpayers who pay by 30 April 2020 late filing penalties in respect of tax returns for 2019 and earlier years.

- The tax authorities are given powers to shut down an establishment of certain taxpayers for three days, for the nonadoption of or noncompliance with "technical systems of control" of the income producing activity. The meaning of technical systems of control is not defined in the legislation and may be confirmed by a subsequent decree.

- A new position of the "Special Defender for Taxpayers" is created to protect the rights of taxpayers, withholding agents and customs users.

Czech Republic

Update on implementation of VAT changes

Changes to the Czech VAT rules to implement certain "quick fixes" agreed upon at the EU level and to introduce a temporary generalized reverse charge mechanism, which were proposed to be effective as from 1 January 2020, have been delayed. It is uncertain when the changes will be officially enacted.

Quick fixes

As from 1 January 2020, the Czech Republic was required to amend its domestic law to introduce new measures provided for in Council Directive (EU) 2018/1910 regarding the existing functioning of the VAT system (i.e. the quick fixes). The measures are intended to have an impact on the application of the VAT exemption with respect to the sale of goods to another EU member state; to change the established method of the allocation of transportation in intracommunity supplies of goods in chain transactions; and to harmonize the rules regarding the taxation of sales via consignment warehouses using the call-off stock simplification.

However, the relevant amendments to the Czech VAT Act are still in the legislative process, and are unlikely to be enacted before April 2020. Until then, VAT payers either may follow the current wording of the VAT Act or they may rely on the direct effect of the EU directive and follow the new rules.

Temporary generalized reverse charge mechanism

Implementation also is delayed with respect to the generalized reverse charge mechanism for domestic business-to-business supplies exceeding EUR 17,500. The Czech Republic received an authorization from the EU Council on 14 November 2019 to derogate from article 193 of the EU VAT directive and to apply the mechanism from 1 January 2020 through 30 June 2022, to combat VAT fraud.

However, according to the Ministry of Finance, before implementing the generalized reverse charge mechanism, it is first necessary to prepare and approve another amendment to the VAT Act and to negotiate an extension of the derogation with the other EU member states for additional years. Therefore, the introduction of the new generalized reverse charge mechanism is unlikely to occur in the near future.

France

2020 finance law includes changes to VAT rules

Following the review and approval of the constitutional court, France's 2020 finance bill (n° 2019-1479 dated 28 December 2019) was published in the official journal on 29 December 2019 and became law. The Finance Law 2020 contains several changes to the VAT rules, which unless otherwise stated, generally are effective as from 1 January 2020. This article summarizes the key VAT provisions.

Transposition of EU "quick fixes" into domestic law

EU member states were required to transpose four short-term improvements to the VAT rules, known as "quick fixes," into their domestic law by 1 January 2020. The measures are part of an EU directive (2018/1910) adopted in 2018 that is designed to improve the cross-border VAT regime pending the introduction of a "definitive" VAT system.

The 2020 finance law introduces three of the VAT quick fixes into the French tax code:

1. New requirements for intra-EU supplies to be VAT-exempt;

2. New EU chain transaction rules; and

3. Simplification of call-off stock arrangements.

The fourth quick fix, i.e. new presumption rules regarding documentary evidence of EU cross-border movements of goods, has not been transposed into domestic law but it applies by virtue of EU Regulation 2018/1912 dated 4 December 2018, which is effective as from 1 January 2020.

Management of special investment funds

The finance law clarifies the scope of the VAT exemption applicable to the management of special investment funds (SIFs). Previously, the following types of funds were treated as SIFs under French law:

- Undertakings for the Collective Investment in Transferable Securities (UCITs);

- Debt securitization funds; and

- Certain Alternative Investment Funds (AIFs).

The tax code contained a limited list of AIFs that were eligible for the VAT exemption, with the notable exclusion of real estate funds, which was not in line with CJEU jurisprudence (C-595/13, Fiscale Eenheid X NV). (The CJEU held in that case that the management of real estate is eligible for the VAT exemption applicable to the management of special investment funds.) To align domestic legislation with EU law, UCITs and other funds with similar characteristics may qualify for the VAT exemption if they meet the following requirements:

- Are collective investment vehicles;

- Operate on a risk-spreading basis;

- Are subject to state supervision; and

- Have a return on investment that depends on the performance of their investments with the holders bearing the risks connected with the fund.

- The French tax authorities (FTA) will issue a list of qualifying funds. It should be noted that the management of SIFs in France may opt to be taxed like banking and financial services.

Online marketplaces

- The definition of online marketplaces that can be held jointly and severally liable for the payment of VAT due by users that fail to comply with their VAT obligations in France is modified.

- The finance law also creates a "name and shame" platform where online marketplaces may be listed under certain circumstances. The name and shame program will enable the FTA to publish on a specific web site the name of marketplace operators that do not comply with the VAT rules. This may occur after the Fiscal Infringement Commission (*Commission des Infractions Fiscales* or CIF) issues a ruling against an operator that has failed to comply with its VAT obligations at least twice during a 12-month period, as

indicated by: (i) failure to cooperate with the FTA after the FTA's request for the operator to compel a marketplace user to comply with its French VAT obligations, (ii) implementation of joint and several liability, (iii) imposition of a fine for failure to reply to a right of communication, (iv) implementation of a fine for failure to transmit certain information to users, or (v) *ex officio* taxation.

- Finally, the law transposes the rules in the EU e-business directive (EU/2017/2455) into domestic law, to be effective as from 2021.

VAT rate changes

The Finance Law 2020 makes several changes to the VAT rates, notably:

- **Audiobooks and multiple play (i.e. package) offers:** FTA guidelines previously defined audiobooks benefitting from the 5.5% reduced VAT rate as audio reproductions of written books on any medium. The 2020 finance law updates the tax code guidelines by broadening the definition of audiobooks qualifying for the reduced rate to include all audiobooks, even if they do not reproduce the contents of a written book.

  The law also provides for the apportionment of the taxable basis of fixed-price package offers from electronic communications operators and TV service providers. This includes e-books and subscriptions to cinematic content subject to the 5.5% reduced VAT rate in addition to recurring services subject to the 10% VAT rate (TV services) or the 20% standard rate (electronic communications services).

- **Cultural, recreational and educational activities:** The 10% VAT rate previously applied to entrance fees for specific cultural, recreational, and educational activities listed in the tax code. The 5.5% rate applied to entrance fees for zoos, live shows, movie theaters, and sporting events. As from 1 January 2020, the 10% rate is extended to new activities, such as leisure centers (e.g., water parks, recreational areas, mazes, etc.). The FTA is expected to issue some clarifying guidance on the scope of the 10% rate.

- **Alcoholic beverages:** Transactions involving non-alcoholic drinks are subject to the reduced rate of 5.5%. However, drinks sold for consumption on-site (such as at a restaurant), for take-away/take-out or delivery and intended for immediate consumption are subject to the 10% VAT rate. Alcoholic beverages always are subject to the standard rate of 20%.

  The FTA and the French Administrative Supreme Court had different interpretations of the definition of alcoholic beverages. According to a new provision in the tax code (new article 298 octodecies 1), a single definition will be used for all tax matters (VAT rate, tax on non-alcoholic beverages and excise duties). Now, all beverages with an alcoholic strength greater than 1.2% alcohol by volume (alc/vol) and beers with greater than 0.5% alc/vol are treated as alcoholic beverages.

Reverse charge

A domestic VAT reverse-charge mechanism applies for transfers of electricity certificates (certificates of guarantee of origin and of guarantee of capacity) between two French resident taxpayers.

A general VAT reverse-charge mechanism for imports will apply as from 1 January 2022.

Electronic invoicing for B2B transaction

Electronic invoicing will be required for transactions between taxable businesses (business-to-business or B2B transactions) as from 1 January 2023 at the earliest but no later than as from 1 January 2025. Data also will have to be systematically reported to the FTA. The relevant deadlines and procedure will be discussed further during 2020.

Greece

Changes to indirect tax rules aim to stimulate the economy

Recent indirect tax developments in Greece include a VAT suspension regime for newly developed real estate, the reclassification of certain goods to qualify for reduced rates of VAT, the extension of the application of reduced VAT rates for certain islands, and guidelines for the adjustment of input VAT deducted with respect to certain unused assets.

"Tax reform with a focus on the Greece of tomorrow" (Law 4646/2019 (FEK 'A 201/12.12.2019))

Suspension of VAT for newly developed real estate

The new law, which amends various provisions of the VAT code (L.2859/2000), as well as other tax provisions, aims to foster recovery of the real estate market, which was severely impacted by the recent financial crisis. The law suspends VAT on newly developed real property (article 39), in conjunction with other real estate provisions. The new rules apply as from 12 December 2019, the date the law was published in the government gazette.

- Supply of real estate (article 6)

  Building contractors may elect to be subject to the VAT suspension regime through 31 December 2022 (new paragraph 4a). Once elected, the regime must be applied consistently until that date. Under this regime, VAT will not be imposed on the supply/sale of real estate, but taxpayers will not be able to deduct related input VAT. Instead, the supply/sale of real estate will be subject to the real estate transfer tax.

  Taxpayers will have to file an application to elect to be subject to the VAT suspension regime, as follows: (i) For building licenses already issued, within the six-month period as from 12 December 2019; and (ii) for building licenses issued as from 12 December 2019, within the six-month period as from the date the license is issued.

  The VAT suspension regime applies to all real property owned by a building contractor. Thus, in practice, a building contractor must submit a list of all unsold property and their corresponding input VAT amount when submitting the election application.

  With respect to the "apartments (flats)-for-land" system ("*antiparochi* system"), a building contractor who has elected to be subject to the VAT suspension regime may not charge VAT on the construction of property to be "sold" to the landholder in return for the land (new paragraph 2b).

Further guidance on the process to be followed for filing the election was released in AADE Decision no. A.1012/2020.

- Input VAT deduction right (VAT code article 30 paragraph 1)

  The right to deduct input VAT (i.e. the VAT on expenses) is suspended during the period the VAT suspension regime applies to specific property.

- VAT adjustment (VAT code article 33 paragraph 1)

  Before the VAT suspension regime is applied, the deductible input VAT amount for each property (i.e. a proportionate percentage of the total input VAT amount, which is calculated based on a construction project's "real" supply of goods and services) is adjusted at the time of the sale.

  The input VAT amount to be adjusted may be deducted from income tax in the year of the adjustment (article 39 paragraph 8 of the new law).

- Taxpayer requirements (VAT code article 36 paragraph 4 case a)

  Building contractors are required to keep an account of building costs to monitor the cost of each building/real property, even if they have elected to be subject to the suspension regime.

- Reporting and other relevant requirements (VAT code article 38 new paragraph 11a)

  Building contractors who sell real property that is subject to the suspension regime must remit the adjusted VAT amount to the tax authorities through an extraordinary VAT return at the time of the sale and before filing the real estate transfer tax return, "parental benefit" return (for the transfer of property by parents to their children), or gift return, as applicable.

  AADE Decision A. 1013/2020 provides further procedural guidance on the VAT adjustment right applicable to properties subject to the suspension regime.

Reclassification of certain goods to qualify for reduced VAT rates

The new law (articles 40 and 79) amends Annex III of the VAT code providing for reduced VAT rates for certain goods and services as follows:

- The law clarifies that the reduced VAT rate (13%) applies for infant and children food preparations that are packaged for retail sale (tariff class codes C.N. 1901, 1902, 1903, 1904 and 1905) (revised paragraph 26). To assist families economically, items for infant safety and protection, such as diapers made with any materials (C.N. E.X. 9619), as well as child car seats and their parts (C.N. E.X. 9401), are reclassified to be subject to the reduced VAT rate of 13% instead of the standard 24% rate (new paragraph 49).

  In addition, with respect to citizens' road safety, bicycle helmets (C.N. E.X. 6506) are reclassified to qualify for the reduced 13% VAT rate instead of the standard rate (new paragraph 48).

These provisions are effective as from 1 January 2020.

- As from 12 December 2019, immunological products used in human medicines (C.N. E.X 3002) are reclassified to qualify for the super reduced 6% VAT rate from the reduced 13% rate. This applies to medicinal products administered to patients with serious chronic diseases, such as cancer, diabetes, rheumatoid arthritis, and myasthenia gravis (revised paragraph 37).

  The super reduced 6% VAT rate continues to apply to human vaccines (C.N. E.X. 3002).

Extension of application of special VAT rates for certain islands

Pursuant to a ministerial decision (No. A.1470/2019) published in the government gazette on 23 December 2019, the special VAT rates for the supply of goods and services for the islands of Leros, Lesbos, Kos, Samos, and Chios are extended for six months, from 1 January 2020 to 30 June 2020, provided the necessary conditions are fulfilled. The special VAT rates equal the mainland rates reduced by 30% and are 17% (standard rate), 9%, and 4% (reduced rates).

For the Greek mainland and all other islands, the VAT rates are 24% (standard rate), 13%, and 6% (reduced rates).

Guidelines for required adjustment of input VAT deducted with respect to certain unused assets

Based on a decision of the Greek Independent Authority for Public Revenue (IAPR) (E.2200/2019/20.12.2019), taxpayers are not required to adjust the input VAT amount deducted at the time they acquired an investment asset/capital good if its usage or operation has not started within the first five calendar years after its acquisition or construction because of an act or omission by the Greek government.

In principle, if an investment asset/capital good has not been used or operated within five calendar years of its acquisition/purchase or construction, it is treated as being used for non-VATable transactions. Therefore, the taxpayer is required to adjust the input VAT deducted at the time of purchase or construction, which means that this VAT amount must be repaid to the tax authorities (article 33 paragraph 3).

The Supreme Administrative Court (SAC) ruled in a case (no. 1862/2019) that a taxpayer's right to deduct the input VAT incurred when acquiring or building an investment asset/capital good continues to apply, in principle, even if the asset or good has not been used or operated due to circumstances beyond the taxpayer's control. This would be the case if non-usage is due to sovereign acts (i.e. government actions or omissions) that have rendered use or operation impossible.

Consistent with the SAC decision, the IAPR provided the following guidelines in its decision:

- Input VAT deducted at the time an investment asset/capital good is acquired/built does not have to be adjusted if it can be concluded with certainty, either based on the law or a court decision, that non-usage within five calendar years is due to circumstances beyond the taxpayer's control. An example of this are investment projects subject to

developmental laws 3299/2004, 3908/2011 and 4399/2016 as their completion has been delayed due to the issuance of specific laws.

- Taxpayers in such cases are not required to adjust the deducted input VAT amount if they can prove that they have the right to delay completion of the investment project based on specific authorization for an extension from the relevant authority.

- The IAPR decision further defines the documentation that taxpayers should keep in their files and be able to present to prove authorization for the delay. The documentation required depends on which developmental law applies to each investment project. Additional documents are required in the event of a delay due to force majeure.

- Notably, taxpayers who have not adjusted input VAT are not required to do so for the duration of the project's delay. However, taxpayers who have adjusted input VAT and who have been granted a delay may claim a refund of the VAT amount by filing an amended VAT return for the relevant tax period, provided a refund is not barred by the statute of limitations. However, the VAT amount may not be used to offset income in a future tax period.

- Tax assessments that have been finalized will not be reversed, whereas VAT amounts that have been collected through final tax assessments will not be refunded.

India

GST council recommends changes to procedures and rates

Key recommendations of India's goods and services tax (GST) Council at its 38th meeting on 18 December 2019 to be introduced by the issue of notifications include the following proposed amendments to GST rates and procedures:

- A further extension until 31 January 2020 of the due date for filing the GST annual return (Form GSTR-9) and audit report (Form GSTR-9C) for the year 2017-18. The deadline has been extended on several previous occasions, most recently to 31 December 2019.

- A further restriction on the availability of an input tax credit (ITC) on invoices and debit notes not reported by suppliers up to a maximum of 10% of the eligible ITC reported by suppliers and included in Form GSTR-2A. The current limit of 20% was introduced as from 9 October 2019.

- Waiver of the late filing fee for Form GSTR-1 for the period July 2017 to November 2019, provided the return is filed by 10 January 2020.

- The establishment of a Grievance Redressal Committee (GRC) at zonal and state level to address taxpayers' grievances. The GRC would comprise central and state GST officers, representatives of trade and industry, and other GST stakeholders.

- An extension of the exemption from GST on advance payments for the long-term lease of industrial/financial infrastructure plots (e.g. Software Technology Parks) to entities with at least 20% central or state government ownership as from 1 January 2020. Currently at least 50% government ownership is required to qualify for the exemption.

The council also approved various amendments to GST law that will be announced by the Ministry of Finance in the Union Budget 2020.

India

FAQs on e-invoicing under GST published

India's Goods and Services Tax (GST) Network has published on its website a compilation of frequently asked questions (FAQs) relating to electronic invoicing (e-invoicing) under GST. A GST-registered person whose aggregate turnover exceeds INR 1 billion must issue e-invoices for all supplies made to other GST-registered persons (i.e. business-to-business (B2B) supplies) as from 1 April 2020. The system was to have been made available on a trial basis as from 1 January 2020 for businesses whose turnover exceeds INR 5 billion but the necessary technology is not yet in place.

Key clarifications provided by the FAQs include the following:

- Once the relevant details are uploaded to the invoice registration portal (IRP), the IRP will validate the Goods and Services Tax Identification Number (GSTIN) of both the supplier and the recipient and check that there is no duplication of invoices. If there is no GSTIN and/or a duplicate invoice is found, the invoice will not be registered and will be returned with the relevant error codes.

- Once validated on the IRP, a signed invoice reference number (IRN) will be provided to the supplier. The IRP also will generate a QR code, with digital signatures. Where the supplier is required to provide a printed invoice, it must include the IRN and QR code.

- IRNs will be generated only by the IRP, based on the GSTIN of the supplier, the supplier's invoice number and the financial year.

- The IRP will not generate invoices in PDF format or send email notifications.

- An option will be available to upload details of multiple e-invoices but the IRP will process invoices individually. The number of line items supported in an e-invoice is increased from 250 to 10,000 per e-invoice.

- The IRN also is required on debit notes, credit notes, export invoices, and invoices and credit notes issued by an input service distributor (broadly a business that receives invoices for services used by its branches).

- An IRN is not required for delivery challans (documents related to the transportation of goods), bills of supply or, in the case of imports, for bills of entry generated by the customs authorities.

- An invoice cannot be amended once the IRN has been generated but a supplier may cancel an invoice by uploading the IRN or the GSTIN, type of document, document number and date to the IRP. Once an invoice is cancelled, the same invoice number cannot be used to generate another invoice.

- Foreign service providers may access the IRP from within India.

- GST legislation will be amended to align the contents of the e-invoice template (Form GST INV-01) with the information required in a tax invoice.

Comments

Recent government initiatives in connection with e-invoicing indicate the progress made towards the 1 April 2020 target start date for mandatory implementation of the e-invoicing system. The FAQs provide further clarification on a number of key issues but further government announcements are expected. Businesses should monitor developments to ensure they comply with the prescribed regulations.

Ireland

Guidance issued on EU VAT "quick fixes"

On 20 December 2019, Irish Revenue issued eBrief No. 220/19 regarding updates to the VAT Tax and Duty Manual, which provide guidance on the implementation of the EU's "quick fixes" into domestic law, which take effect as from 1 January 2020.

The quick fixes apply to the cross-border supply of goods within the EU and are meant to harmonize rules across the EU with regard to call-off stock arrangements, chain transactions, and documentation on movements of goods. The quick fixes also introduce a mandatory VAT identification number validation for the intra-EU supply of goods.

Revenue's guidance includes a section on the VAT treatment of call-off stock arrangements with associated simplification measures, to be read in conjunction with sections 23 and 23A of Ireland's VAT Consolidation Act 2010.

The guidance also includes a section on the chain transaction rule, to be read in conjunction with section 32A of the VAT Consolidation Act 2010.

The substantive requirements for zero-rating intra-community supplies are also addressed, reflecting the Council Implementing Regulation (EU) 2019/1912, specifying the evidence that will be required to support the application of the zero rate to an intra-community supply.

Ireland

VAT Tax and Duty Manual updated reflecting rate change on food supplement products

On 20 December 2019, Irish Revenue updated the VAT Tax and Duty Manual to incorporate measures amending the VAT treatment of food supplement products.

The updated guidance reflects a VAT rate change from 0% to 13.5% and lists examples of food supplement products for human consumption that are subject to the 13.5% rate. Appendices have been included to provide further clarity:

- Appendix I provides examples of substances found in food supplement products;

- Appendix II provides examples of descriptions associated with sports food supplement products; and

- Appendix III provides examples of descriptions associated with slimming food supplement products.

The guidance also clarifies that all food supplement products must be sold in pre-packed forms under the name "Food Supplements."

Italy

VAT highlights of decree converted into law

A law decree (No. 124/2019, dated 26 October 2019) containing a number of VAT-related measures received final approval and was converted into law (No. 157) and published in Italy's official gazette on 24 December 2019, with some amendments.

The following is a brief recap of the main VAT measures introduced by the new law:

- **VAT rates:** There will be no increase of the VAT rates in 2020. The following increases are planned for subsequent years:

  - An increase of the standard VAT rate from 22% to 25% in 2021, and from 25% to 26.5% in 2022; and

  - An increase of the reduced 10% VAT rate to 12% in 2021.

- **Offsetting of tax credits:** Starting with the annual income tax returns filed in 2020 (i.e. returns related to the 2019 fiscal year), taxpayers whose VAT number has been suspended or excluded from the VAT Information Exchange System (VIES) database will lose the right to use tax credits (including VAT credits) to offset their tax liabilities via the tax payment form (F24), as from the date of notification of the suspension/exclusion. In the case of a violation, any Form F24 in which a tax credit is claimed to offset the tax liability will be rejected by the tax authorities.

- **Extension of reverse charge mechanism to "labor intensive" contracts:** The reverse-charge mechanism will be extended to all services where the main use of labor occurs at the customer's premises and with the use of capital goods owned by the same customer or attributable to the customer (however, this provision will not apply where the services are rendered for public bodies or customers subject to the split payment mechanism, or through employment agencies). This provision will be fully enacted only upon the release of a specific authorization by the EU Council.

- **XML files for electronic invoices:** The XML files for electronic invoices will be stored by the tax authorities until 31 December of the eighth year following the year in which the relevant return is filed (or in the case of tax litigation, until the dispute is settled), to be available for use by both the tax police and the tax authorities in carrying out their responsibilities.

- **Automation for Italian-established taxpayers:** As from 1 July 2020, input/output VAT ledgers and quarterly VAT reports of Italian-established taxpayers will be automatically populated by the tax authorities, based on the data gathered from

input/output electronic invoices (e-invoices). For transactions carried out as from 1 January 2022 (postponed from 1 January 2021), the annual VAT return also will be automatically populated by the tax authorities ("pre-filled VAT").

- **Esterometro:** The filing frequency for the "Esterometro" (sales and purchases report) has been changed from monthly to quarterly, as from the first reporting period in calendar year 2020. The reports for December 2019 still must be filed on a monthly basis and are due by 31 January 2020. As from the tax period beginning 1 January 2020, the reports are due on a quarterly basis by the last day of the month following the relevant quarter (or, if that day falls on a weekend, by the next business day). The deadlines for 2020 will be 30 April 2020 (first quarter), 31 July 2020 (second quarter), 2 November 2020 (third quarter) and 1 February 2021 (fourth quarter).

- **Stamp duty on e-invoices:** If the annual amount of stamp duty due from a taxpayer is below a threshold of EUR 1,000, payments of stamp duty may be made on a semiannual basis by 16 June and 16 December of each year.

Italy

2020 budget law introduces new consumption taxes on plastic and sugar

Italy's 2020 budget law (No. 160/2019), published in the official gazette on 30 December 2019, introduces two new consumption taxes: a plastic tax and a sugar tax. In addition, following the conversion of a related legislative decree (No. 124/2019) into law (No. 157/2019) on 24 December 2019, with some amendments, the director of the customs agency issued some decisions supplementing excise duty measures contained in the decree.

Plastic and sugar taxes

The plastic tax applies to certain single-use products made of plastic materials containing synthetic organic polymers, and it is set at EUR 0.45 per kilogram of plastic. The producer is liable for the tax on domestic products. For products produced outside Italy, the acquirer, the seller, or the importer may be liable for the tax, depending on the circumstances.

The plastic tax will enter into force on the first day of the second month following the date of publication of an implementing decision by the director of the customs agency, which is required to be issued by the end of May 2020. Therefore, if the decision is published in May 2020, the plastic tax will apply as from 1 July 2020.

The sugar tax applies to the consumption of sweetened drinks (both finished products and products to be diluted before consumption). For finished products, it is set at EUR 10 per hectoliter of the finished product, while for products to be diluted, it is set at EUR 0.25 per kilogram of the products to be diluted.

The sugar tax will become effective on the first day of the second month following the date of publication of an implementing decree by the Ministry for Economic and Finance, which is required to be published by the end of August 2020. Therefore, if the decree is published in August 2020, the sugar tax will apply as from 1 October 2020.

Excise duty decisions

The decisions issued by the director of the customs agency during December 2019 to supplement the excise duty provisions of Legislative Decree No. 124/2019, as converted into law (with some amendments), include a decision (No. 217947/RU) published on the customs agency's website on 27 December 2019 relating to the use of the electronic reporting system for the simplified accompanying document (E-SAD). The decision provides that, for excise duty paid on petrol and gas oil used as fuel circulating within the Italian territory, the obligation to use the E-SAD will become effective as from 1 July 2020. For other products on which excise duty is paid and other consumption taxes, the decision provides that the obligation to use the E-SAD will become effective as from 1 January 2022.

Another decision (No. 240433/RU) published on 27 December 2019 provides simplified procedures for the following operators to maintain loading and unloading ledgers:

- Operators of warehouses used for private, agricultural, and industrial purposes for energy products subject to excise duty, with a warehouse capacity between 10 cubic meters (m^3) and 25 m^3; and

- Operators of automatic fuel stations (distributing fuel for private, agricultural, and industrial uses) connected to tanks with capacity between 5 m^3 and 10 m^3.

The provisions of the decision will be effective as from the first day of the fourth month following the date of its publication, i.e., as from 1 April 2020.

Kenya

Finance Act 2019 enacted

On 7 November 2019, Kenya's president signed the Finance Act 2019 into law bringing into effect a number of changes to direct and indirect tax legislation and administration. Key measures include:

- New legislation confirming that income earned through a digital marketplace should be subject to taxation in Kenya with further details to be provided through regulations;

- An extension of the income tax exemption for real estate investment trusts (REITs) to investee companies of REITs;

- The proposed increase in the capital gains tax rate from 5% to 12.5% has been dropped;

- The reintroduction of turnover tax at 3% of certain gross monthly receipts for resident persons whose gross receipts do not exceed or are not expected to exceed KES 5 million per year;

- Recharges to a Kenyan permanent establishment by a nonresident head office are subject to withholding tax to the extent that they are deductible for corporate tax purposes under a double tax treaty; and

- The withholding VAT rate is reduced from 6% to 2%.

Please refer to Deloitte Kenya's Finance Act 2019 Insights for detailed commentary.

The Netherlands

Tax authorities provide guidance on VAT returns, verification, and reverse charge

The Dutch tax authorities have issued several announcements and guidance since the upper house of parliament adopted changes to the VAT legislation in December 2019.

Dutch legal entities no longer allowed to file annual VAT returns

As from 1 January 2020, legal entities are no longer allowed to file annual VAT returns. Only private individuals and partnerships of private individuals may continue to file annual VAT returns.

Approximately 14,000 legal entities received a letter dated 4 January 2020 stating they must file quarterly VAT returns going forward. Due to this change, the tax authorities will be sending follow-up letters with information on deadlines and payment procedures for the first quarterly VAT return.

Mandatory VAT number verification for cross-border supplies

Additional guidance has been published in an amended decree on the mandatory VAT identification number verification implemented into domestic law pursuant to the EU "quick fix" measures. This verification must take place for EU cross-border supplies to be exempt. The guidance states that the verification process is left to the discretion of the supplier. The supplier must ensure verification at the latest when the chargeable event occurs.

In the same decree, further guidance was included on the correct filing of EU sales listings as a substantive requirement to qualify for VAT-exempt cross-border supplies.

VAT reverse charge mechanism introduced for renewable energy certificates

A domestic VAT reverse charge mechanism has been introduced for renewable energy certificates as from 1 January 2020. These certificates are issued to gas and electricity generators when they produce energy from renewable means. They are commonly called guarantees of origin (GoOs) but also are known as renewable energy certificates (RECs), renewable obligation certificates (ROCs), and renewable energy guarantees of origin (REGOs).

Businesses involved in the trading of gas and electricity certificates must apply the domestic VAT reverse charge to the (electronic) supply of these services to prevent "missing trader intra-community" fraud (i.e., fraud that happens when certificates are bought and sold as a commodity). The VAT reverse charge applies only when the place of supply of a certificate is in the Netherlands (e.g., a supply of services to VAT entrepreneurs registered or having a fixed establishment in the Netherlands).

Delay in issuance of new VAT IDs

Sole traders are beginning to receive their new VAT identification numbers (IDs) from the tax authorities (which replace previously-issued VAT IDs tied to individual social security numbers). These new IDs are effective as from 1 January 2020. Usually, newly-registered

sole traders receive their VAT IDs within two weeks; however, the tax authorities announced in January that, due to an increased number of sole traders registering for VAT, there will be a delay in new issuances which may last until the end of February.

Meanwhile, tax authorities are sending out letters to VAT-registered foreign entrepreneurs notifying them about the new VAT ID for Dutch sole traders. These sole traders should timely inform their (EU) suppliers about their new VAT IDs. EU entrepreneurs must use these new VAT IDs (if they are aware of the customers status as a Dutch sole trader) in their invoicing as from 1 January 2020, and in the recapitulative statements as from 2020.

Romania

VAT split payment mechanism abolished

The Romanian government published an ordinance on 23 December 2019 that abolishes the VAT split payment mechanism as from 1 February 2020.

The split payment mechanism has been in effect since 1 January 2018 for Romanian taxpayers that have VAT debts and those undergoing insolvency procedures. VAT-registered customers of such taxpayers have been required to split the payment of invoices issued by the supplier by paying part of the VAT due to the supplier and the other part into a special account of the supplier. Amounts paid into the dedicated account may be used only to satisfy the supplier's VAT liabilities with the Romanian government or to pay its own suppliers.

The European Commission sent a formal notice in November 2018 requesting that Romania abolish the VAT split payment mechanism on the grounds that the mechanism is not in line with the EU VAT directive or the freedom to provide services in the Treaty on the Functioning of the European Union, and creates a significant administrative burden for businesses.

The repeal of the mechanism will have the following effects:

- For businesses that have applied the VAT split payment mechanism, the amounts available in the special VAT accounts will be automatically transferred to accounts opened for transactions in relation to public entities, within 10 days of 1 February 2020, without any formalities being required from the business (otherwise, the details of another current bank account should be communicated to the Treasury to transfer the amounts, or the tax authorities will request this information); and

- For businesses that have not applied the VAT split payment mechanism, no new entries will be made in the register of persons applying the VAT split payment mechanism as from 1 February 2020.

Additionally, until the ordinance becomes effective, claims against suppliers' special VAT accounts may be enforced by any creditor, regardless of the nature of the claim.

South Africa

Taxpayers may be required to apply for carbon emissions license

The South African Revenue Service (SARS) published a notice (No. R. 1700) on 23 December 2019 providing that, with effect from 2 January 2020, taxpayers liable for the payment of carbon tax must apply to the SARS for a license for an emission facility or a combination of emission facilities. The carbon tax became effective on 1 June 2019 and the first annual filings and payments of carbon tax will be due in July 2020.

A person is liable for the payment of carbon tax in South Africa if the person carries on an activity resulting in greenhouse gas emissions equal to or above the tax threshold listed in schedule 2 of the Carbon Tax Act, No. 15 of 2019 ("Carbon Tax Act"). Schedule 2 to the Carbon Tax Act lists the relevant activities by sector, and the applicable tax threshold for each activity liable for carbon tax. Taxpayers that have a basic tax-free allowance of 100% or a tax threshold indicated as "not applicable" in schedule 2 need not apply for a license.

License applications approved by the SARS will be issued with effect from the date the carbon tax liability for the taxpayer arose. Liability for carbon tax for all taxpayers carrying on taxable activities on 1 June 2019 commenced on 1 June 2019.

The period for licensed taxpayers to submit "documents" (the annual reporting form and any supporting documents requested by the Commissioner for the SARS) and make carbon tax payments for the tax period from 1 June 2019 to 31 December 2019 commences on 1 July 2020 and ends on the penultimate business day of the month (30 July 2020). For subsequent tax periods, documents and payments of carbon tax must be submitted during July of the following year, no later than the penultimate business day of the month (e.g., for the period from 1 January 2020 to 31 December 2020, the deadline will be 29 July 2021). Failure to license and/or to submit documents and payments of carbon tax is an offense and the taxpayer may be liable for a penalty and possible interest for outstanding payment amounts.

United Arab Emirates

Year-end VAT adjustments for input tax and capital assets

United Arab Emirates (UAE) businesses submitting monthly VAT returns and that have a tax year end of 31 December 2019 must submit annual adjustments covering input tax and capital assets by 28 February 2020. For businesses with a different year end (whether submitting monthly or quarterly VAT returns), these annual adjustments are due in the first tax period following the tax year end.

Input tax adjustments

A business may recover input tax incurred on goods and services that are used, or intended to be used, for making taxable supplies. Nontaxable supplies include exempt supplies and supplies not associated with business-related activities.

A business that incurs input tax when making mixed supplies (i.e., a combination of taxable and nontaxable supplies) is required to calculate the proportion of the input tax eligible for deduction against the output tax. These apportionment calculations using detailed methodologies must be made throughout the tax year and revised annually at the tax year end.

The calculation must be performed at the end of each VAT period (e.g. monthly, quarterly), with any input tax recovered being provisional and subject to the annual adjustment (referred to as a "wash-up") at the tax year end. The wash-up (which must use the same calculation methodology as used during the tax year) could result in either additional input tax recovery or payment of VAT due to the FTA.

The amount of residual input tax (i.e. input tax deductible against output tax) that is recoverable during the tax year is calculated based on either the standard method prescribed in article 55 of the VAT Executive Regulations or a special method approved by the Federal Tax Authority (FTA). Of special note:

- Businesses that apply to use a special method must notify the FTA at the time of the application if there is a difference of more than 10% in the recovery percentage calculated using the standard method of input tax apportionment as compared to the special method they are applying to use.

- Businesses that use the standard method also must perform a calculation using one of the specified special methods that represent the actual use of the goods or services purchased for taxable or exempt purposes ("actual-use method"). If this results in a difference in the value of recoverable input tax of AED 250,000 or more as compared to the standard method calculation, the business must use the actual-use method as the basis for calculating the annual adjustment. If the difference in the value of input tax recoverable under the special method is less than AED 250,000, the business must continue to use the standard method to calculate input tax recovery for the annual adjustment.

Capital asset adjustments

When a business acquires or constructs a capital asset, the input tax is recoverable in the year of acquisition, subject to the input tax apportionment calculations. However, for long useful life capital assets of a specified value, the business must make annual adjustments in order to recover the original input tax over the useful life of the asset. These annual adjustments must be made at the same time as the annual input tax adjustments.

Article 57 of the VAT Executive Regulations defines a capital asset as a single item of expenditure of the business amounting to AED 5 million or more excluding VAT on which VAT is payable and that has estimated useful life of at least 10 years or more for buildings or parts thereof, or at least five years for other capital assets. In certain cases, capital expenditure consisting of smaller sums that collectively amount to AED 5 million can be treated as a single capital asset.

Under article 58 of the VAT Executive Regulations, a business must monitor the input tax recovered on a capital asset and make adjustments over the relevant adjustment period. The adjustment depends on the extent the business used the capital asset for taxable

activities during the tax year. This could result in an adjustment being required in the VAT return of either additional recoverable input tax or a reduction in the input tax previously claimed.

Article 60 of the VAT Decree-Law requires a business to keep a record (such as an asset register) for each capital asset for VAT purposes for at least 10 years. This requirement applies to all businesses owning assets meeting the definition of a capital asset for VAT purposes, irrespective of whether the business also has exempt or non-business supplies.

United Kingdom

Legislation and guidance on EU VAT "quick fixes" issued

On 1 January 2020, the "quick fixes" relating to the VAT treatment of cross-border intra-EU supplies of goods came into force in the UK. This is reflected in new guidance from HM Revenue & Customs and the following legislation:

- SI 2019/1507 prescribes which link in an intra-EU supply chain should be treated as the zero-rated cross-border supply (the supply made to the business responsible for the transport of the goods).

- SI 2019/1509 requires suppliers to obtain customers' VAT registration numbers, and record transactions on EC Sales Lists, as a condition of zero-rating dispatches.

- Draft s. 14A and Sch. 4B VATA implementing detailed rules for call-off stock, which will be introduced in Finance Act 2020 with retrospective effect.

United States

State Tax Matters (10 January 2020)

The 10 January 2020 edition of US State Tax Matters includes coverage of the following:

- Corporate income tax nexus developments in Michigan;

- Income/franchise tax developments from the US House of Representatives and in Alabama, Hawaii, Idaho, Indiana, Iowa, Louisiana, Massachusetts, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Utah, Virginia and Wisconsin;

- Credits/incentives developments in New York; and

- Indirect tax developments from the Streamlined Sales Tax Governing Board and in Alaska, Colorado, Illinois, Michigan, Minnesota, Ohio, South Dakota, Texas and Utah.

The newsletter also features recent Multistate Tax Alerts:

- *Budget bill extends and addresses fuel excise taxes and incentives*

- *California issues Legal Ruling 2019-02 on disregarded limited partnerships (not LLCs)*

- *Texas Comptroller adopts new treatment to economic nexus threshold to incorporate Wayfair*

United States

State Tax Matters (17 January 2020)

The 17 January 2020 edition of US State Tax Matters includes coverage of the following:

- Corporate income tax nexus developments in Maryland;

- Income/franchise tax developments in California, New Hampshire, New Jersey and Ohio; and

- Indirect tax developments in Washington.

The newsletter also features a recent Multistate Tax Alert: *Oregon releases 12 temporary Corporate Activity Tax (CAT) administrative rules*

United States

State Tax Matters (24 January 2020)

The 24 January 2020 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Louisiana; and

- Indirect tax developments in California, Louisiana, New Jersey, New York and Washington.

February

Australia

Free trade agreements with Peru and Hong Kong now operative

Free trade agreements between Australia and Peru (Peru-Australia Free Trade Agreement, (PAFTA)) and Australia and Hong Kong (Australia-Hong Kong Free Trade Agreement, (A-HKFTA)) entered into force on 11 February and 17 January 2020, respectively.

PAFTA

PAFTA trade in goods benefits

With effect from the date of PAFTA's entry into force, Australia eliminated almost all import tariffs (customs duty) on Peruvian-originating goods. This will mainly benefit businesses importing goods that would otherwise still be subject to duty (generally imposed at the rate of 5%) under Australia's general tariff arrangements.

Under PAFTA, a small proportion of Peruvian-originating goods are subject to staged elimination of tariffs, in some cases over several years.

Duty will continue to apply to imports of Peruvian-originating excise-equivalent goods (i.e., certain alcohol, tobacco, fuel, and petroleum products).

Businesses exporting goods to Peru similarly will benefit from the elimination of Peruvian import tariffs. Most (93.5%) of Peru's tariff lines have been eliminated for Australian-originating goods from the date of PAFTA entering into force. Within five years, more than 99% of Peruvian tariffs will have been eliminated. PAFTA also provides improved market access (e.g., increased quotas) for many Australian agricultural, food, and mining products.

Under PAFTA, importers may claim preferential tariff treatment only for goods satisfying the prescribed rules of origin. Significantly, claims can be based on a certificate of origin completed by the exporter or producer (or an authorized representative of the exporter or producer). There is no requirement for third party certification under PAFTA.

Impact of the CPTPP

Both Peru and Australia are also signatories to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Although the CPTPP has been in force for Australia since 30 December 2018, Peru has yet to complete its ratification process.

In the future, at such time as the CPTPP enters into force for Peru, importers and exporters will need to compare the PAFTA and the CPTPP to identify whether one agreement offers greater benefits than the other in their particular circumstances.

Other PAFTA commitments

In addition to the trade in goods measures, PAFTA also includes a range of commitments intended to benefit service providers and investors, along with obligations in relation to facilitating Australian-Peruvian trade, and associated matters such as digital trade measures, intellectual property protection, environmental protection, labor rights, etc.

A-HKFTA

A-HKFTA trade in goods benefits

With effect from A-HKFTA's entry into force, Australia has eliminated virtually all remaining customs duties that would otherwise apply to Hong Kong-originating goods under Australia's general tariff arrangements. This will benefit businesses importing those categories of goods.

Under A-HKFTA, duty will continue to apply to imports of Hong Kong-originating excise-equivalent goods.

As Hong Kong did not apply tariffs to goods imported from Australia prior to A-HKFTA entering into force, the customs duty related gains for Australian exporters do not extend beyond certainty that Hong Kong will continue to provide Australian-originating goods with duty free entry.

Other A-HKFTA commitments

A-HKFTA provides a range of other trade and investment related commitments, most significantly those directed at improving access to the Hong Kong market (and making it easier to do business in Hong Kong) for Australian service providers, particularly in the financial, professional accounting, engineering and construction, education, transport, and logistics services sectors.

Chile

Tax authorities sign first-ever APA

On 11 December 2019, Chile's Internal Revenue Service (CIRS) and the National Customs Service (NCS) entered into the country's first-ever advance pricing agreement (APA) with a taxpayer. This APA is the first one in the world in which the country's customs authority is a party to the agreement.

The signing of the APA may be of interest to national tax and customs authorities and to taxpayers seeking to obtain more tax certainty and avoid potential transfer pricing audits and litigation. APAs also may reduce the possibility of double taxation and offer an opportunity for tax administrations and taxpayers to consult and cooperate to reach an agreement.

China-US

Phase One trade agreement signed

On 15 January 2020, China and the US signed the Phase One trade agreement where both countries agreed to suspend additional tariffs that were to take effect on 15 December 2019. The signing of the agreement is a step toward alleviating the trade tensions between the two countries.

Highlights

With respect to intellectual property (IP), the governments agreed on terms in relation to the protection of trade secrets, confidential business information, and pharmaceutical-related IP; resolution of patent disputes and effective extension of patent terms; management of geographical indications; prevention of infringements on e-commerce platforms, and the manufacture and export of pirated and counterfeit goods; actions against bad-faith trademark registrations; and strengthening of bilateral cooperation on the protection of IP.

The governments also agreed to strengthen mutual trust and cooperation in relation to technology transfers. The agreement provides that businesses must be able to operate openly and freely in each other's jurisdiction, and any transfer or licensing of technology must be based on market terms that are voluntary and reflect mutual agreement. The governments oppose any foreign investment activities aimed at acquiring technology that may cause market distortion.

China and the US also will enhance cooperation on issues affecting agricultural trade. China will enhance its management of tariff rate quotas for wheat, rice, and corn in accordance with its WTO commitments, and increase imports of US agricultural products such as dairy products, beef, soybeans, aquatic products, fruits, feeds, and pet food. The annual amount of agricultural imports is expected to reach USD 40 billion in the next two years.

Furthermore, China and the US will provide fair, effective, and nondiscriminatory market access for each other's financial services including service suppliers in various financial sectors (e.g., banking, credit rating, electronic payments, fund management, securities, insurance). China will remove the foreign equity limits in the securities, fund management, futures, and insurance sectors no later than 1 April 2020.

Import tariff adjustments

The US agreed to suspend indefinitely the imposition of additional tariffs of 15% on approximately USD 80 billion of imported Chinese goods as from 15 December 2019.

In addition, for the 15% additional tariffs imposed on approximately USD 120 billion of imported Chinese goods as from 1 September 2019, the rate will be reduced to 7.5% as from 14 February 2020.

Increase of US imports

China agrees to ensure the purchases and imports into China from the US of the manufactured goods, agricultural goods, energy products, and services exceed the corresponding 2017 baseline amounts by no less than USD 200 billion in the next two years. The following illustrates these amounts:

(Unit: USD billion)

	2020	2021	Total
Manufactured goods	32.9	44.8	77.7
Agricultural goods	12.5	19.5	32
Energy products	18.5	33.9	52.4
Services	12.8	25.1	37.9
Total	76.7	123.3	200

Chinese customs authorities will cooperate with various US agencies (e.g., Food and Drug Administration, Department of Agriculture) in certain sectors (e.g., dairy products, fish, meat, and poultry) to ensure the safety of the imported goods and facilitate implementation.

Comments

The trade agreement, which has taken two years to conclude, will help stabilize markets, further open up the Chinese market, and stimulate the global economy. Businesses may focus now on developing their core competencies, including any R&D activities, in a fairer and more competitive market.

Businesses potentially affected by the reduction or suspension of the additional tariffs should consider whether existing supply chains and purchase/sale arrangements should be adjusted.

Agricultural businesses operating in the Chinese market should evaluate the impact of an increase in US agricultural products over the next two years and develop action plans. On the other hand, Chinese agricultural businesses may see an opportunity to increase their exports to the US.

The trade agreement addresses various customs compliance issues (e.g., technical specifics of goods eligible for import, IP protection, export controls) and businesses should be aware of these issues and consider system tools to improve internal management of customs compliance matters.

Greece

Changes to indirect tax rules aim to stimulate the economy

Recent indirect tax developments in Greece include a VAT suspension regime for newly developed real estate, the reclassification of certain goods to qualify for reduced rates of VAT, the extension of the application of reduced VAT rates for certain islands, and guidelines for the adjustment of input VAT deducted with respect to certain unused assets.

"Tax reform with a focus on the Greece of tomorrow" (Law 4646/2019 (FEK 'A 201/12.12.2019))

Suspension of VAT for newly developed real estate

The new law, which amends various provisions of the VAT code (L.2859/2000), as well as other tax provisions, aims to foster recovery of the real estate market, which was severely impacted by the recent financial crisis. The law suspends VAT on newly developed real property (article 39), in conjunction with other real estate provisions. The new rules apply as from 12 December 2019, the date the law was published in the government gazette.

- Supply of real estate (article 6)

  Building contractors may elect to be subject to the VAT suspension regime through 31 December 2022 (new paragraph 4a). Once elected, the regime must be applied consistently until that date. Under this regime, VAT will not be imposed on the supply/sale of real estate, but taxpayers will not be able to deduct related input VAT. Instead, the supply/sale of real estate will be subject to the real estate transfer tax.

  Taxpayers will have to file an application to elect to be subject to the VAT suspension regime, as follows: (i) For building licenses already issued, within the six-month period as from 12 December 2019; and (ii) for building licenses issued as from 12 December 2019, within the six-month period as from the date the license is issued.

  The VAT suspension regime applies to all real property owned by a building contractor. Thus, in practice, a building contractor must submit a list of all unsold property and their corresponding input VAT amount when submitting the election application.

  With respect to the "apartments (flats)-for-land" system ("*antiparochi* system"), a building contractor who has elected to be subject to the VAT suspension regime may not charge VAT on the construction of property to be "sold" to the landholder in return for the land (new paragraph 2b).

  Further guidance on the process to be followed for filing the election was released in AADE Decision no. A.1012/2020.

- Input VAT deduction right (VAT code article 30 paragraph 1)

The right to deduct input VAT (i.e. the VAT on expenses) is suspended during the period the VAT suspension regime applies to specific property.

- VAT adjustment (VAT code article 33 paragraph 1)

  Before the VAT suspension regime is applied, the deductible input VAT amount for each property (i.e. a proportionate percentage of the total input VAT amount, which is calculated based on a construction project's "real" supply of goods and services) is adjusted at the time of the sale.

  The input VAT amount to be adjusted may be deducted from income tax in the year of the adjustment (article 39 paragraph 8 of the new law).

- Taxpayer requirements (VAT code article 36 paragraph 4 case a)

  Building contractors are required to keep an account of building costs to monitor the cost of each building/real property, even if they have elected to be subject to the suspension regime.

- Reporting and other relevant requirements (VAT code article 38 new paragraph 11a)

  Building contractors who sell real property that is subject to the suspension regime must remit the adjusted VAT amount to the tax authorities through an extraordinary VAT return at the time of the sale and before filing the real estate transfer tax return, "parental benefit" return (for the transfer of property by parents to their children), or gift return, as applicable.

  AADE Decision A. 1013/2020 provides further procedural guidance on the VAT adjustment right applicable to properties subject to the suspension regime.

Reclassification of certain goods to qualify for reduced VAT rates

The new law (articles 40 and 79) amends Annex III of the VAT code providing for reduced VAT rates for certain goods and services as follows:

- The law clarifies that the reduced VAT rate (13%) applies for infant and children food preparations that are packaged for retail sale (tariff class codes C.N. 1901, 1902, 1903, 1904 and 1905) (revised paragraph 26). To assist families economically, items for infant safety and protection, such as diapers made with any materials (C.N. E.X. 9619), as well as child car seats and their parts (C.N. E.X. 9401), are reclassified to be subject to the reduced VAT rate of 13% instead of the standard 24% rate (new paragraph 49).

  In addition, with respect to citizens' road safety, bicycle helmets (C.N. E.X. 6506) are reclassified to qualify for the reduced 13% VAT rate instead of the standard rate (new paragraph 48).

  These provisions are effective as from 1 January 2020.

- As from 12 December 2019, immunological products used in human medicines (C.N. E.X 3002) are reclassified to qualify for the super reduced 6% VAT rate from the reduced 13% rate. This applies to medicinal products administered to patients with serious chronic diseases, such as cancer, diabetes, rheumatoid arthritis, and myasthenia gravis (revised paragraph 37).

  The super reduced 6% VAT rate continues to apply to human vaccines (C.N. E.X. 3002).

Extension of application of special VAT rates for certain islands

Pursuant to a ministerial decision (No. A.1470/2019) published in the government gazette on 23 December 2019, the special VAT rates for the supply of goods and services for the islands of Leros, Lesbos, Kos, Samos, and Chios are extended for six months, from 1 January 2020 to 30 June 2020, provided the necessary conditions are fulfilled. The special VAT rates equal the mainland rates reduced by 30% and are 17% (standard rate), 9%, and 4% (reduced rates).

For the Greek mainland and all other islands, the VAT rates are 24% (standard rate), 13%, and 6% (reduced rates).

Guidelines for required adjustment of input VAT deducted with respect to certain unused assets

Based on a decision of the Greek Independent Authority for Public Revenue (IAPR) (E.2200/2019/20.12.2019), taxpayers are not required to adjust the input VAT amount deducted at the time they acquired an investment asset/capital good if its usage or operation has not started within the first five calendar years after its acquisition or construction because of an act or omission by the Greek government.

In principle, if an investment asset/capital good has not been used or operated within five calendar years of its acquisition/purchase or construction, it is treated as being used for non-VATable transactions. Therefore, the taxpayer is required to adjust the input VAT deducted at the time of purchase or construction, which means that this VAT amount must be repaid to the tax authorities (article 33 paragraph 3).

The Supreme Administrative Court (SAC) ruled in a case (no. 1862/2019) that a taxpayer's right to deduct the input VAT incurred when acquiring or building an investment asset/capital good continues to apply, in principle, even if the asset or good has not been used or operated due to circumstances beyond the taxpayer's control. This would be the case if non-usage is due to sovereign acts (i.e. government actions or omissions) that have rendered use or operation impossible.

Consistent with the SAC decision, the IAPR provided the following guidelines in its decision:

- Input VAT deducted at the time an investment asset/capital good is acquired/built does not have to be adjusted if it can be concluded with certainty, either based on the law or a court decision, that non-usage within five calendar years is due to circumstances beyond the taxpayer's control. An example of this are investment projects subject to developmental laws 3299/2004, 3908/2011 and 4399/2016 as their completion has been delayed due to the issuance of specific laws.

- Taxpayers in such cases are not required to adjust the deducted input VAT amount if they can prove that they have the right to delay completion of the investment project based on specific authorization for an extension from the relevant authority.

- The IAPR decision further defines the documentation that taxpayers should keep in their files and be able to present to prove authorization for the delay. The documentation required depends on which developmental law applies to each investment project. Additional documents are required in the event of a delay due to force majeure.

- Notably, taxpayers who have not adjusted input VAT are not required to do so for the duration of the project's delay. However, taxpayers who have adjusted input VAT and who have been granted a delay may claim a refund of the VAT amount by filing an amended VAT return for the relevant tax period, provided a refund is not barred by the statute of limitations. However, the VAT amount may not be used to offset income in a future tax period.

- Tax assessments that have been finalized will not be reversed, whereas VAT amounts that have been collected through final tax assessments will not be refunded.

India

High Court rules IGST may not be levied on ocean freight

The Gujarat High Court held in a decision issued on 23 January 2020 addressing a number of writ petitions that India's integrated goods and services tax (IGST) may not be levied on ocean freight, and declared that the relevant notifications imposing the tax issued by the tax authorities were unconstitutional.

Customs duty (including IGST) is levied on the assessable value of imported goods at the time of import into India. The assessable value comprises the value of goods, plus an amount in respect of freight and insurance. IGST was separately levied on ocean freight on imported goods, while the assessable value (including the cost of freight) was subject to GST. This led to double taxation in the hands of the importer.

Facts of the case

Writ petitions were filed by various assessees before the court challenging the levy of IGST on ocean freight on services provided by a person located in a non-taxable territory in transporting goods by sea from a location outside India to the customs station of clearance in India.

IGST was levied on ocean freight via two notifications issued on 28 June 2017 by the central government under the Integrated Goods and Services Tax Act, 2017 (IGSTA): No. 8/2017-Integrated Tax (Rate) and No. 10/2017-Integrated Tax (Rate). The notifications also determined that the importer was liable to pay the tax under the reverse charge mechanism as the recipient of the service, and deemed the value of the freight component to be 10% of the cost, insurance, and freight (CIF) value of the imported goods.

Contentions of petitioners

The petitioners argued that imposing IGST on ocean freight results in double taxation. IGST already is accounted for on the import of goods, since the freight costs already form a component of the value of the goods. The petitioners contended that the services of the foreign shipping lines were procured by the foreign exporter; the petitioners were not party to the transaction and, therefore, cannot be said to be the "recipient" of the services for the purpose of payment of IGST.

The entire transaction occurred outside India. The supply of goods transportation services by a person in one non-taxable territory to a person in another non-taxable territory, from a place outside India up to the customs station of clearance in India, is neither an interstate supply nor an intrastate supply. In such circumstances, no GST can be levied and collected from the petitioner.

The services also cannot be treated as imported services, since the location of the supplier of the service (i.e., the foreign shipping line) and the recipient of the services (i.e., the foreign exporter) are both outside India and, hence, outside the scope of GST.

Contentions of the tax authorities

The Indian tax authorities argued that IGST is levied on ocean freight following representations from the Indian shipping industry that imposing the tax is necessary to provide a level playing field for Indian shipping lines. The IGST paid under the reverse charge mechanism is available as an input tax credit to the importer, resulting in no additional cost.

Ruling of the High Court

The Gujarat High Court examined the provisions of the GST law and observed that taxing statutes must be interpreted strictly. Importers cannot be deemed to fall within the scope of the term "recipient" as defined in the GST legislation for the purpose of levying IGST on ocean freight services.

The tax authorities had erred in treating the importers as the recipients of the services, since the services actually were received by the foreign exporter. The Indian importers were not liable to pay consideration to the foreign shipping lines and, therefore, could not be held liable to pay tax on such services.

The court observed that the transactions were not entered into by a supplier or recipient located in India. The mere fact that the transportation of goods terminates in India does not mean that the supply of transportation services takes place in India. Since the importers of the goods were not the recipients of the supply of ocean freight services, input tax credit (that the notifications sought to recover) was not available.

Accordingly, the Gujarat High Court allowed the petitions and declared the notifications as unconstitutional, being beyond the powers of the IGSTA.

Comments

The decision provides useful guidance on the contentious issue of the levy of IGST on ocean freight services and will be welcomed by importers who had been subject to double taxation. However, although the decision of the Gujarat High Court provides guidance to high courts in other states considering pending petitions against the notifications, those courts are not obliged to follow the ruling. The tax authorities also may appeal the decision to the Supreme Court.

United Araba Emirates

Guidance issued on free zone economic substance regulations

On 4 February 2020 and 17 December 2019, the United Arab Emirates (UAE) Abu Dhabi Global Market (ADGM) and Dubai International Financial Centre (DIFC), respectively, issued guidance on the implementation of the economic substance (ES) regulations in their free zones with respect to certain ES reporting requirements.

Background

The ES regulations, which apply as from 30 April 2019, require entities conducting relevant activities to comply with annual reporting obligations. Reports must be submitted to a designated regulatory authority whose responsibilities include determining whether the ES tests are met. In free zones, the designated regulatory authority is the competent authority responsible for the formation, registration, and administration of entities within their specific free zone (the entities are referred to as "licensees").

Licensees must submit an annual notification to the designated regulatory authority stating whether the licensee is carrying on a relevant activity and, if so, whether any of the licensee's gross income from a relevant activity is subject to tax outside the UAE. The licensee also must report the date of its financial year end.

The notification filing deadline and procedure for filing is set by the designated authority in each free zone.

ADGM and DIFC notifications

For the ADGM, existing licensees with a financial year end of 31 December 2019 must submit a notification by 31 March 2020. The deadline for licensees with a different year end has not been specified, but clarification is expected in the near future. The notification must be filed electronically with the online registry solution (using the "Lodge a General Document" service) on the ADGM website. The notification template will be available soon, along with further guidance on reporting procedures.

For the DIFC, existing DIFC licensees are required to submit an annual notification by 31 March 2020; new entities are required to submit a notification upon corporate registration. The notification must be filed electronically with the registrar of companies on the DIFC website.

The remaining free zone regulatory authorities are expected to announce their own notification requirements shortly.

Comments

The guidance provided by the ADGM and DIFC clarify the notification timeline and reporting procedure for licensees located in their respective free zones. In the absence of guidance from the remaining regulatory authorities, licensees operating within such free zones should aim to submit the notification by 31 March 2020, consistent with the ADGM and DIFC requirements.

In addition to the annual notification, the ES regulations require licensees that carry on a relevant activity from which they derive income (and if they are not exempt) to submit an annual return (separate from the notification) within 12 months after their financial year end. However, specific guidance on annual return requirements and procedures has not yet been released.

Other news

European Union

European Commission publishes annual survey on tax policies in the EU

On 31 January 2020, the European Commission published the 2020 edition of its annual survey *Tax policies in the European Union*, which addresses tax policies in the various EU member states in terms of the EU's five tax priorities, namely:

- Stimulating investment and addressing positive and negative externalities;
- Improving tax administration and tax certainty;
- Boosting employment;
- Reducing inequalities; and
- Ensuring tax compliance.

The survey also provides an overview of recent tax reforms at both the EU and individual member state levels.

The survey is divided into four chapters:

- Chapter 1: General principles for fair and efficient tax systems;
- Chapter 2: Performance of national tax systems;
- Chapter 3: Tax reforms in the EU and reform options; and
- Chapter 4: The EU's taxation policy agenda.

UK-SACUM

Update on Brexit and new SACUM-UK economic partnership agreement

Following the UK's departure from the EU, a new economic partnership agreement (EPA) between the UK and the Southern African Customs Union and Mozambique (SACUM) will enter into effect on 1 January 2021. Exporters registered in South Africa may need to act to qualify for benefits under the new agreement, e.g., they can expect to be required to register with the South African Revenue Service (SARS) for purposes of the agreement.

The UK left the EU on 31 January 2020. However, under the terms of the withdrawal agreement, the UK has until 31 December 2020 to leave the EU customs union and single market. During this transition period, the UK will remain bound to the EU rules and will not be able to conclude any new trade agreements on its own. The UK has begun negotiating trade agreements with a number of trading partners, including the agreement with the SACUM countries; however, the earliest date that these trade agreements can enter into effect will be 1 January 2021.

South Africa and the UK are signatories to the Southern African Development Community (SADC) and EU EPA (SADC-EU EPA). The SADC-EU EPA will cease to apply to SADC member states and the UK after 31 December 2020. To ensure the continuity of the existing benefits of the SADC-EU EPA, the UK has negotiated a new agreement with the SADC member states to the SADC-EU EPA.

The SADC member states to the SADC-EU EPA are Botswana, Eswatini, Lesotho, Mozambique, Namibia, and South Africa. The five member states other than Mozambique belong to the Southern African Customs Union (SACU), and the SACUM countries have entered into an EPA with the UK. Effective from 1 January 2021, the SACUM-UK EPA will replace the SADC-EU EPA only to the extent that it applies between the SACUM and the UK. The SADC-EU EPA will remain in place between the SADC and the rest of the EU member states (excluding the UK).

South African and foreign exporters registered under the SADC-EU EPA with the SARS can expect to be required to register as approved exporters and/or exporters under the new SACUM-UK EPA. Any origin rulings or determinations obtained by registered producers in particular and/or exporters in general under the SADC-EU EPA may need to be reapplied for under the new EPA. The SARS will have to amend the rules to the Customs and Excise Act 91 of 1964 accordingly.

Argentina

Implementation of measures to promote knowledge economy suspended

Legislation introducing new tax incentives to promote the "knowledge economy" in Argentina due to apply as from 1 January 2020 through 31 December 2029 effectively has been suspended.

The main tax incentives that would have been available during the 10-year period would have included:

- Fiscal stability because once qualifying for the incentives, entities would not be subject to further tax and/or rate changes until at least 1 January 2030;

- A fixed 15% income tax rate, compared to the standard rate of 30% (reducing to 25% for fiscal years commencing after 1 January 2021) provided the entity maintained the size of its workforce;

- A reduction in social security contributions;

- A tax credit equal to a certain percentage of social security contributions that could be used as a payment on account of income tax or VAT; and

- A credit for foreign income taxes withheld from Argentine-source income derived from qualifying activities. (Credit would otherwise only be available under the terms of an applicable tax treaty.)

The measures were enacted by Law No. 27,506, published in the official gazette on 10 June 2019. Two subsequent resolutions (1084/2019 and 449/2019) set out the application process for taxpayers wishing to benefit from the regime. However, Resolution 30/2020, issued by the Production Development Ministry and published in the official gazette on 20 January 2020, revokes the two earlier resolutions, effectively suspending the regime as from 21 January 2020.

The Executive Power is expected to submit a new bill to congress that makes changes to the initiative.

Australia

Customs duty dispute resolved for vitamin and weight loss pastilles

On 5 February 2020, the Australian High Court unanimously dismissed the appeal brought by the Comptroller-General of Customs (Comptroller) in the tariff classification dispute with Pharm-A-Care Laboratories Pty Ltd (Importer).

The dispute concerns two types of chewable pastilles/gummies, one containing vitamins (Vitamin Gummies), the other containing garcinia cambogia (i.e., hydroxycitric acid) but not vitamins (Garcinia Gummies), and the rate of customs duty applicable to each of them.

The appeal to the High Court followed the Comptroller's unsuccessful appeal to the Full Court of the Federal Court (Federal Court) against an unfavorable decision of the Administrative Appeals Tribunal (Tribunal) at first instance.

In short, the High Court agreed with the Federal Court and the Tribunal that the Importer's goods were correctly classified as "medicaments ... for therapeutic or prophylactic uses" under tariff heading 3004 (subheadings 3004.50.00 and 3004.90.00 respectively) in chapter 30 of schedule 3 to the Customs Tariff Act 1995 (Customs Tariff), attracting a 0% import duty rate.

However, while the High Court agreed with the tariff classification given to the imports by both the Tribunal and the Federal Court, it found errors in the approach taken by each of them to derive the classification. As a result, the High Court's reasons for judgment provide useful guidance on a range of matters relevant to the classification process required by the Customs Tariff.

Background to the dispute

The goods were imported from Germany. To the extent of between 70% and 80%, the Vitamin Gummies and the Garcinia Gummies were made up of other substances including sucrose, glucose syrup, gelatin, and flavours. The Garcinia Gummies were marketed in Australia as a weight loss aid.

In relation to the appropriate tariff classification of the goods, the Importer's view was that both types should be classified under tariff heading 3004. The Comptroller's view was that the goods were excluded from classification under chapter 30 as "food supplements", by reason of note 1(a) to that chapter. The relevant part of note 1(a) states:

"*This Chapter does not cover:*

(a) Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (Section IV)…"

The Comptroller considered that the goods should be classified as "sugar confectionary" (tariff heading 1704, in chapter 17) or in the alternative as "food preparations" (tariff heading 2106, in chapter 21). For each of these tariff headings import duty is payable at the rate of 4% or 5%.

It is also relevant to note that:

- The text in schedule 3 of the Customs Tariff is closely based on the wording in the "Harmonized Commodity Description and Coding System" (Harmonized System), consistent with Australia's obligations under the Harmonized System convention agreed at Brussels in 1983. The Harmonized System convention was authenticated in French and in English, both versions being equally authoritative. Further, each term of the Harmonized System convention is presumed to have the same meaning in each text.

- In keeping with the Harmonized System, schedule 3 divides the tariff into sections, chapters and sub-chapters. Within sections or chapters there often are section notes and chapter notes. Within chapters, there are headings and subheadings, in some cases accompanied by their own notes.

- Schedule 2 to the Customs Tariff contains the general rules for the Interpretation of the Harmonized System provided for by the Convention (Interpretation Rules). These rules must be used in the interpretation of the tariff for working out the tariff classification under which the goods are classified.

The decision of the Tribunal

The High Court's reasons address the process by which the Tribunal decided that the goods should be classified under heading 3004. In summary:

- The Tribunal adopted the conventional two-staged approach to tariff classification: identification of the goods as imported, followed by the construction and application to the goods of the potentially relevant provisions of Schedule 3, in accordance with the applicable Interpretation rules set out in schedule 2 of the Customs Tariff.

- In the context of identifying the goods, the Tribunal found that the essential character and purpose of the Vitamin Gummies was the vitamins that they contained, and that the essential feature of the Garcinia Gummies was the hydroxycitric acid in them (being designed to assist weight loss, although their efficacy in that respect was uncertain) and that they were mainly for a "cosmetic" purpose.

- In the context of the second stage, the Tribunal looked first at note 1(a) to chapter 30. It construed "such as" within the first parentheses in the note to mean "for example", and thereby took the view that the Vitamin Gummies were excluded from coverage by chapter 30 by the note only if they were "food." By virtue of their essential character as vitamins, the Tribunal concluded that the Vitamin Gummies were not "food" according to the ordinary meaning of the term. The Tribunal also found that the Vitamin Gummies were not "food supplements." The same conclusion was reached in relation to the Garcinia Gummies. Neither good was excluded by note 1(a) from coverage by chapter 30.

- The Tribunal then turned to heading 3004 and concluded that the Vitamin Gummies met the heading description - "medicaments ... consisting of ... products for therapeutic or prophylactic uses".

- The Tribunal noted that in light of note 2 to section VI (which relevantly provides that "goods classifiable in 3004 ... by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this schedule"), its conclusion that the Vitamin Gummies were classifiable to heading 3004 was that they were classifiable only to heading 3004 and were not classifiable to heading 1704 or to heading 2106. The Tribunal considered subheading 3004.50.00 to provide the most appropriate description.

- In relation to the Garcinia Gummies and heading 3004, the Tribunal found that they did not meet the heading description. It also concluded that they could not be regarded as either "sugar confectionery" (heading 1704) or "food preparations" (heading 2106). The Tribunal applied Interpretation rule 4 in schedule 2 in order to classify the goods "under the heading appropriate to the goods to which they are most akin". The Tribunal found that the Garcinia Gummies were most akin to goods covered by heading 3004 rather than 1704 (and to goods covered by heading 2106 not at all). The Tribunal considered subheading 3004.90.00 ("Other") the most appropriate description.

Relevantly, on appeal, the Full Court upheld the Tribunal's construction of note 1(a), including construing the words in the first set of parentheses as examples of a wider genus of "Foods or beverages." It found that the Tribunal had not erred in law in concluding that the vitamin preparations were neither "food" nor "food supplements." However, the Full Court went further and focused on the words "section IV" in parentheses at the end of note 1(a). The Full Court's view was that the reference to "foods or beverages" in note 1(a) is not a reference to any food or beverage, but rather are limited to those foods or beverages which are addressed in "section IV" of the Tariff.

Key aspects of the High Court's decision

In relation to the construction of note 1(a) to chapter 30, the High Court disagreed with the construction adopted by the Tribunal and the Full Court. Its reasoning is summarized below:

The High Court agreed with the Comptroller's contention that the words in the first parentheses in note 1(a) should not be construed as being examples of a wider genus of "foods or beverages". Significantly, the High Court accepted the Comptroller's submissions about the relevance of certain differences in the wording of note 1(a) of the French and English language versions of the Harmonized System text, and that corresponding

provisions should be interpreted in a way that gives “simultaneous effect” to all of the terms used in each. The High Court ruled that this could be done in relation to note 1(a) by reading the words "such as" in the first parentheses in the demonstrative sense of meaning "of the following kinds." This reading results in the exclusion from coverage by chapter 30 for "foods or beverages" being confined to the particular goods specified within the parentheses, namely dietetic, diabetic or fortified foods, food supplements, tonic beverages, and mineral waters.

The High Court stated that goods must meet one of the descriptions in the parentheses to fall within the scope of note 1(a), but that is all. There is no added requirement that the goods also meet the more general description of "foods or beverages" in order to be excluded by note 1(a). In this regard the Tribunal had been wrong.

The High Court also agreed with the Comptroller’s contention that the Full Court’s finding about a reference to “section IV” in parentheses at the end of note 1(a) was wrong. The High Court said that the reference should not be regarded as importing a further limitation on the coverage of the note. Rather, the High Court said, the reference to "section IV" is simply a drafting convention. It should be regarded as no more than a convenient cross-reference to indicate where goods excluded by note 1(a) might be classified, and is without operative legal effect. The High Court contrasted the reference to “section IV” with instances where a section or chapter note operates to exclude goods based on the classification of those goods to a heading within another section or chapter. In those cases, the note typically does so by referring to goods "of" that other section or chapter.

Notwithstanding the High Court accepting these contentions of the Comptroller, the Court found that there was no error of law made by the Tribunal to justify the Tribunal’s decision being set aside. Although the Tribunal was wrong in law in considering that coverage of the goods by 3004 was not excluded by note 1(a) because the goods were not “foods”, that was immaterial to the Tribunal’s correct in law conclusion that the goods were not excluded by note 1(a).

The High Court went on to reject the Comptroller’s contention that in applying the "most akin" test in interpretation rule 4 to the Garcinia Gummies, the Tribunal erroneously construed heading 2106 (“food preparations”), by equating the expression with the terms “foods" or "food supplements" in note 1(a) to chapter 30.

Observations

Many of the High Court’s reasons for judgment are specific to the subject goods and the three headings under which they could potentially be classified. The outcome will be welcomed by other importers who import products of the same kind, many of whom will have import duty refund claims in place with the Australian Border Force in relation to past importations classified by the ABF under heading 1704 (sugar confectionary).

However, the High Court’s reasons also have broader relevance. This is particularly so in relation to it considering differences in the French text of the Harmonized System as a basis for construing the meaning of the equivalent English provision in the Customs Tariff (to give them “simultaneous effect”).

The practical effect of this aspect of the reasons is to mandate that the English and French versions of the Harmonized System are read harmoniously. As a question of treaty interpretation under international law, this is not a controversial position. However, it does have the effect that for an importer or their customs broker to be certain about the classification of goods, they will need to compare the text of the Customs Tariff against the French version of the Harmonized System instrument and reconcile any relevant differences. This increases the burden on an industry that already has onerous compliance obligations. To give certainty to the market, the Australian Border Force's public response to the High Court's decision should address instances where additional discrepancies between the English and French versions give rise to ambiguity of the sort that arose in this case, which will undoubtedly give rise to further disagreement and controversy.

Additional aspects of the reasons for judgment that have broader relevance include:

- The Court's implicit endorsement of the traditionally applied two-stage approach to tariff classification.

- The Court's extended observations on how and when the Interpretation Rules in schedule 2 should be construed and applied, particularly where there are section or chapter Notes that are relevant to a heading or subheading to which particular goods could be classified.

- Confirmation from the Court that there will be circumstances, as in the present case, where interpretation rule 4 can properly be applied notwithstanding that relevant section notes or chapter notes operate to exclude interpretation rules 2(b) and 3(b) from being applied. (In many instances, interpretation rule 4 is applied only after application of rules 2(b) and 3(b)).

- The Court referring to and drawing support for certain of its reasons from the Harmonized System Explanatory Notes (HSEN). That said, the fulsome statement in the Full Court's judgment about the potential role of the HSEN and how and when the HSEN can be used as an aid to construction (a statement that the High Court did not disturb) should not be overlooked.

Australia

Victorian residential property: Foreign purchaser additional duty change announced

On 31 January 2020, Australia's Victorian State Revenue Office (SRO) announced that as from 1 March 2020 it will stop applying its "practical approach" for determining whether purchases of residential property by family discretionary trusts attract the 8% foreign purchaser additional duty.

The practical approach has involved the SRO treating family discretionary trusts as being local where they have potential foreign beneficiaries who have not received distributions and who are, based on available information, unlikely in the future to receive any distributions.

From 1 March 2020, family discretionary trusts will be subject to the special rules for determining a substantial interest in a discretionary trust that apply to discretionary trusts generally. Broadly, under the special rules, if a discretionary trust has any potential foreign beneficiary (regardless of how remote), the trust will generally be a foreign trust for the purpose of the foreign purchaser additional duty provisions.

The SRO intends to continue applying its practical approach in relation to dutiable transactions where the contract of sale was entered into (or a nomination was made in a sub-sale context) before 1 March 2020.

Exposure to foreign purchaser additional duty on dutiable purchases of Victorian residential property by discretionary trusts on or after 1 March 2020 may be managed: for example, by ensuring that the discretionary trust deed has (or is amended prior to settlement to include) appropriate restrictions on foreign persons as potential beneficiaries. Alternatively, a different form of purchase vehicle (that is not a foreign purchaser) could be considered.

Belgium

CJEU rules Belgian stock exchange tax is not contrary to EU law

The Court of Justice of the European Union (CJEU) issued its decision on 30 January 2020 in a case (C-725/18) referred by the Belgian Constitutional Court in 2018, concluding that 2017 amendments to Belgium's stock exchange tax (*taxe sur les operations de bourse*/*Beurstaks*, or TOB) are not contrary to EU law.

Background

Belgium has imposed the TOB since 2007 on transactions (e.g., purchases and sales of shares, employee stock options, other financial instruments, etc.) taking place in Belgium that involve Belgian or foreign funds. For 2020, the tax is payable at rates ranging from 0.12% to 1.32%, depending on the type of instrument. Initially, the tax was due only when the transaction was executed by a Belgian professional intermediary, enabling investors to avoid payment of the TOB by using foreign intermediaries.

Following a legislative change applicable as from 1 January 2017, the scope of the TOB was extended to include transactions executed by Belgian residents though professional financial intermediaries established outside Belgium. In such cases, the Belgian resident issuing the instruction to carry out the transaction is liable to pay the TOB (and file the required TOB returns), since Belgium cannot enforce obligations arising under Belgian tax law against foreign intermediaries. An exception may apply where the Belgian resident can prove that the tax already has been paid by the foreign intermediary, or by a fiscal representative of the intermediary in Belgium.

The taxpayer in the case at hand argued that the amendments to the legislation discourage Belgian issuers from using foreign intermediaries because doing so entails increased risk, is more expensive, and creates additional administrative obligations.

The Belgian Constitutional Court referred the matter to the CJEU for a preliminary ruling on the compatibility of the legislative change with EU law.

Decision of the CJEU

The CJEU examined the compatibility of the measure with the freedom to provide services under article 56 of the Treaty on the Functioning of the EU (TFEU) and found that the situations of a Belgian resident using a Belgian intermediary and a Belgian resident using a foreign intermediary are comparable. In addition, the tax treatment in both situations is identical. However, where a foreign intermediary is used, the Belgian resident incurs a tax liability and has additional compliance obligations. The revised Belgian rules, therefore, introduce a difference in treatment in comparable situations.

According to the CJEU, the difference in treatment is justified to ensure fiscal supervision, to facilitate collection of the tax, and to combat tax evasion, which in the court's view are all connected in the case at hand. The CJEU also decided that the legislative changes were proportionate to the objective since Belgian residents can be relieved from their obligations by proving, amongst others, that the tax already has been paid, and by allowing the foreign intermediary to appoint a fiscal representative in Belgium. The CJEU concluded that the measure does not go beyond what is necessary to achieve these objectives, and it is not contrary to article 56 of the TFEU.

Comments

The decision establishes that the amendments to the TOB are in line with EU law. The CJEU appears to have deemed this to be a straightforward case as it delivered its ruling without an Advocate General's opinion. Contrary to other cases that involved the appointment of a fiscal representative, the court did not find that this possibility violated EU law, likely because it was viewed as an option for the taxpayer and not a requirement.

The case has been referred back to the Belgian Constitutional Court for the latter to issue its decision. The Constitutional Court is expected to follow the CJEU's decision.

China-US

Update on Section 301 Tariff Reductions, Suspensions, Exclusions, and Requests for Comments

List 4a tariffs to be reduced effective 14 February 2020

On 22 January 2020, the US Trade Representative ("USTR") published a notice in the *Federal Register* that Section 301 tariffs applicable to China origin goods under List 4a will go down to 7.5 percent from 15 percent effective 14 February 2020. This reduction results from the "phase one" trade agreement signed by the US and China on 15 January 2020, which brought a pause to the ongoing escalation of trade measures between the two nations.

The phase one agreement also mandates structural reforms and other changes to China's economic and trade regime in the areas of intellectual property, technology transfer, agriculture, financial services, and currency and foreign exchange. Notably, the agreement also provides for a dispute resolution system allowing the parties to take proportionate and responsive action that either may deem appropriate.

List 4b tariffs suspended indefinitely

On 18 December 2019, in light of progress made in trade negotiations with China, the USTR published a notice in the *Federal Register* suspending, indefinitely, the implementation of 15 percent supplemental tariffs on List 4b goods, which were scheduled to take effect on 19 December 2019.

The phase one agreement did not change or suspend any other Section 301 tariffs implemented pursuant to Lists 1 through 3, which remain in effect indefinitely. However, in the same notice, the USTR signaled its intention to revisit, as appropriate, any previously provided, extensive public comments and testimony if further modifications are considered.

Prior Section 301 product exclusions extended and comments sought on additional extensions

On 23 December 2019, the USTR published another notice in the *Federal Register* that extended certain exclusions that were set to expire in December for a one-year period, through 28 December 2020. These extensions apply to articles covered by Section 301, List 1, including two 10- digit Harmonized Tariff System of the United States ("HTSUS") subheadings (8418.69.0120 and 8525.60.1010) and four specific product descriptions.

In addition, on 30 December 2019, the USTR published in the *Federal Register* a request for public comments concerning the potential extension of certain exclusions granted on certain articles on List 1 that are set to expire on 25 March 2020. Comments may be submitted to USTR docket number 2019-0024 from 15 January to 15 February 2020. Comments should address:

1. Whether the product or a comparable product is available from sources in the US and/or third countries;

2. Any changes in the global supply chain since July 2018 for the particular product or relevant industry developments; and

3. The efforts that the importer or US purchasers have undertaken since July 2018 to source the product from the US or third countries.

Request for comments on 2020 Section 301 review

On 23 December 2019, the USTR published in the *Federal Register* a request for public comments regarding its annual Section 301 review to identify countries that deny adequate and effective protection for intellectual property (IP) rights or deny fair and equitable market access to US persons who rely on IP protection. Comments are due by 6 February 2020 for all parties except foreign governments, who have until 20 February 2020 to file comments. A public hearing on this issue is expected to be held on 26 February 2020, with the USTR's report scheduled to be published on or about 30 April 2020.

Additional Section 301 exclusions granted

On 6 January 2020, the USTR published in the *Federal Register* additional exclusions from Section 301, List 3, tariffs. These exclusions apply to two 10-digit HTSUS subheadings (8712.00.1510 and 8712.00.1550) and 66 specific product descriptions, which cover 81 separate exclusion requests. These exclusions apply retroactively to the 24 September 2018 effective date of the List 3 tariffs and will extend through 7 August 2020.

Importers of articles affected by these product exclusions may request a refund from US Customs and Border Protection by filing a post summary correction prior to the entry liquidation date or, if the entry has already liquidated, a protest.

General Section 301 exclusion update

As of 24 January 2020, 46,525 unique Section 301 exclusion requests have been submitted by US importers with the following results:

- List 1: 10,814 exclusion requests were submitted. 3,656 requests have been approved and 7,158 have been denied (34% approval rate and 66% denial rate respectively).

- List 2: 2,869 exclusion requests were submitted. 1,074 requests have been approved and 1,795 have been denied (37% approval rate and 63% denial rate, respectively).

- List 3: 30,285 exclusion requests were submitted. 396 requests have been approved and 12,206 have been denied (2% approval rate and 40% denial rate, respectively). There are 17,683 requests still pending (58%).

- List 4A: A total of 2,557 exclusion requests have been submitted. No requests have yet been granted or denied.

As of this writing, the submission timeline has closed for filing exclusion requests for goods of Lists 1 through 3, and the deadline to file exclusion requests for articles on List 4A is 31 January 2020.

How we can help

Deloitte's Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- preparing exclusion requests;

- obtaining and analyzing import data to assess the potential impacts of the trade measures;

- examining supply chains and imported products to determine opportunities to manage increased costs due to the additional tariffs;

- conducting strategic sourcing reviews to identify potential alternative sources of affected products;

- scrutinizing the accuracy of tariff classifications;

- considering tariff engineering opportunities;

- reviewing Incoterms® used in contracts to confirm responsibilities for customs duty payments; and

- undertaking customs valuation planning to manage the impacts of the additional tariffs.

China

On 6 February 2020, China's Tariff Committee of the State Council (CTCSC) announced that, effective 14 February 2020, tariffs on certain US-origin goods will be reduced by 50% (Bulletin [2020] No. 1). Specifically, tariffs on 916 items will drop from 10% to 5% and tariffs on 801 items from 5% to 2.5%. The announcement comes following the Phase One agreement signed by China and the US on 15 January 2020, under which both countries agreed to suspend additional tariffs that were to take effect on 15 December 2019, a step toward alleviating the trade tensions between the two countries.

Highlights of Bulletin No. 1

On 23 August 2019, the CTCSC announced a third round of retaliatory tariffs imposing additional tariffs of 5% and 10% on USD 75 billion worth of imports. These additional tariffs were to be implemented in two phases: "List 1" from 1 September 2019 and "List 2" from 15 December 2019; however, the additional tariffs on List 2 have been suspended indefinitely.

The main goods covered under List 1 and the corresponding rates are summarized below:

Main goods covered	Number of affected HS code items	Additional duty rate between 1 September 2019 and 14 February 2020	Duty rate on or after 14 February 2020
Part 1 - Live fish, frozen fish, and other edible animal products, fresh fruit, frozen vegetables, etc.	270	10%	5%
Part 2 - Dried mushrooms, dried fungus, wheat starch, vodka, toothpaste, toilet paper, overcoats, silk scarves, razors, plasma color digital televisions, particle accelerators, etc.	646	10%	5%
Part 3 - Cheese, seed potatoes, dried mung beans, red beans, coffee husks and skins, meal, and powder of potatoes, etc.	64	5%	2.5%
Part 4 - Cattle, pigs, geese, ducks, and other live poultry; orchids, carnations, and other live plants; canned pears; marble, cement, lime, and other minerals; fireworks, firecrackers, matches, activated charcoal, and other chemical products, etc.	737	5%	2.5%

Comments

The CTCSC has indicated that further reductions of the additional tariffs would depend on progress made in improving the core trade policy differences between the two countries.

Based on the new tariff reductions and any future tariff measures, affected companies should consider taking the following actions:

- Analyze import data, as well as customs valuations, to assess the potential impact of the trade/tariff measures;

- Where appropriate, apply for exclusion processes or refunds for the excluded products;

- Examine supply chains and imported products to ascertain whether there are any opportunities to manage costs due to the imposition or reduction of additional tariffs;

- Conduct strategic sourcing reviews to identify any potential alternative sources for obtaining the affected products;

- Examine the accuracy of tariff classifications and review possible reclassification of goods;

- Review international commercial contract terms to confirm responsibilities for customs duty payments; and

- Ensure compliance with the trade/tariff measures and apply for advance rulings, where appropriate.

China

Emergency tax measures implemented to address novel coronavirus outbreak

On 7 February 2020, China's Ministry of Finance and the State Taxation Administration published tax relief measures (Bulletins 8, 9, and 10) to help mitigate the economic impact of the novel coronavirus outbreak on businesses and individuals. The measures, which affect enterprise income tax (EIT), individual income tax (IIT), and value added tax (VAT), apply retroactively as from 1 January 2020, and although they are expected to be temporary, no expiration date has been set and will depend on the extent to which the epidemic is brought under control.

Supplies of goods for virus prevention and epidemic control

Several measures are introduced to increase the production capacity of goods and supplies required to combat the novel coronavirus:

- "Key" manufacturers may deduct (rather than depreciate) expenditure incurred for the acquisition of necessary manufacturing equipment for EIT purposes.

- Key manufacturers may claim refunds of any "incremental unutilized input VAT" on a monthly basis. Such VAT refers to the excess of unutilized input VAT at the end of each month over the unutilized input VAT at 31 December 2019.

- Services provided for transporting "key goods/supplies" are exempt from VAT.

The list of "key manufacturers" and "key goods/supplies" will be determined by the relevant government departments.

Donations

The tax relief measures announced in Bulletins 8, 9, and 10 allow a full deduction for EIT and IIT purposes for the following donations of cash and domestic goods for coronavirus prevention and medical treatment:

- Cash and goods that are donated through qualifying social organizations or national and local governments; and

- Goods that are donated directly to designated hospitals and supported by donation receipts issued by the hospitals.

Additionally, the donation of such goods is exempt from VAT, consumption tax, city construction and maintenance tax, and national and local education surcharges.

For imported goods, the government announced on 1 February 2020, that a temporary exemption from import duty, VAT, and consumption tax would be granted for specific goods donated to help prevent the further spread of the novel coronavirus and control the epidemic.

Tax relief for certain sectors

The tax loss carryforward period for the transportation, catering, hospitality, and travel sectors has been extended from five to eight years for losses incurred in calendar year 2020. To qualify for the longer carryforward period, an enterprise's eligible revenue (i.e., annual revenue from the listed sectors) must be at least 50% of its total annual revenue (excluding nontaxable income and investment income).

Certain services are exempt from VAT, including public transportation services, lifestyle services (e.g., catering, hospitality, education, medical treatment, entertainment), and delivery services provided to residents for daily necessities.

Tax relief for individuals

Medical personnel involved in the response to the novel coronavirus outbreak are exempt from IIT on special subsidies and bonuses paid in accordance with standards prescribed by the local governments.

All employees (regardless of sector or whether they are medical personnel) are exempt from income tax on employer-provided medicines or supplies for coronavirus prevention and medical treatment.

China

Temporary import exemption granted for goods donated in response to novel coronavirus

On 1 February 2020, China's Ministry of Finance, the General Administration of Customs, and the State Taxation Administration issued new rules (Bulletin 6) that grant a temporary exemption from import duty, value added tax (VAT), and consumption tax for specific goods

donated to help prevent the further spread of the novel coronavirus and control the epidemic. The exemptions apply to donations of qualifying goods by foreign parties and by domestic parties that import goods from overseas or special domestic areas.

Bulletin 6 applies for a three-month period from 1 January 2020 through 31 March 2020.

Exemptions

Certain goods donated by foreign parties (e.g., companies, individuals, NGOs, and governments) to national and local governments, qualified social organizations, and qualified charitable foundations are exempt from import duty, VAT, and consumption tax.

This exemption also is available for such goods donated by domestic parties in either of the following situations (but only if the goods are immediately put into use to prevent the further spread of the novel coronavirus and control the epidemic):

- The goods are imported from overseas or special domestic areas under customs supervision (e.g., bonded zones); or

- The goods are (or were made from materials) in a bonded status (i.e., subject to a suspension of duty and import taxes) and donated by a domestic manufacturer that imported or manufactured the goods under a processing trade relief arrangement. (Processing trade relief is a special regime that allows a domestic manufacturer to import materials in a bonded status to process into finished goods for export overseas; where the finished goods or materials subsequently are not exported but diverted for consumption in the domestic market, the duty and import taxes previously suspended would be reinstated if no exemption was granted.)

The types of goods eligible for the exemption are expanded to include virus infection testing supplies, disinfection supplies, virus prevention supplies (e.g., protective devices/gear), and assistance vehicles (e.g., trucks providing disinfectant services, ambulances).

Provincial governments may add entities to their list of qualifying donees (such entities would be included on a list supplied by the provincial governments to the various customs offices). Where a donor does not identify a specific donee, the donee will be presumed to be one of the qualified national social organizations (e.g., the Red Cross Society of China) to ensure the exemption treatment.

Other aspects of Bulletin 6

- If import duty, VAT, and consumption tax were collected on goods entitled to the exemption, the importer can request a refund by submitting a refund application by 30 September 2020.

- If an importer already has claimed import VAT as a credit against its output VAT, the importer only can obtain a refund of the import duty and consumption tax paid.

- In addition to the duty/tax exemptions granted by Bulletin 6, imports of affected goods may be "fast tracked" through customs provided the importer registers the basic information with the customs authorities and subsequently submits the full customs declaration at a later date.

- For US-origin goods subject to exemption under Bulletin 6, no additional retaliatory tariffs would be imposed. A refund can be requested for such additional tariffs already collected on goods eligible for the exemption.

Colombia

Tax authorities issue guidance on application of "general anti-abuse" rule

Executive Order No. 4 of 2020, issued by Colombia's National Tax Authority (DIAN) on 7 January 2020 and published in the official gazette on 15 January 2020, sets out the procedures for applying the general anti-abuse rule (GAAR) contained in article 869 of the Tax Code.

Background

The GAAR provisions in article 869 were amended as from 1 January 2017 through the enactment of Law 1819 of 2016. Based on the revised wording of article 869, abuse is considered to exist for tax purposes where a transaction involves the use or implementation of one or more artificial steps, with no apparent commercial or economic purpose, with the aim of obtaining a tax advantage.

Article 869 defines as artificial transactions including those that:

- Are not carried out on valid economic or commercial terms;

- Generate a significant tax benefit that is not justified taking into account the business and economic risks assumed by the taxpayer; or

- Are apparently legal but conceal the true intent of the parties.

A tax advantage is defined by the Tax Code as the alteration, distortion, or modification of the tax consequences for the taxpayer that otherwise would arise, such as the reduction or deferral of the tax payable, an increased tax repayment, or increased tax losses. Where the DIAN determines that a tax advantage has been derived from a transaction, it can recharacterize the transaction, impose appropriate penalties, and demand the payment of default interest in respect of any additional tax payable as a result of the recharacterization of the transaction.

Key provisions of the executive order

The executive order clarifies various terms and procedures under the code. Key issues addressed include the following:

- The terms "tax evasion" and "tax avoidance" are defined. Evasion is an act or omission by a taxpayer that results in a failure to comply with a tax obligation, and hence conceals a tax liability. Tax evasion is outside the scope of the GAAR, but challenged and subject to penalties and interest under other provisions of the Tax Code. Tax avoidance is an act by which the taxpayer, in a variety of ways, avoids the occurrence of an event that is necessary for a tax liability to arise. Avoidance takes place where a transaction involves one or more artificial steps, with no apparent commercial or economic purpose, intended to obtain a tax advantage.

- The burden of proof is on the DIAN to demonstrate that a transaction is artificial, has no economic or commercial purpose, and is aimed at obtaining a tax advantage.

- A tax advantage is deemed to arise where, among others, a transaction results in tax benefits for more than one individual or legal entity, whether resident or nonresident.

- The DIAN is empowered to recharacterize a transaction that results in a tax advantage on the basis of how a taxpayer generally would be expected to have carried out the transaction in the same circumstances.

- Where recharacterized transactions are subject to the application of a double tax treaty, the treaty provisions apply based on the nature of the transaction as recharacterized under the domestic GAAR.

Colombia

Executive orders under revoked law requiring e-invoicing are unenforceable

On 5 February 2020, Colombia's National Tax Authority (DIAN) issued Ruling No. 000129 of 2020 (Spanish only, published on 7 February 2020), confirming that executive orders relating to electronic invoicing (e-invoicing) issued in accordance with legislation that subsequently was revoked, are no longer enforceable.

Background

Under section 615 of the Colombian tax code, companies and individuals who operate a business, practice one of the "liberal professions" (e.g., lawyer, accountant, notary, engineer, architect, doctor, dentist, etc.), or sell agricultural goods must issue an invoice or equivalent document for every transaction.

Law 1943 of 28 December 2018 (Financing Law) substantially modified the invoicing rules, including making e-invoicing mandatory for all taxpayers to claim a deduction for an expense for income tax purposes and to recover any input VAT suffered. All e-invoices would require validation by the DIAN prior to issue. The DIAN subsequently issued further guidance under Law 1943 relating to e-invoices, including executive orders Nos. 002 and 020 of 2019, confirming the taxpayers required to issue e-invoices and providing a calendar for implementation of the e-invoicing obligation, and No. 030 of 2019 defining some terms, and outlining the requirements and procedures for issuing e-invoices.

Although the Financing Law was held to be unconstitutional by the Constitutional Court on 16 October 2019 and revoked by the court due to procedural defects, the provisions of the tax code regarding e-invoices initially modified by the Financing Law were ratified as part of Law 2010 of 2019 (Economic Growth Law), signed by the Colombian president on 27 December 2019.

This gave rise to the question of whether the executive orders issued under the Financing Law continue to be valid under the tax regulatory framework governed by the Economic Growth Law.

Ruling No. 000129 of 2020

In its ruling, the DIAN stated that since the legal basis for the executive orders has been revoked, the orders have lost their enforceability. However, e-invoices validated in accordance with the previous legislation and orders continue to be appropriate supporting documentation on the sale of goods or provision of services.

The DIAN clarified the legal status of taxpayers required to invoice electronically under three different scenarios, depending on the date from which the obligation arose:

- Taxpayers originally required to implement e-invoicing by 31 December 2019 must continue to issue e-invoices in accordance with the previous validation.

- Taxpayers that should have implemented e-invoicing with prior validation in 2019 but have not done so must implement e-invoicing as from 2020 according to the calendars provided in regulations issued by the DIAN during 2019.

- Taxpayers whose implementation date was scheduled to be 1 January 2020 must implement e-invoicing with prior validation according to the calendar to be issued by the DIAN in 2020.

Czech Republic

Tax amendments now in effect include changes affecting income and consumption taxes

The Czech president signed legislation from the Chamber of Deputies on 19 December 2019 that was published in the collection of laws on 31 December 2019 and amends certain tax-related laws as from 1 January 2020. The new act includes changes to the tax treatment of technical reserves that are expected to have a significant impact for insurance and reinsurance companies, as well as changes to the treatment of interest income from bonds issued prior to 2013, gambling winnings of individuals, the gambling tax rate for lotteries, and the consumption taxes on alcohol and tobacco. Separate legislation containing other tax-related amendments is expected to be enacted subsequently that is expected to be effective as from 1 April 2020.

Change in method of creation and tax deductibility of technical reserves for insurance industry

Insurance and reinsurance companies now may treat only reserves created in accordance with the insurance act, which is based on the EU solvency II directive, as tax-deductible expenses; technical reserves created based on the accounting regulations no longer may be treated as tax-deductible expenses. The wording of both the income taxes act and the act on reserves has been amended to reflect this change. Due to the fact that technical reserves created in line with the insurance act are not reflected in a company's accounts, reserves for the insurance industry will be reflected in the tax base in the form of non-accounting adjustments.

It is expected that the transition to the new system will have a relatively significant impact on the tax liability of insurance and reinsurance companies. Accordingly, the new act includes certain transitional provisions to split the tax burden over two tax periods.

Change in taxation of interest income from bonds issued prior to 1 January 2013

An exception (a transitional provision) that permitted interest income (as a tax base) to continue to be rounded down to the nearest Czech Koruna (or crown) for each bond issued before 1 January 2013 has been eliminated, meaning that all interest income is rounded at the level of the total tax liability arising from interest income from one issuer, regardless of the date of issue of the bond. The same rounding method, thus, is used for all bonds, eliminating the advantageous treatment of "one-crown bonds."

The new rules apply to interest income that is realized by a taxpayer after 1 January 2020 from bonds issued prior to 1 January 2013.

Limitation to tax exemption for gambling winnings of individuals

Gambling winnings of individuals previously were exempt from income tax in the Czech Republic. The tax treatment of gambling winnings now depends on the type of game. Games have been classified into two main categories for individual income tax purposes: lotteries, raffles, and the "receipt lottery" (which allows individuals to use their receipts from the electronic cash register system as lottery tickets, to combat tax evasion); and other types of games (which are further classified into different income categories, depending on the type of game, e.g., fixed-odds betting, live game tournaments, etc.).

Winnings from lotteries, raffles, and the receipt lottery are now subject to withholding tax, under which the gross value of the winnings (not reduced by expenses) is used as the tax base. A tax exemption applies only to individual winnings that do not exceed CZK 1 million per winning event (increased from the originally proposed limit of CZK 100,000). Taxpayers have the option of including their income from lotteries or raffles that was subject to withholding tax in their personal income tax returns, where they can declare the withheld tax as an advance payment if this is beneficial for the taxpayer. The withholding tax applies to winnings from lotteries and raffles derived by individuals as from 1 January 2020.

Income from other types of games is subject to the same tax treatment as other income that must be reported in personal income tax returns, i.e., it will not be subject to withholding tax imposed by the organizer of the game (the payer). The tax base is calculated as the difference between the total winnings for a particular income category (depending on the type of game) and the total stakes (amounts bet) in games within that income category. If the difference between the total income and the total stakes for the relevant income category does not exceed CZK 1 million for the entire tax period, the income from the games in that category will be exempt from tax. No expenses other than the stakes in the game will be deductible from the tax base. The new rules will apply to winnings from the other types of games that are subject to tax as from 1 January 2020.

Change to gambling tax rate for lotteries

The partial tax base for lotteries (the difference between the stakes received and the winnings paid by gambling operators) is now taxable at a rate of 35%, increased from 23%. The original wording of the amendments would have increased the gambling tax for the other partial tax bases for different types of games as well; however, the bill underwent several motions to amend, which led to the removal of the other tax increases from the final wording of the new act.

Changes to consumption tax rates

A major consumption tax change is a significant increase in alcohol tax. As from 1 January 2020, the alcohol tax on products containing alcohol listed under nomenclature codes 2207 (e.g., products with an alcohol content of over 80% or products containing alcohol that are used as fuel) and 2208 (e.g., whiskey, vodka, gin) and certain other products is set at CZK 32,250 (previously, CZK 28,500) per hectoliter of ethanol. The tax also has been increased for alcohol contained in fruit spirits originating from minor distilleries (not exceeding 30 litres of ethanol per producer in the course of one production period), where the alcohol tax has been raised to CZK 16,200 (previously, CZK 14,300) per hectoliter of ethanol.

The tax on tobacco products also has had a major increase: the percentage portion of the tax rate for cigarettes has increased to 30% (from 27%). The fixed portion of the tax rate is now CZK 1.61 per piece on cigarettes, CZK 1.88 per piece on cigars and cigarillos, and CZK 2,460 per kilogram on smoking tobacco. The aggregate minimum tax rate on cigarettes has increased to a total minimum rate of CZK 2.9 per piece. The tax rate also has increased on heated tobacco products, to CZK 2.46 per piece.

As a result of the enactment of the new act, tax warehouse operators or beneficiaries entitled to receive recurring deliveries of selected products may be required to change their tax collateralization. It is necessary for such persons to calculate whether an increase in tax collateralization is needed.

Interestingly, the limit for production of beer by individuals at home is increased. If the amount of beer produced in this manner does not exceed 2,000 liters per calendar year and is not sold, the producer is not considered a taxpayer for consumption tax purposes.

Guatemala

New electronic forms available for exporters requesting VAT credit refunds

Guatemala's Superintendency for Tax Administration (SAT) made available to taxpayers in late December 2019, through its online tax portal, a revised electronic form (SAT-2125) for exporters requesting a value added tax (VAT) credit refund under the general regime and a new electronic form (SAT-2251) for exporters requesting a VAT credit refund under the special electronic regime that entered into effect on 30 October 2019. The SAT still must make certain electronic tools available for exporters to fully comply with the requirements of the special electronic regime, which it is required to do by 30 April 2020.

In contrast to the special electronic regime for VAT credit refunds, the general regime is not a fully electronic regime; although form SAT-2125 may be filed electronically to request a VAT credit refund, a review or audit from the SAT will be carried out in a non-electronic ("hard copy") format.

Both new forms may be used as from January 2020 and require taxpayers to provide the following information:

- General information on the taxpayer;

- Information on the taxpayer's legal representative;

- Information on the taxpayer's accountant;

- Details of the refund request;

- Calculation of the amount of the VAT credit refund being requested; and

- Confirmation that the taxpayer has not requested the same VAT credit to be refunded in a prior tax period.

In addition, for both forms, taxpayers are required to attach their book of purchases and book of sales for the period for which the refund is being requested, in a format provided by the SAT in the online portal.

It is important to note that for taxpayers to use the special electronic regime for VAT credit refunds, they must fulfill certain requirements, including being registered for the online electronic invoice regime (FEL), using an electronic accounting system for recording their usual business transactions, and submitting an electronic form (SAT-0471) through the SAT's online portal to request their registration under the special electronic regime.

In the case of form SAT-2251 for requesting a VAT credit refund under the special electronic regime, the SAT's' online portal indicates that taxpayers are required to provide the following accounting information, as applicable, but the online portal does not yet provide a specific place to upload this information:

- General ledger and journals;

- Financial statements;

- Summary of financial statements; and

- Notes to financial statements.

The SAT is required to make available to taxpayers all electronic tools necessary to comply with the requirements of the special electronic regime for VAT credit refunds, including the requirements to provide electronic accounting information and to electronically attach the information that must be submitted with a refund request, within a non-extendable period of six months from the date the articles of the VAT Law regulating the regime entered into effect (i.e. no later than 30 April 2020).

As part of the implementation of the new electronic forms for requesting VAT credit refunds under the general regime or the special electronic regime, taxpayers will be able to see the status of the requests they file electronically on the SAT's online tax portal, which will be one of the following:

- Suspended;

- In progress;

- Received;

- Accepted;

- Rejected;

- Assigned; or
- Resolved.

India

High Court holds that notice pay recovery is outside the scope of service tax

The Madras High Court held, in a decision issued on 13 December 2019, that "notice pay" recovered by an employer from its employees in lieu of the employees serving their required employment termination notice period is outside the scope of service tax. Service tax was an indirect tax charged in India on the provision of taxable services from July 1994 until 30 June 2017, at rates ranging from 12% to 15%. It was one of a number of indirect taxes replaced by goods and services tax (GST) as from 1 July 2017.

Facts of the case

The employment contracts between the taxpayer and its employees provided that employees were required to give two to three months' notice of termination of the employment. Employees who wished to leave without completing the notice period could do so, provided they reimbursed the employer for the equivalent amount of salary.

The taxpayer had received various amounts in lieu of notice periods not completed by outgoing employees and the tax authorities had required service tax be paid on those amounts. The tax authorities considered that the recovery of the notice pay was within the scope of "declared services" as defined in clause (e) of section 66E of Chapter V of the Finance Act, 1994, that the employer was "tolerating an act" of immediate departure by the employees, and as a result, there was a supply of a taxable service.

Ruling of the High Court

The Madras High Court observed that the employer had not supplied any "service," but merely facilitated the employees' departure without serving the required notice period upon payment of an appropriate amount in lieu thereof. The definition of declared service is not relevant in the circumstances since the employer did not tolerate any acts of the employees.

In considering whether notice pay recovery is chargeable to service tax, the contract of employment must be read in its entirety. Certain contractual situations constitute the supply of a service, such as a breach of a non-compete covenant. However, in the case of notice pay (in lieu of immediate termination of the employment), there is no supply either by the employer or by the employee. Accordingly, service tax does not apply to the recovery of notice pay.

Comments

The decision provides clarity to companies receiving notices from the authorities demanding service tax on notice pay recovery. The Allahabad Customs, Excise & Service Tax Appellate Tribunal previously adopted a similar view in quashing a demand raised on such payments.

Under the GST regime, businesses should analyze the applicability of GST on notice pay recovery in light of the provisions of GST law, relevant judicial precedents concerning service tax, and the appropriate terms of the employment contract.

India

Increase in import duty for medical devices and regulatory changes

India's new customs duty on imported medical devices as from 2 February 2020 and the classification of medical devices as drugs as from 1 April 2020 will affect Indian importers and manufacturers of medical devices.

Customs levy on medical devices

As announced in the 2020/21 union budget, a new customs duty ("health cess") of 5% of the value of the goods is introduced as from 2 February 2020 on the import of certain medical devices to help finance healthcare infrastructure and services. The duty applies to goods classified under headings 9018, 9019, 9020, 9021, and 9022 of the First Schedule to the Customs Tariff Act, 1975.

The value for health cess purposes is determined in accordance with Section 14 of the Customs Act, 1962. Medical devices that are exempt from basic customs duty under an applicable free trade agreement and components used in the manufacture of medical devices are exempt from the cess.

Change in classification of medical devices as drugs

In consultation with the Drugs Technical Advisory Board, the government announced on 11 February 2020 that all medical devices intended for use by humans or animals as are to be classified as drugs and regulated under section 3 of the Drugs and Cosmetics Act, 1940, as from 1 April 2020. This will ensure that all medical devices meet certain standards of quality and efficacy, and make medical device companies accountable for the quality and safety of their products. To regulate the sector, online registration is voluntary for a period of 18 months, after which it will be mandatory.

As from 1 April, the manufacture, import, and sale of all medical devices will need certification from the Central Drugs Standard Control Organization (CDSCO). The manufacturer or importer of a device will be required to upload information related to the device for registration on the "Online System for Medical Devices" established by the CDSCO for this purpose. This broadens the scope of coverage from a compliance perspective since currently only 23 categories of medical device are regulated by the CDSCO. The registration and regulations requirements for medical devices within the regime will be enforced 30 months after 1 April 2020 for low and moderate risk devices (Classes A and B), and 40 months for moderately high and high risk devices (Classes C and D).

Comments

The increase in import duties and additional regulatory compliance requirements may mean that importers, manufacturers, distributors, and hospitals should consider reviewing and potentially reassessing their global supply chain for medical devices.

Ireland

VAT Tax and Duty Manual updates changes to treatment of blood plasma products

On 6 December 2019, Irish Revenue updated the VAT Tax and Duty Manual amending the VAT treatment of certain human blood plasma. As from 1 January 2020, human blood plasma intended to be used in the manufacturing of pharmaceutical products is subject to the standard rate (23%) of VAT; previously, it was exempt. Certain other types of human blood plasma products (and human blood plasma in its natural state) continue to be exempt from VAT.

The new guidance aligns the VAT law with a CJEU decision (C-412/15) that human blood plasma not intended to be used for direct therapeutic purposes, but, rather, exclusively for the manufacture of pharmaceutical products, is not exempt from VAT. As a result, entities who previously treated these types of products as VAT exempt will now need to apply VAT at 23% as appropriate. Given that such products are now subject to VAT, companies who engage in the supply of these products will be entitled to deduct VAT on associated costs.

Italy

Clarification needed on application of VAT "quick fixes"

Certain VAT "quick fixes" agreed upon at the EU level (EU Directive 2018/1910) in connection with intra-EU supplies entered into force on 1 January 2020. However, Italy is still in the process of implementing the necessary changes in its domestic law and the tax authorities have not yet published official clarifications on the rules; there are areas in which additional clarification is needed, particularly in relation to proof of intra-EU transport.

The quick fixes include the following:

- A mandatory VAT identification number check, to apply the VAT exemption regime;
- Simplified and uniform treatment of call-off stock;
- Uniform rules to simplify chain transactions; and
- Harmonized rules for documenting intra-EU transport of goods.

Regarding proof of intra-EU transport, the tax authorities issued an official reply (No. 100) to a ruling request on 8 April 2019, stating that their existing guidelines still would be applicable after the quick fixes entered into effect because they are in line with the new rules set forth by article 45a of EU Regulation 282/2011 (as amended by EU Regulation 2018/1912).

The official reply led to confusion and misinterpretations within the business community, given that the new and supplementary EU regulations regarding the proof of transport appear different and more restrictive when compared with the existing guidelines that have been released by the tax authorities.

To satisfy the need for clarification expressed by economic operators, as well as by the association of Italian joint stock companies, it is expected that the Italian tax authorities will release further guidelines to reconcile their position with the new EU rules on proof of intra-EU transport.

Japan

Fact-finding is key to successful tax appeals

Traditionally, Japan is the country where tax controversy has been the least prevalent, although this trend may be changing. According to the most recent statistics, 3,104 tax appeals were initiated in the National Tax Tribunal (NTT) in FY 2018, which represents an increase of more than 50% over a four-year period (i.e. since FY 2014). This increase is due to the Japanese tax authorities issuing an increasing number of assessment notices and taxpayers appealing the notices rather than complying with them.

There were 216 successful tax appeals to the NTT in FY 2018. Those appeals indicate that fact-finding is key to successful tax appeals to the tribunal.

Tax appeals to the NTT

Fiscal Year	# of tax appeals started	Growth ratio	# of tax appeals completed	# of successful tax appeals	Taxpayer success ratio
FY 2014	2,030	△28.9%	2,980	239	8.0%
FY 2015	2,098	3.3%	2,311	184	8.0%
FY 2016	2,488	18.6%	1,959	241	12.3%
FY 2017	2,953	18.7%	2,475	202	8.2%
FY 2018	3,104	5.1%	2,923	216	

(Source: National Tax Agency)

Options to challenge assessment notices

Differences of opinion between a taxpayer and tax examiners during the course of a tax audit over whether and how much the taxpayer is required to pay are not uncommon. The primary reason for such differences is a discrepancy between the taxpayer's understanding of the facts and those assumed by the tax examiners. Although this discrepancy sometimes can be resolved through open debate during the tax audit process, it is not unusual for unresolved differences of opinion to lead to an assessment notice.

A taxpayer may either accept and comply with an assessment notice issued by the tax authorities as a result of a tax audit or challenge it by appealing it to the issuing tax authorities or the NTT. If the taxpayer appeals to the tax authorities, but receives an unfavorable ruling, the taxpayer still may file an appeal with the NTT. In general, the taxpayer may bring the case to court only after the NTT has rendered a decision unfavorable to the taxpayer in the tax appeal.

Tax controversy process

A tax appeal with the tax authorities generally must be filed within three months after the date the assessment notice is received by the taxpayer or the date the taxpayer acknowledges its issuance (if it is not received by the taxpayer). The tax authorities generally aim to issue a decision within three months after receiving an appeal. Since an appeal to the tax authorities essentially is a quick internal review process, an assessment is unlikely to be overturned unless it clearly is erroneous.

A tax appeal to the NTT generally must be filed within three months after the date the assessment notice is received by the taxpayer or the date the taxpayer acknowledges its issuance (if it is not received by the taxpayer). Upon receiving a tax appeal, the NTT notifies the tax authorities that issued the assessment notice that a tax appeal has been filed, and the tax authorities submit a response to the NTT. The taxpayer then may file further arguments with the NTT. The NTT considers all the arguments and evidence presented and issues its decision in writing, generally within one year after the date the tax appeal was filed.

If the taxpayer wishes to continue challenging the assessment notice after the decision of the NTT, the taxpayer may bring the case to court within six months after the date the taxpayer acknowledges the issuance of the NTT's decision. The taxpayer also may bring the case to court if no decision is rendered by the NTT within three months after the date the tax appeal was made.

Fact-finding

Recent successful tax appeals indicate that fact-finding is key to tax appeals to the NTT. There are two principal issues in tax controversy: fact-finding and legal interpretation. In most tax appeal cases where the NTT reversed an assessment, it did so because it disagreed with the facts assumed and presented by the tax authorities. Fact-finding is an objective exercise and, by relying on objective facts, the NTT functions as a neutral arbiter of disputes between taxpayers and the tax authorities. However, the NTT rarely rejects the tax authorities' legal interpretation, possibly because it is mindful of the wider impact that the interpretation may have on other taxpayers. If such cases, taxpayers may have to bring their case to court.

Comments

Fact-finding is key to successful tax appeals in the NTT:

- A taxpayer generally has an advantage before the NTT if there is a discrepancy between a taxpayer's understanding of the facts and those assumed by the tax examiners. During a tax audit, the tax examiners have to gather facts from relatively limited evidence in a relatively short period of time. It also is difficult for the tax authorities to

collect new evidence once a tax appeal has been filed with the NTT. On the other hand, the taxpayer presumably has access to favorable evidence concerning his/her own affairs and can submit new evidence after the tax appeal has been filed.

- The NTT usually determines the facts of a case based on whether the taxpayer or the tax authorities are more reasonable and persuasive in their presentation of the issues. For example, the tribunal may ask itself: which side's presentation is more aligned with the objective facts and/or with the testimony of relevant parties? Which side's argument can explain plausibly evidence that appears to be adverse? If the NTT cannot determine the facts, it will decide against the party with the burden of proof, which generally is on the tax authorities issuing the assessment notice such that they must produce evidence to support their position.

- The NTT hears arguments from both the taxpayer and the tax authorities, performs its own review of the evidence and issues a decision that is essentially from a third party's perspective free of charge. This procedure allows a taxpayer to correct an unjust assessment based on incorrect facts faster. Even if tax litigation becomes necessary (i.e. if the NTT issues a decision unfavorable to the taxpayer), clarifying contentious points in advance should allow tax litigation to proceed more efficiently.

- When faced with an assessment following a tax audit, taxpayers should carefully consider their options and consult with a tax advisor who has specific expertise and experience with tax appeals and tax litigation before deciding whether to accept or appeal the assessment.

Mexico

Resolución Miscelánea Fiscal 2020

El día 28 de diciembre de 2019 se publicó en el Diario Oficial de la Federación(DOF) la Resolución Miscelánea Fiscal para 2020 (RMF), la cual entró en vigor el 1 de enero de 2020 y estará vigente hasta el 31 de diciembre de 2020, excepto algunas reglas que por su aplicación estarán vigentes o entrarán en vigor en una fecha distinta.

En términos generales la mayoría de las reglas vigentes en la RMF para 2019 se vuelven a publicar, adicionadas por las nuevas reglas correspondientes a la reforma fiscal vigente a partir del 1 de enero de 2020.

A continuación presentamos un resumen de las reglas que consideramos más importantes:

CÓDIGO FISCAL DE LA FEDERACIÓN

Presunción de operaciones inexistentes o simuladas y procedimiento para desvirtuar los hechos que determinaron dicha presunción

Respecto de esta regla, mediante disposición transitoria se señala que tratándose de los procedimientos iniciados al amparo del artículo 69-B del CFF vigente hasta el 24 de julio del 2018, y que a la fecha de la publicación de la presente resolución se encuentren pendientes de concluir y sigan actuando al amparo de lo previsto por el Artículo Segundo Transitorio del "DECRETO por el que se reforma el artículo 69-B del Código Fiscal de la Federación",

publicado en el DOF el 25 de junio de 2018, una vez que hayan transcurrido los treinta días posteriores a la notificación de la resolución a que se refiere el tercer párrafo de dicho precepto legal, la autoridad fiscal publicará un listado en el DOF y en el Portal del SAT, de los contribuyentes que:

- Ejercieron el derecho previsto en el artículo 69-B, segundo párrafo del CFF, sin embargo, una vez valorada la información, documentación y argumentos aportados, no desvirtuaron la presunción de operaciones inexistentes o simuladas a que se refiere el primer párrafo del citado artículo y, por tanto, se encuentran definitivamente en la situación a que se refiere el primer párrafo del citado artículo.

- No ejercieron el derecho previsto en el artículo 69-B, segundo párrafo del CFF y, por tanto, se encuentran definitivamente en la situación a que se refiere el primer párrafo del citado artículo.

- Ejercieron el derecho previsto en el artículo 69-B, segundo párrafo del CFF, y una vez valorada la información, documentación y argumentos aportados, sí desvirtuaron la presunción de operaciones inexistentes o simuladas a que se refiere el primer párrafo del citado artículo.

- Promovieron algún medio de defensa en contra del oficio de presunción a que se refiere el artículo 69-B, primer párrafo del CFF, o en contra de la resolución a que se refiere el tercer párrafo del artículo en comento y una vez resuelto el mismo el órgano jurisdiccional o administrativo dejó insubsistente el referido acto.

Declaraciones de la Instituciones Financieras sujetas a reportar de conformidad con los anexos 25 y 25-Bis

Mediante disposición transitoria se señala que las Entidades que califiquen como Instituciones Financieras de México Sujetas a Reportar y como Instituciones Financieras Sujetas a Reportar, de conformidad con los Anexos 25 y 25-Bis, podrán presentar las declaraciones del periodo reportable 2018 en el periodo extraordinario que comprende del 20 de enero al 28 de febrero de 2020. Dicha facilidad resultará aplicable también para los trámites contenidos en las fichas de trámite 238/CFF "Reporte Anexos 25 y 25-Bis de la RMF sin Cuentas Reportables (reporte en ceros)" y 255/CFF "Aviso relativo a Terceros Prestadores de Servicios conforme los Anexos 25 y 25-Bis de la RMF", contenidas en el Anexo 1-A.

Información y documentación proporcionada por el tercero colaborador fiscal

Con motivo de la Reforma Fiscal, se incluye un procedimiento para que el tercero colaborador fiscal informe a la autoridad fiscal sobre la expedición, enajenación o adquisición de CFDI que amparan operaciones inexistentes, a través del Portal del SAT, debiendo señalar su nombre completo, teléfono de contacto y correo electrónico, así como el nombre, razón o denominación social y clave del RFC del contribuyente cuya información proporciona.

Obligación de los asesores fiscales y contribuyentes de proporcionar la información para revelar esquemas reportables

Esta nueva regla señala que a partir del 1 de enero de 2021, los asesores fiscales y los contribuyentes, revelarán los esquemas reportables mediante la entrega de la información a que se refiere el precepto del CFF, a través de la declaración que para tal efecto disponga el SAT para tal efecto, de conformidad con lo siguiente:

- La declaración se presentará a través del Portal del SAT.

- En la declaración se capturarán los datos generales del declarante, así como la información solicitada en cada uno de los apartados correspondientes.

- La información y documentación que se presente deberá cumplir con lo dispuesto en los instructivos y en los formatos guía que para tal efecto se publiquen en el Portal del SAT.

- La fecha de presentación de la declaración será aquélla en la que el SAT reciba efectivamente la información correspondiente.

  El SAT enviará a los contribuyentes vía buzón tributario, el acuse de recibo de la declaración, una copia de la declaración y un certificado donde conste el número de identificación del esquema.

- En el supuesto de que se modifique la información reportada, se deberá indicar el número de identificación del esquema y la fecha de presentación de la declaración original. Se llenará nuevamente la declaración con los datos correctos, así como los datos generales del declarante, siguiendo el procedimiento establecido en la presente regla.

Acuerdo amplio de intercambio de información

Se adicionan como acuerdos amplios de intercambio de información para varios efectos establecidos en la LISR y la LIVA a la República de Costa Rica, República de Indonesia, Antigua y Barbuda, Brunei Darussalam, Dominica, República Dominicana, República de Ecuador, El Salvador, Jamaica, Estado de Qatar y Serbia a partir de enero de 2020.

Días inhábiles

Para efectos del cómputo de los plazos establecidos en las disposiciones fiscales, se consideran días inhábiles:

- El segundo periodo general de vacaciones del 2019, comprende los días del 23 de diciembre de 2019 al 7 de enero de 2020.

- El primer periodo del 2020 comprende los días del 20 al 31 de julio de 2020.

- El 9 y 10 de abril de 2020.

Verificación de la autenticidad de los acuses de recibo con sello digital

Se modifica sustancialmente esta regla para establecer que los contribuyentes podrán verificar la autenticidad de los acuses de recibo con sello digital que obtengan a través del Portal del SAT, opción "Otros trámites y servicios", sección "Servicios electrónicos", apartado "Verifica la autenticidad del sello digital de las declaraciones", siguiendo las instrucciones que en el citado apartado se señalen, de conformidad con la ficha de trámite 109/CFF "Verificación de la autenticidad de los acuses de recibo con sello digital", contenida en el Anexo 1-A.

Opción para presentar consultas colectivas sobre la aplicación de disposiciones fiscales, a través de organizaciones que agrupan contribuyentes/ Opción para presentar consultas sobre la interpretación o aplicación de disposiciones fiscales

Para efectos de estas opciones, se adiciona que no podrán ser objeto las consultas que versen sobre lo siguiente:

- Deducción de intereses netos del ejercicio

- Entidades extranjeras controladas sujetas regímenes fiscales preferentes

- Pagos efectuados a partes relacionadas o a través de un acuerdo estructurado cuando los ingresos de su contraparte estén sujetos a regímenes fiscales preferentes

- Los pagos que efectúe el contribuyente que también sean deducibles para un miembro de un mismo grupo

- Ingresos obtenidos por o a través de entidades extranjeras transparentes fiscales o figuras jurídicas extranjeras y figuras jurídicas extranjeras transparentes que administren inversiones de capital privado que inviertan en personas morales residentes en México.

- Aplicación de razón de negocios y de la revelación de esquemas reportables (y sus infracciones tanto para el asesor fiscal como para el contribuyente)

Valor probatorio de la contraseña

Se adiciona a esta regla, con motivo de la reforma Fiscal, que cuando la autoridad fiscal identifique que el contribuyente se ubica en alguno de los supuestos previstos en el nuevo precepto del CFF, podrá restringir temporalmente la contraseña, hasta que el contribuyente aclare o desvirtúe dicho supuesto, de lo contrario se podrá bloquear el certificado.

Buzón tributario y sus mecanismos de comunicación para el envío del aviso electrónico

Se modifica sustancialmente esta regla para establecer que los contribuyentes deberán habilitar el buzón tributario registrando sus medios de contacto y confirmándolos dentro de las 72 horas siguientes, de acuerdo al procedimiento descrito en la ficha de trámite 245/CFF "Habilitación del buzón tributario y registro de mecanismos de comunicación como medios de contacto", contenida en el Anexo 1-A.

Los mecanismos de comunicación como medios de contacto disponibles son:

- El correo electrónico.

- Número de teléfono móvil para envío de mensajes cortos de texto.

Para dichos efectos y de la infracción en que pueden incurrir los contribuyentes relativa a no habilitar el buzón tributario, no registrar o no mantener actualizados los medios de contacto, a través de disposición transitoria se estipula que será aplicable para personas morales a partir del 31 de marzo de 2020 y para las personas físicas a partir del 30 de abril de 2020. No obstante, el uso obligatorio del buzón tributario tendrá el carácter de opcional cuando se trate de contribuyentes asalariados.

Procedimiento para restringir temporalmente el uso del CSD para la expedición de CFDI y para subsanar la irregularidad o desvirtuar la causa detectada

Esta nueva regla establece que Los contribuyentes a quienes se les haya restringido temporalmente el uso del CSD para la expedición de CFDI podrán presentar la solicitud de aclaración conforme a la ficha de trámite 296/CFF "Aclaración para subsanar las irregularidades detectadas o desvirtuar la causa que motivó que se le haya restringido temporalmente el uso del certificado de sello digital para la expedición del CFDI en términos del artículo 17-H Bis del CFF", contenida en el Anexo 1-A. De igual forma, utilizarán dicha ficha de trámite para la atención del requerimiento de datos, información o documentación que derive de la presentación de la solicitud de aclaración, así como para la solicitud de prórroga.

Cuando derivado de la valoración de los datos, información o documentación presentada por el contribuyente a través de la solicitud de aclaración y, en su caso, atención al requerimiento, se determine que subsanó la irregularidad detectada o desvirtuó la causa que motivó la restricción temporal del CSD para la expedición de CFDI, el contribuyente podrá continuar con el uso del mismo; en caso contrario, se dejará sin efectos el CSD. En ambos casos, la autoridad emitirá la resolución respectiva. Cuando las autoridades fiscales restrinjan temporalmente o restablezcan el uso del CSD, se considera que también restringen o restablecen el uso del mecanismo que utilice el contribuyente para la expedición de CFDI.

Información de socios o accionistas ante el RFC

En disposición transitoria se establece que las personas morales que no tengan actualizada la información de sus socios o accionistas ante el RFC, deberán presentar el aviso con la información correspondiente a la estructura con la que se encuentren en ese momento. El aviso referido deberá presentarse por única ocasión a más tardar el 30 de junio del 2020.

Casos en que procede la suspensión de actividades por acto de autoridad

Se adiciona un nuevo supuesto en el que procedería la suspensión de actividades por acto de autoridad, tratándose de personas físicas o morales que deban realizar declaraciones periódicas conforme a la normatividad vigentes y la autoridad detecte que no lo realizan, asimismo, que no emitan ni reciban facturas, no hayan presentado avisos de actualización y no sean informados por terceros durante mínimo un ejercicio fiscal. En este caso, se procederá a la suspensión de actividades en el RFC prevista en el párrafo anterior.

En este caso y cuando el contribuyente deje de presentar declaraciones periódicas la suspensión de actividades que realice la autoridad no exime de que se pueda requerir a los contribuyentes por obligaciones o créditos fiscales pendientes.

Casos en los que la autoridad podrá consultar servicios o medios tecnológicos que proporcionen georreferenciación, vistas panorámicas o satelitales

Con motivo de la Reforma Fiscal, se adiciona una nueva regla que establece que la autoridad fiscal podrá utilizar servicios o medios tecnológicos que proporcionen georreferenciación, vistas panorámicas o satelitales, para consultar u obtener información que contribuya a determinar la localización y ubicación de los domicilios manifestados por los contribuyentes en su solicitud de inscripción o avisos de actualización al RFC, información que podrá ser utilizada por la autoridad para actualizar los datos del domicilio fiscal del contribuyente.

Opción para que las personas morales de derecho agrario tributen conforme a flujo de efectivo y reduzcan el ISR en un 30%

Con motivo de la Reforma Fiscal, esta nueva regla establece que las personas morales a que se refiere dicho precepto podrán ingresar un caso de aclaración a través del Portal del SAT, a más tardar el 31 de enero del 2020, a través del cual manifiesten que aplicarán lo previsto en el artículo 74-B, mediante la ficha de trámite 144/ISR.

Los contribuyentes de reciente creación, así como los que reanuden actividades podrán optar por ejercer esta opción, presentando el caso de aclaración a que se refiere el párrafo anterior, a más tardar dentro del mes siguiente a su inscripción o reanudación de actividades en el padrón del RFC.

Presentación del dictamen fiscal 2019

El dictamen fiscal de 2019 se deberá presentar a más tardar el 29 de julio de 2020 siempre y cuando las contribuciones estén pagadas al 15 de julio de 2020 y esto quede reflejado en el anexo "Relación de contribuciones por pagar".

Declaración informativa de Operaciones relevantes

A través de disposición transitoria se estipula que los contribuyentes presentarán la información de las operaciones relevantes correspondiente al último trimestre del ejercicio fiscal 2019, a través de la forma oficial 76 "Declaración informativa de operaciones relevantes" y tomando en consideración lo dispuesto en la ficha de trámite 230/CFF "Declaración informativa de operaciones relevantes", contenida en el Anexo 1-A. La fecha límite en que se deberá presentar dicha información será el último día de febrero de 2020.

IMPUESTO SOBRE LA RENTA

Deducción de gastos e inversiones realizadas por figuras jurídicas extranjeras que sean transparentes fiscales

Para efectos de que los residentes en México y los residentes en el extranjero con EP en nuestro país, integrantes de la figura jurídica, que estén obligados a pagar el ISR mexicano por los ingresos que obtengan a través de figuras jurídicas extranjeras, puedan efectuar la

deducción de gastos e inversiones correspondientes a dichos ingresos, en una nueva regla, se establece que dicha deducción se realice en la proporción de su participación promedio diaria en ella y se cumplan los requisitos mencionados en dicha regla, entre ellos que los demás integrantes y las personas a favor de quienes efectúen los gastos e inversiones, sean residentes en México o en un país con el que México tenga en vigor un acuerdo amplio de intercambio de información.

Concepto de entidades y figuras jurídicas extranjeras transparentes fiscales

Esta otra nueva regla estipula que se consideran entidades extranjeras, las sociedades y demás entes creados o constituidos conforme al derecho extranjero que tengan personalidad jurídica propia, así como las personas morales constituidas conforme al derecho mexicano que sean residentes en el extranjero y se consideran figuras jurídicas extranjeras, los fideicomisos, las asociaciones, los fondos de inversión y cualquier otra figura jurídica similar del derecho extranjero que no tenga personalidad jurídica propia. Asimismo, se considera que las entidades o figuras jurídicas extranjeras son transparentes fiscales, cuando no sean residentes fiscales para efectos del impuesto sobre la renta en el país en que están constituidas o tengan su administración principal de negocios o sede de dirección efectiva y sus ingresos son atribuidos a sus miembros, socios, accionistas, o beneficiarios.

Deducción de pagos realizados por sociedades mexicanas consideradas transparentes fiscales para los efectos de una legislación extranjera

Tratándose de sociedades mexicanas consideradas transparentes fiscales para los efectos de una legislación extranjera, se adiciona que cuando se generen montos no deducibles por motivo de momentos distintos en la acumulación de ingresos entre el contribuyente y sus socios o accionistas, dicho importe podrá deducirse en la medida y proporción en que los ingresos que perciba dicha sociedad, sean acumulados por sus socios o accionistas en el ejercicio inmediato posterior y, siempre que dichos socios o accionistas sean residentes en un país con el que México tenga en vigor un tratado para evitar la doble tributación

Procedimiento para la presentación de la declaración de ISR del ejercicio para personas morales del régimen general de ley

Esta regla nueva señala que los contribuyentes personas morales, deberán presentar la declaración anual en la que determinen el resultado fiscal del ejercicio o la utilidad gravable del mismo, y el monto del impuesto correspondiente, ingresando al Portal del SAT a través del Servicio de "Declaraciones y Pagos". El acceso a la declaración se realizará con la clave en el RFC y Contraseña o e.firma. La declaración estará prellenada con la información obtenida de los pagos provisionales presentados por el contribuyente, así como de los CFDI de nómina que hayan emitido a sus trabajadores. En caso de que el contribuyente deseé modificar la información prellenada, obtenida de los pagos provisionales, deberá presentar declaraciones complementarias de dichos pagos.

Asimismo, se deberá capturar la información requerida por el propio aplicativo.

Concluido el llenado de la declaración, se deberá realizar el envío utilizando la e.firma.

Cuando exista cantidad a cargo, el acuse de recibo incluirá la línea de captura con el importe total a pagar, así como la fecha de vigencia de la misma, a través de la cual se efectuará el pago, mismo que deberá cubrirse mediante transferencia electrónica de fondos o pago con línea de captura vía Internet, en la página de Internet de las instituciones de crédito autorizadas por la TESOFE, publicadas en el Portal del SAT.

Se considera que los contribuyentes han cumplido con la obligación de presentar la declaración del ejercicio en los términos de las disposiciones fiscales, cuando hayan realizado el envío y en su caso se haya efectuado el pago en términos de lo señalado en el párrafo anterior.

Declaración informativa sobre ingresos que se hayan generado sujetos a Regímenes Fiscales Preferentes (REFIPRES)

En disposiciones transitorias se establece que los contribuyentes obligados a presentar la declaración informativa por los ingresos sujetos a REFIPRES correspondientes al ejercicio fiscal 2019, deberán realizar su envío a través del Portal del SAT, por medio de la forma oficial 63 "Declaración Informativa de los Regímenes Fiscales Preferentes", conforme a lo dispuesto en la ficha de trámite 116/ISR "Declaración informativa de los regímenes fiscales preferentes", contenida en el Anexo 1-A.

Declaración informativa sobre operaciones que se realicen a través de figuras o entidades jurídicas extranjeras que sean transparentes fiscales

Mediante disposición transitoria se señala que la declaración informativa que presenten los contribuyentes por las operaciones que realicen a través de figuras o entidades jurídicas extranjeras que sean transparentes fiscales, correspondiente al ejercicio fiscal 2019, deberá contener al menos la siguiente información:

- Los ingresos totales que genere el contribuyente a través de dichas figuras o entidades.

- La utilidad o pérdida fiscal que genere el contribuyente de dichas figuras o entidades.

- El tipo de activos que estén afectos a la realización de las actividades de dichas figuras o entidades.

- Las operaciones que llevan dichas figuras o entidades con residentes en México.

Declaración informativa de subsidio para el empleo. Acreditamiento de cantidades entregadas por subsidio para el empleo

Se adicionan estas reglas para establecer que se tendrá por cumplida la obligación de dicha declaración informativa con la emisión de los CFDI's de nómina. Asimismo, no será acreditable para quienes realicen pagos por concepto de sueldos y salarios, el subsidio para el empleo cuando, no se haya anotado el monto del subsidio para el empleo de manera expresa y por separado en los CFDI's de nómina entregados a sus trabajadores.

Pagos provisionales que realizan por primera vez los residentes en el extranjero por conducto de una empresa con programa IMMEX bajo la modalidad de albergue

Se adiciona esta regla para señalar que los residentes en el extranjero sin EP que terminaron el periodo de aplicación de los 4 años y que por primera vez vayan a efectuar pagos provisionales mensuales por conducto de la empresa con programa IMMEX bajo la modalidad de albergue, para su determinación deberán sujetarse a lo siguiente:

- La empresa con programa IMMEX determinará el ISR que le hubiera correspondido a cada uno de los residentes en el extranjero, en el ejercicio fiscal inmediato anterior al año en que concluya el plazo de los 4 años, de haber estado obligados a tributar en este impuesto, utilizando para tales efectos la utilidad fiscal que hubiera resultado de aplicar el monto mayor que resulte de comparar los dos procedimientos que establece la LISR.

- Los pagos provisionales mensuales serán la cantidad que resulte de dividir entre doce el ISR del ejercicio determinado, que le hubiera correspondido, para cada uno de los residentes en el extranjero de conformidad a lo establecido en el punto anterior, multiplicando dicho resultado por los meses transcurridos en el ejercicio a que corresponda el pago provisional, pudiendo acreditar contra el impuesto a pagar, los pagos provisionales del mismo ejercicio efectuados con anterioridad.

- El primer pago provisional comprenderá el primero, el segundo y el tercer mes del ejercicio, sea regular o irregular, y se efectuará en la fecha en que deba realizarse el pago provisional correspondiente al tercer mes del ejercicio.

Tratándose de ejercicios irregulares, únicamente se efectuarán pagos provisionales cuando el ejercicio sea por un periodo igual o mayor a tres meses.

Obligaciones fiscales para residentes en el extranjero que realicen operaciones de maquila, por conducto de empresas con programa de maquila bajo la modalidad de albergue

Esta nueva regla estipula que los residentes en el extranjero, por conducto de las empresas con programa de maquila bajo la modalidad de albergue con las que realicen operaciones de maquila, deberán cumplir con lo siguiente:

- Realizar su inscripción al RFC sin obligaciones fiscales de conformidad con la ficha de trámite 43/CFF "Solicitud de inscripción en el RFC de personas morales en la ADSC", contenida en el Anexo 1-A.

- Presentar la DIEMSE, incluyendo el módulo correspondiente a sus operaciones de comercio exterior, contenido en la mencionada Declaración, con lo cual tendrán por cumplida la obligación de presentar la declaración informativa anual en el mes de junio del año siguiente de que se trate.

- Presentar aviso ante el SAT cuando dejen de realizar las actividades, de conformidad con la ficha de trámite 143/ISR "Aviso por el que los residentes en el extranjero que realizan operaciones de maquila a través de una empresa maquiladora de albergue informan que dejan de realizar sus actividades de maquila", contenida en el Anexo 1-A.

En caso de solicitar una resolución particular, deberá hacerse conforme a la ficha de trámite 142/ISR "Consultas en términos del artículo 34-A del CFF realizadas por empresas con programa de maquila bajo la modalidad de albergue", contenida en el Anexo 1-A.

Mediante disposición transitoria se establece que Los residentes en el extranjero que con anterioridad al 31 de diciembre de 2019, llevaron a cabo operaciones de maquila a través de una empresa con programa IMMEX bajo la modalidad de albergue y hayan aplicado la opción contenida en la regla correspondiente, vigente hasta la citada fecha, deberán cumplir las obligaciones que deriven de su aplicación, durante el lapso en que se hayan acogido a ella.

Fideicomiso dedicado a la adquisición o construcción de inmuebles que invierte en torres de telecomunicaciones móviles

Para efectos de que el fin primordial de dicho fideicomiso sea la adquisición o construcción de bienes inmuebles que se destinen al arrendamiento y se pueda gozar del estímulo correspondiente, se considerará cumplido este requisito cuando el fideicomiso que invierta en torres de telecomunicaciones móviles, cumpla con los requisitos establecidos en la propia regla que se adiciona.

LEY DEL IMPUESTO AL VALOR AGREGADO

Retención del 6% de IVA por servicios recibidos

A través de disposición transitoria se señala que para efectos de dicha retención por los servicios en donde se pone a disposición del contratante o de una parte relacionada de éste personal del contratista, los contribuyentes estarán obligados a efectuar la retención del 6% del valor de las contraprestaciones que sean efectivamente pagadas a partir del ejercicio 2020.

Los contribuyentes que hayan emitido los CFDI's de las contraprestaciones antes de la fecha de la entrada en vigor del presente Decreto, podrán aplicar las disposiciones vigentes en 2019, siempre que el pago de las contraprestaciones respectivas se realice dentro de los diez días naturales inmediatos posteriores a dicha fecha.

Tasa de retención del IVA en subcontratación laboral (Región Fronteriza Norte)

Para efectos Del Decreto de Estímulos Fiscales Región Fronteriza Norte y de la retención por los servicios en donde se pone a disposición del contratante o de una parte relacionada de éste personal del contratista, las personas físicas o morales con actividades empresariales obligadas a efectuar la retención por dichos servicios, podrán optar por efectuar dicha retención por el 3% del valor de la contraprestación efectivamente pagada, en lugar del 6%.

LEY DE INGRESOS DE LA FEDERACION

Para efectos del estímulo consistente en una deducción en el impuesto sobre la renta, por un monto equivalente al 8% del costo de los libros, periódicos y revistas que adquiera el contribuyente, se adiciona una regla que establece que las personas físicas y morales residentes en México que enajenen libros, periódicos y revistas, cuyos ingresos totales en el ejercicio inmediato anterior no hubieran excedido de la cantidad de seis millones de pesos y

que obtengan durante el ejercicio de que se trate ingresos por la enajenación de libros, periódicos y revistas que representen al menos el 90% de los ingresos totales del contribuyente, deberán observar lo siguiente:

- Presentarán a más tardar el 31 de enero de cada año, a través de buzón tributario o un caso de aclaración a través del Portal del SAT, aviso en el que señalen que aplicarán durante el ejercicio fiscal el estímulo fiscal. Cuando en el ejercicio fiscal las personas físicas y morales inicien operaciones o reanuden actividades, presentarán el aviso a que se refiere el párrafo anterior dentro del mes siguiente a aquél en que se presenten los trámites de inscripción en el RFC o reanudación de actividades.

- Para determinar el 90% de sus ingresos totales, no deberán incluir los ingresos por las enajenaciones de activos fijos o activos fijos y terrenos, de su propiedad que hubiesen estado afectos a su actividad.

- Cuando realicen operaciones por un periodo menor a doce meses, para determinar el monto mencionado en el primer párrafo de esta regla, dividirán los ingresos manifestados entre el número de días que comprende el periodo y el resultado se multiplicará por 365 días.

- Cuando inicien operaciones los contribuyentes podrán optar por aplicar el estímulo cuando estimen que sus ingresos del ejercicio no excederán del monto mencionado.

DE LA PRESTACIÓN DE SERVICIOS DIGITALES

Con motivo de la reforma fiscal 2020, se adiciona el capítulo de referencia con sus reglas correspondientes, el cual junto con sus fichas de trámite 1/PLT a 5/PLT, contenidas en el Anexo 1-A, entrarán en vigor a partir del 1 de junio de 2020. Las reglas que de este capítulo se adicionaron en materia de ISR, IVA y CFF son las siguientes:

1. Inscripción en el RFC de residentes en el extranjero que proporcionen servicios digitales.

2. Trámite del certificado de e.firma para residentes en el extranjero que proporcionen servicios digitales.

3. Aviso para designar a un representante legal y proporcionar un domicilio en territorio nacional.

4. Comprobante fiscal de los residentes en el extranjero que proporcionan servicios digitales.

5. Listado de prestadores de servicios digitales inscritos en el RFC.

6. Pago del IVA por la importación de servicios digitales

7. Pago de contribuciones y en su caso entero de las retenciones de residentes en el extranjero que proporcionen los servicios digitales a que se refiere el artículo 18-B de la Ley del IVA.

8. Inscripción en el RFC de residentes en el extranjero que presten servicios digitales de intermediación entre terceros con el carácter de retenedores del ISR e IVA.

9. Aviso de actualización de obligaciones de los residentes en México o residentes en el extranjero que presten servicios digitales de intermediación entre terceros.

10. Emisión del CFDI de retención por servicios digitales de intermediación entre terceros.

11. Facilidad de expedición de comprobante de retenciones para servicios digitales de intermediación entre terceros.

12. Expedición de comprobantes con clave en el RFC genérica.

13. Inscripción en el RFC de las personas físicas que enajenen bienes, presten servicios o concedan hospedaje a través de plataformas tecnológicas.

14. Actualización de obligaciones fiscales de las personas físicas que enajenen bienes, presten servicios o concedan hospedaje a través de plataformas tecnológicas.

15. Opción para considerar como pago definitivo las retenciones del ISR e IVA.

16. Opción para considerar como pago definitivo las retenciones del ISR e IVA cuando además se obtengan ingresos del RIF.

17. Opción para continuar con los beneficios del artículo 23 de la LIF.

18. Expedición de CFDI a los adquirentes de bienes o servicios a través de plataformas Digitales.

19. Determinación del límite de ingresos para optar por considerar como pago definitivo la retención realizada por las plataformas tecnológicas.

20. Personas que ya tributan en el RIF que además obtienen ingresos por operaciones a través de plataformas tecnológicas.

21. Acreditamiento de la retención del ISR efectuada conforme a la regla 3.11.11., a las personas físicas con actividades empresariales que obtienen ingresos por operaciones a través de plataformas tecnológicas.

22. Conclusión del uso de la plataforma tecnológica.

En disposición transitoria se estipula que el aviso presentado por las plataformas para realizar las retenciones del ISR e IVA conforme a la regla 3.11.12. de la RMF para 2019, y la ficha de trámite 292/CFF "Aviso para optar por efectuar la retención del ISR e IVA a prestadores de servicio de transporte terrestre de pasajeros o entrega de alimentos", se considera vigente del 01 de enero del 2020 al 31 de mayo del 2020.

Retención de ISR e IVA aplicable a los prestadores de servicio de transporte terrestre de pasajeros o entrega de alimentos (que prestan el servicio mediante el uso de plataformas tecnológicas)

Se vuelven a publicar las mismas reglas que estuvieron vigentes durante 2019 relativas a la retención de ISR e IVA aplicable a los prestadores de servicio de transporte terrestre de pasajeros o entrega de alimentos, con el único cambio de los porcentajes de retención, los cuales se ajustaron a los porcentajes establecidos en la reforma fiscal 2020 en el ISR, quedando la tabla de retención como sigue:

Monto del ingreso mensual $	Tasa de retención (%)	
	ISR	IVA
Hasta $5,500.00	2	8
Hasta $15,000.00	3	8
Hasta $21,000.00	4	8
Más de $21,000.00	8	8

Mediante artículo transitorio se estipula que dichas reglas estarán vigentes del 1 de enero al 31 de mayo de 2020; a partir del 1 de junio de 2020 entrarán las nuevas reglas correspondientes a la reforma fiscal 2020 correspondientes al capítulo "De la prestación de servicios digitales".

No aplicación de la facilidad de la nueva regla 12.2.4 de expedición de comprobante de retenciones para servicios digitales de intermediación entre terceros

En artículo transitorio se establece que los sujetos que presten servicios digitales de intermediación entre terceros que hayan aplicado el esquema contenido en las reglas de la RMF para 2019 y las reglas de la RMF 2020 y expedido los CFDI conforme a las mismas, no podrán aplicar la facilidad establecida en la regla 12.2.4 que permite optar por expedir durante 2020, un comprobante de la retención efectuada, en lugar del CFDI de retenciones e información de pagos con el complemento "Servicios Plataformas Tecnológicas", mediante archivos electrónicos en formato PDF.

Cabe señalar que la regla 12.2.4 permite como facilidad emitir un comprobante que al menos contenga los siguientes requisitos:

- Nombre, denominación o razón social del emisor.
- Ciudad y País en el que se expide.
- Clave de registro tributario de quien lo expide.
- Clave en el RFC del receptor del comprobante, cuando se cuente con la misma.
- Monto de la contraprestación por el servicio sin incluir el IVA.
- IVA del servicio.

- Concepto, descripción del servicio o tipo de operación.
- Fecha de expedición y período que ampara la retención.
- Número de cuenta bancaria donde se depositó la contraprestación.
- Monto del ISR retenido sobre el total de los ingresos que efectivamente perciban las
- personas físicas por conducto de las plataformas sin incluir el IVA durante el mes.
- Monto del IVA retenido sobre el IVA cobrado.

Personas físicas que tributan en el RIF que hayan optado por considerar las retenciones como pagos definitivos (uso de plataformas tecnológicas)

A través de disposición transitoria se estipula que las personas físicas que tributan en el RIF que hayan optado por considerar las retenciones del ISR e IVA como pagos definitivos conforme a lo dispuesto en la regla correspondiente, vigente hasta el 31 de mayo de 2020, podrán considerar las retenciones efectuadas en el mes de mayo de 2020 como pago definitivo del bimestre mayo-junio de 2020. A partir del 1 de junio de 2020, estarán sujetos a las retenciones del ISR e IVA en términos de las reformas a la LISR y LIVA, en cuyo caso podrán considerar como pago definitivo la retención que por dichos ingresos les efectúen siempre que cumplan con la LISR, entre otros requisitos, que sus ingresos obtenidos mediante el uso de plataformas electrónicas en el ejercicio inmediato anterior no hayan excedido de trescientos mil pesos y con la LIVA en ciertos requisitos que establece la misma.

Personas físicas que ya estén recibiendo ingresos por la prestación de servicios de transporte terrestre de pasajeros o entrega de alimentos

Por último, mediante disposición transitoria se establece que las personas físicas que ya estén percibiendo ingresos por la prestación de forma independiente de servicios de transporte terrestre de pasajeros o entrega de alimentos preparados, a través de plataformas tecnológicas, aplicaciones informáticas y similares, y estén aplicando la regla vigente al 31 de mayo de 2020, por los ingresos que perciban por la enajenación de bienes o la prestación de servicios a través de Internet mediante plataformas tecnológicas, aplicaciones informáticas y similares, a que se refiere la Ley del ISR, y la Ley del IVA, se encuentran relevados de cumplir con la obligación de presentar el aviso a que se refiere la ficha de trámite 71/CFF "Aviso de actualización de actividades económicas y obligaciones", contenida en el Anexo 1-A, para ubicarse en el Régimen de Actividades Empresariales y Profesionales a que se refiere la Ley del ISR, siendo la autoridad fiscal competente la encargada de realizarlo con base en la información existente en el RFC al 31 de mayo de 2020.

The Netherlands

E-identification not required for 2020 VAT return filings

On 10 February 2020, the Dutch State Secretary of Finance published a letter providing clarity as to whether e-identification must be used for filing VAT returns. As of 1 January 2020, payroll tax and corporate income tax returns must be filed using e-identification (an

extension allows payroll tax filings to use the standard method until 1 July 2020). However, taxpayers have been uncertain as to whether they are required to use e-identification for filing VAT returns as well.

The letter came in response to taxpayer uncertainty and questions raised by parliament surrounding the e-identification program. The letter provides as follows:

- For 2020, entrepreneurs do not need to use e-identification to file VAT returns; instead, the standard method (i.e., using a username and password to log in to the tax administration portal) will continue to apply for filing VAT returns.

- No date has been identified for conversion to using e-identification for filing VAT returns.

- Only legal entities registered in the Trade Register at the Chamber of Commerce are allowed to apply for e-identification. Since VAT groups cannot be registered with the Chamber of Commerce, such groups may continue to file their VAT returns using the standard method.

The Netherlands

Implementation VAT e-commerce package in the Netherlands by 1 January 2021 unlikely

According to the newly appointed Dutch State Secretaries of Finance it is highly unlikely that the VAT e-commerce package will be implemented by 1 January 2021. The delay is caused due by the current ICT problems the Dutch Tax Authorities are having.

Failure to implement the new EU e-commerce regulations in a timely manner can have major consequences for businesses involved in cross-border trade to consumers.

Background

State Secretaries Vijlbrief and Van Huffelen sent the House of Representatives a letter (only available in Dutch) addressing the problems the Dutch Tax Authorities are currently experiencing. For a long time, the Tax Authorities were successful in fulfilling their tasks. However, this has led to many new tasks being added and an increasing complexity. As a result, the Tax Authorities have come under pressure due to the outdated ICT systems, according to the State Secretaries.

As a result of these ICT problems, the implementation of the EU VAT e-commerce package is likely to be postponed. The Tax Authorities are investigating how and when the measures can be implemented. The State Secretaries will inform and involve the European Commission. It is yet unclear whether there are any conceivable and feasible alternatives. The State Secretaries will inform the Dutch Parliament about further developments before the summer of 2020.

These developments make it unclear to business involved in cross-border trade whether they must have their systems adapted to the new e-commerce rules by 1 January 2021. The State Secretaries do not discuss this in their letter.

We will keep you informed about any further developments.

Guidance issued on new VAT regime for low-value goods

On 12 February 2020, Norway's Ministry of Finance and tax authorities issued, respectively, VAT regulations and guidelines ("guidance") on the simplified VAT registration and reporting system (VAT on e-commerce (VOEC)) for foreign suppliers of low-value goods, effective as from 1 April 2020. The guidance addresses the concept of a "deemed supplier" and certain compliance matters.

Overview of VOEC

In conjunction with abolishing the exemption of VAT and other indirect taxes as from 1 January 2020 on imported goods valued at less than NOK 350, the Norwegian government introduced new legislation, effective as from 1 April 2020, requiring foreign suppliers of low-value goods to register for and report VAT using a new VOEC system. Low-value goods are all goods valued under NOK 3,000 (excluding any additional costs), except for goods subject to excise duty (including tobacco products and alcoholic beverages), restricted or illegal goods, and any goods meant for human consumption.

A primary purpose of the VOEC system is to shift the VAT liability on sales of low-value goods from Norwegian consumers to foreign suppliers, with VAT collected by the supplier at the point of sale and not by the customer upon import.

Under the VOEC system, if a supplier uses an intermediary, such as an online marketplace, to facilitate the sales of imported goods through electronic platforms, portals, and similar means, the intermediary will be the "deemed supplier" and must register, collect, report, and remit the VAT (similar to rules set forth in the EU implementing regulation on supplies of goods facilitated by electronic interfaces (Implementing Regulation (EU) 2019/2026)). This is a mandatory requirement and not a voluntary choice by the supplier as to whether the intermediary is a deemed supplier.

VOEC is an extension of the current simplified VAT registration and reporting system for foreign suppliers of electronic services (VAT on electronic services (VOES)), and uses the same simplified electronic registration process and electronic submission of quarterly VAT returns, and generally has fewer administrative burdens.

Guidance on "deemed supplier" rule

To be the deemed supplier, the guidance states that the intermediary must determine the general supply terms, being involved in the payment, order, and delivery of the goods. However, the intermediary will not be the deemed supplier if it performs only administrative tasks, such as facilitating payment, managing advertising, or referring customers to other electronic interfaces.

Guidance on compliance

The guidance states that foreign suppliers under the VOEC system will be required to keep a record of all transactions, including a description of the goods, the date of delivery, and information about any returns.

The guidance outlines procedures with the customs authorities to avoid VAT being charged upon import. Any communications with the customs authorities should include the unique VOEC number assigned to the supplier, as well as a description of the goods including the value and amount.

Saudi Arabia

Customs authority announces self-correction initiative for customs declarations

On 1 January 2020, Saudi Arabia's customs authority announced that taxpayers will be allowed to make qualifying "self-correction" declarations within a six-month period beginning on 1 January 2020. This initiative aligns with the vision of the customs authority to increase transparency which, in turn, will provide a more stable business environment for Saudi businesses.

Corrections may address valuation, origin, or classification of goods, and taxpayers should ensure they have the proper documentation to support and explain any corrections.

Although the announcement does not refer to how far back errors may be corrected, it is anticipated that the customs authority will accept corrections made to declarations from the last five years.

This initiative is welcomed and should benefit many importers as it will allow them to take a considered look at their current activities to determine whether they are in full compliance. This is especially relevant with respect to the classification and origin of goods, where the typical use of third-party clearing agents can sometimes lead to inaccurate reporting.

United States

State Tax Matters (31 January 2020)

The 31 January 2020 edition of US State Tax Matters includes coverage of the following:

- Amnesty/voluntary disclosure/administrative developments in Illinois and South Carolina;

- Income/franchise tax developments from the US House of Representatives and in Illinois, Maine, New York, and Oregon; and

- Indirect tax developments in Kansas, Louisiana, and Texas.

The newsletter also features a recent Multistate Tax Alert: *New Jersey establishes elective entity tax for pass-through entities (PTE)*

United States

State Tax Matters (7 February 2020)

The 7 February 2020 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Michigan, North Carolina, Oregon, Texas, Utah, and Wisconsin; and

- Indirect tax developments in Georgia, Nevada, North Carolina, Pennsylvania, South Carolina, Utah, and Washington.

United States

State Tax Matters (14 February 2020)

The 14 February 2020 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Colorado, Louisiana, New Jersey, Ohio, and Oregon; and

- Indirect tax developments in Alaska, Colorado, Illinois, Massachusetts, Pennsylvania, and Washington.

The newsletter also features recent Multistate Tax Alerts:

- *Employers located in a Qualified Disaster Zone may be eligible for federal Disaster Relief Tax Credits, up to $2,400 per eligible employee*

- *Oregon releases four additional temporary Corporate Activity Tax (CAT) administrative rules*

United States

State Tax Matters (21 February 2020)

The 21 February 2020 edition of US State Tax Matters includes coverage of the following:

- Income/franchise tax developments in Mississippi, New Jersey, New York, Ohio, Rhode Island, and Virginia; and

- Indirect tax developments in Colorado, Louisiana, Pennsylvania, Texas, and Washington.

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

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

Atentamente,
Deloitte Legal