Deloitte.
Legal

Septiembre 2020
Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

3. Tribunal Económico-Administrativo Central. Resolución 3041/2017, de 3 de junio.

4. Tribunal Económico-Administrativo Central. Resolución 2376/2017, de 9 de junio.

5. Tribunal Económico-Administrativo Central. Resolución 4122/2016, de 9 de junio.

6. Tribunal Económico-Administrativo Central. Resolución 3786/2016, de 9 de junio.

7. Dirección General de Tributos. Contestación nº V2246-20, de 1 de julio de 2020.

8. Dirección General de Tributos. Contestación nº V2419-20, de 14 de julio de 2020.

9. Dirección General de Tributos. Contestación nº V2438-20, de 16 de julio de 2020.

10. Dirección General de Tributos. Contestación nº V2441-20, de 16 de julio de 2020.

11. Dirección General de Tributos. Contestación nº V2443-20, de 16 de julio de 2020.

12. Dirección General de Tributos. Contestación nº V2457-20, de 17 de julio de 2020.

13. Dirección General de Tributos. Contestación nº V2509-20, de 22 de julio de 2020.

14. Dirección General de Tributos. Contestación nº V2522-20, de 23 de julio de 2020.

15. Dirección General de Tributos. Contestación nº V2525-20, de 23 de julio de 2020.

16. Dirección General de Tributos. Contestación nº V2602-20, de 31 de julio de 2020.

17. Dirección General de Tributos. Contestación nº V2608-20, de 31 de julio de 2020.

IV. Country Summaries

Feature articles

OECDE

Tax policy reforms 2020 report

The OECD has published the latest edition of its annual report identifying major tax policy trends in OECD and certain other partner economies, including VAT and other indirect taxes. This report also covers fiscal measures introduced in response to COVID-19.

Australia

Combined assurance reviews

The ATO has announced a change to its tax assurance program for Top 1,000 taxpayers. The Top 1,000 income tax performance program will end in December 2020 and be replaced by the Top 1,000 combined assurance program, which will cover both income tax and GST.

Canada

Sales tax registration for nonresidents

Various Canadian tax authorities have introduced or suggested the possibility of rules that may require nonresident vendors to register to collect sales tax. Given some recent announcements, Deloitte has assembled a roadmap to track these advances.

Hungary

Real-time invoice data reporting obligation

With the extension of the real-time invoice data reporting obligation from 1 January 2021, the Ministry of Finance announced a "grace period" for compliance, and there is an updated version of the schema for the provision of the obligation.

Ireland

Standard VAT rate reduced temporarily

The government has signed into law measures to improve the economy and assist businesses in response to COVID-19, including a temporary reduction to the standard rate of VAT from 23% to 21%, effective for six months from 1 September 2020.

Portugal

VAT e-commerce package published

A law has been published to transpose into Portuguese law the provisions of Council Directives (EU) 2017/2455 and 2019/1995 regarding the VAT treatment of distance sales and certain domestic supplies of goods (the e-commerce package).

Other news

Eurasian Economic Union

Update on Eurasian Economic Union customs developments (September 2020)

China

Guidance issued on tax measures for development of the Hainan Free Trade Port

Cyprus

Amendments to rules for assessment and collection of taxes published

El Salvador

Overview of requirements for amended tax returns to be accepted as definitive returns

Finland

Helsinki Administrative Court issues ruling on VAT fixed establishment

Finland

Helsinki Administrative Court rules on definition of insurance service

Finland

KATSO IDs to be replaced by Suomi.fi authorizations as from 2021

Finland

Tax Administration postpones project on VAT reporting due to COVID-19

Finland

Advance VAT ruling on services provided between non-EU head office and Finnish branch

France

Lessors of business premises may elect premise-by-premise VAT liability on rents

Guatemala

New box in monthly VAT return will display suppliers' formal compliance status

Hungary

UK-based VAT registered businesses obliged to appoint a fiscal representative

India

GST e-invoicing validations amended and new GST input tax credit statement introduced

Indonesia

Tax authorities introduce electronic objection procedures

Ireland

Temporary zero VAT rate for medical equipment and donations extended

Japan

Overview of Smart Customs Initiative 2020

Mexico

Maquiladoras must pay retroactive fees for VAT and excise tax certification

New Zealand

Snapshot of recent developments (September 2020), including GST

New Zealand

Snapshot of recent developments (October 2020), including GST

The Netherlands

Possible introduction of RETT changes on transfers of residential property

Oman

Excise tax to be levied on sweetened beverages from 1 October – a reminder

Portugal

VAT quick fixes transposed into domestic legislation

Portugal

New European Sales Recapitulative Statement approved

Portugal

VAT rate on supplies of electricity amended

Romania

Amendments to local sales and purchases list return published

Russia

Update on customs developments (September 2020)

Russia

Update on VAT developments (September 2020)

Saudi Arabia

Customs extends deadline for voluntary data correction program

United Kingdom

Winter Economy Plan includes new COVID-19 support measures

United States

State Tax Matters (28 August 2020)

United States

State Tax Matters (4 September 2020), including indirect tax developments in California

United States

State Tax Matters (11 September 2020), including indirect tax developments in California and Illinois

United States

State Tax Matters (18 September 2020), including indirect tax developments in Illinois and Minnesota

United States

State Tax Matters (25 September 2020), including indirect tax developments in South Carolina

Zimbabwe

New commercial clearing procedures announced

I. Normativa

1. Modernización del IVA con vistas al comercio electrónico transfronterizo entre empresas y consumidores.

Decisión (UE) 2020/1109 del Consejo de 20 de julio de 2020 por la que se modifican las Directivas (UE) 2017/2455 y (UE) 2019/1995 en lo que respecta a las fechas de transposición y de aplicación en respuesta a la pandemia de COVID-19.

Reglamento de Ejecución (UE) 2020/1112 el Consejo del 20 de julio de 2020 por el que se modifica el Reglamento de Ejecución (UE) 2019/2026 en lo que respecta a las fechas de aplicación en respuesta a la pandemia de COVID-19.

Reglamento (UE) 2020/1108 del Consejo de 20 de julio de 2020 por el que se modifica el Reglamento (UE) 2017/2454 en lo que respecta a las fechas de aplicación en respuesta a la pandemia de COVID-19.

Con fecha 29 de julio de 2020 se han publicado en el Diario Oficial de la Unión Europea las mencionadas Decisión, Reglamento de Ejecución y Reglamento.

Estas Decisión, Reglamento de Ejecución y Reglamento aplazan seis meses la fecha de aplicación de las modificaciones previstas en la Directiva (UE) 2017/2455 del Consejo, la Directiva (UE) 2019/1995 del Consejo, el Reglamento de Ejecución (UE) 2019/2026 y el Reglamento (UE) 2017/2454, relativos al comercio electrónico transfronterizo entre empresarios y consumidores, inicialmente prevista para el 1 de enero de 2021.

La nueva fecha de aplicación será el 1 de julio de 2021.

2. Propuesta de Directiva del Consejo por la que se modifica la Directiva 2006/112/CE, relativa al sistema común del impuesto sobre el valor añadido en lo que respecta a la identificación de los sujetos pasivos en Irlanda del Norte.

A partir del 1 de enero de 2021, la legislación de la UE sobre el IVA dejará de aplicarse al Reino Unido. No obstante, sobre la base del Protocolo sobre Irlanda/Irlanda del Norte (en lo sucesivo, «el Protocolo»), que forma parte del Acuerdo de Retirada, Irlanda del Norte seguirá estando sujeta a la legislación de la UE sobre el IVA en lo que respecta a las mercancías con el fin de evitar una frontera física entre Irlanda e Irlanda del Norte. En relación con los servicios, en cambio, se considerará que Irlanda del Norte, junto con el resto del Reino Unido, está fuera de la UE.

Esto implicará un sistema de IVA doble o mixto en Irlanda del Norte, según el cual las entregas, adquisiciones intracomunitarias e importaciones de bienes realizadas en Irlanda del Norte estarán sujetas a la normativa armonizada de la UE con arreglo a las normas sobre el lugar de realización del hecho imponible establecidas en el título V de la Directiva del IVA, mientras que las prestaciones de servicios realizadas en ese mismo territorio no estarán sujetas al sistema del IVA de la UE.

Para que el sistema del IVA de la UE funcione debidamente, es esencial que los sujetos pasivos que realicen en Irlanda del Norte entregas de bienes (incluidas las denominadas «entregas intracomunitarias») o adquisiciones intracomunitarias de bienes (incluidas las realizadas por personas jurídicas que no sean sujetos pasivos), tal como quedan enumerados en el artículo 214 de la Directiva del IVA, sean identificados a efectos del IVA con arreglo a la normativa de la UE. Esto también es necesario para garantizar el correcto funcionamiento de los regímenes especiales optativos para los sujetos pasivos que presten servicios a personas que no tengan la condición de sujeto pasivo o que hagan ventas a distancia de bienes.

Por tanto, es importante que dichos sujetos pasivos (y, cuando proceda, las personas jurídicas que no sean sujetos pasivos) estén identificados en Irlanda del Norte mediante un número UE de identificación a efectos del IVA separado, concedido con arreglo a la normativa de la UE y que sea distinto de cualquier otro número de identificación a efectos del IVA del Reino Unido (números que empiezan por «GB»), los cuales a su vez se concederán con arreglo a la legislación del Reino Unido. Es posible que este número UE de identificación a efectos del IVA tenga que ser asignado además del número de identificación a efectos del IVA aplicado en el Reino Unido, por ejemplo, en el caso de una empresa que suministre bienes y también preste servicios en Irlanda del Norte.

Esta Propuesta de Directiva contempla la identificación de los sujetos pasivos -empresarios o profesionales en los términos de la Ley del IVA- de Irlanda del Norte a partir de 1 de enero de 2021 a efectos de la aplicación de la Directiva 2006/112/CE, del IVA.

A tales efectos, la propuesta establece que para Irlanda del Norte se utilizará el prefijo "XI" para el número de identificación a efectos del IVA en la UE, modificando al efecto el artículo 215 de la Directiva del IVA.

3. Resolución de 10 de septiembre de 2020, del Congreso de los Diputados, por la que se ordena la publicación del Acuerdo de derogación del Real Decreto-ley 27/2020, de 4 de agosto, de medidas financieras, de carácter extraordinario y urgente, aplicables a las entidades locales.

Con fecha 11 de septiembre de 2020 se publicó en el Boletín Oficial del Estado la Resolución de 10 de septiembre de 2020, del Congreso de los Diputados, por la que se ordena la publicación del Acuerdo de derogación del Real Decreto-ley 27/2020, de 4 de agosto, de medidas financieras, de carácter extraordinario y urgente, aplicables a las entidades locales.

Con la derogación del Real Decreto-ley 27/2020 dejaron de estar vigentes, desde el 11 de septiembre de 2020, en relación con el Impuesto sobre el Valor Añadido, las siguientes disposiciones:

- La aplicación temporal del tipo impositivo del 0% para la adquisición de determinado material relacionado con el COVID-19.

- El régimen fiscal aplicable a la final de la "UEFA Women's League 2020".

No obstante, mediante el Real Decreto-ley 28/2020 de 22 de septiembre, que se comenta a continuación, se restablecen las modificaciones que se realizaron previamente por el citado Real Decreto-ley 27/2020.

4. Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia.

Con fecha 23 de septiembre de 2020 se ha publicado en el Boletín Oficial del Estado el Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia.

En relación con el IVA se realizan las siguientes modificaciones:

A) Tipos impositivos:

La disposición adicional séptima de dicho Real Decreto-ley contempla mantener hasta el 31 de octubre de 2020 la aplicación del tipo del 0% de IVA a las entregas, importaciones y adquisiciones intracomunitarias de material sanitario esencial para combatir la COVID-19. La modificación afecta a los productos sanitarios que tengan como destinatario una entidad pública, clínicas y centros hospitalarios o entidades privadas de carácter social.

Esta modificación tiene efectos desde la entrada en vigor del Real Decreto-Ley 15/2020, de 21 de abril, de medidas urgentes complementarias para apoyar la economía y el empleo -23 de abril de 2020-. En dicho Real Decreto-ley se estableció, hasta el 31 de julio de 2020, la aplicación de un IVA del 0% al suministro de determinado material sanitario.

Este Real Decreto-ley también actualiza la relación de bienes a los que es de aplicación esta medida. Todos los nuevos bienes se beneficiarán de un IVA al 0% con efecto retroactivo desde la entrada en vigor del Real Decreto-ley 15/2020 -23 de abril de 2020-.

Por tanto, los empresarios que hayan repercutido o satisfecho IVA por operaciones efectuadas con anterioridad al 5 de agosto a las que el citado Real Decreto-ley 28/2020 aplique el tipo cero, en su caso, podrán efectuar la rectificación del impuesto conforme al artículo 89 de la Ley del IVA.

B) Régimen fiscal aplicable a la final de la «UEFA Women's Champions League 2020»:

La disposición adicional sexta. Cuatro del citado Real Decreto-ley, que regula el régimen fiscal aplicable a la final de la «UEFA Women's Champions League 2020», en relación con el IVA establece lo siguiente:

- No se exigirá el requisito de reciprocidad, previsto en el artº 119 bis.2º de la Ley del IVA, en la devolución a empresarios o profesionales no establecidos en la Comunidad que soporten o satisfagan cuotas del IVA como consecuencia de la realización de operaciones relacionadas con la celebración de la final de la «UEFA Women's Champions League 2020».

- Cuando se trate de empresarios o profesionales no establecidos en la Comunidad, Canarias, Ceuta o Melilla, o en un Estado con el que existan instrumentos de asistencia mutua análogos a los instituidos en la Comunidad, no será necesario que nombren un representante a efectos de lo previsto en artº 164.Uno.7º de la Ley del IVA.

- Los empresarios o profesionales no establecidos en el territorio de aplicación del IVA que tengan la condición de sujetos pasivos y que soporten o satisfagan cuotas como consecuencia de la realización de operaciones relacionadas con la final de la «UEFA Women's Champions League 2020», tendrán derecho a la devolución de dichas cuotas al término de cada periodo de liquidación.

  Para dichos empresarios o profesionales, el período de liquidación coincidirá con el mes natural, debiendo presentar sus declaraciones-liquidaciones durante los 20 primeros días naturales del mes siguiente al periodo de liquidación. Sin embargo, las declaraciones- liquidaciones correspondientes al último período del año deberán presentarse durante los treinta primeros días naturales del mes de enero. Ello no determinará que aquellos estén obligados a la llevanza de los Libros Registro del Impuesto a través de la Sede Electrónica de la Agencia Estatal de Administración Tributaria (Suministro Inmediato de Información, SII).

  Lo anterior será igualmente aplicable a la entidad organizadora del acontecimiento, a los equipos participantes y a las personas jurídicas a que se refiere la mencionada disposición adicional tercera. En el caso de empresarios o profesionales no establecidos en los que concurran los requisitos previstos en los artículos 119 o 119 bis de la Ley del IVA, la devolución de las cuotas soportadas se efectuará conforme al procedimiento previsto en dichos artículos y en los artículos 31 y 31 bis del Reglamento del IVA.

- Respecto a las operaciones relacionadas con los bienes vinculados al régimen de importación temporal con exención total de derechos, resultará aplicable lo dispuesto en el artículo 24 de la Ley del IVA.

- El plazo a que se refiere el artº 9.3.g) de la Ley del IVA –no aplicación de un supuesto de transferencia de bienes: operación asimilada a una entrega intracomunitaria de bienes–, será, en relación con los bienes que se utilicen temporalmente en la celebración y desarrollo de la final de la «UEFA Women's Champions League 2020», de 24 meses que, en todo caso, finalizará, a más tardar, el 31 de diciembre del año siguiente al de la finalización de la final correspondiente.

- La regla establecida en el artº 70.Dos.1º de la Ley del IVA no resultará aplicable a los servicios referidos en dicho precepto cuando sean prestados por las personas jurídicas residentes en España constituidas con motivo del acontecimiento por la entidad organizadora de la final de la «UEFA Women's Champions League 2020», o por los equipos participantes, y estén en relación con la organización, la promoción o el apoyo de dicho acontecimiento.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 16 de septiembre de 2020. Asunto C-312/19, XT.

Directiva 2006/112/CE — Artículo 9, apartado 1 — Artículo 193 Concepto de "sujeto pasivo" — Contrato de actividad conjunta — Sociedad civil — Atribución de una operación económica a uno de los socios — Determinación de la persona obligada al pago del impuesto.

Se plantea al TJUE si, conforme a los artículos 9, apartado 1, y 193 de la Directiva del IVA, debe considerarse que una persona física (XT) que ha celebrado con otra un contrato de actividad conjunta constituyendo una sociedad civil, carente de personalidad jurídica, bajo el que la primera está facultada para actuar en nombre de todos los socios, pero interviene sola y en su propio nombre en sus relaciones con terceros a la hora de llevar a cabo la actividad económica para la que se constituyó esa sociedad, ejerce dicha actividad con carácter independiente y debiendo ser considerada, por tanto, sujeto pasivo.

En relación con la operación inmobiliaria en cuestión, considera el TJUE que XT actuó en su propio nombre y por cuenta propia, asumiendo él solo el riesgo económico vinculado a las operaciones imponibles. En este sentido, no se puede vincular a la actividad económica de la sociedad constituida, siendo XT el sujeto pasivo de la operación, puesto que:

- los socios no actuaron de manera conjunta frente a terceros y;
- la persona facultada para actuar en nombre de ambos socios (XT) en ningún momento compareció en esas relaciones siguiendo las reglas de representación establecidas en el citado contrato, es decir, actuó sin mencionar la identidad del socio o la sociedad civil de que se trata, de manera que no se puede considerar que sea dicha entidad la que ha realizado el hecho imponible objeto del litigio principal.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 16 de septiembre de 2020. Asunto C-528/19, Mitteldeutsche.

Directiva77/388/CEE — Artículo 17, apartado 2, letra a) — Deducción del impuesto soportado — Nacimiento y alcance del derecho a deducir — Ampliación de una carretera perteneciente a un municipio —Contabilización de los costes generados por las obras como gastos generales del sujeto pasivo — Determinación de la existencia de una relación directa e inmediata con la actividad económica del sujeto pasivo — Entrega a título gratuito — Entrega asimilada a una entrega realizada a título oneroso — Artículo 5, apartado 6.

En primer lugar, se plantea al TJUE si conforme al artículo 17, apartado 2, letra a), de la Sexta Directiva, un sujeto pasivo tiene derecho a deducir el IVA soportado por las obras de ampliación de una carretera cuando tales obras estén afectas a la actividad empresarial del sujeto pasivo pero también benefician a un municipio propietario de dicha carretera.

Responde afirmativamente el Tribunal, considerando que existe una relación directa e inmediata entre las obras y la actividad económica de la empresa ya que, por un lado, dichas obras eran indispensables para poder desarrollar la actividad empresarial de explotación de una cantera y, por otro, asume el TJUE que los gastos de las obras de ampliación forman parte de los elementos del coste de las operaciones que realiza la empresa con ocasión de la explotación de la cantera, que constituye su actividad económica.

En segundo lugar, resuelve el Tribunal que el permiso de explotación de una cantera concedido por una Administración pública no tiene la naturaleza de contraprestación o precio obtenido por la empresa por la ejecución de las obras de ampliación de la carretera, por lo que tales obras no constituyen una operación efectuada a título oneroso que deba quedar gravada por el IVA.

Esto se debe a que, bajo la relación jurídica entre el Municipio y la empresa, consistente en que el primero apruebe la ampliación de la carretera que sufraga la empresa, no se intercambian prestaciones recíprocas, dado que (i) las obras se realizaron en una carretera municipal, pero el permiso de explotación de la cantera lo dio otra Administración pública y de manera unilateral, y (ii) porque las obras realizadas no son contraprestación del derecho de explotar la cantera, sino que es condición *sine qua non* para obtener ese derecho.

Por último, resuelve el TJUE que las obras de ampliación de una carretera municipal de uso público, llevadas a cabo a título gratuito por un sujeto pasivo en beneficio de un municipio, no constituyen una operación asimilada a una entrega de bienes efectuada a título oneroso; es decir, no suponen un autoconsumo externo de bienes.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 17 de septiembre de 2020. Asunto C-791/18, Stichting.

Directiva 2006/112/CE — Bienes inmuebles de inversión — Deducción del impuesto soportado — Regularización de la deducción inicialmente practicada — Regularización en una sola vez del importe total de esa deducción a raíz de la primera utilización del bien de que se trate — Período de regularización.

Se plantea al TJUE si los artículos 184 a 187 de la Directiva del IVA se oponen a una normativa nacional de regularización para bienes de inversión que prevé que, el año de comienzo de la utilización, que además es el primer año de regularización, se regularice en una sola vez el importe total de la deducción inicialmente practicada por ese bien cuando, en el momento de la primera utilización, se pone de manifiesto que la deducción no se corresponde con la que el sujeto pasivo tiene derecho a practicar sobre la base del uso de ese bien inmueble, ya que inicialmente se afectaría a una actividad sujeta pero finalmente fue destinado a una actividad exenta.

Dado que la deducción inicial se calculó teniendo en cuenta la afectación del inmueble a operaciones gravadas, el arrendamiento posterior de algunos apartamentos con exención del IVA supuso una modificación de los elementos a tener en cuenta para determinar el importe de la deducción, lo que conlleva que la deducción inicial resultara superior a la que el empresario tenía derecho

por el uso del bien. Así, considera el TJUE que el procedimiento del artículo 187 de la Directiva del IVA no resulta procedente para la regularización en cuestión, dado que en el momento de la primera utilización el derecho a deducir es superior o inferior a la deducción inicialmente practicada, debiendo seguirse lo dispuesto en el artículo 186 de la misma, que remite a que los Estados miembros determinen cómo debe realizarse el procedimiento de regularización.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución de 3 de junio de 2020, recurso 7256/2016.

IVA - Base imponible – Descuentos en cadena - "Cupón de reembolso"

Una entidad española es distribuidora de cápsulas de café que fabrica una entidad establecida en Suiza.

Para el consumo del café, se requieren máquinas de café específicas que la entidad española adquiere a fabricantes distintos del fabricante de las cápsulas. La entidad suiza concede un descuento en forma de "cupón de reembolso" a los consumidores finales que adquieren las máquinas de café con el fin de incentivar el consumo de las cápsulas de café.

La Sociedad Suiza trata de recuperar el IVA de estos cupones de descuento a través del procedimiento regulado en el artículo 119.bis LIVA. No obstante, la Administración entiende que no resulta aplicable ya que la sociedad Suiza no ha soportado ningún IVA en España sino que pretende recuperar el exceso de IVA devengado a causa de la concesión de un descuento.

Por otro lado, la sociedad española solicitó la rectificación de sus autoliquidaciones que también fue desestimada por la Administración y que es objeto de análisis en esta resolución.

La reclamante alega que se han ingresado unas cuotas de IVA en exceso (diferencia entre el precio inicial y el final tras el cupón de reembolso) y que ninguna de las entidades de la cadena lo ha podido recuperar (ni la entidad suiza, ni la española).

Tras analizar el caso, el TEAC considera que aunque la finalidad comercial de la campaña es incentivar el consumo de cápsulas de café, lo cierto es que el descuento se articula sobre la base de las adquisiciones de máquinas de café y el reembolso se realiza a los clientes, consumidores finales de las mismas. Por lo tanto, puesto que se concede un descuento sobre un producto en cuyo esquema de comercialización la entidad suiza no participa, no le corresponde la modificación de la base imponible, que se determina por la comercialización de un producto distinto (las cápsulas de café).

Así, el TEAC entiende que el descuento se concede a costa a la compañía y que no procede la modificación de la base imponible.

2. Tribunal Económico-Administrativo Central. Resolución de 3 de junio de 2020, recurso 281/2017.

IVA - Sujeción al impuesto de las transmisiones que se producen con ocasión de la disolución de una comunidad de bienes que ha sido sujeto pasivo del IVA.

El objeto de la resolución consiste en determinar si las adjudicaciones de bienes realizadas por una comunidad de bienes a los comuneros en proporción a su cuota de participación como consecuencia de la extinción de la comunidad tienen la consideración de entregas de bienes a efectos de IVA y quedan sujetas al mismo.

La Inspección consideró que la adjudicación de los bienes a los comuneros estaba sujeta al IVA.

Por el contrario, la entidad recurrente alega que en la fecha en que se produjo la operación de adjudicación de parte de un inmueble a los comuneros (previa a la Ley 37/1992), ni la Ley del IVA ni su reglamento sujetaban como primera entrega este acto y que la jurisprudencia así lo manifiesta en numeras sentencias y resoluciones.

En el marco de esta controversia, el TEAC procede a analizar las siguientes cuestiones:

1. Determinar si las operaciones realizadas confieren a la comunidad de bienes el carácter de empresario profesional a efectos del IVA.

   El TEAC responde afirmativamente a esta cuestión al entender que tienen la condición de empresarios las comunidades de bienes dedicadas a la promoción de edificaciones para, una vez terminadas, adjudicar a cada comunero una parte de la misma.

2. Calificación de la adjudicación de los inmuebles desde el punto de vista del IVA.

   Sobre este punto el TEAC entiende que tanto con la antigua como con la nueva redacción de la Ley del IVA, la adjudicación a cada comunero del correspondiente inmueble constituirá una primera entrega sujeta y no exenta del Impuesto sobre el Valor Añadido.

3. Tribunal Económico-Administrativo Central. Resolución de 3 de junio de 2020, recurso 3041/2017.

IVA - Modificación de la base imponible por créditos total o parcialmente incobrables.

La reclamante practicó la minoración de las bases imponibles del IVA al considerar varios créditos total o parcialmente incobrables.

La Inspección considera que no se cumplen los requisitos enumerados en el artículo 80.Cuatro LIVA ya que la entidad no ha instado el cobro del crédito mediante requerimiento notarial sino mediante acta notarial de remisión de carta por correo.

Por el contrario, la mercantil alega que tanto las actas de remisión de documentos por correo como las actas de requerimiento cumplen las mismas funciones, por lo que el uso de unas u otras debe ser indiferente a efectos del artículo 80.Cuatro LIVA. Alega también la entidad que la no equiparación de las actas produciría una ruptura del principio de neutralidad del impuesto, al no permitirse la rectificación de la base imponible.

En relación con la distinción de ambos documentos notariales, el TEAC concluye que no es posible equiparar las actas de remisión de documentos y las actas de requerimiento porque existen diferencias fundamentales entre ambos tipos de actas notariales. Por ejemplo, en actas como las de presencia o las de remisión de documentos por correo, el notario puede presenciar la formulación de un requerimiento verbal o escrito, pero se priva al requerido del derecho de contestación inherente al acta de requerimiento.

En lo relativo con la vulneración del principio de neutralidad del IVA, el TEAC entiende que no existe tal vulneración ya que se trata de una condición dirigida a prevenir el fraude y eliminar el riesgo de pérdidas de ingresos fiscales que es proporcionada, y plenamente compatible con la Directiva. Adicionalmente, el TEAC señala que negar la posibilidad de rectificar la base imponible por el incumplimiento de esta condición no implica, necesariamente, que el sujeto pasivo no pueda rectificar la base imponible, sino que tan sólo se lo impide en ese momento, pero no en un momento posterior.

4. Tribunal Económico-Administrativo Central. Resolución de 9 de junio de 2020, recurso 2376/2017.

Deducibilidad de las cuotas de IVA soportadas en la construcción de edificaciones.

En la presente resolución, el TEAC se pronuncia sobre la deducibilidad de las cuotas de IVA soportadas por una promotora en la construcción de un edificio de viviendas que incluye algún local comercial, garajes y trasteros con destino a su arrendamiento.

En aplicación de lo dispuesto en el artículo 99.Dos LIVA, la Inspección no admite la deducibilidad del IVA soportado en la construcción de las viviendas y anexos al entender que su destino previsible será el alquiler de viviendas (operaciones que no originan el derecho a la deducción).

Tras analizar el criterio de la Inspección, el TEAC concluye que:

- El destino previsible debe valorarse al tiempo de soportar las cuotas del IVA por la adquisición de bienes y servicios y en atención a las operaciones a las que se afecten las mismas.

- La carga de la prueba recae sobre el sujeto pasivo que es quien deberá justificar el destino de los bienes.

- El artículo 99.Dos LIVA (derecho a la deducción) no es incompatible con el 107 LIVA (regularización bienes de inversión) ya que el requisito del destino previsible debe analizarse en el momento en que se soportan las cuotas de IVA, sin perjuicio de regularizarlas posteriormente.

- En relación con los gastos comunes, el criterio de reparto aplicado por la Inspección no es admisible (en función de los metros cuadrados) sino que el grado de deducibilidad debe determinarse según la regla de la prorrata general.

A la luz de lo anterior, el TEAC considera que, debido a la naturaleza de la edificación controvertida, las pruebas aportadas sobre estudios de rentabilidad referidos a una posible actividad de apartotel no sirven para desvirtuar que el destino previsible de la edificación era el uso como viviendas.

En lo relativo a las plazas de aparcamiento sobre las que la recurrente repercutió IVA, también se deniega su deducibilidad al ser los destinatarios los mismos que los de las viviendas arrendadas pero con contratos documentados por separado.

5. Tribunal Económico-Administrativo Central. Resolución de 9 de junio de 2020, recurso 4122/2016.

Sujeción al IVA – Operaciones con derivados financieros para cubrir riesgos empresariales.

En la presente resolución, el TEAC se pronuncia sobre la sujeción al IVA de las operaciones con derivados financieros para cubrir riesgos empresariales. En concreto, se discute si la utilización de derivados financieros está sujeta al IVA, y, en caso afirmativo, su inclusión en el cálculo de la prorrata.

La recurrente opera en sector energético y contrata derivados financieros para la cobertura de riesgos empresariales derivados de la oscilación de determinados elementos patrimoniales.

La Inspección considera que procede incrementar el denominador de la prorrata en el importe de las liquidaciones positivas.

La recurrente alega que dichas operaciones no están sujetas al IVA ya que su objetivo no es generar un mayor volumen de negocio sino asegurar un riesgo empresarial.

A la luz de la sentencia del Tribunal Supremo nº 483/2020 de 19 de mayo de 2020, que se transcribe en los fundamentos de derecho de la resolución, el TEAC estima íntegramente las alegaciones de la recurrente concluyendo que no se están realizando operaciones sujetas al IVA por la contratación de derivados financieros destinados a cubrir determinados riesgos empresariales.

6. Tribunal Económico-Administrativo Central. Resolución de 9 de junio de 2020, recurso 3786/2016.

Base imponible - Reducciones del precio por publicidad – Calificación de servicios de almacenamiento como accesorios.

En la presente resolución el TEAC se pronuncia sobre el cálculo de la base imponible en caso de operaciones cruzadas (ventas de producto y recepción de servicios de publicidad).

La recurrente es titular de determinadas marcas y fabrica productos que vende íntegramente a su filial. Adicionalmente, la reclamante cede parte de unos almacenes de su propiedad a su filial para que ésta almacene productos.

Según el parecer de la inspección:

- La base imponible de la venta de los productos no es correcta ya que se ha "minorado" en el valor de la publicidad que la filial hace de los productos de la recurrente.

- Los servicios de almacenaje no se están facturando de forma autónoma sino que su importe se incluye dentro de la base imponible correspondiente a la entrega de los productos a los que resulta de aplicación el tipo reducido cuando el tipo correspondiente los servicios de cesión y gestión de almacenes es el general.

A juicio de la reclamante:

- La beneficiaria de los servicios de publicidad es la filial, por lo que no le está prestando ningún servicio a la recurrente.

- El almacenamiento es una operación accesoria a la principal (venta del producto).

Respecto a los servicios de publicidad, el TEAC desestima las alegaciones de la reclamante y entiende que ha quedado plenamente acreditada la existencia de un servicio de publicidad prestado por la filial a su matriz. Todo ello porque la matriz del grupo no sólo es la titular de las marcas, sino que también vende a su filial comercializadora los productos que fabrica. De tal modo que no cabe duda de que el destinatario último de los servicios de publicidad (pagados por la filial) para promocionar los productos es la empresa fabricante y titular de las marcas. Por otro lado, la empresa fabricante de los productos también recibe servicios de publicidad de terceros independientes.

En lo relativo a los servicios de almacenamiento, el TEAC también desestima las alegaciones de la recurrente al entender que el servicio de almacenamiento constituye un fin en sí mismo para la filial, pues la venta del producto y el almacenamiento no se producen de forma simultánea en el tiempo, sino que, una vez efectuada la entrega, se presta el servicio de almacenaje con posterioridad, no existiendo una división artificial de la actividad.

7. Dirección General de Tributos. Contestación nº V2246-20, de 1 de julio de 2020.

Deducción del IVA respecto a adquisición de productos sanitarios amparados por el Anexo del Real Decreto-ley 15/2020, así como incidencia sobre el cálculo de la prorrata de las transmisiones de dichos productos y obligaciones formales.

La consultante es una mercantil dedicada al comercio de material sanitario entre los que se encuentran productos incluidos en el Anexo del Real Decreto-ley 15/2020, de 21 de abril y la mayoría de sus clientes son los destinarios a los que se refiere el artículo 8 del citado Real Decreto-ley.

En primer lugar, la DGT indica que las entregas que realice la consultante, tributarán al tipo cero al cumplirse con lo recogido en el artículo anteriormente mencionado. No obstante, no será de aplicación a las entregas que sus proveedores realicen a la consultante, que tributarán, en cada caso, conforme a lo previsto en los artículos 90 y 91 de la Ley del IVA, al no tener la consultante la condición de entidad de derecho público, clínica, centro hospitalario o entidad privada de carácter social.

Asimismo, afirma este Centro directivo que las entregas de bienes a las que aplica el tipo del 0 por ciento de acuerdo con lo previsto en dicho Real Decreto-ley, tienen la consideración de operaciones sujetas al IVA que otorgan pleno derecho a la deducción y no tienen incidencia alguna sobre el cálculo de la prorrata a efectos del IVA. Así pues, las cuotas soportadas con motivo de las adquisiciones o importaciones de dichos bienes, serán íntegramente deducibles en la medida que dichos bienes se vayan a destinar a realizar operaciones sujetas al IVA que otorguen el derecho a la deducción.

En relación con la última cuestión, la DGT confirma que estas entregas de bienes que tributan al tipo del 0 por ciento deberán de ser documentadas a través de las correspondientes facturas e incluidas en el libro registro correspondiente.

8. Dirección General de Tributos. Contestación nº V2419-20, de 14 de julio de 2020.

Indemnización - Sujeción al IVA.

La consultante es una empresa pública cuyo objeto es la explotación de las líneas de red del metro. En el marco de una licitación pública, y ante la imposibilidad de la consultante de facilitar unas tablets a la adjudicataria (a lo que está obligada contractualmente) se procedió a suspender temporalmente la ejecución del contrato, acordándose una indemnización a favor de la adjudicataria.

En primer lugar, recuerda la DGT que tal y como puso de manifiesto este Centro directivo en su contestación vinculante, de 26 de septiembre de 2018, número V2612-18 así como en base a la jurisprudencia del TJUE (entre otros, asuntos C-215/94y C-384/95), con carácter general, para determinar si existe una indemnización a los efectos del IVA, es preciso examinar en cada caso si la

cantidad abonada tiene por objeto resarcir al perceptor por la pérdida de bienes o derechos de su patrimonio o, por el contrario, si su objetivo es retribuir operaciones realizadas que constituyen algún hecho imponible del IVA.

En el supuesto de hecho expuesto en la consulta, hay que destacar que la indemnización que debe satisfacer la consultante por la suspensión temporal en la ejecución del contrato por causa no imputable a la adjudicataria, pretende compensar dos conceptos claramente diferenciados.

Por una parte, los perjuicios económicos causados a la adjudicataria como consecuencia de la desocupación no prevista de los empleados asignados a este proyecto y la necesidad de reasignación de los mismos a otros proyectos y por otra parte, el tiempo adicional necesario en el que se va a tener que incurrir, por parte de la adjudicataria, como consecuencia del denominado "rearranque" del proyecto.

En este sentido, este Centro directivo informa que la parte de la indemnización pactada que pretende resarcir a la adjudicataria de los daños causados como consecuencia de la suspensión temporal de la ejecución del contrato en términos de reasignación de efectivos no está vinculada con la prestación de servicios que va a realizar para la consultante ni puede considerarse que constituya contraprestación de sus servicios. En tal caso, el pago de dicha cuantía no estará gravada por el Impuesto de acuerdo con el articulo 78 Tres. 1º de la LIVA.

De otro lado, y en la misma línea, la DGT confirma que respecto a la compensación relacionada con los costes de "rearranque", quedarán sujetos al IVA en la medida que están estrechamente vinculados con la prestación del servicio a realizar por la adjudicataria y no tendrían naturaleza indemnizatoria.

9. Dirección General de Tributos. Contestación nº V2438-20, de 16 de julio de 2020.

Aplicación de la exención contemplada en el artículo 22.Quince de la Ley del IVA a los servicios de mediación prestados por el consultante a favor de un proveedor de carburante.

La consultante es una sociedad mercantil que ejerce la actividad de mediación, en nombre y por cuenta ajena, en el comercio de hidrocarburos y que presta servicios para un proveedor, con sede en el TAI, que efectúa una venta de combustible para buques de las Fuerzas Armadas españolas mientras estos se encuentran fuera del TAI.

En primer lugar, indica la DGT que la venta de combustible por parte del proveedor de hidrocarburos debe ser calificada como una entrega de bienes, de conformidad con la definición contenida en el artículo 8 de la Ley del IVA, pero quedará no sujeta al Impuesto de conformidad con lo establecido en el artículo 68 de la Ley del IVA al no encontrarse dicho combustible en el TAI en el momento de su puesta a disposición ni tampoco se encuentra en dicho territorio el lugar de inicio de la expedición o transporte necesarias para su puesta disposición.

Respecto al servicio de mediación, quedará sujeto al Impuesto de acuerdo con las reglas de localización de los servicios establecidas en los artículos 69, 70 y 72 de la Ley del IVA, pues el destinatario del mismo es un empresario o profesional con la sede de actividad económica en el TAI.

Finalmente, la DGT señala que de acuerdo con en el artículo 22.Quince las prestaciones de servicios realizadas por intermediarios que actúen en nombre y por cuenta de terceros cuando intervengan en las operaciones que estén exentas del Impuesto en virtud de lo dispuesto en dicho artículo, quedarán a su vez exentas.

En consecuencia, concluye la DGT que no será de aplicación la exención contenida en dicho artículo pues el servicio de medición no se efectúa para la realización de una operación sujeta y exenta en virtud del artículo 22 de la Ley del IVA.

10. Dirección General de Tributos. Contestación nº V2441-20, de 16 de julio de 2020.

Entrega intracomunitaria de bienes: Tributación y medios de acreditación del transporte (CMR).

La consultante es una sociedad mercantil con sede en el TAI dedicada a la comercialización de productos relacionados con actividades agrícola que, en el ejercicio de su actividad, efectúa ventas a empresarios franceses que se desplazan al TAI y comunican a la consultante un número de identificación fiscal a efectos del IVA asignado a los mismos por las autoridades francesas. Los bienes son transportados a Francia por los propios adquirentes. A pesar de lo anterior, la consultante expide facturas a los mismos repercutiendo el IVA sobre los clientes.

Comienza la DGT indicando que las entregas de bienes efectuadas por la consultante y que sean objeto de expedición o transporte a territorio francés por los adquirentes, estarán sujetas y exentas del IVA cuando concurran los requisitos previstos en los artículos 25 y 13 de la Ley y Reglamento del IVA, respectivamente.

Respecto a la acreditación del transporte efectivo de los bienes en cuestión, podrá probarse "por cualquier medio de prueba admitido en derecho" y hay que señalar que en nuestro ordenamiento jurídico rige el principio general de valoración libre y conjunta de todas las pruebas aportadas, quedando descartado como principio general el sistema de prueba legal o tasada.

A este respecto, entiende la DGT que no puede considerarse con carácter general probado el hecho de la existencia del referido transporte por la mera presentación de uno o varios elementos de prueba a consideración del sujeto pasivo del impuesto, sin perjuicio de que, en cada caso concreto, la Administración tributaria pueda estimar que tales medios de prueba u otros admitidos en Derecho, distintos de los mismos, por sí solos o valorados conjuntamente caso de existir varios, prueban suficientemente el referido hecho.

No obstante lo anterior, matiza la DGT que desde el 1 de enero de 2020 se han establecido una serie de presunciones iuris tantum, en las letras a) y b) del artículo 45 bis, apartado 1, del Reglamento de ejecución 282/2011, que pretenden simplificar para los operadores económicos la prueba del transporte comunitario.

De lo anterior se puede concluir que en el caso en que el transporte sea siempre efectuado por los adquirentes de los bienes, podrá acreditarse el transporte efectivo de los bienes a otro Estado miembro por cualquier medio de prueba admitido en derecho.

Finalmente la DGT termina concluyendo que se deberá expedir la correspondiente factura rectificativa para aquellos casos en los que se haya repercutido erróneamente el IVA porque haya quedado suficientemente probado que se trate de una entrega de bienes sujeta y exenta de acuerdo con el artículo 25 y 13 de la LIVA y RIVA.

11. Dirección General de Tributos. Contestación nº V2443-20, de 16 de julio de 2020.

Condición de establecimiento permanente de una sucursal a efectos del IVA y obligaciones de facturación.

La consultante es la sucursal en el TAI de una entidad alemana identificada como establecimiento permanente de entidad no residente. Dicha sucursal es la responsable de comercializar al por mayor los bienes de la casa central en el TAI y, entre otras actividades, cuenta con la autorización necesaria para negociar los contratos de distribución.

Todas las ventas a clientes españoles efectuadas por la entidad alemana son facturadas a través de la sucursal, incluidas aquellas en las que los bienes vendidos son transportados directamente desde las instalaciones de la casa central, en Alemania, a las instalaciones de los clientes en el TAI.

Respecto a la condición de establecimiento permanente a efectos del IVA de una sucursal, recuerda la DGT que es criterio de este Centro directivo que debe entenderse que una entidad dispone de un establecimiento permanente en el TAI cuando mantiene en el mismo agencias o representaciones autorizadas para contratar en nombre y por cuenta del sujeto pasivo, en los términos establecidos en el transcrito artículo 69.Tres.2º.a) de la Ley del IVA.

Por tanto, la entidad alemana cuenta en TAI con un establecimiento permanente, siendo sujeto pasivo del Impuesto en las entregas de bienes sujetas al Impuesto efectuadas por el mismo.

Por otra parte, las ventas efectuadas directamente desde sus instalaciones en Alemania hasta las instalaciones de los clientes, en el TAI, serán efectuadas por la casa central.

Así, la DGT, de acuerdo con lo dispuesto en el artículo 6.1 del Reglamento de facturación señala que la consignación en factura del número de identificación fiscal atribuido por la Administración tributaria española a la sucursal será obligatoria en el caso de las entregas interiores, pues es dicha sucursal quien efectivamente interviene en dichas entregas.

12. Dirección General de Tributos. Consulta Vinculante V2457-20, de 17 de julio de 2020.

Exención en la prestación de servicios de gestión.

La entidad consultante ha creado una sociedad de inversión colectiva cerrada para invertir en el segmento de pequeñas y medianas empresas. La entidad gestora de dicha sociedad le presta determinados servicios de gestión.

La consultante se cuestiona si la prestación de tales servicios estaría exenta del IVA a tenor de los dispuesto en el artículo 20, apartado uno, número 18º, letra n) de la LIVA.

Así, la DGT, de acuerdo con lo dispuesto en el artículo 135, apartado 1, letra g) de la Directiva IVA, y siguiendo el criterio de diversa jurisprudencia del TJUE (asunto C-169/04, Abbey National) concluye primeramente que una sociedad de inversión colectiva de tipo cerrado como la consultada que recurre a los servicios de gestión de una entidad gestora puede incluirse en el concepto de «fondos comunes de inversión» de la Directiva, ya que dichos fondos no presentan ninguna diferencia relevante que excluya desde un principio que los referidos fondos se clasifiquen entre los fondos comunes de inversión contemplados en la Directiva IVA.

De otro lado, la DGT analiza el concepto de "gestión" de fondos comunes de inversión cuya definición no viene recogida en la Ley del Impuesto ni en la Directiva. Este Centro Directivo, en línea con la ya mencionada sentencia Abbey National del TJUE, señala que en el ámbito de aplicación de la exención se hallan comprendidas, además de las funciones de gestión de cartera, las de administración de los propios organismos de inversión colectiva.

En este sentido, y de acuerdo con el criterio del Tribunal, la DGT confirma que la exención se aplica a la gestión de fondos comunes de inversión, con independencia de su modalidad cerrada o abierta, por lo que los servicios de gestión prestados por una entidad gestora y retribuidos mediante una comisión variable y otra de éxito estarán sujetos y exentos del IVA.

13. Dirección General de Tributos. Consulta Vinculante V2509-20, de 22 de julio de 2020.

Tipo impositivo aplicable al acceso al material virtual objeto de consulta en el Impuesto sobre el Valor Añadido.

La consultante es una asociación empresarial dedicada a la formación a distancia y en línea. Para la impartición de la citada formación se facilita material virtual de aprendizaje de carácter electrónico que puede integrar elementos como videos, gráficos, imágenes, animaciones, audios, simuladores o biblioteca.

La DGT comienza analizando la aplicación del tipo reducido al suministro de este material electrónico tras la modificación realizada por la Directiva (UE) 2018/1713 del Consejo de 6 de noviembre de 2018 del punto 6) del Anexo III de la Directiva IVA, traspuesta en nuestro ordenamiento por el Real Decreto-ley 15/2020 de 21 de abril, por la que se modifica el número 2.º del apartado dos.1 del artículo 91 de la LIVA.

En este sentido, y amparándose en las acepciones del concepto de "libro" de la Ley 10/2007, de 22 de junio, de la lectura, del libro y de las bibliotecas, así como el de la propia RAE, este Centro Directivo confirma la aplicación del tipo del 4 por ciento ya que el soporte en el que se distribuyan es indiferente a este caso, siempre y cuando no contengan única o fundamentalmente publicidad y no consistan íntegra o predominantemente (en más de un 90 por ciento de los ingresos que proporcionen al editor) en contenidos de vídeo o música audible, así como los elementos complementarios que se entreguen conjuntamente con aquellos mediante precio único.

Asimismo, continua la DGT analizando la posible exención de IVA por el artículo 20. Uno.9º de la LIVA de los servicios de formación que presta la consultante. Este Centro Directivo afirma que, al no cumplirse ambos requisitos, subjetivo (actividades realizadas por entidades de Derecho público o entidades privadas autorizadas) y objetivo (materias incluidas en los planes de estudio), los servicios tributarán al tipo general del 21 por ciento de IVA.

No obstante, lo anterior, y en base a otras contestaciones vinculantes como la número V0218-19, puede concluirse que la entrega de los libros y manuales constituyen la prestación principal que tributa al tipo impositivo del 4 por ciento, constituyendo el acceso en línea a la plataforma educativa y sus contenidos una prestación accesoria de ésta, cuya tributación seguirá a la principal, es decir, tributará todo al tipo impositivo del 4 por ciento de IVA.

En consecuencia, el suministro de libros y material electrónico objeto de consulta tributaría al tipo reducido del 4 por ciento, al no considerarse servicios de educación exentos de IVA.

Finalmente, en caso de que se tratase del suministro de enseñanza a distancia que tuviera la condición de prestación de servicios por vía electrónica, tributaría al tipo general del 21 por ciento.

14. Dirección General de Tributos. Consulta Vinculante V2522-20, de 23 de julio de 2020.

Accesoriedad de la entrega de bolsas de plástico respecto de la operación principal de venta de productos. Tipo impositivo de la operación.

La consultante es una compañía de supermercados que entrega a sus clientes bolsas de plástico en la línea de caja a cambio de un precio, así como en las secciones de frutería, pescadería y horno, de forma gratuita.

En este sentido, solicita aclaración de la consulta V0158-20 fruto de la modificación de normativa en el Territorio Foral de Navarra de 18 de junio, que impone la obligación de cobrar cualquier bolsa de plástico entregada en los supermercados situados en ese Territorio, y en concreto si debe proceder de igual forma con las bolsas que ofrece en las secciones de frutería, pescadería y horno.

En primer lugar, la DGT destaca que en relación con el criterio reiterado por este Centro directivo es relevante determinar si se trata de una única operación, siendo una la principal y otra accesoria a ella o, por el contrario, se trata de operaciones diferentes e independientes a efectos del IVA.

En base a la jurisprudencia del TJUE (entre otros, asuntos C-349/96, C-231/94, C-308/96 y C-94/97), una prestación debe ser considerada accesoria de una prestación principal cuando no constituye para la clientela un fin en sí, sino el medio de disfrutar en las mejores condiciones del servicio principal del prestador.

Por consiguiente, la DGT considera que las bolsas entregadas en las secciones de frutería, pescadería y horno no tienen por objeto el transporte de los bienes adquiridos al domicilio del cliente, sino que su función es la de servir de envase a los productos ofertados, generalmente a granel o por piezas enteras, para contener la cantidad o porción de producto demandada en dichas secciones por el cliente cuando los alimentos no se ofrecen previamente envasados para su adquisición, como sí ocurre con las bolsas de plástico que son objeto de entrega voluntaria en las líneas de caja.

Así, la DGT termina concluyendo que las entregas de bolsas a las que se refiere la consulta no constituyen un fin en sí mismo para el destinatario, sino que tienen carácter accesorio respecto de la entrega de los productos considerados entregados en ellas, por lo se les aplicará el régimen de tributación que corresponda a la operación principal de la que dependa, es decir, la entrega de los alimentos.

15. Dirección General de Tributos. Consulta Vinculante V2525-20, de 23 de julio de 2020.

Sujeción de la operación de reventa al Impuesto sobre el Valor Añadido.

La consultante es una entidad, dedicada a las telecomunicaciones que va a iniciar una actividad de reventa de minutos de telefonía, por la cual comprará los mismos a proveedores nacionales para después revenderlos a empresas localizadas en América Latina (call centers). Estas, utilizarán esos minutos de telefonía para prestar servicios a sus clientes ubicados en España, haciendo llamadas para vender productos de sus clientes o realizar campañas publicitarias o prestar asistencia telefónica.

La entidad consulta a este Centro Directivo si la reventa de minutos de telefonía se encuentra sujeta al IVA.

En primer lugar, la DGT concluye que la consultante tiene la condición de empresario o profesional a efectos del IVA y que las operaciones deben calificarse como prestaciones de servicios sujetas al IVA siempre que se entiendan realizadas en el TIVA-ES. Así, este Centro Directivo establece que en relación con la regla general de localización de los servicios del artículo 69. Uno.1º LIVA, los servicios prestados por la consultante no estarían localizados en el TIVA-ES, al estar sus destinatarios establecidos en otros Estados miembros de la UE o en terceros países.

No obstante, lo anterior, la DGT trae a colación el artículo 70. Dos de la LIVA, el cual establece un criterio basado en la utilización o explotación efectiva de determinados servicios cuyos requisitos son:

1. Que se aplicará exclusivamente para los servicios expresamente citados en el artículo.

2. Que, tales servicios sean prestados a empresarios o profesionales actuando como tales, salvo cuando se trate de servicios prestados por vía electrónica, telecomunicaciones, radiodifusión, televisión o arrendamiento de medios de transporte, en cuyo caso los destinatarios podrán ser, asimismo, particulares.

En base a la jurisprudencia del TJUE (asunto C-1/08, Athesia Druck Srl), y a las sentencias de 16 y 17 de diciembre de 2019 del Tribunal Supremo, la DGT concluye que la regla de uso y disfrute, será de aplicación en aquellos supuestos en los que los servicios prestados desde el TIVA-ES a una entidad establecida fuera de la Comunidad, ya sea ésta su destinataria inicial o final sean utilizados en la realización de operaciones sujetas al IVA en el TIVA-ES, independientemente de que tengan la condición de sujetos pasivos de las mismas.

16. Dirección General de Tributos. Contestación nº V2602-20, de 31 de julio de 2020.

Tarjetas descuento - tarjetas prepago de combustible.

La entidad consultante, dedicada a la promoción y marketing, emite tarjetas de fidelización en favor de sus clientes (empresas patrocinadoras). Este programa se instrumenta mediante la emisión de una tarjeta por parte de la consultante que se entrega a cambio de un precio a los clientes de las entidades patrocinadoras para que disfruten descuentos en sus compras. La entidad consultante recibe una comisión por cada venta que se realiza a través de dichas tarjetas de fidelización.

Asimismo, también emite tarjetas prepago para obtener descuentos en gasolineras en la adquisición de combustible. La entidad consultante recibe igualmente una comisión por cada repostaje realizado con dicha tarjeta.

La entidad consulta a este Centro Directivo el tratamiento a efectos del IVA de ambas operaciones.

En cuanto a las tarjetas de fidelización, la DGT, siguiendo el criterio de la Resolución de 28 de diciembre de 2018 sobre el tratamiento de los bonos en el IVA, excluye del ámbito de aplicación de esta a las tarjetas o vales descuento. En consecuencia, la venta de esta tarjeta por el consultante a los clientes (usuarios finales) a cambio de una contraprestación es una operación sujeta al IVA por la que la entidad consultante deberá repercutir el IVA al tipo impositivo general del 21 por ciento. Asimismo, la comisión recibida por parte de la consultante constituye la contraprestación de los servicios prestados por esta a cada una de las empresas que contratan sus servicios (empresas patrocinadoras) y deben calificarse como servicios de promoción o marketing, que estarán sujetos y no exentos del IVA, estando gravados al tipo impositivo general del 21 por ciento, cuando se entiendan realizados en el TIVA-ES.

De otro lado, y en la misma línea, la DGT confirma que las tarjetas prepago de combustible no se consideran bonos a tenor de la citada Resolución, puesto que se excluyen de la misma las tarjetas prepago. Por consiguiente, la comisión que recibe la consultante por cada repostaje tendrá la consideración retribución por su labor de promoción a favor de las entidades adheridas, quedando dicho servicio sujeto al IVA.

17. Dirección General de Tributos. Contestación nº V2608-20, de 31 de julio de 2020.

Operaciones financieras – compra de vehículos.

Una entidad del sector de la automoción promueve un producto que ofrece a sus clientes la posibilidad de comprar vehículos a través de un sistema de financiación en el que, tras un cierto tiempo, el cliente tiene la posibilidad de devolver el vehículo al concesionario, que deberá realizar la recompra del mismo por un importe estimado en función del valor del vehículo en dicho momento. En caso de que el precio de recompra sea inferior al valor de mercado, la entidad se compromete a compensar al concesionario por esa diferencia.

La entidad consultante, entidad del grupo de automoción dedicada al renting de vehículos, pretende firmar con la entidad del grupo que promueve el anterior producto, un contrato por el cual la consultante gestione asuma el riesgo de las compensaciones que en su caso se deban satisfacer, a cambio de una comisión por cada contrato firmado por los concesionarios.

La entidad consultante se plantea si los servicios prestados estarían sujetos y exentos, así como si las compensaciones se consideran operaciones sujetas al IVA.

A este respecto, la DGT considera que, a tenor de la Jurisprudencia del TJUE (entre otras, Asunto C-455/05, Velvet & Steel Inmobilien), en la medida en que el servicio prestado parece que tiene por finalidad la cobertura de posibles pérdidas pecuniarias derivadas del compromiso de recompra asumido por el concesionario y su naturaleza es intrínsecamente financiera, el mismo debe quedar sujeto y exento del IVA, a tenor de lo dispuesto en el artículo 20. Uno. 18º, letra f) de la LIVA.

En relación con la segunda cuestión, la DGT considera que en aplicación de lo dispuesto en el artículo 78. Tres.1º de la LIVA y la reiterada jurisprudencia del TJUE (entre otros, Asuntos C-215/94 y C-384/95), las compensaciones abonadas por la consultante tienen por objeto resarcir al concesionario de la pérdida financiera provocada por las desviaciones de precio, sin que constituya en sí misma la contraprestación de otra operación sujeta al IVA. Por consiguiente, la cantidad que abonaría la consultante no constituiría contraprestación sujeta al IVA.

IV. Country Summaries

Featured articles

OECD

Tax policy reforms 2020 report released

On 3 September 2020, the OECD *announced* the publication of *Tax Policy Reforms 2020: OECD and Selected Partner Economies*, the latest edition of its annual report identifying major tax policy trends. The report covers the OECD member countries (with the exception of Colombia, which became a member after the end of the primary data collection exercise), plus Argentina, China (covered for the first time), Indonesia, and South Africa. In addition to identifying the major tax policy trends before the coronavirus (COVID-19) outbreak, the report covers tax and broader fiscal measures introduced in response to COVID-19, from the time of the outbreak to June 2020.

The report finds that some countries have taken unprecedented fiscal action due to COVID-19 and that countries will need to continue to support economic recovery, as significant fiscal challenges lie ahead.

Regarding the reforms introduced prior to the outbreak of COVID-19, the report covers trends relating to various types of tax, including corporate income tax, personal income tax and social security contributions, VAT and other taxes on goods and services, property taxes, and environmentally related taxes.

Australia

Combined assurance reviews: GST scrutiny for more Top 1,000 taxpayers

On 10 September 2020, the Australian Taxation Office (ATO) published details of an important change to its tax assurance program for Top 1,000 taxpayers (i.e., large public and multinational businesses with a turnover greater than AUD 250 million that are not in the Top 100 cohort).

The Top 1,000 income tax performance program will end in December 2020 and be replaced by the Top 1,000 combined assurance program. Combined assurance reviews (CARs) will cover both income tax and GST and will seek to identify whether each taxpayer under review is reporting and paying the correct amount of income tax and GST or has areas of risk that require attention.

More Top 1,000 taxpayers facing a GST review

Significantly, the existing Top 1,000 GST assurance program will continue in operation once the combined assurance program commences. During a presentation at a GST-related event held by the Taxation Institute of Australia on 10 September 2020, the ATO speaker indicated that:

- The ATO will be aiming to undertake 300 CARs per year;

- The GST component of a CAR will involve a narrower review than a review under the GST assurance program. These narrower GST reviews are intended to enable the ATO to engage with more Top 1,000 taxpayers so as to more efficiently identify those who are higher risk for GST; and

- To a large extent, taxpayers identified as higher risk for GST through the combined assurance program will form the pipeline for future GST assurance reviews.

The Top 1,000 GST assurance program has a target of reviewing 320 taxpayers over the four-year period from 1 July 2019 to 30 June 2023 (i.e., 80 per year). To date, there have been no indications that this target is changing. Therefore, in terms of the raw number of Top 1,000 taxpayers undergoing some form of GST assurance review each year, it seems likely that there will be a very substantial increase, from about 80 currently to about 380 per year after December 2020.

What will the income tax and GST components of a CAR involve?

According to the ATO, there will be a level of tailoring of each CAR, depending in part on whether the ATO has engaged with the taxpayer through an earlier income tax assurance review (SAR) and/or an earlier GST assurance review (GST SAR).

Income tax component

If the taxpayer has not previously undergone a SAR, the income tax component of the review will be like a SAR and cover a four-year period.

If the taxpayer has previously undergone a SAR, the ATO will focus on "topping up" that prior income tax assurance work by looking at what has changed since the earlier review and checking whether the taxpayer has addressed any recommendations that arose from it.

GST component

The GST component of a CAR will be narrower than a GST SAR, having the taxpayer's GST governance frameworks as its focus, as well as identifying areas of GST risk that require action.

In cases where the taxpayer has previously undergone a GST SAR, the ATO will "top up" its understanding of the taxpayer's GST governance frameworks, as well as "topping up" its earlier evaluation of the taxpayer's GST risk profile and checking that recommendations from the GST SAR have been addressed.

ATO's expectations

It is clear from the details published by the ATO about the combined assurance program that the ATO expects all Top 1,000 taxpayers to have a good understanding of the ATO's approach to tax assurance and related guidance publications including the recently published *GST Governance, Data Testing and Transaction Testing Guide* and the *Tax risk management and governance review guide* published several years ago. It is clear that taxpayers selected for a CAR will be in a more advantageous position if they can demonstrate to the ATO that they have already used such guidance to self-review their tax governance and have addressed, or are addressing, gaps or risks identified.

The ATO also has emphasized the weight it will be placing on how taxpayers selected for a CAR respond to requests for information. The ATO's view is that the provision of timely, accurate and complete responses to information requests "may indicate the presence of stronger tax governance frameworks and a willingness to engage … to obtain better review outcomes." Where responses to information requests meet the ATO's expectations, the ATO has indicated that it will seek to tailor its engagement with the taxpayer through a shorter review, a shorter combined tax assurance report, and/or a "lighter touch" engagement.

Observations

With the introduction of the combined assurance program at the end of 2020, taxpayers in the Top 1,000 population have a greatly increased chance of being selected for some form of GST review in 2021 or beyond.

Taxpayers who use the months ahead to prepare for that eventuality - by undertaking a self-review of their GST systems, processes and governance, documenting the outcomes, and addressing any gaps and areas of GST risk identified – could reap the very substantial benefit of a faster, lighter and more positive GST review experience with the ATO.

Canada

Sales tax registration: Provinces are focusing on nonresidents

Various Canadian tax authorities have introduced or suggested the possibility of rules that may force nonresident vendors to register to collect sales tax. In light of recent announcements from the governments of British Columbia and Saskatchewan, Deloitte has assembled the following roadmap to track these advances.

Sales taxes in Canada

The Canadian sales tax landscape is unique and complex. In this respect, Canada has a federal Goods and Services Tax (GST), which is a value-added tax regime and applies in all provinces and territories across Canada on the taxable supply of goods, services, and intangibles made in Canada.

As well, at times, a provincial sales tax can apply simultaneously to a supply that is subject to GST.

Certain provinces (Newfoundland-and-Labrador, New Brunswick, Nova Scotia, Ontario, and Prince Edward Island) have harmonized with the federal regime having these rules apply for provincial purposes as well. The Canada Revenue Agency (CRA) is the tax authority that administers the GST and Harmonized Sales Tax (HST) regime.

The Québec Sales Tax (QST) is quasi harmonized with the federal GST, with a branch of the provincial government (Revenu Québec) managing the administration and enforcement of the QST regime, which is substantially the same as the GST regime.

Finally, other provinces (British Columbia, Manitoba, and Saskatchewan) have a Provincial Sales Tax (PST) regime, where tax is generally only collected on goods, software, and enumerated services sold to end users (similar to the sales and use tax regimes in the US).

Alberta and the three Canadian territories do not have a provincial/territorial sales tax regime.

The above leads to an abundance of complexities including ever-changing rules in a variety of regimes, burdensome registration and compliance obligations, and varying taxability dependent on the regime in question.

GST/HST regime

In general, a nonresident of Canada is required to register for GST/HST purposes if it is "carrying on business" in Canada. It is a question of fact whether a person is carrying on business in Canada for GST/HST purposes. Various politicians have suggested that amendments may be coming to the GST/HST regime to require nonresidents with activities in Canada to register. However, as of the date of publication, no amendments have been proposed to the Excise Tax Act (ETA) in this regard. Specifically, the ETA does not have the extended definition of "carrying on business" that is contained in the Income Tax Act. CRA released its Policy Statement P-051R2 –*Carrying on Business in Canada,* in order to assist nonresidents in determining if the nonresident is carrying on business and thus required to register for GST/HST purposes and collect tax on taxable supplies made in Canada.

QST regime

Nonresident vendors and marketplace facilitators

Historically, the QST nonresident registration criteria, similar to the GST/HST regime, generally required that a vendor be considered to be carrying on business in Quebec.

On 12 June 2018, the National Assembly of Quebec passed into law the measures announced in the 2018-2019 Budget, introducing a particular QST regime ("new QST regime"). This new QST regime provides that suppliers, notably those engaging in e-commerce, which transact with customers in Quebec must register for the QST.

Effective 1 January 2019, the new rules introduced registration requirements for nonresidents of Quebec. In addition, new rules were introduced for nonresidents of Quebec that are registered for GST/HST purposes, effective 1 September 2019. According to the legislation, "specified suppliers" and operators of a "specified digital platform" may be required to register under the new QST regime and collect QST on taxable incorporeal movable property (i.e., intangible personal property (IPP)) and services supplied in Quebec,

should the "specified threshold" exceed CAD 30,000. In addition, "specified suppliers" registered for GST/HST may also be required to collect QST on taxable supplies of corporeal movable property (i.e., tangible personal property (TPP)) in Quebec.

Further details can be found in the 4 October 2018 edition of our Canadian Indirect Tax News alert.

Operators of digital accommodation platforms

As of 1 January 2020, an operator of a digital accommodation platform must register to collect the tax on lodging if:

- It operates a digital accommodation platform used to offer for rent one or more accommodation units located in one of the 21 Quebec tourism regions where the tax on lodging applies;

- It receives an amount as consideration for the rental of the units.

In this respect, the operator must collect and remit the tax on lodging, calculated on the consideration received, rather than the renter of the accommodation unit.

PST in British Columbia

While the registration requirements have historically required some sort of inventory held in the province, or solicitation and delivery into the province (dependent on the residency of the vendor), on 18 February 2020, the government announced proposed changes to the provincial sales tax laws. These proposed changes include expanding the PST registration requirements so that Canadian sellers of goods and Canadian and foreign sellers of software and telecommunication services will be required to register to collect PST if specified BC revenues exceed CAD 10,000.

On 2 September 2020, it was announced that the implementation of the above-proposed changes will be effective on 1 April 2021.

PST in Saskatchewan

Nonresident vendors

On 30 May 2018, Royal Assent was given to the amendments proposed by the government of Saskatchewan regarding the PST registration criteria for nonresident suppliers. Retroactive to 1 April 2017, businesses located outside Saskatchewan that make retail sales in the province, or lease taxable goods in the province, including tangible personal property and taxable services that are acquired for use or consumption in or relating to Saskatchewan, are required to become licensed to collect PST.

Marketplace facilitators, operators of online accommodation platforms and electronic distribution platforms

The government of Saskatchewan now requires certain marketplace facilitators and operators of online accommodation platforms to register and collect Saskatchewan PST. The changes, which were announced on 15 June 2020[1], became law on 3 July 2020 and have retroactive effect to 1 January 2020. The changes add a number of new definitions and concepts to the legislation.

Marketplace facilitator: A "marketplace facilitator" is defined as a person that:

- Makes or facilitates a marketplace for retail sales by marketplace sellers; and

- Directly or indirectly, collects payment from a consumer or user and remits payment to a marketplace seller.

A "marketplace seller" is a person that makes retail sales through any physical or electronic marketplace operated, owned, or controlled by a marketplace facilitator.

Therefore, a person who meets the criteria in the definition of "market facilitator" is generally required to register and collect PST.

Online accommodation platforms: An "online accommodation platform" means an electronic marketplace that enables or facilitates transactions in relation to accommodation services located in Saskatchewan.

The operator of an online accommodation platform is a vendor, generally required to register and collect PST, if:

- It makes or facilitates the marketplace in which the provider of accommodation services in Saskatchewan and the user of those services are brought together; and

- It collects payment from the user, remitting payment to the provider of the accommodation services.

Electronic distribution platform: Finally, the proposed amendments introduce the definition of "electronic distribution services," stating that these services that are delivered, streamed, or accessed through an "electronic distribution platform" are subject to PST.

Key takeaways

Nonresident suppliers and platform operators may find themselves with Canadian sales tax obligations, independent of physical presence in Canada. As such, it is important that nonresident businesses keep abreast of advances in legislation, and review sales tax obligations to ensure risks are limited.

---

[1] Bill No. 211, The Provincial Sales Tax Amendment Act, 2020.

Hungary

Changes announced in view of extension to real-time invoice data reporting obligation

Ahead of the extension of the real-time invoice data reporting obligation as from 1 January 2021, on 7 September 2020 the Hungarian Ministry of Finance announced a "grace period" for compliance and the Hungarian tax authorities published an updated version of the schema for the provision of the real-time reporting obligation.

Grace period for the extended real-time reporting obligation

As from 1 July 2020, all invoices issued in respect of domestic transactions with a VAT-taxable person (business-to-business or B2B transactions) have been subject to the real-time invoice data reporting obligation. As from 1 January 2021, the obligation will be extended to include also all invoices in respect of domestic transactions with non-taxable persons (business-to-consumer or B2C transactions, irrespective of the amount of VAT charged), and invoices relating to B2B intra-community supplies of goods and services, and other export sales. Invoices issued in respect of a B2C transaction carried out in another EU member state on which the supplier accounts for VAT under the Mini One Stop Shop (MOSS) will not be subject to the real-time invoice data reporting obligation.

According to the Ministry of Finance's announcement, the Hungarian tax authorities will operate a grace period between 1 January 2021 and 31 March 2021 when they will not seek to impose penalties for failure to comply with the extended real-time invoice data provision obligation. The grace period aims to support businesses with the smooth transition to the new system, taking account of the additional difficulties caused by the COVID-19 pandemic.

Introduction of the XSD 3.0 schema for the real-time reporting obligation

In order for the data structure to be equipped for the extended reporting obligation, the tax authorities have published the updated XSD 3.0 schema including the necessary developments (e.g., data privacy measures for B2C invoices). Coinciding with the three-month grace period, taxpayers may use the current XSD 2.0 schema from 1 January 2021 through 31 March 2021, but as from 1 April 2021, all taxpayers will be required to comply with the updated XSD 3.0 schema.

Ireland

Standard VAT rate reduced temporarily

On 1 August 2020, the Irish government signed into law the Financial Provisions (Covid-19) (No. 2) Act 2020, which contains measures to improve the economy and assist businesses in response to COVID-19. The measures include a temporary reduction to the standard rate of value-added tax (VAT) from 23% to 21%, which is effective for six months as from 1 September 2020.

In a similar approach to other EU member states, the Irish government has chosen to introduce a general reduction in the standard rate of VAT rather than target a particular sector (as was done in July 2011 when a temporary reduction in the VAT rate was introduced for the hospitality, services, and tourism sector).

Revenue currently has guidance that describes procedures businesses should follow after a change in VAT rates. It remains to be seen if there will be additional guidance as a result of the impending change.

The following are issues businesses should consider regarding a VAT rate change.

Time of supply

The time of supply takes place at a "tax point" and VAT is charged at the rate of VAT applicable at such point, which generally takes place at the earlier of when an invoice is issued, when an invoice should have been issued, or the receipt of full or partial payment (although there are several rules surrounding the time of supply depending on whether goods or services are being supplied).

Businesses should make certain they determine the correct tax point in order to apply the appropriate VAT rate. For example, businesses accounting for VAT on a cash receipts basis should apply the rate that is in force at the time of receipt of payment, whereas businesses using the invoice basis of accounting should apply the rate that is in force at the time an invoice is issued or should have been issued (whichever is earliest).

Determining the tax point of a supply can be complex depending on the nature of the transaction (e.g., one-off transaction versus continuous supply, whether payment already was made, private individual or business). As such, making this determination will take on increased importance given the recent VAT rate change.

Credit and debit notes

Where credit or debit notes are issued for returned goods or when there is an amendment to the agreed consideration, the tax point should be the date the original invoice was issued and the VAT rate in force on such date should be used. This also applies to credit notes issued for retrospective discounts, such as volume-based bonuses.

Existing contracts

For existing contracts (and contacts entered into before 1 September 2020) relating to supplies to be made between 1 September 2020 and 28 February 2021, the reduced VAT rate of 21% generally must be applied.

Where a contract has been entered into at a particular VAT rate and that rate changes before the contract is fulfilled, an adjustment to take the rate change into consideration may be required. For example, adjustments may need to be made to contracts where the stated consideration is EUR 100 plus 23% VAT or EUR 123 VAT inclusive.

Therefore, businesses should determine if existing contracts state prices on a VAT exclusive or VAT inclusive basis, and subsequent negotiations with suppliers or customers with respect to the rate change may be necessary along with updating the contracts if necessary.

Given the complexities that can exist in contracts, businesses should review their contracts and consider on a case-by-case basis the appropriate VAT treatment.

Continuous supplies, ongoing services, and vouchers

Consideration also should be given to the appropriate VAT rate applying to continuous supplies, the provision of ongoing services, as well as services that are rendered in parts. This is relevant in the context of utilities, which are billed in advance, such as gas, electricity, or telecoms.

The issue of vouchers also should be borne in mind. Vouchers have complex VAT rules, which need VAT accounted for at the time of issue (for a single purpose voucher) or on redemption (for a multi-purpose voucher).

Practical and commercial issues

Businesses should review IT systems and address issues relating to the VAT rate change including:

- Systems impact and configuration in enterprise resource planning (ERP), with key consideration given to updating relevant IT systems including with respect to tax codes;

- Implementation and lead time (e.g., who will update, how long will updates take, how easily are changes reversed);

- VAT general ledger accounts;

- VAT documentation and records;

- VAT invoicing;

- Electronic point of sales (EPOS) and cash register systems; and

- Department guidance and training (e.g., accounts payable, accounts receivable, orders and bookings, IT, shared service centers, finance, legal, treasury, procurement, sales, marketing).

With respect to VAT reporting and the VAT rate change, businesses should review and address issues surrounding:

- VAT reporting systems;

- Rate changes midway through a VAT accounting year;

- Pro-forma invoices;

- Employee expenses;

- Acquisition VAT/reverse charge VAT and timing considerations (e.g., basis for accounting for VAT on "bought-in" services particularly where there is restricted input VAT recovery); and

- Import VAT.

Commercial issues businesses should consider with respect to the VAT rate change include:

- Pricing issues such as whether the benefit of the rate reduction will be retained to support day-to-day costs or passed on to customers or end users, with pricing policies amended to reflect any such changes (this pricing aspect is very relevant to traders who set their prices on a VAT inclusive basis (e.g., retailers) and also should be borne in mind by suppliers to businesses with limited or restricted input VAT recovery*);*

- Advising customers on the changes and responding to customer queries;

- Making intercompany adjustments and arranging settlements within groups;

- For partially exempt businesses where the recovery of input VAT is blocked, businesses should consider if they can maximize the benefit of the temporary VAT rate cut while ensuring all VAT reporting requirements are being met;

- Traders with an import VAT deferment account should consider if the level of bond or guarantee could be reduced to take into account the temporary lower import VAT payables;

- Businesses that pay VAT by monthly direct debit may be able to reduce their direct debit amounts temporarily based on the reduced VAT rate; and

- The impact on cashflow; however, for most transactions between VAT registered traders with full input VAT recovery, the change will be cash neutral.

Other COVID-19 VAT initiatives

Other VAT measures include provisions for the "warehousing" of tax liabilities, which allows businesses affected by COVID-19 to delay payment of their VAT and PAYE obligations (in part or in full) for a set period (agreed with Revenue on a case-by-case basis) with no sanctions (interest or penalties); however, the tax returns must be filed on time to qualify.

In addition, taxpayers that are experiencing difficulties settling tax liabilities (including VAT) are subject to a reduced interest rate of 3% on agreed tax debt repayments (provided that an agreement has been reached with Revenue prior to 30 September 2020).

Also, VAT measures relating to the warehousing scheme were introduced, which include a description of the phases (referred to as "periods") to which the measures apply and formulas for calculating interest on "Covid-19 liabilities."

Comments

As the standard rate of VAT applies to a broad range of activities, the impact of this temporary change likely will be felt by most businesses and private individuals. Examples of services and goods subject to the standard rate of VAT include professional services (e.g., solicitors, accountants, tax advisors, architects), adult clothing, alcohol, motor vehicles, electrical products, and most household goods, non-basic foodstuff, many electronically supplied services, and telecommunications.

The temporary reduction in the VAT rate may be used by businesses as an opportunity to review their pricing policies and perhaps consider any efficiencies that could be made around the timing of supplies. The largest impact experienced by businesses may be from a systems and process perspective as tax coding, invoicing, and ERP systems, along with routine controls, will need to be updated to account for the rate change.

Portugal

VAT e-commerce package published

Law No. 47/2020, published on 24 August 2020, transposes into Portuguese law the provisions of Council Directives (EU) 2017/2455 and 2019/1995 regarding the VAT treatment of distance sales and certain domestic supplies of goods.

The law includes the following main changes:

- Extension of the VAT "mini one stop shop" (MOSS) to all B2C services, intracommunity distance sales of goods and distance sales of imported goods, resulting in new VAT special regimes and the revocation of the previous VAT special regime for telecommunications, broadcasting and electronic services;

- Revocation of the VAT exemption for small consignments;

- New place of supply rules for distance sales of imported goods;

- New VAT rules for distance sales of goods performed in electronic interfaces (e.g., marketplaces); and

- New invoicing rules for certain distance sales of goods.

The new rules are effective as from 1 January 2021. However, the European Council has recently postponed the introduction of the VAT e-commerce package to 1 July 2021; therefore, it is possible that Portugal also will amend its local law to adopt a 1 July 2021 effective date.

Other news

Eurasian Economic Union

Update on Eurasian Economic Union customs developments (September 2020)

This article highlights several decisions on import customs duties, export and import restrictions issued by the Board of the Eurasian Economic Commission (EEC) during August and September 2020. The EEC is the permanent regulatory body of the Eurasian Economic Union (EEU), established to oversee the functioning and development of the EEU in the areas including customs regulation, non-tariff regulation, and technical regulation. The current EEU members are Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia.

Zero import duties for certain goods discontinued

As from 1 September 2020, certain types of component used for the production of bicycles (broadly classified under the commodity codes 4011 50 000 1, 7315 11 100 1, 8714 93 000 1, and 8714 91 100 7 of the Harmonized System of the EEU (HS of the EEU)), are subject to import duty at a rate of between 5% and 15% of their customs value. Zero import duty rates on such goods established by the Board of the EEC in Decisions No. 220 of 25 December 2018, No. 94 of 5 June 2018, and No. 98 of 18 August 2017 ceased to apply after 31 August 2020.

Zero import customs duties for certain raw materials discontinued

As from 1 October 2020, certain types of down and fur materials, and tanned/dressed skins, classified under commodity headings 4301 and 4302 of the HS of the EEU, will be subject to import duty at a rate of between 3% and 5% of their customs value. In accordance with Decision No. 146 of the Board of the EEC of 7 September 2018, a zero rate of import duty applies on such goods from 12 October 2018 to 30 September 2020 inclusive.

Temporary ban on exports of certain medical products and personal protective equipment lifted

As from 1 October 2020, the export of personal protective equipment, protective equipment, disinfectants, medical products, and other materials may be resumed after the expiry of the temporary ban established by Decision No. 41 of the Board of the EEC of 24 March 2020.

Tariff quotas established for imports of certain types of agricultural goods

Decision No. 102 of the Board of the EEC dated 18 August 2020 and effective as from 20 September 2020 sets tariff quotas for 2021 on certain types of agricultural goods imported into the EEU. The quotas will be distributed among the EEU member states.

Tariff quotas are applied in respect of agricultural goods placed under the customs procedure of release into free circulation, with the exception of goods originating from a CIS member state. The list of goods includes certain types of beef, poultry, and milk whey, etc.

Antidumping measures for certain steel products from China extended

Decision No. 98 of the Board of the EEC dated 11 August 2020 extends until 12 May 2021 the antidumping duty for certain types of seamless steel pipe used for the drilling and operation of oil and gas wells imported into EEU territory, the country of origin of which is the People's Republic of China. Decision No. 101 of the Board of the EEC dated 18 August 2015 established a five-year antidumping customs duty until 22 September 2020 at a rate between 12.23% and 31% of the customs value.

China

Guidance issued on tax measures for development of the Hainan Free Trade Port

On 30 June 2020, China’s Ministry of Finance and State Taxation Administration issued guidance (Circulars 31 and 32) implementing several tax measures to support the development of the Hainan Free Trade Port (HFTP), which measures were announced by the State Council on 1 June 2020. The measures are effective retroactively as from 1 January 2020 and will expire on 31 December 2024, and include:

- A 15% enterprise income tax (EIT) rate (reduced from the statutory 25% rate) for taxpayers engaged in “encouraged” business activities in the HFTP;

- A tax exemption for certain foreign-source income from newly formed foreign branches and new foreign direct investment of taxpayers established in the HFTP in the sectors of tourism, modern services, and high and new technologies;

- Accelerated tax deductions for eligible capital expenditures by taxpayers established in the HFTP; and

- A 15% effective individual income tax (IIT) rate for qualified talent working in the HFTP.

The guidance addresses various aspects of the tax measures and is summarized below.

Reduced income tax rate for encouraged business activities

A reduced 15% EIT rate is available for a taxpayer that meets the following tests:

- Its primary business activity is an encouraged business (as set forth in specific industry catalogues);

- The revenue from such primary business activity accounts for 60% or more of gross revenue; and

- It carries out substantial business operations in the HFTP.

This reduced rate only applies to income attributable to a company's head office and branches established in the HFTP. For example, if a company's head office is established in the HFTP, the reduced rate may not be applied to income attributable to branches established outside the HFTP. Similarly, if a company's head office is established outside the HFTP, the reduced rate only applies to income attributable to the company's branches established in the HFTP. In addition, when determining whether the encouraged businesses and 60% revenue tests have been met, a company's head office or branches established outside the HFTP will not be considered.

Encouraged businesses test

Taxpayers must have as their primary business activity an "encouraged" business as set forth in any of the following industry catalogues:

- *The Guiding Catalogue for Industrial Structure Adjustments.* The National Development and Reform Commission (NDRC) publishes this catalogue, with the most recent version issued in 2019. There are 821 encouraged businesses listed.

- *The Catalogue of Encouraged Industries for Foreign Investments.* The NDRC and the Ministry of Commerce publishes this catalogue, with the most recent version issued in 2019. The catalogue is comprised of two parts: Part I applies nationally and has listed 415 encouraged businesses; and Part II applies in mid- and western China and has varied encouraged businesses depending on the province. For the Hainan province, 40 encouraged businesses are listed.

- *The Catalogue of Newly added Encouraged Industries in the Hainan Free Trade Port (HFTP catalogue).* This catalogue has not been released yet.

Based on the two existing catalogues, a pure holding company may not be able to meet the encouraged businesses test unless it adds functions such as providing various business and management services (e.g., research and development, IT outsourcing, supply chain, accounting, tax, legal) to group affiliates.

Financial services likely will be a key industry considered in the development of the HFTP catalogue in order to encourage foreign investors in the financial sector to invest in the Hainan province.

Sixty percent revenue test

The taxpayer's revenue from the encouraged business must account for 60% or more of gross revenue.

There is no clear guidance on the type of revenue that must be included in order to determine whether the 60% threshold has been met. "Gross revenue" could include a broad range of items including passive income from dividends and interest, as well as capital gains from the sale of shares. As such, a taxpayer may find it difficult to meet the test in a year in which, for example, it disposed of a significant number of shares in certain investments.

Substantial business operations test

A taxpayer also must carry out substantial business operations in the HFTP. This test was introduced in order to avoid granting the tax incentive to companies that have no (or nominal) operations or assets in the HFTP.

In determining whether a taxpayer carries out substantial business operations in the HFTP, Circular 31 refers to the place of effective management, which is a concept introduced in the EIT Law to determine whether a company is tax resident in China. The considerations commonly used in determining a company's place of effective management for EIT purposes may include but are not limited to:

- The place where a company's shareholder meetings, board meetings, or other management meetings are held; and

- The place where a company maintains its books and records.

Supplementary guidance issued by the Hainan Tax Bureau on 31 July 2020 suggests that certain information (such as total assets, gross revenue, salary expenditure, and number of employees) of companies or branches established in the HFTP will be needed in order for the tax authorities to determine whether the test has been met.

Tax exemption on new foreign-source income

A tax exemption applies to certain foreign-source income earned by taxpayers established in the HFTP that are engaged in the tourism, modern services, and high- and new-technologies sectors. The HFTP catalogue will contain guidance as to whether a taxpayer's business falls within the scope of these sectors.

The exemption applies to income from operating profits derived from 1 January 2020 through 31 December 2024 from branches established in foreign jurisdictions during this same period.

The exemption also applies to dividend income derived from 1 January 2020 through 31 December 2024 from a foreign company in which the taxpayer holds a 20% or more equity interest and that is a result of a direct investment in such company during this same period.

The investment may be acquired through capital contributions to a new or existing foreign company or purchased from a foreign company's existing shareholders. Gains from the disposal of such direct investments do not fall within the scope of income eligible for the tax exemption.

In addition, the foreign jurisdiction in which the branch is located or investment is made must impose a minimum statutory income tax of 5%. No guidance currently exists as to how this requirement will be applied within indirect shareholding structures, such as when a foreign investment is made through a holding company established in a jurisdiction that imposes a statutory income tax of 5% or higher.

Accelerated deduction of certain capital expenditures

For fixed assets (excluding buildings) or intangible assets that are acquired between 1 January 2020 through 31 December 2024, taxpayers established in the HFTP may accelerate the deduction of the cost of such assets as follows:

- For assets valued at RMB 5 million or less, an immediate tax deduction is allowed; and

- For assets valued at more than RMB 5 million, an accelerated depreciation or amortization schedule is allowed.

To qualify for the accelerated deductions, the assets must be purchased, constructed, or developed by the taxpayer.

This treatment is similar to that provided in Circular 54 (issued in 2018 and applicable nationally through 2020); however, Circular 54 does not cover intangible assets and contains more restrictions on fixed assets valued at more than RMB 5 million.

15% effective tax rate for qualified talent

A partial IIT exemption is available to qualified talent working in the HFTP during 2020 through 2024 in order to achieve a 15% effective tax rate on the individual's taxable income in the following categories: comprehensive income, business income, and subsidies recognized by the Hainan government.

The requirements to qualify for this exemption (e.g., high-end and urgently needed talent) and other relevant measures will be determined and issued by the provincial governments (with involvement from the Ministry of Finance and State Tax Administration).

This measure is similar to those currently implemented in the nine mainland China cities of the Greater Bay Area (GBA). However, unlike the measures in the GBA where the government collects the tax first and then grants a tax-free subsidy to qualified taxpayers, the HFTP measure provides a more streamlined process so that the relevant income is exempt immediately from tax when the annual tax return is filed without the need for granting a subsequent subsidy.

Future plan to reduce IIT on comprehensive and business income

Although not addressed in the guidance, the State Council also announced on 1 June 2020 a planned measure that would limit the IIT brackets on comprehensive income and business income to 3%, 10%, and 15% (the normal IIT brackets are: 3%, 10%, 20%, 25%, 30%,

35%, and 45% for comprehensive income; 5%, 10%, 20%, 30%, and 35% for business income) for certain individuals residing in the HFTP. Comprehensive income includes salaries and wages, income from provision of independent services, author's remuneration, and royalties. In order to qualify, the income must be derived by an individual in a given calendar year from 2025 through 2035, if the individual resides in the Hainan province for 183 days or more in that year.

Cyprus

Amendments to rules for assessment and collection of taxes published

A law amending the Cyprus Assessment and Collection of Taxes Law published on 20 August 2020 introduces provisions that aim to improve tax compliance and grant additional tax collection powers to the Commissioner of Taxation.

Following its publication, the Cyprus Tax Department on 28 August issued a clarifying circular on the practical application of the law. Nevertheless, certain details are still pending and will be communicated to taxpayers in the form of decrees.

The main provisions of the amending law are summarized below.

Obligation to submit personal income tax returns

From tax year 2020 onwards, all individuals with gross income that falls under the provisions of Article 5 of the Income Tax Law (i.e., dividends, interest, and certain other income) are required to submit a personal income tax return.

Through tax year 2019, individuals with gross income not exceeding EUR 19,500 (i.e., the tax-free threshold) were not required to submit a personal income tax return, unless they received a notice/request for submission.

As from tax year 2020, individuals with gross income not exceeding EUR 19,500 will need to meet certain conditions to be exempt from the obligation to submit a personal income tax return. The Council of Ministers will communicate these conditions through a decree.

Deadlines for submission of income tax returns and payment of income tax

The deadlines for the submission of income tax returns and the payment of income tax for tax years 2020 onwards are shown in the table below:

Taxpayer	Tax return form(s)	Submission deadline for tax return	Deadline for payment of tax
Individuals who don't have an obligation to prepare audited financial statements	TD1	31 July of the year following the relevant tax year	31 July of the year following the relevant tax year
Companies and individuals with an obligation to prepare audited financial statements	TD1 (self-employed)/TD4	15 months from the end of the relevant tax year	1 August of the year following the relevant tax year

Submission of revised income tax returns

Taxpayers can submit a revised tax return within 3 years from the submission deadline of the relevant tax return and only if the revision arises:

- As a result of claiming a relief, deduction or tax credit;

- As a result of correcting an error; or

- For the purposes of being consistent with the provisions of the tax laws.

Irrespective of the above, a revised tax return cannot be submitted during a tax examination or a tax audit of the relevant tax return.

A taxpayer must settle any tax liability arising from the revision within 30 days from the submission of the revised return.

Revised tax returns for which the submission deadline for a revised return has already passed, will need to be submitted the latest by **20 February 2021** (i.e. within 6 months from the date of entry into force of the amending law).

Change of taxpayer's data

Taxpayers must notify the Tax Department of any changes to the information they have submitted upon tax registration within 60 days from the date of change.

Employer's returns

The amending law changes the deadline for the electronic submission of the employer's return (TD7) from 31 July of the year following the relevant tax year to 31 May of the year following the relevant tax year.

In addition, the law clarifies that the deemed benefit arising on a financing arrangement provided by a company to an individual shareholder/director and individuals related to a shareholder/director is considered "remuneration" and should be included in the employer's return.

Obligations of Cyprus incorporated nonresident companies

A company incorporated in Cyprus that is not a tax resident of Cyprus must inform the Tax Department of its intended activities in Cyprus within 60 days from its incorporation date.

In addition, such companies have an obligation to submit an annual tax return within 15 months following the end of the tax year.

Powers of Commissioner of Taxation

The Commissioner of Taxation has the power to request the submission of:

- Tax returns and any supporting documentation; and

- A detailed statement of assets and liabilities (capital statement) of the taxpayer, his/her spouse and any dependants, covering a period not exceeding six years. The period under review can be extended to 12 years in cases of fraud or willful default.

Tax inspections

The Commissioner of Taxation has the authority to enter and inspect business premises at a reasonable time, without providing notice to the relevant person.

Accepting payments through credit cards

Certain businesses that will be determined in a decree to be issued by the Council of Ministers will not be allowed to refuse payment by credit card. To meet this requirement, the businesses will need to have the appropriate equipment, made available from licensed credit card payment providers. As from 21 February 2021, an administrative fine of up to EUR 2,000 will be imposed for noncompliance.

No refund in case of noncompliance with VAT obligations

The refund of any tax will be suspended in cases where the taxpayer has not submitted any VAT return due by the end of the tax year in which the examination of the refund began. The suspension will continue until the taxpayer complies with this obligation.

El Salvador

Overview of requirements for amended tax returns to be accepted as definitive returns

Taxpayers in El Salvador may need to file amended tax returns in certain circumstances, to make modifications or corrections to previously filed tax returns. It is important for taxpayers to be familiar with the applicable rules and follow the proper procedures for their amended tax returns to be accepted by the tax authorities and treated as "definitive" returns effectively replacing the originally filed returns, particularly in cases where the amendments decrease the taxpayer's tax liability and the taxpayer seeks to obtain a refund.

Title III, chapter I, section 4 of El Salvador's tax code establishes the regulatory provisions relating to the filing of all types of tax returns (including corporate income tax, VAT, withholding tax, and other returns). These provisions allow for corrections to aspects of tax return forms or to the amounts of taxes that already have been paid and settled with the tax authorities, through amended returns.

When making modifications and/or corrections to tax returns, the specific rules found in section 4 of the tax code must be followed for the amended returns to be considered as definitive. Observance of the rules is crucial because the filing of an amended return does not mean it automatically will be accepted by the tax authorities and classified as a definitive return.

The general rules for the filing of tax returns are found in articles 91 to 98 of section 4 of the tax code:

- There is a legal obligation to file tax returns that applies to either the taxpayer or the party responsible for the payment of the tax.

- The obligation to file tax returns remains applicable even when no tax payment is required.

- Tax returns must be filed using the forms provided by the tax authorities. The current general filing method is mandatory electronic filing through the online services available through the Treasury Office of El Salvador's website.

- The information contained in tax returns will convey the intent and serve the purposes of a sworn statement.

- Tax returns must be submitted to the locations and within the deadlines established in the specific tax laws for each type of tax, taking into account whether the returns must be filed for monthly periods or for the tax year (1 January to 31 December).

- Taxpayers must ensure that the tax return filed contains all the necessary personal information for the taxpayer.

- Tax returns filed by the legal deadline will be deemed to be definitive in nature.

- Original and amended tax returns submitted after the taxpayer is notified of a tax audit will be considered as not having been filed, unless they are filed for the purpose of making voluntary payments of taxes, withholding, and/or remittance of tax, or for decreasing a balance in the taxpayer's favor, to remedy any noncompliance.

However, the law does accommodate that there may be circumstances related to aspects of timing and form that require modifying the information contained in original tax returns. Therefore, the law allows taxpayers to make corrections to the returns, provided that the definitive nature of the information declared in the returns is preserved. For such corrections to be accepted, taxpayers must follow the specific rules described in articles 101 to 106 of the tax code, which provide the following:

- **Incorrect tax returns:** When, after the filing of a tax return, the taxpayer changes the amounts declared in the return and the change results in an original or additional payment of tax, the original return will be deemed to have been incorrectly filed.

- **Amendments to tax returns:**

    a. **Correction of formal errors:** Errors relating to a failure to comply with the formal requirements specified in article 95 of the tax code (e.g., incorrectly populated informational fields), as well as errors that do not involve changes to the amount payable or a balance in favor of the taxpayer may be corrected within the two years following the deadline for filing the original tax return, provided that no notification of an audit or corresponding enforcement proceeding has been received by the taxpayer.

    b. Changes that increase the amount payable or decrease a balance in favor of the taxpayer: Tax returns may be modified at any time and under any circumstances in order to increase the tax payable or decrease the excess or remaining balance of tax in favor of the taxpayer.

c. **Corrections that decrease the amount payable or increase a balance in favor of the taxpayer:** An amended tax return decreasing the amount of the tax payable or increasing a balance in favor of the taxpayer may be filed with the tax authorities within the two years following the filing deadline for the original tax return, provided that no notification of an audit has been received by the taxpayer.

d. **"Ex officio" rectifications:** The tax authorities have the authority to rectify, within the statutory period (in general, three years where the taxpayer has filed a return with a tax payment amount), errors in numerical calculations and other obvious errors that are evident based on a simple review of tax returns, and to require the settlement of any tax due and take the corresponding collection actions.

If tax returns are amended under the circumstances indicated in letters (a), (b), or (d) above, such returns will be deemed to be definitive and will replace the original return filed by the taxpayer.

It is important to note that in the case of returns amended under the circumstances indicated in letter (c) above—relating to corrections that decrease the amount payable or increase a balance in favor of the taxpayer—for the amended returns to be classified as "filed" and for the information declared in them to be deemed definitive, taxpayers must have confirmation from the tax authorities' auditors in the form of a ruling establishing whether the amended returns are acceptable. If the taxpayer does not have a favorable ruling from the tax authorities regarding the acceptability of an amended return, the return will have no legal effects and will not replace the original return the taxpayer seeks to amend.

These rules are particularly relevant when taxpayers wish to file a refund request for a balance of tax in their favor. Article 104 of the tax code indicates that when an amended tax return reports a balance in the taxpayer's favor, the calculation of the statutory deadline for requesting a refund will be suspended during the period during which the tax authorities make the necessary verification of the information included in the amended return, until the tax authorities rule on the acceptability of the amended return. If the result of the verification is favorable to the taxpayer, the taxpayer makes a written request to the tax authorities for the balance in favor of the taxpayer, and that balance is of a type that is permitted to be refunded under the tax law, the tax authorities must adopt the result of the verification and issue a corresponding ruling without requiring additional verification.

For the information reported in tax returns to withstand verification from the tax authorities, it is important that taxpayers have adequate internal controls over their taxes that allow for the correct filing of their tax returns (in both timeliness and form), and with respect to taxes or balances in favor of the taxpayer that are pending settlement. Furthermore, if taxpayers need to file amended tax returns, their internal controls should allow them to comply with the rules covered above so that their information will be considered valid for purposes of the requirements of government, financial, or third-party institutions. If the relevant rules are not taken into account, the amended tax returns may not be considered valid, and taxpayers run the risk that the returns will be rejected by the tax authorities and that the taxpayers will not be able to use or obtain a refund of balances in their favor declared in such returns.

In the event that an amended tax return makes corrections that decrease the amount of tax payable or increase a balance in favor of the taxpayer, for the information declared in the return to be considered as accepted by the tax authorities, the taxpayer must submit a written request to the tax authorities that complies with the provisions of article 34 of the tax code, requesting the verification of the information included in the amended tax return, and must obtain a favorable ruling stating that the amended return has been classified as "filed" in the records and files of the tax authorities. Such a ruling may be required for purposes of different tax formalities, including the use or refund of an income tax balance in favor of the taxpayer, a request for a refund of VAT to an exporter, and as evidence in audit and control processes carried out by the tax authorities.

Finland

Helsinki Administrative Court issues ruling on VAT fixed establishment

The Helsinki Administrative Court issued a ruling on 25 May 2020 (decision number 04219/19/8204) on the creation of a fixed establishment for Finnish VAT purposes.

A company established in another EU member state had acted as a subcontractor for a business in Finland to whom it sold elevator installation services. The company's installation operations began in Finland in May 2017 and continued throughout 2018. The duration of an individual installation project varied between one to three weeks. The company did not have an office or other similar place or a representative in Finland. The company did not have cars or work equipment in Finland, but the company's employees brought the necessary equipment with them to Finland. The company's administrative activities were carried out in another member state.

The Finnish VAT Act no longer defines the concept of a fixed establishment, as the concept is provided in article 11 of Implementing Regulation (IR) 282/2011. Prior to the IR, the VAT Act contained a definition of a fixed establishment and a provision for construction and installation activities. Regardless of the existence of the definition in the IR, the current practice of the tax authorities still is to apply the definition previously included in the VAT Act, according to which a construction contract (or several successive contracts) lasting more than nine months is deemed a fixed establishment for VAT purposes. The Administrative Court referred to this practice in its reasoning in the proceedings.

Although the company's individual projects were separate and short-term, the company's operations were considered to be of a continuous nature as a whole and successive contracting projects had lasted more than nine months. Based on these circumstances, the Administrative Court ruled that the company was considered to have appropriate human and technical resources to carry out installation activities in Finland. As a result, the company was deemed to have created a fixed establishment for VAT purposes in Finland and was found liable to remit VAT on the provided installation services.

Companies performing installation projects in Finland should evaluate in advance whether they will be considered to have created a fixed establishment for VAT purposes under this decision.

Finland

Helsinki Administrative Court rules on definition of insurance service

The Helsinki Administrative Court issued a ruling on 20 July 2020 (decision number 04231/19/8203) on the definition of insurance services for Finnish VAT purposes.

The company's business consisted of importing and selling cars and their spare parts to dealers. The company and the car manufacturer granted the cars a two-year factory warranty. The company and the factory planned to launch a new extended warranty product in Finland, under which the warranty period would be increased by one to three years. The product would be similar to the regular warranty, and it would be granted together by the factory and the company. The factory would charge the company for each additional warranty sold, and the company would invoice the dealer with a margin added on top of the factory's charge, after which the dealer would charge the end customer for the warranty. The repair costs covered by the warranty would be invoiced by the dealer to the company, which would eventually invoice them to the factory. The risk of an accident would remain with the factory. Neither the factory nor the company engaged in insurance business. The factory did not use an insurance company in the arrangement, and the company had not bought insurance from an insurer to cover the repair costs related to the extended warranty.

The Administrative Court was asked to determine whether the extended warranty should be considered as a VAT exempt insurance service or a service subject to VAT. In the case before the court, the dealers selling the warranty and taking responsibility for the repairs would be the same dealers that further sold the cars imported by the company. Therefore, the warranty would not be provided by an economic operator independent of the supply chain. Neither the company nor the factory were insurance companies or other insurance operators. The risk also remained with the factory and, thus, there was no independent insurer involved that would bear the risk of indemnification in an insured event. As a result, the court ruled that the extended warranty at issue was not an insurance service within the meaning of the VAT Act or the VAT Directive but instead was considered a taxable supply of a service.

Finland

KATSO IDs to be replaced by Suomi.fi authorizations as from 2021

Changes to the KATSO authorizations used to access the Finnish Tax Administration's (FTAs) e-service reporting system will be implemented as from 1 January 2021, when the current KATSO service will be completely replaced by a sign-in service called Suomi.fi and the KATSO authorization roles will be discontinued.

The authorization application and access options available depend on, e.g., whether the company is registered in the Finnish Trade Register (as opposed to only having, e.g., a tax registration), whether a person with the right to represent the company has a Finnish personal ID, and whether the company wishes to obtain their own access to the FTA's e-service or to grant the authorization and access to a service provider.

Where the company is registered in the Finnish Trade Register and has a representative with a Finnish personal ID, the representative may sign into the Suomi.fi service and grant required authorizations on behalf of the company. Companies that are not registered in the Finnish Trade Register may authorize their employees or service providers via a "mandate service" provided by officials, where the authorizations are granted with a specific power of attorney. As the Suomi.fi authorization is strongly connected to the Finnish personal ID, a new identifier called a foreign individual's unique identifier (UID) has been introduced to be used by foreign persons. To utilize the Suomi.fi access and to be granted any authorizations (e.g., to access the FTA's e-service), anyone that does not have a Finnish personal ID must first apply for the UID.

Based on information from the FTA, any users using the UID will not be able to access the FTA's e-service with the Suomi.fi authorization until later in the autumn of 2020 (the date is to be confirmed later by the tax authorities). Access with an existing KATSO ID will be available until the end of the year. However, the application process for Suomi.fi authorizations should be initiated soon to make sure that the access rights are in place by the end of the year.

Finland

Tax Administration postpones project on VAT reporting due to COVID-19

The Finnish Tax Administration has postponed its project to update the information required to be reported on the Finnish VAT return. The Tax Administration had prepared the new VAT return and its content in cooperation with its customers and stakeholders, and the new VAT return was intended to be introduced in 2022. The new VAT return would have required more detailed information from taxpayers as well as changes to the software used by companies. However, due to the prevailing COVID-19 situation, the introduction of the new return has been postponed until further notice. There is no decision on the new introduction date.

Finland

Advance VAT ruling on services provided between non-EU head office and Finnish branch

A company with a head office established in a non-EU country has a branch that is established in Finland. The head office belongs to a VAT group formed in its country of establishment in accordance with the country's national legislation. The head office grants loans to corporate customers in Finland, and the head office provides services to the Finnish branch for consideration and vice versa.

Pursuant to an advance ruling request, Finland's Central Tax Board has determined the following:

- The VAT group formed under the national legislation of the non-EU country does not fall within the scope of the VAT Directive and, thus, the charge between the head office and the branch is treated as an internal charge of one taxable person. The Finnish branch therefore is not required to remit VAT subject to reverse charge on the services it acquires from the head office.

- Where the services performed for the head office by the Finnish branch related to the granting of loans, such as preparation of credit applications, credit analyses, and assessments, have a direct and immediate link to the VAT exempt financial services stipulated in the Finnish VAT Act that are carried out by the head office in Finland, the branch is not entitled to reclaim VAT on purchases of services related to the services it supplies to the head office.

France

Lessors of business premises may elect premise-by-premise VAT liability on rents

The French Supreme Court, in a case issued on 9 September 2020 (in French only), held that an election by a lessor to be liable for the payment of VAT on rents charged on its business premises to a building's lessee pursuant to article 260, 2° of the French tax code can be made on a premise-by-premise basis and not necessarily for the building as a whole, provided that the VAT election letter specifies the premises to be covered by the election.

In principle, rental income from unfurnished business premises is VAT exempt. However, a lessor can elect to be liable for the payment of VAT on the rents charged to a lessee, in accordance with article 260, 2° of the French tax code. In this case, a specific VAT election letter has to be sent to the relevant tax office. The VAT election applies as from the first day of the month during which it is made. If a taxpayer owns several buildings, a separate VAT election has to be made for each building.

The French tax code and the public guidelines issued by the French tax authorities state that, when a VAT election is made with respect to a building, the election applies to all the relevant business premises included in the same building.

The Supreme Court case constitutes a real change: it allows taxpayers to tailor their VAT elections for business premises, potentially exempting from VAT the rents they charge to tenants with no VAT recovery rights.

However, it should be noted that (i) when a VAT election is made, it may only be revoked as from 1 January of the ninth calendar year following the year the election was made and (ii) any VAT exemption applying to rents reduces the lessor's VAT recovery rights.

Guatemala

New box in monthly VAT return will display suppliers' formal compliance status

In August 2020, Guatemala's Superintendency for Tax Administration (SAT) modified the mandatory annex to electronic form SAT 2237, the monthly value added tax (VAT) return and payment form, to include an additional box related to the tax compliance status for each of the taxpayer's 10 main suppliers for the month.

The box will be automatically populated with a green checkmark if the supplier is in compliance with its tax obligations; if not, the box will display "OMISO" (omission) to indicate that the supplier has not complied with all of its tax obligations.

The supplier's box is purely informational, with the purpose of making companies aware of their suppliers' tax compliance status. The form may be filed even if a supplier has an "omission" status.

However, companies may wish to implement internal control measures for tax purposes to reduce the likelihood that their commercial relationships may have future negative effects; for example, a noncompliant supplier could result in the taxpayer being questioned by the SAT regarding transactions with that supplier.

Hungary

UK-based VAT registered businesses obliged to appoint a fiscal representative

UK companies conducting business in Hungary will be required to appoint a fiscal representative for VAT purposes as from 1 January 2021, at the end of the transition period for the UK's departure from the EU.

Background

In general, EU-based companies wishing to carry out economic activities in Hungary without a business establishment are required to register for VAT purposes in Hungary. In addition to the registration requirement, companies established in countries outside the EU (referred to as "third countries") also are obliged to appoint a fiscal representative. As from 1 January 2021, the UK will be considered as a third country, and UK companies will be required to appoint a fiscal representative in Hungary.

The role of the fiscal representative is to act on behalf of the represented company, prepare and file the Hungarian VAT returns, represent the company during VAT audits, and assume joint liability for the company's VAT related obligations.

Comments

Having regard to the approaching deadline, and the time required to set up the fiscal representation, UK companies that will be affected by the change should ensure that they take the necessary steps to ensure the continued smooth operation of their business activities in Hungary as from 1 January 2021.

India

GST e-invoicing validations amended and new GST input tax credit statement introduced

On 29 August 2020, India's National Informatics Centre released a new version of the application programming interfaces (APIs) making various changes to validations for goods and services tax (GST) electronic invoicing (e-invoicing). The changes reflect feedback from various stakeholders (including Deloitte), that had tested the previous version of the APIs.

In addition, the Goods and Services Tax Network has introduced a new input tax credit statement on Form GSTR-2B as a taxpayer facilitation measure. Form GSTR-2B is an automatically populated but static statement of GST input tax credit for a month, and will be prepared on the 12th day of the subsequent month.

Some of the more significant changes to the e-invoicing validations, and an overview of the key features of Form GSTR-2B are set out below.

E-invoicing validations

- The document number field will accept alphabetical entries in lower case (e.g., invoice number ABC123 previously would have been permitted, but not Abc123 – now both are acceptable); however, the validation of invoice numbers not starting with "0," "/," and"-" continues;

- The restriction on the date of the document has been removed; previously the document date was required to be the date when the request for an invoice reference number (IRN) was made, or the previous day;

- For transactions where a special economic zone (SEZ) unit or SEZ developer is the recipient, the 'Bill to' state code should match with the state code of the recipient;

- Validation of the gross amount based on multiplying the quantity and unit price is temporarily withdrawn;

- The total invoice value may be rounded within the range of INR -99.99 and INR +99.99, subject to the value not going below INR 0;

- The tolerance limit for "passed value/amount" has been improved by setting the value between "actual calculated value/amount" and "calculated value/amount" rounded up to the next INR;

- The "Cancel IRN" API may be used to cancel the IRN within 24 hours of the IRN being generated;

- Where goods are exported and an e-waybill is required in addition to the IRN, the "Ship to" address should be the address of the port in India from which the goods will be exported. Alternatively, the e-waybill may be generated following the generation of the IRN, by entering the "Ship to" address as the address of the port in India from which the goods will be exported;

- The transportation distance is validated against the auto calculated pin code-to-pin code distance. The permitted distance for transportation should be within 10% of the auto calculated distance;

- Where the transportation distance is considered to be zero, the Invoice Registration Portal automatically will calculate the distance for generation of the e-waybill, and generate the e-waybill together with the IRN; and

- Where the source pin code and the destination pin code are the same, and the allowed range of value is from 1 to 100, the taxpayer will be required to enter the actual distance.

Form GSTR-2B

Form GSTR-2B is an automatically generated static statement of GST input tax credit. The details of input tax credit are obtained from and segregated in various tables via the following sources:

- Form GSTR-1 filed by suppliers, including where the recipient is liable to GST under the reverse charge mechanism;

- Form GSTR-5 filed by nonresident suppliers;

- Form GSTR-6 filed by the input service distributor locations; and

- The bill of entry filed for the import of goods from outside India and procurement of goods from SEZ units or SEZ developers, obtained from the Indian Customs Electronic Gateway (ICEGATE).

The first Form GSTR-2B for July 2020 was made available on 29 August 2020 on a trial basis to obtain feedback from taxpayers. Going forward, the Form GSTR-2B for each month will be available to all taxpayers on the 12th of the following month. Recipients can view and download the form from the GSTN portal.

Key features of Form GSTR-2B include:

- Timelines for the transactions to appear on Form GSTR-2B:

    - Form GSTR-2B will contain all the transactions reported by suppliers on their respective Forms GSTR-1, GSTR-5, and GSTR-6 after the due date for submitting Form GSTR-1 (i.e., from the 12th of the month) for the previous month, and up to the due date for submitting Form GSTR-1 for the current month (i.e., up to 11th of the month);

    - As the due dates for submission of Forms GSTR-5 and GSTR-6 are after the 12th day, transactions reported by suppliers in these two returns will not appear in the recipient's Form GSTR-2B generated on the 12th, but will instead appear on the Form GSTR-2B for the following month. Consequently, the recipient will be able to claim input tax credit on such transactions on a self-assessment basis, notwithstanding that the transactions are not recorded on the Form GSTR-2B;

    - Similarly, transactions will appear in the recipient's Form GSTR-2B for the period in which they are reported by the supplier; for instance, an invoice dated June 2020 reported in the supplier's Form GSTR-1 for August 2020 will appear in the recipient's Form GSTR-2B for August 2020, and not June 2020; and

    - Input tax credit on the import of goods from outside India, or the procurement of goods from SEZ units or SEZ developers will appear on Form GSTR-2B for the month in which the goods are imported or procured;

- Form GSTR-2B segregates input tax credit into three categories:

    - May be claimed on Form GSTR-3B;

    - May not be claimed on Form GSTR-3B where the transactions are reported by the suppliers beyond the statutory timelines, or where the place of supply is different from the recipient's state; and

    - Must be reversed via Form GSTR-3B because of a reversal made by the supplier;

- In addition to the above restrictions on input tax credit, the recipients also will be required to carry out reversals of input tax credit for other reasons via Form GSTR-3B;

- Details of imported goods, and goods procured from SEZ units or SEZ developers will be available on Form GSTR-2B for August 2020 and subsequent months; and

- Form GSTR-2B will not include details of input tax credit on GST paid under the reverse charge mechanism on imported services, or on courier imports.

Comments

The release of new APIs reflecting amendments and relaxations to the validations based on feedback from various stakeholders is a welcome step. With only four weeks remaining until the introduction of mandatory GST e-invoicing for certain business-to-business transactions on 1 October 2020, detailed guidelines and frequently asked questions for implementation of e-invoicing are expected shortly, together with the necessary changes to the GST legislation.

It also is important that eligible taxpayers expedite the process of implementation and testing to facilitate a seamless transition to e-invoicing.

The introduction of Form GSTR-2B as a static statement of GST input tax credit is a welcome taxpayer facilitation move that will assist taxpayers in determining the amount of input tax credit they may claim on a monthly basis. The noninclusion of details of input tax credit on certain imports, and the time lag in populating the input tax credit based on Forms GSTR-5 and GSTR-6 may be expected to streamline in future, and all the steps are in place for the real-time integration of the various returns and ICEGATE with GST input tax credit.

Indonesia

Tax authorities introduce electronic objection procedures

On 29 July 2020, Indonesia's Directorate General of Taxation (DGT) issued PER-14/PJ/2020 (PER-14), which provides guidelines for the submission of objection requests through the DGT's e-filing system (e-objection). PER-14 is the long pending regulation on e-objection referred to in Minister of Finance Regulation Number 9/PMK.03/2013. E-objections can be submitted as from 1 August 2020, and the process aims to provide convenience for taxpayers to carry out their objection rights, especially during the COVID-19 pandemic.

To be able to submit an e-objection, the taxpayer must fulfill the following requirements:

- Have an active electronic filing identification number (EFIN);

- Be registered with DJP Online (the DGT's e-filing platform); and

- Have an active electronic certificate (e-certificate).

When filing an e-objection, a taxpayer can choose to either fill in the reasons for the objection directly in the e-objection application or attach a soft file of the objection letter (no larger than 5 MB) in the *.pdf format. The e-objection is to be signed electronically, which requires the taxpayer to input a passphrase and upload a valid e-certificate.

The e-objection system will evaluate whether the objection request meets the above requirements. If it meets the requirements, the system will issue the taxpayer an electronic proof of submission, and if the requirements are not met, the system will issue a notification.

Taxpayers may submit an e-objection 24 hours a day, seven days a week, and e-objections will be time stamped based on the Indonesian western time region.

Ireland

Temporary zero VAT rate for medical equipment and donations extended

Irish Revenue issued updated guidance in July 2020 on the temporary VAT measures relating to COVID-19, which include the temporary zero rating of supplies of certain personal protective equipment, ventilators, and other medical products, and also donations of meals, food products, and non-alcoholic drinks. These provisions, which were originally set to expire on 31 July 2020, have been extended to 31 October 2020 (subject to review).

Japan

Overview of Smart Customs Initiative 2020

In June 2020, Japan Customs announced the Smart Customs Initiative 2020, its medium to long-term vision for the Japan Customs administration, with the purpose of transforming Japan into the world's leading customs administration. In order to achieve this goal, Japan Customs will utilize cutting edge technology and create a more efficient and effective workforce.

Background

The initiative was designed taking into account the following changes and areas of growth that are expected to occur in the medium to long-term:

1. The increase in the flow of goods as a result of the development and implementation of new technology, the conclusion of new economic partnership agreements (EPAs) and free trade agreements (FTAs), and the use of larger maritime vessels in a more sophisticated marine transportation network;

2. Changes in the flow of people as a result of an increase in the number of inbound and outbound tourists;

3. Changes in cash flows as a result of growth in crypto assets and the popularity of cashless payments;

4. Changes in workforce demographics (e.g., the decreasing size of the workforce and the increasing age of workers), and changes in government policies to offset the impact of such changes (e.g., work style reform);

5. More recently, disaster prevention measures and relief (e.g., COVID-19 related measures);

6. An increase in the use of technology in international trade, such as artificial intelligence (AI), fifth generation (5G) services, and blockchain technology; and

7. Changes in international security as a result of the increased threat of international terrorism, the smuggling of goods into and out of North Korea, and the growth in international criminal activity and the sophisticated ways in which the activities are carried out.

The four key points of the initiative

The Initiative consists of four key points—solution, multiple access, resilience, and technology and talent ("SMART")—that focus on specific measures and policies.

Solution

The goal is to implement efficient and effective customs procedures by providing trade-related companies and passengers with solutions that simplify and streamline their compliance obligations. In order to achieve this, the following measures will be enacted:

- Implementation of electronic declarations for personal effects and unaccompanied articles via the use of mobile phones;

- Introduction of the concept of electronic money for the payment of taxes;

- Introduction of service desks that can assist with inquiries on FTAs/EPAs; and

- Improvements to the Japan Customs' homepage.

Multiple access

Multiple access is meant to enhance cooperation with domestic and foreign authorities/companies, and promote the reinforcement of border protection while concurrently maintaining efficient customs procedures. In order to achieve this, the following measures will be enacted:

- Reinforcement of the collection of information and utilization of advanced information with respect to cargo and passengers;

- Examination of the use of web crawling technology, which automatically collects information from the internet; and

- Use of web conferencing tools to enhance effective communication with related domestic and foreign authorities.

Resilience

Another goal is to increase resilience to, and reduce the impact of, demographic changes and disasters, while simultaneously maintaining effective and efficient customs procedures and operations. In order to achieve this, the following measures will be enacted:

- Creation of a flexible and agile work environment that enables business continuity during a disaster or crisis;

- Exploration of the use of cutting edge technology like drones and satellites for coastline patrol; and

- Creation of a flexible work environment for employees, including supporting people working from home.

Technology and talent

Finally, cutting-edge technology, including AI, will be adopted to make customs operations more advanced and efficient. Additionally, staff training will be conducted to upskill employees, and current customs operations will be reviewed to improve the overall work environment. In order to achieve this, the following measures will be enacted:

- Strengthening of the inspection capabilities of customs officers by increasing the use of technology such as AI, big data, blockchain, the "internet of things" (IoT), and drones;

- Automation and digitization of more services;

- Upskilling of customs officers so that they can operate new technology effectively; and

- Improvement in customs examinations and post-clearance audits with the use of AI analysis.

Comments

The Smart Customs Initiative 2020 is part of the reform of Japan Customs, which is in response to the drastic changes expected to take place within the trade industry in the coming decades. On the whole, the initiative has been well received by the trade community, as it is seen by many as a step toward automation and digitization that has been long overdue. For example, COVID-19 has reduced the amount of face-to-face interaction, so it is timely that Japan Customs is enabling documentation and payments to be processed electronically.

For importers and exporters in Japan, it will be critical to adapt to the changes quickly and incorporate the new measures into their operating systems to ensure that there is no detrimental impact to their daily international transactions and that they can benefit from the new measures. For example, the upskilling of staff and the increased use of technology likely will mean more focus by Japan Customs on ensuring that importers and exporters are compliant with customs rules and regulations.

Additionally, the implementation of AI and cutting-edge technology will not only improve the compliance process for taxpayers, but it will also enable the customs authority to collect and store large amounts of data in a timely manner. It is possible that this new capability will lead to more rigorous post-clearance audits. Further, audits and investigations may also be more targeted as a result of the strengthening of relationships and the increase in the exchange of information between Japan Customs and its foreign counterparts and local authorities, which may enable customs authorities to become aware of potential risks at an earlier stage.

The initiative measures are expected to transform the way in which Japan Customs operates in two ways: (i) by improving the overall user experience for importers and exporters in Japan through digitization and automation, and (ii) by strictly focusing on high-risk transactions. The main by-product of automation and digitization is efficiency, which is generally welcomed by taxpayers. However, taxpayers also should be aware that, with increased efficiency in data management programs, there is the possibility that weaknesses in internal procedures and processes may become apparent to the authorities. As a result, taxpayers should prepare now for the changes to come so that they do not find themselves on the wrong end of the new measures.

Mexico

Maquiladoras must pay retroactive fees for VAT and excise tax certification

Mexico's First Omnibus Foreign Trade Resolution, published in the official gazette on 24 July 2020, requires maquiladoras ("maquilas"), among other entities subject to other certification procedures, to pay a fee pursuant to the Federal Fees Law (LFD) if they wish to be certified by the Service Tax Administration (SAT) and thus be exempt from paying any value added tax (VAT) or excise tax (ET) when importing goods for use in maquila production activities.

Under the maquiladora program (IMMEX), maquilas must pay a 16% VAT on imports. However, a maquila that has received VAT certification from the SAT is eligible to receive a full VAT credit such that, effectively, no cash VAT will be imposed on the maquila's import transactions.

On 5 August 2020, the SAT published a note on its website explaining that maquilas, among others, must pay retroactive fees pursuant to the LFD for registering and renewing their VAT and ET certifications for each year that the certifications have been in force, using as a reference the day and month when the registration or renewal was granted. Accordingly, the SAT provides in the same note the past amounts due for the certifications, applying an update factor and a late surcharge in accordance with the Tax Code.

The SAT explains that payments can be made at a bank or electronically. Payment vouchers may be submitted through the SAT's Digital Window on its website or, if a payment was late, the voucher may be sent electronically to the following email address: certificacion.iva.ieps@sat.gob.mx.

The SAT's website features a simulator for taxpayers to calculate their fee obligations, inviting taxpayers to comply with the new rules and pay the fees right away so as to avoid fines and/or assessments for failure to pay on time. In this regard, payment before the next renewal deadline in October 2020 is recommended.

Because fees must be paid for past years when the certification process, including registration and renewal, was free, taxpayers who are currently certified may wish to explore ways to contest them.

New Zealand

Snapshot of recent developments (September 2020)

Tax legislation and policy announcements

COVID-19: Further management measures act enacted

The COVID-19 Response (Further Management Measures) Legislation Act (No 2) 2020 introduced on 4 August 2020 was passed under urgency and enacted on 6 August 2020. This act aims to assist with the impact of COVID-19 and includes key tax amendments around eligible R&D expenditure, providing an in-work tax credit entitlement extension, and the Inland Revenue Commissioner's additional power to modify time periods and remit use of money interest (UOMI) on provisional taxpayers' terminal tax for the 2020-21 tax year. The New Zealand government has issued a special report on the legislation.

Inland Revenue statements and guidance – finalized items

Income tax – when is development or division work "minor"?

On 13 August 2020, Inland Revenue released Interpretation Statement IS 20/08 – Income tax: when is development or division work "minor"? which was previously open for public consultation. It is important to note that the Commissioner has set "safe harbor" figures for the absolute and relative costs to assist taxpayers with compliance. This statement applies as from 13 August 2020.

COVID-19 variation for GST-registered persons changing to making exempt supplies of accommodation

On 17 August 2020, Inland Revenue issued Determination COV 20/09 – Variation to sections 52(3) and 52(4) of the Goods and Services Act 1985. This statement applies to GST-registered persons with a taxable activity of supplying accommodation, who between 14 February 2020 and 31 October 2020, change to making exempt supplies of accommodation leaving them with no taxable activity. Under ordinary circumstances, the taxpayers are required to notify the Commissioner whether or not they intend to carry on any taxable activity within 12 months from the date they cease having taxable activity. The Commissioner will not cancel their GST registrations if she believes the customer will carry on any taxable activity within 12 months from the date their taxable activity ceased. This statement extends the 12-month period to 18 months, subject to the conditions that the taxpayers ceased their taxable activity of supplying accommodation as a consequence of COVID-19 and they notify the Commissioner of the cessation in accordance with the set requirements. The variation applies from 17 March 2020 to 31 October 2020.

Snapshot of recent developments (October 2020)

Tax legislation and policy announcements

OECD Tax Policy Reforms 2020

The Tax Policy Reforms 2020 report tracks the tax policy developments over time and provides an overview of the latest tax reform trends for OECD countries. It identifies major tax policy trends emerging before COVID-19 but includes a special feature which takes stock of the tax and broader fiscal measures introduced by countries in response to the pandemic, from its outbreak to June 2020. The report shows that initial government COVID-19 responses focused on providing income support to households and liquidity to businesses, and the responses were then expanded. Most recent measures suggest that the recovery phase will be supported by expansionary fiscal policy in several countries. With countries facing such high levels of uncertainty, policy agility will be key and targeted support measures should be maintained to avoid scarring effects. Once recovery is well underway, governments should shift from crisis management to more structural tax reforms. In addition, the rising pressure on public finances as well as increased demands for fairer burden-sharing should also provide new impetus to reach an agreement on digital taxation.

Inland Revenue statements and guidance

GST and agency interpretation statement

On 7 September 2020, New Zealand's Inland Revenue released public consultation item PUB00327: *Goods and Services Tax – GST and agency.* This draft interpretation statement considers whether a person is acting as an agent or as a principal for the purposes of the Goods and Services Act 1985. It is primarily concerned with the application of sections 60(1) and (2) and identifies features that indicate when an agency relationship will exist in relation to a supply. Submissions close on 20 October 2020.

Liquidation question we've been asked

On 9 September 2020, Inland Revenue released an item for consultation, PUB00366: *First step legally necessary to achieve liquidation when a liquidator is appointed*. The draft clarifies that the first step legally necessary to achieve liquidation in a long-form liquidation (being the appointment of a liquidator) is not the same for a short-form liquidation. In a short-form liquidation, a resolution by shareholders, board of directors, or another overt decision-making step is required. Submissions close on 21 October 2020.

Land for the compulsory zero-rating rules

On 23 September 2020, Inland Revenue released a public consultation item, PUB00381: *Do certain supplies wholly or partly consist of land for the compulsory zero-rating (CZR) rules?* This draft Questions We've Been Asked concludes the following types of supplies (which wholly or partly consist of land) will be subject to the CZR rules:

- The sale of transferable development rights;

- The sale of standing timber; and

- The sale of a purchaser's interest in a binding sale and purchase agreement for land, even if it is conditional.

In comparison, the statement concludes that the following supplies do not consist of land for the CZR rules:

- The sale of a purchaser's interest in a non-binding sale and purchase agreement for land; and

- The grant of a licence to use land.

The deadline for submissions is 3 November 2020.

Tax treatment of cryptoassets

On 8 September 2020, Inland Revenue updated its guidance on the tax treatment of cryptoassets in New Zealand to clarify how the income tax rules apply. Essentially, cryptoassets are treated as a form of property for tax purposes, and so the proceeds from selling, trading, or exchanging cryptoassets are broadly taxable. The guidance defines "cryptoassets", sets out the tax treatment for individuals and businesses who are buying, selling, and mining cryptoassets, the effect of tax residency status on cryptoasset income, the PAYE and fringe benefit tax issues when providing cryptoassets to employees, recordkeeping obligations, and how to calculate net income to include in tax returns.

GST and Leaky Homes Financial Assistance Scheme

On 21 September 2020, Inland Revenue issued a Commissioner's Statement, CS 20/05– *GST treatment of payments received by a GST registered body corporate from the Ministry of Business, Innovation and Employment (MBIE) under the Leaky Homes Financial Assistance Package (FAP).* The Commissioner considers that a payment made under the FAP scheme from MBIE to a body corporate is not a payment in respect of any actual supply of goods and services made by the body corporate in return for that payment. However, the Commissioner considers that these payments are in the nature of a grant or subsidy from the Crown under section 5(6D) of the Act and therefore are deemed to be in response to a supply from the body corporate. As a result, these payments are subject to GST. A GST-registered body corporate that receives such payments is therefore obliged to include the GST component in its GST return and to pay for any net GST output tax. A body corporate that is not registered (and not liable to be registered) for GST will not be obliged to account for GST.

The Netherlands

Possible introduction of RETT changes on transfers of residential property

Recently, media reports in the Netherlands have indicated, as from 1 January 2021, the abolition of the real estate transfer tax (RETT) for first-time buyers of residential property, and an increase in the general RETT rate on nonresidential property to 8% (along with an expansion of the scope of the general RETT rate to include purchases of residential property by private investors).

These reports have not been confirmed officially yet by the government; further details are expected to be announced on Budget Day (15 September 2020).

Background

The RETT is levied on the acquisition of real property in the Netherlands (or rights to such property).

The general RETT rate will be increased from 6% to 7% (or even 8%, to be confirmed on Budget Day) as from 1 January 2021, which rate applies to transfers of nonresidential property, such as industrial buildings, business spaces, land earmarked for housing developments, hotels, and guesthouses.

A reduced rate of 2% currently applies to the acquisition of residential property.

Reported changes to rates on transfers of residential property

According to media reports, as from 1 January 2021, individuals between the ages of 18 and 35 who qualify as first-time buyers of a residential property would be exempt from the 2% RETT rate on their purchase.

Also as from 1 January 2021, media reports state that the purchase of a residential property as an investment by private investors, as well as by individuals who want to buy a second residential property or a residential property for their children, will be taxed at a general RETT rate of 8% instead of the 2% RETT rate on residential property.

Comments

These media reports come as a surprise, as last June, a research report exploring the economic impact of a differentiation of the RETT rate was presented to the government indicating that abolishing the RETT for first-time buyers and increasing the rate for private investors would have little economic effect. The report states that the plan would encourage few first-time buyers to purchase a residential property. In addition, the report warns that private investors may attempt to charge higher rents in order to offset the higher RETT rate. Moreover, the report points out that first-time buyers and private investors rarely compete for the same type of properties. Finally, the RETT rate differentiation will entail additional work (particularly for notaries) to determine the correct levy.

Oman

Excise tax to be levied on sweetened beverages

On 18 June 2020, Oman's tax authorities announced that excise tax will be levied on sweetened beverages at the rate of 50% effective from 1 October 2020. Excise tax came into effect on 15 June 2019 and covers carbonated drinks, energy drinks, tobacco products, pork, and alcohol.

Scope

Although the scope of sweetened beverages that will be subject to excise tax is not clear yet, it will include drinks containing "sugar or any of its derivatives" (with no indication as to a minimum amount of sugar) and likely will be broad with few exceptions. Products that may be within the scope include:

- Juices, sports drinks, fruit/malt syrups, and pre-mixed ready-to-serve coffee and tea drinks; and

- Concentrates, powders, gels, extracts, or any other similar forms, which can be converted into sweetened drinks.

Rules implemented in the United Arab Emirates and Saudi Arabia have included products such as 100% fruit juices (with no added sugar), beverages containing at least 75% milk or milk substitutes, baby formula/food, and beverages consumed for special dietary/medical uses.

Who is impacted?

The excise tax on sweetened beverages primarily will affect:

- Producers or manufacturers;

- Importers;

- Warehouse keepers; and

- Retailers that stock affected goods, including supermarkets, restaurants, hotels, and food and beverage outlets.

Transitional returns

Businesses that have existing inventory of sweetened beverages subject to excise tax on the effective date (i.e., 1 October 2020) will need to file a transitional return and pay excise tax due on such existing inventory within 15 days of the effective date. The transitional returns could be subject to audit, making it important to ensure accuracy and maintain appropriate documentation.

Key takeaways

Affected businesses should consider the following, especially since noncompliance with the excise tax laws could result in monetary penalties and even imprisonment and cause reputational damage to noncompliant businesses:

- Determine whether products will be treated as sweetened beverages subject to the excise tax and seek clarification from the tax authorities in cases of uncertainty to avoid delays in clearing products at the border and minimize the risk of incorrect application of the excise tax to products;

- Request the tax authorities to confirm inclusion (or exclusion) of products manufactured/imported in the official excise tax list of products as delays in products being registered on this list could impact the clearing of products imported;

- Analyze the potential impact of excise tax on costs, pricing, cash flow, and commercial contract arrangements;

- Review vendor contracts, customer contracts, distribution agreements, agency agreements, and similar arrangements;

- Determine the impact on the current IT system and identify changes required (such as testing of reports/templates generated) in order to comply efficiently and effectively;

- Assess the requirement to register for excise tax or amend an existing registration;

- Set up processes to file excise tax returns and pay excise tax on a quarterly basis; and

- Identify transitional return requirements and make arrangements for inventory stock counts to be undertaken at the appropriate time.

Portugal

VAT quick fixes transposed into domestic legislation

Law No. 49/2020, published on 24 August 2020, transposes into Portugal's domestic legislation the provisions of Council Directive (EU) 2018/1910, which aims to harmonize and simplify the rules for cross-border transactions within the EU. The changes commonly are referred to as the VAT "quick fixes" and are effective as from 1 January 2020.

The quick fixes where transposition was needed relate to the following:

- New requirements for the application of the VAT exemption for intra-EU supplies;

- Intra-EU cross-border supplies involving call-off stock arrangements; and

- Intra-EU cross-border chain transactions.

Since the new rules are effective as from 1 January 2020, where applicable, taxpayers must file amended EC Sales Lists to reflect the changes. Law No. 49/2020 provides that taxpayers have until 31 December 2020 to file the amended lists; however, the updated EC Sales List form has not yet been published.

Portugal

New European Sales Recapitulative Statement approved

On 10 September 2020, the Portuguese government published Ordinance No. 215/2020 approving the new layout of the European Sales Recapitulative Statement for VAT purposes as well as the related instructions.

The ordinance follows the publication on 24 August of Law No. 49/2020, which transposes the European Union (EU) VAT "quick fixes" into Portugal's domestic legislation with a main objective of adapting the layout of the European Sales Recapitulative Statement to the new VAT rules related to the sales regime for consignments of intra-Community transfers of goods.

The new layout of the statement essentially introduces the reporting fields for intra-Community sales of consignment goods, and the amendments are intended to include the fields relating to the communication to be made by consigning taxable persons (in Portugal) when sending the goods to another EU member state without their sale.

The changes made by the ordinance apply retroactively as from 1 January 2020 (in line with the effective date of Law No. 49/2020). Companies that have failed to report consignments of intra-Community transfers of goods to another EU member state without their sale or have reported them in the wrong fields of the previous version of the statement have until 31 December 2020 to correctly report such transactions by filing or substituting the new European Sales Recapitulative Statement return.

Portugal

VAT rate on supplies of electricity amended

Decree-Law No 74/2020 of 24 September 2020 approves the application of the intermediate VAT rate (currently 13% in mainland Portugal, 12% in Madeira, and 9% in the Azores) to supplies of low voltage electricity (up to 6.9 kVA) for consumption not exceeding:

- 100 kWh per 30-day period (applicable for consumption as from 1 December 2020); and

- 150 kWh per 30-day period, when purchased for consumption by large households, defined as having five or more persons (applicable for consumption as from 1 March 2021).

The reduced rate does not apply to fixed components of electricity supplies (i.e., that do not change with the amount of electricity consumed, such as the fixed component of the tariff to access the network and components related to the contracted power).

An order will be issued to regulate certain aspects of the decree-law, such as the rules for large households, the computation of the thresholds when facing multi-hourly tariffs, and the apportionment of those thresholds when facing billing cycles of less than or greater than 30 days.

Romania

Amendments to local sales and purchases list return published

On 21 August 2020, an order amending the Local Sales and Purchases List (LSPL) return (Form 394) was published in the Official Gazette of Romania. The change applies to operations carried out as from 1 September 2020, which are required to be reported in the September LSPL return due by 30 October 2020.

The order introduces a new box that taxpayers will tick according to whether they performed transactions with affiliates during the reporting period.

Article 7 of Law no. 227/2015 of the Fiscal Code defines an affiliated person as follows:

- A natural person is affiliated with another natural person if they are spouses or relatives up to and including the third degree;

- A natural person is affiliated with a legal person if the natural person holds, directly or indirectly, including the holdings of affiliated persons, at least 25% of the value/number of participation titles or voting rights of the legal person or if it effectively controls the legal person;

- A legal person is affiliated with another legal person if it holds, directly or indirectly, including the holdings of affiliated persons, at least 25% of the value/number of participation titles or voting rights in the other legal person or if it effectively controls that legal person;

- A legal person is affiliated with another legal person if a person holds, directly or indirectly, including the holdings of affiliated persons, at least 25% of the value/number of participation titles or voting rights in both legal persons or if it effectively controls both legal persons.

The amendment provided by the order aims to prevent and fight against tax evasion, given the progressive expansion of the number of transactions with affiliated persons by Romanian taxpayers. In addition, the explanatory memorandum to the draft order states that for some of these transactions, tax inspectors have identified the use of lower market prices, thus affecting the state budget.

Russia

Update on customs developments (September 2020)

This article provides an update on key customs developments in Russia during August and September 2020, including changes to customs clearance fees and the import restrictions on certain goods.

Changes to customs clearance fees

New rates of customs clearance fees apply as from 1 August 2020 in accordance with Government Resolution No. 342 dated 26 March 2020. Significant changes include the following:

- The rate continues to depend on the customs value of goods but the minimum fee has been increased from RUB 500 to RUB 775, while the maximum fee remains RUB 30,000;

- The 25% discount for electronic submission of the customs declaration is discontinued;

- Where the customs value is not determined or declared (for imported goods) or export duties are not set or special rates apply (for exported goods), customs fees are determined based on the quantity of goods in the customs declaration; and

- Customs clearance fees in respect of aircraft, sea craft, river vessels, and mixed use river/sea vessels (declared as goods) placed under particular customs procedures are increased from RUB 10,000 to RUB 20,500 per vessel.

Restriction on the import of certain ozone-depleting substances

Government Resolution No. 1137 dated 29 July 2020 and effective as from 3 September 2020 contains a list of ozone-depleting substances whose import will be limited from 7 September 2020 to 31 December 2020. Import quotas in 2020 will be distributed among the importers that filed the relevant application with the Federal Service for Supervision over Use of Natural Resources before 21 August 2020.

Import quota for GICF-141b for the remainder of 2020 is 60,609 metric tonnes. Other ozone-depleting substances that require a license to be imported are prohibited from being imported into or exported from the territory of the Eurasian Economic Union (EEU).

From 1 January 2021, ozone-depleting substances may be imported based on an import license.

Ban on import of certain types of fuel lifted

As from 1 October 2020, the import into Russia of certain types of motor gasoline and diesel fuel, kerosene, marine fuel, and certain types of gas oils classified under commodity heading 2710 of the Foreign Economic Activity Commodity Nomenclature of the EEU is allowed. The import of such goods was temporarily banned between 2 June 2020 and 30 September 2020 by Government Resolution No. 732 dated 22 May 2020.

Russia

Update on VAT developments (September 2020)

This article provides an overview of key VAT developments in Russia from July to September 2020, including legislative developments, court decisions, and announcements by the Ministry of Finance.

Legislative developments

Time limit for claiming VAT refunds under Tax Free System temporarily suspended

Under Russia's Tax Free System, foreign citizens who purchase goods from approved retailers are eligible for a refund of the VAT paid within one year from the date of purchase of the goods, provided that the goods are exported outside the territory of the Eurasian Economic Union within three months after purchase. As a result of the restrictive measures imposed in response to COVID-19, many foreign citizens have been unable to fulfill the above requirement, with tax-free retailers reporting that more than 15,000 foreign citizens have not exported purchased goods within the required three-month time limit. Government Resolution No. 1334 dated 1 September 2020 introduced a temporary suspension of the time limit for goods purchased from approved retailers during the period from 1 January 2020 to 30 December 2020 inclusive.

State Duma approves bill to clarify VAT rules for bankrupt companies

A bill passed by Russia's State Duma on 23 September 2020 and submitted for consideration to Russia's Federation Council is intended to confirm the VAT treatment of supplies by bankrupt companies.

Russia's Tax Code currently provides a VAT exemption on the sale of property and/or property rights of debtors recognized as bankrupt. The wording of the legislation creates legal uncertainties: on the one hand, bankrupt companies formally have the right to apply the VAT exemption only with respect to the property included in the bankruptcy estate, while on the other hand, the buyers of goods (work and services) and property rights supplied by the bankrupt companies during their ongoing activities often are denied an input VAT deduction by the tax authorities.

A temporary solution to the issue was suggested by the Constitutional Court in Ruling No. 41-p dated 19 December 2019, which states that buyers have the right to deduct input VAT provided that they are unaware that the bankrupt suppliers may fail to pay the VAT to the state budget.

The bill introduced to the State Duma is intended to resolve the issue unambiguously. According to the proposed amendments, all transactions of bankrupt companies connected with the supply of goods (work and services) and property rights, including transactions performed in the normal course of business, would be outside the scope of VAT.

Court decisions

Court rules that bonuses received by a car dealer to reimburse customer discounts are subject to VAT

In a 15 June 2020 decision, the Sixteenth Arbitration Appeal Court held in Case No. A25-2650/2019 that bonuses received by a car dealer from a distributor as compensation for discounts provided to final customers are subject to VAT.

The taxpayer is an authorized car dealer who received bonuses from a distributor for participating in a car fleet renewal program. Under the terms of the contract, the bonuses were intended to reimburse discounts provided to customers. The taxpayer maintained that the bonuses did not decrease the value of the supply performed and did not affect the VAT base. The tax authorities took the position that the bonuses represented compensation for the taxpayer's lost revenue and should have been included in the VAT base as an amount associated with the payment for goods (under subparagraph 2 of paragraph 1 of article 162 of the Tax Code). The trial court supported the taxpayer's arguments, but the court of appeal ruled in favor of the tax authorities.

This is the second precedent regarding VAT accounting rules for bonuses representing compensation for discounts provided to final customers; in a similar case, the courts of two instances also ruled in favor of the tax authorities.

Ruling on VAT place of supply if services in connection with organization of foreign exhibitions

On 15 July 2020 the Arbitration Court of the Sverdlovsk region gave its decision in case No. A60-10845/2020 in a case concerning services provided by foreign companies to a Russian taxpayer in connection with organizing participation in foreign exhibitions, including provision of an exhibition area, stands, and other equipment for displaying advertising materials.

The taxpayer maintained that the services were associated with the creation of movable assets (stands) and the lease of immovable property (exhibition space) outside Russia, and hence the place of supply of the services was the relevant foreign jurisdiction. The tax authorities argued that the disputed services were of an advertising nature and should have been subject to VAT in the customer's location (i.e., Russia).

The court ruled in favor of the tax authorities and stated that the purpose of participating in foreign exhibitions was to advertise goods and to promote them in the market. The court noted that the Russian company conducted advertising activities while participating in the exhibitions; consequently, the services for organizing participation in the exhibitions provided by foreign suppliers were of an advertising nature and subject to VAT in Russia.

Ministry of Finance announcements

Confirmation of VAT rate on transportation of imported goods within Russia

In Letter No. 03-07-08/60602 dated 10 July 2020 the Ministry of Finance confirms that the 0% VAT rate does not apply to services for the transportation of goods previously imported into Russian territory, where both the departure and destination locations are in Russia. Such services are subject to VAT at 20%.

VAT rules for services related to search and selection of potential counterparties confirmed

In Letter No. 03-07-08/71010 dated 13 August 2020 the Ministry of Finance confirms that services related to the search for and selection of potential counterparties to a transaction are not mentioned in the list of services the place of supply of which is determined at the customer's place of activity. Consequently, if a Russian company acquires such services from a foreign company, no liability to withhold and pay VAT as a tax agent arises for the Russian company.

VAT recovery rules for goods acquired in Russia for construction work performed by a foreign branch of a Russian taxpayer confirmed

In Letter No. 03-07-08/67753 dated 03 August 2020 the Ministry of Finance reaffirms that as from 1 July 2019, input VAT charged on goods (work and services), property rights, and related to the provision of services to or the performance of work for foreign buyers with no place of activity in Russia may be recovered in full. The rule for "export of services" applies when exported services/work are rendered by Russian taxpayers. Where services/work are rendered by a foreign branch of a Russian company that is registered as a taxpayer in a foreign jurisdiction, the rule does not apply. Therefore, input VAT on goods acquired by the company on Russian territory to be transferred to its foreign branch for performing construction work outside Russia is not recoverable.

Saudi Arabia

Customs extends deadline for voluntary data correction program

Saudi Arabia's General Authority of Customs has extended the voluntary data correction program until 30 September 2020, which program originally was set to expire on 30 June 2020. Under the program, importers may correct their past customs records with respect to

matters such as the valuation, origin, or classification of goods, without having to pay any penalties. Importers will be required to settle any underpayments that are due. Importers should take advantage of this program to correct any under-declared import or dutiable values, misclassified goods where lower duties were paid, or noncompliance with exemption conditions.

In addition, the value-added tax (VAT) amnesty program also has been extended until 30 September 2020 to allow taxpayers to make corrections to VAT returns without penalty. Therefore, taxpayers should combine the customs and VAT reviews as an efficient way of ensuring compliance with both obligations.

United Kingdom

Winter Economy Plan includes new COVID-19 support measures

On 24 September 2020, the UK Chancellor of the Exchequer, Rishi Sunak, delivered a statement outlining his Winter Economy Plan. HM Treasury has published the Winter Economy plan update and a press release on the announcement. Factsheets have been released covering the new Job Support Scheme (JSS), the Self Employment Income Support Scheme (SEISS), other tax measures, and loan schemes. The main announcements include the following.

JSS

This replaces the Coronavirus Job Retention Scheme (CJRS) as from 1 November 2020 and is intended to run for six months. Employees under this scheme, who must be on an employer's Pay As You Earn (PAYE) payroll on or before 23 September 2020, will be able to work on a part time basis as long as they are working at least 33% of their normal hours. If the conditions are met, employers will pay for the hours actually worked, while the government and employer pay a further third each of the remaining hours not worked. An illustration from HM Treasury shows an employee working 33% of normal hours, and receiving 77% of normal pay, i.e., 55% from the employer and 22% from the government. The government contribution will be capped at GBP 697.92 per month. All small and medium-sized enterprises with a UK bank account and PAYE scheme are eligible, but large businesses will not be unless their turnover has fallen. Employers who take up the JSS can continue to claim the Job Retention Bonus (the one-off payment of GBP 1,000 to employers for continuously employing previously furloughed employees through 31 January 2021).

SEISS and self-assessment

The SEISS will be extended. The new grant will be limited to self-employed individuals who are currently eligible for the SEISS and are continuing to trade but are facing reduced demand due to COVID-19. The extended scheme will last for six months, from November 2020 to April 2021. It will be in the form of two taxable grants. The first will cover the period from the start of November until the end of January 2021 and cover 20% of average monthly trading profits, paid out in a single installment covering three months' worth of profits, and capped at GBP 1,875. The second will cover a three-month period from the start of February until the end of April 2021; the level will be set in due course. The plan also refers to Enhanced Time to Pay for self-assessment taxpayers in respect of taxes due in

January 2021 (building on the deferral provided in July 2020). Taxpayers with up to GBP 30,000 of self-assessment liabilities due will be able to use HMRC's self-service Time to Pay facility to secure a plan to pay over an additional 12 months.

VAT

The temporary 5% reduced VAT rate for hospitality and tourism is extended to 31 March 2021. Businesses that deferred VAT payments due between 20 March 2020 and 30 June 2020 are able to repay them in 11 interest-free installments during the 2021-22 financial year, rather than in full by 31 March 2021. A process allowing business to opt to pay by installments will be introduced early in 2021.

Other

There also are provisions to ease the repayments of bounce-back loans, to extend the deadline for some loan applications, and to provide for successor loan schemes.

Budget

It has been confirmed that the autumn budget has been cancelled. HM Treasury said: "[Now] is not the right time to outline long-term plans – people want to see us focused on the here and now."

United States

State Tax Matters (28 August 2020)

The 28 August 2020 edition of US State Tax Matters includes coverage of the following tax amnesty development:

- **Illinois:** Department of Revenue rules on 2019 tax amnesty program that offered interest and penalty waiver

The newsletter also includes coverage of the following income/franchise tax developments:

- **Federal:** COVID-19 pandemic-related remote worker relief bill has been introduced in US House

- **District of Columbia:** New law postpones unitary combined reporting group deduction and addresses Qualified High Technology Companies and opportunity zones

- **Kentucky:** Department of Revenue addresses implications of COVID-19 pandemic-related telecommuting on withholding and nexus

- **New Hampshire:** Governor slams Massachusetts rule addressing telecommuting during COVID-19 pandemic

- **New Hampshire:** Department of Revenue outlines taxability of some COVID-19 financial relief for business profits tax and business enterprise tax purposes

- **North Carolina:** Department of Revenue discusses ongoing "Voluntary Corporate Transfer Pricing Resolution Initiative"

- **Ohio:** Department of Taxation addresses commercial activity tax treatment of some COVID-19 financial relief

In addition, the newsletter includes coverage of the following local tax development:

- **Virginia:** Another trial court says Internet Tax Freedom Act may bar local taxation of some services

Finally, the newsletter features a recent article: "TCJA/Transition Tax Audit Campaigns and the Amplification of State Income Tax Complexity"

United States

State Tax Matters (4 September 2020)

The 4 September 2020 edition of US *State Tax Matters* includes coverage of the following income/franchise tax developments:

- **Colorado:** Proposed rules reflect inclusion of certain domestic companies on combined returns

- **District of Columbia:** Permanent bill postpones combined reporting group deduction and addresses qualified high technology companies and opportunity zones

- **Minnesota:** Department of Revenue generally addresses state impact of federal CARES Act changes

- **Ohio:** Municipalities can't exclude some consolidated filing affiliates from local returns

- **South Carolina:** Department of Revenue extends COVID-19 pandemic-related telecommuting relief through 31 December 2020

- **Utah:** Responding to federal CARES Act, new law includes changes to net operating loss provisions

The newsletter also includes coverage of the following indirect tax developments:

- **California:** Possible changes to drop shipment rule incorporate marketplace facilitator provisions

United States

State Tax Matters (11 September 2020)

The 11 September 2020 edition of US *State Tax Matters* includes coverage of the following administrative developments:

- **Kentucky:** Governor signs order abolishing Claims Commission and recreating a Board of Tax Appeals

The newsletter also includes coverage of the following income/franchise tax developments:

- **District of Columbia:** Office of Tax and Revenue extends COVID-19 pandemic-related telecommuting relief and addresses PL 86-272

- **New Jersey:** Division of Taxation adopts rules reflecting market-based sourcing law

- **Tennessee:** Department of Revenue issues more guidance on franchise and excise tax treatment of IRC section 163(j)

In addition, the newsletter includes coverage of the following indirect tax developments:

- **California:** Department of Tax and Fee Administration updates guidance on its voluntary disclosure program

- **California:** Office of Tax Appeals holds that contractor owes use tax on Mexican affiliate fabrication labor

- **Illinois:** Department of Revenue announces expanded Audit Fast Track Resolution program

United States

State Tax Matters (18 September 2020)

The 18 September 2020 edition of US *State Tax Matters* includes coverage of the following income/franchise tax developments:

- **California:** Franchise Tax Board discusses COVID-19 pandemic-related telecommuting nexus relief and P.L. 86-272

- **Colorado:** Permanent rules clarify meaning of "internal revenue code" for income tax purposes

- **Georgia:** Department of Revenue addresses state implications of federal CARES Act qualified improvement property (QIP) provisions

- **New Jersey:** Appellate court upholds corporation business tax (CBT) assessments against out-of-state corporate limited partner

- **Ohio:** Department of Taxation announces online service to respond to notices and file appeals

The newsletter also includes coverage of the following indirect tax developments:

- **Illinois:** Department of Revenue adopts marketplace facilitator use tax rule and proposes remote Retailers' Occupation Tax (ROT) rules

- **Minnesota:** Department of Revenue reminds that remote sellers and marketplace providers may have collection obligations

United States

State Tax Matters (25 September 2020)

The 25 September 2020 edition of US *State Tax Matters* includes coverage of the following income/franchise tax developments:

- **California:** New law allows group returns for some corporate international business travelers

- **Florida:** New law updates state conformity to Internal Revenue Code

- **New York:** Draft proposed rules on Metropolitan Transportation Business Tax Surcharge updated

- **Pennsylvania:** Department of Revenue updates bulletin that adopts USD 500,000 annual gross receipts economic nexus standard

- **Tennessee:** Administrative ruling addresses survival of NOL carryforwards in merger transactions

The newsletter also includes coverage of the following indirect tax developments:

- **South Carolina:** Draft Department of Revenue guidance addresses when costs of tariff surcharges are included in tax base

In addition, the newsletter features a recent Multistate Tax Alert: "State Tax Conformity to GILTI High Tax Exception Regulations"

Zimbabwe

New commercial clearing procedures announced

The Zimbabwe Revenue Authority (ZIMRA) has issued Public Notice number 46 of 2020 to advise all clearing agents and the public that, with effect from 17 August 2020, ZIMRA has revised its commercial clearance process. According to the public notice, the following functions will no longer be performed in order to curb the spread of COVID-19:

- Release of bills of entry in the system and printing release orders; and

- Stamping bills of entry and supporting documents.

Clearing agents have access rights to release assessed bills of entry in the system as well as print release orders. Under the revised process, clearing agents no longer will be required to submit hard copy documents to the Commercial Office for the printing of release orders or for stamping. However, printed release orders and bills of entry together with the supporting documents should be submitted to ZIMRA for purposes of releasing trucks/commercial goods.

The changes in procedure are expected to result in the following benefits:

- Reduced risks of spreading COVID-19 due to the elimination of contact between ZIMRA staff and clients;

- Improved bill of entry turnaround time; and

- Reduced costs of doing business by the trading public and clearing agents.

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