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Tax amnesty to apply from 1 July 2021

Regulations have been published to implement the tax amnesty proposed in the 2021/22 budget. The amnesty, which includes VAT, will apply from 1 July 2021. It allows for penalties and interest to be written off upon payment of outstanding tax liabilities.

Canada

Assessment and Revenue Management project

Release 1 of the Canada Border Services Agency Assessment and Revenue Management project has been launched, with the introduction of the Client Portal. CARM aims to transform the collection of duties and taxes for goods imported into Canada.

Germany

CJEU decision on VAT groups and intra-entity supplies

A recent Court of Justice of the European Union ruling concerning supplies of services from a head office of a company that was part of a VAT group in one EU member state to its branch in another member state confirmed previous jurisprudence from the court.

India

Court ruling on powers of provisional attachment

The Supreme Court has held that the powers for the provisional attachment of property (including bank accounts) under GST law are “draconian” in nature and that all conditions prescribed by the legislation for a valid exercise of the power must be strictly fulfilled.

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International tax update presented to G20 finance ministers

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Foreign IT companies may be obliged to open local offices

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State Tax Matters (4 June 2021), including sales and use tax developments in Maryland

United States

State Tax Matters (11 June 2021), including sales and use tax developments in Maryland, Tennessee, Texas, and Washington

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State Tax Matters (18 June 2021), including sales and use tax developments in Iowa, Louisiana, and Maine

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I. Normativa

1. Real Decreto 366/2021, de 25 de mayo, por el que se desarrolla el procedimiento de presentación e ingreso de las autoliquidaciones del Impuesto sobre las Transacciones Financieras y se modifican otras normas tributarias.

Con fecha 26 de mayo de 2021 se publicó en el Boletín Oficial del Estado el Real Decreto 366/2021, de 25 de mayo, por el que se desarrolla el procedimiento de presentación e ingreso de las autoliquidaciones del Impuesto sobre las Transacciones Financieras y se modifican otras normas tributarias.

Este Real Decreto contempla las siguientes modificaciones en el Reglamento del IVA que entraron en vigor el día 27 de mayo de 2021:

- Se modifica el artículo 66.2.B) incluyendo nuevos campos de información para registrar los movimientos de los bienes efectuados en el ámbito de un acuerdo de ventas de bienes en consigna (artº 9 bis de la Ley del IVA).

- Se modifica el artículo 69 bis.1.c) estableciendo el plazo para el suministro de la información relativa a las operaciones citadas en el guión anterior, que deberá efectuarse antes del día 16 del mes siguiente a la fecha de llegada al almacén de los bienes, su puesta a disposición o de la operación que deba registrarse.

II. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 12 de mayo de 2021. Asunto C-844/19, technoRent International y otros.

Directiva 2006/112/CE — Artículo 90 — Reducción de la base imponible — Artículo 183 — Devolución del excedente del IVA — Intereses de demora — Inexistencia de normativa nacional — Principio de neutralidad fiscal — Aplicabilidad directa de las disposiciones del Derecho de la Unión — Principio de interpretación conforme.

Se plantea al TJUE si el Derecho de la Unión debe interpretarse en el sentido de que la devolución resultante de (i) una regularización de la base imponible con arreglo al artículo 90, apartado 1, de la Directiva del IVA y (ii) solicitud de devolución de un excedente del IVA en virtud del artículo 183 de dicha Directiva debe dar lugar al pago de intereses cuando no se efectúe en un plazo razonable, y, en su caso, en qué condiciones.

Establece el Tribunal que, si bien la Directiva del IVA no establece una obligación de pagar intereses de demora para ambos escenarios, ni precisa el momento a partir del cual se devengan tales intereses, el principio de neutralidad del sistema tributario del IVA exige que las pérdidas económicas generadas debido a la demora en la devolución o en la reducción de la base imponible más allá de un plazo razonable sean compensadas mediante el pago de intereses de demora. Asimismo, con respecto al pago de dichos intereses, concluye el TJUE que corresponderá al órgano jurisdiccional remitente examinar si es posible garantizar la plena eficacia del Derecho de la Unión tomando en consideración todo el Derecho nacional y aplicando por analogía disposiciones de este último.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 20 de mayo de 2021. Asunto C-4/20, ALTI.

Directiva 2006/112/CE — Artículo 205 — Personas deudoras del IVA ante el Tesoro Público — Responsabilidad solidaria del destinatario de una entrega sujeta al impuesto que ha ejercido su derecho a deducir el IVA sabiendo que el deudor de ese impuesto no lo abonaría — Obligación de tal destinatario de pagar el IVA no abonado por ese deudor así como los intereses de demora adeudados por la falta de pago del citado impuesto por este último.

Se plantea al TJUE si el artículo 205 de la Directiva del IVA, a la luz del principio de proporcionalidad, debe interpretarse en el sentido de que se opone a una normativa nacional en virtud de la cual la persona designada solidariamente responsable, en el sentido del citado artículo, está obligada a pagar, además del importe del IVA no pagado por el deudor de este impuesto, los intereses de demora adeudados por el deudor sobre dicho importe.

Establece el Tribunal que el artículo 205 de la Directiva permite a los Estados miembros adoptar medidas en virtud de las cuales una persona distinta de la que normalmente adeuda dicho impuesto quede obligada solidariamente al pago del citado impuesto, con vistas a la recaudación eficaz del IVA. De igual modo, considera el TJUE que si bien la responsabilidad solidaria recogida en el artículo 205 únicamente hace referencia a las cuotas del IVA, el mismo tenor no excluye que los Estados miembros puedan imponer a cargo del deudor solidario todos los elementos correspondientes a ese impuesto, como los intereses de demora adeudados por la falta de pago del impuesto por el deudor.

III. Doctrina Administrativa

1. Tribunal Económico-Administrativo Central. Resolución número 4707/2018, de 20 de 2021.

Rectificación de la base imponible motivada por la anulación de una compraventa. Denegación del derecho a la deducción del IVA soportado.

En la presente resolución, la entidad recurrente llevó a cabo la resolución de un contrato de compraventa, operación gravada en su día por el impuesto. En este sentido, al quedar la operación parcialmente sin efecto, el sujeto pasivo de la operación debió rectificar las cuotas repercutidas de acuerdo con el artículo 80 de la Ley. Asimismo, el destinatario, al tratarse de una minoración de las cuotas inicialmente soportadas, debió rectificar las deducciones en su día practicadas.

El Tribunal debe valorar si en el caso que medie actuación administrativa y una posterior regularización que suponga una minoración de las cuotas inicialmente deducidas, como consecuencia de una modificación en la base imponible del impuesto, se hace necesario el cumplimiento de los requisitos previstos en el artículo 80.Siete de la LIVA a que se refiere el artículo 114. En concreto, "que el sujeto pasivo reciba el documento justificativo del derecho a deducir en el que se rectifiquen las cuotas inicialmente soportadas."

En el caso que nos ocupa, la rectificación de las deducciones se ha puesto de manifiesto por parte de la Administración tributaria.

El Tribunal considera que en los casos de operaciones que cesan sus efectos se debe aplicar la doctrina del TJUE mediante la cual, en operaciones inexistentes, no procede deducción alguna en concepto de IVA soportado.

En cuanto a la cuestión de la incidencia que la conducta de quien repercutió el IVA que, en su día se dedujo, puede tener en la necesaria rectificación, el Tribunal, cita la STS 2255/2020, de 8 de julio de 2020, por la que se señala que el efectivo reintegro de las cuotas rectificadas es independiente de las correspondientes rectificaciones, tanto de las repercusión como de las consecuentes deducciones: si el reintegro de las cantidades inicialmente satisfechas en concepto de IVA es independiente de la obligación de rectificación que incumbe al destinatario de las operaciones, otro tanto cabe decir de la recepción de la factura rectificativa por medio de la cual se opera la rectificación de la repercusión, de la que debería traer causa dicho reintegro.

Resuelto el contrato, pues, y conocida la fecha de la resolución, viniendo todo ello debidamente acreditado, hubo el reclamante de rectificar la deducción del IVA soportado devenido improcedente, y ello por referencia al periodo de liquidación en el que se operase el cese en los efectos de la operación.

No debe confundirse lo anterior con otras situaciones, en las que la rectificación de la repercusión del tributo únicamente puede ser conocida por los destinatarios de las operaciones por medio de la remisión, por parte del proveedor de los bienes y servicios a que se refieran, de la correspondiente factura rectificativa.

2. Tribunal Económico-Administrativo Central. Resolución número 1252/2019 de 20 de abril de 2021.

Exención de los transportes aéreos nacionales en conexión con vuelos internacionales y sujeción al IVA de las prestaciones de servicios derivadas de retribuciones del trabajo en especie.

En la presente resolución, el TEAC analiza dos cuestiones: (i) la aplicación de la exención, contenida en el artículo 22.Trece de la Ley del IVA, a los transportes aéreos nacionales en conexión con vuelos internacionales, aún con desembarque en el TAI, y (ii) la sujeción al IVA de las prestaciones de servicios derivadas de retribuciones del trabajo en especie, consistentes en el traslado del empleado al aeropuerto desde su domicilio.

En relación con el primer punto, la Administración entiende que el desembarque en TAI, aún con el fin de cambiar de avión, constituye un transporte aéreo interior, sujeto y no exento de IVA. A criterio de la recurrente, lo anterior contraviene la doctrina establecida por la DGT, así como las sentencias más recientes de la Audiencia Nacional en relación con supuestos idénticos.

En vista de lo anterior, el TEAC modifica su criterio previo y establece que los mencionados servicios de transporte aéreo constituyen una prestación única cuyo origen o destino se encuentran fuera del ámbito espacial del Impuesto; de este modo, la exención resulta aplicable a los transportes aéreos nacionales en conexión con vuelos internacionales.

En relación con la segunda cuestión, la recurrente alega que no existe un vínculo directo entre la prestación y el trabajo personal del empleado que permita satisfacer la nota de onerosidad requerida.

Para el caso objeto de análisis, el TEAC sostiene la existencia de una relación directa entre el servicio de transporte del personal y la contraprestación percibida por el mismo, atendiendo al hecho de que aquellos trabajadores que renuncian al régimen de trasporte colectivo reciben en su sustitución una cuantía mensual compensatoria por los gastos de transporte incurridos. En consecuencia, el TEAC desestima la pretensión de la recurrente, concluyendo que dicho servicio constituye una prestación a título oneroso y que, por lo tanto, se encuentra sujeta al IVA.

Finalmente, en relación con la fijación de la base imponible de los mencionados servicios de transporte, el Tribunal estima la pretensión de la reclamante, puesto que el órgano inspector había computado otros servicios que no se correspondían exclusivamente con el transporte de la tripulación. De este modo, el Tribunal resuelve que debe considerarse de forma exclusiva la facturación relativa a dicho concepto y debe limitarse a los ejercicios que son objeto de comprobación limitada.

3. Tribunal Económico-Administrativo Central. Resolución número 1199/2018, de 20 de abril de 2021.

Establecimiento Permanente – Prestaciones de servicios por filiales. Análisis sobre las relaciones entre las entidades pertenecientes al grupo y la dependencia exigida para considerar la existencia de establecimiento permanente en el TAI.

En la presente resolución la entidad recurrente ha suscrito contratos de agencia con las dos filiales españolas del grupo. El TEAC analiza la posible existencia o no de un establecimiento permanente por parte de la entidad recurrente en el territorio de aplicación del impuesto, debido a la vinculación existente entre esta y las dos entidades locales que se encargan de concretar y gestionar la venta al consumidor final. La existencia e intervención de un establecimiento permanente, supone la consideración como sujeto pasivo de aquél y la obligación del empresario o profesional establecido para repercutir el impuesto a los destinatarios empresarios o profesionales, por las operaciones interiores que realiza, al tener la condición de sujeto pasivo del tributo.

Entiende el TEAC que, con carácter general, filiales ubicadas en el TAI no determinan por sí mismas la existencia de establecimientos permanentes en dicho territorio. Únicamente podrá llegarse a una conclusión diferente cuando las citadas filiales dependan de su entidad matriz de una forma que exceda de la propia de la participación de aquella en el capital de estas, pudiendo considerarse que se trata de entidades dependientes y, por tanto, establecimientos permanentes de aquellas.

Este carácter de dependencia, en el sentido descrito, determina que una agencia o representación autorizada para contratar en nombre y por cuenta de un tercero constituya un establecimiento permanente. Por otro lado, si la agencia o representación es completamente independiente de su representando, sin más relación que la estrictamente derivada del contrato de agencia, no cabe considerar a dicha agencia como un

establecimiento permanente de la entidad en nombre de la cual está facultada para contratar. En conclusión, lo verdaderamente relevante no es la relación de comisión como tal, siendo que lógicamente, esta deberá ajustarse a los términos del contrato.

El Tribunal determina que, debido al tipo de dependencia entre las filiales y la matriz, ésta última había constituido EP en el TAI, por lo que aplicó de forma incorrecta el supuesto de inversión del sujeto pasivo, debiendo regularizar las operaciones cuya repercusión debió haberse efectuado por la entidad reclamante.

A este respecto, ni la normativa ni la jurisprudencia prevén un mecanismo de compensación de cuotas cuando nos encontramos ante dos entidades con personalidad jurídica propia. Por ese motivo, se devengarán intereses de demora por las cantidades de IVA no repercutidas por la entidad matriz, al haber aplicado incorrectamente el mecanismo de la inversión del sujeto pasivo, aunque dicho importe hubiese sido repercutido por la entidad filial.

4. Tribunal Económico-Administrativo Central. Resolución 1891/2018 de 20 de abril de 2021.

No sujeción de las operaciones entre sucursal y matriz cuando conforman un sujeto pasivo único del IVA. Aplicación de la regla de uso efectivo a los servicios prestados a una entidad establecida en un país tercero.

En la presente resolución, el TEAC debe resolver dos cuestiones previas para determinar la procedencia de la deducción del IVA soportado por una sucursal: en primer lugar, el impacto de las operaciones realizadas entre la sucursal establecida en el TAI y su casa central luxemburguesa; y, en segundo lugar, la sujeción de los servicios financieros prestados por parte de la sucursal a empresarios o profesionales establecidos fuera del territorio de la Comunidad.

En relación con el primer aspecto, el Tribunal sostiene que para determinar la deducibilidad de las operaciones realizadas entre la sucursal y la matriz debe analizarse primeramente si se trata de sujetos pasivos independientes. En este sentido, entendiendo que la sucursal no realiza una actividad autónoma y no asume el subsiguiente riesgo, sino que es la matriz quien lo asume, a efectos del IVA se considera un sujeto pasivo único. En base a lo anterior, las operaciones internas con la casa central no se encuentran sujetas al Impuesto.

En relación con el segundo aspecto, la recurrente entiende que los destinatarios de los servicios no son los inversores españoles, sino entidades establecidas en Singapur y Estados Unidos, por lo que los servicios prestados no se encuentran sujetos al Impuesto. Por el contrario, la Administración considera que resulta aplicable la regla de cierre, en virtud del artículo 70.Dos de la Ley del IVA.

El Tribunal sostiene, en vista a la jurisprudencia del TJUE sobre la materia, que se cumplen los requisitos exigidos por la regla de uso y disfrute para concluir que los servicios se prestan en TAI: (i) los servicios prestados se subsumen en el artículo 69.Dos de la Ley del IVA, pues se trata de servicios financieros, (ii) los destinatarios son empresarios o profesionales y (iii) los servicios se entienden inicialmente prestados fuera del territorio de la Comunidad por aplicación de las reglas generales o especiales de los artículos 69.Uno y 70.Uno de la Ley del IVA.

En consecuencia, el TEAC concluye que los servicios prestados a las entidades residentes fuera del territorio de la Comunidad, consistentes en la atención y soporte a los inversores españoles, constituyen operaciones sujetas y exentas.

Finalmente, el TEAC precisa que para el cálculo de la prorrata deben tenerse en cuenta las operaciones de la matriz cuya vinculación es directa e inmediata con las adquisiciones de bienes y servicios efectuados por la sucursal; asimismo, dichas operaciones deben conferir el derecho a la deducción en ambos Estados miembro (i.e. donde se encuentra establecida la matriz y la sucursal).

5. Dirección General de Tributos. Contestación nº V0810-21, de 6 de abril de 2021.

Lugar de realización de las prestaciones de servicios – Servicios de instalación y montaje – Servicios relacionados con bienes inmuebles.

El consultante es residente en el TIVA-ES y realiza una actividad de reparación de maquinaria industrial. Tiene un contrato por el que realiza labores de montaje de una determinada maquinaria, que va anclada al suelo, en las fábricas de los clientes españoles de un proveedor italiano sin establecimiento permanente en el TIVA-ES. El consultante factura sus servicios al proveedor italiano de las máquinas, aplicando el correspondiente IVA español.

La consultante desea conocer el lugar de realización, a efectos del IVA, de la instalación de la maquinaria en fábricas situadas en el TIVA-ES, así como la ejecución de reparaciones en período de garantía de la misma y el procedimiento para solicitar a la Administración la devolución de las cuotas indebidamente ingresadas, si este fuese el caso.

Este centro Directivo comienza su análisis indicando las reglas de localización de las prestaciones de servicios efectuadas. En este sentido la regla general establecida en el artículo 69 de la Ley del IVA, señala que las prestaciones de servicios se entenderán realizadas en el TIVA-ES, sin perjuicio de lo dispuesto en el apartado siguiente de este artículo y en los artículos 70 y 72 de esta Ley cuando el destinatario sea un empresario o profesional.

No obstante, lo anterior el artículo 70. Uno.1º de la Ley del IVA, transposición del artículo 47 de la Directiva 2006/112/CE, establece que se entenderán prestados en TIVA-ES los servicios relacionados con los bienes inmuebles situados en dicho territorio.

De acuerdo con lo dispuesto en las "Notas Explicativas sobre las normas de la UE referentes al lugar de realización de las prestaciones de servicios relacionados con bienes inmuebles a efectos de IVA" se considera «instalación permanente» a "*aquellos elementos que se instalan para servir a un fin específico en un edificio o construcción y que se prevé que perduren en él o permanezcan* inalterados".

En línea con lo anterior, este Centro concluye que en la medida en que la maquinaria se encuentra anclada al suelo, parecen concurrir los requisitos para que las operaciones necesarias para su instalación deben entenderse como servicios directamente con un bien inmueble situado en el TIVA-ES y, por tanto, sujetos a IVA.

6. Dirección General de Tributos. Contestación nº V0933-21, de 15 de abril de 2021.

Pago anticipado - Devengo – Depósito de dinero en una cuenta "escrow".

La entidad consultante ha firmado un contrato de compraventa de cosa futura en virtud del cual se compromete a construir y entregar un edificio de oficinas. Con el objeto de garantizar la compraventa futura, las partes firman un acuerdo de depósito en garantía (escrow agreement), en virtud del cual la parte compradora transferirá el 10% del precio de venta a una cuenta "escrow". Los fondos se mantendrán en la cuenta "escrow" hasta el cumplimiento de las cláusulas contractuales previstas.

La consultante desea conocer si el depósito de una cantidad de dinero en una cuenta "escrow" en las condiciones pactadas en la consulta supone un pago anticipado a efectos del IVA.

Este Centro directivo, comienza analizando los conceptos de devengo y de exigibilidad, indicando asimismo que el devengo del Impuesto en las entregas de bienes se producirá cuando tenga lugar su puesta a disposición del adquirente. No obstante, en el caso de las operaciones sujetas que originen pagos anticipados, anteriores a la realización del hecho imponible, el devengo del impuesto se producirá en el momento del cobro total o parcial del precio por los importes efectivamente percibidos.

Asimismo, el TJUE, en la sentencia de 8 de febrero de 1990, asunto C-320/88, relativa al artículo 10 de la Directiva 388/77/CEE, de 17 de mayo, Sexta Directiva del IVA, establece los criterios para la determinación del momento en el que se produce la entrega de un bien, por los cuales se considera que será el momento a partir del cual el destinatario de la operación tenga la posesión completa e inmediata del objeto de la misma, quedando la misma a su entera disposición, entendida ésta tanto como la facultad de usar o disfrutar, como relativa a la facultad de disponer, el que determine la entrega de la misma y, por consiguiente, el devengo del Impuesto correspondiente a la operación.

Lo anteriormente expuesto no impide la aplicación de la norma relativa a los pagos anticipados. No obstante, es criterio reiterado del TJUE considerar que el Impuesto sólo puede ser exigible en esa situación y de forma anticipada, siempre y cuando se conozcan todos los elementos relevantes del devengo.

En vista de lo anterior, la DGT señala que de acuerdo con doctrina del TJUE, en la medida en que la consultante no puede disponer de los fondos depositados en la cuenta "escrow" hasta la finalización del contrato, no puede entenderse producido el devengo de la operación con la constitución de los fondos, al no suponer la realización de un cobro anticipado ni tampoco la realización de un pago anticipado.

7. Dirección General de Tributos. Contestación nº V0949-21, de 19 de abril de 2021.

Lugar de realización de las prestaciones de servicios – Servicios de abogacía - Regla de uso efectivo.

El consultante es un abogado que presta servicios de defensa jurídica en el TIVA-ES a una entidad establecida en el Reino Unido.

El consultante desea conocer si los servicios descritos se encuentran sujetos al Impuesto Sobre el Valor Añadido.

En relación con las reglas de localización y en virtud del apartado Uno.1º del artículo 69 de la Ley del IVA, los servicios prestados por el consultante no se entenderán realizados en el TIVA-ES, en la medida en que el destinatario se encuentra establecido en Reino Unido y goza de la condición de empresario o profesional.

Por otro lado, el artículo 70.Dos de la Ley del IVA establece la regla de uso efectivo, para servicios de determinada naturaleza. En este sentido, los servicios de abogacía objeto de consulta se encuentran entre los previstos en el artículo 69. Dos de la Ley del IVA.

Este Centro directivo, de acuerdo con lo establecido por el TJUE, en la sentencia de 19 de febrero de 2009, asunto C-1/08 Athesia Druck Srl, ha reiterado los requisitos que han de concurrir para que resulte de aplicación la cláusula de cierre:

- Los servicios han de ser citados de forma expresa en el artículo 70. Dos de la LIVA.
- Con carácter general, los servicios deben ser prestados a empresarios o profesionales actuando como tales. En todo caso, deberá atenderse al destinatario real del servicio.
- La aplicación del artículo 69.Uno.1º de la LIVA, debe conducir a que la localización de los mismos tenga lugar fuera de la Comunidad, exceptuadas las Islas Canarias, Ceuta o Melilla.
- Los servicios deberán utilizarse o explotarse efectivamente desde un punto de vista económico en el territorio de aplicación del Impuesto. El citado requisito que deberá valorarse de forma individualiza de acuerdo con la naturaleza del servicio de que se trate. Asimismo, el servicio ha de relacionarse de forma directa o indirecta con operaciones que se realicen en el TIVA-ES.

Por todo ello, la DGT concluye a la vista de las sentencias del Tribunal Supremo de 16 de diciembre de 2019, número 1782/2019 (Rec. 6477/2018), y de 17 de diciembre de 2019, número 1817/2019 (Rec. 6274/2018) y la resolución del Tribunal Económico Administrativo Central, de 22 de julio de 2020 (procedimiento 00-01532-2017), que la regla de uso efectivo resultará de aplicación cuando los servicios prestados por la entidad establecida en el TIVA-ES a una entidad establecida fuera de la Comunidad, ya sea esta su destinatario inicial o final, sean usados y explotados efectivamente en el TIVA-ES, con independencia de que cualquiera de dichas destinatarias realice en el TIVA-ES operaciones sujetas al IVA o no.

8. Dirección General de Tributos. Contestación nº V1039-21, de 21 de abril de 2021.

Suministro de hidrocarburos – Navegación marítima internacional – Exenciones.

La consultante es una sociedad mercantil (filial de una entidad irlandesa) que no cuenta con un establecimiento permanente a efectos del IVA y efectúa operaciones de aprovisionamiento de combustible a buques en un puerto español.

De acuerdo con su operativa, la entidad matriz recibe una petición de suministro de combustible efectuada por un buque afecto a la navegación marítima internacional, siendo la consultante quien procede con el suministro físico del combustible (éste se encuentra en

un depósito fiscal de los Impuestos Especiales o bien en gabarras operadas por la consultante), en condiciones FOB. Posteriormente, la entidad no residente factura la entrega a la matriz irlandesa y ésta, al titular de la explotación del buque, si bien la matriz en ningún momento toma posesión física del combustible.

Asimismo, es la consultante la que realiza todos los trámites aduaneros necesarios, figurando como exportadora en el Documento Aduanero de Exportación que ampara el aprovisionamiento y estando en poder del albarán de entrega del producto, rubricado por el capitán del buque objeto del suministro.

Esta entidad plantea a la DGT, si las entregas de bienes efectuadas a favor de la matriz irlandesa pueden quedar exentas del Impuesto sobre el Valor Añadido en virtud de lo dispuesto en los artículos 21, 22.Tres o 24 de la LIVA.

Comienza la DGT, indicando que en relación con los Impuestos Especiales de Fabricación, la ultimación del régimen suspensivo de los productos gravados se producirá en el momento de la salida del depósito fiscal, es decir, en el momento del devengo de los impuestos especiales, de acuerdo a lo dispuesto en el artículo 7 de la LIE, independientemente de que los suministros se realicen directamente desde el depósito fiscal o a través de gabarras mediante el procedimiento de ventas en ruta.

En lo relativo al IVA y la posible aplicación de las exenciones mencionadas, deviene necesario indicar en primer lugar que en la medida en que los bienes no parecen ser expedidos de forma efectiva fuera del territorio de la Comunidad por la consultante ni por la matriz, ni tampoco se especifica si esa es la intención de los buques aprovisionados con el combustible, no resulta de aplicación la exención relativa a la exportación regulada en el artículo 21 de la LIVA, independientemente sea la consultante quien se encarga de la formalización de los trámites aduaneros, pues es de aplicación la realización de dichas formalidades de acuerdo con la legislación aduanera.

Del mismo modo, parecería que la exención establecida en el artículo 24 de la LIVA tampoco sería de aplicación, ya que ésta sólo tendría lugar cuando la puesta a disposición del carburante a favor del adquiriente se produzca durante la vigencia del régimen suspensivo de los Impuestos Especiales de Fabricación

Finalmente, la DGT señala que de acuerdo con doctrina del TJUE, cuando el suministro por un intermediario en nombre propio (i.e. la matriz irlandesa) a los buques se efectúe en condiciones idénticas a las del asunto “Fast Bunkering Klaipeda UAB” y, en particular, pueda considerarse que se realiza una única entrega de bienes, efectuada por la consultante a favor de los titulares de la explotación de dichos buques, puede concluirse que la entrega efectuada por la consultante a favor de los buques suplidos, puede quedar exenta del impuesto en virtud del artículo 22.Tres de la LIVA.

9. Dirección General de Tributos. Contestación nº V1042-21, de 21 de abril de 2021.

Requisitos técnicos y formales – Renuncia a la modalidad avanzada del Régimen de Grupo de Entidades.

La entidad consultante está acogida junto con otras entidades al Régimen Especial de Grupo de Entidades del Impuesto sobre el Valor Añadido en su modalidad avanzada.

La consultante desea conocer los requisitos técnicos y formales para renunciar a la modalidad avanzada y aplicar la modalidad básica del Régimen de Grupo de Entidades del IVA.

Comienza la DGT, enumerando los requisitos para la aplicación del Régimen de Grupo de Entidades del IVA para posteriormente indicar que existe la posibilidad de renunciar a la modalidad avanzada del REGE en aras de aplicar la modalidad básica.

Para ello, basta con que la entidad dominante, realice la comunicación correspondiente ante la Administración tributaria sin que, en este caso, sea necesario la adopción de acuerdos por el consejo de administración de las entidades del grupo. Dicha renuncia, tendrá una validez mínima de un año.

10. Dirección General de Tributos. Contestación nº V1141-21, de 28 de abril de 2021.

Inclusión de entidad SOCIMI en el régimen especial de grupo de entidades - Efectos de la inclusión - Base imponible de los servicios intragrupo.

La entidad consultante, dominante de un régimen especial de grupo de entidades del IVA (REGE), en su modalidad avanzada, ha adquirido durante 2020 la participación mayoritaria en una entidad SOCIMI. Dicha entidad arrienda oficinas a la propia entidad consultante.

La entidad consultante plantea a la DGT la posibilidad de incluir a la SOCIMI en el REGE y los efectos de su inclusión, así como el cálculo de la base imponible en la prestación de los servicios por parte de la SOCIMI tras su inclusión en el REGE.

En lo relativo a la primera de las cuestiones, la DGT concluye que la SOCIMI adquirida se integrará en el REGE desde el 1 de enero 2021, siempre que se cumpla con el resto de los requisitos establecidos reglamentariamente en este régimen especial.

Seguidamente, en cuanto a las consecuencias de la inclusión de la SOCIMI en el REGE de la consultante, la DGT determina lo siguiente:

- Las oficinas que estaban afectos al sector diferenciado de actividad de arrendamiento pasarán a afectarse de forma sobrevenida al sector de operaciones intragrupo, pues, una vez dentro del grupo, la SOCIMI continuará arrendando los inmuebles a entidades del propio grupo.

- El devengo de dicha operación se producirá en el momento en que se realice el autoconsumo que coincidirá con el momento en que la SOCIMI pase a formar parte del REGE (1 de enero de 2021).

- La operación constituirá una segunda entrega de edificaciones sujeta y exenta del Impuesto, con posibilidad de renuncia a dicha exención.

- Dicha operación supondrá la necesidad de practicar la regularización de los bienes de inversión, en caso de que dicha entrega de bienes se produzca durante el periodo de regularización de los mismos.

- La base imponible de este autoconsumo se cuantificará por los costes de los inmuebles por los que se hubiera soportado IVA.

Por último, la DGT confirma que la base imponible de los servicios de arrendamiento de bienes inmuebles prestados por la SOCIMI deberá calcularse imputando el coste de los bienes de inversión por cuya adquisición se soportó el IVA, pero sólo cuando no haya transcurrido íntegramente su periodo de regularización en el momento en el que, de acuerdo con el sistema de información analítica adoptado, dichos bienes pasen a ser utilizados directa o indirectamente, total o parcialmente, en la realización de las operaciones intragrupo.

Así, en este caso, la base imponible de los arrendamientos se constituirá por las cuotas del IVA soportadas por la SOCIMI por los gastos corrientes que sean imputables a los servicios de arrendamiento, sin incluir los de los bienes de inversión ya regularizados.

11. Dirección General de Tributos. Contestación nº V1149-21, de 29 de abril de 2021.

Tipo superreducido del 4% - Revistas electrónicas – Páginas web de asesoramiento a inversores.

La entidad consultante dispone de una página web en la cual se incluye de forma semanal artículos de actualidad y divulgación financiera, así como estudios sobre el comportamiento de los diferentes índices bursátiles. Los suscriptores premium de esta web reciben avisos sobre señales de compra o venta respecto de los índices bursátiles.

Esta entidad plantea a la DGT si la prestación de estos servicios está sujeta al tipo reducido del 4% por tener la consideración de revista electrónica.

Comienza la DGT dictaminando que la aplicación de este tipo reducido dependerá de si los artículos publicados se ajustan al concepto de periódico o revista amparados tanto en el artículo 91, apartado dos.1, número 2º LIVA, como en las definiciones dadas por el Diccionario de la Real Academia Española, ante la falta de un concepto legal de periódico o revista.

Así, bajo la confirmación de la consultante que cualquier usuario registrado en la web tiene acceso a los artículos, y son sólo los usuarios premium quienes a cambio de una contraprestación tienen acceso al sistema de avisos anteriormente descrito. Pues bien, considera la DGT que de tales hechos resulta que el servicio prestado no puede calificarse como servicio de revista electrónica, y por tanto no sería de aplicación el tipo superreducido del 4%.

Finalmente, en cuanto al servicio de asesoramiento de inversiones, determina la Directiva 2014/65/UE que será un asesoramiento en materia de inversión aquel que sea personalizado a un cliente en concreto, como idóneo para esa persona, o al menos basándose en las circunstancias personales del tercero. Por consiguiente, la DGT concluye, en base al supuesto aquí presente, que este servicio de asesoramiento prestado por la consultante es un servicio de asesoramiento en inversiones, servicio sujeto al tipo general del 21%.

12. Dirección General de Tributos. Contestación nº V1153-21, de 29 de abril de 2021.

Determinación de la base imponible. Autoconsumo de bienes. Entrega de alimentos a asociaciones y entidades sin ánimo de lucro de manera gratuita o residual.

La entidad consultante se dedicada a la comercialización y venta de productos de alimentación a grandes superficies o pequeños establecimientos. En ocasiones los productos son devueltos por defectos en el envase, etiquetado, fecha próxima a caducidad u otro estándar de venta de los distribuidores que hacen que el producto no sea apto para la comercialización. En aquellos casos en los que los productos no sean aptos para su comercialización pero sí para el consumo humano, la consultante se plantea entregar los mismos a asociaciones y entidades sin ánimo de lucro o de manera gratuita, o bien al mismo precio fijado para las entregas a centros autorizados de retirada de residuos.

Esta entidad se cuestiona ante la DGT la determinación de la base imponible en estas entregas.

La DGT, en primera instancia, determina que estas entregas de productos alimentarios constituirían un autoconsumo de bienes sujeto y no exento de acuerdo con el artículo 9.1º.b) LIVA, en la medida en que la consultante ostentaría pleno o parcial derecho de deducción de las cuotas soportadas en la adquisición de dichos productos objeto de autoconsumo.

Habiendo dicho eso, la DGT determina, por un lado, que la base imponible de las entregas a título oneroso, es decir, al precio fijado por centros autorizados, se constituirá por la contraprestación recibida, sin mayor ahondamiento en su tratamiento.

Del otro lado, respecto a las donaciones realizadas, la DGT determina que la base imponible de estas operaciones deberá calcularse a tenor de lo dispuesto en la regla especial del artículo 79.Tres de la LIVA. En particular, la base imponible de estas entregas se calculará en función de la alteración del valor de los bienes, siendo la base imponible el valor de los bienes en el momento en el que se efectúe la entrega. A tenor del supuesto, la base imponible será muy reducida en la medida en que el valor de los productos no aptos para su comercialización (fecha de consumo preferente muy cercana) será muy escaso en comparación al precio de venta al público de los mismos en condiciones normales. La misma lógica utiliza la DGT para tratar a los productos que sin encontrarse sometidos a fechas de consumo preferentes, por sus características, hubiesen perdido su valor comercial.

La DGT concluye atribuyendo a la consultante la potestad para acreditar el valor de los bienes entregados a través de cualquier medio de prueba admitido en Derecho.

13. Dirección General de Tributos. Contestación nº 0007-21, de 29 de abril de 2021.

Ente dual - Régimen de deducción aplicable a entidad pública gestora de servicios públicos de radiodifusión y televisión de una Comunidad Autónoma.

La entidad consultante es una entidad pública creada por una Comunidad Autónoma para la gestión de los servicios públicos de radiodifusión y televisión. En concreto, la consultante

centraliza los servicios de dirección general y los departamentos financiero, jurídico y técnico de su filial, sociedad mercantil de capital público, siendo el objeto social de esta última la gestión mercantil del servicio público de radiodifusión y televisión de la región.

La consultante plantea a la DGT el régimen de deducción aplicable a entes duales a efectos del IVA.

En un análisis preliminar, la DGT confirma el carácter de sujeto pasivo de la consultante, para continuar el mismo confirmando la sujeción al Impuesto de los servicios públicos de radiodifusión y televisión, en línea con la letra I') del artículo 7.8º de la LIVA.

No obstante, lo anterior, prosigue la DGT advirtiendo que esta sujeción aplicaría exclusivamente a actividades públicas de radiodifusión y televisión que tengan carácter comercial, dictaminándose como no sujetas los servicios de esta naturaleza que ostenten un carácter no comercial.

Adicionalmente, destaca la DGT que las posibles aportaciones públicas que pudiera recibir la entidad consultante para la gestión de estos servicios no estarían sujetas a IVA al no tener la consideración de subvención vinculada al precio de dichos servicios, ni constituir la contraprestación de operación alguna sujeta al Impuesto.

Tras lo anterior, la DGT prosigue señalando que la no sujeción de la actividad no comercial implica que el ejercicio de la deducción del IVA soportado por la entidad consultante se vea limitado, al no permitirse la deducibilidad de los gastos relacionados con la actividad no comercial de la consultante.

A estos efectos, se señala que el régimen de deducción aplicable a los denominados "entes duales" es criterio reiterado de la DGT y deberá considerarse un criterio razonable y homogéneo de imputación para la deducción de las cuotas soportadas en el desempeño tanto de la actividad comercial como la no comercial, además dicho criterio deberá ser mantenido en el tiempo. Asimismo, corresponderá a la propia consultante probar ante la Administración dicho régimen de deducción, que deberá ser aceptado posteriormente por la misma, si bien es cierto que un criterio financiero debe ser preferente por su equivalencia con el régimen de la prorrata.

IV. Country Summaries

Featured articles

Botswana

Tax amnesty to apply as from 1 July 2021

On 8 June 2021, the Botswana Income Tax (Remission of Penalties and Interest) Amnesty Regulations, 2021 and the Value Added Tax (Remission of Penalties and Interest) Amnesty Regulations, 2021 were published in the *Government Gazette*. The regulations implement the tax amnesty proposed by the Minister of Finance and Economic Development in the national budget for 2021/22 presented on 1 February 2021 and apply as from 1 July 2021. The amnesty provides eligible taxpayers with outstanding tax liabilities with the opportunity to settle the principal amount owed in exchange for the write-off of penalties and interest charged during previous tax periods without fear of prosecution.

Key features of the amnesty scheme

The key features of the scheme are highlighted below. More detailed information is available in the guidelines issued by the tax authorities.

Amnesty period

The amnesty scheme is available during the period 1 July 2021 through 31 December 2021.

Taxes covered

The scheme applies to income tax (including corporate income tax, personal income tax, taxes collected under the pay-as-you-earn scheme, and other withholding taxes) and VAT.

Penalties and interest eligible for remission

All penalties and interest charged under the Income Tax Act other than those imposed under section 118A for failure to submit transfer pricing documentation are eligible for remission.

All penalties and interest charged under the Value Added Tax Act are eligible for remission.

Eligible persons

An eligible person is one that:

Has an outstanding principal tax debt with an associated relevant penalty and/or interest liability;

Has filed a tax return but has not paid the whole or part of the tax due in accordance with the return, i.e., the person has partially settled the tax liability but has a penalty or interest outstanding;

Has paid the principal tax due under any of the relevant revenue laws but has outstanding penalties and/or interest, i.e., the person has settled the principal tax liability in full but has not paid all or part of the associated penalties or interest;

Has outstanding penalties and/or interest only, i.e., the person may not have had a principal tax liability but was charged penalties or interest;

Has not filed a tax return for a period covered by the amnesty, i.e., a person who has outstanding returns may file those returns during the amnesty period and any penalties charged will be remitted provided the taxpayer pays their total principal tax debt during the amnesty period;

Is not registered for any of the relevant taxes, i.e., a person required to register for any of the relevant taxes who has not yet done so may register during the amnesty period and will not be charged penalties for late registration;

Has lodged an objection against any assessment with the Commissioner General, i.e., no person is prohibited from benefitting from the amnesty scheme on the basis that they have lodged an objection with the Commissioner against an assessment; or

Has lodged an appeal to the Board of Adjudicators, the High Court, or the Court of Appeal, i.e., no person is prohibited from benefitting from the amnesty scheme on the basis that either they or the Commissioner General have lodged an appeal against a decision of the Commissioner General or the Board of Adjudicators, as appropriate.

Non-eligible persons

A non-eligible person is one that:

May otherwise be an eligible person but has paid all of the eligible tax liability including the related penalties and interest, i.e., a person that does not have a principal tax liability and penalties and/or interest at the commencement of the amnesty scheme will not be eligible for the scheme. However, if a new liability were to arise during the amnesty period, the person would be eligible to participate in respect of the new liability. Penalties and interest paid before the amnesty period will not be refunded;

Has previously been convicted of a criminal offense under any of the relevant revenue laws; or

Has been convicted of international organized crime including money laundering, human trafficking, or economic sabotage.

Tax periods covered

For income tax purposes, the amnesty applies to tax years up to and including 2020/21.

For VAT purposes, the amnesty applies to tax periods prior to July 2021 as follows:

Category A: Up to and including the April/May 2021 tax period;

Category B: Up to and including the May/June 2021 tax period; and

Category C: Up to and including the June 2021 tax period.

The different categories reflect the fact that entities may be required to account for VAT on a monthly or bimonthly basis depending on turnover and the bimonthly periods may vary.

Operational procedures

To benefit from the amnesty, an eligible person who has either paid the total principal tax but had a penalty and/or interest liability or had no principal tax but had a penalty and/or interest liability must notify the Commissioner General via the electronic platform provided by the Commissioner General within seven days after the required payments have been made. The Commissioner General will confirm remission of the penalties and/or interest within 21 days after receiving notification of the payment. Details of the electronic platform are not yet available.

The Commissioner General will remit all outstanding penalties or interest as at 1 July 2021 for any person that did not have a principal tax liability as at that date. The person need not make any notification to the Commissioner General in respect of the outstanding amounts.

Canada

CBSA launches first phase of Assessment and Revenue Management Project

On 25 May 2021, Release 1 (R1) of the Canada Border Services Agency (CBSA) Assessment and Revenue Management (CARM) project launched. CARM is a multi-year initiative that will transform the collection of duties and taxes for goods imported into Canada.

Under R1 of CARM, the CBSA introduced the CARM Client Portal and some basic functionalities available to importers, exporters, customs brokers, and trade consultants, including the ability to:

Set up an account and delegate access/authority;

View account information and make payments electronically via the portal;

Use self-service tools (i.e., tariff classification tool and duties and taxes estimator); and

Submit ruling requests and track their status.

Release 2 (R2) is tentatively set for spring of 2022 and will expand on the functionalities of the CARM Client Portal by adding the following features:

Electronic commercial accounting declarations with the ability to make corrections and adjustments;

Changes to release-prior-to-payment requirements for bonds;

Harmonized billing cycles;

New offsetting options; and

Electronic management of appeals and compliance actions.

Note that, under R2, importers will be required to post their own financial security (via either a surety bond or CBSA cash deposit) to obtain the release of their goods prior to accounting for and paying duties and taxes to the CBSA. Security posted by customs brokers no longer will extend to importers.

Gemany

CJEU decision issued on VAT groups and intra-entity supplies: A German perspective

On 11 March 2021, the Court of Justice of the European Union (CJEU) issued its ruling in Danske Bank (C-812/19) concerning supplies of services from a head office of a company that was part of a VAT group in one EU member state to its branch in another member state. The court confirmed that its previous jurisprudence in Skandia (C-7/13), concerning a branch that joined a VAT group and received services from its overseas head office, has a broad application and that the principles established also applied to the current case. As described further below, it is uncertain whether the German tax authorities will take a position in response to the Danske Bank decision and if so, what that position will be.

Background and facts of the case

The case involved the Swedish branch of the Danish company Danske Bank A/S. In Denmark, Danske Bank A/S is part of a VAT group under Danish law (corresponding to a VAT group within the meaning of article 11 of the EU VAT directive). Accordingly, permanent establishments located abroad cannot be part of the Danish VAT group (as is also the case from a German point of view). The Swedish branch was not part of a VAT group in Sweden.

In the Scandinavian countries, Danske Bank A/S used an information technology (IT) platform for its business activities. It allocated the costs incurred in connection with the use of the platform for the activities in Sweden to the Swedish branch. The branch questioned whether, as the recipient in Sweden, it was responsible to account for and pay the VAT due for the service of use of the IT platform.

Considering CJEU case law on the relationship between branches and VAT groups (the 2014 Skandia case and the 2006 FCE Bank case (C-210/04)), the Swedish court that referred the case to the CJEU was uncertain whether, in the present case, Danske Bank A/S and the Swedish branch were to be regarded as separate taxable persons because Danske Bank A/S is part of a VAT group in Denmark.

Decision of the CJEU

The CJEU ruled that supplies between a company and its permanent establishment located abroad are subject to VAT in a situation in which the company is a member of a VAT group. The VAT group to which the company belongs prevents the company and its foreign permanent establishment from forming a single enterprise. Therefore, services supplied between the company and its permanent establishment have to be assessed under the general VAT principles applying to unrelated parties.

With its ruling, the CJEU again gave affiliation with a VAT group greater weight than the general principle that services between a company and its foreign permanent establishment are deemed to be provided within the same legal entity (for VAT purposes). This general principle has not been abandoned; however, the CJEU has clarified that from its point of view, the existence of a VAT group takes precedence over this principle. The CJEU thus followed the same approach as in its decision in the Skandia case, in which the court considered the reverse situation where a company from a non-EU country had provided services to its branch that was part of a VAT group in Sweden. The court ruled that these services were not exchanged within the same company (for VAT purposes), but were provided by the company to the VAT group to which the branch office belonged. Accordingly, the VAT group, as the recipient of the service, was responsible for accounting for and paying the VAT due in Sweden under the reverse-charge mechanism.

Comments and practical implications from a German point of view

The Danske Bank ruling primarily affects internationally active companies that operate through permanent establishments and that are not (or that are only partially) entitled to deduct input tax. If services are supplied between a company abroad and a permanent establishment in Germany, such services currently are not required to be subject to VAT in Germany as sales under the reverse-charge mechanism because the principles of the Skandia ruling have not yet been applied by the German tax authorities. Regardless of the existence of a VAT group, services between a company and its foreign permanent establishment are considered to be provided within the same company from a German perspective, and accordingly are not required to be subject to German VAT (as provided in section 2.9, paragraph 2, sentence 2 of the German VAT Act Application Decree (as of 15 March 2021)).

In 2018, the Ministry of Finance published a draft circular on the consequences of the CJEU ruling in the Skandia case. According to the draft circular, the principles developed by the CJEU should not be generally applicable, but should apply only in limited cases in which services are supplied between a company in a third country and its permanent establishment belonging to a VAT group in an EU member state (Germany in this case). A final version of the circular has not yet been published.

As noted above, it remains to be seen whether the German tax authorities will take a position in response to the CJEU's ruling in the Danske Bank case and if so, what that position will be. Hopefully, any change in the legal interpretation taken by the tax authorities will be accompanied by a generous "non-objection" rule (providing a transition period during which the tax authorities will not object to the application of their previous interpretation of the rules). It also remains to be seen whether the tax authorities will wait for the CJEU to issue a ruling on the German concept of a VAT group before making a statement on the issue (requests for a preliminary ruling have been made to the CJEU by the German federal tax court in pending cases C-141/20 and C-269/20).

With regard to input VAT deductions, the Danske Bank ruling should be considered along with the CJEU decision in the 2019 Morgan Stanley case (C-165/17), in which the CJEU ruled on how to calculate input VAT deductions considering the relationship between a head office and a branch located in different EU member states.

India

Supreme Court rules powers of provisional attachment under GST law are excessive

India's Supreme Court in a decision issued on 20 April 2021 held that the powers for the provisional attachment of property (including bank accounts) under goods and services tax (GST) law are "draconian" in nature and that all conditions prescribed by the legislation for a valid exercise of the power must be strictly fulfilled.

Background and facts of the case

The Himachal Pradesh state GST authorities observed that the appellant had received supplies from a taxpayer against whom proceedings for issuing fake invoices were initiated. Subsequently, a show cause notice was issued to the appellant to recover input tax on the supplies, together with interest and penalties. This was followed by an order provisionally attaching the appellant's receivables from its customers, issued by the Joint Commissioner of State Taxes and Excise, Parwanoo. (Provisional attachment broadly is a protective measure intended to ensure payment of tax liabilities under which a governmental agency may seize or block property, including bank accounts, of a taxpayer subject to an investigation or inquiry. If the amounts due are settled by the taxpayer, the attached properties are released. Where the agency does not believe that the taxpayer will be able to pay the tax owed, it may dispose of the property and use the proceeds to settle the outstanding liability. Further guidance on the provisional attachment of property for GST purposes was issued by the Central Board of Indirect Taxes and Customs on 23 February 2021.)

The appellant filed a writ petition against the order before the Himachal Pradesh High Court. The court dismissed the petition on the ground that an alternate remedy under GST law for filing an appeal before the appellate authority was available to the appellant. The appellant accordingly filed an appeal before the Supreme Court challenging the High Court's dismissal of the writ petition.

Submissions of the appellant

Maintainability of the writ petition before the High Court

The appellant submitted that under GST law, an order for provisional attachment must be passed by the Commissioner. In the case at hand, the power for passing such orders was delegated by the Commissioner to the Joint Commissioner. Therefore, the Joint Commissioner was acting in the capacity of the Commissioner.

The High Court had dismissed the writ petition on the ground that the appellant could have filed an appeal before the first appellate authority. The appellant submitted that the provisions in GST law relating to appeals provide that the orders of the "adjudicating authority" can be appealed before the first appellate authority. Further, the definition of adjudicating authority specifically excludes the Commissioner. Since the Joint Commissioner was acting in the capacity of the Commissioner, an appeal could not be filed before the first appellate authority.

The appellant also stated that it had filed a writ petition before the High Court as the GST Appellate Tribunal was not constituted.

Finally, the procedure prescribed under GST law was not followed when passing the order for provisional attachment as the Joint Commissioner did not provide the appellant with the opportunity of being heard. In such a case of violation of the principles of natural justice, the writ petition was maintainable before the High Court.

Improper invocation of powers for provisional attachment

The powers for provisional attachment of property (including bank accounts) should be exercised only when there is sufficient evidence that the taxpayer is about to dispose of all or part of the property to avoid payment of tax. Such evidence is a precondition for the Commissioner to form an opinion on provisional attachment.

The provisional attachment of the appellant's receivables from its customers was based on the ground of proceedings being initiated against the appellant's suppliers in relation to fake invoicing. There was no evidence to show that the appellant's alleged involvement caused any threat to the interests of the revenue (i.e., the income derived by the government from GST receipts).

Even if an attachment were to be made, the appellant's immovable properties should be attached first, since attachment of bank accounts and trading assets adversely affected the business.

Decision of the Supreme Court

The Supreme Court noted that in the current case, the Joint Commissioner when ordering a provisional attachment was acting as a delegate of the Commissioner in accordance with the terms of the delegation order and an appeal against the order could not be filed before the first appellate authority. Therefore, the High Court had erred in dismissing the writ petition on the ground that it was not maintainable.

The court also observed that the power to order a provisional attachment of the property of a taxable person including a bank account is "draconian" in nature and the following conditions prescribed under the GST law for valid exercise of the power must be strictly fulfilled:

Formation of an opinion by the Commissioner that it is necessary to order a provisional attachment to protect the interests of government revenue;

The opinion must be based on tangible evidence that the assessee is likely to take action to avoid payment of the tax demanded;

The taxpayer is entitled to object that the property is not liable to attachment; and

The taxpayer must be provided with the opportunity of being heard in relation to the objections filed against the attachment of property.

In the case at hand, it was observed that although the appellant had filed objections against the provisional attachment, no opportunity of being heard was provided as the Joint Commissioner was of the view that this was not a mandatory requirement but a discretionary requirement under GST law.

The Supreme Court allowed the appeal and set aside both the order of the Himachal Pradesh High Court and the order for provisional attachment.

Comments

In issuing its ruling, the Supreme Court made reference to earlier decisions of the Gujarat High Court in which it was held that the competent officer must be able to provide the evidence on the basis of which the opinion for passing an order for provisional attachment is formed. A similar view also was adopted by the Delhi High Court, the Punjab and Haryana High Court, and the Bombay High Court who each held that the procedure prescribed under GST law for provisional attachment, i.e., pendency of proceedings, forming of an opinion, etc., must be followed by the authorities.

This demonstrates that in some cases the authorities have been exercising their powers of provisional attachment without forming an opinion based on tangible evidence that the action is necessary to protect the interests of government revenue. The Supreme Court judgement should prevent unnecessary action being taken by the authorities, by confirming that the authorities must establish convincing grounds for provisional attachment.

Other news

Egypt

Importers must apply Advance Cargo Information system as from 1 July 2021

Egypt's Minister of Finance issued a decree on 1 February 2021 mandating the application of the Advance Cargo Information system (ACI) to all imported shipments into Egypt as from 1 July 2021 (decree no. 38 of 2021). This was followed by instructions from the Customs Authority on 23 March 2021, elaborating how the ACI should be applied (instructions no. 14 of 2021).

Under the ACI, Egyptian importers are required to declare all information about goods shipped to Egypt at least 48 hours before their actual shipment from the exporting country. A unique ACID number will be issued for each shipment, which should be included on all documents that the Customs Authority must review to clear the shipment.

A pilot phase started on 1 April 2021, with a limited set of importers using the ACI system under the close supervision of the Ministry of Finance and the Customs Authority. Full implementation will go live on 1 July 2021, at which time all Egyptian importers will be expected to comply with the ACI requirements.

El Salvador

Legislation enacted making bitcoin legal currency in El Salvador

On 9 June 2021, the El Salvador government published in the official gazette legislation making the digital currency "bitcoin" legal tender within El Salvador. Among other things, bitcoin may be used to make tax payments.

The legislation will go into effect 90 days after its publication; however, since the official gazette was not made available to the public until 11 June 2021, the 90 days is calculated from 11 June 2021, and, thus, the legislation will be effective as from 9 September 2021.

The Monetary Integration Law, which granted legal tender to the US dollar and has been effective since 2001, has not been expressly amended; rather, the bitcoin legislation must be applied in coordination with such law.

The immediate effects of the legislation include:

Bitcoin may be used to discharge debts, without limitation, in any transaction (Art. 1);

Bitcoin must be accepted by any economic agent when it is offered as payment for goods or services (Art. 7);

Prices may be expressed solely in bitcoin (Art. 3);

Any tax payment may be paid in bitcoin (Art. 4);

Any previous obligation expressed in US dollars may be paid in bitcoin (Art. 13);

Accounting standards will continue to use the US dollar as the reference currency (Art. 6); and

The government will provide alternatives in subsequent regulations that will allow users to make an automatic and instant conversion of bitcoin into US dollars.

Companies should be aware of and review the following in regard to the new law:

Accounts receivable, invoices, credits, etc. may be paid using bitcoin;

Exchange rates will need to be introduced into IT systems in order to accept bitcoin currency; and

Exchange rate policies will need to be determined including whether bitcoin will be automatically converted into dollars or will bitcoins be kept (and for how long), and who will decide when bitcoins should be exchanged.

In addition to identifying issues that will have an effect on their business in regard to the new law, companies should be aware of any announcements by the government upon the issuance of the regulations.

Gemany

CJEU rules on VAT exemption for services of a German underwriting agent

The Court of Justice of the European Union (CJEU) issued a decision dated 25 March 2021 (C-907/19) in which it considered whether the types of services supplied by a German underwriting agent were within the scope of the VAT exemption for services provided by an insurer or an insurance agent under article 135(1)(a) of the EU VAT directive (2006/112/EC). The court concluded that if the insurance-related services provided by the underwriting agent are treated as a single supply of services by the referring court (the German federal tax court (BFH) in this case), the VAT exemption would not apply if the principal service is not eligible for the exemption, and the fact that ancillary services supplied by the underwriting agent could have been eligible for the exemption if considered alone would not change this result.

Background and facts of the case

The taxpayer is an underwriting agent that develops insurance products. Its services comprised three elements: granting an insurer a right to issue insurance policies (licensing services), intermediary services, and administrative services, including claims handling. It charged a brokerage fee to insurers for these services.

The key factor in the case is that the services at issue went beyond the services of an insurance agent (which are VAT-exempt under section 4(11) of the German VAT Act) but did not reach the level of VAT-exempt insurance services within the meaning of section 4(10) of the VAT Act. As indicated in the commentary to a decision of the BFH dated 5 September 2019, an underwriting agent provides more services than an insurance agent, but less than an insurer. The question was whether the underwriting agent's services were VAT exempt.

The German tax authorities were of the view that the different services provided by the underwriting agent were each a separate supply, with only the intermediary services being exempt from VAT. The taxpayer brought an action against the tax authorities' VAT assessment before the lower tax court of Muenster. The lower tax court considered the services to be a single supply of services that was not VAT exempt, with licensing as the principal service. Upon further appeal, the BFH requested a preliminary ruling from the CJEU.

Question referred to the CJEU

The question referred to the CJEU was whether the VAT exemption for "insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents" under article 135(1)(a) of the EU VAT directive applies where a taxable person that carries out intermediary work for an insurance company also provides the insurance company with the "mediated" insurance product.

Decision of the CJEU

The CJEU answered the question in the negative. According to the court, a single supply of services as a whole does not meet the conditions for the VAT exemption if the principal service is the non-exempt licensing of an insurance product.

Considering the principal service to be licensing, the CJEU analyzed whether licensing fell within the exemption under article 135(1)(a) of the EU VAT directive. According to the court, licensing is not the VAT-exempt provision of insurance coverage because the grantor of the license did not take on the risk of the insurance policies. The licensing also is not an exempt service of an insurance agent because at the time the license is granted, the insurer still needs to be connected with a person to be insured. In this respect, the CJEU confirmed the principles of its 2016 decision in the Aspiro case. Accordingly, the characteristic element of VAT-exempt "insurance mediation" is the seeking of potential clients and bringing them together with the insurer. By granting the license, the taxpayer in the case did not bring together persons seeking to enter into a contract of insurance.

The insurance mediation services, which would be VAT exempt if regarded separately, did not affect the court's analysis because insurance mediation was an ancillary service.

Implications of CJEU decision

The CJEU's ruling is especially relevant for underwriting agents, insurance intermediaries, and insurers. Insurance intermediaries and underwriting agents that offer service packages should closely consider this decision. The provision of insurance intermediary services does not mean that all potentially insurance-related services under the same contract are VAT exempt. If the predominant element of a single supply of services is not exempt from VAT, the services as a whole are not exempt. Accordingly, businesses providing service packages that constitute a single supply of services with a non-exempt principal service will not benefit from the VAT exemption.

In line with settled case law, the CJEU confirmed that the principal service is determinative for the applicability of a VAT exemption. An exemption that would be applicable to a service element, if considered separately, does not apply to the overall single supply of services if the principal service is not exempt. In accordance with common principles, the ancillary service shares the VAT treatment of the principal service. This demonstrates the importance of a correct single supply analysis. Suppliers should consider whether their services are indivisible or serve an independent purpose to evaluate whether there is a single supply. For the VAT analysis, it also is crucial to identify the principal service to which other services are ancillary.

In light of the principles of the Aspiro case, confirmed by the CJEU, intermediaries that predominantly sell template insurance products to insurers and that apply the exemption should review their position. Since the characteristic element of VAT-exempt insurance mediation is bringing together the future parties to the contract, a service that is merely related to a contract of insurance is insufficient for the VAT exemption to apply.

Germany

Non-EU travel agents excluded from TOMS as from 1 January 2022

The German Ministry of Finance (MOF) announced in February 2021 (through a circular dated 29 January 2021) that it has taken the position that the special VAT scheme for travel agents (also known as the tour operator margin scheme (TOMS)), as set forth in section 25 of the German VAT Act and articles 306 to 310 of the EU VAT directive, does not cover transactions by travel agents that have not established their business within the EU and do not have a fixed establishment in the EU ("non-EU travel agents"). This position could eliminate competitive advantages that non-EU travel agents have enjoyed in Germany when buying and reselling travel services. Although the 29 January circular provides that this position would apply as from 1 January 2021, the MOF announced through a circular dated 29 March 2021 that it will not object to the application of the TOMS by non-EU travel agents up to 31 December 2021.

Background

The TOMS is a special scheme for businesses that buy and resell travel, accommodation, and certain other services in their own name. It enables VAT to be accounted for on travel supplies within the EU without businesses having to register and account for VAT in every EU member state in which the services and goods are enjoyed.

Consequences of MOF's position

Based on the MOF's position that the TOMS does not cover non-EU travel agents, it could be concluded that non-EU travel agents should apply the normal VAT rules on place of supply, valuation, liabilities, and input tax deductions. Accordingly, non-EU travel agents would either be required to register in Germany if they supply travel services in Germany, or the reverse-charge mechanism would apply, requiring a German business recipient of the travel service to account for German VAT.

The German tax authorities' position is in line with the EU VAT committee's position resulting from the committee's 101st meeting on 20 October 2014, during which the VAT committee by a large majority agreed that travel services carried out by non-EU travel agents should not be covered by the VAT special scheme (as documented in the guidelines resulting from VAT committee meetings). The rationale for this position is to avoid competitive advantages that travel agents established outside the EU would enjoy if the TOMS applies but no VAT is imposed based on the place of supply rule for the special scheme.

Whether the MOF's position is in line with German or EU VAT law is an open issue. The Court of Justice of the European Union has not ruled on this subject yet. The EU VAT directive and the German VAT law allow for another interpretation—that travel services provided by non-EU travel agents are not taxable in the EU. The law could be interpreted as applying to all travel agents buying and reselling travel services, but only imposing VAT on travel agents if they have established their business in the EU or have a fixed establishment in the EU. This interpretation is based on the wording of the law, which does not distinguish between EU and non-EU travel agents, and the place of supply rules for the TOMS. Different EU member states seem to interpret the law differently, as indicated in a 2017 study on the review of the VAT special scheme for travel agents and options for reform (Final Report, TAXUD/2016/AO-05) issued by the European Commission.

In light of the MOF's position, non-EU tour operators and non-EU destination management companies, as well as German businesses receiving travel services from non-EU travel agents, should evaluate their VAT position (VAT liability and input VAT deduction) if they are supplying or receiving travel packages or single travel services.

Travel agents acting as intermediaries are not affected by the MOF's position, since they already fall outside of the scope of the special scheme.

Germany

MOF expands VAT exemption for supplies provided by crypto exchange operators

In a letter dated 3 May 2021, Germany's federal Ministry of Finance (MOF) updated its positions regarding the VAT treatment of services provided by exchanges for financial products. The letter clarifies that the same principles that apply to services provided by traditional stock exchanges also apply to services provided by other trading platforms for financial products, e.g., for virtual currencies. Based on the letter, more platform operators (including operators of a "decentralized exchange," described further below) should be able to invoke the VAT exemption for financial services; specifically, the exemption under section 4(8) of the German VAT Act that applies to sales of financial products and the brokerage of such transactions. Other clarifications in the letter indicate that ancillary services, such as information technology (IT) services, may be considered as part of a single supply of services that is VAT exempt, rather than as independent taxable services; the clarifications may require operators to make changes to their invoicing by 1 July 2021.

Previously, in the case of trading platforms, a distinction had to be made between a situation where the platform operator merely makes the platform available and a situation where it carries out the purchase/sale of virtual currency, e.g., bitcoin, as an intermediary in its own name. Where an operator makes a website available to market participants for trading without acting as an intermediary in its own name, the MOF previously took the position that a VAT exemption was not applicable because the website simply enables the technical settlement of the acquisition or trading of bitcoin. However, if the operator of the platform buys and sells bitcoin as an intermediary in its own name, the transaction was treated as VAT-exempt. In other words, a platform acting as a mere trading platform that processes the transactions (often referred to as a "decentralized exchange" (DEX)) and not trading on its own behalf and for its own account (as would be the case for a centralized exchange (CEX)) was excluded from the VAT exemption, even in cases where the platform was used for the settlement of transactions (as indicated in an MOF letter dated 27 February 2018). The letter dated 3 May 2021 changes the MOF's

position (as described further below), expanding the scope of the VAT exemption. In addition, the letter makes welcome clarifications regarding the treatment of ancillary services, such as IT services, as part of a single supply of services that is VAT exempt.

The letter is applicable to all open cases. For services rendered before 1 July 2021, a "non-objection" rule applies, meaning that the tax authorities will not require the positions set forth in the letter to be applied to services rendered before 1 July 2021.

Services provided by exchange operators as central counterparties

According to the letter, an exchange operator providing central counterparty and IT services renders a single supply of services that is VAT exempt if the services are taxable in Germany. The exchange operator is involved in the settlement of securities by purchasing and reselling securities on its own behalf and for its own account. The provision of a trading platform by the exchange operator is part of the single supply of services, and the IT services are ancillary services to the main supply of trading.

The exchange operator can opt to be subject to VAT. If the option is not exercised, the operator is entitled to an input VAT deduction if the supply of the service is provided to a recipient resident in a third country (a non-EU country).

Exchange operators as settlement agents and technical providers

If the exchange operator acts as a settlement agent but does not buy or sell securities on its own behalf and for its own account, the letter indicates that the exchange operator provides a supply of services consisting of matching buyers and sellers and clearing and settlement of transactions, as well as providing the trading participants with the trading platform. In this context, the matching, clearing, and settlement constitute a single supply of services that is VAT exempt. No special rules apply regarding the option to be subject to VAT and the input VAT deduction, i.e., rules similar to those described above for central counterparties apply.

Exchange operators as technical providers of IT exchange programs

According to the letter, platform operators that only enable IT processing and provide service recipients with informational access still cannot invoke the VAT exemption where the recipients do not actually carry out trading transactions through the platform. In such cases, there is no connection with a trading transaction, which is necessary to invoke the VAT exemption under section 4(8)(e) of the VAT Act. The services are merely technical services provided by the operator.

Additional comments

As noted above, the letter's applicability is not limited to the VAT treatment of services provided by traditional stock exchanges, since the letter specifically refers to other trading platforms for financial products. This means that significantly more platform operators may invoke the VAT exemption under section 4(8)(e) of the VAT Act than under the tax authorities' previous position. Previously, when it came to cryptocurrencies, the brokerage of sales involving bitcoin via platforms did not fall under the German VAT exemption (see above regarding the distinction that had been made between DEX and CEX), despite case law to the contrary from the Court of Justice of the European Union (Case C-264/14). Similar to other German exemption rules, the VAT exemption was narrowly interpreted by the tax authorities. This

resulted in unequal treatment of brokerage transactions via trading platforms involving legal tender and those involving bitcoin. The unequal treatment has now been eliminated by the expanded scope of the VAT exemption.

Operators that have treated their IT services up to now as independent taxable services should change their invoicing no later than 1 July 2021, now that the MOF has clarified that IT services related to VAT-exempt supplies also are exempt as dependent ancillary services.

Hungary

Key VAT measures in summer 2021 tax package

On 8 June 2021, the Hungarian parliament enacted the summer tax package announced by the Ministry of Finance on 11 May 2021. Key VAT measures in the package include new VAT refund procedures with regard to bad debts and for UK taxpayers. No amendments to the original proposals were made during the parliamentary process.

New VAT refund procedure regarding bad debts

In line with the judgement of the Court of Justice of the European Union (CJEU) in case C-507/20 issued on 3 March 2021, the package introduces a special VAT refund procedure with regard to bad debts allowing a reduction in the tax base for VAT purposes where the tax point for the respective transaction has expired for VAT purposes, but the limitation period has yet to elapse from the date on which the debt becomes irrecoverable.

The following deadlines apply for the submission of the VAT refund request:

Where the refund relates to a debt that becomes a bad debt following the date of entry into force of the package, the VAT refund request may be submitted within one year after the date on which the debt becomes irrecoverable.

Where the refund relates to a debt that becomes a bad debt within one year prior to the date of entry into force of the package, the VAT refund request may be submitted within 180 days after the date of entry into force of the package (i.e., 180 days from 8 June 2021).

Where the debt became irrecoverable more than one year before the date of entry into force of the package, the VAT refund request may not be submitted based on the proposed new rules. However, in line with the CJEU's ruling, a special VAT refund request may be submitted within the framework of a specific procedure within 180 days after the date of publication of the judgement (i.e., 180 days from 3 March 2021).

VAT refunds for UK taxpayers

The package includes measures allowing taxpayers established in the UK and not registered for VAT purposes in Hungary to obtain refunds of Hungarian VAT in respect of goods and services supplied from Hungary where the tax point date is after 31 December 2020, i.e., after the end of the transition period for the UK's departure from the EU. The provisions of the EU Principal VAT Directive apply to VAT refunds in respect of goods and services supplied up to that date.

Ireland

In a previous edition of Indirect Tax Matters we looked at the new VAT e-commerce measures that will enter into force from 1 July 2021. These new rules are reflected in the increased scope of the One Stop Shop (OSS) scheme and the introduction of the Import One Stop Shop (IOSS) regime which aim to simplify VAT obligations for businesses engaged in cross-border e-commerce thus ultimately deepen the EU single market.

With the go-live of 1 July approaching, Revenue has since published several guidance documents that provide more insight into the new OSS and IOSS schemes which we will consider further in this article. In particular we will look at what's new, what's changed and what's stayed the same with the new measures being introduced.

What's New

IOSS

The Import One Stop Shop (IOSS) is a new special scheme for reporting the supply of goods dispatched on behalf of the seller from a non-EU country to a private individual in the EU, as VAT will be chargeable on all goods imported into the EU regardless of their value from 1 July 2021.

IOSS concerns goods only and can only be used for goods in a consignment of an intrinsic value of €150 or lower and that are not subject to excise duty.

Generally import VAT is collected at point of entry into the EU. However, under IOSS the supplier will charge VAT at the point of sale to the customer and declare and pay this VAT via a monthly IOSS return. VAT will be charged at the appropriate rate based on the country that the goods will ultimately be shipped to. The goods will then not be subject to VAT at the time of importation.

Both suppliers established in and outside the EU can apply for IOSS through slightly different processes. Irish established businesses can register directly for IOSS in Ireland. Non-EU businesses who wish to register for IOSS in Ireland must do so through an Irish intermediary, unless they are established in a country that has a mutual assistance agreement with the EU and the goods in question are supplied from that country.

From a practical perspective such a non-EU business may consider appointing an Irish side entity (if any) in the corporate family as its intermediary in respect of IOSS. The intermediary will have responsibility for the payment of the VAT due and the fulfilment of the VAT obligations of the supplier under the scheme. Such obligations include the filing of returns and record-keeping obligations.

An intermediary firstly has to register to be able to act as such. Upon registration they will receive an Intermediary Number beginning with 'IN' and an Intermediary TAIN number which will then allow them to register the non-EU businesses for IOSS.able to act as such

The use of IOSS is optional and where IOSS has not been availed of suppliers may alternatively opt for a special arrangement where postal operators, express carriers or other customs agents collect VAT at the standard rate from the customers and remit it to Revenue. This arrangement also only applies to goods in consignments with a maximum value of €150 that are not subject to excise duty.

Digital Platforms

The new e-commerce rules also introduced measures for electronic interfaces such as online marketplaces and platforms established both inside and outside the EU.

A digital platform will be a deemed supplier where they facilitate (a) the sale of goods of value not exceeding €150 imported from outside the EU to an individual customer located in the EU, regardless of where the underlying seller is established or (b) the intra-Community distance sales of goods and domestic supplies of goods by sellers established outside the EU, regardless of the value of such goods.

Being a deemed supplier means the digital platform effectively receives a supply from the underlying seller and subsequently makes a B2C supply to the individual customer. Depending on the location of the seller and the movement of the goods that B2C sale can either be: an importation of low value goods or an intra-Community distance sale of goods; or a domestic sale of goods.

Marketplaces established both in, or outside, the EU can report the deemed distance sale of imported goods under the IOSS scheme, and the intra-community distance sales and domestic sales may be declared via the Union OSS scheme as further explained below. Where they facilitate both types of sales they can opt to register for both the IOSS and the Union OSS schemes.

What's changed

Increased scope of OSS

From 1 July 2021, the scope of transactions that can be reported through the OSS scheme will be increased to include not just TBE services, but also other B2C services to individuals in the EU and distance sale of goods in the EU.

While Revenue guidance includes a reference that OSS covers all cross-border supplies of services on a B2C basis, it is important to note that the principle of taxation has not changed in that the general place of supply rules remain the same. B2C supplies of services are still typically taxable where the business is established with the usual exceptions such as services connected with immovable properties, passenger transport services and B2C transport of goods.

Threshold for the place of supply

Currently for TBE services an annual threshold of €10,000 applies to benefit micro-businesses which only occasionally make these supplies to customers in other Member States. For intra-Community distance sales of goods Member States currently set their own registration thresholds which can be anywhere between €35,000 to €100,000 per calendar year.

With the scope of OSS being extended, a new threshold of €10,000 will apply to the total value of both TBE services and distance sales of goods. If the business's cumulative annual sales of these types of supplies exceed this threshold they must either use OSS or register in each of the Member States of consumption to account for the VAT due on these supplies. If the threshold is not met then they continue to be seen as domestic supplies and OSS will not be required. It is worth noting that the threshold does not apply to B2C services other than TBE services or to the sales of imported goods as there is no registration threshold in respect of these types of supplies.

Expansion of the OSS Union scheme

The Union and non-Union schemes currently available under the MOSS regime will continue under the OSS regime albeit with an expanded scope.

EU businesses can continue to avail of the OSS Union scheme for both B2C supplies of services to customers in the EU and intra-Community distance sales of goods. They can declare the B2C supply of imported goods in the IOSS scheme which is separate from OSS.

Non-EU businesses who wish to use the OSS/IOSS schemes would need to register for Union OSS in respect of intra-Community distance sales of goods (when the goods are within the EU) and non-Union OSS to account for the supply of B2C services. The Union OSS registration must be submitted to the Member State where the dispatch or transport begins. Where there are multiple such Member States, the supplier may decide which Member State they wish to register in and will be bound by that decision for the current and the two following calendar years.

What's stayed the same

General place of supply rule for B2C services

As mentioned above, B2C services within the scope of the new OSS are confined to services that would have been taxable in the EU country where the customer is located under the existing place of supply rules. The new OSS changes the way to declare sales and pay VAT to various jurisdictions by providing a centralised portal however it does not amend the principle of taxation in respect of B2C supply of services.

Optional use of OSS / IOSS

As with the current MOSS scheme, use of the OSS or IOSS schemes is not mandatory and businesses may continue to register in each Member State of consumption to declare VAT on these supplies if they so wish.

Also similar to MOSS, when choosing to use an OSS or IOSS scheme businesses must apply the scheme to all supplies falling under this scheme in all relevant Member States and cannot opt to use the OSS scheme just for supplies in some Member States and not for supplies in other Member States.

Filing frequency

Under the extended OSS scheme businesses will continue to file returns and make payments on a quarterly basis. IOSS returns will be submitted on a monthly basis to enable suppliers to declare and pay VAT due on the B2C sale of imported goods.

Registrations

Businesses established in the EU who are registered in Ireland may continue to use their Irish Revenue Online Service (ROS) account in particular in the "VAT OSS section" of the "Other Services" panel for the registration of OSS or IOSS schemes.

For non-EU businesses the registration of OSS for both Union and non-Union schemes will continue to be available from a specific Non-Union Registration portal as provided by Irish Revenue.

Conclusion

The new VAT measures mark an important milestone for the European Commission's continued effort of modernising VAT for cross-border e-commerce. In particular the OSS scheme aims to significantly reduce the administrative burden and the VAT compliance cost for taxpayers by offering a much wider scope of supplies businesses may declare centrally on a quarterly basis.

The rules around the digital platforms and B2C sale of import goods on the other hand give rise to additional VAT due on the supplies and new compliance obligations. Suppliers whose businesses are affected would need to consider the impact from a commercial perspective and to manage the VAT obligations going forward.

With the start date of 1 July 2021 fast approaching Irish Revenue have updated their online system to facilitate the OSS and IOSS pre-registration for EU and non-EU businesses. Taxpayers who would like to shift to these schemes should take action to ensure the appropriate registrations are in place effective from 1 July. Non-EU businesses established in a country that does not have a VAT mutual assistance agreement with the EU should also consider appointing a VAT intermediary for IOSS purposes.

This article provides only a high level overview of some of the implications involved. We are happy to discuss how this impacts your business more specifically.

Ireland

Revenue eBrief No. 025/21 – 12 February 2021

Customs Manual on Import VAT

This manual gives a general overview of the arrangements in place in relation to VAT payable on goods imported into the State from outside the EU (usually referred to as "Import VAT"). A topical update following Brexit means that it has been updated to include:

The withdrawal of a concession which has become redundant due to the introduction of 'Postponed Accounting'

An updated link to the AIS Trader Guide

Updated AIS codes

Revenue eBrief No. 031/21 - 16 February 2021

Partial Recovery of VAT on Qualifying Passenger Motor Vehicles

The Tax and Duty Manual Partial Recovery of VAT on Qualifying Passenger Motor Vehicles has been updated to reflect the definition of a "qualifying vehicle" effective from 1 January 2021 in accordance with Finance Act 2019.

A qualifying passenger motor vehicle is a vehicle that is used for at least 60% business purposes (for a period of 2 years or more) and

Was first registered for Vehicle Registration Tax (VRT) purposes on or after 1 January 2009 up to 31 December 2020 and has CO2 emissions of less than 156g/km (i.e. CO2 emission bands A, B and C) or

Was first registered for Vehicle Registration Tax (VRT) purposes on or after 1 January 2021 and has CO2 emissions of less than 140g/km (i.e. CO2 emission bands A and B)

Revenue eBrief No. 044/21 - 5 March 2021

Hard Copy Returns

The requirements for the making and authentication of hard copy returns are set out in section 917K of the Taxes Consolidation Act 1997. A new Tax and Duty Manual – Part 38-06-03 – provides general guidance on the process.

Following a change introduced in Finance Act 2019, Revenue is no longer approving the format, or technical detail, of the returns of third party software providers. The relevant schema and notes for third party software providers are available on the Revenue website.

Revenue eBrief No. 050/21 - 9 March 2021

VAT - Postponed Accounting - Entries on VAT3 Return and VAT Return of Trading Details (RTD)

The VAT - Postponed Accounting Tax and Duty Manual has been updated to include information on Postponed Accounting entries on the VAT3 Return and the VAT Return of Trading Details.

To recap, Postponed Accounting arrangements enable an accountable person to self-account for VAT on imports on their VAT return so that import VAT may, subject to the usual rules on deductibility, be reclaimed at the same time as it is declared on a VAT return. This updated information will be no doubt be welcome by traders availing of postponed accounting arrangements.

Revenue eBrief No. 059/21 - 23 March 2021

VAT & Employees' Pension Fund

We welcome further clarification to the Tax and Duty Manual VAT & Employees' Pension Fund on the circumstances where an employer can claim deductibility for costs incurred in relation to an employee pension fund.

A taxable person (the employer) is entitled to deductibility in respect of costs incurred in the setting up, on-going management, administration, and management of the assets of a pension scheme where certain conditions are met.

To be entitled to deductibility a taxable person must meet all the following conditions:

The costs of the input transaction must form part of the employer’s general costs and must be, as such, components of the price of the taxable goods or services it supplies.

The costs incurred must be invoiced to, and paid by, the employer and not passed on to the pension fund.

The existence and extent of the right to deduction is determined in the light of the direct and immediate link with the employer’s economic activity, and more precisely, its taxable activity.

Revenue eBrief No. 061/21 - 24 March 2021

Charitable Donations Scheme

An update to the Charitable Donations Scheme:

In summary, this scheme allows tax relief on qualifying donations made to approved bodies. If an individual donates €250 or more in a year, the approved body can claim a refund of tax paid on that donation. If a company donates €250 or more in a year, the company can claim a tax deduction as if the deduction was a trading expense. There is a 4 year limit for making a claim under this scheme.

There have been a number of updates including clarification that applications for the charitable tax exemption are made online through ROS.

Revenue eBrief No. 066/21 - 25 March 2021

The VAT treatment of the procurement of certain Goods and Services by a Public Body

This guidance sets out the circumstances in which a public body, which is not otherwise a taxable person in relation to its activities, may engage in the procurement of certain goods or services in respect of which they will be required to register and account for VAT.

'Public body' is a broad ranging term, which includes Government Departments, An Garda Síochána, the Defence Forces, local authorities including regional authorities and harbour authorities, the Health Services Executive, State sponsored bodies, public hospitals, enterprise boards and educational establishments, such as, Universities, Institutes of Technology, Education and Training Boards and schools.

The manual has been updated regarding the implications arising from the requirement to apply the reverse charge mechanism to received construction services.

Where a public body is required to register for VAT by virtue, solely, of the fact that it is required to account for VAT on received construction services, that public body will not be considered to be a VAT registered person for any other purpose. A public body in those circumstances will not, for example, be required to account for VAT in respect of intra-Community acquisitions unless they breach the relevant registration threshold or are otherwise obliged to register for VAT.

Revenue eBrief No. 067/21 - 26 March 2021

Sale of Live Animals by Auction (Mart)

A new Tax and Duty Manual -Sale of Live Animals by Auction (Mart)– has been published detailing the application of VAT to sales of live animals by auction.

The Manual on Flat-rate Farmers Settlement Vouchers – Sales to Marts has been archived.

Revenue eBrief No. 070/21 - 30 March 2021

VAT eCommerce - Registration for the One Stop Shop (OSS) and Import One Stop Shop (IOSS) from 1 April 2021

The purpose of this manual is to outline the requirements for pre-registration for the new One Stop Shop (OSS) and the new Import One Stop Shop (IOSS) from 1 April 2021.

The expansion of the current Mini One Stop Shop (MOSS) to a One Stop Shop (OSS) and the introduction of the Import One Stop Shop (IOSS) will go-live from 1 July 2021.

As previously highlighted, new VAT eCommerce rules will come into effect from 1 July 2021. These amendments will significantly change the way VAT operates for cross-border business-to-consumer (B2C) e-commerce activities in the EU.

From 1 April 2021, eligible businesses may opt to register for these schemes in advance of the go live date of 1 July.

The main changes that will enter into force from 1 July 2021 are as follows:

Extension of the VAT Mini One Stop Shop (MOSS) to a One Stop Shop (OSS)

The treatment of Online Marketplaces and Platforms as deemed suppliers for certain transactions

Introduction of a new Import One Stop Shop (IOSS)

Introduction of Special Arrangements for certain imports of goods on 1 July 2021.

Revenue eBrief No. 072/21 - 1 April 2021

Charities VAT Compensation Scheme

This scheme was introduced to reduce the VAT burden on charities and to partially compensate for VAT paid in the day to day running of the charity. The scheme applies to tax paid on expenditure on or after 1 January 2018 and so VAT paid in years prior to that cannot be claimed. Refunds will be paid one year in arrears.

A total annual capped fund of €5m is available for payment under the scheme, and the scheme will be subject to review after three years. Charities will be entitled to claim a refund of a proportion of their VAT costs based on the level of non-public funding they receive. Where the total amount of eligible claims from all charities in each year exceeds the capped amount, claims will be paid on a pro rata basis.

The scheme has been updated to include information on the treatment of Covid-19 wage subsidy scheme payments for the purposes of calculating a VAT Compensation Scheme claim.

Revenue eBrief No. 075/21 - 7 April 2021

Customs Export Procedures

The Customs Export Procedures Manual has been updated to provide further information in light of Brexit and to make minor amendments to the text where necessary. The significant changes include:

Amending the list of special fiscal territories

Introduction of a new office of export for goods travelling to Great Britain via Northern Ireland

Information on preferential origin for trade with the UK

Information on Voisinage Arrangements and fishing procedures for trade with Great Britain and Northern Ireland

Changes to the entitlement to the Retail Export Scheme.

Revenue eBrief No. 081/21 - 9 April 2021

Customs Import Procedures Manual update

The Customs Import Procedures Manual has been updated to provide additional information in light of Brexit. Some minor amendments have also been made to improve the text. Amendments include:

Information on the preferential rules of origin as agreed under the UK-EU Trade and Cooperation Agreement

Guidance on the Voisinage Arrangement with Northern Ireland and the customs formalities with the UK for fisheries

Information on customs formalities required for importation of vehicles from GB and Northern Ireland

Update of the list of countries considered the Special Fiscal territories of the EU

Further information on the procedure for oral declarations

Further information on the procedure for Returned Goods Relief.

Such topical updates to both export and import procedure manuals will no doubt be welcome for those trading with the UK post Brexit.

Revenue eBrief No. 090/21 - 30 April 2021

Excise Duty Rates on Energy Products and Electricity Taxes

The Tax and Duty Manual on Excise Duty Rates on Energy Products and Electricity Taxes has been updated to reflect increases in rates of Mineral Oil Tax (MOT) on certain mineral oils, rates of Natural Gas Carbon Tax (NGCT) and Solid Fuel Carbon Tax (SFCT) introduced with effect as on and from 1 May 2021.

EU Commission Updates

Coronavirus Response: Commission proposes to exempt vital goods and services distributed by the EU from VAT in times of crisis

On 12 April in response to the experience gained during the course of the Coronavirus pandemic, the European Commission proposed to exempt from VAT goods and services made available by the European Commission, EU bodies and agencies to Member States and citizens during times of crisis.

Once in place, the new measures will allow the Commission and other EU agencies and bodies to import and purchase goods and services VAT-free when those purchases are being distributed during an emergency response in the EU. The recipients might be Member States or third parties, such as national authorities or institutions.

Commission initiates an investigation to decide whether to prolong the steel safeguard measure

On 26 February, the European Commission initiated an investigation to assess whether the safeguard measure currently in place on imports of certain steel products should be prolonged beyond 30 June 2021 following a request received from twelve Member States.

The Commission will in its investigation determine whether the safeguard measure continues to be necessary to prevent or remedy serious injury to the EU steel industry and whether the industry is adjusting. The investigation will also include a Union interest assessment. The investigation will be concluded by the expiry date of the existing safeguard measure on 30 June 2021.

The steel safeguard measure was introduced in July 2018 to manage the volume of steel entering the EU Single Market. The measures currently in place apply a 25% tariff on steel imports from non-EU Member States landing in the EU which exceed quotas set in line with traditional volumes of trade in steel.

Commission puts in place transparency and authorisation mechanism for exports of COVID-19 vaccines

On 29 January, the European Commission put in place a measure requiring that COVID-19 vaccine exports outside the EU are subject to authorisation by Member States. The measure was introduced to ensure timely access to COVID-19 vaccines for all EU citizens. The transparency and authorisation system will require companies to notify the Member State authorities about the intention to export vaccines produced in the European Union. This scheme only applies to exports from companies with whom the EU has concluded Advance Purchased Agreements.

New Zealand

Snapshot of recent developments

Tax legislation and policy announcements

Budget 2021

On 20 May 2021, New Zealand's Finance Minister Hon Grant Robertson delivered Budget 2021. Given the already significant number of tax measures from the Labour Government, it was a relief to many that tax announcements were missing from the budget. However, we did get a glimpse of what may be to come, with the detailed Budget documents providing the following insights:

Inland Revenue has been allocated NZD 5 million over two years to “collect information on the level of tax paid by high-wealth individuals and their related entities.”

A digital services tax is not yet off the table and remains in the wings in the event that the OECD does not make sufficient progress on finding a multilateral solution to international tax.

The government books do not yet include an estimate of any revenue gain from removing interest deductions from residential rental property. The documents note: “the fiscal impact of this policy has not yet been quantified as this depends on final policy decisions.”

On a related note, the budget documents note: "Tax settings will continue to be broadly stable and predictable. … The Generic Tax Policy Process shall be used to develop and consult on tax policy where practicable."

Check out the Deloitte Budget Hub for further commentary.

Remedial Tax Act

On 20 May 2021, the Taxation (Budget 2021 and Remedial Matters) Act 2021 was introduced and passed through all stages. On 24 May 2021, the Act received Royal Assent. The Act increases the minimum family tax credit (MFTC) threshold from NZD 30,576 to NZD 31,096 as from 1 July 2021 and ensures that low-income working families will be better off working and receiving the MFTC than they would be on a main benefit, on an annual basis.

Extending due dates for R&D Tax Incentive

The Minister of Revenue has recently agreed to extend due date for years one and two of the R&D Tax Incentive (RDTI). Specifically extending:

Year one (2019-20 income year) supplementary returns to 31 August 2021 for all businesses; and

Year two (2020-21 income year) general approvals and criteria and methodologies (CAM) approvals to 31 August 2021 for all businesses.

Amendments to give effect to these extensions will be included in the next tax omnibus bill due to be introduced in the second half of the year. As such, any claims made under the above extensions cannot be processed until the relevant bill is enacted.

Public consultation on Transport Emissions Green Paper

On 14 May 2021, Ta Manatū Waka (the Ministry of Transport) released a green paper Transport Emissions: Pathways to Net Zero by 2050, which seeks feedback on options to accelerate the transport sector meeting the draft advice and recommendations of the Climate Change Commission, and moving to a net zero carbon transport system by 2050. The paper includes tax-related suggestions to reduce fringe benefit tax on zero emission vehicles, reduce GST on the purchase of zero-emission vehicles, offer refundable tax credits on the purchase of zero-emission vehicles, replace the road user charges exemption for electric vehicles with an upfront subsidy, and increase tax depreciation for electric vehicles. More information on the release can be found here. Submissions close on 25 June 2021.

Conference of the Parties to the MLI approve an opinion on interpretation and implementation

On 3 May 2021, the Conference of the Parties to the Multilateral Instrument (MLI) approved an opinion that sets out a series of guiding principles for addressing questions about the interpretation and implementation of the MLI.

Inland Revenue statements and guidance

Employee share schemes: Employer expenditure or loss income

On 18 May 2021, Inland Revenue published finalized QB 21/04 – When an employer is party to an employee share scheme, when does an employer's expenditure or loss under s DV 27(6) or income under s DV 27(9) arise? The Commissioner's position in the finalised statement has remained the same as in the

draft statement. This Question We've Been Asked is relevant to any employer who is party to an employee share scheme where the employee receives a benefit under the scheme within 20 days of the end of the employer's income year or a breach of shareholder continuity in the employer. This statement does not consider arrangements that may be subject to the application of sections BG 1 (tax avoidance) or GB 49B (employee share schemes).

Application date for depreciation of commercial buildings

On 25 May 2021, Inland Revenue released draft Questions We've Been Asked ED0230 – The application date for the depreciation of commercial buildings. This consultation item clarifies that the new rules for depreciation for commercial buildings apply as from the beginning of the 2020-21 income year for all taxpayers, rather than as from 1 April 2021. Submissions close on 11 June 2021.

GST: Definition of a resident

On 28 May 2021, Inland Revenue released draft interpretation statement PUB00390– GST – definition of a resident. This consultation item provides guidance on how to determine whether a person is a resident for GST purposes. Submissions close on 9 July 2021.

GST: Registration of nonresidents

On 28 May 2021, Inland Revenue issued finalised interpretation statement IS 21/03– GST – registration of non-residents under section 54B, with the Commissioner's position remaining unchanged from the previous consultation item. Section 54B of the Goods and Services Tax Act 1985 allows nonresident businesses that do not make supplies to end consumers in New Zealand to register for GST and recover GST input tax on goods and services acquired in New Zealand. Since section 54B was introduced, there have been legislative changes that treat certain supplies by nonresidents as being made in New Zealand. These changes include the supply of remote services and low value goods. This means a greater number of nonresidents must register under the standard registration provision and fewer nonresidents are eligible to register under section 54B. This item provides guidance on whether a nonresident is eligible to register under section 54B.

Variation to the effective date of a notice of election to imputation group

On 28 April 2021, Inland Revenue published Determination COV 21/02 – Variation to section FN 7(5) of the Income Tax Act 2007. This variation recognises that some taxpayers who did not take steps to address a debit balance in their imputation credit account before 31 March 2020 could have used a tax pool or other option to reduce the balance subsequently, but the impact of COVID-19 on their profits has been such that these options will adversely affect their cashflow. Hence, eligible taxpayers will be able to give a notice of an election to form an imputation group between 28 April 2021 and 30 September 2021 that will be effective from the start of the tax year ending 31 March 2020, allowing use of the credits of the related company to reduce the debit balance.

Negative interest and withholding taxes

On 30 April 2021, Inland Revenue issued a finalised Question We've Been Asked QB 21/02– Whether "negative interest" payments are subject to withholding taxes. In short, the answer is no. It explains the application of the resident withholding tax (RWT) and nonresident withholding tax (NRWT) rules to situations where negative interest is charged on an advance of money or a loan. The Commissioner has

been asked this question by banks and financial institutions because they wish to have appropriate processes in place should the RWT and NRWT rules apply to negative interest payments and they are required to withhold tax.

Tax treatment of cryptoassets received from an airdrop and a hard fork

On 3 May 2021, Inland Revenue released consultation documents PUB00405– Income tax– tax treatment of cryptoassets received from an airdrop and PUB00405– Income tax– tax treatment of cryptoassets received from a hard fork. In short, these two draft statements state that if a person has a cryptoasset business, or acquired the cryptoassets as part of a profit-making undertaking or scheme, then the receipt of cryptoassets from an airdrop or a hard fork will be taxable; if a person has a cryptoasset business or disposed of the cryptoassets as part of a profit-making undertaking or scheme or acquired the cryptoassets for the purpose of disposing them, then the disposal of cryptoassets that were received from an airdrop or a hard fork will be taxable. Submissions closed on 25 May 2021 for both consultation items. Our comments on an earlier consultation document were covered in the February 2021 Tax Alert.

Charities business exemption: Business carried on in partnership

On 7 May 2021, Inland Revenue issued finalized QB 21/03 – Charities business exemption – business carried on in partnership. This statement states that income derived by a charitable entity from a business can be exempt under section CW 42 of the Income Tax Act 2007 if the business is carried on by a charitable entity in partnership with a non-charitable entity, subject to other requirements (such as the control and territorial restrictions) being satisfied.

2021 CPI updates

On 12 May 2021, Inland Revenue updated the following statements to reflect the annual CPI adjustment to the following amounts for the 2021 income year:

DET 19/01: Standard-cost household service for private boarding service providers. The updated weekly standard-cost per boarder is NZD 194.

DET 09/02: Standard-cost household service for childcare providers showing. The updated hourly standard cost (per child) is NZD 3.75 and annual fixed administration and record keeping standard-cost is NZD 367.

DET 19/02: Standard-cost household service for short-stay accommodation providers. The updated daily standard-cost for each guest for owned dwelling is NZD 52 and for rented dwelling is NZD 47.

OS 19/03: Square metre rate for the dual use of premises. The updated square metre rate is NZD 44.75 which has increased by NZD 2 compared to the previous tax year.

National average market values of specified livestock

On 26 May 2021, Inland Revenue published NAMV 2021– National Average Market Values of Specified Livestock Determination 2021. This determination is made under section EC 15 (determining national average market values) of the Income Tax Act 2007 and shall apply to specified livestock on hand at the end of the 2020-2021 income year.

A type of attributing interest in a FIF for which a person may not use the FDR method

On 12 May 2021, Inland Revenue issued Determination FDR 2021/02– A type of attributing interest in a foreign investment fund for which a person may not use the fair dividend rate method (The Colchester Global Bond Enhanced Currency Fund NZD Hedged Accumulation Class - Z Shares). The determination states that any investment by a New Zealand resident investor in the NZD Hedged Accumulation Class Z-Shares of the Colchester Global Bond Enhanced Currency Fund is a type of attributing interest for which the investor may not use the fair dividend rate method to calculate foreign investment fund income from the interest.

New Zealand

Keeping tax records up to standard

As business are becoming increasingly digitalised, agile, and environmentally sustainable, business records are no exception to these developments. New Zealand's Inland Revenue has recently issued guidance regarding the retention of business records. There are a number of points to recap on below, to ensure you are complying with these requirements.

What's new?

While there are numerous legislative requirements under company and corporate law imposed on businesses to hold appropriate business records, the Inland Revenue's standard practice statement relates to the documentation requirements under New Zealand tax law.

The key requirement remains that businesses are required to keep sufficient business records to allow its tax compliance with tax laws to be readily ascertainable by the Commissioner. They must be kept for a period of seven years after the end of the income year to which they relate.

Standard Practice Statement 21/02, "Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori," applies as from 6 May 2021 and replaces its predecessor issued in 2013.

In what language are your records?

Previously, applications had to be made to hold business records in te reo Māori. Now the Commissioner has confirmed that as te reo Māori is an official language of New Zealand, alongside English, no application is required for records to be held in te reo Māori (note, certain phrases required by the Goods and Services Tax Act 1985 are still required to be in English).

An application can be made to keep records in an alternative language for tax purposes. This can include approval for some or all of the business records. Such an approval is not a relaxation in the standard of record keeping, nor does it mean the IR will communicate in that alternative language. The law is silent on which language is to be used when completing tax returns. The statement provides that the Commissioner will accept returns in the prescribed format, in either English or te reo Māori language with numbers entered using Arabic numerals.

Do you store your records in the cloud?

As businesses move towards being paperless and increasing digitalisation, records may not be held in their traditional physical form. Records stored electronically, either in or outside New Zealand, in either your own system or an outsourced provider, must meet the requirements of the Contract and Commercial Law Act 2017 (CCLA). As such, the integrity of the information in the records is to be maintained and readily accessible for future reference. Further conditions to retain records under the Inland Revenue Acts are provided in the Contract and Commercial Law (Electronic Transactions) Regulations 2017. The statement sets out the Commissioners view when these requirements and conditions are met.

Where are the records?

The default position may be that records are stored in New Zealand. However, the Commissioner accepts that businesses may have reasons to store their business records outside of New Zealand. Where this is the case, businesses can apply to Inland Revenue for authorisation. The Commissioner may authorise storing records offshore or a third party to hold records offshore, if the storage does not impact on the Commissioner's compliance activities.

An applicant will be required to demonstrate that the storage method complies with the legal requirements. The Commissioner decides on the merits of each case, including the compliance history of the business. In addition, conditions may be attached to the authorisation.

Have you outsourced to a third party provider?

The good news is that taxpayers are not required to submit an application if their third party providers are already an Inland Revenue approved third party. You can review this online here.

Where authority is obtained for third party providers to store the business records, the statement is very explicit that such outsourcing does not replace the businesses responsibility to meet the record keeping requirements.

As part of any third party application, the Commissioner will consider whether the third party carries on business in, or through, an establishment in New Zealand, and will also consider the processes that the third party has for data should they cease to hold records for the relevant taxpayer.

Governance

The Commissioner continues to emphase in the statement that internal controls must be adequate to ensure that all business transactions executed electronically are completely and accurately captured. Depending on where your business is in its digitalisation journey, it is vital that the governance around these processes are robust to ensure the information in the records is complete and accurate. It would be timely to review your tax policies and processes to ensure appropriate controls are in place to mitigate both financial and reputational risks.

Oman

VAT treatment of key transactions for oil and gas sector clarified

Following the introduction of VAT in Oman on 16 April 2021, the Ministry of Energy and Minerals (MEM) released letter number MEM/US/1161/2021/2830 on 31 May 2021 to clarify the VAT treatment of certain critical transactions for the oil and gas sector, including cash calls, quality bank adjustments, and

pipeline tariff charges. The clarification has come directly from the MEM in consultation with the Oman Tax Authority (OTA) and the two will continue to work together to provide further clarity on sector specific transactions/issues periodically.

Key areas clarified

Cash calls

It has been clarified that cash calls made by operators to or from unincorporated or incorporated joint venture partners (JVs) and investors/stakeholders for upstream activities under an exploration and production service agreement or a joint operating agreement are treated as out-of-scope for VAT purposes provided VAT is accounted for when required, reflecting the underlying supplies of goods and services. The clarification is expected to provide relief to many businesses operating in upstream activities within the sector.

It is important to note that the relief applies only to cash call transactions made by the operator to the JV parties and others. Businesses who make taxable supplies of goods and services to the operators are required to charge VAT either at 5% or 0% (if they satisfy the conditions in article 93 of the VAT executive regulations). It may be presumed that where VAT at 5% is charged to the operator, the operator also would be eligible to recover input VAT, subject to the conditions mentioned in the VAT Law and regulations.

Quality bank adjustment (QBA)

Operators producing crude oil in Oman use a pipeline distribution network, Petroleum Development Oman (PDO), for exports. Given that different qualities of crude oil flow from common pipeline networks and subsequently are stored in common storage tanks, there is a likelihood that they may become blended. As a result, a QBA is made by PDO with the operators depending upon the quality of the crude oil for export purposes. The MEM has clarified that where a QBA is made, it is treated as out-of-scope for VAT purposes.

Pipeline tariff charges

It has been clarified by the MEM in consultation with the OTA that the pipeline tariff charged by PDO is treated as a zero-rated supply. This applies both at the source and recipient level, i.e., VAT is not chargeable by PDO to the operators and VAT is not payable by the operators.

OTA VAT updates

As part of its communication strategy and to assist businesses on VAT, the OTA is to continue to provide regular updates, news, and clarifications under the “Latest news” section of the OTA website.

Portugal

VAT exemption for goods needed to fight COVID-19 extended until 31 December 2021

As part of the exceptional measures taken by Portugal to mitigate the effects of the COVID-19 pandemic, Law No. 33/2021 (available in the Portuguese language only), published on 28 May 2021, extends through 31 December 2021 the temporary VAT exemption for domestic and intracommunity acquisitions

of goods necessary to fight COVID-19 that are to be used by the state, autonomous regions, local authorities, or nonprofit organizations (i.e., the VAT exemption now applies from 30 January 2020 through 31 December 2021).

The goods covered by the VAT exemption and the conditions for applying the exemption were established in Law No. 13/2020 (issued in May 2020), which originally introduced the exemption.

Portugal

Standard VAT rate in Azores expected to be reduced to 16%

Regional Legislative Decree No. 15-A/2021/A was published on 31 May 2021, approving the 2021 budget law for the Portuguese autonomous region of Azores, which includes a reduction of the standard VAT rate in the Azores to 16%. The reduction is intended to be effective as from 1 July 2021; however, this is dependent on legislative amendments that still must be made to the Portuguese VAT Code.

The VAT rates in the Azores are based on a percentage of the VAT rates applicable in mainland Portugal. The decree provides that the standard VAT rate in the Azores would benefit from a 30% reduction (currently 20%) from the standard VAT rate in force in mainland Portugal (currently 23%), meaning that the standard VAT rate in the Azores would be reduced to 16% (from 18%). The intermediate VAT rate would remain at 9% and the reduced VAT rate at 4% (these rates already benefit from a 30% reduction from the rates applicable in mainland Portugal).

Russia

LT in Focus Foreign IT companies may be obliged to open local offices in Russia

A bill introducing new obligations for foreign IT companies with a daily Russian audience of 500,000+ users has been laid before the Russian State Duma.

Such companies will be obliged to:

open an personal account on the website of Roskomnadzor (the federal mass media watchdog)

open a branch, a representative office, or a subsidiary in Russia

create an online feedback form for Russian users.

The same requirements will apply to hosting providers, advertising system operators, and the so-called ‘online information distributors’.

Sanctions for non-compliance will include inter alia a ban to transfer money and accept payments from Russian users.

According to the explanatory note, the bill is aimed to ensure the equal treatment of Russian and foreign IT companies and establish a legal framework for IT companies delivering services to Russian users.

Read on for more details

Who will be subject to the new rules?

The new rules will apply to the following foreign persons (companies, individuals, unincorporated entities, and stateless persons) engaged in IT operations in Russia:

owners of information resources (websites and/or website pages and/or information platforms or software) with a daily Russian audience exceeding 500,000 users, subject to one of the following conditions:

- information on the resource is presented in Russian, a national language of a republic within Russia, or other minority language spoken in Russia
- the information resource places advertising to attract attention of Russian consumers
- a foreign person processes data of Russian users
- a foreign person receives money from Russian individuals and legal entities

providers of hosting services to the Internet resources whose audience includes Russian users

persons that support the operation of systems and/or software intended and used to distribute online advertising aimed to attract the attention of users, including those located in Russia (operators of advertising systems)

persons that support the operation of systems and (or) software facilitating the exchange of electronic messages, including between Russian users ('online information distributors').

The above-mentioned persons will be included in a list maintained by Roskomnadzor.

The number of daily users will be determined in accordance with the rules developed by Roskomnadzor.

Hosting providers, operators of advertising systems and 'online information distributors' will be identified according to the policy approved by the Government.

Potentially, foreign search services, social networks, instant messengers, and video services will fall under the new regulation as well.

What will the new responsibilities be?

IT companies falling under the new requirements will be obliged to:

create an electronic feedback form according to the requirements established by Roskomnadzor

open an personal account on the Roskomnadzor's website to interact with the Russian public authorities

open a branch, a representative office, or a subsidiary in Russia.

The requirement to formalise presence in Russia gives rise to most questions.

It must be noted that so far, the bill does not require foreign persons to conduct business via local offices (which currently exist for representation purposes only).

The functions of such local offices will include:

receiving and considering complaints from Russian users

Implementing court orders/directives of government authorities

representing the head company in court

taking measures to restrict access to/delete information disseminated in breach of the Russian legislation.

If the bill is adopted, the requirement to open the branch/ representative office/subsidiary will enter into force as of 1 January 2022, the other requirements – as of the date of official publication of the law.

Enforcement tools

Enforcement measures will include:

1. informing the information resource's users of breaches of Russian legislation 2
2. banning the advertisement of the information resource
3. banning the placement of third-party advertising
4. restricting money transfers and acceptance of payments from Russian users
5. blocking access to the resource's search engine
6. banning the collection and transfer of personal data overseas
7. fully or partially blocking the information resource.

Sanctions will be initiated by Roskomnadzor and reflected in the list of foreign IT companies.

Within 30 days of discovering a breach, the authorities will impose only the lightest of the above measures (1–4), with the rest coming into play if the breach has not been addressed.

Similar measures will be imposed for other legislative breaches, including failure to restrict/delete wrongfully disseminated information (sanctions 1–6), mishandling of personal data stored on the Russian servers, or impairment of the freedom of the media.

As we can see, all sanctions are aimed at disrupting the operations of non-compliant foreign IT services in Russia.

Despite the description of how the enforcement measures will work, the question whether they are realistic remains.

For most measures, it will depend on how dutifully they are treated by Russian counterparties (advertisers, banks, personal data subjects), since no particular penalties for the breach of bans imposed on foreign IT companies are envisaged in the bill

Conclusions

The authorities are seriously concerned about the lack of levers over foreign IT companies having no local representation.

Such companies must follow the Russian legal requirements on a par with the Russian players.

The government now has hardly any tools to enforce compliance and sees the opening of local offices as a solution to the problem.

So far, the bill contains no requirements to conduct business through them, merely establishing local presence.

According to the explanatory note, Russian presence is needed to ensure a 'constructive dialogue' between foreign IT giants and the Russian authorities and enable communications with users in Russia.

At the same time, the second package of support measures for the Russian IT sector announced by the Ministry of Digital Development, Communications and Mass Media provides for a digital services tax.

This gives the bill a potential tax context, which was not officially declared by the lawmakers.

In particular, the formalisation of foreign IT companies' presence in Russia may help ensure that all potential taxpayers are accounted for and create a legal framework to enforce payment of tax by foreign persons.

However, the digital services tax initiative has not yet been legislated in Russia and its parameters remain unclear.

We will keep you posted of further developments

United Arab Emirates

New rules amending tax penalties for VAT and excise tax issued

On 28 April 2021, the United Arab Emirates (UAE) Cabinet issued Decision No. 49 of 2021, which amends the rules concerning administrative penalties for tax violations for VAT and excise tax purposes. The amendments are effective as from 28 June 2021 and include changes to the penalties for late payment of tax and errors in tax returns, tax assessments, and refund applications. One of the most notable changes is the introduction of a concessionary measure that may reduce the amount of penalties imposed under the current penalties regime on certain taxpayers.

Late payment penalties

The late payment penalty applies to the late payment of VAT and excise tax in regard to submitted tax returns, voluntary disclosures, and tax assessments.

Under the current rules, the late payment penalty is 2% on the first day the tax payment is due, then 4% on the seventh day the payment is due, and then a 1% daily accrual rate applies on such unpaid amounts after one month (with a limit of 300% of the unpaid tax due), which can quickly lead to very large penalties.

The new rules will impose a late payment penalty on any unpaid amount of tax at a rate of 2% on the first day the tax payment is late and 4% per month thereafter, with a limit of 300% of the unpaid tax due.

Set forth below is a comparison of the late payment penalty under the current rules and the new rules:

Date penalty applicable	Current rules	New rules
On the first day the tax payment is late	2%	2%
On the seventh day following the deadline for payment	4%	-
One calendar month following the deadline for payment	1% daily (with a limit of 300%)	4% monthly (with a limit of 300%)

Furthermore, under the new rules, if a taxpayer is required to make an additional tax payment to the Federal Tax Authority (FTA) based on a voluntary disclosure or a tax assessment issued by the FTA following a tax audit, the taxpayer will have 20 business days to make this payment in order to avoid the application of the late payment penalty This is a significant change from the application of the penalty under the current rules, which apply the penalty from the date on which the tax was originally due.

Penalties for errors

A percentage-based penalty may be imposed for errors in submitted tax returns, tax assessments, or refund applications. Under the new rules, the amount of the penalty will depend on the timeframe in which the taxpayer notifies the FTA of the errors by way of a voluntary disclosure after the due date of the original tax return, tax assessment, or refund application.

The penalties will be incremental and range from 5% (if the error is disclosed within one year) to 40% (for disclosures after four years) and imposed on the difference between the tax that was calculated and the tax that should have been calculated in a submitted tax return, tax assessment, or refund application. As such, the penalty may be imposed where, for example, a tax return submitted by a taxpayer incorrectly reports the tax that is due or the refund amount.

In contrast, where a person does not submit a voluntary disclosure in respect of an error before being notified of an audit, the person will be subject to a fixed 50% penalty on the amount of the error. In addition, the taxpayer will be required to pay a 4% penalty for every month where there is unpaid tax due to the FTA (including any overclaimed refunds) from the date payment is due for the relevant tax period, up until the date of receipt of the tax assessment from the FTA.

Relief for existing penalties

The new rules provide relief for existing penalties, potentially allowing for the reduction of administrative penalties that have already been imposed under the original rules to 30% of the original penalty amounts.

In order to benefit from the relief, the registered taxpayer would need to meet certain conditions, including paying all the tax due and 30% of the total unpaid administrative penalties by 31 December 2021.

The relief appears to apply to penalties that are still unpaid to the FTA prior to the effective date of the Cabinet Decision. As such, taxpayers who have already accounted to the FTA in respect of any imposed penalties are unlikely to be able to benefit from the relief. Taxpayers should look out for any guidance from the FTA on the procedures for implementing this relief.

Comments

Once the new rules come into effect, the amendments to the administrative penalties regime may provide businesses with both opportunities and risks.

Specifically, the new penalty structure encourages the early submission of voluntary disclosures for errors by applying relatively low penalty percentage rates for disclosures submitted closer to the due date of the relevant tax return. On the other hand, the penalties where there is no voluntary disclosure submitted are much more significant and will continue to accumulate from the due date of the relevant tax return. Since greater penalties will apply where errors are discovered in the course of a tax audit (or disclosed after a taxpayer is notified of an impending audit), it is important that businesses work toward identifying such errors and reporting them to the FTA before they are notified of any FTA audit.

In order to determine if a voluntary disclosure is required, businesses should immediately commence a careful review of their tax position for previous periods for the purpose of identifying any errors (in particular, the periods where there were uncertainties relating to VAT treatment of supplies or recovery of expenses). Where a business has already conducted such a review, it is prudent to repeat the exercise for any subsequent tax periods to ensure new errors have not been made.

Furthermore, where a registered taxpayer has already been subject to penalties under the current administrative penalties regime, the taxpayer should consider whether it may benefit from the relief for existing penalties, which allows a reduction in the amount of the penalties that are still unpaid before the effective date of the new rules. Businesses should carefully evaluate whether they meet the conditions for the relief in order to take advantage of these concessions. Note that the amnesty does not apply where penalties have already been paid – although further guidance would be welcome whether this extends to penalties settled under the compulsory administrative procedures, such as penalties settled by taxpayers in order to appeal the FTA's decisions to the Tax Disputes Resolution Committee and then the courts.

In summary the new rules are welcome, but also are more complicated. Taxpayers should consider any further guidance published by the FTA, the date of effect of the changes, and the full implications of the changes.

United States

State Tax Matters (4 June 2021)

The 4 June 2021 edition of US State Tax Matters includes coverage of the following tax developments:

Administrative:

- Maryland: New law creates whistleblower reward program for taxes and revises limitations period

Income/Franchise:

- Federal: Multi-state worker tax fairness bill has been introduced in US Senate
- Maryland: New law alters provisions on automatic one-year decoupling from Internal Revenue Code changes
- New Jersey: Tax Court holds that auditor's NOL carryforward adjustments are statutorily time barred
- New Jersey: Tax Court holds that some of taxpayer's in-state activity is protected by P.L. 86-272
- Vermont: Updated guidance on effect of COVID-19 pandemic-related telecommuting on withholding

Sales/Use:

- Maryland: New law delays start date of new digital advertising tax and addresses digital products

The newsletter also features recent Multistate Tax Alerts:

“State tax considerations of President Biden’s federal tax proposals”

“Indiana updates Internal Revenue Code conformity”

“Montana enacted legislation creates employer job growth incentive tax credits”

United States

State Tax Matters (11 June 2021)

The 11 June 2021 edition of US State Tax Matters includes coverage of the following tax developments:

Income/Franchise:

- Missouri: Adopted withholding rule addresses impact of pandemic-related telecommuting
- New Jersey: Just announced corporation business tax combined reporting initiative begins 15 June 2021
- West Virginia: Proposed rules reflect newly adopted single sales factor and market-based sourcing

Other:

- City of Seattle: Washington state superior court denies local business group’s claims and deems Seattle payroll tax valid

Sales/Use:

- Maryland: Updated guidance on taxation of digital products reflects newly enacted legislation
- Tennessee: Online platform uninvolved with payment processing is not a marketplace facilitator
- Texas: Comptroller explains policy on taxing certain medical billing services under new law
- Washington: Department of Revenue adopts new rule on marketplace facilitator tax collection and reporting

The newsletter also features recent Multistate Tax Alerts:

“California Franchise Tax Board to hold Sixth Interested Parties Meeting on market-based sourcing regulation”

“Illinois proposes new pass-through entity tax election”

“Maryland enacts emergency bill addressing taxation of digital advertising and digital products”

“Massachusetts Supreme Judicial Court rules in favor of taxpayers on sales tax apportionment for software”

“Montana enacts legislation increasing class eight business equipment tax exemption”

"Overview of New York's new pass-through entity tax"

United States

State Tax Matters (18 June 2021)

The 18 June 2021 edition of US State Tax Matters includes coverage of the following tax developments:

Administrative:

- Pennsylvania: Voluntary compliance program for retailers with in-state inventory extended again

Income/Franchise:

- District of Columbia: Emergency legislation extends duration of deduction for apportioned net operating loss carryover
- Iowa: New law conforms to federal bonus depreciation and maintains Internal Revenue Code section 163(j) decoupling
- Iowa: New law requires passthroughs to file composite return on behalf of nonresident members
- Maine: New law provides a bright-line nexus standard for corporate income tax
- Maine: State high court rejects claim that disallowed loss carryover led to invalid taxation
- Rhode Island: Guidance on pandemic-related telecommuting, withholding, and lifting of state of emergency
- Texas: Comptroller to hold public hearing on proposed changes to R&D rules on 28 June 2021

Gross receipts/Other miscellaneous:

- Nevada: Refund notice issued after 2019 modified business tax (MBT) rate changes are deemed invalid

Sales/Use:

- Iowa: Ruling addresses taxability of online learning, digital products, and internet advertising
- Louisiana: Approved joint resolution potentially may lead to a centralized tax collection system
- Maine: New law eliminates economic nexus standard's "200-transaction" threshold

The newsletter also features recent Multistate Tax Alerts:

"California Legislature moves A.B. 71, relating to taxation of GILTI and repatriation income, to inactive file"

"Illinois fiscal year 2022 state budget highlights"

"New Jersey announces compliance initiative for Corporation Business Tax"

"Texas enacts law amending definition of 'data processing service' for sales and use tax purposes"

“West Virginia issues proposed market-based sourcing rules”

United States

State Tax Matters (25 June 2021)

The 25 June 2021 edition of US State Tax Matters includes coverage of the following tax developments:

Amnesty:

- Connecticut: New law includes tax amnesty program with potential waiver of penalties and reduced interest

Income/Franchise:

- Colorado: New law contains several combined reporting changes and includes listed tax havens
- Colorado: New law contingently provides for elective passthrough entity-level taxation
- Connecticut: New law includes corporate tax surcharge extension and delayed capital base tax phase-out
- Indiana: Pandemic-related telecommuting policy on nexus and P.L. 86-272 ends 30 June 2021
- Louisiana: New law addresses state treatment of federal partnership audit regime changes and RARs
- Louisiana: Enacted bills will ask voters whether to lower tax rates and repeal federal income tax (FIT) deduction
- Louisiana: New mobile workforce law imposes nonresident withholding using a 25-day threshold
- Louisiana: New law provides individual income tax exemption for some qualifying digital nomads
- Maryland: Administrative guidance explains optional passthrough entity-level income taxation
- Massachusetts: Department of Revenue announces that special pandemic-related telecommuting rule expires 13 September 2021
- Ohio: Guidance issued on financial institution tax decrease for some newly formed banks
- Pennsylvania: Department of Revenue says pandemic-related nexus and telecommuting provisions expire 30 June 2021

Sales/Use:

- Colorado: New law defines digital goods and codifies treatment as taxable tangible personal property (TPP)
- Washington: Department of Revenue explains destination-based sourcing rules and their application

Property:

- Louisiana: New law allows Board of Tax Appeals (BTA) to potentially hear ad valorem tax cases

The newsletter also features the article “Income Tax Nexus Limitations in a Post-Wayfair World” and recent Multistate Tax Alerts:

“Illinois fiscal year 2022 state budget enacted”

“Iowa enacts tax relief bill that includes several income tax law changes”

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