Deloitte.
Legal

Octubre 2021

Boletín de IVA

Deloitte Legal
Departamento de IVA, Aduanas e Impuestos Especiales

Índice de contenido

I. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-855/19 (G. Sp. z o.o.).

2. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-294/20 (GE Auto Service Leasing).

3. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-406/20 (Phantasialand).

4. Tribunal de Justicia de la Unión Europea. Sentencia de 16 de septiembre de 2021. Asunto C-21/20 (Balgarska natsionalna televizia).

5. Tribunal de Justicia de la Unión Europea. Sentencia de 30 de septiembre de 2021. Asunto C-299/20 (Icade Promotion).

6. Tribunal de Justicia de la Unión Europea. Sentencia de 30 de septiembre de 2021. Asunto C-186/20 (Hydina SK).

7. Audiencia Nacional. Sala de lo Contencioso. Sentencia de 12 mayo 2021. Nº recurso 206/2020.

II. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V2243-21, de 5 de agosto de 2021.

2. Dirección General de Tributos. Contestación nº V2248-21, de 6 de agosto de 2021.

3. Dirección General de Tributos. Contestación nº V2310-21, de 16 de agosto de 2021.

4. Dirección General de Tributos. Contestación nº V2313-21, de 16 de agosto de 2021.

5. Dirección General de Tributos. Contestación nº V2315-21, de 16 de agosto de 2021.

6. Dirección General de Tributos. Contestación nº V2368-21, de 20 de agosto de 2021.

7. Dirección General de Tributos. Contestación nº V2371-21, de 20 de agosto de 2021.

8. Dirección General de Tributos. Contestación nº V2372-21, de 20 de agosto de 2021.

9. Dirección General de Tributos. Contestación nº V2392-21, de 23 de agosto de 2021.

10. Dirección General de Tributos. Contestación nº V2394-21, de 23 de agosto de 2021.

III. Country Summaries

Featured articles

European Union

Financial services review

In summer 2021, the European Commission published the results of its public consultation on the VAT rules in the financial and insurance services industries. The answers and comments that were received provide some interesting insights that are worth exploring.

Bahrain

VAT rate may increase from 1 January

Bahrain may increase the standard rate of VAT from 5% to 10% with effect as from 1 January 2022. Although the National Bureau for Revenue has not yet made an official announcement, taxpayers should start measuring the potential impact of an increased VAT rate.

Cambodia

VAT on foreign e-commerce activities

The Ministry of Economy and Finance has issued guidance setting out the rules and procedures for the implementation of VAT in relation to certain e-commerce activities by nonresidents that do not have a permanent establishment in Cambodia.

China

Authorized economic operator system updated

The General Customs Administration has announced new customs credit management measures for enterprises which revise and replace the current rules on the customs credit rating system. The new measures will come into effect on 1 November 2021.

Norway

Launch of eVAT returns

On 1 January 2022, a new electronic VAT return will be launched, affecting all types of VAT returns and sharing a common information structure and set of rules. The general industry and primary industry returns will be launched first (on 1 January 2022).

Thailand

VAT rules on e-services provided from abroad

A regulation and notification were issued setting forth the rules, procedures, and conditions for VAT registration that will apply for certain business operators providing electronic services from abroad and electronic platform operators located abroad.

Other news

OECD: New model manual published on exchange of information for tax purposes

European Union: European Commission publishes September 2021 infringements package

European Union: Transitional origin rules in Pan-Euro Mediterranean area

Australia: ATO publishes new GST assurance guidance for large taxpayers

China: Tax incentives proposed for new cooperation zone in Hengqin

Czech Republic: VAT Act amended to update e-commerce rules

Germany: BFH rules on transfer of an entire business in situation involving leased property

Germany: Tax authorities clarify applicability of insurance premium tax

Germany: Cost of providing interest-free finance to customers does not reduce VAT taxable base

Greece: Important VAT law changes enacted

Greece: Additional VAT law changes aim to facilitate economic activity

Greece: Government publishes changes to certain indirect tax and VAT measures

Guatemala: COVID-19: Law includes VAT and import duty exemption for certain donations

Guatemala: SAT guidance offers taxpayers flexibility regarding form of payment to suppliers

Guernsey: Tax highlights of 2022 budget

India: GST council recommendations include changes to GST rates on some goods and services

India: CBIC issues circulars clarifying contentious issues relating to export of services

India: Global Trade Advisory Newsletter (July–September 2021)

Italy: Clarification provided on VAT refunds for certain nonresidents

Malaysia: Special voluntary disclosure program for indirect taxes could be introduced

Malaysia: Sales tax technical updates (September 2021)

Malaysia: Guide on tourism tax available for digital platform service providers

Mexico: 2022 economic package and tax reform proposals presented to Chamber of Deputies

Oman: VAT guide issued for real estate sector

Poland: CJEU: Polish regulations on intra-EU acquisition of fuel violate EU VAT directive

Poland: Proposed VAT group regulations introduced

Spain: Concept of “fixed establishment” regarding letting of property: A Spanish perspective

Switzerland: Federal Council approves project to revise VAT law

Switzerland: Draft change of practice would change VAT treatment of certain health sector services

Thailand: Waiver or reduction of certain penalties authorized

Thailand: Extension of 7% VAT rate for two years

United States: State Tax Matters (1 October 2021), including sales and use tax developments in Hawaii, Illinois, Massachusetts, Mississippi, New York, Tennessee, Texas, and Utah

United States: State Tax Matters (8 October 2021), including sales and use tax developments in Arkansas, California, Texas, and Washington

United States: State Tax Matters (15 October 2021), including sales and use tax developments in Maryland, Mississippi, and Texas

United States: State Tax Matters (22 October 2021), including sales and use tax developments in Illinois and New Mexico

United States: State Tax Matters (29 October 2021), including sales and use tax developments in Missouri and Texas

I. Jurisprudencia

1. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-855/19, G. Sp. z o.o.

Directiva 2006/112/CE — Artículo 69 — Exigibilidad del IVA — Adquisición intracomunitaria de carburantes — Obligación de pago anticipado del IVA — Artículo 206 — Concepto de "pagos a cuenta" — Artículo 273 — Correcta recaudación del IVA y lucha contra el fraude — Margen de maniobra de los Estados miembros.

Concluye el TJUE que los artículos 69, 206 y 273 de la Directiva del IVA deben interpretarse en el sentido de que se oponen a una disposición de Derecho nacional que impone una obligación de pago anticipado del IVA por la adquisición intracomunitaria de carburantes, antes de que dicho impuesto resulte exigible.

Señala el Tribunal que los Estados Miembros pueden establecer excepciones a la regla del pago en el momento de la presentación de la declaración periódica y aceptar pagos a cuenta, siempre que se refiera a un impuesto que resulte exigible; por lo que la posibilidad de aceptar pagos a cuenta, permite únicamente anticipar el pago de un impuesto que ya se ha convertido en exigible.

2. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-294/20, GE Auto Service Leasing GmbH.

Directiva 79/1072/CEE — Artículos 3, 6 y 7 —Modalidades de devolución del impuesto sobre el valor añadido (IVA) — Sujetos pasivos no establecidos en el interior del país — Denegación de la devolución del IVA abonado — Documentos que justifican el derecho a la devolución — No presentación de los documentos justificativos dentro de los plazos señalados.

Se plantea al TJUE y confirma este que las disposiciones de la Octava Directiva IVA y los principios del Derecho de la Unión, en particular el principio de neutralidad fiscal, deben interpretarse en el sentido de que no se oponen a que se deniegue una solicitud de devolución del IVA cuando el sujeto pasivo no haya presentado a la Administración tributaria competente, en los plazos fijados, ni siquiera a requerimiento de esta, todos los documentos e información exigidos por esa Directiva, con independencia de que el sujeto pasivo presente, por su propia iniciativa, tales documentos e información con ocasión de la reclamación económico-administrativa o del recurso jurisdiccional interpuestos contra la resolución denegatoria de ese derecho a la devolución.

Establece el TJUE que la presentación de una solicitud de devolución del IVA sin ninguna limitación temporal sería contraria al principio de seguridad jurídica, que exige que la situación fiscal del sujeto pasivo, en lo que se refiere a sus derechos y obligaciones frente a la Administración tributaria, no pueda cuestionarse indefinidamente; por lo que se podrá imponer dicha limitación siempre que hayan existido posibilidades razonables de aportación de información.

Adicionalmente, confirma el Tribunal que no se puede considerar que no constituiría un abuso del Derecho de la Unión, que un sujeto pasivo que solicita la devolución del IVA no aporte durante el procedimiento administrativo los documentos que le requiere la Administración tributaria, pero sí los aporte espontáneamente en fases procesales posteriores, en la medida en que no conste que se llevara a cabo con la intención de obtener una ventaja fiscal.

3. Tribunal de Justicia de la Unión Europea. Sentencia de 9 de septiembre de 2021. Asunto C-406/20, Phantasialand.

Directiva 2006/112/CE — Artículo 98 — Facultad de los Estados miembros de aplicar un tipo reducido de IVA a determinadas entregas de bienes y prestaciones de servicios — Anexo III, punto 7 — Derecho de acceso a los parques de atracciones y a las ferias — Principio de neutralidad fiscal — Prestaciones realizadas por feriantes itinerantes y por feriantes no itinerantes — Comparabilidad — Contexto — Punto de vista del consumidor medio — Informe pericial.

Se plantea al TJUE si el artículo 98 de la Directiva del IVA, en relación con el anexo III, punto 7, de dicha Directiva, debe interpretarse en el sentido de que se opone a una normativa nacional en virtud de la cual las prestaciones realizadas por los feriantes itinerantes, por una parte, y las realizadas por los feriantes no itinerantes que operan bajo la forma de parques de ocio, por otra, están sujetas a tipos de IVA distintos, uno reducido y el otro normal.

Destaca el Tribunal que el hecho de que las ferias sean instalaciones no permanentes que se establecen de manera estacional, mientras que los parques de ocio son terrenos urbanizados que prestan servicios de forma permanente, goza de cierta relevancia, puesto que la circunstancia de que un servicio se encuentre disponible por un período limitado de tiempo puede resultar importante en la decisión del consumidor de acudir a un parque de ocio o una feria; por lo que procede la aplicación de tipos de gravamen diferenciados. Además, señala el Tribunal que los órganos jurisdiccionales nacionales podrán solicitar un informe pericial que le ayuda a tomar su decisión, en el caso de que experimenten dificultades en el análisis de las prestaciones realizadas.

4. Tribunal de Justicia de la Unión Europea. Sentencia de 16 de septiembre de 2021. Asunto C-21/20, Balgarska natsionalna televizia.

Directiva 2006/112/CE — Ámbito de aplicación — Artículo 2, apartado 1, letra c) — Prestación de servicios realizada a título oneroso — Exclusión de los servicios de comunicación audiovisual prestados a los telespectadores que se financian mediante una subvención pública y que no dan lugar a remuneración alguna por parte de los telespectadores — Artículo 168 — Derecho a deducción — Sujeto pasivo que efectúa indistintamente operaciones imponibles y operaciones que no están incluidas en el ámbito de aplicación del IVA.

Se plantea al TJUE en primer lugar si el artículo 2, apartado 1, letra c), de la Directiva del IVA debe interpretarse en el sentido de que la actividad de un proveedor público nacional de televisión que consiste en prestar a los telespectadores servicios de comunicación audiovisual, que es financiada por el Estado por medio de una subvención y que no da lugar

al pago por parte de los telespectadores de ninguna tasa por la difusión televisiva constituye una prestación de servicios realizada a título oneroso.

Concluye el TJUE que la actividad del contribuyente no tiene la consideración de prestación realizada a título oneroso, en la medida en que los servicios no benefician a personas que se encuentran claramente identificadas y que el importe de la subvención de que se trata se determina en función de un tanto alzado reglamentario por hora de programación, sin tomar en consideración la identidad y el número de usuarios del servicio prestado.

En segundo lugar, confirma el TJUE que, en aplicación del artículo 168 de la Directiva del IVA, el proveedor público nacional de televisión está facultado para deducir el IVA soportado por adquisiciones de bienes y servicios utilizados para las necesidades de sus actividades que generan derecho a deducción y no está facultado para deducir el IVA soportado por adquisiciones de bienes y servicios utilizados para las necesidades de sus actividades no comprendidas en el ámbito de aplicación del IVA. Respecto del reparto de las cuotas del IVA soportado entre operaciones sujetas al impuesto y operaciones que no están comprendidas en su ámbito de aplicación, corresponde a los Estados miembros determinar los métodos y los criterios de reparto, teniendo en cuenta la finalidad y la estructura de esta Directiva dentro del respeto del principio de proporcionalidad.

5. Tribunal de Justicia de la Unión Europea. Sentencia de 30 de septiembre de 2021. Asunto C-299/20, Icade Promotion SAS.

Directiva 2006/112/CE — Artículo 392 — Régimen de imposición sobre el margen de beneficio — Ámbito de aplicación — Entregas de inmuebles y de terrenos edificables comprados con fines de reventa — Sujeto pasivo que no ha tenido derecho a deducción con ocasión de la adquisición de los inmuebles — Reventa sujeta al IVA — Concepto de "terrenos edificables".

Se plantea al TJUE si el artículo 392 de la Directiva del IVA debe interpretarse en el sentido de que limita la aplicación del régimen de imposición sobre el margen de beneficio a operaciones de entrega de inmuebles cuya adquisición haya estado sujeta al IVA sin que el sujeto pasivo que los revende haya tenido derecho a practicar la deducción de ese impuesto con ocasión de esa adquisición o en el sentido de que permite que este régimen se aplique igualmente a operaciones de entrega de inmuebles cuya adquisición no haya estado sujeta al referido impuesto, ya sea porque la adquisición no entra en el ámbito de aplicación de este impuesto o porque, aunque entra en su ámbito de aplicación, está exenta.

Recuerda el Tribunal que no todas las adquisiciones de terrenos edificables llevadas a cabo por un sujeto pasivo para su reventa se encuentran sujetas al IVA; por lo que excluir de la aplicación del régimen las entregas de terrenos edificables cuya adquisición no haya estado sujeta al IVA (entrega de los terrenos con el fin de ser objeto de un segundo consumo), llevaría a que se les diera un tratamiento a efectos del IVA distinto a entregas de bienes similares y operadores económicos, que compiten entre sí. No obstante lo anterior, el régimen no podría resultar de aplicación en ningún caso para aquellas entregas de terrenos edificables que no haya estado sujetas al IVA bien por no incluirse en el ámbito de aplicación o por estar exenta al IVA.

Del mismo modo, se plantea y confirma el TJUE que, bajo artículo 392 de la Directiva del IVA, se excluye la aplicación del régimen de imposición sobre el margen de beneficio a las operaciones de entrega de terrenos edificables cuando dichos terrenos, adquiridos sin edificar, se hayan convertido, entre el momento de su adquisición y el de su reventa por el sujeto pasivo, en terrenos edificables. Sin embargo, no se excluye de la aplicación de dicho régimen a operaciones de entrega de terrenos edificables cuando esos terrenos hayan sido objeto, entre el momento de su adquisición y el de su reventa por el sujeto pasivo, de modificaciones de sus características, tales como su división en parcelas o la realización de obras que permitan la instalación de redes con el fin de proveerlos de servicios, como, por ejemplo, redes de gas o de electricidad.

6. Tribunal de Justicia de la Unión Europea. Sentencia de 30 de septiembre de 2021. Asunto C-186/20, HYDINA SK s. r. o.

Reglamento (UE) n.º 904/2010 — Artículos 10 a 12 —Intercambio de información — Inspección tributaria — Plazos — Suspensión de la inspección tributaria en caso de intercambio de información — Incumplimiento del plazo impuesto para comunicar la información — Incidencia sobre la legalidad de la suspensión de la inspección tributaria.

Se plantea al TJUE si el artículo 10 del Reglamento n.º 904/2010, interpretado a la luz de su considerando 25, debe interpretarse en el sentido de que establece plazos cuyo incumplimiento puede afectar a la legalidad de la suspensión de una inspección tributaria prevista por el Derecho nacional del Estado miembro requirente, a la espera de que el Estado miembro requerido comunique la información solicitada en el marco del mecanismo de cooperación administrativa establecido por dicho Reglamento.

Dictamina el TJUE que los plazos previstos en el artículo 10 del referido Reglamento se refieren únicamente a las relaciones entre las autoridades tributarias competentes llamadas a cooperar en el marco del mecanismo establecido, y que además, ninguna disposición del Reglamento establece consecuencias en el caso de que las autoridades tributarias sobrepasen uno de los plazos fijados; por lo que el incumplimiento de uno de estos plazos, no otorga al sujeto pasivo afectado ningún derecho, así como tampoco conlleva ninguna consecuencia específica, ni siquiera en lo relativo a la legalidad de la suspensión de la inspección tributaria.

7. Audiencia Nacional. Sala de lo Contencioso. Sentencia de 12 de mayo de 2021, nº recurso 206/2020.

Sanción por no incluir en la declaración del IVA las cuotas auto-repercutidas – vulneración del principio de proporcionalidad.

La parte recurrente recibió una factura que documentaba una operación en la que se debía aplicar el mecanismo de inversión del sujeto pasivo. Dicha compañía, que tenía reconocido pleno derecho a la deducción del IVA soportado, registró la factura en el libro registro de facturas recibidas. No obstante, como consecuencia de un error, no la consignó en la autoliquidación del IVA correspondiente al periodo del devengo.

Entiende la inspección que la conducta anterior es constitutiva de la sanción prevista por el artículo 170.Dos de la Ley del IVA, y que consiste en una multa pecuniaria proporcional fija del 10% de la cuota correspondiente a las operaciones no consignadas en la autoliquidación, sin perjuicio de ulteriores deducciones.

Por su parte, entiende la entidad demandante que la referida sanción resulta improcedente en los supuestos en los que el destinatario tiene derecho a la deducción plena del IVA soportado, conforme al principio de proporcionalidad que rige el Derecho de la Unión, en virtud del cual las sanciones no deben ir más allá de lo necesario para garantizar la correcta recaudación del IVA y prevenir el fraude.

A este respecto, el presente Tribunal, del análisis de la jurisprudencia del TJUE aplicable al presente supuesto, entiende que la sanción impuesta a la entidad recurrente vulnera el principio de proporcionalidad.

Considera el Tribunal que, ante la inexistencia de un perjuicio económico para la Hacienda Pública dado que la operación inmobiliaria de referencia supuso una cuota de IVA de 0 euros, la única justificación de la imposición de la sanción sería la de prevenir el fraude, supuesto que no se da en la medida en que se expidió factura correcta y se incluyó en los libros registros del Impuesto.

En conclusión, a criterio del Tribunal, aun estando plenamente justificado que se puedan reprochar incorrecciones en las autoliquidaciones, incluso cuando ello no tiene consecuencias en la recaudación del impuesto, el principio de proporcionalidad se vulnera con la imposición de una sanción que atiende a parámetros automáticos sin tener en cuenta las circunstancias del caso, como la ausencia de perjuicio económico, la existencia de la factura en la que consta la operación y el registro de la propia operación en el libro de facturas recibidas, pese a que no se consignara en la autoliquidación.

II. Doctrina Administrativa

1. Dirección General de Tributos. Contestación nº V2243-21, de 5 de agosto de 2021.

Adquisición de parcelas urbanas – Inversión del sujeto pasivo.

El consultante es una sociedad que va a adquirir dos parcelas que se encuentran en curso de urbanización, acordándose entre las partes contratantes que la sociedad adquirente asuma el pago de las cargas de urbanización pendientes.

El consultante se cuestiona la aplicación del mecanismo de inversión del sujeto pasivo previsto en la LIVA.

Comienza la DGT, indicando que esta transmisión quedará sujeta y no exenta del IVA, por tratarse de una transmisión de un terreno en el que ya se ha iniciado el proceso urbanizador o cuando el mismo esté ya finalizado, con la única excepción de que dicho terreno se destine a parques y jardines públicos o superficies viales de uso público, en cuyo caso la transmisión quedaría sujeta pero exenta del IVA.

En línea con el criterio seguido en contestaciones anteriores (entre otras, V3610-15 y V0664-18), la DGT confirma que resulta de aplicación el supuesto de inversión del sujeto pasivo, establecido por el artículo 84.Uno.2º.e) guion tercero de la LIVA, a la transmisión de terrenos afectos al pago de las cargas de urbanización, cuando al adquirente le corresponda su pago, cuando dichos gastos se hayan devengado y sean exigibles, esté vigente la afección registral de las parcelas al cumplimiento de los deberes urbanísticos, y siempre que no estemos ante el supuesto previsto en el guion segundo del citado artículo de la LIVA en relación a las entregas exentas del artículo 20.Uno. 20º y 22º.

Por último, conviene señalar que no sería de aplicación del supuesto de inversión del sujeto pasivo cuando no esté vigente la afección registral de las parcelas al cumplimiento de los deberes urbanísticos por haber transcurrido el plazo de caducidad de siete años tras haberse expedido la nota de afección.

2. Dirección General de Tributos. Contestación nº V2248-21, de 6 de agosto de 2021.

Devengo del IVA – Facturación y suministro de información en el SII.

La consultante presta un servicio completo de enfardado mediante el cual embala la mercancía de sus clientes, incluyendo el citado servicio la cesión de uso de la maquinaria, su mantenimiento, el suministro del film y el acceso a una plataforma online en la que el cliente puede consultar los datos relativos al servicio prestado y al consumo de film realizado. La contraprestación por el servicio se determina en función del consumo de film realizado y se exige a los sesenta días de emisión de la factura.

La consultante se plantea si el devengo del IVA se producirá conforme a lo que dispone el artículo 75.Uno.7º LIVA, en el que se establece que, en las operaciones de tracto sucesivo o continuado, el devengo tiene lugar en el momento en que resulte exigible la parte del precio que comprenda cada percepción. Al mismo tiempo, y en caso de que se confirme el punto anterior, la consultante plantea cómo afectaría a la obligación de facturación y de información de las operaciones consultadas en el SII.

La DGT concluye que, en atención a los hecho descritos en la consulta, el devengo del IVA se determina conforme a lo que dispone el artículo 75.Uno.7º LIVA y éste se produce transcurridos 60 días desde la emisión de la factura puesto que es en dicho momento en el que resulta exigible la contraprestación por los servicios prestados.

Además, conforme a lo dispuesto en el Reglamento de Facturación, la consultante deberá expedir y entregar factura por las operaciones objeto de consulta y, en su caso, por los pagos anticipados recibidos con anterioridad a la realización de las operaciones atendiendo a los plazos recogidos en los artículos 11 y 18 del Reglamento de facturación.

Asimismo, la información correspondiente a facturas expedidas que documenten operaciones de tracto sucesivo, deberán ser objeto de reporte a través del SII mediante el valor “15” en la clave del régimen especial o trascendencia.

3. Dirección General de Tributos. Contestación nº V2310-21, de 16 de agosto de 2021.

Transmisión de unidad económica autónoma – Operación no sujeta al IVA.

La entidad consultante, en el marco de una reorganización empresarial, va a transmitir la totalidad de su negocio dedicado a las actividades de ventas institucionales y "*research*" así como las actividades de soporte o "*back office*". La transmisión del negocio se realiza, por motivos regulatorios, a través de distintas transmisiones, pero en unidad de acto.

La consultante plantea si la operación de transmisión del negocio citado en distintas fases sucesivas, pero en unidad de acto, puede considerarse como una operación no sujeta al IVA.

La DGT indica, apoyándose en jurisprudencia del TJUE, que la aplicación del supuesto de no sujeción del artículo 7.1º LIVA exige que el conjunto de los elementos transmitidos por el empresario o profesional sean suficientes para permitir desarrollar una actividad económica autónoma en el propio transmitente. En el caso planteado, la transmisión incluirá todos los activos y pasivos necesarios para el desarrollo de la actividad, así como la cesión de los empleados que realizaban dicha actividad.

El hecho de que la transmisión se realice con la intervención de diversas sociedades establecidas en otros territorios que adquieren el negocio para transmitirlo a la siguiente sociedad, en unidad de acto y bajo un mismo contrato, no impide la aplicación de lo dispuesto en el artículo 7.1º LIVA y, por tanto, la no sujeción a IVA de la transmisión objeto de consulta.

En conclusión, la DGT establece que las operaciones intermedias de transmisión del negocio son irrelevantes para considerar no sujeta la transmisión del negocio en línea con el artículo 7.1º LIVA, siempre que la primera y última transmisión sean realizadas con sujeción al IVA por empresarios o profesionales y que los elementos transmitidos tengan la consideración de unidad económica autónoma.

4. Dirección General de Tributos. Contestación nº V2313-21, de 16 de agosto de 2021.

Régimen especial de ventanilla única – Registro de alta – Declaración de operaciones.

La mercantil consultante es residente en el TIVA-ES y realiza una actividad de venta de bienes, tanto a través de una plataforma como a través de su propio dominio web, con una previsión de ventas a países de la Unión Europea por importe superior a 10.000 euros.

La consultante se plantea si debe darse de alta, a efectos del IVA, en cada uno de los Estados miembros donde venda sus productos, así como cuál sería la forma de declarar la venta de bienes a través del régimen especial de ventanilla única del IVA.

Este Centro Directivo comienza su análisis estableciendo los conceptos de ventas a distancia intracomunitarias de bienes y las reglas de localización referentes a las mismas. En este sentido, siempre que el volumen de ventas global no supere los 10.000 euros, se entenderán realizadas en el TIVA-ES cuando las mercancías se expidan desde este. Existiendo también la posibilidad de no aplicar este umbral y aplicar la regla general de forma voluntaria por un periodo mínimo de dos años naturales.

En cualquier caso, desde que se supera el umbral de 10.000 euros, la regla general de localización será de aplicación y, el IVA será debido en cada Estado miembro de llegada de las mercancías. En estos casos, los consultantes podrán optar por registrarse en el régimen de la Unión o, darse de alta y abonar el IVA en cada uno de los Estados miembros donde se entiendan realizadas las ventas a distancia de bienes intracomunitarios.

El referido régimen de la Unión, permite a los empresarios que realicen ventas intracomunitarias de bienes declarar y pagar el IVA en cada uno de los Estados miembros a través de un sistema de ventanilla única conocido como "OSS". Siendo para ello necesario la elección de un Estado miembro de identificación donde presentar las declaraciones-liquidaciones (modelo 369) como se establece reglamentariamente.

Finalmente, conviene señalar que en relación con el régimen de deducción de las cuotas soportadas relacionadas con las ventas a distancia intracomunitaria de bienes, no se podrá deducir en la declaración-liquidación del régimen especial cantidad alguna por las cuotas soportadas relacionadas con este régimen de acuerdo con el artículo 163 tervicies de la Ley del IVA.

No obstante lo anterior, entidades establecidas en el TIVA-ES podrán recuperar el importe de las cuotas soportadas en otros Estados miembros, a través del procedimiento del artículo 117 bis de la Ley del IVA.

Por otro lado, las cuotas soportadas en TIVA-ES, cuando el Reino de España sea el Estado miembro de identificación, se deducirán conforme al régimen general del IVA.

5. Dirección General de Tributos. Contestación nº V2315-21, de 16 de agosto de 2021.

Servicios de gestión de cobro de deudas propias y ajenas – Derecho a la deducción – Autoconsumo de servicios.

La entidad mercantil consultante es residente en el TIVA-ES y presta servicios de gestión de cobro de deudas a terceros establecidos en el TIVA-ES a cambio de una contraprestación. Además, gestiona también el cobro de deudas propias provenientes de adquisiciones de carteras de créditos a terceros.

La consultante desea conocer si la actividad de gestión de cobro de las deudas propias limita su derecho a deducir las cuotas del IVA que haya soportado y si dicha actividad tiene un reflejo en su volumen de operaciones a efectos del impuesto.

Este Centro Directivo comienza su análisis indicando las exenciones reguladas en el artículo 20.Uno.18º de la Ley del IVA respecto a las operaciones financieras. En este sentido, concluye la DGT indicando que los servicios de gestión de cobro de créditos a terceros establecidos en el TIVA-ES, se encuentran sujetos y no exentos del IVA.

Respecto a la adquisición de carteras de créditos a terceros y su posterior gestión de cobro, señala este Centro Directivo que es criterio reiterado, como ha establecido en su contestación vinculante de 13 de febrero de 2006, número V0259-06 que se trata de adquisición sujeta pero exenta del IVA, con base en el artículo 20.Uno.18º. e) de la Ley del IVA.

Así pues, la operación por la que la entidad consultante cobra los créditos que ahora ella posee frente a las empresas clientes, no implica la existencia de hecho imponible, pues sólo representa la obtención de una contraprestación correspondiente a una operación que se había declarado exenta con anterioridad.

Del mismo modo, la DGT recuerda que también es preciso analizar si las operaciones en las que el destinatario de un servicio es el propio prestador, pueden tener la consideración de autoconsumo de servicios. En lo que respecta a los servicios de gestión de cobro de créditos propios, se establece que no constituyen operaciones que formen parte del ámbito del IVA ni determinan la realización de algún hecho imponible del mismo y por tanto, no implicarían una limitación en el derecho a deducir las cuotas soportadas del IVA.

Por último, este Centro Directivo concluye que dichas operaciones no deben computarse a efectos del cálculo del volumen de operaciones del IVA (de acuerdo con lo dispuesto en el artículo 121 de la Ley del IVA) en la medida que se trata de operaciones de carácter interno de la entidad consultante y no determinan la realización de ningún hecho imponible del IVA.

6. Dirección General de Tributos. Contestación nº V2368-21, de 20 de agosto de 2021.

Sujeción al IVA – Renuncia a la exención y deducción.

Una sociedad, establecida en Francia y sin establecimiento permanente en España, quiere adquirir en el territorio de aplicación del Impuesto una nave industrial y un terreno adyacente, para cederlos en arrendamiento a otra sociedad en cuyo capital tiene participación.

Se plantea la posibilidad de renunciar a la exención del IVA con la consiguiente inversión del sujeto pasivo y la deducción de las cuotas soportadas en la adquisición y gastos relacionados.

Comienza la DGT indicando que la trasmisión del inmueble localizado en el TIVA-ES estaría exenta del IVA, en consonancia con lo regulado en el artículo 20. Uno.22º de la LIVA en el supuesto de tratarse de una segunda o ulterior entrega, pudiendo el sujeto pasivo que realiza la entrega, renunciar a dicha exención en cuyo caso aplicará la inversión del sujeto pasivo de acuerdo con lo dispuesto en el artículo 84.Uno.2º, letra e) de la LIVA.

En lo relativo a la posterior actividad de arrendamiento, que se entenderá realizada en el TIVA-ES, de conformidad con lo dispuesto en el artículo 70. Uno.1º de la LIVA, conviene hacer referencia al concepto de establecimiento permanente a efectos del IVA y traer a colación el reciente pronunciamiento del TJUE, en su sentencia de 3 de junio de 2021, asunto C-931/19, Titanium, Ltd.

A la luz de dicha sentencia, la DGT establece que en los supuestos de arrendamientos de inmuebles situados en el TIVA-ES cuyos titulares sean sujetos no establecidos en el mismo, se considerará que dichos propietarios no disponen de un establecimiento permanente en el referido territorio cuando los mismos no dispongan de su propio personal para gestionar dichos arrendamientos.

Esta conclusión supone un cambio de criterio respecto al mantenido por la propia DGT en las que se ponía de manifiesto la posible existencia de un establecimiento permanente en estos supuestos cuando los medios humanos necesarios para la gestión del arrendamiento estuviesen a disposición del propietario de forma indirecta o subcontratada.

En consecuencia con lo anterior, la consultante no mantendría en el TIVA ES un establecimiento permanente al no mantener de forma permanente medios materiales y humanos para el ejercicio de la actividad de arrendamiento de la nave industrial, siendo así el sujeto pasivo del arrendamiento el arrendatario.

Finalmente, la DGT señala que la consultante podrá deducir las cuotas soportadas en la adquisición de la nave por el procedimiento general regulado en el artículo 115 de la LIVA mientras que deberá acudir al procedimiento de devolución del artículo 119 de la LIVA, en caso de que se soporten otras cuotas del Impuesto en la medida que la entidad no ostentaría la condición de sujeto pasivo una vez se realice la entrega de la nave.

7. Dirección General de Tributos. Contestación nº V2371-21, de 20 de agosto de 2021.

Autoconsumo – Sujeción al IVA y base imponible.

La entidad consultante se constituyó en 2001 y adquirió en dicho año un vehículo nuevo, en 2002 adquirió otro vehículo a uno de los socios y en 2010 adquirió otro vehículo nuevo, habiendo cesado desde 2013 en el desarrollo de sus actividades. Actualmente ha surgido la posibilidad de venta de la sociedad y se plantea la posibilidad de cambiar previamente la titularidad de los vehículos, que son el único bien material de la sociedad, para transferiros al patrimonio particular de su socio.

En primer lugar, la DGT hace referencia a la LIVA y al RGAT para indicar que la pérdida de la condición de empresario o profesional a efectos del IVA no tendrá lugar en tanto no se cese efectivamente en la actividad correspondiente y se formule la baja en el correspondiente censo de empresarios o profesionales. Por tanto, mientras que la consultante no haya liquidado completamente su patrimonio, seguirá obligada a cumplir con las obligaciones fiscales derivadas de las transmisiones de los vehículos objeto de consulta.

Respecto a la trasmisión de los vehículos, se producirá un supuesto de autoconsumo de bienes sujeto al Impuesto si estos conforman el patrimonio empresarial de la consultante, siendo preceptiva la declaración y liquidación de la cuota impositiva correspondiente, salvo lo dispuesto en el artículo 7. 7º LIVA.

Así pues, se producirá autoconsumo sujeto al Impuesto por el traspaso de los vehículos, solamente por aquellos por los que se hubiera soportado el IVA y este haya sido objeto de deducción.

Respecto a la determinación de la base imponible la DGT hace referencia a las reglas especiales contenidas en el artículo 79 de la LIVA, en la medida en que los bienes objeto de consulta habrían experimentado alteraciones en su valor como consecuencia de su utilización, deterioro, obsolescencia.

Asimismo, la DGT hace referencia a los artículos 95 y 4.dos.b) de la LIVA para concluir que el porcentaje de afectación a un patrimonio empresarial o profesional del bien a trasmitir debe de reflejarse también en la base imponible del Impuesto de la entrega de dicho bien, quedando el porcentaje del bien entregado no afectado al patrimonio no sujeto al Impuesto.

Por último, en el supuesto de que la transmisión del vehículo tuviera lugar antes de la finalización del período de regularización de la deducción practicada en su adquisición, la consultante quedaría obligada a efectuar la regularización correspondiente con arreglo a lo dispuesto en el artículo 110 de la LIVA.

8. Dirección General de Tributos. Contestación nº V2372-21, de 20 de agosto de 2021.

Concepto de ejecución de obra - Inversión del Sujeto Pasivo.

La sociedad consultante es un centro de jardinería y venta de plantas que se dedica al diseño de jardines en el marco de ejecuciones de obra de construcción o rehabilitación contratadas entre empresarios, en las que aplica la inversión del sujeto pasivo.

La consultante desea aclarar el concepto de ejecución de obra y necesidad de que los trabajos de jardinería formen parte del proyecto de construcción en aras de aplicar la inversión del sujeto pasivo.

Siguiendo la contestación del 27 de diciembre de 2012 con referencia V2583-12 de este Centro Directivo, se indica que aplicará la regla de inversión del sujeto pasivo, cuando la obra en su conjunto haya sido calificada como de construcción o rehabilitación de edificaciones o como de urbanización de terrenos. Asimismo, la inversión precisa que el contrato o subcontrato, total o parcial, que se deriva de la obra en su conjunto tenga la consideración de ejecución de obras y, finalmente, que el destinatario actúe en su condición de empresario o profesional.

Por otra parte, en el caso de que existan varios contratistas principales, lo relevante a estos efectos es que la ejecución de obra llevada a cabo en su conjunto por todos ellos se realice en el marco de un proceso de urbanización de terrenos o de construcción o rehabilitación de edificaciones, sin que haya que atender a que cada una de las ejecuciones de obra llevadas a cabo por cada uno de los contratistas sean aisladamente consideradas como de urbanización, construcción o rehabilitación.

Por todo ello, y de acuerdo con el criterio de la DGT, será de aplicación el mecanismo de inversión del sujeto pasivo previsto en el artículo 84.Uno.2º.f) de la LIVA a las operaciones consultadas, al tratarse de ejecuciones de obras efectuadas por la consultante para la construcción o rehabilitación de una edificación, siempre que se cumplan las condiciones y requisitos establecidos reglamentariamente.

9. Dirección General de Tributos. Contestación nº V2392-21, de 23 de agosto de 2021.

Sujeción al IVA – Obligaciones de facturación.

La consultante es una mercantil dedicada al comercio al por menor de productos textiles, confección, calzado y artículos de piel en régimen de franquicia, siendo la empresa franquiciada y explotando el modelo de negocio de la empresa franquiciadora únicamente a través de la venta en tiendas físicas.

Siguiendo una estrategia omnicanal, el modelo de negocio de la empresa franquiciadora consiste, fundamentalmente, en tiendas físicas y medios telemáticos (internet). Siendo así, la empresa franquiciadora ofrece a la consultante dos tipos de compensaciones:

- Compensación por el *click and collect* por la compra en línea pero recogida en la tienda física de la franquiciada.

- Compensación omnicanal. Supone una compensación a la franquiciada con un porcentaje de las ventas realizadas directamente en línea con la empresa franquiciadora que se correspondan con el área geográfica de influencia de los establecimientos (tiendas físicas) de la franquiciada.

La consultante plantea a la DGT la sujeción al Impuesto de las compensaciones descritas, así como la obligación de expedir factura en torno a dichas compensaciones.

Comienza la DGT haciendo referencia a jurisprudencia asentada por el TJUE (sentencias Mohr y Landboden), como a contestaciones del propio Centro Directivo para indicar que es necesario analizar la naturaleza de las compensaciones recibidas para identificar si efectivamente se corresponden con actos de consumo.

Para ello, la DGT analiza las compensaciones descritas de forma independiente:

- Compensación click and collect supondría la contraprestación de un servicio de entrega en la tienda física prestado por la consultante a la empresa franquiciadora, quedando por tanto sujeto y no exento del IVA.

- Compensación omnicanal supondría un resarcimiento por los daños y perjuicios causados por el crecimiento de ventas online en detrimento de las ventas físicas. Por tanto, dicho lucro cesante no constituiría contraprestación alguna de operación sujeta al Impuesto, por lo que habría obligación alguna de expedir factura al respecto.

10. Dirección General de Tributos. Contestación nº V2394-21, de 23 de agosto de 2021.

Operaciones de tracto único - Devengo.

La consultante es una entidad mercantil dedicada a la distribución de producciones audiovisuales. Adquiere los derechos de explotación, por plazo determinado, de las producciones de terceras entidades, generalmente dedicadas a la actividad de producción audiovisuales y cinematográfica

La consultante desea conocer si dicha operación puede ser calificada como de “tracto único”, y siendo así, cuándo se produciría el devengo del Impuesto.

La DGT, tras señalar criterio propio y doctrina del TEAC, indica que se debe distinguir, a efectos de devengo entre operaciones de tracto sucesivo y los contratos de resultado de duración prolongada. Asimismo, aplicar las reglas de devengo previstas en la LIVA para las operaciones de tracto sucesivo, a todas las operaciones que se prolonguen en el tiempo y den lugar a pagos parciales, equivaldría a ignorar la diferencia entre las distintas operaciones y obligaciones.

En la presente contestación vinculante, la DGT hace referencia a criterio reiterado para concluir que la cesión de los derechos de explotación de productos audiovisuales, no tienen la consideración de operaciones de tracto sucesivo o continuado, y por tanto el devengo de los servicios se produce con la cesión de los mencionados derechos según conforme a lo establecido en el artículo 75. Uno. 2º de la LIVA.

III. Country Summaries

Featured articles

European Union

EU financial and insurance services VAT review: Results of public consultation

During summer 2021, the European Commission published the results of its public consultation on the VAT rules in the financial and insurance services industries, which was held from 8 February to 3 May. The publication of the results is an important step as the Commission has stated that "the answers provided will feed into the review of the relevant provisions of the VAT Directive (Council Directive 2006/112/EC) and will contribute to a possible future legislative proposal." The numerous answers and comments that were received provide some interesting insights that are worth exploring.

The respondents

The questionnaire prepared by the Commission included 63 questions and the answers of the 469 respondents are summarized in a 230-page Excel document. However, the Commission considers that 271 respondents (58%) were part of a "campaign" from Austria (based on the similarity of the answers, the wording used in answers to open questions, and the excessive number of respondents (around three-fifths) identifying themselves as Austrian). However, we should keep in mind that these 271 respondents all strongly supported VAT exemptions and believe they should be extended to services such as individual asset management and advice, leasing, crypto-assets, etc., which, as we will see, is consistent with other answers to the survey. Nonetheless, even after excluding the answers from this "campaign," Austria was still the most represented country (47 answers), followed by Germany (44 answers).

This discussion focuses on the remaining 198 answers. It is also based on 51 additional documents (around 300 pages) primarily from 35 business associations and 11 companies, as well as the Commission's "factual summary report" (38 pages).

It is interesting to mention that the respondents included 86 companies, including large international ones as well as smaller and more local ones, and 73 professional associations, whether European or national. In the case of Luxembourg, the associations included the Luxembourg Bankers' Association (ABBL), the Association of the Luxembourg Fund Industry (ALFI), whose comments, at 14

pages, are the longest, and the Luxembourg Private Equity & Venture Capital Association (LPEA). Deloitte also provided a document analyzing general issues based on the daily experiences of practitioners in its financial services industry/VAT network.

Each of the three major financial services sectors—banks, insurance companies, and funds—were represented in a balanced way in the results, in contrast to "innovative services" such as "crowdfunding," which were almost absent. These sectors provide services to all types of customers (individuals, businesses, etc.). Less than 20% operate either in the EU or outside of the EU while the remaining 80% are divided more or less equally between those operating only nationally and those operating across the EU.

Exempt or not, that is the first question

The first question was whether or not the VAT exemption for financial and insurance services should be maintained.

The answers to this question are clear: 75% of respondents support exemptions, including 60% who "strongly" support them. This seems based on the view that exemptions work "well" or "very well" according to 43% and 17% of respondents, respectively, even if they are not perfect. While 30% find that their functioning is poor and could be improved, only 10% are opposed.

These observations must be nuanced, however, by the fact that 70% of respondents think that exemptions are no longer adapted to recent developments, such as the digitalization of the economy. This last statement could be surprising because the Court of Justice of the European Union (CJEU) decided as early as 1997 in its *SDC* decision (C-2/95, 5 June 1997) that the fact that a service is delivered electronically should not prevent the application of the exemptions, a principle that the court has repeated on numerous occasions. However, it is true that the application of even a simple principle is not always easy in practice, as the respondents' answer seems to confirm. According to the respondents, the difficulties are mainly due to a lack of clarity and the complexity of the concepts more so than differences between EU member states, even though about two-thirds of the respondents consider that these difficulties have a negative impact on the development of cross-border services.

Despite the nuance about lack of adaptation to recent developments, the results of the public consultation seem quite clear.

What solutions?

Among the different solutions theoretically possible, there are mainly four "global" ones and four "technical" ones, discussed below. The global solutions include taxation at the standard rate, taxation at a reduced rate, a zero rate, and an option to tax. The technical solutions include the use of a VAT group, the use of an independent group of persons (IGP)/cost sharing agreement (CSA), a fixed VAT deduction rate, and revised exemptions.

Global solutions

Around 9% of respondents support taxation at the standard rate for all or only fee-based services while around 15% support taxation at a reduced rate for these services. The standard rate solution finds support mainly in a handful of companies active in industrial and commercial activities (which generally

are entitled to a full VAT deduction) and their associations. These companies also support the reduced rate solution, joined by a limited number of companies and associations in the financial and insurance sectors facing specific issues, as further discussed below.

Twenty respondents mention the zero-rate solution (which amounts to an exemption with the right to deduct VAT on costs). This shows some appetite for this solution and indicates its appeal despite the fact that this mechanism is not very well known in the EU and not included in the Commission's questionnaire.

A large number of participants, around 75%, consider the "option to tax" solution (i.e., the supplier decides whether or not to apply VAT on its services) one of the most effective possible reforms. To the question whether the option should remain at the discretion of each member state, as is currently the case, around 65% would like it to be available in all member states. Even if the questionnaire did not address this specific point, it would seem appropriate to introduce harmonized rules, should the option become mandatory in all member states. Various comments confirm this point.

Technical solutions

The different technical solutions received a lot of support. This is not surprising because only full taxation would make them useless which, as mentioned above, is not the wish of most respondents.

Both the IGP/CSA solution, whose use by the financial sector was denied in 2017 by the CJEU *(DNB Banka AS, C-326/15 and Aviva, C-605/15, 21 September 2017)*, and the VAT group solution received clear support. Indeed, the IGP/CSA solution has 134 supporters against 9 opposed and 55 with no answer or no opinion. The same number supports applying this solution on a cross-border basis. Results are roughly similar for the VAT group solution.

As a reminder, the VAT directive requires member states to make IGPs/CSAs available, which is why this mechanism is available in all jurisdictions. On the contrary, making the VAT group mechanism available is not mandatory. As a result, this mechanism is not available in all member states even if, after the CJEU decisions mentioned above, some member states have (e.g., Luxembourg in 2018) or should (e.g., France and Poland in 2023) implement the VAT group mechanism in their legislation. We may have expected this difference of experience to influence the answers as people usually more strongly support what they are used to. This does not seem to be the case, however. Instead, the results seem to indicate that the respondents think that these two tools could be useful in achieving a common objective, i.e., managing shared services, even if they present different technical features. In addition, a large majority of respondents want these two regimes to apply across borders in the future, which would mean harmonizing the rules, even if this question was not specifically addressed.

Interestingly, a fixed deduction rate (i.e., the supplier is authorized to deduct a certain percentage of the VAT on its costs, whatever its activities are) is supported by 30% of respondents compared to 45% who oppose it and a large balance with no opinion. We could consider this a fairly good score since this mechanism is unknown in the EU even though it is practiced, for example, in Australia. An overwhelming majority of respondents to this question, 80%, is in favor of the mechanism's optional nature. Indeed, its impact depends on the rate applied. If the rate is significantly lower than that enjoyed by taxable persons under the current rules, the mechanism may lose its appeal, apart from administrative simplification, which is probably relatively limited.

Finally, a large majority considers that it is necessary to update the VAT exemptions if they are maintained, which is also largely supported. More than 90% of respondents feel that this update should be based on CJEU case law. This may seem a little surprising because this jurisprudence is supposed to be binding on the member states and thus should already be part of their national law. However, this may reflect the fact that participants consider that some member states do not properly take this jurisprudence into account in local legislation. The remaining minority considers that the update should be based on the EU regulations applicable to financial and insurance services. The CJEU already partially achieved this result for fund management services, finding that these services include "at least" those listed in Annex II of the UCITS Directive 85/611 (*Abbey National,* C-169/04, 4 May 2006). By contrast, the court developed its own definition of insurance operations separate from that of the directive *(CPP*, C-349/96 25 February 1999) and clearly excluded the link between the tax and legal definitions, as confirmed, for example, in the *United Biscuits* case (C-235/19, 8 October 2020). It is true that this reference to other (non-VAT) EU legislation, *a priori* attractive in its simplicity, has the disadvantage of being dependent on tax legislation, which must be adopted unanimously by all member states, as opposed to legislation that is adopted by majority vote. In any case, it seems clear that respondents think that the rules exempting outsourced services from VAT should be clarified and harmonized.

Analysis by sector

Beyond the responses to the questionnaire, respondents had the opportunity to provide comments to clarify their positions or highlight additional issues. In all, 51 participants used this opportunity, which allows a sectoral analysis.

Asset management: Investment and pension funds

The analysis for the asset management sector is primarily based on the 14-page ALFI document, which is essentially similar to the one from its European umbrella organization, the European Fund and Asset Management Association (EFAMA), but also the comments from other national associations. The fund industry insists on the positive social and economic impacts of the VAT exemption applicable to investment fund management services. This exemption facilitates investment by preventing an additional tax burden, a policy reason that the CJEU highlighted in the *Abbey National* case. Consequently, subjecting management services to VAT when the ultimate investors are individuals, directly or indirectly (via insurance products or pension funds), could be detrimental. It would risk reducing these individuals' investment capacity, diverting them from fund investments to less productive ones, or leading them to invest in funds outside of the EU, which would have a negative impact on the level of investment. The associations representing pension funds are fully in line with these various considerations.

Private equity

Given that private equity is another facet of asset management, although it has different modalities, it is not surprising that the associations that have submitted comments (InvestEurope and LPEA) are in line with the fund sector.

Insurance

Although the insurance sector as a whole is also in favor of maintaining the VAT exemption for quite similar social and economic reasons, its position is actually influenced by the tax on insurance (IPT). While this tax goes relatively unnoticed in Luxembourg because its rates are rather low (4% and 6%), this is not the case in other countries such as Germany, Finland, or France where the rates may be equivalent to

those for VAT, i.e., 19%, 20%, or 24% on some or all insurance products. It should be remembered that, in addition to the IPT, which is not deductible, there is a "hidden VAT" that the provider, in this case the insurance company, bears on its costs.

Because of this very high tax burden, even taxation at the standard rate would be preferable for insurance companies. Indeed, in all cases, the hidden VAT would disappear. The replacement of the IPT with VAT at the same rate would be neutral for individuals and other taxpayers that cannot deduct VAT while it would be favorable for businesses which, generally, can deduct VAT on their costs. However, as mentioned above, not all member states are affected equally by this situation. This is reflected in the comments of some national associations while the position of Insurance Europe, the European umbrella organization for insurance associations, is in favor of the exemption, even if it should be improved, such as by introducing an option to tax.

Banking

Compared to the sectors discussed above, the banking sector has many different features. The first is the diversity of its services and products, which may include asset management services or the distribution of funds or insurance products whereas the previously discussed sectors primarily offer a single product. Another factor of diversity is the coexistence of services remunerated by commissions and so-called "margin" services, such as the granting of credit or purchases of foreign currency or securities. It may be difficult to determine the tax base for these services in the event that they become taxable: should the entire amount of the credit or sale be taken into account or only the margin on the assumption that the bank does not act as an intermediary? In addition, all types of consumers receive banking services whereas fund management services are primarily aimed at private investors and, in general, investment and private equity funds are final consumers since they cannot deduct VAT on their charges.

As a result, a large majority of respondents from the banking sector support the VAT exemption, including the sector's European umbrella association, the European Banking Federation (EBF), with some providing a neutral response or no response. However, there were a few minority voices in favor of abolishing the exemptions (one bank, one payment service provider, and two associations). These reflect the specific concerns of payment service providers, which have to pay large amounts of VAT on important investments, such as information technology.

Consumers

Commercial and industrial companies consuming services expressed themselves as well, mainly through their European association, BUSINESSEUROPE. To the extent that these companies can fully deduct VAT, they are affected by the "hidden VAT." Therefore, a reform leading to the taxation of financial services would seem appropriate. Nevertheless, these participants generally provided a "neutral" response when asked if the exemption should be maintained. Indeed, these respondents are conscious of the potential impact of full taxation at the standard rate for those that cannot deduct VAT (mainly individuals) and their comments take this issue into account. Therefore, they suggest that solutions such as a reduced rate, an option to tax, or even a zero rate (exemption with the right to deduct) should be explored in greater depth.

Only one association, from the Czech Republic, and 20 "citizens" represented private consumers. An overwhelming majority (85%) of these respondents is in favor of the exemptions and a slight majority considers that they work well or very well.

And in Luxembourg?

Finally, it should be noted that the Luxembourg associations that participated in the consultation, ABBL, ALFI, and LPEA, are unanimous in their “strong” support for the exemptions, even if there are nuances in their answers regarding the types of problems that derive from the exemptions, their respective acuteness, and proposed solutions. This should help the Luxembourg authorities in their assessment of the situation and the economic impact of the future legislative proposal, which, after its preparation by the EU Commission, will have to be discussed among, and approved unanimously by, the 27 member states.

Comments

Both the quantitative and the sectoral analyses indicate a general and clear support for the VAT exemptions with a need for improvements such as updated definitions, more efficient VAT group and IGP mechanisms, or even, to meet the expectations of businesses, the elimination of the “hidden VAT,” the generalization of the option to tax, or a zero rate.

The next step in this long process should be the publication of the Commission’s impact assessment and synopsis report based, inter alia, on the results of the consultation, but also a preliminary study carried out by a consortium of external consultants, the Commission’s own research, and discussions with various affected parties.

Bahrain

VAT rate may increase as from 1 January 2022

Bahrain may increase the standard rate of value-added tax (VAT) from 5% to 10% with effect as from 1 January 2022. Although the National Bureau for Revenue (NBR) has not yet made an official announcement, a VAT rate increase may be part of the economic improvement plans following the impact of COVID-19 on the economy and the Fiscal Balance Program.

Impact on businesses

Audits and queries

Businesses in Bahrain should expect an increased level of scrutiny from the NBR, as VAT may become a more important source of revenue. There may be an even greater requirement for taxpayers to ensure that they are fully VAT compliant, as penalties on the amount of tax due could be doubled as a result of a higher tax rate.

Cash flow

A rate increase also may impact cash flow for businesses due to the timing difference between the payment and the recovery of VAT, and cash flow planning may take on renewed significance. As such, businesses should review their internal systems and processes to prepare for a possible increase in the VAT rate.

Cost increase

Businesses whose sales are partially or fully VAT exempt (e.g., businesses in the financial services, insurance, and real estate sectors) may experience an increase in costs as a direct effect of a rate increase. Furthermore, a rate increase may cause an impact across all industry sectors, with the end

consumer ultimately bearing the brunt of an increase. It remains to be seen if some measure to relieve the impact of a rate increase, such as zero or reduced rates of VAT, would continue to apply to specific or essential goods and services.

Contracts and invoices

Taxpayers who carry on continuous or periodic supplies of goods or services should review existing contracts and documentation to prepare for any transitional provisions to be issued in the event of a rate increase. For example, taxpayers would need to determine the correct rate of VAT to charge on contracts and supplies that span both December 2021 and January 2022. As with the introduction in 2019 of VAT in Bahrain and the VAT increase in Saudi Arabia, transitional rules often are confusing for taxpayers and difficult to implement.

Comments

The tax authorities are expected to release additional details in the near future on the potential rate increase, including any guidance on transitional rules. In the meantime, taxpayers should start measuring the potential impact of an increased VAT rate on their cash flow, contracts, operations, IT systems, and supply chain.

Cambodia

Rules and procedures set forth to implement VAT on foreign e-commerce activities

Cambodia's Ministry of Economy and Finance (MEF) issued guidance (Prakas No.542 MEF.Brk ("Prakas No. 542")) on 8 September 2021 that is effective as from the same date and that sets forth the rules and procedures for the implementation of VAT in Cambodia in relation to certain e-commerce activities. This follows the 8 April 2021 issuance of Sub-decree No. 65, which set out the mechanism to implement VAT on electronic supplies of digital goods and services or other e-commerce activities for domestic consumption that are made by nonresidents that do not have a permanent establishment in Cambodia.

Among other things, Sub-decree No. 65 set out a number of relevant definitions, including the following:

- "E-commerce" means activities such as purchasing, selling, renting, and exchanging goods or services via electronic systems, including commercial and non-commercial activities or operations;
- "Digital goods" means intangible goods that are ordered, supplied, and delivered via electronic systems; and
- "Digital services" means services that are provided via electronic systems.

Prakas No. 542 clarifies that nonresidents that supply digital goods or services electronically to, or that use electronic systems to conduct e-commerce activities from overseas for, consumers in Cambodia are required to register for VAT purposes in Cambodia and file VAT returns if their turnover from these activities reaches a certain threshold. This is applicable for both business-to-consumer (B2C) and business-to-business (B2B) transactions. Other relevant provisions of Prakas No. 542 are summarized below.

VAT registration

- Nonresidents that derived annual turnover of KHR 250 million (around USD 62,500) or more in the prior year or that expect to derive turnover of KHR 60 million (around USD 15,000) or more for three consecutive months in the current year from e-commerce transactions with Cambodian consumers will be required to register for VAT purposes in Cambodia under the simplified VAT registration system within 30 days after satisfying the turnover threshold.
- The application for VAT registration can be completed in Khmer or English via the e-registration system (http://www.tax.gov.kh) or via a physical submission to the tax authorities.
- The registration fee is KHR 400,000 (around USD 100) and the fee to update registration information is KHR 200,000 (around USD 50).
- Nonresidents will receive approval of the VAT registration or an information update within seven to 10 business days. Once registration is approved, the tax authorities will issue the following documents in PDF format:

  Simplified VAT registration certificate;

  Tax registration card; and

  Notification letter regarding the nonresident's tax obligations.
- The tax authorities also have the right to unilaterally register a nonresident.

Other VAT obligations

Nonresident taxpayers that supply digital goods or services to, or that conduct e-commerce activities electronically for, consumers in Cambodia under the B2C model are required to file VAT returns on a monthly basis and pay the tax in KHR to the tax authorities by the 20th day of the following month.

Nonresident taxpayers that supply digital goods or services to, or that conduct e-commerce activities electronically for, consumers in Cambodia under the B2B model are also required to file VAT returns on a monthly basis by the 20th day of the following month, but they are not required pay the tax to the tax authorities. Instead, under the B2B model, resident taxpayers that purchase digital goods or services electronically from, or that otherwise enter into e-commerce transactions with, nonresident taxpayers are required to collect output VAT based on the "reverse charge mechanism" by filing VAT returns and paying the tax in KHR to the tax authorities by the 20th day of the following month. In such a case, the resident taxpayer can claim the collected output VAT as an input VAT credit, based on articles 29 to 39 and article 41 of the VAT Sub-decree.

Nonresident taxpayers are required to prepare reports on a monthly basis on transactions involving taxable supplies, based on the format prescribed by the tax authorities.

VAT rate

The VAT rate for the supplies described above is the standard 10% rate.

Exemption from VAT

Small taxpayers (as classified under a prakas, most recently Prakas No. 009 issued on 12 January 2021) that purchase digital goods or services electronically from, or that otherwise enter into e-commerce transactions with, nonresident taxpayers are exempt from the requirement to apply the VAT reverse charge mechanism for five years, effective from the 8 September 2021 date of Prakas No. 542.

Penalties

Failure to register, update information, submit tax returns, or pay tax to the tax authorities will result in penalties under the existing tax laws and regulations.

Other matters

Nonresident taxpayers that have registered under the simplified VAT registration system are exempt from patent tax (the patent tax is an annual tax on business activities determined based on the type of taxpayer and the level of turnover).

Prakas No. 542 also covers nontaxable supplies, taxable value, time of supply, and invoicing requirements.

China

General Customs Administration updates authorized economic operator system

On 13 September 2021, China's General Customs Administration (GAC) announced new customs credit management measures for enterprises (GAC Order No. 251, or Order 251) that revise and replace the current rules on the customs credit rating system. The new measures will come into effect on 1 November 2021.

Background

According to the current rules on the customs credit rating system, an eligible enterprise may fall under one of the following four categories based on its customs compliance status:

- Advanced certified enterprises;
- General certified enterprises;
- General credited enterprises; and
- Discredited enterprises.

The "advanced certified enterprises" and "general certified enterprises" (collectively, "certified enterprises") are regarded as the Chinese version of "Authorized Economic Operators (AEOs)" recognized by the World Customs Organization (WCO). The GAC has adopted categorized administration measures so that certified enterprises may enjoy better, expedited government services and less scrutiny from a customs perspective, while discredited enterprises will be subject to strict scrutiny from customs authorities.

It has been more than three years since the rules on the customs credit rating system were revised. Order 251 has been released to refine and improve the current system to make it more suitable to the new business and regulatory environment. More implementation guidance is expected to be updated and released soon.

Highlight of changes

Merger of "general certified enterprises" and "general credited enterprises"

After the new measures come into effect, the two categories under the current rules, "general certified enterprises" and "general credited enterprises," will be merged into one general category under which a vast majority of enterprises would fall. Therefore, only "advanced certified enterprises" will be considered as AEOs under the new measures. For enterprises that currently are rated as "general certified enterprises," they may no longer be able to enjoy certain benefits available for AEOs unless they could be recognized as "advanced certified enterprises" under the new measures.

More benefits granted to "advanced certified enterprises"

The new measures continue to offer priority treatment and other beneficial polices to “advanced certified enterprises” in respect of customs-related matters. They also formally introduce two more incentives, including:

- Priority treatment in being recommended to be registered with customs authorities of other jurisdictions for agricultural products and food importation purposes; and

- Lower inspection rate on the origin of export goods, where the rate for “advanced certified enterprises” could be less than 20% of the average inspection rate for all enterprises.

Extension of valid period for "advanced certified enterprises"

The valid period for "advanced certified enterprises" will be extended from three years to five years. Upon the expiration of the valid period, customs authorities will review the enterprise's status to determine whether to renew its rating as an "advanced certified enterprise" for another five years. In other words, an “advanced certified enterprise's” status will normally be reviewed every five years.

The extension of the valid period may help reduce the administrative burden for “advanced certified enterprises” in preparation of the materials for customs authorities' review. However, as customs authorities retain the right to perform reviews whenever special cases arise, an “advanced certified enterprise” should make efforts to continuously comply with customs regulations.

Introduction of a list of "seriously discredited enterprises"

A discredited enterprise will be further moved to a list of "seriously discredited enterprises" under the new measures in either of the following situations:

- The enterprise is subject to criminal liability for offenses of violating the laws and regulations for the safety of imported and exported food/cosmetics or smuggling solid waste; or

- The enterprise is subject to a customs penalty exceeding RMB 2.5 million as a result of the illegal import of solid waste.

The list will be shared by the customs authorities with other government agencies. Enterprises on the list will be subject to scrutiny not only from customs authorities but also from other government agencies.

Introduction of a "credit recovery mechanism"

The current rules allow an enterprise to be removed from the category of "(general) discredited enterprises" only after a two-year period of no violations. The new measures introduce a "credit recovery mechanism" for qualified discredited enterprises, which voluntarily make corrections and remove the negative consequences of violations, so that such enterprises' compliance ratings could be upgraded more quickly. For example, where an enterprise was recognized as a "(general) discredited enterprise" because of its failure to pay customs duties overdue for more than three months, the enterprise (which has voluntarily made corrections) may apply to upgrade the rating after three months ("the recovery period") since it was recognized as a "(general) discredited enterprise." The recovery period could be three months, six months, or a year, depending on the nature of the violations.

Comments

The Chinese customs authorities have been actively promoting the awareness of the customs credit rating system, as well as encouraging qualified businesses to apply for AEO status (i.e., certified enterprises in China). In addition, China has entered into AEO mutual recognition agreements with more than 40 jurisdictions and has been engaged with other trading partners for AEO mutual recognition. An "advanced certified enterprise" may not only enjoy preferential treatment from the Chinese customs authorities, but also may receive certain benefits in the jurisdiction that has signed an AEO mutual recognition agreement with China. Businesses are advised to evaluate their current status and continuously improve the efficiency of customs compliance management in order to apply for AEO status. Since more updates to the implementation guidance (notably, the updates to the criteria of "advanced certified enterprises") are expected to be released soon, businesses also are advised to closely monitor future regulatory developments.

Norway

Launch of eVAT returns begins on 1 January 2022

On 1 January 2022, a new and modernized electronic VAT return (eVAT return) will be launched in Norway. All types of VAT returns will be affected and will share a common information structure and set of rules. The general industry (RF-0002) and primary industry (RF-0004) VAT returns will be launched first (on 1 January 2022). As such, VAT returns for periods beginning on or after 1 January 2022 in these industries must be submitted in the new format in accordance with relevant periodical VAT reporting deadlines. For taxpayers that submit VAT returns on a weekly, monthly, or bi-monthly basis, the first VAT reporting period using the new format will take place in 2022, while taxpayers that submit VAT returns annually will submit their first return using the new format in 2023. All other types of VAT returns will be launched at a later date still to be determined, including returns for reverse tax liability (RF-0005), VAT compensation (RF-0009), VAT on e-commerce (RF-1292), maritime share fishing *(lottfiske)*, and maritime average losses *(havari).*

SAF-T codes

The eVAT return will use XML format and SAF-T (Standard Audit File Tax) VAT codes. Fixed fields in the current VAT return will be replaced by a dynamic list of specification lines that are based on SAF-T codes,

and reporting will be done only on lines that are relevant for the business. The eVAT return, however, will continue the requirement of reporting at a very aggregated level, with reporting of aggregate amounts within the different VAT types and rates.

The eVAT return will be a separate report and different from the SAF-T file that applies for the exchange of accounting data in tax audits and controls. The SAF-T file and eVAT return, however, will be closely related since the SAF-T file provides a standardized extract of the accounting information and VAT treatment, which will be the basis of the amounts reported on the eVAT return.

The use of SAF-T codes is not mandatory for bookkeeping purposes. Taxpayers will continue to be allowed to choose between the use of separate accounts for different VAT types and rates, the use of internal VAT codes, or combinations of "clean" accounts and VAT codes for bookkeeping purposes. Nevertheless, the specification requirements in section 3-1 of the Bookkeeping Regulations for account and VAT specifications must be met, and it is these specification requirements that impact whether a VAT code is mandatory or voluntary to use. However, extensive use of VAT codes that aligns with SAF-T codes will simplify reconciliation and reporting, and the introduction of SAF-T has facilitated increased use of VAT codes for accounting purposes.

System-to-system and web portal reporting

The tax authorities are encouraging businesses and advisors, upon launch, to submit eVAT returns (using XML files) directly from their accounting systems (through an Altinn API). The tax authorities are working closely with system suppliers to facilitate such system-to-system submissions. The tax authorities do not set requirements for what the report should look like in the accounting system. Their goal is for users to keep accounts as normal, and for the system to compile the information from the accounts to the eVAT return, so that the taxpayers easily can submit the return.

However, the tax authorities are developing a web portal where taxpayers will be able to access VAT registration information and directly upload VAT XML files. Taxpayers also will be able to manually prepare, edit, and submit eVAT returns on the web portal. The eVAT return will be logically grouped for the SAF-T VAT codes to be easily available.

The option to use the web portal is intended to be a permanent alternative to the system-to-system submission. Even if a taxpayer has an accounting system that may be used to submit eVAT returns directly to the tax authorities, the taxpayer may choose, rather, to use the web portal. Thus, the alternative to use the web portal will be a process for many businesses that for various reasons do not have the desire or opportunity to submit an eVAT return directly from their accounting system to the tax authorities. This may be particularly relevant for certain taxpayers, such as foreign companies VAT registered in Norway, or VAT groups. For VAT groups, the reporting entity must deliver the VAT group report from the accounting system or in the portal on behalf of all the jointly registered entities.

Required line specifications

In the eVAT return, separate specification lines will be required to indicate the amount of the output and/or input VAT that refers to withdrawal, losses on outstanding claims, reversal, and adjustment of input VAT. Currently, there only is a requirement to specify these amounts in the accounting records. The eVAT return, thus, will have a greater degree of detail compared to the current VAT return in terms of these specifications. No new SAF-T codes have been published for these specifications, but the eVAT return will be designed so that there is a separate specification line within the relevant SAF-T codes. The following amounts will be required to be entered aggregated per specification type:

- Withdrawal of goods and services pursuant to sections 3-21 and 3-22 of the VAT Act.
- Losses on outstanding claims and cancellations that are deemed to be losses for VAT purposes. Section 4-7 of the VAT Act provides further rules on when the basis for calculation may be corrected. Corrected output VAT regarding deemed losses for VAT purposes should be reported as an increase in input VAT, and the specification line, therefore, only will be available in connection to input VAT codes.
- Reversal of input VAT on passenger vehicles or from the sale, etc., of real property before completion, pursuant to sections 9-6 and 9-7 of the VAT Act.
- Adjustment of input VAT on capital goods pursuant to the adjustment rules in chapter 9 of the VAT Act.

Language, remarks, and attachments

The eVAT return will support English and Norwegian (Bokmål and Nynorsk) languages. Furthermore, remarks may be submitted in lines and fields using pre-defined remarks or free text. In addition, attachments may be uploaded. Each submission may include up to 50 file attachments with a maximum of 25 MB per file. The following file formats are supported: pdf, open office xml, open document format, JPG, and PNG.

"Supplementary return" not supported

If changes are made to a taxpayer's accounting system that results in the need to correct an eVAT return after 1 January 2022, a new complete eVAT return will be required to be submitted (i.e., the most recent eVAT return will be the valid return). Supplementary returns will, therefore, no longer be relevant after 1 January 2022.

However, the current format must be used when submitting corrections that include VAT periods beginning prior to 1 January 2022, even if the submission happens after that date. Hence, the new format only will be used to correct returns for VAT periods that begin on or after 1 January 2022.

ID-porten login

For general industry and primary industry eVAT return submissions, ID-porten (e.g., minID, BankID) will be required to be used for login and authentication for both system-to-system and web portal submissions. Therefore, the current Altinn login with username and password will no longer be used. However, Altinn still will be used for identification and information exchange.

The tax authorities are expected to provide further information on how to log in in order to submit other types of eVAT returns.

Altinn roles

Altinn roles will be used both for system-to-system reporting and in the web portal. The person submitting the eVAT return must be authorized by holding the necessary Altinn roles. Some Altinn roles entitle a person to prepare and submit the eVAT return, while other roles only entitle a person to prepare the eVAT return.

Roles to prepare eVAT returns include a responsible auditor, an accounting employee, an accountant without signing rights, and an assistant auditor. Roles to submit eVAT returns include a person with limited signing rights, a contact person for a Norwegian branch of a foreign company, and an accountant with signing rights.

These Altinn roles are pre-assigned to persons with specific external roles in the business in connection with registration in the Brønnøysund register (i.e., the government registry that includes company registrations), such as accountants and general managers. Roles or rights to a specific form also may be delegated. In order to be delegated an Altinn role or rights to a specific form, a person must have a Norwegian national ID number (or a "D number" for nonresidents) for this purpose. There is no requirement to have a formal role in the business to be assigned Altinn roles or rights to specific forms.

Consultation paper released on disclosure of sale and purchase transactions

In parallel with the introduction of a new eVAT return, the tax authorities also are considering introducing transaction-level reporting for sales and purchase transactions for companies subject to bookkeeping obligations and public enterprises. This proposal will require a change in the law and regulations, and the tax authorities have released a consultation paper on the proposal (comments may be submitted through 26 November 2021). Such reporting will come as an addition to the eVAT return and is expected to take effect in 2024.

Comments

In preparation for the first eVAT return submissions, taxpayers should:

- Familiarize themselves with the new requirements and assess any implications in regard to the VAT process;
- Familiarize themselves with the relation between the eVAT return and the SAF-T and potentially carry out a SAF-T/VAT reconciliation; and
- With regard to systems, investigate how to adapt to the new requirements and, if necessary, determine if any changes need to be done to technical interfaces.

Thailand

VAT registration rules issued in relation to electronic services provided from abroad

A ministerial regulation (No. 377) issued on 23 August 2021 and a notification from the Director-General of the Thai Revenue Department (No. 241) issued on 16 August 2021 set forth the rules, procedures, and conditions for the VAT registration and for the notification of changes in details of the VAT registration for certain business operators providing electronic services from abroad and electronic platform operators located abroad. The ministerial regulation and notification were issued in light of amendments to the tax legislation regarding the imposition of VAT that apply to income from electronic services received as from 1 September 2021. The key rules, procedures, and conditions set forth in the ministerial regulation and notification are summarized below:

- A service provider providing electronic services from a foreign country to be used in Thailand by a non-VAT-registered user, or an electronic platform operator located abroad that operates a platform through which service providers supply electronic services from abroad to be used in Thailand by a non-VAT-registered user, is required to apply for VAT registration within 30 days from the date the

annual gross revenue derived from such transactions exceeds THB 1.8 million, using the application form prescribed by the Director-General of the Revenue Department (Form P.P.01.9) and providing the required documents specified on the Revenue Department's website;

- An applicant that is subject to "prohibitions" (e.g., a person whose VAT registration has been revoked by the Director-General of the Revenue Department, a person with no actual place of business operations, or a person that failed to deliver required documentary evidence to revenue officers) will not be allowed to register for VAT; and
- If there is any change in the key details regarding the VAT registration (e.g., name and address of the VAT operator, suspension of business for more than 30 successive days, relocation of the place of business, or cessation of business), the change must be reported using the form prescribed by the Director-General of the Revenue Department (Form P.P.09.9) via the Revenue Department's website within 15 days from the date of the change.

Other news

OECD

New model manual published on exchange of information for tax purposes

On 16 September 2021, the OECD announced the publication of a new version of the model manual to support tax authorities in relation to the exchange of information for tax purposes. The new version of the manual was jointly published by the Global Forum on Transparency and Exchange of Information for Tax Purposes, the World Bank Group, and the African Development Bank.

The previous version of the model manual that was issued in 2013 covered the exchange of information on request and the spontaneous exchange of information. The new edition includes coverage of a broader range of exchange of information tools, such as simultaneous tax examinations by two or more jurisdictions and tax examinations carried out abroad.

European Union

European Commission publishes September 2021 infringements package

On 23 September 2021, the European Commission released its September 2021 infringements package indicating cases where the Commission is pursuing legal action against EU member states for failing to comply with their obligations under EU law.

The first step in the infringement procedure is a "letter of formal notice." The relevant member state has two months to address the shortcomings identified by the Commission. If the Commission is not satisfied with the response and concludes that the member state is failing to fulfill its obligations under EU law, the Commission may move to the second stage of the procedure, which is to send a "reasoned opinion," i.e., a formal request to comply with EU law. If the member state does not comply within two months of the date of issue of the reasoned opinion, the Commission can refer the case to the Court of Justice of the European Union.

The September 2021 infringements package includes the following in respect of taxation and customs:

Letters of formal notice

Letters of formal notice are to be sent to Cyprus, the Czech Republic, and Greece.

- Cyprus: Regarding the incorrect transposition of the interest limitation rule in article 4 of EU directive 2016/1164 (the anti-tax avoidance directive or ATAD). Cyprus has used the option to exempt financial undertakings from the ATAD interest limitation rules; however, the respective domestic legislation goes beyond the permitted exemptions and provides unlimited deductibility of interest for corporate income tax purposes for securitization entities, which do not qualify as financial undertakings under article 2(5) of the directive.
- Czech Republic: Regarding the failure to communicate all required national measures fully implementing EU directive 2017/952 (ATAD 2) as regards hybrid mismatches with third countries. The deadline for communication of the measures was 31 December 2019. The Czech Republic only partially notified the relevant measures and has two months take the further measures necessary.
- Greece: Regarding the failure properly to apply EU rules on second-hand vehicles purchased in other EU member states. Greece's tax registration procedure discourages second-hand vehicles being placed into circulation in Greece in favor of the sale of similar products available on the domestic market. In addition, Greece prohibits the registration of specific categories of second-hand vehicle purchased in other EU member states. Accordingly, Greece has failed to fulfill its obligations related to the free movement of goods and the prohibition to introduce discriminatory fiscal treatment for products under articles 34, 36, and 110 TFEU.

Reasoned opinion

A reasoned opinion is to be sent to Italy for the failure to notify measures for the transposition into national law of EU directive 2018/1910 (the VAT "quick fixes" directive). The quick fixes (concerning call-off stock arrangements, chain transactions, and application of the VAT exemption for intra-EU supplies of goods) harmonize and improve certain VAT rules to simplify trade between member states and are based on the principle of taxation in the member state of destination. Member states should have adopted and published the necessary national provisions by 31 December 2019.

European Union

Transitional origin rules apply in Pan-Euro-Mediterranean área

After a renegotiation process, the European Union (EU) has succeeded in applying updated rules of origin in the Pan-Euro-Mediterranean (PEM) area with a number of contracting parties. These updated rules bring administrative simplifications and new possibilities with the introduction of full cumulation, the abolition of the drawback ban, and the calculation of average values.

From 1 September 2021, the new rules of origin apply between the EU and each of the following partners: Albania, Faroe Islands, Georgia, Iceland, Jordan, Norway, Palestine, and Switzerland. From 9 September 2021, the new rules of origin also apply between the EU and North Macedonia.

The negotiation process with most other partners (Bosnia and Herzegovina, Egypt, Israel, Kosovo, Lebanon, Montenegro, Republic of Moldova, Serbia, Turkey, and Ukraine) is ongoing and at different stages of progress. However, Algeria, Morocco, and Tunisia have not yet endorsed the new rules. The EU remains committed to finalizing the negotiation process so that a single set of rules of origin applies throughout the PEM area.

This article provides a brief overview of the changes together with general considerations for organizations required to implement the new rules.

Background

The system of PEM cumulation of origin allows for the application of diagonal cumulation between the EU, European Free Trade Association member states, Turkey, the countries that signed the Barcelona Declaration, the Western Balkans, and the Faroe Islands. It is based on a network of free trade agreements having identical origin protocols. Those origin protocols are being replaced a single regional convention (the PEM Convention) to facilitate the ongoing revision of the PEM rules of origin with the aim of modernizing and simplifying the rules.

The EU is in the process of amending 21 origin protocols within the PEM area by implementing an alternative set of rules of origin applicable alongside the rules of the PEM Convention on a bilateral basis, pending the adoption of the revised Convention.

New rules: Administrative simplifications

The transitional rules (see guidance) provide for administrative simplifications, in particular:

Proof of origin

The EUR-MED proof of origin is eliminated and a single proof of origin (EUR.1 or origin declaration) will suffice for a period for 10 months instead of four months. Businesses using the transitional rules of origin must include the wording “transitional rules” in section 7 of the EUR.1 certificate. Two new codes have been created in TARIC (the integrated tariff of the EU) to be used in customs declarations:

- U075 for the EUR.1 movement certificate (subject to the condition that in box 7 “transitional rules” is indicated); and
- U076 for the origin declaration (subject to the condition that the declaration mentions “origin according to the transitional rules”).

In future it will be possible to replace the certificates of origin with origin statements by registered exporters and to issue electronic origin certificates.

Accounting segregation

When requesting an authorization for accounting segregation, exporters no longer need to justify that keeping separate stocks has a considerable cost or gives rise to material difficulties; it is sufficient to indicate that identical and interchangeable materials are used in the working or processing of a product to obtain authorization to apply accounting segregation.

Non-manipulation rule

The “direct transport” rule is replaced with a ”non-manipulation” rule with regard to the transport of goods from one PEM contracting party to another PEM contracting party; goods may transit through third countries if exporters can prove that the goods have not been “manipulated” or altered during that transit. Splitting of consignments in a third country also is allowed, provided that the goods remain under customs supervision. In practice, this can be proven by a certificate of non-manipulation or a copy of the re-exportation declaration.

New rules: Other beneficial changes

More flexible and simpler product rules

The transitional rules generally are more flexible. For example, the new double transformation for textiles (more finishing operations confer origin), multiple choice rule for chemicals (chemical reactions confer origin), etc. However, there are a very few cases where the transitional rules are stricter than the old rules, in particular for products containing sugar.

More flexible tolerance rules

The tolerance is increased from 10% to 15% of non-originating materials on the basis of net weight for agricultural goods, while for other products (except for products falling within chapters 50 to 63 of the Harmonized System (HS), textiles and textile articles) the tolerance is set to 15% of non-originating materials based on the ex-works price of the final product.

Possibility of duty drawback

Prohibition of duty drawback is eliminated for all products, with the broad exception of materials used in the manufacture of products falling within the scope of chapters 50-63 of the HS.

Value limitation rules

There is increased flexibility on value limitation rules: the exporter and EU suppliers making out suppliers' declarations now have the flexibility to request authorization from the customs authorities to calculate the ex-works price and value of non-originating materials on an average basis, allowing fluctuations in costs and currency rates to be taken into account, providing more predictability.

"Full" cumulation

Diagonal cumulation for all products is maintained on the condition that identical rules of origin are applied between the partners involved in the cumulation. Additionally, generalized full cumulation is provided for all products except those in chapters 50-63 of the HS. For those products, the transitional rules provide for bilateral full cumulation.

Comment

Currently, there are therefore two sets of rules of origin in force. While businesses may continue to use the "old" rules of origin in trade with PEM partners, they may not use the new rules to determine the origin of their products for those destination countries with whom the negotiation process still is ongoing. In practice, this means that there is a need to indicate which rules are used (PEM Convention or transitional rules) in suppliers' declarations when indicating the partner country; if no specific rules of origin are stated, the assumption is that the old rules have been followed.

Businesses using both sets of rules to trade with various partners within the PEM area must ensure that they comply with the relevant requirements. Adhering to the transitional rules does not automatically guarantee compliance with the old rules, and vice versa. Where businesses trade with multiple countries in the PEM area, it is important to verify that in-house procedures to differentiate between the two sets of rules have been implemented correctly, e.g., in the enterprise resource planning (ERP) system, (long-term) suppliers' declarations, and tolerance calculations.

ATO publishes new GST assurance guidance for large taxpayers

On or around 15 October 2021, the Australian Taxation Office (ATO) published on its website further guidance to assist Top 100 and Top 1,000 taxpayers in relation to aspects of goods and services tax (GST) streamlined assurance reviews (GST SARs). The new guidance comprises:

- Guide to Independent Data Testing by Third Party Advisors; and
- GST Analytical Tool (GAT) Frequently Asked Questions.

Background and context

The ATO has been undertaking GST SARs with Top 100 and Top 1,000 taxpayers as part of its Justified Trust framework since 2019. With increasing numbers of GST SARs undertaken in the time since, the ATO has been learning and adapting, and making changes to the way GST SARs are carried out. Since late 2020, this has included giving taxpayers the option of engaging an independent third party advisor to perform the data testing component of a GST SAR, rather than the ATO conducting the data testing. The testing is generally of approximately three months of transactional data, to look for weaknesses in GST controls.

In our experience, taxpayers who have engaged a third party advisor to do the data testing for their GST SAR have done so for several reasons. These include advisor familiarity with the taxpayer's business operations and systems, the advisor's specialist GST and data analytics experience, and efficiencies arising from leveraging preparatory GST data testing, together with the opportunity for taxpayers to validate or reconcile errors/exceptions identified through the data testing and for that information to be included in the advisor's report of factual findings when it is provided to the ATO.

Previously, third party advisor data testing has been in accordance with the draft version of the guide as made available to stakeholders by the ATO in mid-late 2020. The key issues addressed in the final version of the guide, including clarifications in response to feedback about the draft version and its application to live data testing, are summarized below.

Guide to Independent Data Testing by Third Party Advisors

The guide is intended to help taxpayers who have been selected for a Top 100 or Top 1,000 GST SAR and are considering engaging a third party advisor to perform the data testing component of the review, together with third party advisors.

Broadly, the guide sets out:

- The conditions that must be satisfied for a taxpayer's third party advisor to carry out data testing that the ATO can rely on for the GST SAR;
- The process involved in identifying the scope of, and the methodology for, the data testing; and
- The ATO's expectations for the report of factual findings that the third party advisor will provide once the data testing is performed.

When does the ATO consider third party data testing is appropriate?

A taxpayer who wishes to have a third party advisor perform the data testing will need to engage one that:

- Has the GST expertise and the level of system capability necessary to perform the testing;
- Has the capacity to do the data testing within the timeframe agreed with the ATO (usually four weeks from the test plan agreement date); and
- Is independent from the day-to-day operations of the taxpayer's enterprise and has not been involved with any aspect of the underlying data that will be tested, including not being involved in the data input/business activity statement (BAS) preparation exception reporting process or having responsibility/accountability for controls relating to data and BAS preparation.

The guide helpfully sets out a range of example scenarios to assist taxpayers understand whether a third party advisor's involvement with their enterprise could present "independence" concerns for the ATO, and potentially rule the advisor out from doing the data testing for the GST SAR.

Scenario	ATO view of perceived risk to independence and objectivity
Third party advisor (TPA) engaged to help taxpayer prepare for the GST SAR	Low perceived risk
Taxpayer uses TPA's software to prepare its BAS	Software use alone would not compromise independence – but need to assess whether related support/services from TPA would
Taxpayer's tax function is outsourced to/cosourced with the TPA	Significant perceived risk
TPA was involved with design and set up of taxpayer's business systems	Significant perceived risk
Taxpayer systems embed and run data testing based on testings developed by the TPA	Need to assess independence impact on a case-by-case basis

Other conditions are also required to be met when a taxpayer proposes that its data testing be done by a third party advisor. These relate to the taxpayer and the third party advisor engaging collaboratively with the ATO to agree upon the data testing plan up front, as well as to address issues or concerns raised by the ATO as a result of AP, AR, and BAS walkthroughs which occur during the testing phase.

The guide makes clear that the choice to engage a third party advisor to do the data testing, and the costs thereof, rest with the taxpayer. In the absence of a taxpayer making that choice, or its chosen third party advisor being unable to meet any of the conditions, the data testing will be done by the ATO.

What is the process when a third party advisor will be doing the data testing?

The guide emphasizes that the data testing process needs to be tailored to the individual circumstances of the taxpayer being reviewed. The scope of the testing and the data test period are now both to be considered and proposed by the third party advisor. This is a change from the approach taken to date, which has commonly involved the ATO deciding on the scope of testing and the data test period. It reflects the ATO's recognition that a taxpayer's third party advisor usually will have much more familiarity

with the taxpayer's business operations and systems and be in a better position to determine what data testing is required and is appropriate. The testing proposed by the third-party advisor is to be discussed and agreed with the ATO up front. For Top 100 taxpayers, this will occur after the ATO has been walked through the taxpayer's business systems (e.g., IT, accounts payable, accounts receivable, BAS preparation, etc. systems). For Top 1,000 taxpayers, the discussion and agreement with the ATO will occur during the two-month period after the taxpayer is notified of its selection for a GST SAR, but before the ATO is walked through the taxpayer's business systems.

The guide sets out a four-part process for determining the proposed scope of the data testing, with considerable detail provided to assist taxpayers and third party advisors understand the ATO's expectations. In summary, the relevant considerations are:

Entity selection

For Top 100 taxpayers, the selection of the entity (or entities) whose GST reporting is to be tested needs to offer at least 75% coverage of the GST throughput of the taxpayer's economic group, and should extend to include entities or business divisions with unique or complex transactions that may present GST risks, or demonstrate other features of concern to the ATO (e.g., major business/IT systems changes, changes to business operating model, high staff turnover, outsourcing of business reporting functions, etc.).

For Top 1,000 taxpayers, the ATO generally will expect to review the largest GST reporter in the economic group, together with any other entities that pose potential GST risks due to the type of transactions undertaken, major business systems changes, etc.

Data test period selection

As a general rule, a data set of at least three consecutive months, from within the 12-month period aligning to the taxpayer's most recent income tax return, is considered to be an appropriate sample for businesses with a stable supply and acquisitions base. The guide lists a range of factors that may affect the selection of the data test period, e.g., M&A activity, restructuring, rapid growth, changes in accounting systems/key accounting staff, significant GST trending deviation, etc.

Test data selection

The data selected for testing needs to be detailed, correct, and complete. The data generally will come from accounting systems and source systems. The guide sets out the mandatory minimum reports (and required fields) to be included in the data set for all taxpayers, and has been expanded since the draft version.

Testing plan and data tests development

The unique nature of each taxpayer's business/industry sector, its operating circumstances, and accounting systems will dictate the make-up of the testing plan and the data tests to be done. The ATO expects relevant tests from its list of e-Audit tests to be included, together with any additional tests specific to the taxpayer's circumstances, etc.

Report of factual findings

The third party advisor is required to provide the ATO with a full report of factual findings following the completion of data testing. The guide sets out all of the information that the report must contain,

including the detailed information about each test performed, procedures associated with each test performed (e.g., data formatting/manipulation, control checks, etc.), the test results, and full details about all errors and exceptions identified. In circumstances where the taxpayer and third party advisor are unable to reconcile or validate errors and exceptions, further testing may be required.

Other issues clarified via consultation for the guide

The ATO has clarified the following matters in relation to third party advisor data testing via a feedback compendium:

- The data testing requirements set out in the guide are specific to a "live" GST SAR. Although there is a correspondence between the testing principles in the guide and those in the ATO's *GST Governance, Data Testing and Transaction Testing Guide,* there is no guarantee that the scope, methodology, and data testing plan that were used by a taxpayer in anticipation of being selected for a GST SAR, or as part of the taxpayer's internal GST assurance monitoring processes, will be accepted by the ATO for the purposes of the GST SAR. Nonetheless, the ATO has indicated that it will, where possible, leverage the data testing done before the commencement of the GST SAR where the scope, methodology and tests performed align with the GST SAR; and

- The fact that a taxpayer uses complex systems (i.e., multi-billing and numerous source systems) does not preclude data testing by a third party advisor.

GST Analytical Tool (GAT) Frequently Asked Questions

The GAT is a tool developed by the ATO in 2019 to provide additional assurance that a taxpayer is reporting the correct amount of GST payable (Label 1A) and input tax credits (Label 1B) and ultimately paying the correct net amount of GST. The GAT involves a top-down approach, by identifying differences between the accounting figures reported in the taxpayer's audited financial statements and the GST reported in the taxpayer's BASs for the same 12-month period, and then seeking to understand/explain those differences, preferably supported by objective evidence.

The GAT now has a role in most GST assurance reviews. Separate to this, the ATO considers that large GST taxpayers should be incorporating the GAT (or an equivalent reconciliation of GST outcomes and management accounts) into their own ongoing GST governance and GST risk management processes, and applying it at least annually.

Some of the key points contained in the GAT FAQs include the following:

- A GAT analysis is required for Top 100 GST SARs (except for taxpayers in predominantly input taxed sectors e.g., banking and financial services).

- A GAT analysis is usually required in Top 1,000 GST SARs for taxpayers mainly making taxable supplies. Whether Top 1,000 taxpayers in the property or insurance sectors, or with very complex structures, will need to do a GAT analysis will be determined on a case-by-case basis. Use of the GAT in its current form is excluded for taxpayers in predominantly input taxed sectors.

- A GAT analysis is encouraged, but not required, for Top 1,000 taxpayers undergoing a combined income tax and GST assurance review (CAR). If the taxpayer has done a GAT analysis, the ATO will review it. The ATO is not proceeding to use "GAT-Lite" in CARs (i.e., a version of the GAT applied only to the supply/revenue side of a business).

- Where a GAT analysis is required as part of a GST SAR, the taxpayer is expected to do it early on, so that the ATO can use it to inform areas of focus during the review.
- Although the ATO is willing to collaborate with taxpayers to help them get the GAT analysis done, generally the ATO will not do it for the taxpayer.
- The GAT analysis is intended to match the scope of the assurance review (i.e., generally, at least 75% of the GST throughput of the taxpayer's economic group).
- The GAT results contribute to the rating given to the taxpayer for the fourth focus area of the Justified Trust methodology for a GST SAR (i.e., understanding and for explaining the various streams of economic activity and how they are treated for GST), and are also taken into account in determining the overall level of GST assurance for the taxpayer.
- The ATO uses professional judgment to evaluate the taxpayer's performance in the fourth focus area, primarily based on the ATO's level of understanding of the reasons for variances between the accounting and GST results, and objective evidence provided by the taxpayer where there are gaps in the ATO's understanding. The ATO has regard also to the unexplained net GST dollar variance and the effective net GST rate resulting from the GAT analysis but does not expect a full reconciliation of the BAS figures to the taxpayer's accounts. It has not set an "acceptable"/"non-material" level of variance (in either percentage or dollar terms).
- The use of the GAT in GST SARs to date has resulted in all taxpayers reaching either a Stage 2 rating (i.e., ATO does not fully understand why accounting and GST results vary and/or there is insufficient support from objective evidence) or a Stage 3 rating (i.e., ATO understands the various streams of economic activity and why accounting and GST results vary; objective evidence provides sufficient support).

The GAT FAQs also addresses several issues that are more technical/circumstance specific in relation to using the GAT and addressing/explaining variances.

In addition to the GAT FAQs, the ATO also has added to its website two example documents that set out the results of a GAT analysis for two fictitious taxpayers, one in the Top 100 and one in the Top 1,000. These examples are not new, having been shared by the ATO with taxpayers undergoing GST assurance reviews during the past year or so. The examples outline the steps involved in a GAT analysis and offer a general indication of how the ATO considers the results of a GAT analysis can be usefully presented.

Observations

The new guidance is welcome for the clarification it brings in relation to having data testing for a GST SAR done by a third party advisor, as well as regarding the ATO's expectations regarding the use of the GAT both in the GST SARS and CARs context and more generally.

Both guidance products reflect the very high bar the ATO has set for GST taxpayers when it comes to GST governance under a Justified Trust framework.

Also welcome is the collaborative approach the ATO has taken in developing the new guidance, using interactions and consultations with taxpayers and professional advisors, including Deloitte Australia, to gain a better appreciation of the experiences of large taxpayers undergoing a GST SAR.

Tax incentives proposed for new cooperation zone in Hengqin

On 5 September 2021, China's Central Committee of the Communist Party of China and the State Council released a plan for building a Guangdong-Macau in-depth cooperation zone in Hengqin, which is a region located in the Zhuhai, Guangdong Province. The plan aims to encourage further economic development in Hengqin, a more diversified economy in Macau, and a new stage of comprehensive cooperation between Guangdong and Macau.

The plan proposes various preferential tax policies, including enterprise income tax (EIT) and individual income tax (IIT) incentives, as well as import duty relief.

Although detailed guidance of these preferential tax policies is yet to be released, this article discusses Deloitte China's preliminary observations based on other similar tax incentives that were or are still applicable in Hengqin and neighboring regions.

Reduced EIT rate of 15%

The plan proposes a reduced EIT rate of 15% for qualified enterprises. A similar incentive was applicable in Hengqin (Caishui [2014] No. 26 (Circular 26) and Caishui [2019] No. 63 (Circular 63)) where qualified enterprises engaged in an encouraged business (as prescribed in the catalogue released in connection with Circular 26 and Circular 63) as their primary business were able to enjoy a reduced EIT rate of 15%. The catalogue consisted of 80 encouraged industries classified into six categories: high and new technologies (37 industries); pharmaceuticals and healthcare (13 industries); science and technology, education, and research and development (10 industries); cultural creativity (5 industries); business and trade services (7 industries), and tourism (8 industries). The two circulars and the catalogue expired on 31 December 2020.

A new catalogue is expected to be released soon, based on the previous catalogue, and may include more industries in the following four new categories (which are specified in the plan as the new encouraged businesses):

- Science and technology, research and development, and high-end manufacturing;
- Macau branding industries, such as traditional Chinese medicine;
- Cultural tourism, exhibition, and trade; and
- Modern finance.

As part of the plan, other EIT-related incentives also have been proposed that would be available to enterprises in the cooperation zone. Taxpayers would be able to take an immediate tax deduction or accelerated tax depreciation or amortization for eligible capital expenditures. For taxpayers established in the cooperation zone that are engaged in the industries of high and new technologies, tourism, and modern services, a tax exemption would apply to certain income derived from new direct foreign investment. These tax incentives should encourage enterprises to invest in Hengqin in industries (such as research and development, manufacturing, etc.) that require a large investment in fixed assets, as well as boost new outbound investment.

Individual income tax incentives

The plan proposes the following IIT incentives:

- A partial IIT exemption would be available to highly skilled and urgently needed talent working in the cooperation zone to achieve a 15% effective tax rate; and
- For Macau residents working in the cooperation zone, the difference of IIT paid in Mainland China and the tax that would be payable on the same income in Macau would be exempt from IIT.

No details have been disclosed in the plan on how to assess the qualification of highly skilled and urgently needed talent (qualified talent). However, in regard to a similar IIT incentive that currently applies in Zhuhai (as part of the IIT subsidy available in the Guangdong-Hong Kong-Macau Greater Bay Area (GBA)), qualified talent must satisfy basic criteria related to citizenship or residency, working requirements, IIT paid in Mainland China, and acting with integrity, as well as other qualification requirements. Also, the current GBA IIT subsidy only applies to foreign talent, while the first item of IIT incentives proposed in the plan would apply to both domestic and foreign talent working in the cooperation zone.

In the proposal for the IIT incentive for Macau residents working in the cooperation zone, “Macau residents” is not defined in the plan. However, based on a similar incentive for Hong Kong and Macau residents working in Hengqin that no longer applies, "Macau residents" was defined as individuals who obtained Macau permanent resident status under Law No. 8/1999 of the Macau SAR. Macau residents working in Hengqin included those who were employed to work or provided independent personal services in Hengqin.

The IIT incentives proposed in the plan would allow for an immediate exemption on IIT. This is unlike the current IIT subsidy offered to qualified talent working in the GBA where the tax authority first collects the full amount of the IIT based on the general calculation method, and then the finance department provides a tax-exempt subsidy to the qualified talent.

One of the key points of the plan is to build a new mechanism of “mutual communication, joint construction, joint administration, and shared benefits” between Guangdong and Macau. As such, Guangdong and Macau would jointly establish a management committee for the cooperation zone, which would have as co-chairs the Governor of the Guangdong Province and the Chief Executive of the Macau SAR. This new cooperation mechanism would optimize and simplify the application requirements and procedures for enjoying the IIT incentives, so as to attract more Macau residents and related talent to Hengqin for employment and entrepreneurship.

Import duties on goods

The plan proposes to implement a policy of relaxing customs supervision on goods flowing across the “frontier” and strictly managing customs supervision on goods flowing across the “second tier.” The plan defines "frontier" as the area between Hengqin and the Macau SAR, and "second tier" as the area between Hengqin and other areas within the customs territory of Mainland China.

Based on the proposal, goods imported from Macau to Hengqin would be duty-free or bonded, unless otherwise specified. For goods manufactured by enterprises in the cooperation zone that do not contain imported materials, or that contain imported materials and are processed in the cooperation zone with an added value of 30% or more, these goods would be exempt from import duties when imported from Hengqin to other areas within the customs territory of Mainland China. Goods imported from other areas

within the customs territory of Mainland China to Hengqin across the second tier would be deemed as being exported from Mainland China, and thus a refund of the value-added tax and consumption tax may be available in accordance with the current tax policies. Under the new cooperation mechanism, further simplified declaration procedures are expected for the import and export of goods and more convenience may be achieved in personnel mobility. This should enhance the competitiveness of enterprises in the cooperation zone and encourage more enterprises from Guangdong, Hong Kong, and Macau to invest in Hengqin.

Comments

Enterprises that are established (or are planning to establish) in Hengqin should be aware of implementation guidance to be released and assess their eligibility for the tax incentives to improve the operational arrangements and development plans related to Hengqin enterprises. Given the strategic positioning of the in-depth cooperation between Hengqin and Macau, investors also should consider the business opportunities in Macau and potential tax incentives that may apply there.

Czech Republic

VAT Act amended to update e-commerce rules

On 30 September 2021, an amendment to the VAT Act was published in the Czech Collection of Laws, changing the e-commerce rules affecting electronic platforms that facilitate sales of goods within the EU, among other things. The amendment should have been effective as from 1 July 2021. However, it is actually effective as from 1 October 2021, i.e., there was a delay of three months in the implementation of the changes.

The European Council in 2017 adopted a VAT e-commerce package and subsequent implementing measures that include significant changes to the VAT e-commerce rules within the EU. The rules were originally intended to take effect as from 1 January 2021; however, the European Council extended the date by six months to 1 July 2021 to give member states and businesses more time to prepare for the necessary changes.

Germany

BFH rules on transfer of an entire business in situation involving leased property

A decision from Germany's federal tax court (BFH) dated 24 February 2021 and published on 22 July 2021 clarifies the circumstances under which a transfer of real property that is being leased may constitute a transfer of an entire business, which is not subject to VAT. The BFH ruled that a transfer of an entire business was not precluded in a situation where the acquirer was the tenant of the property and sublet a portion of the property prior to acquiring the ownership of the property, the acquisition effectively resulted in a merger of two rental businesses, and the acquirer continued the rental activity thereafter. As described further below, according to the BFH, a transfer of a real property that is being leased can constitute a transfer of an entire business even if the lease agreement is not transferred, as long as the activities carried on before and after the transfer are sufficiently similar.

Facts of the case

As noted above, the acquirer previously had been the tenant of real property that he partly sublet and otherwise used for his own business purposes. In 2010, he acquired the ownership of the property and continued to use it partly for rental and partly for his own business purposes.

A question arose regarding whether the transfer of the portion of the property that had previously been sublet and that continued to be let by the acquirer as the owner constituted a transfer of an entire business. In the opinion of the tax authorities and the lower tax court of Berlin-Brandenburg, this was not the case because there was no transfer of a rental business: by subletting, the acquirer had previously established his own rental business that he was continuing after the acquisition.

Decision of the BFH

The BFH ruled that the transfer of the property constituted a transfer of an entire business to the extent that the acquirer continued to lease a portion of the property after the acquisition, under circumstances where the property initially was leased by the seller to the subsequent acquirer and was partially used for the subsequent acquirer's own business and partially subleased by him. In other words, the transfer of the portion of the property that was sublet by the acquirer before the acquisition and let by the acquirer after the acquisition could constitute a transfer of an entire business, whereas the transfer of the portion of the property that was used for the acquirer's own use both before and after the acquisition could not constitute a transfer of an entire business.

BFH's reasoning

In principle, the sale of a building without the transfer of a lease agreement generally does not constitute a transfer of an entire business. However, according to the BFH, the transfer of a lease agreement is not mandatory for a sale of a building to constitute a transfer of an entire business. For a transfer of an entire business to exist, the rental activities carried on before and after the transfer must be similar. The rental activity must continue, but not necessarily the specific rental agreement. The BFH cited a number of decisions from the Court of Justice of the European Union (CJEU) and the BFH to support that what matters is not the transfer of a contract, but the continuation of the same independent economic activity (e.g., the 27 November 2003 CJEU decision in *Zita Modes* (C-497/01), the 10 November 2011 CJEU decision in *Schriever* (C 444/10), and a 18 January 2012 BFH decision (XI R 27/08)). Although the activities carried on before and after the transfer must be sufficiently similar, it is not necessary for them to be completely identical. Therefore, a transfer of an entire business occurs if the former landlord sells the property to a tenant that previously sublet the property and continues to let the property after the acquisition.

Comments

To constitute a transfer of an entire business, section 1(1a) of the German VAT Act requires that a business or a business unit managed separately within the overall business be transferred for consideration or free of charge or be contributed to another business. In the case of the transfer of a leased property, the German tax authorities presume that the acquirer enters into the lease agreement of the seller as its successor and takes over the leasing business (see section 1.5(2)(1) of the German VAT Application Decree). The BFH's ruling confirms these principles, but also clarifies that the transfer of a rental agreement is not mandatory for a transfer of an entire business to occur. Since an overall assessment is determinative for non-taxability pursuant to section 1(1a) of the VAT Act, a civil law perspective is not relevant.

To constitute a transfer of an entire business, the activities of the seller and the subsequent activities of the acquirer must be sufficiently similar, but do not need to be identical. Based on the purpose of the rules, which is to facilitate the transfer of a business or parts of a business, excessive requirements should

not have to be met with respect to sufficient similarity. Sufficient similarity of the leasing activity exists if, prior to the sale, the seller leases the property as the owner and, after the transaction, the acquirer leases a portion of the property as the owner.

This case must be distinguished from scenarios where the acquirer does not continue the rental activity of the transferor, but establishes its own rental business while the rental business of the transferor continues to exist (see the 3 July 2014 BFH decision VR 12/13). In the latter case, there is no transfer of an entire business.

The principles set forth in the BFH's decision are relevant not only for real estate transactions, but also for other types of business transactions without a transfer of contracts. If a business as a whole or a portion of a business is sold, the question of whether the acquirer continues the activity of the seller must be determined based on the overall circumstances in the specific case.

Germany

Tax authorities clarify applicability of insurance premium tax

Germany's Federal Ministry of Finance (MOF) published a new circular letter dated 7 September 2021 that clarifies the interpretation and application of certain provisions of the Insurance Premium Tax Act ("IPT Act"). The main topics of the letter involve the interpretation of the IPT Act in relation to the applicability of the tax in situations involving policyholders established in Germany and the insurance of permanent establishments, branches, or similar business premises that are located outside of the European Economic Area (EEA), or the insurance of companies that are not established in the EEA. The circular letter is applicable to all open cases.

Background

The IPT is levied on insurance premiums paid to an insurance company for insurance contracts that cover risks that have a relationship to Germany, as defined by law. Germany implemented section 1(2)(2) of the German IPT Act with effect as from 1 January 2021, which deals with the applicability of the German IPT to non-EEA risks insured by an insurer established in the EEA if the policyholder is established in Germany. Under section (1)(2)(2)(4) of the IPT Act, permanent establishments, branches, or similar business premises are subject to German IPT if the permanent establishment, branch, or similar business premises are established:

- In Germany; or
- In a non-EEA country and the policyholder is established in Germany.

Sections (1)(2)(2)(1) to (3) of the IPT Act cover certain other situations in which the IPT may be applicable. The MOF's circular letter dated 7 September 2021 focuses primarily on the applicability of the IPT under section (1)(2)(2)(4) of the IPT Act.

MOF circular letter

Through its circular letter, the MOF provides information on how the tax authorities evaluate questions involving the interpretation and application of the IPT Act regarding permanent establishments, branches, or similar business premises.

The circular letter defines the insurance of permanent establishments for purposes of section 1(2)(2)(4) of the IPT Act as the insurance of business activities of the permanent establishment, including the risks specified in the insurance contract. These can include risks associated with the conduct of business activities of the permanent establishment, persons associated with it (e.g., employees), or third parties. Relevant insurance includes, for example, liability insurance for the permanent establishment, professional liability insurance for employees of the permanent establishment, or international accident insurance for employees seconded to a non-EEA country (for example, to assemble a system there).

To the extent that an insurance policy also covers the insurance of property such as land, buildings, or vehicles, the insurance relates to the owner of the property as determined under civil law, not to the permanent establishment itself. Such risks may be within the scope of the IPT in accordance with the provisions set out in sections 1(2)(2)(1) to (3) of the IPT Act, rather than under the provisions of section 1(2)(2)(4).

Based on the views of the tax authorities expressed in the circular letter, the requirements for the IPT to apply under section 1(2)(2)(4) of the IPT Act may be fulfilled if the domestic policyholder insures permanent establishments, branches, or similar business premises of another party. In the MOF's opinion, a taxable event may exist regardless of whether the policyholder insures its own risks or risks of another party. Risks of another party may be subject to the IPT, for example, in a situation where a parent company based in Germany insures permanent establishments, branches, or similar business premises of its subsidiary that are established in a non-EEA country (but not the main office of the subsidiary established in a non-EEA country).

The insurance of permanent establishments, branches, or similar business premises of another party must be distinguished from the insurance of a separate company. If a separate company is insured, this is treated as insurance that does not fall under the definition of insurance of a permanent establishment. The insurance of a main office or headquarters of a company is not insurance of a permanent establishment within the meaning of section 1(2)(2)(4) of the IPT Act, even if the insurance includes other dependent parts of the company (permanent establishments, branches, or similar business premises) located in a non-EEA country in addition to the main office or headquarters. The circular letter emphasizes that section 1(5) of the implementing regulation for the IPT Act does not apply to the insurance of a separate company with its registered office in a non-EEA country, i.e., the IPT will not apply. For example, section 1(2)(2)(4) of the IPT Act does not apply, meaning that the relevant insurance premiums are not subject to the IPT, if a parent company based in Germany insures its subsidiary based in the US and the policy covers both the main office or headquarters and branches located in the US.

The insurance of separate companies (e.g., subsidiaries) that are based in Germany or in an EEA country is subject to IPT only in accordance with section 1(2)(3) of the IPT Act, which applies only to the portion of the insured risks that are located in Germany. Section 1(2)(2)(4) of the IPT Act does not apply to co-insured permanent establishments, branches, or similar business premises of the insured company that are located in a non-EEA country.

Comments

All insurance relationships concluded with an insurer established in an EEA country potentially could be affected by the MOF's circular letter. Particular consideration should be given to insurance relationships with German-established policyholders that insure permanent establishments that are located in a non-EEA country, as well as those that insure other companies or property in addition to permanent establishments.

Cost of providing interest-free finance to customers does not reduce VAT taxable base

Germany's Federal Fiscal Court has ruled that the VAT tax base for supplies of goods purchased via interest-free financing provided to customers by a bank, where the cost of the financing is met by the seller, may not be reduced by the financing fees paid by the seller to the bank. The court's decision was issued on 24 February 2021 but published only recently and is aligned with a previous decision of the Court of Justice of the European Union (CJEU) involving very similar facts.

Facts

The taxpayer is a German limited partnership that operates a retail business. The partnership offered zero-percent financing for the sale of goods. Customers concluded a loan agreement with the partner bank of the partnership, under which the purchase price was repaid in installments. The loans were disbursed to the partnership, less interest calculated at a rate of 3.5%, i.e., the loans were not actually interest-free; the partnership paid the interest on behalf of its customers. The partnership issued invoices to the customers displaying the total amount with the VAT shown separately. The invoices also included a note that interest of an amount stated had been charged by the financing bank. The partnership reduced the value of its taxable supplies of goods for VAT purposes by the financing discount granted to customers. The German tax authorities assessed the VAT on the full purchase price of the goods. The taxpayer appealed the tax authorities' assessment but the Fiscal Court agreed with the tax authorities and dismissed the taxpayer's appeal. The taxpayer subsequently appealed the Fiscal Court's ruling to the Federal Fiscal Court.

Judgement

The Federal Fiscal Court agreed with the view of the Fiscal Court and ruled that the remuneration to be treated as the tax base of the supply to the customer for VAT purposes may not be reduced by the amount by which the financing bank reduced the loan payment to the partnership.

According to the existing and consistent case law of the CJEU and the Federal Fiscal Court, a taxable supply requires a direct link between the supply and the consideration. The consideration for the supplies made by the partnership is the unreduced purchase price paid by the customers in installments. The remuneration may not to be reduced by the financing costs retained by the bank, since the legal grounds for the retention are based solely on the relationship between the partnership and the customer and not on the relationship between the partnership and the bank.

Comments

The judgement addresses the concept of remuneration in accordance with section 10(1)(1) to 10(1)(3) of the German VAT Act prior to amendment as from 1 January 2019, that defined the tax base as remuneration less VAT. As from 1 January 2019, the wording in section 10(1)(2) of the German VAT Act was adapted to align with article 73 of the EU principal VAT directive. However, no substantive change to the wording was made and the reasoning of the Federal Fiscal Court may, therefore, also be taken to apply to current taxation periods. The ruling may potentially have a significant impact on the marketing strategies of larger companies among whom zero-percent financing is frequently used as an inducement to customers to purchase a variety of goods.

The underlying facts of the case are reminiscent of those in CJEU case *C-34/99* (Primback) in which the CJEU issued its judgement on 15 May 2001 and that also concerned a purchase with zero-percent financing. The CJEU ruled that the loan to the customer constituted an independent supply that was exempt from VAT and could not affect the taxable basis of the supply between Primback and the customer. This also applies to the present case. The reference in the invoices stipulating that the interest charged by the financing bank is granted as a discount affects neither the VAT treatment of the supplies, nor the purchase price owed by the customer.

In principle, the German tax authorities also are of the opinion that a payment made by a retailer to a bank to subsidize a loan for a customer does not result in a reduction in remuneration, with the exception of payments made by a car dealer where the lending bank is an in-house car finance company (section 3.10(6), no. 14 of the German VAT Application Decree read in conjunction with a Federal Ministry of Finance letter dated 29 September 2013).

The current case also is to be distinguished from cases where a taxable person grants the loan and charges the customer a fee (interest). In these cases, there generally is an independent, VAT-exempt supply of financing services (section 3.11(1) of the German VAT Application Decree and the Federal Fiscal Court judgement of 13 November 2013, XI R 24/11).

Greece

Important VAT law changes enacted

Between 26 June and 23 July 2021, various amendments to Greek VAT legislation were announced, addressing e-commerce transactions and book publishing, the free supply of goods aimed at waste prevention and environmental protection, and special reduced rates for certain Greek islands. Most changes apply as from 1 July 2021 unless otherwise indicated. This article summarizes the key modifications.

E-commerce transactions and book publishing

Law 4818/2021, published in the government gazette on 18 July 2021(FEK A΄ 124/18.7.2021), incorporates the provisions of Council Directives (EU) 2017/2455, 2019/1995, and 2018/1910 into Greek VAT legislation with respect to intra-community (i.e., intra-EU) distance sales of goods and distance sales of imported goods, the supply of goods through the use of electronic interfaces, and the supply of services to non-VATable persons (e-commerce). In addition, the law extends the application of the super-reduced VAT rate (6%) to books provided on physical media/devices and electronically. The new rules and changes are summarized below.

E-commerce transactions

The new provisions aim to overcome the barriers in cross border transactions between businesses (taxable persons) and non-taxable persons (business-to-consumer or B2C transactions), simplify the processes for businesses and consumers, and combat tax evasion and tax avoidance when small shipments are imported.

Accordingly, as from 1 July 2021, the provisions of the Greek VAT Code (Law 2859/2000) are amended as follows:

- The concept of "distance sales of goods" is replaced by two new taxable supplies: "intra-community distance sales of goods" and "distance sales of imported goods." The place of supply (and thus taxation) is based on the principle of the place of destination and the nature of VAT as a general indirect consumption tax. More specifically:

- "Intra-community distance sales of goods" are supplies of goods that are dispatched or transported by the supplier or another person acting on their behalf from a member state (e.g., Italy) other than that in which the dispatch or transportation of the goods to the customer ends (e.g., Greece). Therefore, the place of taxation is Greece if, when the dispatch or transportation of the goods to the customer ends, the goods are located in Greece.

  - "Distance sales of imported goods" are supplies of goods that are dispatched or transported by the supplier or another person acting on their behalf from a third country or third territory (e.g., Canada) to any member state (e.g., Greece). Therefore, the place of supply (taxation) is Greece in the following cases:

    - Where the goods are imported into a member state other than that in which the dispatch or transportation of the goods to the customer ends (e.g., Spain) if, when the dispatch or transportation ends, the goods are located within the territory of Greece (on the contrary, the place of supply (taxation) is not Greece if the goods are imported into Greece and the place in which the dispatch or transportation of the goods to the customer ends is within another member state (e.g., Spain)); or

    - Where the place of importation and the place in which the dispatch or transportation of the goods to the customer ends is Greece and the VAT due on the supply of goods is reported via the Import One Stop Shop (IOSS) application in any member state (e.g., Italy).

      - Goods should be supplied either to an individual, a taxable person, or a non-taxable legal person that is not considered to carry out intra-community acquisitions of goods, pursuant to the relevant provisions of the VAT Code.

      - The goods supplied should be neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

      - To prevent and combat abusive practices, the taxable supplies mentioned above also cover situations where the supplier intervenes indirectly in the dispatch or transportation of the goods to the customer.

- The new law introduces the concept of "deemed supplier" for situations where goods with a value up to EUR 150 are imported into the EU from a third country or goods are already circulating freely within the EU and the supplier is established outside the EU. In such cases, a taxable person who facilitates the supply of goods through the use of an electronic interface, such as a marketplace, platform, web portal, or similar means, is treated, for VAT purposes, as having received and delivered the goods to the final consumer themselves instead of the actual supplier and is therefore considered the supplier and the person liable for the payment of VAT.

  - Regarding the interpretation of the term "facilitates," guidelines are generally provided in the Council Implementing Regulation (EU) No 282/2011 and the Explanatory Notes of the European Commission on VAT e-commerce rules. However, due to the special nature and complexity of the term, the facts of each case should be carefully reviewed.

- Other special provisions regulate the time when the tax obligation arises and other relevant obligations.

- The prior EUR 35,000/100,000 threshold per country of arrival for distance sales of goods up to which B2C sales are taxed in the dispatching member state is abolished. It is replaced by a new EU-wide threshold of EUR 10,000 below which the supply of telecommunications, broadcasting, and electronically-supplied services (TBE services) to non-taxable persons, as well as intra-community distance sales of goods, may remain taxable in the member state where the taxable person/supplier of TBE services is established or in the member state where the goods are located when the dispatch or transport begins, unless otherwise chosen by the supplier/seller. Beyond this EUR 10,000 threshold, supplies of goods or services are taxed in the member state where the goods arrive, or the place where the non-taxable recipient of services is established, has their permanent residence, or usual stay, respectively. This provision applies to businesses that are established only in one member state and aims to reduce their administrative burden.
- Given the success of the VAT Mini One Stop Shop (MOSS) that was already in force and allowed the remittance of VAT to several members states through registration in a single member state, the new law extends the non-Union and Union taxation schemes for TBE services, resulting in a bigger One Stop Shop (OSS). More specifically:

  - The non-Union scheme is extended to cover all cross border B2C services supplied by non-EU established suppliers to non-taxable persons, including the supply of TBE services; and

  - The Union scheme is extended to cover:

    - All cross border B2C services supplied by EU established suppliers to non-taxable persons, including the supply of TBE services;

    - Intra-community distance sales of goods; and

    - Certain supplies of goods which are carried out though the use of electronic interfaces (“deemed supplier”), provided that the initial supplier of the goods is not established in the EU.

  - Taxable persons/suppliers who opt to be subject to one of the special schemes do not have to register for VAT in each member state where the related transactions take place. The VAT return must be submitted and the VAT amount due must be remitted in the member state of identification through the OSS application for all services provided in the EU/all supplies of goods that are covered by the relevant special scheme.

  - Registering for the OSS application must be done electronically. A non-EU supplier is not required to appoint a fiscal representative for VAT purposes in Greece in order to use the OSS system.

  - The law clarifies that suppliers/“deemed suppliers” who use the OSS application must keep detailed entries in their accounting records/books of all information relating to the transactions covered by the special scheme so that the Greek tax authorities, as well as those in other member states of consumption, can verify the accuracy of the VAT return. The accounting entries/records should be made available electronically, upon request, to the Greek Tax Administration and the member state of consumption and be kept for 10 years.

- Taxable persons who supply services to non-taxable persons (B2C services) and have selected Greece as the country of identification either for the Union or the non-Union scheme are required to issue the relevant tax records pursuant to the rules of the Hellenic Accounting Standards Law (Law 4308/2014). This obligation does not apply to taxable persons who have not selected Greece as their country of identification.

- Other provisions of the law address the application of the Union and non-Union special scheme in the context of the OSS system, including definitions, the registration process, the obligations of taxable persons registered under the special scheme, as well as when and how the VAT amount due should be remitted.

• Regarding distance sales of imported goods, the new law:

- Abolishes the VAT exemption on imports of small consignments up to a value of EUR 22 so that VAT is paid on all imports of goods;

- Establishes two optional VAT payment schemes for goods with an intrinsic value not exceeding EUR 150 and imported from third territories or third countries, with the exception of goods subject to excise duties and local consumption tax:

  - The special Import One Stop Shop (IOSS) scheme; and

  - Special arrangements for the declaration and payment of VAT;

- Introduces at the EU level a new simplified import customs declaration document (declaration H7). This said document has been implemented as the new customs importation document (e-commerce import customs declaration) in the ICISnet Import Subsystem;

- Makes customs formalities mandatory, irrespective of the special VAT payment scheme that is selected, and individuals/consumers are charged with the VAT rate applicable in Greece, i.e., the standard or reduced VAT rate, depending on the type of good purchased online and imported; and

- Requires the importer to submit an import customs declaration for each shipment for the release of the goods into free circulation, with the exception of the following items, which are delivered directly to customers:

  - Cards and letters containing exclusively personal messages;

  - Letters for blind persons; and

  - Advertising leaflets, brochures, catalogues, price lists, etc.

- In particular, with respect to the new optional schemes for imported goods, the following apply:

  - **Special VAT payment scheme for distance sales of goods imported from third countries or third territories through the IOSS:**

    - The person liable for the payment of VAT is the seller of the goods (either established in the EU or outside the EU), the electronic platform facilitating the online sales of goods, or the intermediary for non-EU established suppliers or electronic platforms, with the

exception of those established in countries with which an agreement of administrative cooperation exists with the EU (to date, the only agreement is with Norway), in which case no intermediary needs to be appointed and the seller or the electronic platform remains liable for the payment of VAT.

- For the payment of VAT through the IOSS application, the seller is required to register with the IOSS system in the country of identification in order to obtain a unique identification number that will be valid throughout the EU (VAT IOSS identification number). In case an intermediary is appointed, they are, in principle, required to register with IOSS in order to obtain an IOSS identification number with the prefix "IN." Then, the intermediary may acquire a unique identification number (VAT IOSS identification number) with the prefix "IM" for each taxable person (seller or electronic platform) that they represent.

- The identification number of the intermediary is not a VAT registration number and cannot be used to declare VAT on taxable transactions.

- Furthermore, an electronic platform should have one VAT IOSS identification number regardless of the number of underlying suppliers for whom it facilitates the distance sales of low value goods to EU customers.

- The seller of the goods or the electronic platform ("deemed supplier") at the time of sale charges the purchaser/recipient of the parcel with the value of the goods plus the corresponding VAT amount based on the applicable VAT rate at the member state of arrival (member state of consumption). The applicable VAT rates for each members state are available through the Taxes in Europe DataBase (TEDB).

- The seller or electronic platform remits the VAT by submitting monthly returns for the special scheme through the IOSS application by the end of the month following the end of the related reporting period; this includes the VAT amount due in each member state of consumption at the applicable VAT rate.

- The obligation to keep detailed entries of imports in the accounting records/books for a 10-year period applies also in this case. A related obligation also applies to the intermediary for each of the taxable persons that they represent (suppliers or electronic platforms).

- Taxable persons who are registered with the IOSS scheme in Greece are required to issue the relevant tax records pursuant to the rules of the Hellenic Accounting Standards Law (Law 4308/2014).

- Taxable persons subject to VAT under the small enterprises special scheme (article 39 of the Greek VAT Code) are not entitled to register with the special IOSS scheme.

- Special arrangements for declaration and payment of import VAT to the customs authorities (traditional customs model):

  - The "special arrangements" scheme is used when the IOSS scheme is not applicable, under the condition that the dispatch or arrival of the goods is completed in Greece.

- The person liable for the payment of VAT is the recipient of the parcel. However, VAT is paid on behalf of the final recipient of the parcel by the person who delivers the goods to the customs office (namely, courier companies and postal service providers).

- The VAT payment is deferred until the 16th day of the month following the one in which it was assessed.

- The deferral of the VAT payment applies without the issuance of a special license or guarantee.

- Special provisions are introduced for certain goods, which are subject to excise duties and local consumption tax and for which specific obligations apply according to the National Customs Code (Law 2960/2001).

- Relevant guidelines on the above are available on the website of the Independent Authority for Public Revenue (IAPR – AADE) (https://www.aade.gr/oss, https://www.aade.gr/sites/default/files/2021-06/usermanual_oss_en.pdf), as well as through Circulars E.2133/2021 and E.2138/2021.

Book publishing

Books provided on physical media/devices (recorded optical or audio editions) of tariff class codes C.N.EX 8523, C.N. EX 8543, and C.N. EX 8519, as well as electronically-supplied optical and audio books, with the exception of publications devoted wholly or predominantly to advertising and publications consisting wholly or predominantly of video or audible musical content, are reclassified from 1 July 2021 such that they are subject to the super-reduced VAT rate of 6% instead of the standard 24% VAT rate.

This amendment has been introduced in compliance with the EU VAT Directive 2006/112/EC so that the reduced VAT rates apply not only to printed books but also to books that are recorded on CDs, CD-ROMs, DVDs, and USB devices, as well as to electronic publications of books listed in Annex III paragraph 6 of the directive.

Note that the super-reduced VAT rate of 6% already applied to:

- Books and books with pictures for children (CN Codes EX 4901 and EX 4903);

- Newspapers and print periodicals, whether illustrated or with advertisements (CN Code 4902); and

- Handwritten or printed sheet music, whether or not illustrated, even if not bound (CN Code 4904).

Exemption from self-supply obligation in case of free supply of goods aimed at waste prevention; extension of applicable criteria

Law 4819/2021 (and in particular article 21 paragraph 1), published in the government gazette on 23 July 2021 (FEK A΄ 129/23-07-2021), replaces article 7 paragraph 2 case b of the Greek VAT Code on the self-supply of goods and extends the applicable criteria. As a result, the free supply of specific goods in the context of waste prevention and environmental protection aimed at preventing the disposal of products in landfills before they become waste is not considered a self-supply and is not subject to VAT under certain conditions. In addition, the law extends the list of persons who can receive goods in other cases and with respect to which a self-supply obligation does not arise (such as the free supply of goods for the relief of socially vulnerable groups or to cover the needs of refugees).

These changes apply as from 23 July 2021.

Reduced VAT rates for the islands of Chios, Kos, Leros, Lesvos, and Samos

Law 4811/2021, published in the government gazette on 26 June 2021 (FEK A' 108/26-06-2021), amends article 21 of the Greek VAT Code. In particular, article 65 of the law provides that, with effect as from 1 July 2021, the special reduced VAT rates of 17%, 9%, and 4% (i.e., the standard VAT rates reduced by 30%) apply indefinitely and regardless of any population criteria to the five islands of Chios, Kos, Leros, Lesvos, and Samos if accommodation structures and centers have been established and operate for citizens of third countries or stateless persons. This rule was ratified by Ministerial Decision A. 1150/2021, published in the government gazette on 30 June 2021 (FEK B' 2828/30.06.2021). This decision will be revoked automatically within three months as from the date the operation of the accommodation structures and centers cease.

Manufacturing tobacco products and means of transport are excluded from the application of the special reduced VAT rates.

The law clarifies that, through 30 June 2021, the special reduced VAT rates applied for a six-month period pursuant to another ministerial decision.

Under the new law, as from 1 July 2021, the following rates apply:

Region	Standard VAT rate	Reduced VAT rate	Super-reduced VAT rate
Islands of Chios, Kos, Leros, Lesvos, and Samos: The reduction applies indefinitely until revocation of the Ministerial Decision	17%	9%	4%
Greek mainland and other islands	24%	13%	6%

Greece

Additional VAT law changes aim to facilitate economic activity

Law 4821/2021 ("Modernization of the Greek land registry, new digital services and enhancement of digital governance"), published in Greece's government gazette on 31 July 2021 (FEK A' 134/31.7.2021), extends the deadline for construction companies to elect the VAT suspension regime for newly-built real property, provides for the application of the super-reduced VAT rate to defibrillators, and extends the application of the reduced VAT rate on tickets for sporting events. The new rules and changes are summarized below.

Extension of the deadline for construction companies to elect the VAT suspension regime

The new law amends the Greek VAT Code such that construction companies may elect to be subject to the VAT suspension regime until 31 December 2021 on the transfer of immovable property that is licensed through 30 June 2021 (article 6 paragraph 4 case a). Note, however, that, under this regime, taxpayers will not be able to deduct any related input VAT as the sale of immovable property will be subject to real estate transfer tax instead of VAT.

Regarding buildings for which the construction license has been issued as from 1 July 2021, the law allows taxpayers to elect the regime by filing an application within six months of the license being issued.

This extension aims to make it easier for building contractors to elect the VAT suspension regime as the way for taxpayers to communicate with the tax authorities has changed in response to the spread of COVID-19.

It should be noted that the VAT suspension regime, once elected, applies to all real properties owned by a building contractor. In practice, the construction company must submit a list of all its unsold property and the deducted input VAT amount corresponding to each property when submitting the election application so that VAT may be adjusted when the property is sold.

Application of the super-reduced VAT rate (6%) to defibrillators

The new law reclassifies defibrillators of tariff class code C.N. EX 9018 from the standard VAT rate of 24% to the super-reduced VAT rate of 6% as from 31 July 2021 and through 31 December 2022 (Greek VAT Code Annex III Chapter A (Goods) new paragraph 54). This amendment was introduced as application of the standard VAT rate complicated market conditions in the health sector, especially due to the COVID-19 pandemic.

Extension of application of the reduced VAT rate (13%) on tickets for sporting events

The new law also amends the Greek VAT Code such that the reduced VAT rate of 13% will continue to apply until 30 June 2022 on tickets for sporting events (Annex III Chapter B (Services) subcase 1b). The reduced VAT rate initially applied from 1 September 2020 until 30 June 2021.

This change aims to keep some prices low while reducing others in order to increase the number of ticket sales given the limited occupancy of sport venues due to measures put in place to prevent the spread of COVID-19.

Greece

Government publishes changes to certain indirect tax and VAT measures

The Greek Parliament enacted Law 4839/2021, which was published in the government gazette on 2 October 2021 (Vo. A 181/02/10/2021) and includes changes to the capital accumulation tax (CAT), television and telecommunication levies, real estate taxes, gift taxes, and value-added tax (VAT), as follows:

Reduction in the CAT rate: Pursuant to article 57 of the new legislation, the CAT rate has been reduced from 1% to 0.5% for transactions that occur as from 1 October 2021. According to the explanatory statement, the lower rate should lessen the burden on companies that increase share capital, facilitate corporate transformations, and generally attract investments by creating a more competitive environment.

- **Extending the suspension of the pay television levy**: According to article 58 of the new legislation, the pay television levy (imposed at a rate of 10% on the total amount of the monthly bill and paid by the subscriber), which had been suspended from 1 October 2020 to 30 September 2021, has been suspended further until 30 June 2022.

- **Reduction in the mobile subscribers' and prepaid users' levy and abolition of said levies for individuals up to 29 years old**: Pursuant to article 59 of the new legislation, the monthly mobile subscribers' levy will no longer be imposed using a scale based on the amount of the monthly bill; rather, it will be determined by applying a 10% rate to the total amount of the monthly bill. Furthermore, the rate of

the prepaid users' levy will be reduced from 12% to 10% and apply to the value of "top-ups" added to prepaid phone plans. In addition, these levies no longer will apply to individuals from 15 to 29 years of age. These measures will be effective as from 1 January 2022. As per the explanatory statement, the objective of these measures is to promote the telecommunication services market and facilitate young individuals' access to such services. A joint ministerial decision is expected, which should provide all necessary details for the application of these levies.

- Payment of annual real estate tax (ARET) for 2021: According to article 54 of the new legislation, taxpayers must pay the first two ARET installments for 2021 by the last working day of October 2021. Moreover, the remaining installments must be paid by the last working day of each of the following four months. This change was deemed necessary in order to encourage taxpayers to pay their tax liabilities for 2021, as the original due date for the ARET payment was 30 September 2021.

- Amendments regarding certain gifts and parental grants: By virtue of article 56 of the new legislation, the following amendments have been made to article 44 of Law 2961/2001 (inheritance, gifts, and parental grants):

  - A new tax-free threshold has been introduced with regard to gifts and parental grants made between first-degree relatives included in article 29 of Law 2961/2001 up to EUR 800,000.

  - In the event that the value of the gifted asset exceeds EUR 800,000, a 10% rate is levied on the value exceeding EUR 800,000.

  - This provision applies to all assets, including cash, provided that the latter is transferred via wire transfers carried out through financial institutions.

  - Gifts of cash not meeting the above condition (i.e., if not gifted via wire transfer through a financial institution) are subject to a 10% tax rate from the first Euro.

  - Only gifts made as from 1 October 2021 are taken into account for purposes of this provision.

  - Gifts made according to the above provisions are not taken into account for inheritance tax purposes upon the acquisition of property causa mortis between the same persons (e.g., the donor and the donee).

  - The above tax threshold applies exclusively to first-degree relatives included in article 29 of Law 2961/2001, namely:

    - The donor's spouse;

    - The person with whom the donor has entered into a civil partnership, pursuant to the provisions of Law 3719/2008;

    - The donor's children;

    - The donor's grandchildren; and

    - The donor's parents.

- **Amendments regarding VAT rates:** Annex III of the VAT Code providing for reduced VAT rates for certain goods and services has been amended with effect as from 1 October 2021, as follows:
    - Reclassification of certain services and goods to qualify for reduced VAT rates:
        - The supply of services by gyms and dance schools (provided that they are not subject to a VAT exemption upon conditions, as per article 22 of the VAT law and article 132 of the EU VAT Directive 2006/112/EC) has been reclassified to qualify for the reduced VAT rate of 13% instead of the standard VAT rate of 24% from 1 October 2021 through 30 June 2022.
        - The following goods have been reclassified to qualify for the super reduced VAT rate of 6% instead of the reduced VAT rate of 13%:
        - Cereal straw and husks, unprepared, whether or not chopped, ground, pressed, or in the form of pellets, swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupines, vetches, and similar forage products, whether or not in the form of pellets, of tariff class codes C.N. 1213 and 1214, maize (corn) of tariff class codes C.N. EX 1005, EX 1103, and EX 1104; and
        - Residues and wastes produced by the food industry, foods/preparations for animal feeding, excluding dog or cat food, of tariff class codes C.N. 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, EX 2309.
    - Extension of the application of the reduced VAT rate for certain goods and services:
        - The reduced VAT rate of 13% has been extended until 30 June 2022 for the following goods and services:
            - Non-alcoholic beverages, without the addition of alcohol in any proportion of tariff class code C.N. EX 2202 and aerated waters classified under tariff class code C.N. EX 2201;
            - Passenger and luggage transportation services;
            - The supply of non-alcoholic beverages, juices, and drinks for on-site consumption in cafeterias, restaurants, and similar establishments; and
            - Cinema tickets.
        - Note that theatre and concert tickets already are subject indefinitely to the super-reduced VAT rate of 6%.

Guatemala

COVID-19: Law includes VAT and import duty exemption for certain donations

Decree 11-2021, a national emergency law containing measures in response to the COVID-19 pandemic that include a VAT and import duty exemption for certain donations made to the Guatemalan public health care system, was published in the official gazette on 21 September 2021 and is effective as from 22 September 2021 up to 31 December 2021. Regulations to implement the law must be issued within eight days from the effective date of the law (i.e., by 30 September 2021) and the regulations must not alter the intent and scope of the law.

The law includes the following provisions:

- The “GUATECOMPRAS” system must be used for the acquisition of surgical medical goods made with public funds, as well as for the hiring of temporary technical or professional service personnel intended to provide patient care relating to COVID-19. The Ministry of Public Health and Social Assistance must enter into agreements under the United Nations’ procurement system to carry out its acquisitions. Imports of health supplies acquired based on these agreements will be exempt from VAT;
- A “basic list of purchases and contracts” that must be made or entered into using the GUATECOMPRAS system is provided; and
- An exemption from all import taxes, VAT, and customs duties is established for donations that are directly related to the prevention of COVID-19 and that are made to the Ministry of Public Health and Social Assistance or the Guatemalan Social Security Institute to support charities that have signed agreements with these entities and that provide health care services during the period when the law is valid, i.e., up to 31 December 2021. To qualify for the exemption, imports of merchandise and goods must be related to and exclusively used for nonprofit and charitable purposes in combating the COVID-19 pandemic. A request for the tax and customs duty exemption must be submitted to the Superintendency of Tax Administration, which must respond within a timeframe of no more than three business days; if no response is received within this timeframe, the request will be considered to be approved. The exemption is available for requests made as from the effective date of the law, i.e., as from 22 September 2021.

Guatemala

SAT guidance offers taxpayers flexibility regarding form of payment to suppliers

Guidance (Institutional Tax Opinion No. 5-2021) dated 5 August 2021 published by Guatemala’s Superintendency of Tax Administration (SAT) on its website offers taxpayers additional flexibility regarding the circumstances in which they may claim income tax deductions or VAT credits in relation to payments made to their suppliers. The guidance indicates that taxpayers may be able to claim deductions or tax credits relating to transactions that are settled through means other than a direct payment to the supplier through the banking system if certain criteria are fulfilled.

A 2006 decree (No. 20-2006) provides that to be able to claim deductions or credits for tax purposes, companies that make payments that generate costs and expenses or that result in tax credits for amounts of GTQ 30,000 or more should make such payments through the means made available by the banking system, through which the seller of the goods or provider of the services can be identified and documented (e.g., electronic transfers, checks, and credit and debit card payments).

Due to business, financial, legal, and operating complexities, companies may have used various means to settle their debts to suppliers that differ from the direct payment to the supplier through the banking system generally required by the tax law. For example, they may have used alternatives such as payments to a third party designated by the supplier pursuant to a commercial contract, settlements of their transactions through current account contracts, use of the services or intermediation of a third party that makes the payments to the supplier, and other forms in cases related to judicial proceedings or trusts that preclude the use of a bank account.

In the past, these sorts of payment alternatives increased the risk of tax adjustments being made by the SAT. If the SAT took a literal interpretation of the requirement for taxpayers to make direct payments through the banking system, it could deny the tax deductions and/or tax credits relating to transactions settled through the other alternatives mentioned above.

With this background, the SAT issued Institutional Tax Opinion No. 5-2021 ("Application of the Use of Banking Services in Payments to Suppliers through Third Parties or Payments Made by Third Parties"), which provides that to ensure the proper application of the tax laws as a whole, forms of payment other than electronic transfers, checks, and credit and debit card payments will be accepted by the SAT, provided that they comply with the following guidelines:

- **Invoices and contracts in general:** It is necessary to have supporting documentation for the transaction, e.g., invoices that support the deductibility of costs and/or expenses or the recognition of the tax credit. The SAT also will take into account contracts related to a payment alternative used by the taxpayer that is documented in a notarial instrument (e.g., outsourcing, management, current account, factoring and discount contracts, and those relating to trusts, etc.).

- **Current accounts:** When payments are documented using mechanisms established through current account contracts, these must be executed through a notarial instrument at the time the payment obligation arises, and not when the tax authorities initiate oversight actions. The current account contract should include, at a minimum, an annual settlement at the closing of each accounting period.

- **Payments to third parties other than the supplier:** If the documentation supporting the payment (e.g., a check) indicates that the beneficiary of the payment is a third party, there must be contractual evidence documented in a notarial instrument that supports the transaction.

- **Factoring and discounts:** Factoring and discount contracts used as forms of payment should be documented in writing, either through a notarial instrument or a private instrument, and must adhere to the specific relevant law and the law regarding security interests in personal property, where applicable. In these cases, the tax authorities will verify the application of interest and discounts, and that the documentation supports the factoring and/or discount transaction.

- **Trusts:** When payments are made through a trust, it must be verified that the company's income is deposited into that trust, so that the SAT can review the payments to suppliers in the trust's accounting.

- **Payments made by third parties:** In cases in which a third party is the party making the payments, the tax authorities will request the contract between the third party and the entity requesting the tax credit refund and/or the deduction of the expenses stemming from the invoices paid.

- **Payments made by another company due to judicial attachments:** When a third party makes payments on behalf of the entity that recorded the costs and/or expenses or tax credits due to judicial attachments or precautionary measures that impede the normal use of the entity's bank accounts, the tax authorities will verify that there is an account of a third party taxpayer that is designated exclusively to the purposes of handling the funds of the entity claiming the deductible expenses or tax credits. The transaction also must not involve a violation of the relevant court order.

The new institutional opinion of the SAT provides more flexible oversight criteria that reflect the substance, and not only the form, of payment transactions of taxpayers claiming tax deductions or tax credits. This should provide some comfort to companies that if they follow the specific guidance detailed in the opinion, their deductible expenses and tax credits should not be denied because they used a payment alternative that differs from a direct payment through the banking system.

However, it must be kept in mind that the SAT's institutional opinions do not provide absolute legal certainty for taxpayers, in general. In the past, the SAT's institutional opinions have changed over time when the current administration does not share the opinion of the previous administration. Therefore, it is recommended that taxpayers perform an in-depth evaluation to identify all pertinent risks when they use forms of payment to their suppliers other than a direct payment through the banking system.

Guernsey

Tax highlights of 2022 budget

At midnight on 4 October 2021, the States of Guernsey Policy & Resources Committee published the 2022 budget report. The key tax changes relate to income tax installment payments, individual personal allowances, duties (on goods such as tobacco, alcohol, and petrol), and the tax on real property.

The comments from the treasury lead of the committee, Deputy Mark Helyar, in an associated media release provide a good insight into the theme of the 2022 budget:

"I am delighted that accelerated recovery has led to increased revenues in 2021. This has absorbed the unanticipated additional expenditure as a result of the second lockdown, including increased losses for both Aurigny and Guernsey Ports, at the same time as reducing the deficit by GBP 17 million against our budget.

This is welcome news and it speaks to how well as a community we worked together to respond to the pandemic. It has been an extraordinary challenge and Islanders have been incredible in how we all stepped up to meet it. However, when it comes to the Island's public finances, the strong results in 2021 will not all translate into our baseline and we must not forget that we are facing economic headwinds and have pent up demand in the system creating cost pressures."

The budget confirms that there was a positive end to the 2021 period in that the deficit for that period will be closer to GBP 5 million, rather than the previous estimate of GBP 33 million following the second lockdown imposed in response to the COVID-19 pandemic (the original estimated deficit for 2021 was GBP 22 million). The budget for 2022 anticipates an overall surplus of GBP 22 million, but this will not be sufficient to fund the level of required capital expenditure of between GBP 50 and GBP 70 million per annum in order to meet Guernsey's long-term goals.

The key tax changes are as follows:

Quarterly installment payments

It is proposed that as from the 2023 tax year, income tax paid by installments would be required to be paid quarterly rather than biannually. The payment dates for tax installments for a calendar tax year would be 31 March, 30 June, 30 September, and 31 December. To facilitate the change, it is proposed that interim assessments would be issued to taxpayers prior to the commencement of that year.

Personal allowances

An increase in the personal allowance from GBP 11,875 to GBP 12,175 is proposed for those aged under 65 years and increases to the supplementary allowances also are proposed.

The annual tax-free lump sum for a pension scheme of up to 30% of the fund value is proposed to remain at GBP 203,000 for 2022.

Other taxes and duties

Proposed changes in other taxes and duties include:

- Tobacco: Increase of 7.5% on cigarettes, cigars, and other tobacco products;
- Alcohol: Increase of 4% in alcohol duty;
- Fuel: Motor fuel–increase of 4% to 76.3 pence per liter; petrol for marine use–increase to 51.9 pence per liter as from 1 January 2022. Diesel for marine (and other non-road) use would remain exempt from duty and the concessionary rate of duty on biodiesel would be 66.3 pence per liter); and
- Tax on real property: Increase of 4% in the rate for both (i) commercial buildings and land, and (ii) domestic buildings and land.

Comment

The 2022 budget has been prepared against a backdrop of unprecedented circumstances. The COVID-19 pandemic has so far had much less of an economic impact than predicted which is largely attributed to the successful response of the whole community, including a relatively short second lockdown in 2021.

The buoyancy of the housing market has been positive in that it reflects renewed confidence in Guernsey as a place to live and work but it is also responsible for some issues around affordability as well as shortages in housing stock. These issues have become important for businesses wishing to grow where this involves recruiting from outside the island.

A significant area of focus for the States is to decide on the future of the domestic tax structure and the complex discussions which took place in the States in late September/early October 2021 are to continue at a further meeting on 13 October 2021.

When considering the future structure of the corporate tax regime in Guernsey, the ongoing developments in international tax also are important and more details on the G20/OECD plans for a global minimum rate of tax (Pillar Two of the G20/OECD proposal) are expected in October 2021. It is still too early to predict how these proposals will affect Guernsey, although the focus on very large groups could mean that the effect is less in Guernsey than in other jurisdictions.

India

GST council recommendations include changes to GST rates on some goods and services

The recommendations of India’s goods and services tax (GST) council, at its 45th meeting held on 17 September 2021, include changes to the GST rates for some goods and services, the issuance of clarifications on certain contentious issues, and changes to compliance related requirements.

Notifications and circulars giving effect to the recommendations were issued on 30 September and 20 September 2021, respectively.

Key recommendations of the council include:

Changes in GST rates/exemptions

- An extension of the reduced GST rates on certain drugs used for the treatment of COVID-19, e.g., amphotericin B, remdesivir, tocilizumab, and anti-coagulants such as heparin, from 30 September 2021 through 31 December 2021, together with a reduction in the GST rate on certain additional drugs used for COVID-19 treatment from 12% to 5% through 31 December 2021.
- Changes to the GST rates on the goods and services shown in the table below as from 1 October 2021

Description	GST rate prior to 1 October 2021	GST rate as from 1 October 2021
Biodiesel supplied to oil marketing companies for blending with diesel	12%	5%
Ores and concentrates of metals including iron, copper, aluminum, and zinc	5%	18%
Specified renewable energy devices and parts	5%	12%
Railway parts, locomotives, and other goods within Harmonized System (HS) code chapter 86	12%	18%
Licensing services and the right to broadcast and show original films, sound recordings, radio and television programs	12%	18%
Printing and reproduction services of recorded media where content is supplied by the publisher	12%	18%

- Implementation of GST rate changes to correct inverted duty structures (where the GST rate on inputs purchased by a GST-registered business is higher than the GST rate applicable to the finished goods), in the footwear and textiles sectors as from 1 January 2022.
- Extension through 30 September 2022 of the GST exemption for the transport of goods by sea and air from India to locations outside India.
- Withdrawal of the GST exemption for the leasing of rolling stock by the Indian Railway Finance Corporation to Indian Railways.
- Certain relaxations to the conditions for exemption from Integrated Goods and Services Tax (IGST) on the import of leased goods, where GST is paid on the lease amount, to allow the exemption even where:
    - The goods are transferred to a new lessee in India upon expiry or termination of the lease; or
    - The lessor is located in a special economic zone and pays GST under the forward charge mechanism.

Expansion of levy on e-commerce operators

E-commerce operators will be liable to pay GST as from 1 January 2022 on the following services provided through them:

- Passenger transport, by any type of motor vehicle; and
- Restaurant services, with some exceptions.

Clarifications relating to GST rate on goods and services

- Brewers' spent grain, dried distillers' grains with soluble, and other such residues falling under HS code 2303 are subject to GST at 5%.
- All laboratory reagents and other goods falling under HS code 3822 are subject to GST at 12%.
- Drinks classified as "Carbonated Fruit Beverages of Fruit Drink" or "Carbonated Beverages with Fruit Juice" are subject to GST at 28% and a cess at 12%.
- External batteries sold together with uninterruptible power supply (UPS) systems or UPS inverters are subject to GST at the rate applicable to batteries (28% for batteries other than lithium-ion batteries) while the UPS system or inverter is subject to GST at 18%.
- GST on specified renewable energy projects may be paid in terms of the 70:30 ratio for goods and services, respectively, during the period 1 July 2017 to 31 December 2018, in the same manner as has been prescribed as from 1 January 2019.
- All pharmaceutical goods falling under HS code 3006 are subject to GST at 12%, not 18%.
- An essentiality certificate issued by the Directorate General of Hydrocarbons authorizing the application of a reduced rate of GST on imports is sufficient also to cover interstate stock transfers; a separate certificate is not required to be obtained for each transfer.
- Services by "cloud" or central kitchens (commercial cooking spaces that satisfy online orders for delivery only) are covered under "restaurant service" and subject to GST at 5% without input tax credit (ITC).
- The grant of mineral exploration and mining rights is subject to GST at 18% as from 1 July 2017.

Measures to facilitate trade

- Interest will be charged on "ineligible ITC availed and utilized" and not on "ineligible ITC availed" at 18% with retroactive effect as from 1 July 2017.
- Unutilized balances in the central goods and services tax and IGST cash ledgers may be transferred between distinct persons (entities with the same permanent account number (PAN) but registered in different states), without going through the refund procedure, subject to certain safeguards.
- Clarification of the following:
  - The scope of "intermediary services;"

  - That a company incorporated in India under the Companies Act, 2013 and a person incorporated under the laws of any other country are to be treated as separate legal entities for the purpose of fulfilling conditions for export of services; and
  - Removing the requirement for retaining a physical copy of the tax invoice where the supplier has issued an e-invoice in accordance with GST law.
- Restriction of the refund of accumulated ITC on goods subject to levy of export duty.

Other recommendations

- Aadhaar authentication of registration to be mandatory to file refund claims and applications to revoke the cancellation of registration.
- The late fee for delayed filing of Form GSTR-1 to be auto-populated and collected in the next open return on Form GSTR-3B.
- Refunds to be credited to the bank account linked to the PAN under which the GST registration has been obtained.
- As from 1 January 2022, a registered person may not file Form GSTR-1 where Form GSTR-3B for the preceding month has not been submitted.
- Groups of ministers (GoMs) to be established to:
  - Examine the issues of correction of the inverted duty structure for major sectors, rationalization of GST rates, and review of exemptions, from the perspective of augmenting revenue from GST; and
  - Discuss methods of using technology to further improve compliance including monitoring through improved e-way bill systems, e-invoices, and data from FASTag (India's electronic toll collection system), and strengthening the institutional mechanism for sharing of intelligence and coordinated enforcement actions between the central and state governments.

Comments

This was the first in-person meeting of the GST council since the outbreak of the COVID-19 pandemic. The council's recommendations, following lengthy discussion, on issuance of clarifications on certain key contentious issues such as intermediary services and the treatment of a company incorporated in India providing services to a company outside India being treated as separate legal entities should bring relief to the industry as well as reduce litigation. The detail of the subsequent circulars must be reviewed carefully to determine their application to specific fact patterns.

The requirement for e-commerce operators in the food delivery and passenger transport sectors to be liable to pay GST is intended to reduce evasion by unregistered vendors and will increase the compliance requirements for such operators.

Although there was some expectation that petrol and diesel would be brought within the scope of GST, unanimous opposition from the states, together with the council's clarification that only a discussion on this issue was required in accordance with a ruling of the Kerala High Court, suggests that a decision on this issue will take some time yet.

CBIC issues circulars clarifying contentious issues relating to export of services

India's Central Board of Indirect Taxes and Customs (CBIC) on 20 September 2021 issued two circulars intended to bring clarity to and ensure uniformity in the implementation of provisions of goods and services tax (GST) law concerned with the export of services, following representations received from industry.

Circular No. 159/15/2021-GST outlines the principles and prerequisites for a service to qualify as "intermediary." Circular No. 161/17/2021-GST clarifies that a company incorporated under Indian law that is a subsidiary of, sister company of, or member of the same group as a foreign company incorporated under laws of a country other than India and the foreign company are treated as separate legal entities and are not "merely establishments of a distinct person" for the purpose of fulfilling specified conditions for the export of services.

Circular No. 159/15/2021-GST

Under GST law, an intermediary means a broker, an agent, or any other person who arranges or facilitates the supply of goods and/or services or securities between two or more persons, but does not include a person who supplies such goods and/or services or securities on their own account. Circular No. 159/15/2021-GST clarifies the scope of intermediary services.

Primary requirements for intermediary services

- Minimum of three parties: The circular clarifies that, by definition, an intermediary is someone who arranges or facilitates the supply of goods and/or services or securities between two or more persons. Therefore, there must be at least three parties, i.e., the transacting parties and the person arranging or facilitating the main supply, for a service to qualify as an intermediary service.

- Existence of two distinct supplies: There are two distinct supplies under such a transaction, namely the:

  - Main supply: Between the two principals, which may be a supply of goods and/or services or securities; and

  - Ancillary supply: The service of facilitating or arranging the main supply between the two principals. The ancillary supply is the supply of an intermediary service and is clearly identifiable and distinguishable from the main supply.

- Person acting in capacity of an agent/broker or any other similar person: The circular clarifies that the use of the term "means" in the definition of intermediary does not expand the definition. The use of the expression "arranges or facilitates" in the definition of intermediary suggests a subsidiary role for the intermediary. The intermediary must arrange or facilitate another supply, which is the main supply, and the intermediary does not provide the main supply. The role of the intermediary is, therefore, merely supportive.

- Does not include a person who provides goods and/or services or securities on their own account: The circular clarifies that services provided on a principal to principal basis do not fall within the scope of intermediary. Where the person supplies the main supply, either in full or in part, on a principal to principal basis, that supply is not covered under the scope of intermediary.

- **Subcontracting for a service is not an intermediary service:** The supplier of the main service may decide to outsource the supply of that service, either in full or in part, to one or more subcontractors. The subcontractor provides either all or part of the main supply; it does not merely arrange or facilitate the main supply between the principal supplier and their customers and, therefore, clearly is not an intermediary.

Illustrations provided in the circular

The circular provides the following four illustrations that are indicative and not exhaustive. It also clarifies that the treatment of a service as an intermediary service depends on the facts of the case and the terms of the contract.

Situation	Nature of services
A is a manufacturer and supplier of a machine. C helps A in selling the machine by identifying client B who wishes to purchase the machine and helps in finalizing the contract for the supply of the machine by A to B. C charges A for the services of locating B and assisting to finalize the sale between A and B.	C is providing the ancillary supply of arranging or facilitating the main supply of machinery between A and B. Therefore, C is an intermediary and is providing an intermediary service to A.
A is a software company that develops software for clients in accordance with the clients' requirements. A has a contract with B to provide some customized software for its business operations. A outsources the task of design and development of a particular module of the software to C, which may require C to interact with B, to understand B's requirements.	C is providing the main supply of services of the design and development of software to A; hence C is not an intermediary in this case.
An insurance company (P), located outside India, requires processing of insurance claims of its clients in respect of the insurance services that it provides. To process the claims, P outsources the work to an Indian company (Q), to arrange an insurance claims processing service from other service providers in India. Q contacts R, who provides insurance claim processing services and arranges the supply of insurance claim processing services by R to P. Q charges P a commission or service charge on the contract value of the insurance claims processing service provided by R to P.	The main supply of insurance claim processing services is between P and R; Q merely arranges or facilitates the supply of services between P and R and does not itself provide the main supply of services. Accordingly, in this case, Q acts as an intermediary.
A is a US manufacturer and supplier of computers that supplies its goods globally. As part of the supply, A also is required to provide customer care services to address customers' queries and complaints. A outsources the customer services function to a business process outsourcing firm (B). B provides the customer care service to A by interacting with A's customers and addressing/processing their queries and complaints. B charges A for this service.	B is involved in the supply of the main service of customer care to A and, therefore, B is not an intermediary.

Circular No. 161/17/2021-GST

GST legislation prescribes certain conditions for treating services as exports which are supplied by suppliers located in India to recipients located outside India. One condition is that the supplier and recipient should not be merely establishments of a distinct person. Circular No. 161/17/2021-GST clarifies that a company incorporated in India and a body corporate incorporated under the laws of a country other than India are separate legal entities and, hence, not merely establishments of a distinct person.

Highlights of the circular

- GST law provides that where a foreign company conducts business in India through a branch, an agency, or a representative office, the Indian branch, agency, or representative office of the foreign company is treated as an establishment of the foreign company in India. Services supplied by such entities are treated as supplies between establishments of distinct persons and are not considered as exports of services.

- A company incorporated in India and a body corporate incorporated under the laws of a country other than India (also referred to as a foreign company) are separate persons under GST law and thus are separate legal entities. Services supplied by subsidiary, sister, group companies, etc. of a foreign company to the establishments of that foreign company that are both located outside India and incorporated outside India are considered as exports under GST legislation, subject to the fulfillment of other conditions, since the entities are not considered as merely establishments of a distinct person.

Comments

The Indian GST authorities have adopted various interpretations of the scope of intermediary services and differing approaches as to when an Indian company and its group companies located overseas are treated as merely establishments of a distinct person. This has led to requests for refunds of GST being rejected and demands for GST being raised on the supply of services.

There has been considerable ambiguity around the scope of intermediary services. The government previously had issued a circular for the information technology/information technology enabled services sector on this issue which was later withdrawn ab initio. Circular No. 159/15/2021-GST now has been issued for industry generally to provide uniformity of interpretation and should help provide more clarity and reduce litigation on the issue where benefits for exports were being denied. While most of the principles laid down in the circular were already present in *Taxation of Services: An Education Guide* issued by the Central Board of Excise & Customs under the service tax regime, the clarity on subcontracted services is welcome. Since the definitions of intermediary under GST law and service tax law are similar, the circular likely will have persuasive value for matters pending under the service tax regime. However, it is important that businesses re-evaluate agreements and contracts, the scope of work, and other supporting documents in light of the circular.

Circular No. 161/17/2021-GST on services being provided by a subsidiary, sister company, or group company of a foreign company in India to associates located overseas eliminates confusion over the fulfillment of conditions for the export of services where the authorities were of the view that such businesses are merely establishments of a distinct person and should bring relief to service suppliers facing challenges during the processing of GST refund claims.

Overall, the circulars also should be of assistance in matters currently pending before various judicial forums in India and bring faster closure to ongoing litigation.

India

Global Trade Advisory Newsletter (July–September 2021)

India Global Trade Advisory Newsletter is a quarterly update on customs and other trade developments relevant to businesses operating within or trading with India.

The July-September 2021 issue of the newsletter includes coverage of the following:

- Remission of duties and taxes on exported products (RoDTEP) scheme guidelines and rates;
- Auto renewal of certification for authorized economic operator-T1 entities;
- Improvement in faceless assessment; and
- Other changes in customs and foreign trade policy 2015-20:
    - General trade facilitation measures;
    - Step towards digitization of compliance;
    - Export policy; and
    - News on levy of anti-dumping duty.

Italy

Clarification provided on VAT refunds for certain nonresidents

In an official reply (No. 359) dated 20 May 2021 to a request for a tax ruling, the Italian tax authorities clarified the circumstances under which an EU entity that registered in Italy for VAT purposes through the appointment of an Italian tax representative may use the electronic portal to request a refund of Italian VAT.

The ruling clarifies that a nonresident taxpayer with a tax representative in Italy may request a VAT refund through the electronic portal (under the procedure provided for in article 38-bis2 of Presidential Decree No. 633 of 1972, as amended) for VAT relating to domestic purchases and imports, provided the input invoices or customs bills are addressed to the foreign VAT number. In contrast, transactions with invoices or customs bills referring to the Italian VAT number and managed through the tax representative must be accounted for in the Italian annual VAT return.

This means that the appointment of an Italian tax representative does not preclude the nonresident from applying for a VAT refund through the electronic portal procedure provided for in EU directive 2008/09/EC (the former eighth directive) for taxable EU persons not established in the EU member state from which a VAT refund is being requested, provided the following conditions are fulfilled:

- The relevant invoices are addressed to the foreign VAT number (therefore, it is not permitted to use the refund procedure for invoices addressed to the Italian VAT number); and
- The transactions are not accounted for in the Italian monthly VAT computations and annual VAT return.

Malaysia

Special voluntary disclosure program for indirect taxes could be introduced

The inaugural annual pre-budget statement released by the Malaysian Ministry of Finance (MOF) on 31 August 2021 includes a welcome announcement that the introduction of a special voluntary disclosure program (SVDP) focused on indirect taxes is under consideration, which would encourage taxpayers to disclose tax that has not been paid, has been underestimated, or has been erroneously reported to the

Royal Malaysian Customs Department (RMCD). The pre-budget statement provides the public a preliminary view of initiatives that potentially will be included in the 2022 budget, which is expected to be released in October 2021.

The indirect taxes administered by the RMCD cover a range of taxes, including sales tax and service tax (SST), customs and excise duties, and tourism tax. At present, the RMCD does not have a formal voluntary disclosure scheme for businesses to disclose errors and obtain waivers of penalties. As a result, each disclosure is handled on a case-by-case basis and there are no published guidelines on when or if the RMCD would waive penalties. The lack of a formal process or procedure on the waiver of penalties can act as a disincentive for businesses to make disclosures to the RMCD, as there is no guarantee that penalties would be waived or that an audit would not be triggered.

Although we do not yet have a lot of details on the proposed SVDP, if details are released that reflect a clear intention from the RMCD to waive all applicable penalties for disclosures made and to make no escalations to audit regardless of the background of the case, this would make the program quite attractive for businesses. While businesses may try to do their best to stay on top of compliance requirements, as indirect taxes are imposed on a transactional basis (an import, manufacture of a good, or provision of a service) it is easy to get something wrong and for that error to be compounded across multiple transactions before it is discovered. Compliance also has not been facilitated by the fact that the relevant laws and guidance are complex, and their interpretation and application have changed considerably over time. It is easy to become confused and make mistakes when dealing with these complex rules. Unfortunately, the risk of noncompliance is high without a formal voluntary disclosure process. The announcement of the SVDP should encourage greater compliance among businesses.

This is important, as the SST has been around for three years and other indirect taxes like customs duty and excise duty have a much longer history. Over time, we have seen a lot of changes made to the law and guidance, as well as to the practical application of the rules. Consequently, it has been challenging for businesses to stay on top of compliance requirements. It also is important to note that the RMCD can now conduct indirect tax audits going as far back as six years, with expanded powers.

As noted above, the concern with compliance errors is that they are transactional in nature and can be compounded if they are not discovered until much later. As such, many transactions could have been incorrectly reported or missed being reported. If such errors are discovered by the RMCD during an audit, a business would not only need to pay the underlying tax amount, but there also could be significant penalties imposed. For this reason, the SVDP for indirect tax would be welcomed and businesses should consider taking advantage of the scheme, as it is not clear how often it would be repeated in the future, if at all.

Quotations and extracts from this article were published in Bernama and (in Chinese) in Sin Chew Daily.

Malaysia

Sales tax technical updates (September 2021)

The Royal Malaysian Customs Department recently published two sales tax guides on exemptions from sales tax provided under schedule A of the Sales Tax (Persons Exempted From Payment of Tax) Order 2018, as amended ("exemption order"). A guide published on 13 July 2021 covers the exemption for certain purchases of domestically manufactured vehicles to be supplied to a government department that is available under section 5A of schedule A of the exemption order, and a guide published on 17 August 2021 covers the exemption for certain persons approved to carry out bunkering services involving

the supply of fuel to ships that is available under item 58A of schedule A. This article covers the salient points of both guides, which provide clarifications regarding the exemptions and set forth some relevant conditions and procedures.

Sales tax guide on item 5A of schedule A

With effect from 1 January 2021, under item 5A of schedule A of the exemption order, an approved franchise holder, distributor, or dealer of motor vehicles (including motorcycles) is exempt from payment of sales tax for purchases of domestically manufactured motor vehicles (including motorcycles) to be supplied to any federal or state government department in Malaysia, subject to certain conditions.

To provide clarifications regarding the exemption, on 13 July 2021 the RMCD published the Sales Tax Guide on Item 5A in Schedule A (available only in the Bahasa Malaysia language) that includes the following provisions, among others:

- Approved franchise holders, distributors, or dealers of motor vehicles are those listed in the finance ministry's letters dated 15 May 2020 (Reference No. MOF.TAX(S)700-2/8/9(31)) and 20 July 2020 (Reference No. MOF.TAX(S)700-2/8/9(42));
- The descriptions and harmonized system (HS) codes of the motor vehicles that are eligible for the sales tax exemption are set forth;
- The application procedures to obtain the relevant sales tax exemption are as follows:
    - Federal or state government departments must appoint agents to purchase domestically manufactured motor vehicles (including motorcycles);
    - The federal or state government department must issue an appointment letter to the agent for the purpose of purchasing motor vehicles (including motorcycles);
    - The appointed agent must prepare a letter of notification or written notice that must include information on the following:
        - The appointed agent;
        - The federal or state government department;
        - The domestically manufactured motor vehicles (including motorcycles) involved; and
        - The supply chain (a list of franchise holders, distributors, and dealers involved);
    - The approved franchise holder, distributor, or dealer that will buy from the registered manufacturer must manually (i.e., non-electronically) apply for an exemption certificate under item 5A of schedule A of the exemption order. The application must be accompanied by the following documents:
        - Application form;
        - Letter of notification or written notice from the appointed agent; and
        - Government appointment letter issued to the appointed agent;

- The exemption certificate will be issued manually by the customs controlling station; and
- The approved franchise holder, distributor, or dealer must submit the exemption certificate when making a purchase from a registered manufacturer.

The roles and responsibilities of the appointed agent and the approved franchise holder, distributor, or dealer are summarized below.

Appointed agent	Franchise holder, distributor, or dealer
Submit the following documents to the RMCD through the franchise holder, distributor, or dealer that will apply for the exemption: • Letter of appointment as an agent from the federal or state government department; and • Letter of notification of the purchase of a motor vehicle by an appointed agent, to be supplied to the federal or state government department.	Submit the following documents to the RMCD (specifically, to the Internal Revenue Division of the controlling station, which is based on the postal code of the business premises of the franchise holder, distributor, or dealer): • Application form for the exemption; • Letter of appointment for the agent appointed by the federal or state government department; and • Letter of notification of the purchase of a motor vehicle by an appointed agent, to be supplied to the federal or state government department.
Ensure that the motor vehicle is supplied at a price excluding the sales tax, according to the terms in the relevant contract.	Submit a sales tax exemption certificate to the registered manufacturer when making a purchase.
Ensure that the motor vehicle is delivered to the relevant federal or state government department.	Prepare a sales tax exemption statement on a monthly basis, using a prescribed format for the statement.
Retain the copy of the sales tax exemption statements submitted by the franchise holder, distributor, or dealer.	Submit a copy of the sales tax exemption statements to the appointed agent, for purposes of the agent's records.
Present the sales tax exemption statements during an inspection, if required by the RMCD at any time.	Retain the completed sales tax exemption statements, which need not be submitted to the Internal Revenue Division of the controlling zone or state. However, the statements must be presented during an inspection, if required by RMCD at any time.
	Submit a notification directly to the Ministry of Finance if there is any change or update to the name of the franchise holder, distributor, or dealer company.

Sales tax guide on item 58A of schedule A

Effective from 15 June 2021, a sales tax exemption under item 58A of schedule A of the exemption order is granted to any person approved to carry out bunkering services under the Petroleum Development Act 1974 (PDA), subject to certain conditions. The RMCD has since published the Sales Tax Guide on Item 58A in Schedule A, available only in the Bahasa Malaysia language. Relevant provisions of the guide are described below.

An application for the sales tax exemption must be made manually, subject to conditions outlined in the exemption order. The goods eligible for the sales tax exemption include the following:

- Diesel fuel;
- Liquefied natural gas;

- Lubricating oil; and
- Greases.

These goods are listed under the HS codes 2710.19.7200, 2711.11.0000, 2710.19.4300, 2710.19.4400, 2710.19.2000, 2710.19.3000, and 2710.19.9000 of the Customs Duties Order 2017.

The application procedures to obtain the relevant sales tax exemption are the following:

- The applicant must submit the following documents to the nearest RMCD office (i.e., the controlling station) for the business premises where the applicant operates:
  - Sales tax exemption certificate application form;
  - "PDA 2" permit granting approval for the applicant to carry out bunkering services under the PDA; and
  - A letter of approval to carry out ship supply activities that is based on the information in the PDA 2 permit and that is issued by the Customs Division of the RMCD; and
- An applicant that has more than one PDA 2 permit must submit a separate application regarding each permit.

An approved person that is granted a sales tax exemption certificate has certain responsibilities and various conditions apply, including the following:

- To be eligible for the exemption, the approved person must make a purchase of goods from a sales tax-registered manufacturer or the goods must be transported from a special area (as defined under the sales tax legislation);
- The approved person must submit the sales tax exemption certificate to the registered manufacturer when the purchase is made, or when the goods are transported from the special area;
- The goods must be for the use of approved ships only, including eligible fishing boats. The ships eligible for the sales tax exemption for bunkering purposes include the following:
  - Ships sailing from ports in Malaysia to ports abroad;
  - Foreign ships on international voyages;
  - International fishing boats; and
  - Passenger ferries, cruise ships, and tour boats that call at foreign ports such as those in Indonesia, Singapore, or Thailand;
- Ships other than those specified above are not eligible for the sales tax exemption for bunkering purposes under item 58A of schedule A;
- The sales tax exemption is limited to approved goods only;
- The purchase of goods is restricted to approved suppliers only;
- The goods must be used solely for the purpose of bunkering activities in the approved area;

- Persons approved for an exemption must prepare a report (Report CJ (P) Schedule A-58A) on a monthly basis. The format of the report is provided in appendix II of the guide. A complete report for each month must be submitted to the Internal Tax Division of the controlling zone or state on or before the 10th day of the following month; and
- If the approved person does not comply with any of the relevant conditions, sales tax will be due and payable on the date of the breach of the conditions.

Comments

The sales tax guide is intended to facilitate the application of the sales tax exemption for approved goods for use in bunkering services, subject to certain conditions. The sales tax exemption will lower the cost of doing business for bunkering services providers. Bunkering service providers will need to put in place appropriate procedures and processes to comply with the requirements described above, especially regarding the preparation of the relevant reports (which requires detailed information), and ensure timely submission of the reports to the RMCD.

Malaysia

Guide on tourism tax available for digital platform service providers

An obligation to charge Malaysia's tourism tax (TTx) and remit the tax to the tax authorities currently is scheduled to apply as from 1 January 2022 to digital platform service providers (DPSPs) that provide online booking services for accommodations in Malaysia, regardless of whether the DPSP is a resident of Malaysia or a nonresident. A guide to the TTx for DPSPs ("DPSP guide") published by the Royal Malaysian Customs Department (RMCD) on 13 August 2021 aims to provide clarity on the scope of the TTx for DPSPs, as well as their tax obligations that include an obligation for DPSPs that already are providing online booking services for accommodations in Malaysia to register for the TTx by 1 October 2021.

Following the gazettal of the Tourism Tax (Amendment) Act 2021 in February 2021, the Tourism Tax (Digital Platform Service Provider) Regulations 2021 were gazetted in March 2021 to provide the mechanisms to administer the TTx for DPSPs.

As noted above, the RMCD published the DPSP guide to provide clarification on the scope of the TTx for DPSPs, as well as their tax obligations. The salient points of the DPSP guide are as follows:

- A DPSP is any person (whether located within or outside Malaysia) that provides a digital platform service related to the online booking of accommodation premises in Malaysia. A DPSP will be liable to be registered for TTx.
- A TTx-registered DPSP will be required to charge TTx to a tourist who stays at any accommodation premises in Malaysia, when an online booking is made through its digital platform. The TTx rate is MYR 10 per room, per night, based on the Tourism Tax (Rate of Digital Platform Service Provider Tax) Order 2021.
- Where TTx has been paid by the tourist to the DPSP, the provider of the accommodation premises ("registered operator") is not required to collect the TTx from the tourist, provided that the tourist can show proof of payment. Where the tourist cannot present proof of payment of TTx to the DPSP, the registered operator must collect the TTx from the tourist and remit it to the RMCD. The registered operator still may be liable for TTx if the DPSP failed to collect the TTx or failed to provide a receipt to the tourist as proof that the TTx has been paid, based on paragraph 8 of the DPSP guide.

- A DPSP is required to issue an invoice, a receipt, or other document in Malay or English to a tourist who makes an online accommodation booking. The document must be issued within 30 days from the date the accommodation premises are made available (the date the booking is confirmed), or such extended period as may be approved by the Director General of Customs and Excise.
- On the date the booking is confirmed by the tourist, the TTx must be charged and collected by the DPSP if the payment for the booking is made to the DPSP. Where the DPSP only enables the booking but does not handle the payment, the registered operator must collect the TTx from the tourist, based on examples 3 and 4 of the DPSP guide. Note, however, that frequently asked question (FAQ) 2 of the guide indicates that where the DPSP provides an *option* for the tourist to pay tax up front to the DPSP or pay tax later to the registered operator, the obligation to charge and collect TTx falls on the DPSP.
- For DPSPs that provide online booking services for accommodations in Malaysia before the implementation date of the TTx for DPSPs (1 January 2022), the application for registration for the TTx must be made by 1 October 2021, based on example 7. The DPSP may register for TTx by submitting Form TTx-01A through the MyTTx portal. DSPs that begin providing online booking services for accommodations in Malaysia on or after 1 January 2022 will be required to apply for registration within 30 days from the date the services are first provided.
- The taxable period for DPSPs will be a period of three months ending on the last day of any month of any calendar year. The dates of the taxable periods generally will depend on the effective date of the registration for TTx, although DPSPs may request approval to use a specific taxable period. A registered DPSP is required to account for TTx by submitting a quarterly return (Form TTx-03A) to the RMCD, according to its taxable period. The return is due by the last day of the month following the end of the quarter. Upon submitting the Form TTx-03A, DPSPs may remit the TTx by way of telegraphic transfer (TT), or through the Financial Process Exchange (FPX) if the DPSP has a bank account in Malaysia.
- There are existing exemptions from registration and collection of TTx for operators of accommodations for backpackers and certain operators of accommodation premises listed in the Tourism Tax (Exemption) Order 2017. However, if a tourist books online to stay at these accommodations via a DPSP, TTx is chargeable, based on FAQs 5 and 6.
- Where no TTx is collected by the DPSP due to inaccurate information provided by the tourist, the DPSP will not be responsible for the under-collected TTx, provided it can be shown that due diligence has been carried out to obtain the required information from the tourist. DPSPs are expected to collect the necessary information (e.g., passport number or identification number) to determine the nationality of the tourist, based on FAQs 9 and 10. This is important because only Malaysian citizens and permanent residents are exempt from TTx under the Tourism Tax (Digital Platform Service Provider) (Exemption) Order 2021.

Comments

We welcome the guidance provided by the RMCD in the DPSP guide. It is important to note that online booking sites operated by foreign and local hotel chains that enable tourists to book a number of different hotels also would be classified as a DPSP. Currently, there is an exemption from TTx for DPSPs until 31 December 2021, as indicated in a 5 April 2021 RMCD announcement of the postponement of TTx, which had been scheduled to apply as from 1 July 2021. It is unclear at this stage if the exemption

will be extended beyond 31 December 2021 and in the event that the exemption is not extended, the requirement to collect TTx for DPSPs will commence on 1 January 2022. Existing DPSPs that allow online bookings of accommodations in Malaysia should take note that the DPSP TTx registration deadline of 1 October 2021 is rapidly approaching. DPSPs will need to ensure their systems are up to date and ready for the implementation of TTx.

Mexico

2022 economic package and tax reform proposals presented to Chamber of Deputies

On 8 September 2021, Mexico's federal executive submitted the 2022 Economic Package and Tax Reforms to the Chamber of Deputies for review, comprising, among others, proposed amendments to the Income Tax Law, the Value-Added Tax Law (VATL), and the Federal Tax Code.

If approved by Congress, these amendments would be effective as from 1 January 2022, albeit with the exception of certain provisions that would take effect on the day following their publication in the official gazette or on another date.

A summary of the most relevant tax proposals is detailed below.

Income Tax Law

Companies

- Changes to the thin capitalization rules:
  - Regarding the option to treat the CUCA (capital contributions account), CUFIN (net after-tax profits account), and CUFINRE (reinvested CUFIN) balances as stockholders' equity for the year, net operating loss (NOL) carryforwards would be deducted from the opening and closing balances and the result divided by two.
  - This option would not be applicable whenever the result of this calculation exceeds the stockholders' equity for the year by more than 20%.
  - The exception to the thin capitalization rules for financial institutions would not apply to unregulated multi-purpose financing companies (SOFOM, Sociedades financieras de objeto multiple no reguladas) whose primary corporate purpose is the performance of activities with Mexican or foreign related parties.
- Amendments to the back-to-back financing regulations would cover any financing activities that lack business purpose where interest is due by a Mexican resident or a permanent establishment in Mexico.
- In a corporate spin-off, NOL carryforwards must be split between the original and spun-off entities. A proposed amendment would require these entities to be engaged in the same line of business, a situation that would have to be substantiated if the authorities conduct an inspection.
- The rules that restrict NOLs following a change in stockholders' control would be substantially modified in the case of mergers. A change in partners or stockholders would not be deemed to occur if it is the result of an inheritance, donation, corporate restructuring, merger, or spin-off that is not treated as a sale under the Federal Tax Code, subject to applicable requirements being met. A change

in partners or stockholders holding a controlling interest in a company would be deemed to occur when one or more of the actions performed within a three-year period as from the date of the merger result in any of the following:

- A change in the direct or indirect holders of more than 50% of the shares or voting rights in the company;
- A change in the direct or indirect holders of any of the rights to make decisions, appoint or remove board members, direct management, etc.; or
- Following the merger, the company and its corporate partner or stockholder cease to consolidate their financial statements in conformity with applicable accounting and financial rules.

- A new "Simplified Trust Regime for Companies" would apply to companies resident in Mexico that are incorporated only by individuals and whose total income during the immediately preceding year did not exceed MXN 35 million, or new companies resident in Mexico that are incorporated only by individuals and whose total income in their first year of operations is not expected to exceed that amount.

Foreign residents

- Additional requirements would have to be met to apply the 35% rate on Mexican-source gains from the sale of shares between related parties. The certified public accountant's (CPA's) report would have to indicate the book value of the shares and supporting documentation would have to be submitted demonstrating that the price is consistent with the price that independent parties would have used in comparable transactions.
- When authorized to defer taxes following an internal group restructuring involving a share transfer, shares would be deemed to have left the group when the share issuer and the acquirer stop consolidating their financial statements for accounting purposes. The authorization could be subject to other requirements found in rulings issued by the tax authorities. Additional formalities regarding the authorization would apply to the CPA's report and requirements would apply to the acquirer and its legal representative. If the authorization is granted prior to the restructuring process and if the sole consideration used in the transaction is an exchange of shares, the authorization would become invalid if:
    - During an inspection, the tax authorities find that the restructuring or relevant related transactions that were performed within the five years immediately preceding and the five years immediately following the authorization did not have a business purpose; or
    - The exchange of shares generated income subject to a preferential tax regime.
- Foreign residents with Mexican-source income that carry out transactions with related parties would be required to determine their revenues, gains, profits and/or deductions based on the prices, payment amounts, or profit margins that would apply between independent parties in comparable transactions.
- A new rule would require that, whenever a verdict or arbitration ruling orders the payment of compensation to a foreign resident, regardless of whether this payment is for damages or lost profits, the individual or entity making the payment withhold the appropriate amount of income tax based on

the total compensation amount. The foreign resident would be allowed to request a refund of any excess tax withheld from damages, as long as it demonstrates which part of the payment represents damages and which part represents compensation for lost profits.

- The legal representative of a foreign resident would have to voluntarily assume liability for the foreign resident's taxes, which may not exceed the amount of taxes payable by the foreign resident. The legal representative also would have to have sufficient resources to enable it to act as joint obligor in accordance with general tax rules.

Maquiladoras

- An individual or entity resident in Mexico no longer would be able to obtain an advance pricing agreement to confirm its compliance with established transfer pricing rules and methods. This would also apply to companies with a maquiladora ("maquila") program granted under the shelter modality (i.e., Mexican companies providing contract manufacturing services to multiple unrelated entities).
- Companies with a maquila program would have to file an information return no later than June detailing their maquila operations and stating that their taxable revenues for the year equal at least the higher amount under the safe harbor rules. The benefits of the maquila program (i.e., absence of a permanent establishment) would not apply if the company fails to file the information return or fails to provide this information.

Transactions with related parties

- The following changes are proposed with regard to transactions between related parties:
  - Transfer pricing requirements would apply to related parties resident in Mexico and abroad;
  - Profit margins would be taken into consideration; and
  - Information regarding comparable transactions would only have to be considered for the year under analysis when a business cycle or commercial acceptance of the taxpayer's product covers more than one year; comparable transactions for two or more preceding or subsequent years could be taken into consideration.
- Ranges would be adjusted by using the statistical approaches based on the interquartile method provided in the regulations. This would apply to the process agreed in the mutual agreement procedure article of tax treaties signed by Mexico or the method authorized under the general tax rules.

Value-Added Tax Law

- A new provision would define acts or activities exempt from VAT as those which the taxpayer does not perform in Mexico, as well as those differing from the acts or activities listed in article 1 of the Value-Added Tax Law and performed in Mexico. This would apply when, in the cases mentioned in the new provision, the taxpayer (i) receives income or payments for which it incurs expenses or (ii) makes investments through which VAT is transferred to it or is paid to import goods. The value of the acts or activities referenced in the new provision would be equal to the amount of income or payments received by the taxpayer for performing the acts or activities during the relevant month.

- For VAT crediting purposes, the customs declaration for imported goods would have to be in the name of the taxpayer and certify that VAT has been paid.
- A foreign digital services supplier's access to digital services would be suspended temporarily if the supplier fails to maintain records and/or comply with its information obligations (i.e., number of services or transactions performed during each month of the calendar year with service recipients located in Mexico, classified by service or transaction type and number of recipients). This suspension would be implemented by the holders of public telecommunications network concessions in Mexico until the foreign resident fulfills its outstanding obligations.

Federal Tax Code

- A corporate spin-off or merger would not be considered tax exempt when any of the participating entities (i.e., surviving entity, merged entity, original company, spun-off entities) record an equity account, however named, that was not included in the financial statement for each participating entity approved for the transaction. Also, if the tax authorities determine that a spin-off or merger lacks business purpose, or does not fulfill the exemption requirements, it would be considered a taxable transaction.
- An addition would be made to the definition of royalties to provide that image rights imply the use of, or the right to use, a copyright of a literary, artistic, or scientific work.
- The tax authorities would be allowed to reject an advanced electronic signature from taxpayers whose shareholders or partners with effective control over the entity are not in compliance with their tax obligations.
- Several paragraphs would be added to the provisions regulating compensation or off-sets to give taxpayers under audit the option to regularize their tax situation by applying any favorable tax balances against their unpaid taxes and ancillary government charges determined by the tax authorities. This would be allowed even when different types of taxes are involved. The taxpayer would have to file a request with the tax authorities and an enabling clause would be added to the Federal Tax Code to allow the tax authorities to regulate the procedure and respective requirements through its general provisions. This amendment would be effective as from 1 January 2023.
- New assumptions would be included to qualify a transaction as the transfer of an ongoing concern subject to joint liability.
- Joint liability for taxes among individuals or entities that are not resident in Mexico or that are resident abroad would be extended to their representatives, regardless of their title, who perform taxable activities, up to the amount of taxes due. This would also apply to persons appointed pursuant to tax requirements as well as those appointed for tax purposes, up to the amount of taxes or ancillary government charges imposed under applicable provisions.
- The tax authorities would have the power to cancel or suspend a taxpayer's registration (RFC) when its systems or the information provided by other authorities or third parties confirm that the taxpayer did not perform any activities during the previous five years, did not issue any tax receipts, has no outstanding tax obligations or is deceased, and has met other requirements in the general tax rules.

- Taxpayers that file an RFC cancellation notice due to the complete liquidation of their assets or the complete suspension of their operations would be required to obtain a positive opinion regarding their compliance with social security obligations, except when the RFC cancellation is due to a corporate merger.
- Companies would be required to have their financial statements audited by a registered CPA (tax audit report) when, in the immediately preceding fiscal year, they reported on their regular tax return accrued income for income tax purposes of at least MXN 876,171,996.50. This would also apply to companies that listed their shares on the stock market at the close of the immediately preceding fiscal year. The tax authorities would retain the option to audit a taxpayer's financial statements but financial information would have to be declared in the taxpayer's annual tax return. The tax audit report would have to be filed no later than 15 May of the year immediately following the end of the fiscal year.
- A new provision would allow the tax authorities, after performing an inspection, to qualify a transaction, for tax purposes only, as a simulated or sham transaction. This would have to be justified and legally allowed by the inspection procedure and the deemed transaction would have to be described in the document in which the tax unpaid as a result is determined by the tax authorities, provided it is a transaction between related parties.

Oman

VAT guide issued for real estate sector

The Oman Tax Authority (OTA) issued in September 2021 its official value-added tax (VAT) guide on real estate transactions in Oman. This article discusses issues important to businesses operating within the real estate sector, as well as businesses involved in real estate transactions.

VAT treatment for real estate transactions

In accordance with VAT law, the guide identifies various supplies that are exempt, standard rated, or zero rated. The sale of undeveloped land, the resale of residential property, and the rental of residential property are exempt from VAT. Other supplies related to real estate, such as the sale and rental of commercial property (e.g., hotel apartments, warehouses, stores, car parks), the initial sale of residential property, and other cases not specifically zero rated or exempt are subject to VAT at a rate of 5%.

Real estate transactions for property located in special zones may qualify as zero-rated, subject to meeting certain conditions provided in the VAT Executive Regulations and guidance issued by the OTA.

What constitutes real estate?

The term "real estate" means any specified area of land, building, structure, or engineering work permanently attached to the land, including any goods affixed to any building, structure, or engineering work. For example, permanent fixtures (e.g., buildings not erected on a temporary basis), car parks, and hospitals are considered real estate. However, temporary fixtures that can be moved or removed without damage, such as temporary housing, equipment, furniture (not permanently attached to the land), and mobile homes are not considered real estate.

Developed versus undeveloped land

The supply of developed land is subject to VAT at a rate of 5%, whereas the supply of undeveloped land is exempt from VAT. Where a certain degree of construction or structural work is completed or civil engineering work is performed, the land is likely to be classified as developed land. However, if there are no man-made structures or partially completed structures (either above or below the surface), the land is likely to be classified as undeveloped land. The guide clarifies that whether land constitutes developed or undeveloped land must be evaluated on a case-by-case basis.

There may be cases where the supply of land at the point it is first leased to the tenant may constitute undeveloped land; however, once the tenant begins to develop the land, the nature of the landlord's supply will change. As per the guide, from the point the land ceases to be undeveloped land, the landlord would need to charge the tenant VAT at a rate of 5%. VAT would apply for a period after the change in the nature of the relevant supply.

Residential and commercial real estate

The guide helps determine what constitutes residential or commercial real estate. It also provides for the VAT treatment on different transactions relating to residential and commercial property:

Car park rentals are subject to VAT at a rate of 5%. However, if the car park rental forms part of a single residential property rental supply, it will be exempt from VAT. The guide also explains when a supply constitutes a single supply or multiple supplies.

Services provided by owners and developers regarding the maintenance, electricity, internet, water, administrative services, etc., for residential properties is subject to VAT at a rate of 5%, unless such services constitute a part of a single residential property rental supply.

If real estate has clear and distinct sections that are put to different uses, a specific VAT treatment must be applied. For example, a property that has retail units on the ground floor level and residential units on the upper floors would be considered mixed-use real estate. In this case, the VAT treatment would be based on the use of the part of the real estate that is being supplied (e.g., supply of a commercial unit is subject to VAT at a rate of 5%, whereas supply of a residential unit (other than the first supply) is exempt from VAT). Where mixed-use real estate is sold in its entirety, the consideration received must be assigned to the different parts of the property.

Input VAT incurred on the development costs of new commercial real estate is recoverable in full, but only if all intended supplies of that property are taxable.

Furthermore, if a taxable person incurs costs in constructing a residential building, all VAT incurred on such costs would be recoverable if they relate to the standard-rated first supply. Any future supplies of the building by that taxable person (e.g., a subsequent lease, which would be exempt from VAT after the first supply) would be ignored for the purposes of input tax recovery.

Place of supply of real estate and related services

The place of supply of real estate and related services is where the real estate is located. The VAT laws will apply if the place of supply is in Oman. The guide also provides that a supply of services is deemed to relate to property where the supply of services is directly connected with the real estate. The guide sets out examples to help determine whether the services are directly connected with a property.

The guide clarifies that if a nonresident person makes any taxable supplies related to real estate located in Oman, they may be required to register, charge, and account for VAT. This will depend upon the nature of taxable supplies made by the nonresident person and on the VAT registration of the recipient of taxable supplies. Where the real estate property itself is sufficient to create a fixed establishment for the nonresident person, the nonresident person is considered a resident in Oman and, therefore, should consider the mandatory VAT registration thresholds.

Retention payments and deposits

There are no rules in place for determining the date of supply in relation to retention payments. As per the guide, the normal time of supply rules apply.

Where a transaction qualifies as a continuous supply, the date of supply is the earlier of:

- The date the retention payment is made;
- The date specified on the tax invoice in relation to the retention; or
- Twelve months from the date the work was signed off on as complete (to be determined as per the contract signed between parties).

However, if the transaction is a single supply, the date of supply is the earlier of the following:

- The date the services are completed (to be determined as per the contract signed between parties);
- The date of issuance of the tax invoice; or
- The date the retention payment is made.

Transitional provisions

The guide highlights useful examples to help determine the VAT liability on continuous supplies that are partially made before and after the date the law became effective (according to a contract concluded before 16 April 2021). Only the part of the supply that was made after the law's effective date is subject to VAT. As such, the supplier should specify the supplies that were made before and after this date.

From a valuation perspective, consideration will be deemed to include VAT in the event that the contract does not include a clause related to VAT.

Poland

CJEU: Polish regulations on intra-EU acquisition of fuel violate EU VAT directive

In a judgment issued on 9 September 2021 (C-855/19), the Court of Justice of the European Union (CJEU) found that the provisions of Poland's VAT law regarding the intra-community acquisition of fuel were inconsistent with the EU VAT directive (Council Directive 2006/112/EC).

According to the Polish VAT Act, in the case of the intra-community acquisition of certain goods, the taxpayer is required to calculate and pay the VAT due to the customs authorities (i.e., the competent authority for the payment of excise duty), without prior notification from the customs office, within a few days (generally five) of the goods entering the country. The VAT is subsequently recovered through the

taxpayer's VAT return (as input VAT). This requirement applies to goods listed in the Polish VAT Act, including, among others, motor gasoline, diesel oil, biofuels, aviation fuels, liquefied petroleum gas (LPG), and heating oils.

The EU VAT directive, however, stipulates that, with respect to intra-community acquisitions, the tax obligation arises on the date the invoice is issued, but no later than the 15th day of the month following the month in which the acquisition is made. Therefore, the taxpayer cannot be required to pay VAT before that date.

It is believed that, as a consequence of the CJEU's judgment, taxpayers will not be required to pay VAT by the deadline provided for in the Polish VAT Act. Also, proceedings held to determine the arrears of taxpayers who failed to make timely VAT payments should be resolved in the taxpayers' favor. Moreover, the judgment may open the way for a refund of interest on VAT paid too early.

Poland

Proposed VAT group regulations introduced

Poland's Ministry of Finance introduced in September 2021 provisions regulating the creation of VAT groups in a draft bill entitled "Polish Deal." The provisions had been presented to the VAT Committee of the European Commission in November 2020 for discussion. The proposed regulations would treat certain related parties (legally separate entities) as a single VAT taxpayer and VAT grouping would be allowed in Poland as from 1 July 2022. The proposed regulations will become law once the legislative process is finalized and the bill is signed by the president and published in the official journal.

The most important provisions of the draft bill are as follows:

- The aim of the proposed regulations is to enable entities that are related financially, economically, and organizationally to jointly settle their VAT obligations. In practice, a VAT group would act as a single taxpayer required to submit a single JPK_V7 (SAF-T file) covering all VAT-able activities performed by each member of the group.
- To establish a VAT group, entities would have to meet and maintain the following three types of relationships during the entire period of the group's existence:
    - Financial relationship: One VAT group member holds directly more than 50% of the share capital of the other members;
    - Economic relationship: The main activities of the group members are of the same nature; and
    - Organizational relationship: The entities, legally or practically, directly or indirectly, remain under common management or organize their activities wholly or partly in mutual agreement.
- A VAT group could be established by taxpayers that are (i) seated in Poland or (ii) not seated in Poland to the extent that they conduct business activities in Poland through a Polish branch.
- Entities establishing a VAT group would have to (i) sign a written founding agreement for a minimum period of three years governing the group's future operation, (ii) register as a VAT taxpayer in Poland, and (iii) appoint a VAT group representative generally required to fulfil all of the group's VAT obligations, e.g., submission of JPK_V7 files.

- The delivery of goods and the provision of services between entities belonging to the same VAT group would not constitute VAT-able activities; accordingly, transactions within the group would not have to be documented with VAT invoices. However, a VAT group would have to keep relevant simplified records of intragroup transactions to be presented upon request to the tax authorities.
- VAT-able activities performed by one of the group members for the benefit of an external entity (third party) would be deemed performed by the VAT group itself. Similarly, VAT-able activities received by one of the group members would be deemed received by the VAT group.
- The companies belonging to the VAT group would be jointly and severally liable for the group's VAT liabilities.
- In case of intragroup transactions, the split payment mechanism would not apply.
- A given entity would be allowed to be a member of only one VAT group and a VAT group would not be allowed to be a member of another VAT group.

The general purpose of the VAT group option is to simplify VAT settlements between group members and increase the group's financial efficiency in dealings with third parties. In addition, VAT grouping should positively affect the financial liquidity of a group. It may also significantly limit the VAT compliance burden of a group's members.

Spain

Concept of "fixed establishment" regarding letting of property: A Spanish perspective

The Court of Justice of the European Union (CJEU) issued a decision on 3 June 2021 in the *Titanium* case (C-931/19) regarding the existence of a VAT fixed establishment in a situation involving leased immovable property owned by a foreign entity. The court confirmed that a foreign company has no fixed establishment for VAT purposes in the EU member state in which it owns and rents out an immovable property if the foreign company does not have its own staff in that member state to perform services relating to the rental of the property. This article provides a Spanish perspective on the CJEU decision and describes a significant change in the Spanish General Directorate of Taxation (DGT) position regarding the criteria for the existence of a fixed establishment following the decision.

In brief, the *Titanium* case involved a company that had its registered office and management in Jersey and that owned and rented out a building in Austria, but that had no employees or other resources in Austria. As is typically the case in these kind of situations, a local property manager provided support and essentially carried out the tasks for the day-to-day management of the property, while the owner (the foreign entity) retained the power to make all important decisions. The local property manager had its own premises, so it did not perform its activities in the building owned by the nonresident company.

Based on these circumstances, the court ruled that the building owned and rented out in Austria did not constitute a fixed establishment in Austria for VAT purposes for the foreign entity.

Comments and practical implications from a Spanish point of view

The DGT issued a binding ruling dated 20 August 2021 that was published in late September 2021 and that provides the DGT's first analysis of the criteria for a fixed establishment following the CJEU decision in the *Titanium* case. The ruling was highly anticipated, since the current Spanish VAT Law specifically provides that a "leased immovable property" should be considered as a fixed establishment for VAT purposes.

As expected following the CJEU decision, the DGT has confirmed the criteria for a fixed establishment set forth in the decision and has taken the position that a foreign entity has no VAT fixed establishment in Spain where it owns and rents out an immovable property through a lease if the property is located in the Spanish VAT territory (comprising the peninsula and the Balearic Islands) but the foreign entity does not have in that territory "their own staff/personnel to manage this lease." In other words, according to the DGT, there is no VAT fixed establishment when the foreign entity does not have any "own" personnel resources in the Spanish VAT territory to perform services relating to the letting.

The position adopted by the Spanish tax authorities is significant, since it represents a change of the approach that the DGT had maintained when analyzing structures in which foreign entities owned and rented out immovable property located in the Spanish VAT territory through lease agreements. Previously, for a fixed establishment to exist in Spain, the DGT did not require the management of leased property located in the Spanish VAT territory to be carried out solely and exclusively by an entity's own personnel resources located in the territory; having subcontracted with a third party for personnel resources to perform services relating to the letting was sufficient for the DGT to consider that a VAT fixed establishment existed in Spain.

The consequences that may arise from the change of the DGT's position may be numerous and should be analyzed carefully from a variety of perspectives. Although the general criteria for a fixed establishment have been modified, there are still many outstanding issues to be resolved. Each situation should be analyzed on a case-by-case basis and, among other things, the analysis should consider whether a fixed establishment for VAT purposes exists in the Spanish VAT territory and the right to recover Spanish input VAT on the letting of the property.

Switzerland

Federal Council approves project to revise VAT law

On 24 September 2021, the Swiss Federal Council approved a message on a project to partially revise the Swiss VAT Law.

Context

On 19 June 2020, the Swiss Federal Council mandated the Federal Finance Department to open a consultation on a partial revision of the VAT Law and VAT Ordinance. The aim of the revision is to ensure a level playing field and a uniform application of VAT in a more globalized and digitalized world.

Overall, 24 cantons, five political parties, and 63 organizations expressed their views, on which the Federal Council commented in its note to the federal parliament.

The changes have been welcomed overall by all stakeholders.

Main proposals

The main changes proposed are as follows:

- In the field of e-commerce, electronic platforms would become subject to VAT in Switzerland (as suppliers) for the deliveries they have facilitated. In order to ensure a level playing field and uniform application of VAT, the Swiss federal tax administration (SFTA) would be able to block importations or order the destruction of shipments from mail-order companies/platforms that do not meet their VAT obligations in Switzerland.

- For travel taking place abroad, travel agencies would no longer be required to consider each element of a trip (e.g., accommodation, transport, etc.) separately to assess the place of supply. All services rendered by travel agencies in their own name would be taxable where the agencies are established. The supplies of travel agencies would not be subject to VAT if they are rendered abroad of if they would have been zero-rated according to article 23 of the Swiss VAT Law if rendered by persons who are not travel agencies.

- Some administrative obligations would be simplified:

  - Small and medium-sized enterprises (SMEs) would be able to file an annual return with installment payments; and

  - The appointment of a fiscal representative would no longer be mandatory for foreign compagnies in certain specific cases.

- Finally, in order to guarantee and ensure a uniform application of the tax:

  - Acquisition tax would apply to the transfer of emission rights and other similar rights; and

  - The SFTA would be able to require, in certain cases, the provision of a security by the governing members of a legal person to cover the taxes, interests, and costs owed by a company.

The revision project includes other proposed changes. Notably, it would apply the reduced VAT rate to feminine hygiene products, introduce a fiction treating all funds received from public bodies as subsidies if they are qualified as such by the public bodies toward the beneficiaries, and equalize the treatment of cultural and sports associations by exempting from VAT registration fees for active participation in cultural events.

Next step

Following the publication of the Federal Council message, the project still needs to enter the parliamentary phase and be voted. The revised VAT Law and VAT Ordinance are not expected to enter into force prior to 1 January 2023. Meanwhile, businesses may begin to assess the impact of the proposed changes on their operations.

Switzerland

Draft change of practice would change VAT treatment of certain health sector services

The Swiss Federal Tax Administration (SFTA) published on 5 October 2021 draft amendments to VAT info n° 21 on the health sector, specifically regarding pharmacists. The publication of the draft is a preliminary step to a future formal integration into the VAT guidelines at a later date to be confirmed.

The draft amendments clarify which pharmacist activities are taxable and which are VAT exempt without credit (i.e., the taxation option remains possible).

The VAT-exempt activities without credit are expressly listed in the draft sector VAT info, as follows:

- Vaccination to prevent disease;

- First aid in case of injury;

- Conducting examinations for the purpose of diagnosing diseases, injuries, or other physical disorders; and
- Inquiries and advice in relation to contraception.

For the exemption to apply, these activities would have to be carried out by pharmacists holding a cantonal authorization to practice the profession of pharmacist in a self-employed capacity or those authorized to dispense medical treatments in accordance with cantonal legislation.

The same activities provided by pharmacist assistants, who do not hold a cantonal authorization, would remain taxable.

Thailand

Waiver or reduction of certain penalties authorized

On 31 August 2021, the Thai Revenue Department issued a revenue department regulation (No. Tor.Por. 337/2564) authorizing a revenue officer to waive or reduce the penalty for taxpayers that fail to file VAT or specific business tax (SBT) returns by the relevant deadline, or that submit tax returns with errors, in respect of tax returns that are due from 1 September 2021 through 31 December 2021. The authorization is in response to COVID-19. If the filing is made within three months from the deadline, the penalty will be waived or reduced as follows:

- The penalty will be waived if the tax and surcharge due are paid in full; and
- The penalty will be reduced to 2% of the total penalty that otherwise would apply if tax is paid that is equal to at least 25% of the amount payable.

Thailand

Extension of 7% VAT rate for two years

A royal decree (No. 724) issued on 26 August 2021 provides that the reduction of Thailand's statutory VAT rate from 10% to 7% (inclusive of local tax) will be extended for an additional two years. The extension is effective from 1 October 2021 until 30 September 2023.

United States

State Tax Matters (1 October 2021)

The 1 October 2021 edition of US *State Tax Matters* includes coverage of the following tax developments:

- Income/Franchise:
  - Colorado: Department of Revenue proposes special industry apportionment rule addressing hedging transactions
  - New Jersey: Corporation business tax combined reporting initiative extended through 3 January 2022
  - West Virginia: Proposed rule changes reflect adoption of single sales factor and market-based sourcing

- **Sales/Use:**
  - **Hawaii:** General excise tax and use tax are not expressly preempted by Foreign Trade Zone Act
  - **Illinois**: Rules on marketplace facilitator obligations for food delivery services are in effect
  - **Massachusetts:** Department of Revenue withdraws online versus in-store sales reporting for some sales tax filers
  - **Mississippi:** Department of Revenue proposes changes to rule on computer software and services addressing cloud computing
  - **New York**: Trial court dismisses suit against retailer on tax treatment of instant savings program
  - **Tennessee**: Department of Revenue addresses new law allowing some customers to directly file sales tax refund claims
  - **Texas:** Comptroller says it will not enforce some rule changes involving local tax sourcing
  - **Texas:** Proposed rule changes for comment define "bad debt credit" terms and reflect policy
  - **Utah**: Administrative ruling holds that online access to training platform is taxable

United States

State Tax Matters (8 October 2021)

The 8 October 2021 edition of US *State Tax Matters* includes coverage of the following tax developments:

- **Administrative:**
  - **Maryland:** Comptroller issues guidance on new whistleblower reward program for taxes
- **Income/Franchise:**
  - **Alabama:** Proposed rule changes reflect move from double-weighted to single sales factor
  - **California**: Franchise Tax Board posts more guidance on new elective pass-through entity tax
  - **Massachusetts:** New law offers entity-level taxation for some pass-through entities
  - **Michigan**: Appellate court says alternative apportionment warranted for deemed asset sale gain
- **Sales/Use/Indirect:**
  - **Arkansas:** US district court dismisses local franchise fee suit against streaming companies
  - **California:** New law requires marketplace facilitators to register, collect, and remit specified fees
  - **Texas:** US district court dismisses local franchise fee suit against streaming companies
  - **Washington**: Supreme Court upholds constitutionality of added 1.2% business and occupation tax on some banks

United States

State Tax Matters (15 October 2021)

The 15 October 2021 edition of US *State Tax Matters* includes coverage of the following tax developments:

- Sales/Use/Indirect:
    - Maryland: Comptroller proposes rules for new digital advertising tax with comments due 8 November
    - Mississippi: 3 November public hearing will address proposed rule changes involving cloud computing
    - Texas: Manufacturing exemption applies to equipment used to excavate tangible personal property from realty

The newsletter also features recent Multistate Tax Alerts:

- "Massachusetts enacts pass-through entity tax election"
- "New Jersey extends compliance initiative for Corporation Business Tax"
- "Recent guidance addressing New York's new pass-through entity tax"

United States

State Tax Matters (22 October 2021)

The 22 October 2021 edition of US *State Tax Matters* includes coverage of the following tax developments:

- Income/Franchise:
    - Oregon: Tax Court reconsiders case on inclusion of dividend and subpart F income in sales factor
    - Texas: Appellate court says only net proceeds from hedging transactions includable in sales factor
- Sales/Use/Indirect:
    - Illinois: Proposed rules include marketplace facilitator obligations for food delivery services
    - New Mexico: Adopted rules address gross receipts taxation of marketplaces and services performed

The newsletter also features a recent Multistate Tax Alert: "Texas Comptroller adopts amended regulations for R&D activities"

United States

State Tax Matters (29 October 2021)

The 29 October 2021 edition of US *State Tax Matters* includes coverage of the following tax developments:

- Income/Franchise:
    - Alabama: Proposed new financial institution excise tax (FIET) rule explains federal income tax deduction
    - California: Franchise Tax Board legal ruling considers unitary treatment of passthrough entities and holding companies
    - Louisiana: Department of Revenue announces transfer pricing managed audit program that begins 1 November
    - Oregon: Proposed rules address fiscal year corporate activity tax (CAT) returns, accounting period differences, and designated filers
- Sales/Use/Indirect:
    - Missouri: Machinery and equipment used to produce vehicle history reports (VHRs) qualifies for manufacturing exemption
    - Texas: Mobile restaurant ordering and payment platform provider deemed a marketplace provider
- Property:
    - New York: New law revises how assessors value some commercial property using comparable sales

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