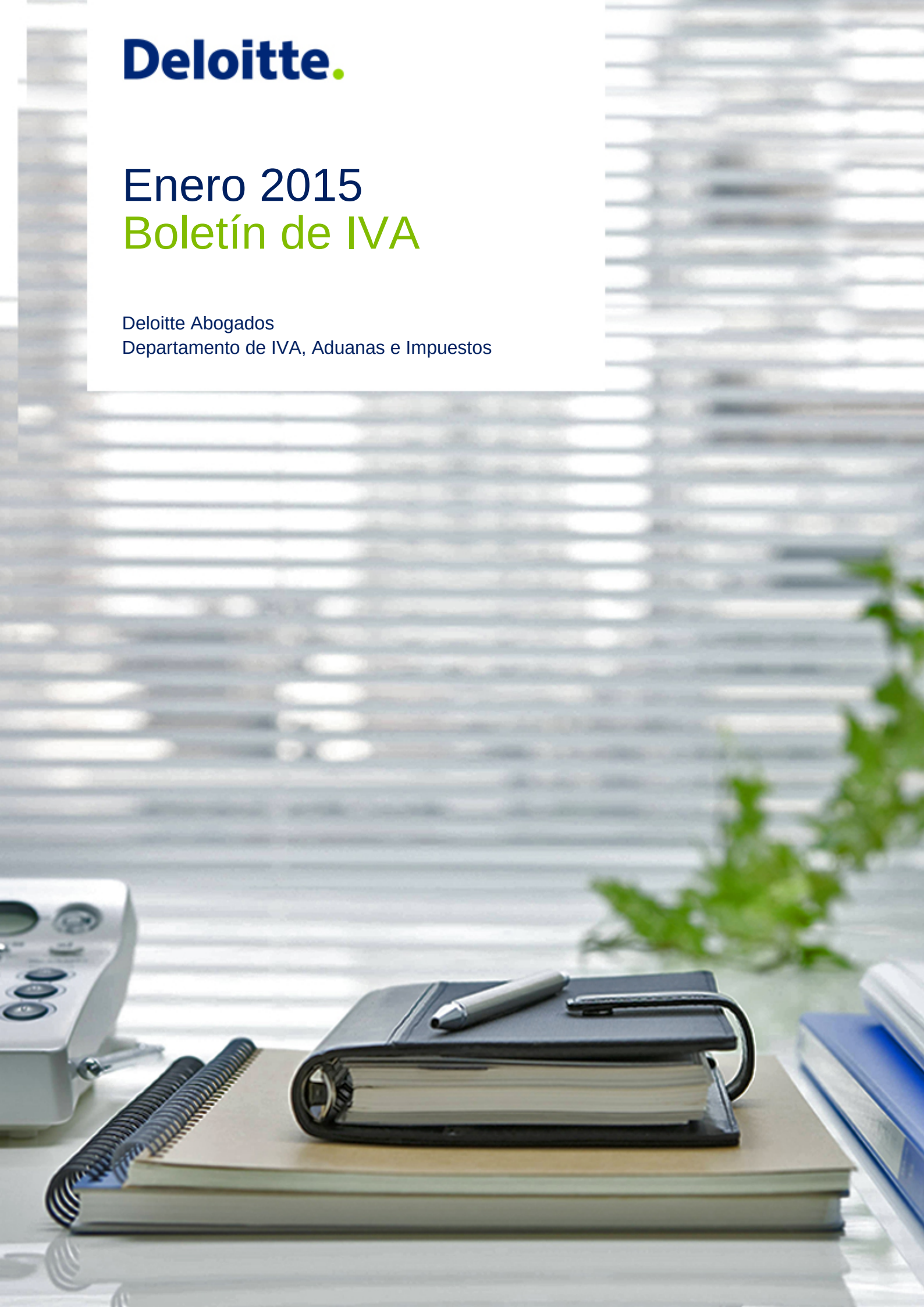
Deloitte.

Enero 2015
Boletín de IVA

Deloitte Abogados
Departamento de IVA, Aduanas e Impuestos



Índice de contenido

8. **Dirección General de Tributos. Contestación nº V3343-14, de 18 de diciembre de 2014.**

9. **Dirección General de Tributos. Contestación nº V3386-14, de 29 de diciembre de 2014.**

III. World WAT News.

OECD
The OECD has released discussion drafts on two new elements of the International VAT/ GST Guidelines.

The OECD has released reports on consumption tax trends and the distributional effects of consumption taxes in OECD countries.

Americas

Colombia
The requirements have been established for offshore permanent free trade zones for activities related to the oil & gas industry.

A 0% customs tariff has been set for the importation of cotton.

Mexico
An antidumping investigation has been instigated for U.S. origin apples.

Compensatory quota investigation for ethylene glycol monobutyl ether imported from the U.S.

United States
New Jersey has adopted new regulations regarding sales and use taxes on sales of software and software-related services.

U.S. and Singapore sign Customs Mutual Assistance Agreement and Mutual Recognition Arrangement.

Uruguay
There are new rules regarding the VAT and customs duty exemptions applicable to international packages.

Asia Pacific

ASEAN
Abolishment of FOB value under AJCEP Form AJ.

China
China tariff policy for 2015 announced.

India
Aluminum dross and skimming are not subject to excise duty, following a decision by the Bombay High Court.

There has been an increase in the Sikkim VAT and sales tax rates.
The Union Finance Minister has tabled the Constitution Bill, 2014 to enable the introduction of GST.

The Special Economic Zone (SEZ) rules have been amended to provide for the division of Non Processing Areas (NPA) into two parts.

Indonesia
The Government has revoked thousands of import licenses.

Import duties on finished goods are to be increased.

Japan
Update on proposed changes to the taxation of cross-border digital services.

Singapore
U.S. and Singapore sign Customs Mutual Assistance Agreement and Mutual Recognition Arrangement.

The Strategic Goods (Control) (Amendment) Regulations 2014 took effect on 1 January 2015.

Singapore has signed the Arms Trade Treaty.

South Korea
An advanced adjustment system for customs and internal tax has been introduced.

TRADE PREFERENCES

Philippines-European Union
The Philippines is the first ASEAN country to join EU's GSP+.

Singapore-Gulf Cooperation Council
Dubai eliminates customs duties applicable to Singapore origin products.

South Korea-Australia
The Korea-Australia FTA entered into force.

South Korea-New Zealand
Negotiations for a Korea-New Zealand FTA have concluded.

South Korea-Vietnam
Negotiations for a Korea-Vietnam FTA have concluded.

EMEA

Belgium
The application of the new rule requiring directors acting through companies to charge VAT on their fees has been deferred until 1 January 2016 (from 1 January 2015).

The entry into force of new tax point rules has been deferred until 30 June 2015.

The tax authorities have issued a decision on the VAT place of supply rules for port taxes/ dues.

Croatia
On 1 January 2015, there were significant amendments to the Croatian VAT legislation, regarding, inter alia, the reduced VAT rate, the cash accounting system, the suspension of VAT identification numbers, the responsibility of a taxpayer for payment of unpaid VAT, the adjustment of VAT deductions for stocks of goods, VAT returns and compliance forms, and the supply of real estate.

Denmark
A full input VAT deduction is now allowed for hotel accommodation.

There has been a change of administrative practice for corrections of VAT.

A bill has been introduced regarding mini one stop shop invoicing requirements for foreign businesses.

Owners of new buildings and building sites may be able to sell without VAT in certain circumstances.

The simplification rule for foreign tourist buses' activities has been abolished.

There is an update on a number of customs issues.

Eurasian Economic Union
On 2 January 2015, Armenia became a full EEU member together with Belarus, Kazakhstan and Russia.

European Union
EU consultation on 'public interest' VAT exemptions and VAT for public bodies.

Finland
Supply of scrap metal is subject to domestic reverse charge mechanism as of 1 January 2015.

Books published on physical means of support other than paper cannot be deemed subject to the reduced VAT rate.

The SAC considered remuneration for a transfer of outstanding debts a taxable collection service.

The SAC has published two rulings regarding the management services provided to SIFs.

A buyer was allowed to deduct input VAT on prepayments, although the supply was not carried out due to liquidation of the supplier.

An amount withheld by the buyer from a payment to the supplier was regarded as an indemnity and not a discount.

Germany
Threshold established for reverse charge on base and precious metals.

GCC
Update on implementation of the FTA between the Gulf Cooperation Council and European Free Trade Association countries.

Iceland
There have been changes to the VAT rates and the excise duty regime, and amendments to the VAT legislation.

Italy
New software for the mandatory e-filing and e-sending of letters of intent and new 2015 VAT forms are now available on the official website of the tax authorities.

A number of VAT changes apply from 1 January 2015, including ‘split payment’ rules for certain public bodies, extension of the scope of the reverse charge mechanism, new VAT rules for e-books and wood pellets, and potential future increases to the VAT rates.

Clarification has been provided regarding the new VAT refund rules.

The draft of a new legislative decree implementing the EU Mini One Stop Shop regime has been sent by the Italian Government to the competent Commissions of the Parliament.

The Supreme Court has recognized the right to be heard before the adoption of a decision about the abuse of right.

Lithuania
The VAT Law has been amended in relation to the application of the cost sharing exemption, the 2015 EU place of supply changes, and the VAT treatment of tourism services. The reduced VAT rate has been extended.

There have been amendments to the excise duty law.

Luxembourg
The VAT rates have increased.

Netherlands
The Court of Justice of the European Union has delivered its judgment in the Dutch case of Italmoda about VAT evasion as a type of VAT fraud.

Poland
New VAT rules are scheduled to come into force, in most cases, on 1April 2015, concerning the reverse charge mechanism, and a number of other amendments.

As of 1 January 2015, some important changes to the excise duty law were introduced.

Portugal
The Budget Law for 2015 has been approved and includes a number of VAT changes.

The Environmental Tax Reform was also approved and includes several measures that cover a number of topics.

The tax authorities have released a ruling regarding the 2015 EU place of supply changes and their application in respect of services rendered in the Autonomous Region of Madeira or Azores.

There are new rules in respect of VAT refunds.

Spain
There have been significant amendments to the VAT Law, which mainly came into force on 1 January 2015.

Ukraine
There been significant amendments to the Tax Code of Ukraine, including a number of changes to VAT law.

United Kingdom
Change to the Intrastat arrival threshold from 1 January 2015.

New tax authority guidance on VAT and prompt payment discounts.

Tax authority guidance for businesses supplying digital services to private consumers.

I. Jurisprudencia.

1. Tribunal de Justicia de la Unión Europea. Sentencia de 22 de enero de 2015. Asunto C-55/14, Régie communale autonome du stade Luc Varenne.

Exenciones — Concepto de arrendamiento de bienes inmuebles exento — Puesta a disposición, con carácter oneroso, de un estadio de fútbol, que reserva determinados derechos y prerrogativas al propietario — Sexta Directiva IVA — Artículos 13, B, letra b).

Esta sentencia se produce en el marco de un litigio entre las autoridades fiscales belgas y la Régie communale autonome du stade Luc Varenne (en adelante la régie), en relación con la deducibilidad del IVA incurrido por parte de dicha compañía al adquirir un estadio de fútbol.

En lo relativo al litigio principal, el 25 de agosto de 2003, la regie celebró un contrato con el Royal Football Club de Tournai ASBL (en adelante RFCT), en virtud del cual este último utiliza, a cambio de una remuneración, las instalaciones del estadio de fútbol Luc Varene, deduciéndose la régie la totalidad del IVA que gravaba la adquisición de las citadas instalaciones.

Como consecuencia de dos inspecciones llevadas a cabo durante los años 2004 y 2006, la Administración tributaria belga consideró que, según los términos del contrato celebrado entre la régie y RFCT, la puesta a disposición de determinadas instalaciones del citado estadio debía considerarse como un arrendamiento de bienes inmuebles, exento del IVA, en virtud del artículo 13, B, letra b) de la Sexta Directiva (artículo 135.1.l) de la Directiva 2006/112/CE).

Así, la Administración tributaria belga señaló en el acta correspondiente y tras realizar un análisis de las actividades llevadas a cabo por la régie, que esta última únicamente podría deducirse el IVA soportado en un 36%, según la técnica de la prorrata y con arreglo al método de afectación real.

Esta decisión fue recurrida por la régie ante distintas instancias jurisdiccionales, al entender que la puesta a disposición de un estadio de fútbol habría de ser calificada a efectos del IVA como una prestación de servicios distinta y no como un arrendamiento de bienes inmuebles, exento del Impuesto.

Finalmente, el *cour d'appel de Mons* decidió plantear al Tribunal de Justicia la cuestión prejudicial de si la puesta a disposición de las

instalaciones de una infraestructura deportiva utilizada para una finalidad exclusivamente futbolística entendida como la facultad de uso y explotación puntual de la superficie de juego del estadio de fútbol así como de los vestuarios, hasta un máximo de 18 días por temporada deportiva, es un arrendamiento de bienes inmuebles exento en el sentido del artículo 13, B, letra b), de la Sexta Directiva, teniendo en cuenta que el cedente de ese derecho de uso y explotación:

- dispone de plenas facultades para otorgar derechos idénticos a otras personas físicas o jurídicas de su elección, fuera de los 18 días antes citados;

- tiene derecho a acceder en todo momento a las mencionadas instalaciones;

- se reserva asimismo un derecho de inspección permanente del acceso a las instalaciones;

- y en cuanto a la contraprestación recibida, el 20 % del importe corresponde, en virtud del contrato, al derecho de acceso al campo de fútbol y 80 % constituye la contrapartida por diversos servicios de mantenimiento, limpieza y conservación del terreno.

En este sentido, el TJUE considera que, en virtud de reiterada jurisprudencia, la característica fundamental del concepto de arrendamiento de bienes inmuebles en el sentido de la Sexta Directiva es conferir a la otra parte contratante por un plazo y a cambio de una renta, el derecho a usar un inmueble con todas las facultades atribuidas a su propietario impidiendo que otra persona pueda disfrutar de ese derecho. Asimismo, también afirma el Tribunal que, en cuanto a la calificación de la utilización de instalaciones deportivas, ya ha declarado que las prestaciones relacionadas con la práctica del deporte deben ser consideradas de manera global.

Con base en lo anterior, Tribunal de Justicia señala que los servicios prestados por la régie presentan un carácter mucho más complejo, consistente no sólo en facilitar el acceso a las instalaciones deportivas sino también en proporcionar el control, supervisión, gestión, mantenimiento y limpieza de dichas instalaciones, servicios que reflejan una permanencia constante de representantes de la régie en dichas instalaciones, lo que supone un indicio a considerar que el papel desempeñado por la régie es mucho más activo que el que correspondería en virtud de un contrato de arrendamiento de bienes inmuebles.

Añade el TJUE que, en lo que respecta a los servicios de gestión, mantenimiento y limpieza, la mayor parte de ellos resultan efectivamente necesarios para garantizar que las instalaciones en cuestión sean adecuadas para su utilización.

En línea con este razonamiento, señala el Tribunal de Justicia que el hecho de que en virtud del contrato previsto, el 80% de la contraprestación percibida por la régie derive de los distintos servicios prestados supondría un indicio adicional para calificar la transacción como una prestación de servicios distinta y no como un arrendamiento de un bien inmueble exento.

Por último, y en lo que respecta a la duración del uso y disfrute del bien, como elemento esencial de un contrato de arrendamiento, el TJUE considera que 18 jornadas futbolísticas no constituyen una duración insignificante a priori. No obstante, afirma que deberá ser el órgano jurisdiccional remitente el que deberá determinar si en dichas circunstancias podría calificarse de ocasional o temporal el uso y disfrute convenido.

De acuerdo con lo anterior, el Tribunal concluye que, en virtud del artículo 13, parte B, letra b) de la Sexta Directiva, la puesta a disposición con carácter oneroso de un estadio de fútbol en virtud de un contrato que reserva determinados derechos al propietario y que prevé la prestación, por parte de éste, de distintos servicios, que representan el 80 % de la contraprestación recibida, no constituye, en principio, un arrendamiento de bienes inmuebles exento a efectos de dicha disposición.

2. Audiencia Nacional. Sala de lo contencioso. Sentencia de 2 de enero de 2015 (nº de recurso 226/2013).

Transmisión global del patrimonio empresarial – No sujeción al IVA.

En el supuesto de hecho, la recurrente adquirió un edificio a una Compañía A en febrero de 2011. Dicha compra incluyó las licencias de primera ocupación, medioambiental, turística categoría cinco estrellas. Por otra parte la recurrente adquirió de una segunda Compañía B, entidad que explotaba en régimen de arrendamiento el citado edificio como hotel, todos los activos de su propiedad (menaje del hotel, mobiliario…). Estos activos fueron valorados en “cero” euros. La compraventa del inmueble se sujetó al IVA, previa renuncia a la exención conforme a lo dispuesto en el artículo 20.Dos de la Ley del IVA.

Por otra parte, en la misma fecha, la recurrente suscribió un contrato de

arrendamiento con una tercera Compañía C, integrante de su mismo grupo empresarial, y que versó sobre la explotación de Hotel con todas sus instalaciones. La recurrente no adquirió los medios operativos que venía utilizando la Compañía B, pues disponía de sus propios medios, pero pactó con ésta el uso del nombre comercial y marca, los dominios de internet y del sistema informático de gestión durante los 4 meses siguientes a la compra del hotel y el mantenimiento durante 1 mes de los contratos con proveedores.

La recurrente solicitó la devolución de las cuotas soportadas como consecuencia de la realización de las operaciones anteriores (en particular, la adquisición del inmueble). Sin embargo, la Administración Tributaria declaró no deducible dichas cuotas por entender que la operación que dio lugar a las mismas estaba no sujeta al IVA.

En este sentido, la Audiencia entiende que la Administración ha acreditado que la Compañía A transmite el edificio que ya está siendo explotado como hotel junto con las licencias necesarias para seguir con la misma actividad, elementos indispensables para el desarrollo de la actividad económica.

Además, el Tribunal pone de relieve que la Compañía B está participada íntegramente por la Compañía A, hecho que no supone necesariamente que carezca la primera de autonomía decisoria. Sin embargo, al tratarse de una participación de todo el capital y coincidir en ambas sociedades el mismo administrador, puede razonablemente establecerse una presunción iuris tantum en el sentido de que es la Compañía A quien dicta la política comercial de la Compañía B.

Asimismo, el hecho de que la transmisión de los activos se haya realizado por valor de cero euros, lleva a la Audiencia a concluir que la operación no responde a una lógica económica predicable de un agente libre y autónomo en un mercado.

Por último, nada cambia por el hecho de que la recurrente tenga grupo hotelero propio y que, con posterioridad a adquirir los activos necesarios para realizar la explotación de la actividad, los sustituya posteriormente.

Concluye la Audiencia que no existen dos transmisiones de activos realizadas de forma aislada por dos sujetos pasivos distintos, sino una única operación compleja imputable en su conjunto a la Compañía A, debiendo la operación calificarse como no sujeta al IVA de acuerdo con el artículo 7.1º de la Ley del IVA.

3. Audiencia Nacional. Sala de lo contencioso. Sentencia de 14 de enero de 2015 (nº de recurso 523/2013).

Servicios relacionados con vivienda – Asistencia social – Exención

En el supuesto de hecho, una fundación presta servicios a los propietarios de viviendas relacionados con el alquiler de las mismas, tales como reforma limpieza, búsqueda de inquilinos, seguro multi-riesgo, resolución de contratos y conflictos entre contratantes. Por otra parte presta servicios gratuitos a los inquilinos, tales como búsqueda de vivienda, elaboración del contrato y asesoramiento en su firma. Además, presta servicios también gratuitos de asesoramiento en relación a la vivienda (aspectos legales, fiscales…). Todos estos servicios son gratuitos para los propietarios e inquilinos, siendo los costes asumidos por ayuntamientos, comunidades autónomas y otros entes públicos con los que contrata.

La fundación obtuvo en 1999 el reconocimiento de entidad de carácter social a que se refiere el artículo 20 Tres de la Ley del IVA, considerando la demandada que tal declaración lo es en relación al artículo 20.Uno 8º, 13º y 14º de la Ley del IVA.

La Audiencia señala que, en los Estatutos de la fundación, se establece que carece de ánimo de lucro, que su patrimonio está afecto a la realización de los fines de interés general y que, entre sus actividades, se encuentra la de gestionar programas relacionados con el acceso a una vivienda digna, prestando asesoramiento a los agentes implicados.

La recurrente (la fundación) sostiene que sus programas son de confección pública y se realizan en colaboración con instituciones públicas, estando enfocados principalmente a inmigrantes y personas con nivel socioeconómico bajo, aportando documentos de las Administraciones municipales y autonómicas en las que reconocen el carácter social de su actividad.

La controversia se centra en determinar si las condiciones y circunstancias en las que la recurrente presta los servicios de intermediación inmobiliaria, permiten afirmar que realiza una actividad que pueda ser calificada de acción social y/o de protección a la juventud y, por tanto, exenta del IVA. O bien, dichos servicios de intermediación no pueden calificarse de servicios de asistencias social y la fundación debió repercutir IVA, tal y como sostuvo la Administración Tributaria y confirmó el TEAC.

En relación con lo anterior, la Audiencia hace referencia a la Sentencia de 26 de mayo de 2005 del TJUE. A la vista de dicha jurisprudencia, la Audiencia establece que para calificar una actividad como acción social comunitaria o familiar o de protección a la juventud: a) debe estar relacionada con tal asistencia o protección, b) prestarse por organismos que tengan un carácter esencialmente social, c) existencia de disposiciones específicas, y d) interés general de la actividad, sin exigir la falta de ánimo de lucro para el reconocimiento de la exención.

La Audiencia entiende que la recurrente carece de ánimo de lucro, se dedica a la realización de fines de interés general y todos los servicios que presta en relación con la vivienda son gratuitos. La finalidad de la intermediación es operar en ámbitos sociales con problemas para acceder a la vivienda, buscando un abaratamiento del acceso a la vivienda, enmarcándose la actividad en proyectos públicos de acceso a la vivienda de jóvenes y personas en riesgo de exclusión.

En relación con lo anterior, la Audiencia sostiene que la Administración no ha acreditado que la recurrente haya prestado servicios de intermediación inmobiliaria distintos a los prestados a jóvenes o personas en riesgo de exclusión, ni que haya realizado una actividad onerosa o, en su caso, que haya desarrollado programas de carácter privado al margen de las Administraciones públicas.

Sobre la base de lo anterior, la Audiencia manifiesta que la recurrente realiza una actividad constitutiva de acción social comunitaria consistente en facilitar el acceso a una vivienda digna a personas que, por su situación, se encuentran en dificultades, realizando su actividad de manera gratuita y en el seno de programas públicos y, por ello, su actividad se encuentra incluida en el ámbito de aplicación de la exención prevista en el artículo 20.Uno.8 de la Ley del IVA.

4. Tribunal Superior de Justicia de Madrid. Sala de lo Contencioso-Administrativo. Sentencia de 5 de diciembre de 2014 (nº de recurso 1446/2012).

Deducciones: facturas emitidas a nombre de UTE; disolución y liquidación de la UTE; deducción de cuotas soportadas por la entidad miembro de la UTE que asume los derechos y obligaciones pendientes de la misma tras su disolución.

La presente sentencia del Tribunal Superior de Justicia de Madrid versa sobre el derecho que ostenta una entidad a poder deducirse el IVA de unas facturas, emitidas en nombre de la Unión Temporal de Empresas (en

adelante, UTE) de la que formaba parte, posteriormente a su disolución, por ser dicha entidad sucesora y asumir los correspondientes derechos y obligaciones.

La entidad impugna la resolución dictada por el Tribunal Económico Administrativo Regional de Madrid en la que, en la misma línea que el órgano inspector, se establece que no cabe la posibilidad de deducirse las cuotas del IVA correspondientes a las facturas emitidas en nombre de la UTE, argumentando que podría concurrir un supuesto de duplicidad en dicha deducción. En este sentido, afirma que las cuotas del IVA soportadas corresponden a facturas, anteriores al momento de disolución, en las que se consigna el C.I.F y el nombre de la UTE. Asimismo, añade que solo podrán ejercitar el derecho a la deducción aquellos sujetos pasivos que estén en posesión de la factura original, a tenor de lo dispuesto en el artículo 97 de la Ley del Impuesto sobre el Valor Añadido (en adelante, Ley del IVA).

Si bien el Tribunal afirma que el destinatario de las facturas, cuyas cuotas del IVA se pretenden deducir, no era la recurrente, sino la UTE, no resulta de aplicación el artículo 92 de la Ley del IVA que dispone que no procede la deducibilidad de una factura emitida a otra entidad distinta de la que pretende la deducción. Pues, en el presente caso, la recurrente asumió los derechos y obligaciones de la UTE, una vez ésta fue disuelta y liquidada.

Respecto a la fecha de recepción de las facturas, el Tribunal cita el artículo 98 de la Ley del IVA, el cual establece que el derecho a la deducción puede ser ejercitado en el periodo de liquidación en el que las cuotas deducibles se hayan soportado o, posteriormente, dentro del plazo de cuatro años. En el presente caso, el Tribunal considera que el derecho de deducción de las cuotas del IVA sigue persistiendo a pesar de que la citada UTE, una vez extinguida, dejó de ser sujeto pasivo y obligado tributario a todos los efectos, sin capacidad de cumplir obligación formal alguna. Pues, el Tribunal, basándose en la jurisprudencia de la propia Sala, atribuye preferencia a los requisitos materiales, debiéndose conceder la deducción aun cuando los sujetos pasivos omitan algunos de los requisitos formales para garantizar, de este modo, el cumplimiento del principio de neutralidad fiscal.

El Tribunal acaba concluyendo que, una vez extinguida la UTE, perdiendo la condición de sujeto pasivo y de obligado tributario, si no se admitiera el derecho de la recurrente a deducirse las cuotas del IVA, se estaría vulnerando la nota característica del Impuesto, su neutralidad. Por consiguiente, procede a estimar el recurso contencioso administrativo interpuesto por la recurrente, declarando que tiene derecho a deducirse las cuotas del IVA de las facturas emitidas en nombre de la UTE.

II. Doctrina Administrativa.

1. Tribunal Económico-Administrativo Central. Resolución nº 6809/2012, de 22 de enero de 2015.

Obligaciones formales – Registro de Operadores Intracomunitarios (ROI) – Inscripción o alta en el Registro: principio de proporcionalidad en el análisis de la situación del sujeto pasivo.

El TEAC se pronuncia acerca de la procedencia de la denegación de la inclusión en el ROI de la sociedad recurrente.

En el supuesto que nos atañe, la entidad recurrente presentó Declaración censal (modelo 036) solicitando su inclusión en el ROI. Por su parte, la Administración denegó la inclusión amparándose en la existencia de determinados indicios que permitían concluir que era posible la implicación de la recurrente en tramas de fraude de IVA.

Tanto la normativa interna como la normativa europea reconocen la importancia de la correcta identificación de las personas o entidades que apliquen el IVA, siendo necesario para conseguirlo el adecuado cumplimiento de los procedimientos censales.

En virtud de lo anterior, se reconocen a la Administración determinadas funciones de comprobación censal. En este sentido, el TEAC trae a colación la Sentencia del Tribunal de Justicia de la Unión Europea de 14 de marzo de 2013, en la que según la Resolución se señala que *"los Estados miembros están legitimados para adoptar medidas que impidan el uso abusivo de los números de identificación, pero sin que dichas medidas vayan más allá de lo que sea necesario para garantizar la correcta recaudación del impuesto y evitar el fraude y sin cuestionar sistemáticamente el derecho a la deducción del IVA ni su neutralidad. Por lo tanto, para que la negativa a dar de Alta en el ROI a un sujeto pasivo a efectos de IVA sea proporcionada al objetivo de prevención del fraude, tal negativa debe basarse en indicios fundados que permitan considerar objetivamente que el número de identificación del IVA atribuido a ese sujeto pasivo se utilizará de modo fraudulento, decisión que debe basarse en una apreciación global de todas las circunstancias del caso concreto".*

En la mencionada sentencia, el TJUE concluye que en virtud de lo establecido en la Directiva y del principio de proporcionalidad no cabe denegar a una entidad la inscripción en el registro del IVA por no disponer de medios materiales, técnicos y financieros, sin realizar previamente una

apreciación global de las circunstancias concretas de la compañía que arrojen indicios fundados de que el número se va a utilizar de forma fraudulenta.

En el supuesto concreto aquí enjuiciado, la Administración, en el acuerdo de denegación de la inclusión en el ROI ha expuesto determinados indicios que, tal y como establece el artículo 144 de la LIVA, constatan "*la posible intervención del obligado tributario en operaciones de comercio exterior o intracomunitario, de las que pueda derivarse el incumplimiento de la obligación tributaria o la obtención indebida de beneficios o devoluciones fiscales en relación con el Impuesto sobre el Valor Añadido*", como el tipo de actividad que realiza, la vinculación con otra entidad que fue dada de baja en el ROI por su posible intervención en tramas de fraude de IVA y la inexistencia de datos que prueben el contacto con proveedores intracomunitarios, entre otros.

Por su parte, de acuerdo con el artículo 105 de la LGT, tanto en el procedimiento de gestión como en el de resolución de reclamaciones económico-administrativas, quien haga valer su derecho deberá probar los hechos constitutivos del mismo.

En este caso, la entidad recurrente no ha aportado ningún documento o prueba para desvirtuar lo argumentado por la Administración, por lo que el TEAC, a la vista de la jurisprudencia comunitaria y las circunstancias concretas, concluye que existen indicios fundados que determinan la baja en el ROI, desestimando el recurso planteado.

2. Tribunal Económico-Administrativo Central. Resolución nº 565/2013, de 22 de enero de 2015.

Operaciones no sujetas — Art 7.1º LIVA — Transmisión de unidad económica autónoma.

El TEAC se pronuncia acerca de si es aplicable el supuesto de no sujeción al Impuesto regulado en el artículo 7.1º de la LIVA en la transmisión por parte de C, a un adquirente A, del inmueble en el que se encuentra situado un hotel junto con determinados derechos de propiedad intelectual y licencias de actividad, sanitarias y ambientales, y a un adquirente B, de determinados elementos del hotel, como mobiliario, maquinaria, marcas y página web, entre otros.

En el supuesto enjuiciado, la sociedad recurrente adquirió un inmueble en el que se desarrollaba actividad hotelera, junto con los derechos de propiedad intelectual sobre los proyectos de construcción y reforma del hotel y las licencias de actividad, sanitarias y ambientales necesarias para el desarrollo de la actividad. Por otro lado, otra sociedad adquirió elementos tales como mobiliario, maquinaria y marcas entre otros, arrendándoselos el mismo día de la adquisición a la parte recurrente.

En la misma fecha, la recurrente arrendó a la sociedad C el inmueble, junto con las licencias, los derechos de propiedad intelectual, el mobiliario, la maquinaria y demás elementos.

En la transmisión del inmueble, la sociedad C renunció a la exención del IVA, repercutiendo a la sociedad recurrente A el citado Impuesto.

Por su parte, la Inspección ha regularizado la situación, ya que considera que esta operación engloba la transmisión de un patrimonio empresarial susceptible de realizar una actividad económica de forma autónoma y, por tanto, ha habido una incorrecta repercusión del Impuesto, puesto que se trataba de una operación no sujeta a IVA en virtud de lo dispuesto en el artículo 7.1 de la LIVA.

El TEAC en esta Resolución recuerda la jurisprudencia del TJUE, en sentencias como la de 27 de noviembre de 2003 y de 10 de noviembre de 2011, en las que estableció que para la aplicación de la no sujeción prevista en el artículo 5.8 de la Sexta Directiva (base del artículo 7.1 de la LIVA), es necesario que el conjunto de elementos transmitidos sea suficiente para desarrollar una actividad económica autónoma, por lo que no comprende la mera cesión de bienes, ni la cesión de un determinado porcentaje de las acciones de la sociedad, a no ser que la misma vaya acompañada de una "*intervención directa o indirecta en la gestión de las sociedades en las que se haya producido la adquisición de la participación, si ésta implica la realización de operaciones sujetas al IVA, tales como la prestación de servicios administrativos, financieros, comerciales y técnicos*".

En atención a la mencionada jurisprudencia, el TEAC determina lo siguiente:

- La finalidad de la norma de no sujeción, que es facilitar las operaciones que tienen por objeto la "transmisión de empresas" aligerando la carga financiera de las mismas, debe tenerse en cuenta a la hora de interpretar su alcance.

- El objeto de la norma "*son las "empresas" (universalidad total) o "parte de empresas" (universalidad parcial), es decir, el conjunto de elementos corporales e incorporales que conjuntamente son susceptibles de desarrollar una actividad económica autónoma*".

En conclusión con lo anterior, para la aplicación del supuesto de no sujeción citado, es indiferente si se transmite la totalidad o una parte de una empresa o si la adquisición se produce por uno o varios adquirentes, siempre que lo transmitido y adquirido por cada uno de ellos sea susceptible de constituir una unidad económica autónoma, fuera de la actividad a la que estaban afectos y sin depender de los demás elementos que no se transmitieron.

En el supuesto que nos atañe, el TEAC considera que lo que se trasmite no es un conjunto de elementos corporales e incorporales que constituyen una unidad económica autónoma capaz de desarrollar una actividad empresarial o profesional por sus propios medios, puesto que para llevar a cabo la explotación del hotel no es necesario sólo la trasmisión de los activos de la entidad, sino también elementos adicionales, como los trabajadores afectos y los derechos y obligaciones de la vendedora, que permiten constituir una unidad económica capaz de funcionar autónomamente.

Así, el TEAC concluye que se trata de una mera transmisión de elementos patrimoniales, sin aportar una organización empresarial, por lo que considera que con resulta de aplicación el supuesto de no sujeción previsto en el artículo 7.1 de la LIVA, anulando las liquidaciones derivadas de las actas incoadas por la Inspección de Tributos.

3. Dirección General de Tributos. Contestación nº V3251-14, de 3 de diciembre de 2014.

Venta de moldes – Exención por exportación

En la presente contestación, la DGT se ha pronunciado sobre el tratamiento a efectos del IVA así como la posibilidad de la aplicabilidad de la exención en el siguiente supuesto de hecho:

"La sociedad consultante, establecida en el Territorio Español de aplicación del Impuesto (TAI), tiene como actividad principal la fabricación de piezas, componentes y accesorios no eléctricos para vehículos de motor. La fabricación de tales piezas o componentes, que se hacen bajo las especificaciones contractuales que indica cada cliente, requiere la utilización de moldes, también producidos bajo especificaciones y que son adquiridos por la consultante a otros proveedores establecidos en el TAI.

Para el proceso industrial de fabricación la consultante adquiere los moldes a un empresario establecido en TAI, efectuada la adquisición del molde la consultante transmite la propiedad del molde a su cliente no establecido en TAI. No obstante la consultante conserva la posesión de los moldes que utiliza para la producción y fabricación de las piezas y componentes de los vehículos objeto de suministro a su cliente. Una vez fabricados los componentes son expedidos fuera de la Unión Europea con destino al cliente.

De acuerdo con lo establecido contractualmente los moldes se han de expedir fuera de la Unión Europea con destino al cliente, si bien tal expedición sólo se lleva a cabo una vez que se han fabricado un determinado número de piezas o componentes. El período de permanencia de los moldes en el TAI hasta su expedición fuera del mismo variará dependiendo de cada contrato en función de las características del pedido o encargo."

La DGT inicia su análisis a efectos del Impuesto sobre el valor añadido (IVA) reproduciendo los artículos 4 y 8 de la Ley del IVA (LIVA) para concluir, con base en los mismos, que las operaciones realizadas por la entidad consultante tienen la consideración de entregas de bienes sujetas al Impuesto.

Continuando con el análisis de la operación objeto de consulta, la DGT estudia la posible aplicación de la exención del Impuesto prevista en el artículo 21 de la LIVA y 9 del Reglamento, para las entregas de bienes que se transporten fuera de la Comunidad concluyendo que, efectivamente, la transmisión del poder de disposición de los moldes por parte de la entidad consultante cumple los requisitos y condiciones establecidos en los mencionados artículos y que, por lo tanto, resultará exenta del Impuesto, la entrega de moldes que se transporten fuera de la Comunidad efectuadas por la consultante.

Por otro lado, con respecto al plazo para la exportación, concluye la DGT de igual manera que el Comité de IVA, esto es, que la mencionada exención resulta de aplicación de igual manera pese a que el transporte de mercancías se lleve a cabo en un plazo posterior al momento en que se produce la entrega de los moldes, siempre que existan condiciones que justifiquen la dilación y la intención del transmitente de proceder a su exportación.

Estos términos se han precisado por el TJUE en la sentencia C-563/12, señalando que debe oponerse a una legislación nacional en la que se exige

que los bienes destinados a la exportación fuera de la Unión Europea abandonen el territorio de la Unión Europea dentro de un plazo fijo de tres meses o de 90 días a partir de la fecha de entrega, cuando la simple superación del plazo tenga por consecuencia privar definitivamente al sujeto pasivo de la exención de dicha entrega.

Con base a todo lo anterior, concluye la DGT que la exportación de los moldes fuera del límite temporal que prevén la Ley y el Reglamento del Impuesto no debe impedir la aplicación de la exención del IVA cuando se pruebe que se ha cumplido el requisito de salida de dichos bienes con posterioridad a dicho plazo y, siempre dentro del plazo de prescripción del Impuesto.

4. Dirección General de Tributos. Contestación nº V3252-14, de 3 de diciembre de 2014.

Exención – Organismos internacionales – Localización del hecho imponible

En la citada contestación, la DGT rectifica la anterior Resolución de fecha 5/08/2014 con nº de consulta vinculante V2161-14 en lo relacionado con la localización del hecho imponible y la posible aplicación de las exenciones de los artículos 22.Ocho y 22.Nueve de la Ley del IVA, sobre la base del siguiente supuesto de hecho:

"La mercantil consultante ha sido contratada por una organización internacional con sede en Bruselas, para que organice y provea todos los servicios necesarios para la celebración de una reunión global del organismo que va a celebrar en el territorio de aplicación del Impuesto.

A estos efectos, el organismo internacional no dispone de NIF a efectos del IVA pero tiene reconocida por la Administración tributaria belga la exención en el IVA".

Con el objeto de determinar la localización de las prestaciones de servicios realizadas por la consultante a la organización internacional con sede en Bruselas, a diferencia que lo desarrollado en la consulta que se rectifica, la DGT subraya la importancia de que dicha organización internacional no dispone de un NIF a efectos del IVA .

Esta circunstancia supone que la organización no tendrá la consideración de empresario o profesional actuando como tal y por tanto los servicios objeto de consulta de los que sea destinataria se entienden realizados en el TIVA-ES, de acuerdo con el artículo 69.Uno.2º de la Ley del IVA, al ser

éstos prestados por un empresario o profesional cuya sede de actividad se encuentra en dicho territorio.

En segundo lugar, la DGT entiende que, una vez localizados los servicios prestados por la consultante en el TIVA-ES, procede analizar la posible aplicación de la exención contenida en el artículo 22.Nueve de la Ley del IVA, relativa a entregas de bienes y prestaciones de servicios destinadas a los organismos internacionales reconocidos por España o al personal de los mismos. En la consulta V2161-14 rectificada, se analizó, parece que erróneamente, la aplicación de la exención contenida en el apartado Ocho de dicho artículo, relativa a entregas de bienes y prestaciones de servicios realizadas en el marco de las relaciones diplomáticas y consulares.

No obstante las matizaciones anteriores, la DGT llega a la misma conclusión que la determinada en la consulta rectificada, no pudiendo considerarse exentas las entregas de bienes y prestaciones de servicios que va a realizar la consultante a favor del organismo internacional, al tratarse de operaciones no previstas en el Real Decreto 3485/2000.

5. Dirección General de Tributos. Contestación nº V3296-14, de 9 de diciembre de 2014.

Sujeción al IVA – Localización del hecho imponible – Regla del uso efectivo

A través de esta contestación a consulta, la DGT se pronuncia sobre la posibilidad de aplicación de la regla especial de localización de servicios basándose en su utilización o explotación efectiva de los mismos, según el siguiente supuesto de hecho:

"La sociedad consultante, establecida en territorio de aplicación del Impuesto, tiene como objeto social la prestación de servicios centralizados de asistencias a las sociedades del grupo residentes en territorios terceros. Para dicha prestación adquiere servicios a empresas no establecidas en territorio de aplicación del impuesto que, posteriormente, refactura.".

En primer lugar, la DGT señala que, de acuerdo con el apartado 16º del artículo 11.Dos de la Ley del IVA, la adquisición de productos informáticos adaptados a las necesidades de las filiales de la entidad consultante tendrá la consideración de prestación de servicios.

En este sentido, conforme a las reglas generales de localización de servicios recogidas en el artículo 69 de la Ley del IVA, en la medida en que el consultante adquiera servicios en nombre propio y estén destinados a la

sede de su actividad económica o establecimiento permanente (localizado en el TIVA-ES), dichos servicios estarán sujetos al IVA. Igualmente, la DGT subraya que, en virtud de lo dispuesto en el artículo 84.Uno.2º de la Ley del IVA, el sujeto pasivo de la operación será la consultante, ya que es de aplicación la regla de inversión del sujeto pasivo.

De acuerdo con el supuesto de hecho, la consultante presta una serie de servicios (i.e. asesoramiento, informáticos, administrativos y tecnológicos de adaptación de software previamente adquiridos) a sociedades del grupo establecidas fuera de la Unión Europea. En aplicación de las reglas generales de localización de servicios anteriormente descritas, dichos servicios estarían, en principio, localizados fuera del TIVA-ES y, por lo tanto, no sujetos al IVA.

No obstante, el artículo 70.Dos de la Ley del Impuesto, contempla la regla especial de localización de servicios basado en el lugar donde se produce la utilización o explotación efectiva de los mismos. En este sentido, la DGT subraya los cuatro requisitos que han de concurrir para poder aplicar dicha norma especial:

- Únicamente esta norma especial es aplicable para los servicios expresamente enumerados en la Ley del IVA a estos efectos.

- Salvo los servicios de telecomunicaciones o arrendamiento de medios de transporte, el resto de servicios deben ser prestados a empresarios o profesionales actuando como tales.

- La aplicación de las normas generales de localización deben conducir que la localización de dichos servicios tenga lugar fuera de la Unión Europea, Canarias, Ceuta y Melilla.

- Los servicios de referencia deberán utilizarse o explotarse efectivamente desde un punto de vista económico en el territorio de aplicación del Impuesto.

Por lo tanto, en primer lugar se han de localizar las operaciones a las que sirva o en relación con las cuales se produzca la utilización o explotación efectiva del servicio de que se trate. Si, dichas operaciones son realizadas en el TIVA-ES, ha de determinarse la relación de las mismas con la prestación de servicios que se trata de localizar para determinar si efectivamente se produce su utilización o explotación efectivas en la realización de las operaciones de referencia.

En base a lo expuesto, la DGT concluye que para aplicar la regla del uso efectivo y disfrute a los servicios objeto de consulta es necesario que el servicio sea utilizado por el destinatario en la realización de operaciones en el TIVA-ES, circunstancia que no parece recogerse en el supuesto de hecho. Así, los servicios prestados por la consultante a las empresas de grupo establecidas en terceros países no se encuentran sujetos al IVA.

6. Dirección General de Tributos. Contestación nº V3297-14, de 9 de diciembre de 2014.

Ejecuciones de obra – Entrega de bienes – Prestaciones de servicios – Localización del hecho imponible

La DGT analiza la calificación a efectos del IVA de una ejecución de obra, así como la localización del hecho imponible con ocasión del siguiente supuesto de hecho:

"El consultante es una empresa dedicada a reformas que contrata con una entidad austríaca la fabricación, transporte e instalación de ventanas en inmuebles situados en territorio de aplicación del impuesto.".

De acuerdo con la doctrina que ha mantenido la DGT, el suministro de bienes que sean objeto de instalación y montaje tendrá la consideración de ejecuciones de obra (lo que parece concurrir en el supuesto de hecho). De acuerdo con la interpretación mantenida por ese Centro Directivo de los artículos 8 y 11 de la Ley del IVA, la ejecución de obra tendrá la consideración de entrega de bienes siempre que el coste de los materiales aportados por el empresario austríaco exceda del 40 por ciento de la base imponible.

Sobre la base de lo anterior, en caso de que la aportación de materiales por el empresario o profesional austriaco que ejecuta las obras de instalación de las ventanas supera el límite del 40 por ciento referido, la ejecución de obra tendrá la calificación de entrega de bienes. De lo contrario, la ejecución de obra tendrá la consideración de prestación de servicios.

En relación con la localización de la operación, ésta tendrá que ser analizada en función de que la ejecución de obra sea calificada como entrega de bienes o prestación de servicios. En el primer caso, puesto que los materiales se transportarán al TIVA-ES desde otro estado miembro, se podrán dar las siguientes situaciones:

- Que la instalación o montaje que implica la inmovilización de los bienes tenga un coste superior al 15 por ciento de la total contraprestación, en cuyo caso la ejecución de obra se entiende localizada en el TIVA-ES.

- Que la instalación o montaje no implique la inmovilización o tenga un coste inferior al 15 por ciento de la total contraprestación. En este caso, la consultante realiza una adquisición intracomunitaria de bienes, por la que deberá tributar mediante el mecanismo de autoliquidación del impuesto.

Por el contrario, de calificarse la ejecución de obra como una prestación de servicios, de acuerdo con las reglas generales de localización, la misma se entenderá prestada en el TIVA-ES, realizando la consultante una adquisición intracomunitaria de servicios en donde operará el mecanismo de inversión del sujeto pasivo, debiendo igualmente autoliquidar el impuesto.

7. Dirección General de Tributos. Contestación nº V3331-14, V3332-14, V3333-14 y V3334-14, de 15 de diciembre de 2014.

"MICE" (mítines – reuniones, incentivos, conferencias y eventos)

En las presentes contestaciones, la DGT analiza la tributación sobre determinados supuestos de servicios prestados por diversas empresas asociadas a la consultante, una confederación de asociaciones de agencias de viajes, en el denominado segmento "MICE" *(mítines-reuniones, incentivos, conferencias y eventos).*

Los hechos expuestos en dichas consulta son los siguientes:

"Los servicios se suministran en nombre propio a sus clientes, en particular, se tratan de servicios relativos a la organización y ejecución de reuniones, conferencias, seminarios, simposios, convenciones, congresos, presentaciones de productos, programas de incentivo y cualquier otra clase de evento de naturaleza similar.

Para prestar dichos servicios las agencias de viajes adquieren de terceros la mayor parte de los bienes y servicios necesarios para llevar a cabo la actividad. Tanto los clientes como los eventos pueden radicar en el territorio de aplicación del Impuesto, en otros Estados miembros o países o territorios terceros.

Las empresas asociadas a la consultante intervienen de forma diversa en

función de las necesidades y peticiones de sus clientes, si bien, pueden distinguirse dos grandes sectores de actividad:

a) la actividad de congresos y la actividad de eventos;
b) las distintas formas de intervención:

i) según obtengan directamente ingresos de los asistentes, participantes y expositores (cuota de inscripción, participación o a expositores) o únicamente del organizador del congreso o evento;

ii) según tengan la consideración de promotor en nombre propio o, únicamente de organizador del congreso;

iii) según las modalidades de retribución al promotor, en su caso, según cuantía fija o participación en los eventuales beneficios;

iv) según la propia naturaleza del evento, ya sea una conferencia, reunión corporativa o la presentación de un producto.

Los servicios prestados son también diversos en función de la naturaleza del congreso o evento pudiendo incluir, entre otros: la localización del espacio adecuado para su celebración, contratación de instalaciones con, o sin, servicios adicionales prestados por el titular de la instalación, cesiones de personal técnico y administrativo, construcción de stands, servicio auxiliares como el servicio de traductores, apoyo a los ponentes y asistentes, preparación de salas de trabajo, servicios de gestión y secretaria técnica y administrativa, control de entradas, etc, así como, en su caso, servicios de traslado, transporte, alojamiento, catering, restauración y visitas turísticas."

Del listado de servicios objeto de análisis, la DGT diferencia los siguientes supuestos y procede a concluir lo siguiente:

i) La prestación de servicios única de organización de eventos o congresos que va a realizar la consultante, cuyos destinatarios sean empresarios o profesionales a efectos del Impuesto, quedará sujeta al IVA en el territorio de aplicación del Impuesto cuando la sede de la actividad económica del destinatario del servicio se encuentre en dicho territorio, o tenga en el mismo un establecimiento permanente o, en su defecto, el lugar de su domicilio o residencia habitual, en los términos señalados en el artículo 69.Uno.1º de la Ley del IVA.

Por su parte, si el destinatario no es un empresario o profesional actuando como tal, la referida prestación única se entenderá en todo caso realizada en el territorio de aplicación del Impuesto cuando se preste materialmente en el mismo.

En este sentido, la DGT señala que como tal servicio único o complejo de organización de congresos o eventos, el mismo deberá comprender, de forma integral, todo lo necesario para su celebración, estando compuesto de una pluralidad de elementos estrechamente ligados y que forman una única prestación, que sean facturados de forma conjunta, como, pudieran ser entre otros: el servicio de localización y reserva o alquiler de locales o recintos para la celebración, contratación de pólizas de seguros y gestión de permisos administrativos, acondicionamiento y decoración del espacio, incluyendo mobiliario, servicio de azafatas, traducción y otros de apoyo; dirección, gestión y secretaría técnica y administrativa del congreso y gastos de estancia, manutención y transporte de los congresistas y ponentes, entre los que se puede incluir algún servicio recreativo como una comida o cena que no sea de trabajo o alguna visita cultural.

ii) Respecto al servicio de acceso a los congresos o eventos empresariales objeto de consulta, la DGT indica que el mismo se entenderá realizado en el territorio de aplicación del Impuesto cuando no constituyan para su destinatario, ya se trate de un empresario o profesional o de una persona que no actúe como tal, un servicio complejo de organización en los términos señalados en el apartado anterior sino el mero derecho de entrada, o asistencia a los mismos.

iii) Apunta la DGT en su contestación que será de aplicación el régimen especial de las agencias de viaje cuando un empresario o profesional, tenga o no tenga la consideración de agencia de viajes, vende en nombre propio la entrada o el servicio de acceso a una manifestación cultural, artística, deportiva, científica, educativas, recreativa, juegos de azar o similares, como las ferias y exposiciones, incluidos los congresos, mítines, conferencias, simposios y eventos de igual naturaleza, conjuntamente con un servicio de transporte o alojamiento, tratándose de servicios adquiridos a otros empresarios o profesionales, constituyendo una prestación única de servicios de viajes que se entenderá realizada en el lugar donde la agencia tenga establecida la sede de su

actividad económica o posea un establecimiento permanente desde donde efectúe la operación.

Con independencia de lo anterior, se plantean también en el escrito de la consulta los siguientes supuestos:

i) *"Que la empresa que presta el servicio de organización del congreso, además de encargarse en nombre propio de la organización, sea quien facture en su propio nombre los servicios a los asistentes, como las cuotas percibidas de asistentes y expositores.*

ii) *Que a su vez, el promotor percibirá del organizador un importe fijo en función de los ingresos.*

iii) *Asimismo, puede establecerse que el promotor únicamente perciba el importe derivado de la liquidación del congreso descontado el margen comercial y el servicio de organización del organizador pero que, en el caso de que existan pérdidas, el promotor no tuviera que satisfacer cantidad alguna al organizador."*

Y a partir de dichos supuestos, la DGT entiende respecto de cada uno de ellos lo siguiente:

i) En el primer caso el organizador asumirá el papel del promotor en relación con la organización del congreso y los servicios que preste a los asistentes y expositores. A su vez será destinatario de un servicio de promoción o cesión de uso del nombre del promotor que este deberá facturarle.

   Por tanto, la DGT señala que cuando este organizador tenga su sede de actividad económica o un establecimiento permanente en el territorio de aplicación del Impuesto que sea destinatario del referido servicio de promoción o cesión de uso del nombre, conforme a lo establecido en el artículo 69.uno.1ºde la Ley del IVA.

ii) El segundo caso, la DGT entiende que cuando el promotor únicamente perciba los eventuales beneficios pero no soporte las pérdidas, parece que nos encontramos ante un negocio jurídico como el contrato de cuentas en participación regulado en los artículos 239 a 243 del Código de Comercio, en el que el organizador se identifica con la figura del participe-gestor y el

promotor con la del participe-no gestor. En efecto, este participe-no gestor aporta el elemento necesario para el desarrollo de la actividad de organización del congreso a cambio de una participación en los beneficios.

Recuerda la DGT su reiterada doctrina en el sentido de que, se entenderá que de la firma de un contrato de *"cuentas en participación"* no nace un nuevo sujeto pasivo del IVA distinto del participe-gestor. Por lo que, recuerda asimismo la DGT que toda vez que no existe explotación en común sino que la misma sigue llevándose a cabo íntegramente por este último como único titular jurídico de los bienes y derechos integrantes de la misma, debe considerarse también a efectos del IVA que éste *-el partícipe gestor-* es el único titular del negocio en cuestión.

Y a partir de lo anterior, concluye la DGT que en la medida en que el consultante-gestor no efectúa ninguna aportación sino que continúa explotando como titular su negocio, limitándose al reparto de los beneficios en efectivo al partícipe no gestor, no realiza, respecto a éste, ninguna operación sujeta al IVA, sin perjuicio de la tributación de la aportación no dineraria realizada por el partícipe no gestor.

8. Dirección General de Tributos. Contestación nº V3343-14, de 18 de diciembre de 2014.

Exenciones – Exención del artículo 22.Cuatro LIVA - Operaciones relativas a aeronaves - Calificación como aeronave

En esta contestación, la DGT se ha pronunciado sobre si podría aplicarse la exención prevista en el artículo 22.Cuatro de la Ley 37/1992, en relación con la entrega de aeronaves, en el siguiente supuesto de hecho:

“La consultante forma parte de un consorcio que se dedica principalmente a la fabricación de aeronaves y, de manera secundaria, a prestar servicios relacionados con tales aviones. La consultante va a desarrollar un nuevo modelo de aeronave a motor no tripulada. La aeronave consta de dos segmentos indivisibles: segmento aéreo (vehículo aéreo y sistema asociados) y un segmento de tierra (centro de control del sistema que realiza funciones de vuelo equivalentes a la cabina de un avión tripulado).”

En primer lugar, de la información disponible en el escrito de consulta, la DGT señala que la operación descrita comprende la entrega de un bien mueble, un avión no tripulado, y, por otra parte, una prestación de servicios consistente en la cesión del hardware y software necesario para controlar el citado avión.

En su contestación, la DGT recuerda la reiterada jurisprudencia del Tribunal de Justicia de la Unión Europea (asuntos C-349/96 y C-111/05) sobre los criterios para decidir cuándo una operación, a efectos del IVA, se puede considerar como una prestación única, o por el contrario debe entenderse como dos o más prestaciones diferentes.

Entiende la DGT que en el caso planteado, en el que se produce una transmisión de una aeronave no tripulada con el software y hardware necesarios para su control se trata de una operación compleja, compuesta por una entrega de bienes y una prestación de servicios. En particular, la DGT señala que la prestación de servicios debe ser tratada como accesoria de la operación principal al no constituir para el adquirente un fin en sí mismo, si no el medio de disfrutar en las mejores condiciones del bien entregado.

En segundo lugar, la DGT analiza si el objeto fabricado cumple con los requisitos necesarios para la aplicación de la exención del artículo 22.Cuatro de la Ley del IVA.

Así, la DGT señala que dicha exención queda condicionada a que el adquirente o destinatario de los servicios indicados sea la propia compañía que realice las actividades mencionadas y utilice las aeronaves en el desarrollo de dichas actividades o en su caso, la propia Entidad pública que utilice las aeronaves en las funciones públicas.

En base a lo anterior, la DGT matiza que la exención quedará condicionada a la concurrencia de los siguientes requisitos:

1. Que el destinatario de dichas operaciones sea el titular de la explotación de la aeronave a que se refieran.

2. Que los objetos mencionados se utilicen o, en su caso, se destinen a ser utilizados en la explotación de dichas aeronaves y a bordo de las mismas.

3. Que las operaciones a que se refieren las exenciones se realicen después de la matriculación de las mencionadas aeronaves en el Registro de matrícula que se determine reglamentariamente.

Por lo tanto, cabe concluir que estarían exentas del IVA las entregas de aeronaves no tripuladas utilizados exclusivamente por Compañías dedicadas esencialmente a la navegación aérea internacional en el ejercicio de actividades comerciales de transporte remunerado de mercancías o pasajeros y las utilizadas por Entidades públicas en el cumplimiento de sus funciones públicas

9. Dirección General de Tributos. Contestación nº V3386-14, de 29 de diciembre de 2014.

Tipo impositivo – Entregas de "productos sanitarios" – Aplicación del artículo 91.Uno.1.6º

En la presente contestación, la DGT se ha pronunciado sobre la modificación, introducida por la Ley 28/2014, del artículo 91 de la Ley 37/1992:

En primer lugar, la DGT transcribe la nueva redacción del artículo 91 de la Ley del IVA que establece los tipos impositivos reducidos.

Asimismo, la DGT señala que para que sea de aplicación el tipo reducido a los productos farmacéuticos se requiere que se cumplan los siguientes cuatro requisitos:

i) Que se trate de productos que se encuentras incluidos en la categoría 30 de la Nomenclatura Combinada.

ii) Que se trate de productos que no sean medicamentos.

iii) Que se trate de productos cuya entrega, adquisición o importación no esté exenta del Impuesto, por cuanto la categoría 30 mencionada incluye, por ejemplo en la partida 30.02 a la sangre humana, que se encuentra sujeta y exenta del Impuesto.

iv) Que sea susceptible de uso directo por el consumidor final, lo que implica que, con independencia de la persona que adquiera el producto (paciente consumidor final u otra persona, como por ejemplo, un profesional sanitario o un hospital) por sus características objetivas, en el momento de la entrega, adquisición o importación pueda ser susceptible de aplicación directa sobre un paciente consumidor final, lo que excluye, por ejemplo, a los

deshechos farmacéuticos, que se incluyen en la partida 30.06, en los que no cabe dicha aplicación.

Recuerda, además, la DGT que será de aplicación del tipo reducido del 10 por ciento a aquellas entregas, adquisiciones intracomunitarias e importaciones de compresas, tampones, protegeslips, preservativos y otros anticonceptivos no medicinales tales como DIUs y diafragmas.

Cabe resaltar con carácter adicional, que en esta contestación la DGT se pronunció también respecto a la relación de los productos que contiene el Anexo octavo de la Ley del IVA.

En este sentido, señala la DGT que la aplicación del tipo reducido estará supeditada a que los artículos incluidos en dicho Anexo estén diseñados para aliviar o tratar deficiencias para uso personal y exclusivo de personas que tengan deficiencias físicas, mentales, intelectuales o sensoriales, con independencia de quien resulte ser el adquirente del mismo.
A este respecto, la DGT establece que resultará de aplicación el tipo reducido del 10 por ciento, entre otros, a los siguientes productos:

1. Gafas, lentes de contacto y productos necesarios para su uso, cuidado y mantenimiento.

2. Dispositivos de punción, dispositivos de lectura automática del nivel de glucosa, dispositivos de administración de insulina y demás aparatos para el autocontrol y tratamiento de la diabetes: medidores y sus tiras reactivas, plumas de insulina y sus agujas y bombas de insulina, ya se adquieran de forma conjunta o por separado.

3. Dispositivos para el autocontrol de los cuerpos cetónicos y de la coagulación sanguínea y otros dispositivos de autocontrol y tratamiento de enfermedades discapacitantes como los sistemas de infusión de morfina y medicamentos oncológicos: medidores y sus tiras reactivas, ya se adquieran de forma conjunta o por separado.

4. Prótesis, ortesis, ortoprótesis e implantes quirúrgicos, en particular los previstos en el Real Decreto 1030/2006, de 15 de septiembre, por el que se establece la cartera de servicios comunes del Sistema Nacional de Salud y el procedimiento para su actualización, incluyendo sus componentes y accesorios.

5. Sillas terapéuticas y de ruedas, así como los cojines antiescaras y arneses para el uso de las mismas, muletas, andadores y grúas para movilizar personas con discapacidad.

6. Aparatos y demás instrumental destinados a la reducción de lesiones o malformaciones internas, como suspensorios y prendas de compresión para varices: Bragueros y suspensorios; tejidos elásticos destinados a la protección o reducción de lesiones o malformaciones internas; inmovilizadores; prendas de compresión de varices; medias elásticas terapéuticas y vendas enyesadas.

Por último, la DGT analiza el tratamiento de los productos vendidos conjuntamente por un único precio, cuando el tipo aplicable a cada uno de ellos de forma individual es diferente, concluyendo que sólo procederá la aplicación del tipo reducido del 10 por ciento, a aquellos productos que cumplan las condiciones anteriormente descritas.

III. World WAT News.

OECD

OECD releases discussion drafts on new elements of International VAT/ GST Guidelines

The OCED has released its discussion drafts on two new draft elements of the International VAT/ GST Guidelines, relating to the place of taxation of business-to-consumer supplies of services and intangibles, and provisions to support the application of the Guidelines in practice. Comments are invited on the drafts, and must be submitted by 20 February 2015.

Consumption tax trends

The OECD has released reports on consumption tax trends and the distributional effects of consumption taxes in OECD countries. The consumption tax trends report highlights the strong increase in standard VAT rates over the past five years. The OECD average standard VAT rate has reached 19.1% (as of January 2014) and the average standard VAT rate for EU countries is 21.7%.

Americas

Colombia

Requirements for offshore permanent free trade zones for oil and gas industry

By decree, the national Government has established from 24 December 2014the requirements and conditions for the recognition of offshore permanent free trade zones (PFTZ), for activities related to the oil and gas industry, namely, technical evaluation, the exploration and production of hydrocarbons, logistics, compression, and the transformation and liquefaction of gas related to hydrocarbons. Continental or insular areas can also qualify as a PFTZ.

0% customs tariff for importation of cotton

On 12 December 2014, the national Government issued a decree, under which a 0% customs tariff was set for the importation of up to 20,400 tons of cotton not carded or combed, falling under tariff code sub-heading 5201.00.30.00. The import quota will be assigned and managed by the Ministry of Agricultural and Rural Development.

Mexico

Antidumping investigation for U.S. origin apples

On 14 August 2014, UNIFRUT submitted an investigation request to the Ministry of Economy to review the application of unfair practices in connection with import price discrimination of goods falling under tariff code 0808.10.01 having U.S. origin.

UNIFRUT argue that they are in a crisis situation in which it is impossible to market national apples at prices that allow for a profit margin. This would be due to the increasing volume of imports of U.S. grown apples and the prices set by importers, which, UNIFRUT argue, are uncompetitive for national producers. UNIFRUT argue that the price discrimination is approximately 249.94%.

The Ministry of Economy accepted the request to open an antidumping investigation for imports of apples with U.S. origin and will proceed with the investigation.

Compensatory quota investigation for ethylene glycol monobutyl ether imported from the U.S.

A compensatory quota investigation was targeted at imports from the U.S. of ethylene glycol monobutyl ether, regardless of the country of origin. The antidumping duties imposed under the preliminary resolution of the antidumping investigation had no corrective effect on prices, causing the margin of price discrimination to double.

The Ministry of Economy revised the antidumping duties for the import of ethylene glycol monobutyl ether, with tariff code 2909.43.01, and a new higher rate has been imposed.

United States

New Jersey adopts sales tax rules for software and related services

The New Jersey Division of Taxation recently released new regulations that address the imposition of sales and use taxes on sales of software and software-related services. The new regulations, which are effective 1 December 2014 through 28 October 2015, address the following:

- Modification of the definitions of custom software and installation services; and

- Addition or clarification of the definitions of customer support service, modified software, servicing of software and certain software maintenance contracts.

U.S. and Singapore signed Customs Mutual Assistance Agreement and Mutual Recognition Arrangement, see Singapore.

Uruguay

International delivery packages

In 2012, a decree was issued regulating the VAT and customs duty exemptions applicable to international packages imported to Uruguay with express delivery by authorized private mail services, couriers or the National Mail.

This decree included exemption from VAT and custom duties for packages weighing less than 20 kg and with a customs value not exceeding USD 200 (CIF value). Other conditions were also required for the exemption to apply, namely that packages had to be received at the destination by the addressee, it could only be applied up to five times per calendar year, and it was not intended to be commercialized.

However, since 1 January 2015 a new decree has entered into force, imposing further limitations to the exemptions described above, with the intention of generating fairer conditions for local retailers.

The new requirements of the decree are as follows:

- Payment must be made with an international debit or credit card owned by the same person that will receive the package, and whose name appears in the package. The person needs to be over 18 years old;

- This exemption can be used only five times per calendar year per person, and all international delivery packages count towards these five times. (Before this decree was issued, packages of non-express delivery with a value below USD 50 were excluded); and

- New obligations are imposed on postal operators to establish further control by the Customs Office of these activities.

Asia Pacific

ASEAN

Abolishment of FOB value under AJCEP Form AJ

With effect from 26 January 2015, ASEAN Member States (except Cambodia and Myanmar*) will remove the requirement to state the FOB value in Box 9 of the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) Form AJ when the origin status is determined under the following criteria:

- Wholly Obtained
- Change in Tariff Classification
- Process Rule or
- Specific Processes.

* There is a two year grace period for Cambodia and Myanmar to adopt the changes.

Consequently, there is only a requirement to indicate the FOB value of the imported goods in Box 9, where the Regional Value Content (RVC) criterion was applied in the origin determination.

Exporters and declaring agents should note that all other requirements for the ATIGA Form D and AKFTA Form AK remain unchanged. The FOB value of the product is still required to be declared in the export declaration regardless of the origin criterion used**.**

China

China tariff policy for 2015 announced

The Tariff Commission of the State Council issued a circular (Shuiweihui [2014] No. 32) on 12 December 2014 setting out China's tariff policy for 2015. The circular, which took effect from 1 January 2015, will bring both opportunities and challenges for affected industries.

Major changes

1. Interim duty rate

   The Government sets interim import and export duty rates to encourage imports or restrict exports of certain products. Interim duty announcements are usually made at the end of each year.

   a. Interim export duty

      For 2015, the export duty and the interim export duty are applicable to 343 export commodities. In comparison with 2014:

- Certain energy and resource commodities (e.g. coal, zinc) remain subject to interim export duty rates, although rates for certain export commodities (e.g. fertilizer, coal) have been adjusted.

- Further (beneficial) changes are possible in the near future, probably for energy and resource commodities, such as rare earth and base metals.

b. Interim import duty

For 2015, the interim import duty, which is generally lower than most favored nation (MFN) duty rates, is applicable to 749 import commodities. In comparison with 2014:

- 19 new items (e.g. automatic welders for copper wire, electronic vehicle motor controllers) now become subject to the interim import duty, and the interim import duty rates for 12 items are decreased to encourage the import of certain commodities.

- 33 items (e.g. compressors for freezing, certain items with small import trade volume) are removed, and the interim import duty rates for five items (e.g. image pick-up modules for digital cameras) are increased to promote manufacturing in China.

2. Conventional duty rate

Conventional duty rates, which generally are more favorable than MFN duty rates, are applicable to commodities originating from countries or regions that have concluded a free trade agreement (FTA) with China.

- FTAs with Iceland and Switzerland entered into effect in 2014, bringing China's total number of FTAs to 13. Many commodities under these new FTAs are granted conventional duty rates in 2015.

- China has completed substantial negotiations for FTAs with Australia and Korea, with the FTAs expected to take effect in 2015.

Note: China has FTAs with ASEAN, Chile, Costa Rica, Iceland, New Zealand, Pakistan, Peru, Singapore, Switzerland and the Asia-Pacific Trade Agreement. Commodities originating from Hong Kong and Macau with specified preferential origin standards continue to enjoy a zero duty upon import into Mainland China. Certain commodities originating from Taiwan continue to benefit from the conventional duty rates agreed in the Early Harvest Plan under the Cross-Strait Economic Cooperation Framework

Agreement.

3. Revisions to import and export tariff codes

   Several new items are added to the 2015 tariff codes, such as gulfweed, air compressors and synthetic rubber, as a result of which the number of import and export tariff codes for 2015 will increase from 8,277 to 8,285.

   Comments

   As noted above, interim export duty rates are expected to be future adjusted in 2015 for specific commodities, so companies in affected industries should closely monitor developments and take steps to prepare for potential financial impacts and the need to make changes to pricing/ tax-related contractual arrangements.

   Certain industries that are encouraged under the national policy may wish to consider recommending to the Government that interim rates be applied in their sectors.

   Companies engaged in import and export activities should revisit the adopted classification in a timely manner and apply for customs pre-classification, where necessary, to manage the risk of noncompliance with the current classification of import/ export commodities.

   Companies also should monitor the conventional duty rates under FTAs and review their supply chain and duty rates.

India

Aluminum dross and skimming not subject to excise duty – even post May 2008

In the November 2014 edition of the newsletter, there was a mention of a decision of the Larger Bench of Tribunal. It was held in this decision that aluminum dross and skimming which arise as a by-product in the process of manufacture of aluminum products are manufactured goods and were excisable with effect from May 2008 in view of an explanation inserted in Section 2(d) of Central Excise Act, 1944 which stated that goods capable of being bought and sold were deemed to be marketable.

There has been a further development regarding the levy of excise duty on goods in terms of the amendment carried out by the insertion of the above

explanation in 2008, with the decision of the Larger Bench being quashed by the Bombay High Court.

The High Court has held that the attempt by the Tribunal to hold that goods that are marketable and satisfy the requirement in the explanation inserted in Section 2(d) of Central Excise Act, 1944 are necessarily liable to excise duty was directly contrary to the binding judgments of the Supreme Court on the same issue.

Increase in Sikkim VAT rates and Sikkim sales tax rates

From 1 January 2015, the rate of VAT leviable under the Sikkim Value Added Tax Act, 2005 has been increased to 1.1% on goods specified in Schedule II, 4.5% on goods specified in Schedules III and IV, 13.5% on goods specified in V, and 22% to goods specified in Schedule VI.

The rate of sales tax leviable under the Sikkim Sales Tax Act, 1983 on all types of liquor, beer and other alcoholic drinks has been increased to 25% with effect from 1 January 2015.

Salient features of the Constitutional Bill 2014 to enable the introduction of GST

The Union Finance Minister has tabled the Constitution Bill, 2014 to enable the introduction of Goods and Services Tax (GST). The salient features of the Bill are:

- Concurrent powers on Parliament and State Legislatures to make laws governing GST;

- The GST council shall be formed within 60 days from the enactment of the bill;

- GST shall be levied on all supplies of goods and services except alcoholic liquor for home consumption;

- GST shall not be levied on petroleum crude, high speed diesel, motor spirit, natural gas, and aviation turbine fuel, until a date to be notified on the recommendation of the GST Council;

- The levying of Integrated Goods and Service Tax on interstate transaction of goods and services; and

- An additional tax at the rate not exceeding 1% on the supply of goods in the course of inter-state trade or commerce is proposed to be collected by

Government of India for a period of two years or such other period as the GST council may recommend.

Division of Non Processing Areas for use by Special Economic Zone and Domestic Tariff Area entities

The Special Economic Zone (SEZ) rules have been amended to provide for the division of Non Processing Areas (NPA) into two parts:

- Social/ Commercial infrastructure and other facilities permitted to be used by both SEZ and Domestic Tariff Area (DTA) entities; and

- Social/ Commercial infrastructure and other facilities permitted to be used exclusively by SEZ entities.

For infrastructure that is allowed to be used by both SEZ and DTA entities, no exemption/ concessions/ drawbacks shall be admissible for the creation of such infrastructure. The tax benefits (customs duty, central excise duty, service tax, etc.) availed by the developer for the creation of such infrastructure would have to be refunded in full without interest. In the case of short payment of the amount refundable, interest would be applicable.

The area to be used exclusively for SEZ entities shall be bonded and physically segregated from the DTA, NPA permitted for dual use, and processing area of the SEZ. The infrastructure for this part of the NPA will be eligible for exemptions/ concessions and drawbacks.

Indonesia

Government revokes thousands of import licenses

The Indonesian Government has revoked thousands of import licenses due to administrative non-compliance.

More than two thousand licenses, representing 43.17% of registered importers (IT), were revoked across industries such as electronics, apparel, food and beverages, cosmetics and home care, toys, medicine and food supplements, and footwear. This affects USD 849 million in imports.

The new Government is focused on the aim of becoming a self-sufficient country, and has started to limit imports of certain products. Businesses should consider improving their compliance level with regard to import licenses, including regular disclosure of realized overseas purchases within six months. While the Government may not blacklist the offending importers, they will still keep records, and new permits will not be issued to them for an extended period of time.

Import duties on finished goods to be increased

The Indonesian Government is assessing the possibility of raising import duties on a wide range of finished goods as part of its efforts to harmonize its tariffs. The potential increase will cover 741 out of over 10,000 existing tariff codes in the current customs tariff.

Potential changes will impact textiles, downstream chemical products, and base metals and vehicles. The objective is to reach a tariff system in which imported finished products are charged higher duties compared to raw materials or intermediate goods.

Japan

Updated on proposed changes to taxation of cross-border digital services

On 30 December 2014, the ruling coalition issued an outline of the proposals for 2015 tax reform, which includes new Japanese Consumption Tax (JCT) rules for digital services provided via telecommunications networks (e.g., the provision of e-books, music streaming, and online advertising services). The new rules will apply for transactions occurring on or after 1 October 2015. The highlights of the proposed changes are as follows.

Changes in the place of supply rules

Currently, whether the supply of digital services takes place in Japan is determined by whether the office of the supplier is located in Japan. From 1 October 2015, digital services will be treated as provided at the domicile of the recipient, and as a result, supplies of such services by suppliers located outside of Japan to Japanese customers will be subject to JCT.

New taxation rules

Under the new regime, supplies of digital services by foreign enterprises to Japanese customers will be treated as business-to-business (B2B) supplies, if it is clear based on the nature of the services or service terms that the recipient is an enterprise. If not, such supplies will be treated as business-to-consumer (B2C) supplies. The proposed JCT taxation rules for each of these two types of supplies are as follows:

B2B supplies:

- A reverse charge mechanism will apply, and the liability to file and pay JCT will be shifted to the recipient enterprise.

- Foreign suppliers must notify the Japanese enterprises receiving the services in advance that they will be liable to file and pay JCT.

B2C supplies:

- Foreign suppliers will be liable to file and pay JCT on B2C supplies, unless they are treated as JCT-exempt enterprises under JCT exemption rules. (JCT law provides several exemption rules, but the primary rule is the Base Period rule – an enterprise is exempt from JCT filing/ payment obligations if the amount of JCT taxable sales in its Base Period, i.e., the fiscal year two fiscal years prior to the current fiscal year, is JPY 10 million or less.)

Other key issues

- A foreign enterprise that satisfies the following conditions may apply for registration with the Japanese tax authorities.

  - The enterprise has an office or other place of business in Japan, or has appointed a tax representative in Japan.

  - The enterprise has no outstanding JCT liabilities, and at least one year has elapsed since the prior revocation of registration.

- Applications for registration will be accepted from 1 July 2015.

- Once registered, foreign suppliers will be required to file and pay JCT regardless of the Base Period rule.

- Input JCT incurred on B2C supplies from foreign suppliers will not be creditable, unless the suppliers are registered with the tax authorities.

- For both foreign enterprises and Japanese enterprises, payments for B2B supplies subject to a reverse charge will be excluded from the calculation of JCT taxable sales in the Base Period under the Base Period rule.

Transitional measures

If the beginning of an enterprise's Base Period is before 1 October 2015, the determination of whether the enterprise had JCT taxable sales of more than JPY 10 million in the Base Period should be made as if the new rules had been implemented on that beginning date. However, if this is difficult, such determination may be made based on the amount obtained by (i) calculating the JCT taxable sales for the period between 1 April 2015 and 30 June 2015 that would be accounted for if the new rules were in place during that period, and then (ii) multiplying such sales amount by a factor of four.

Singapore

U.S. and Singapore sign Customs Mutual Assistance Agreement and Mutual Recognition Arrangement

On 1 December 2014, the U.S. and Singapore signed a U.S.-Singapore Customs Mutual Assistance Agreement (CMAA) and a Mutual Recognition Arrangement (MRA).

Under the CMAA, both countries agreed to exchange information and render assistance to each other in the prevention and investigation of customs offences.

Separately, the MRA provides mutual recognition of the U.S. Customs-Trade Partnership against Terrorism program (C-TPAT) and Singapore's Customs' Secure Trade Partnership (STP). Companies that have been certified by Singapore Customs/ U.S. Customs and Border Protection can enjoy faster customs clearance for goods exported to the respective countries.

The signing of the MRA and CMAA between the U.S. and Singapore demonstrates the partnership and commitment of each country to combating customs fraud and to a secure global supply chain.

Strategic Goods (Control) (Amendment) Regulations 2014 take effect on 1 January 2015

The Strategic Goods (Control) (Amendment) Regulations 2014 (SGCR) took effect on 1 January 2015.

Under the amended Regulations, permit exemptions will not apply to transhipment or transit of strategic goods listed in the Fourth (revised and expanded) and Fifth Schedules (newly added) of the SGCR respectively.

New items such as lithium isotope separation facilities and sensitive dual-use items (e.g. arms, ammunition) have been added to the Fourth and Fifth Schedules respectively. Specific to the Fourth Schedule, items like production equipment under Category Code 5A2 and 5B2 have also been removed.

Strategic goods permit applications will have to be made at least five working days before:

- Loading of strategic goods onto the conveyance for transshipment
- Arrival of transit strategic goods.

Singapore signs Arms Trade Treaty

On 5 December 2014, Singapore signed the Arms Trade Treaty (ATT) which aims to eliminate the illicit trade of conventional arms and prevent their diversion through a set of common international standards that regulates the

international transfer of conventional arms.

Singapore is in the process of implementing these obligations domestically, a further affirmation of Singapore's commitment to eliminate the threat brought about by international illicit arms trading and a positive step towards promoting global peace and security.

Aside from the ATT, Singapore also focuses on strategic goods control and works closely with countries around the world to impede the proliferation of chemical, biological, radiological, nuclear and explosive weapons.

South Korea

Introduction of advanced adjustment system for customs and internal tax

With effect from 1 January 2015, under the advanced adjustment system, companies may concurrently apply for Advance Pricing Agreement (APA) and Advance Customs Valuation Arrangement (ACVA) through either the National Tax Service (NTS) or the Korea Customs Authority (KCS).

When taxpayer (importer) applies for the APA and ACVA, both authorities will agree and decide the method of appraisement for determining the taxable value and appropriate range under discussion.

Eligibility

The advanced adjustment system is only applicable for companies using a similar method for determination of arm's length price and customs value (refer as below).

Internal Tax	Customs
Comparable Uncontrolled Price Method	Transaction value of identical imported goods method, 2nd method
	Transaction value of similar imported goods method, 3rd method
Resale Price Method	Deductive method, 4th method
Cost plus Method	Computed method, 5th method

Adjustment process

- NTS prompt notice of ACVA application to KCS.

- Discussion on method for determination of the taxable value (customs value and arm's length price) and acceptable ranges by both NTS and KCS.

- If there is any difficulty regarding adjustment between customs and the tax administration, the applicant is able to process ACVA and APA respectively within 30 days.

While the advanced adjustment system is expected to facilitate companies in their application to obtain certainty of treatment on the taxable value, it remains to be seen how the decisions of NTS and KCS will be integrated in practice.

Trade Preferences

Philippines-European Union

Philippines first ASEAN country to join EU's GSP+

The EU Parliament approved the Philippines' application to qualify for the EU General System of Preference Plus (GSP+) status during its plenary meeting on 18 December 2014. The decision to grant GSP+ privileges was published in the Official Journal of the European Union on 24 December 2014.

With effect from 25 December 2014, the Philippines enjoys the GSP+ privileges which extend duty-free access to Philippines exports for over 6,200 products (66% of tariff lines) including fruit and foodstuffs, coconut oil, footwear, fish and textiles. With the GSP+, Philippines exporters will enjoy improved access and comparative advantage in the EU market.

Singapore-Gulf Cooperation Council

Dubai eliminates customs duties on Singapore origin products

With effect from 1 January 2015, Dubai implemented the Gulf Cooperation Council (GCC)-Singapore Free Trade Agreement (FTA). The GCC comprises of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

The GCC-Singapore FTA was signed by the governments of the GCC member states and Singapore on 15 December 2008, and was ratified by the UAE in the Federal Decree No. (115) of 2009.

With effect from 1 January 2015, Singaporean products on a pre-set list that enter the GCC are exempt from Customs duties, according to a timetable. Approximately 93.9% of all Singapore origin goods exported to the GCC qualified for immediate duty-free concessions, while an additional 2.7% of tariff lines will qualify for the same tariff-free concessions in 2018. Singapore also granted duty exemption for all GCC origin goods with immediate effect.

South Korea-Australia

Korea-Australia FTA entered into force

The Korea-Australia FTA (KAFTA) has entered into force on 12 December 2014.

Under the KAFTA, 84% of Australia's exports (by value) to Korea will have their tariffs eliminated with immediate effect. This percentage will rise to 95.7% within 10 years and 99.8% on full implementation.

86% of Korea's exports (by value) to Australia will have their tariffs eliminated with immediate effect, rising to 100% in eight years.

The KAFTA will increase trading opportunities across a wide range of industries from agricultural and commodities, to automotive and energy industries.

South Korea-New Zealand

Negotations for a Korea-New Zealand FTA have concluded

Negotiations for a Korea-New Zealand FTA (KNZFTA) concluded on 15 November 2014.

Upon implementation of the KNZFTA, Korea will eliminate tariffs on 48% of its imports and progressively eliminate tariffs on up to 97% of tariff lines within 15 years.

The tariffs slated for elimination include:

- 45% rate on kiwifruit
- 22.5% on sheep meat
- 40% levy on beef
- 89% tariff on butter.

Korean exporters in the consumer goods and industrial products industry can expect to enjoy significant tariff savings. In addition to tariff reductions, the FTA will also help remove non-tariff barriers such as labelling, certification and testing requirements.

The KNZFTA is expected to be ratified in 2015, upon legal verification and translation.

South Korea-Vietnam

Negotiations for a Korea-Vietnam FTA have concluded

Negotiations for a Korea-Vietnam FTA (KVFTA) concluded on 10 December 2014.

Under the KVFTA, Korea has committed to liberalize 95.43% of its tariff lines and Vietnam has committed to 89.75% of tariff lines. With the FTA, Korea's exports of industrial products to Vietnam are likely to increase as tariffs will be eliminated over the next 10 years on automotive, home appliances, and cosmetics.

The KVFTA is expected to be ratified in the second half of 2015, upon legal verification and translation.

EMEA

Belgium

Company acting as director must apply VAT on fees – deferred until 1 January 2016

The current optional regime, in place since 1993, whereby companies could treat their director mandatesas not subject to VAT, is to be abolished. Directors acting through a company were to be obliged to charge VAT on their fees from 1 January 2015. Where the business in which the directors are appointed cannot (fully) recover input VAT, the new regime would generate a VAT cost. In a late decision in November 2014, the VAT administration decided to postpone the entry into force of this new regime to 1 January 2016. VAT will still not apply for director mandates held by natural persons.

Under the traditional administrative viewpoint, applicable since 1993, directors acting through a company had the option to register for VAT. Hence, they could choose whether to charge VAT on their director fees or not. In a 2010 decision, the Belgian VAT authorities took the view that this option applied to all a director’s mandates and that the option could not be revoked. Under the new regime, this option is to be abolished. According to the VAT authorities, this change was consequent to an ‘advice’ from the European Commission.

The late publication of the decision to defer the implementation of the new regime gave rise to several questions. As director-companies were to apply the normal VAT rules as from 1 January 2015 onwards, this also implied that in some cases, their services could qualify for VAT exemption (such as under the exemption regime for small enterprises, management of collective investment vehicles, etc.). Additionally, in some cases, the new regime implied that director agreements already in place had to be revised; to differentiate director’s fees from operational fees, for example. Moreover, the director-companies concerned needed to apply for a VAT registration number, which created time pressure for the businesses concerned.

Accordingly, the new regime's delayed entry into force provides businesses with much-needed time to prepare for the entry into force of the new rules on 1 January 2016.

Final tax point rules – entry into force deferred until 30 June 2015

In an update to an article published in the October 2014 edition of this newsletter regarding the final tax point rules for 2015, the Belgian VAT authorities have now decided not to enforce these new guidelines until 30 June 2015. The VAT authorities will not scrutinize businesses applying the current transitional rules of 2014 until that date.

To recap, the new decision allows a supplier to issue an advance invoice (even if no tax point has yet occurred); with a special reference to the 'expected' tax point date if the invoice is issued more than seven days before the taxable event. These advance invoices will be considered as fully compliant and the customer can also deduct VAT based on them. This deduction is 'final' unless the tax point (supply or payment) does not occur during the 'window period' of three months after the invoice date (no window period applies for reverse charge invoices). For intra-EU transactions (both goods and services), the simplifications only concern the invoice content for advance invoices. Reporting of intra-EU transactions in the VAT return and the ESL, from a supplier perspective, should always align with the actual tax point rather than the invoice date.

The deferred entry into force of this major change to the tax point rules allows time to comply with the new invoice specifications and system and process changes.

VAT on port taxes/ dues

Recently, the Belgian VAT administration issued a non-published decision on the VAT place of supply rules for port taxes/ dues. The authorities specify that port services are landed to port infrastructure and should be considered as access to such infrastructure. As a consequence, these fees are subject to VAT at the place where the immovable structures are located.

Since the 2010 changes to the place of supply rules for B2B supplies, the VAT treatment of port taxes/ dues has been unclear. According to the rules introduced in 2010, most B2B supplies of services are taxed where the customer is situated, rather than where the supplier is located. However, a specific rule applies in this case, as according to the tax authorities, the use of port infrastructure is taxed according to the rules for services linked to immovable property.

Hence, Belgian VAT needs to be accounted for on Belgian port taxes/ dues, unless the exemption for services to sea-going vessels (article 42, §1, 5° of the

Belgian VAT Code) applies. To apply this exemption, specific formal conditions must be met.

Croatia

Amendments to Croatian VAT legislation from 1 January 2015

Amendments to the Croatian VAT legislation entered into force on 1 January 2015. The new VAT Act extended the application of the reduced VAT rate to medicaments; introduced new rules for the cash accounting scheme, the suspension of VAT identification numbers, the responsibility of a taxpayer for payment of unpaid VAT and the adjustment of VAT deductions for stocks of goods; and abolished the filing of the annual VAT return. The supply of real estate and construction land became subject to VAT as of that date. New VAT compliance forms were also introduced.

Medicaments

As of 1 January 2015, the reduced VAT rate of 5% applies to medicaments prescribed by a doctor, having approval from the competent authority for medicaments and medicinal products, even if they are not included on the list of the Croatian Health Insurance Institute (which was previously a prerequisite for application of the reduced VAT rate).

Cash accounting scheme

The Croatian tax authorities have amended the rules for the cash accounting scheme from 1 January 2015.

The cash accounting scheme may be applied by resident taxpayers (private individuals and legal entities) with an annual turnover below HRK 3,000,000 (VAT excluded). Taxpayers opting to apply the cash accounting scheme have to do so for the following three years. They have to charge and pay VAT upon the collection of receivables and may deduct input VAT upon payment to their suppliers. The cash accounting scheme does not apply in respect of, inter alia, the intra-Community supply of goods, the intra-Community acquisition of goods, a taxpayer’s transfer of its own goods to another Member States, B2B services, etc.

Annual VAT return

To reduce the administrative burden for taxpayers, the filing of the annual VAT return (PDV-K Form) was abolished as of 1 January 2015. The first year for which the filing will not be required is 2015, meaning that PDV-K form for 2014 must be filed.

Suspension of VAT identification number

Under the new rules, the tax administration will be allowed to suspend a VAT identification number where there is suspicion of its abuse. The suspension would not be regarded as a cancellation, and the tax administration would be

able to reactivate the VAT identification number or to cancel it if the taxpayer, within one year, does not provide evidence for revoking the suspension.

Payment of VAT

The new rules also extend the responsibilities of a taxpayer who procured goods or services in respect of its liability for payment of VAT. A taxpayer-customer will, inter alia, be liable for settlement of VAT to the tax administration when it fails to pay to its supplier at least the amount of VAT stated on the invoice within deadlines for the settlement of liabilities provided by the relevant laws.

Capital goods

Under the previous VAT Act, an adjustment of the VAT deduction was required in respect of capital goods (goods which, according to accounting legislation, are non-current assets of the taxable person), if the deducted VAT was higher or lower than the deduction to which the taxable person was entitled. The adjustment had to be made if conditions applicable to the VAT deduction had changed.

Under the amendments to the VAT Act, such adjustments must also be made in respect of the stock of goods, which the taxable person has purchased for carrying out his registered activity.

Property

The supply of buildings or parts thereof and of land on which they stand, before the first occupation (or use) or where less than two years have passed from the date of the first occupation (or use) to the date of the next supply, as well as the supply of construction property made by taxable persons will be subject to Croatian VAT from 1 January 2015. The supply of land and real estate built, or supplied, prior to 1 January 1998 was previously outside the scope of Croatian VAT.

Compliance forms

Amendments to the VAT regulations have introduced two new compliance forms – PPO form and INO PPO form.

The PPO form must be filed by taxable persons making supplies of construction services, used materials, supplies of immoveable property sold by a judgment debtor in a compulsory sale procedure, and the transfer of emission units of greenhouse gases, i.e., supplies taxed under the reverse charge mechanism. It has to be filed electronically on a quarterly basis.

Non-resident taxable persons who are registered for VAT purposes in Croatia must complete and submit the INO PPO form when making supplies of goods and services in respect of which the customer must self-assess VAT by application of the reverse charge mechanism. The form must be filed

electronically on a monthly basis by the 20th of the month for the previous month.

New fields were added to the VAT return form to align the content of the return with newly introduced legislation.

The previous version of the VAT return form was supplemented by the following fields: data on adjustments of deductions related to capital goods, supply of business units, supply of real estate, total value of services received from non-residents, total value of services provided to non-residents, value of goods received within triangular transaction, and information on the application of the cash accounting scheme.

Denmark

Full deduction for input VAT on hotel accommodation as from 1 January 2015

With effect from 1 January 2015, a full input VAT deduction is allowed for hotel accommodation expenses. The deduction has increased from 75% to 100%; the expense must relate strictly to the business' taxable activities.

Change of administrative practice for corrections of VAT

In response to EU case law, the tax authorities have issued official guidance on a change in administrative practice regarding corrections of VAT. The change affects situations where a business has, for example, treated a supply of goods or services as VAT exempt, but it then transpires that VAT should have been charged.

Previously, the tax authorities took the view that the invoiced amount was the VAT basis. According to the new practice, the tax authorities will, in many situations, consider the invoiced amount to be VAT-inclusive, if it transpires that VAT should have been charged.

Accordingly, correcting the VAT under these circumstances will result in the payment of less VAT than was previously the case.

Businesses are able to correct VAT back to January 2007 according to the new practice.

The deadline for corrections is 17 May 2015.

Mini One Stop Shop invoice requirements

A bill has been introduced according to which it will be possible for the tax minister to exempt foreign businesses registered for the Mini One Stop Shop in another country from issuing invoices in relation to supplies to Danish consumers.

The purpose of the bill is to ease the administrative burden for these businesses, as they would otherwise be required to issue invoices complying with the Danish invoice requirements.

It is proposed that the bill will take effect as of 1 April 2015.

Even if the bill is passed, it will be necessary to comply with the Danish invoice requirements until the tax minister implements such an exemption.

Owners of new buildings and building sites may be able to sell without VAT in certain circumstances

Since 2011, the sale of building sites and new buildings has been subject to VAT in Denmark. The tax authorities have proposed new draft official guidelines under which it would be possible to sell new buildings and building sites without VAT if the owner of the new building or building site rented out the property without VAT. It is, however, a precondition that the property has solely been used for renting without VAT and that the seller did not have a previous intention to sell the property.

Abolition of simplification rule for foreign tourist buses' activities

As of 1 July 2014, the simplification rule for foreign tourist buses was abolished. The consequence of this is that foreign (non-Danish) haulage contractors driving tourist buses in Denmark must VAT register according to the ordinary rules for registration. Previously, foreign tourist buses were only required to account for Danish VAT occasionally when driving in Denmark.

Customs update

Upon exportation of goods, a customs declaration can be made orally, if below the statistical threshold. Prior to 1 January 2015 this rule did not apply for consignments to the Faroe Islands and Greenland. As from that date, consignments for these two territories, outside the EU customs territory, will be treated like any other third country exports.

From 1 January 2015, a number of new procedure codes have been introduced to be utilized upon importation into Denmark. These relate to outward processing relief situations.

The customs authorities have started preparing for new customs legislation that will apply from 1 May 2016. Consequently, there will be a window for interested parties such as business and legal associations, and large traders to identify inappropriate and impractical local interpretations to the authorities, with a view to abolishing or amending them as appropriate.

Finally, discussions will continue into 2015 between some business associations and the authorities in respect of the Danish interpretation of the customs debt provisions of the customs code, following customs audits on mineral oil products carried out during 2013 and 2014.

Eurasian Economic Union

Armenia´s accession to the Eurasian Economic Union

On 2 January 2015, an agreement on Armenia's accession to the EEU entered into force. Armenia became a full EEU member together with Belarus, Kazakhstan and Russia.

The EEU is aimed at the free movement of goods, services, capital and employees, and also at creation of a key economic centre for development.

Intended benefits of the EEU are: an increase in the exchange of goods due to the removal of physical and administrative barriers, the increased mobility of human resources through a common employment market, sustained economic development due to reduced economic isolation, the advancement of infrastructure projects, and participation in generating a global agenda through EEU mechanisms.

Europan Union

EU consultation on 'public interest' VAT exemptions and VAT for public bodies

In October 2013, the European Commission issued a consultation document reviewing the existing VAT legislation on public bodies and tax exemptions in the public interest. The Commission has now published a summary report on the outcome of the consultation.

The report notes that the consultation attracted considerable attention, with nearly 600 contributions. Views on the functioning of the current VAT rules clustered around two views: one group (mainly composed of public bodies) considered that the current system does not require significant reform; the other (including private business) considered that the current system lacked neutrality and argued for comprehensive reform.

Those favoring reform identified distortions and noted that public bodies are increasingly offering goods and services in competition to the private sector. Public bodies, on the other hand, generally considered that the current distinction between taxed and non-taxed supplies were appropriate, highlighting their links with their social purpose and public interest. A similar range of views were also expressed in relation to reform measures, from retaining the status quo to fundamental reform.

Finland

Supply of scrap metal subject to domestic reverse charge mechanism as of 1 January 2015

New regulations regarding the supply of scrap metal came into force on 1 January 2015. In accordance with the regulations, all taxable sales of scrap

metal by a VAT registered seller to a VAT registered buyer are subject to the reverse charge mechanism. The definition of scrap metal is based on the CN code classification from 2013, and the applicable codes have been listed in the Finnish VAT Act.

Books published on physical means of support other than paper not subject to reduced VAT rate

On 31 December 2014, the Finnish Supreme Administrative Court (SAC) gave ruling KHO:2014:199, which concerned the supply of books published on physical means of support other than paper. In this context, the SAC had previously requested a preliminary ruling from the European Court of Justice (C-219/13, K).

The SAC considered that books published on, e.g., CD-ROMs, memory sticks or in other similar formats do not resemble printed books to the extent that the reduced VAT rate applicable to printed books would need to be extended to supplies of books in these formats. Thus, books published on other physical means of support than paper are subject to the standard VAT rate.

SAC considered remuneration for transfer of outstanding debts a taxable collection service

In ruling KHO:2014:191 (23 December 2014) the SAC deliberated the VAT treatment of factoring services. In addition to standard collection services, a collection company provided a service where the customer transferred certain outstanding debts and all rights to the debts to the collection company, without receiving any remuneration at the time of the transfer. The collection company proceeded to collect the debt from the debtor. If the collection was successful, the collection company paid a percentage of the collected amount to the customer. The percentage amount was agreed on a contract signed by the parties at the time of the debt transfer.

The SAC considered that the service the collection company offered was a specific type of a collection service and, as such, subject to VAT.

SAC has published two rulings regarding the management services provided to SIFs

Ruling KHO:2014:193 (23 December 2014) concerned the VAT exemption of services in relation to the management of special investment funds. The case concerned a limited partnership company to be established, in which fund A would be the only silent partner. The intention of A was to use the limited partnership company to only invest its funds. Neither the limited partnership company nor A would have their own personnel, but management services required by the limited partnership company would be purchased from an external service provider established outside of Finland.

The Finnish VAT Act does not include an exemption in relation to the management of special investment funds. However, taking into account the court practice of the CJEU and what has been stated in the VAT Directive, the SAC considered that the limited liability company could not be considered a special investment fund, since only A invested in it. Therefore, the limited partnership company was liable to account for VAT on the basis of the reverse charge mechanism on the services it acquired from the external service provider.

In ruling KHO:2014:194 (23 December 2014) the SAC also considered the nature of special investment funds. An insurance company provided unit-linked life and pension insurances to its customers. The yield on insurance savings that consisted of the premiums paid by the policyholder was linked to insurance portfolios. The portfolios consisted of, e.g., shares. The insurance company owned the assets in the insurance portfolios and retained the title to the assets for the entire term of the insurance. The policyholder's yield was merely calculated on the basis of the value of the assets. The insurance company had a discretionary asset management contract with another party regarding the management of the assets in the portfolios.

The SAC ruled that the insurance portfolios could not be deemed special investment funds as meant in the VAT Directive and in the CJEU's court practice. The insurance company was not considered to make any investments in the name of the policyholder, as the title to the assets remained with the insurance company. The services supplied by the asset management entity to the insurance company were deemed discretionary asset management services and not services in relation to the management of SIFs. Thus, the asset manager was liable to account for VAT on the services it provided to the insurance company.

Buyer allowed to deduct input VAT on prepayments, although supply not carried out due to liquidation of the supplier

In a recent ruling KHO:2014:190 (23 December 2014) the SAC considered whether a taxpayer was liable to rectify the amount of input VAT on prepayments that it had deducted on earlier VAT returns, when the seller was not able to supply the ordered goods due to being placed in liquidation. The SAC deemed that rectification was not required, as the regulations in the VAT Act regarding the liability to adjust the amount of deducted input VAT only concern cases in which the supplier has granted a discount or has agreed to decrease the sales price on other grounds. Thus, the taxpayer was able to deduct the input VAT on prepayments, irrespective of the planned transactions not taking place.

Amount withheld by buyer from payment to supplier regarded as indemnity and not a discount

In another ruling KHO:2014:192 (23 December 2014) the SAC deliberated the nature of indemnities. In accordance with the terms agreed to by the parties, the buyer was entitled to compensation in case of delayed delivery by the supplier. The compensation amount was based on a percentage of the sales price for each day the delivery was delayed.

The SAC considered that a payment withheld by the buyer on a payment instalment was to be considered a VAT exempt indemnity and not a rectification of the sales price. Therefore, the supplier was liable to account for VAT on the entire payment instalment and the amount withheld by the buyer could not be deducted from the tax base.

Germany

Threshold established for reverse charge on base and precious metals

With effect from 1 January 2015, the German VAT Act has been amended to establish a threshold for the application of the reverse charge to the supply of base and precious metals with a minimum value of EUR 5,000 (any subsequent reduction to the value of the supply is not taken into account). Furthermore, appendix 4 of the German VAT Act listing the relevant base and precious metals was amended again; some metals were removed from the list.

On 22 January 2015, the German tax authorities published an official decree for a transitional period until 30 June 2015 for the application of the recent amendments of the reverse charge mechanism for the supply of base and precious metals.

GCC-EFTA

Update on implementation of Free Trade Agreement

Recent press reports in the Gulf region indicate that the Joint Committee between the GCC (Gulf Cooperation Council) and EFTA (European Free Trade Association) countries has met in Oman on 15 January 2015 and discussed the final technical procedures and arrangements before the full implementation of the FTA between both parties and which is now expected to occur mid-2015. The FTA was originally supposed to have become effective in mid-2014 but the GCC countries had been unable to fully implement it at that time.

Iceland

Changes to VAT rates and excise duty regime and amendments to VAT legislation

With effect from 1 January 2015, the standard VAT rate was decreased from 25.5% to 24%, and the reduced VAT rate increased from 7% to 11%. In

addition, the excise duty regime, applicable to imports and domestic production of certain goods, was abolished. Excise duties, previously collected on a range of items from food to kitchen appliances, are now only collected on the import and production of motor vehicles and fossil fuel.

The Icelandic Parliament also approved a number of changes to the VAT legislation that are to take effect on 1 January 2016.

First, the current VAT exemption for passenger transport will be limited as of 2016. The exemption will only apply to public transport on scheduled routes, by land, air, and sea; to the organized transportation of individuals with disabilities and school children; and transportation by taxi. All other passenger transportation, such as of tourists, shall be taxable at the reduced VAT rate.

Secondly, the services of foreign and domestic travel agents will be taxable for VAT at the reduced rate, insofar as these parties supply goods or services that tourists utilize in Iceland. Currently, these services are VAT exempt. In connection with this amendment, the services of travel agents involving the international transport of passengers and services that tourists utilize outside Iceland will from 1 January 2016 be classified as zero-rated services. Currently these services are exempt from VAT with no right to input tax.

According to the Minister of Finance and Economic Affairs, further changes to the VAT legislation are expected in the coming weeks and months.

Italy

New rules for letters of intent

The tax authorities have announced by press release dated 22 December 2014, that the new software for the mandatory e-filing and e-sending of letters of intent is now available on the official website of the tax authorities.

Furthermore, the new online check service is now available on the official website of the tax authorities. This online service allows the recipient of a letter of intent to check the mandatory e-filing and e-sending of the letter of intent by the net exporter.

The previous rules for the transmission of a letter of intent apply during the transitional period (until 11 February 2015). However, the new e-filing is mandatory for letters of intent submitted before this date but related to transactions to be performed after it.

The letters of intent as well as the receipts of submission will be available in the Tax Mailbox (i.e., '*cassetto fiscale'*) of the recipient and of the net exporter, as of FY 2015.

New 2015 VAT form (annual VAT return FY 2014)

The tax authorities announced in a press release dated 22 December 2014 that the new 2015 VAT forms are now available on the official website of the tax authorities. Of particular note among the main changes are: a) the amended VX, including the new VX6 box related to taxpayers exempted from the submission of a guarantee; and b) the amended VE30 box, where net exporters include the same data as reported in the new form of the letters of intent.

Stability Law 2015 (Law n° 190 dated 23 December 2014) published in the Official Gazette on 29 December 2014

The main VAT changes in the Stability Law that apply from 1 January 2015, are as follows:

- "Split payment": where goods and services are supplied to certain public bodies that are not taxable subjects for VAT purposes, the VAT will be paid to the State by those public bodies. The procedures and terms of payment of VAT by the public bodies will be fixed by a decree of the Ministry of Economy and Finance. The Ministry has already stated that the public bodies will need to update their accounting systems to implement the split payment procedure no later than the end of March 2015. The Italian Foundation of Chartered Accountants has issued a note clarifying practical aspects of the split payment regime.

- The scope of the reverse charge mechanism has been extended. In particular, the reverse charge will apply to: the construction industry, the energy industry, large retail businesses (subject to the authorization of the EU Council according to art. 395 of the Principal VAT Directive) and the business of waste or used materials.

- Changes to the procedure and time limits related to voluntary regularization: a taxpayer can apply for voluntary regularization before notification of a tax assessment. (It is not relevant whether the breach has been or is being verified, as only the notification of a tax assessment or a tax irregularity document can prevent the taxpayer from the voluntary regularization). New reduction of penalties rules apply.

- There is a new deadline for the submission of annual VAT returns starting from FY 2015 and a new procedure for submission (i.e., the obligation to file a unified annual return has been removed). Starting from FY 2015, the obligation to file an annual VAT communication is also removed.

- There are new VAT rates for e-books (4% VAT rate) and wood pellets (22% VAT rate).

- In the absence of legislative provisions able to guarantee the achievement of budgetary targets, the following increases to the VAT rates shall apply:

    - The current 22% VAT rate shall increase to: 24% from 1 January 2016, 25% from 1 January 2017, and 25.5% from 1 January 2018;

    - The reduced 10% VAT rate shall increase to: 12% from 1 January 2016 and 13% from 1 January 2017.

Clarification of new VAT refund rules

The tax authorities have provided some preliminary clarification regarding the new VAT refund rules in the so-called ‘Simplification Decree’ dated 21 November 2014, no. 175, in force from 13 December 2014. The clarifications involve:

The level of guarantee required (no guarantee is required for refund claims of less than EUR 15,000);

- The level of guarantee required (no guarantee is required for refund claims of less than EUR 15,000);
- How to calculate the EUR 15,000 threshold:

    - It applies to the sum of VAT refund claims submitted during the fiscal year; and

    - It is separately considered for VAT offsetting purposes and VAT refund purposes.

- For VAT refund claims already submitted but not yet executed on 13 December 2014, it is now clarified that:

    - For VAT credits of less than EUR 15,000, the VAT Offices will no longer request the submission of the guarantee. If the guarantee has been already requested, the claimant will be exempted from the submission.

    - For VAT credits greater than EUR 15,000, claimants who have already submitted a VAT return with the ‘endorsement of conformity’, will be exempted from the submission of the guarantee, upon meeting certain further conditions (i.e., a declaration under art. 47 of the Presidential Decree n°445/2000 and a copy of the ID document of the signing subject to be submitted to the tax authorities).

- The checks of the tax authorities (linked to the ‘endorsement of conformity’ and the declaration under art. 47 of the Presidential Decree n°445/2000) shall be made with reference to the taxpayer position at the effective date of the Simplification Decree (i.e., 13 December 2014).

- With regard to the checks linked to the ‘endorsement of conformity’ (for VAT refunds higher than EUR 15,000), it has now been clarified that they are the same checks as performed for VAT offsetting purposes (for the VAT refund procedures, the only additional request is the declaration under art. 47 of the Presidential Decree n°445/2000 to be reported on the new form of the VAT return).

Draft of legislative decree on MOSS regime sent to Parliament for analysis

The Italian Government recently sent to the competent Commissions of the Parliament the draft of a new legislative decree, implementing the EU Mini One Stop Shop regime. When the draft returns to the Government with the Opinion of the Commissions, it will be approved.

According to the draft under discussion, the place of supply of e-services, telecommunication services and broadcasting services carried out from 1 January 2015 will be the place where the non-taxable customer is resident, instead of the place where the supplier is established (as per the previous rule).

The draft of the legislative decree proposes the following:

- The MOSS regime: This is already available on the official website of the tax authorities, allowing taxable suppliers – providing e-services, telecommunication services, television and radio broadcasting services to non-taxable customers in EU countries where they are not established – to account for the VAT due on those supplies only in Italy.

- The terms and procedures for the calculation of the VAT due on the supplies of these services.

- Automatic checks on MOSS procedures by the tax authorities and applicable penalties.

- Terms and conditions for the VAT refund procedures applicable to suppliers providing these services.

Right to be heard before a decision about the abuse of right – Supreme Court (sentence n°406 dated 14 January 2015)

For the first time, the Supreme Court has recognized the right to be heard before the adoption of a decision about the abuse of right. In particular, the

Supreme Court has made reference to the CJEU principles (including Sopropè, Case C-349/07,) and stated that the subject of an adverse decision must be placed in a position to submit his observations before that decision is adopted.

As a consequence, the infringement of the rights of the defence, and in particular of the right to be heard before the adoption of any decision liable to affect his interests adversely, entails the annulment of the decision taken by the tax authorities.

Lithuania

VAT amendments

In accordance with European Union legislation and case law of the Court of Justice of the European Union, on 11 November 2014 the Parliament of the Republic of Lithuania adopted a number amendments to the VAT Law, including the following.

Cost sharing exemption

As from 20 November 2014, services provided by independent groups, whose members are persons engaged in VAT exempt activities or non-economic activities, to their members necessary for the mentioned activities are VAT exempt when mutual expenses of the group are reimbursed by group members and a member does not pay more than its portion of mutual expenses.

Prior to the amendment, the cost sharing exemption could only have been applied where members of such a group were engaged solely in activities that are exempt from VAT (or outside the scope of VAT).

1 January 2015 place of supply changes

As of 1 January 2015, e-services, telecommunications, and radio and television broadcasting services provided to non-taxable persons are considered to be provided in the state where the customer is established (resides). The Mini One Stop Shop simplification has also been introduced to deal with the additional administrative burden of the new rules.

VAT for tourism services

As of 1 January 2015, the VAT scheme for tourism services (margin scheme) is to be applied where tourism services acquired from third parties as a single tourism service or a travel package are sold to any customer (including persons engaged in resale).

Reduced VAT rate

On 4 December 2014 the application of the 9% VAT rate was extended to 1 July 2015 in respect of thermal energy supplied to heat residential premises, hot water supplied to residential premises or cold water and thermal energy consumed to prepare hot water supplied to residential premises.

Amendments to the excise duty law

On 25 November 2014, the Law amending the excise duty law came into force, based on which the following changes to excise duty rates for tobacco products as well as for alcohol products apply:

Before 1 March 2015	From 1 March 2015
Tobacco products	
- combined excise duty rate on cigarettes not be less than EUR 74.14 for 1,000 cigarettes; - the specific component of excise duty rate on cigarettes amounts to EUR 45.47; - excise duty rate on cigars and cigarillos amounts to EUR 26.93 per kilogram of the product.	- combined excise duty rate on cigarettes not be less than EUR 77.91 for 1,000 cigarettes; - the specific component of excise duty rate on cigarettes amounts to EUR 48.08; - excise duty rate on cigars and cigarillos amounts to EUR 28.09 per kilogram of the product.
Alcohol products	
- excise duty rate on beer (1 hectolitre of the product) is EUR 2.71 for 1% of actual alcoholic strength by volume; - excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume (in case of other fermented beverages – received only by fermentation) of not more than 8.5% vol. and in which fermented beverages with an actual alcoholic strength by volume are of not more than 8.5% vol. (1 hectolitre of the product) – EUR 24.62. Excise duty rate on other wine and fermented beverages (products with an actual alcoholic strength by volume exceeding 8.5%) – EUR 65.16 (1 hectolitre of product); - excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15% vol. – EUR 81.38 (1 hectolitre of the product); - excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15 %	- excise duty rate on beer (1 hectolitre of the product) is EUR 3.11 for 1% of actual alcoholic strength by volume; - excise duty rate on wine and other fermented beverages with an actual alcoholic strength by volume (in case of other fermented beverages – received only by fermentation) of not more than 8.5% vol. and in which fermented beverages with an actual alcoholic strength by volume are of not more than 8.5% vol. (1 hectolitre of the product) – EUR 28.67. Excise duty rate on other wine and fermented beverages (products with an actual alcoholic strength by volume exceeding 8.5%) – EUR 72.12 (1 hectolitre of product); - excise duty rate on intermediate products with an actual alcoholic strength by volume not exceeding 15% vol. – EUR 89.49 (1

vol. – EUR 115.85 (1 hectolitre of the product);
- excise duty on ethyl alcohol shall be levied at the rate of EUR 1,291.71 per 1 hectolitre of absolute ethyl alcohol.

hectolitre of the product);
- excise duty rate on intermediate products with an actual alcoholic strength by volume exceeding 15 % vol. – EUR 126.27 (1 hectolitre of the product);
- excise duty on ethyl alcohol shall be levied at the rate of EUR 1,320.67 per 1 hectolitre of absolute ethyl alcohol.

Luxembourg

VAT rate increase

On 19 December 2014 the law amending the Luxembourg VAT Law was adopted (Memorial A – N°255 published on 24 December 2014).

Based on this law, and in line with our previous announcements (see our VAT Newsletter of September 2014), the Luxembourg VAT rates increased as of 1 January 2015 as follows.

The VAT rates of 6%, 12% and 15% increased to 8%, 14% and 17%. The VAT rate of 3% remains unchanged.

The standard VAT rate of 17% remains the lowest within the EU.

Netherlands

No benefits under EU law where conscious involvement in VAT fraud

The Court of Justice of the European Union has delivered its judgment in the Dutch case of *Italmoda* about VAT evasion as a type of VAT fraud.

The *Italmoda* case concerns a Dutch company that, predominantly engaged in shoe trading, is also involved in supplying computer equipment (hereinafter, the goods). The goods were purchased in the Netherlands and Germany, and subsequently supplied to customers in Italy.

With respect to the goods purchased in Germany, Italmoda acquired these goods under its Dutch VAT number, but the goods were transported directly from Germany to Italy. Italmoda neither reported an intra-Community acquisition in Italy (although this operation was VAT exempt in Germany), nor an intra-Community acquisition in the Netherlands.

Against this background, the Italian tax authorities have collected the VAT due from the Italian customers and denied them the right of deduction of input VAT

otherwise incurred. At the same time, the Dutch tax authorities considered that Italmoda was consciously involved in a fraud designed to evade the payment of VAT in Italy.

On that basis, the Dutch tax authorities denied Italmoda the right of exemption in relation to the intra-Community supplies from the Netherlands, the right to deduct input VAT, and the right of refund of VAT.

According to the CJEU, the national authorities should, based on the EU law, refuse to apply the exemption pertaining to an intra-Community supply, the right to VAT deduction or the refund of VAT when the taxable person was or should have been aware of the VAT evasion, even where the national law does not provide for the basis for such a refusal.

Additionally, the fact that:

- The VAT evasion occurred in a Member State other than that which is competent to refuse the application of the mentioned rights;
- The VAT evasion is also punished in that Member State, or
- The taxable person has satisfied all formal obligations;

does not affect the obligation of national authorities to apply such a refusal.

The *Italmoda* judgment has confirmed once again that rights under EU law cannot be relied upon for abusive or fraudulent ends. This includes not only situations where the taxable persons in question are directly committing a fraud, but also where the taxable persons consciously participated in the fraud carried out by another taxable person upstream or downstream in the supply chain. The case emphasises that businesses should be careful as regards international trade. If they 'should have been aware' that VAT fraud takes place in previous or subsequent links in the supply chain they can be refused the right to deduct VAT or to apply the exemption for intra-Community supplies, even when they consider themselves innocent parties. Indirectly they are then liable for the VAT unpaid by the fraudster.

Poland

Potential changes to Polish VAT law

On 22 December 2014, the Polish Government accepted the draft bill amending the VAT Act in relation to the planned changes in respect of the reverse charge mechanism and other issues mentioned in previous editions of this newsletter. The new law is scheduled to come into force potentially with some exceptions from 1April 2015.

The most important changes are as follows:

Expansion of the catalogue of goods for which the reverse charge mechanism applies

In the draft bill the Government included the catalogue of goods subject to the domestic reverse charge mechanism. According to the draft bill the following will be subject to the reverse charge mechanism:

- Portable machines for automatic data processing weighing up to 10 kg, in particular: laptops, notebooks, tablets;
- Mobile phones (for wireless networks only), including smartphones;
- Game consoles (with own video screen or cooperating with TV) and other devices for arcade games or gambling, excluding spare parts and accessories.

According to the draft law, the application of the reverse charge mechanism is limited to cases where the total value of goods within a single economic transaction exceeds approximately EUR 4,800. Based on the new legal definition, a single economic transaction would mean, in general, a transaction based on one contract, which may result in one or more supplies of goods, even if they are made on the basis of individual orders, or there are one or more invoices issued documenting particular supplies.

Sales lists of transactions subject to local reverse charge mechanism

According to the new rules, taxpayers undertaking transactions subject to the local reverse charge mechanism would need to file summary information (similar as ECSPLs) about the relevant transactions for each settlement period.

New mechanism for calculating input tax that results from purchased goods and services used for performing business and non-business activity

The draft bill stipulates a new mechanism that should be applied by taxpayers performing both activities that can be classified as falling within the scope of their business activity and not.

In the light of the planned regulations, if a taxpayer uses purchased goods and services not only for performing its business activity, it will be allowed to deduct input VAT only from the purchased goods and services used for its business activity. In such situations, the taxpayer will be obliged to apply an additional mechanism of allocating the input VAT to activities that would be considered as its business activity and other activities. Only the part of input VAT relating to taxable activities will be deductible.

Changes to excise duty provisions as of 1 January 2015

As of 1 January 2015, some important changes to the excise duty law were introduced.

Some of the main amendments are as follows:

Binding Excise Duty Information

As of 1 January 2015, a new instrument is available for excise duty purposes – The Binding Excise Duty Information (BEDI).

BEDI is a new instrumentavailable for entrepreneurs interested in obtaining binding confirmation of the treatment of goods for excise duty purposes. The concept of BEDI is similar to the Binding Tariff Information (BTI); however, there are some important differences. BEDI is issued for excise duty purposes only. In the BEDI, the tax authorities will determine the classification of excise duty goods based on the Combined Nomenclature (CN) – in the version currently used for excise duty purposes in Poland. Where the CN classification will not be sufficient, a BEDI will determine the description of the product at the level of detail that will be sufficient for excise duty purposes.

A BEDI is binding for the entity that applied for it. In general, a BEDI is valid for an indefinite period of time unless the excise duty regulation changes. To receive a BEDI, an official application form must be submitted. It may be also necessary to attach samples or additional documents (e.g., certificates, photographs, etc.) or to perform laboratory tests.

The tax authorities may refuse to issue a BEDI in certain cases. In particular, the authorities will refuse to issue a BEDI: (i) if the application for the ruling concerns goods not subject to excise duty; or (ii) in cases where the taxpayer has already obtained a Binding Tariff Information or Binding Tax Ruling for the goods subject to the BEDI ruling request.

Where there are doubts as to the treatment of goods for excise duty purposes, it is highly recommended that entrepreneurs apply for a BEDI, to confirm the classification and excise duty treatment of the goods in question. (During tax audits the tax authorities will be bound by a BEDI received by the taxpayer.)

Documentation rules for preferential excise duty rate for heating oils (fuels) transactions

From 1 January 2015, the documentation rules for the application of the preferential excise duty rate for the supply of heating oils (fuels) have been amended.

According to the Polish excise rules, in order to apply the preferential excise duty rate to the sale of heating oil (heating fuels) specific conditions must be met. One of these conditions is that the buyer must submit to the seller a formal declaration that the purchased oils will be used for heating purposes. Until the end of 2014, this declaration had to be submitted for each supply separately. As of 1 January 2015, it is now also possible to include such declarations in the wording of the sales contract between the buyer and the seller. This option will

be, however, available only for contracts concluded for periodic supplies. In order to benefit from the new option, some requirements must also be met (i.e., a copy of the contract should be submitted to the respective tax authorities before the first sale is performed and every sale should be confirmed with an invoice).

Entrepreneurs interested in the above simplification should consider changing the wording of their contracts and internal procedures to adjust to the new regulations.

New rules on sanctions for distributors of heating oil (fuels)

According to amended rules, formal irregularities in declarations submitted by buyers on the use of purchased oil (fuel) for heating purposes should no longer automatically result in a loss of the right to use the preferential excise duty rate by the seller.

As of 1 January 2015, the basic tax rate may be applied only when the tax authorities can prove that heating oils (fuels) were used not for heating purposes or when it will not be possible to determine the buyer of the oil. The new regulations also apply to tax proceedings that had been initiated before 1 January 2015. The amended rules may give distributors of heating oil (fuels) with ongoing tax proceedings a chance for a positive outcome of the pending proceedings.

Portugal

VAT changes in Portuguese Budget Law for 2015

The Budget Law for 2015 has been approved and includes a number of changes, including VAT related to bad debts, the agricultural producers regime, and a new obligation to communicate inventory information on an annual basis (as of 31 December of each year) to the tax authorities.

Environmental Tax Reform

The Environmental Tax Reform was also approved and includes several measures that cover a number of topics, namely energy, transport, urbanism, forests and biodiversity. Some of the measures introduced, which came in force on 1 January 2015, were: a carbon tax, a tax on plastic bags and tax ‘benefits’ regarding the acquisition of electric, hybrid ‘plug-in’, LPG and LNG cars.

Implementation of the 2015 EU place of supply changes

The tax authorities have released a ruling regarding the place of supply of e-services, telecommunication, and radio and television broadcasting services rendered in the Autonomous Region of Madeira or Azores (where currently ‘reduced’ standard VAT rates of 22% and 18% apply, respectively), providing that for the purposes of the Mini One Stop Shop, the standard rate of the Mainland must be applied.

New rules for local VAT refunds

Under new rules, which came into force on 1 January 2015, to obtain a VAT refund, a taxpayer must be compliant with a number of other obligations (not related to the VAT repayment itself), such as, the obligation to communicate monthly to the tax authorities the invoices issued to its clients. Also, if a bank guarantee is requested by the tax authorities, it must be provided electronically.

Spain

Amendments to VAT Law

There have been significant amendments to the VAT Law, focusing on five major objectives:

- The necessary adaptation of the VAT Law to the EU VAT Directive and to Court of Justice of the European Union case law;
- The technical improvement of VAT;
- The contribution to the fight against tax fraud;
- The relaxation of certain limits and requirements included in the VAT Law, and
- Amendments with the objective of clarifying certain aspects or contributing to other ends.

The main modifications are set out below. They mainly came into force on 1 January 2015.

Modifications introduced for the necessary adaptation of the Spanish VAT Law to the VAT Directive and to CJEU case law

Regarding the exemptions applicable to supplies of services (and supplies of ancillary goods) made by legally recognized non-profit making bodies having a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature purpose, the requirement that such objectives are the only objectives that those entities may have, has been eliminated.

The place of supply rule for the supply of goods with installation will be now applied regardless of whether or not the installation cost exceeds 15% of the total consideration. The immobilization of the goods after their installation is, however, still necessary to apply this rule.

Regarding the rules for determining the taxable basis, the following two amendments are introduced:

- Following the CJEU's judgment in the case *Le Rayon d'Or SARL* (Case C-151/13) on 14 March 2014, the general rule for determining the taxable basis is amended in order to differentiate between amounts that are not directly linked to the price of supplies, which are not part of the taxable basis, from the consideration paid by a third party, which is part of the taxable basis; and

- The special rule for determining the taxable basis for transactions where there is no monetary consideration (barter transactions) is also modified. The taxable basis will be the value agreed by the parties, which will have to be expressed in monetary terms, with reference to the rules related to the determination of the taxable basis for self-supplies.

Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-360/11) on 17 January 2013, the VAT rates applicable to sanitary products are modified. Thus, the reduced 10% rate shall apply to the supplies, intra-community acquisitions and imports of the following goods:

- Medicines for veterinary use (excluding the products necessary for obtaining those medicines);

- Pharmaceutical products covered by Chapter 30 of the Combined Nomenclature, if destined for direct end-consumer use;

- Pads, tampons, pantyliners, preservatives and other non-medical contraceptives; and

- Medical equipment, aids and other appliances, normally intended to alleviate or treat deficiencies, for personal use and for the exclusive use of people who have physical, mental, intellectual or sensory impairments. Accessories and spare parts of these products do not benefit from such reduced VAT rate.

Those products are listed in a new Annex VIII to the Spanish VAT Law. Other similar equipment to be used for different means will now be taxed at the standard 21% rate.

The 4% super-reduced rate will continue to apply to the supplies, intra-community acquisitions and imports of medicines for human use.

Following the CJEU's judgment in the case *European Commission v Kingdom of Spain* (Case C-189/11) on 26 September 2013 related to the Tour Operator Margin Scheme (TOMS), certain modifications are made to the VAT Law. For example, removing the ability to determine the taxable base on a global basis for transactions to which TOMS applies and the ability to deduct a certain

amount of VAT in the TOMS invoices. Additionally, the Law also includes the option to not apply TOMS (and apply the VAT general regime instead) to each transaction individually, whenever the recipient is an entrepreneur or professional with the right to deduct VAT.

With regards to the VAT grouping scheme, the VAT Law has been modified to be consistent with the VAT Directive regarding the requirement for three linking points between the entities forming the group, namely, economic, financial and organizational. However, the dominant entity must also have effective control of the dependent entities, by holding more than 50% of their capital or voting rights. However, entities that did not comply with these linking requirements by 1 January 2015 may continue to apply the VAT grouping scheme until 31 December 2015, provided they meet the requirements that applied before this amendment. Additionally, the law stipulates that mercantile companies not acting as entrepreneurs or professionals for VAT purposes may be considered as dominant entities of a VAT group. Finally, transactions carried out between members of a VAT group should not be taken into account in order to determine the deduction percentage applicable to VAT incurred by entities to which the direct allocation scheme applies.

A number of modifications were introduced as a consequence of the new rules which came into force on 1 January 2015, with regards to the place of supply of telecommunications, radio-broadcasting and television services, as well as those supplied by electronic means, when the recipient is not a taxable person and regardless of the supplier’s place of establishment.

Modifications introduced for for the technical improvement of VAT

The VAT law has been amended regarding certain transactions excluded from VAT taxation (not subject to Spanish VAT), when carried out by public bodies. According to the new definitions included in the VAT Law, transactions performed by ‘Public Administrations’ and not by ‘Public Bodies’ are not subject to VAT. Additionally, two new specific cases of transactions that would not be subject to VAT in connection with public organizations are proposed.

The exit of goods from tax free zones or customs regimes is no longer a taxable event for ‘imports of goods’ or ‘deemed imports of goods’, when such exit would constitute an exempt export (or deemed export) or an intra-community supply of goods.

The scope of the ‘educational exemption’ is extended to childcare services in educational establishments during school lunch times or in nursery establishments outside school hours, regardless of whether such services are performed by own means or by external means.

The scope for waiving the exemptions applicable to supplies related to immovable property is in principle extended, as it is not necessary that the

acquirer has the full right to deduct the input VAT (partial deduction would in principle suffice).

In connection with the requirements for VAT deduction, ‘dual public bodies’ (performing both transactions subject and not subject to VAT) are now allowed to deduct input VAT amounts on goods and services aimed at carrying out both types of transactions, subject to a reasonableness criteria. In addition, it is specified that input VAT on acquisitions or imports of goods and services connected to transactions not subject to VAT when carried out by public bodies would not be deductible.

The scope of the prorata special rule is extended by decreasing the threshold from 20% to 10%. This percentage refers to the excess of input VAT to be deducted as calculated by the general rules of the prorata, and the special rules.

Modifications introduced for the contribution to the fight against tax fraud

The exemption to the requirement for imports of goods to be placed in a VAT warehouse is restricted to the following goods:

- Goods subject to excise duties, referred to in the Annex 5 of the VAT Law.
- Goods coming from the Customs Union territory, but excluded from the VAT common system territory.
- Certain goods specifically mentioned by the European Community Law.

The owners of a VAT warehouse have subsidiary liability for the tax debt arising from the exit of goods from the warehouse, with the exception of goods subject to excise duties.

These modifications will come into force on 1 January 2016.

With effect from 1 April 2015, the reverse charge mechanism is extended, in particular regarding the following goods:

- Silver, platinum and palladium.
- Mobile phones.
- Game consoles, laptop computers and tablets.

With respect to goods mentioned in the second and third bullet points, the reverse charge applies when the recipient of the transaction is a taxable person deemed as a reseller of those goods, or a taxable person who does not act as a reseller of goods when the total value of the supplies of those goods,

documented through the same invoice, exceeds EUR 10,000 (VAT excluded). Proof of the taxable person's status should be given prior or simultaneously to the purchase of the goods. Where the reverse charge mechanism is applied, the invoice must have a special serial number.

New penalties have been established for the non-communication of certain transactions subject to the reverse charge, such as the supply of services for the construction or renovation of a building. The penalties would amount to 1% of the VAT amount on those transactions, with a minimum of EUR 300 and a maximum of EUR 10,000.

New specific import VAT audit procedures are introduced, limited to tax obligations stemming from the import transactions. When the VAT amounts settled through these audit procedures refer to import transactions carried out by taxable persons applying the import VAT deferral system, such VAT amounts would be paid through this deferral system.

Modifications introduced regarding certain limits and requirements

The threshold for free samples or advertising products not to be considered as subject to VAT is increased from EUR 90.15 to EUR 200.

Certain amendments are introduced regarding the formal requirements for VAT recovery procedures for bad debts. For instance, the period for modifying the taxable basis for bad debts related to insolvency procedures is extended to three months (instead of one month).

The VAT refund procedure under the 13th Directive is extended to countries where no reciprocity agreement exists, in respect of the following imports and acquisitions of goods and services:

- Hotel, restaurant and transport services, related to fairs and congresses, performed in the Spanish VAT territory.

- The supply of molds and equipment acquired or imported into the Spanish VAT territory by a non-established entrepreneur, to be made available to an established entrepreneur, for its use in the manufacture process of goods which are to be dispatched or transported outside the European Community for the non-established entrepreneur if, at the end of the manufacture of the goods, the molds and equipment are either exported to the non-established entrepreneur or destroyed.

An import VAT deferral system is introduced for certain taxpayers by which the payment of import VAT is made through the VAT return. In addition, a specific penalty is introduced for those cases where this import VAT is not properly reported or not reported at all in the VAT return. Such penalty would amount to 10% of the import VAT amounts not properly reported or not reported at all.

Modifications to clarify certain areas of the VAT Law

With respect to the transfer of going concern, it is clarified that the transferring entity must be an ‘independent economic unit’ (and not the acquiring entity). It is also clarified that classification as a TOGC does not apply to transactions that consist merely of the transfer of goods or rights.

Supplies of stocks giving the holder the right to the property, the use of or the possession over immovable property or part thereof are considered to be a supply of goods.

The scope of the application of the exemption for services directly related to exports of goods, when they are provided to the exporter, the recipient of the goods or their customs representatives, has been delimited.

The use and enjoyment rule is extended to electronically supplied services where the recipient is a non-taxable person who is established (or has its residence or domicile) outside the European Community.

The reduced 10% VAT rate is applied to the supply of seeds and the other goods which are used to obtain flowers and live plants.

The regulation regarding VAT refunds to customs agents on imports of goods is revoked as from 1 January 2016.

Ukraine

Tax reform enacted

A law published on 31 December 2014 has made significant changes to the Tax Code of Ukraine (TCU) and other laws, particularly regarding corporate income tax, VAT and personal income tax. Overall, the law reduces the total number of taxes and duties from 22 to 11 (nine taxes and two duties), through partial abolition and consolidation. The new law is effective from 1 January 2015, although some measures will take effect at a later date.

The main changes regarding indirect taxes are set out below.

There is clarification that the taxable basis for goods and services may not be lower than the price of their purchase, and the taxable basis for transactions involving the supply of goods and services of own manufacture/ production may not be lower than their cost, except for specific cases.

A five month transitional period (starting from 1 February 2015) is introduced for the registration of VAT invoices, without limitation of the amount of funds on the special VAT account calculated according to a formula.

The ability to refund amounts from special VAT accounts into the taxpayer’s current account or to the budget is formalized in legislation.

The mechanism for recognizing outstanding VAT amounts claimed for refund or the VAT asset carried forward (including the amounts stated as of 1 February 2015) is formalized in legislation.

The formula for calculating a maximum VAT amount to which a supplier has the right to register VAT invoices has been amended. Effective from 1 July 2015, this amount may be increased by the average monthly amount of VAT stated as payable to the budget and paid for the previous 12 consecutive months.

A liability is established for failure to comply with the deadlines for registration of VAT invoices with the Unified State Register in the form of a penalty at the rate of 10% to 40% of the relevant VAT amount, depending on the duration of delay in the said registration.

For the supply of services by a non-resident in Ukraine, the right to VAT input arises immediately at the date of drawing up a VAT invoice covering such transactions, subject to registration with the Unified Register.

United Kingdom

Change to Intrastat arrival threshold from 1 January 2015

Information on trade in goods between EU Member States is collected by the Intrastat system. The UK tax authorities (HMRC) have reviewed the Intrastat exemption threshold, below which businesses involved in such trade are not required to submit Intrastat declarations, and announced that from 1 January 2015, the exemption threshold for arrivals will increase from £1,200,000 to £1,500,000. The exemption threshold for dispatches remains unchanged at £250,000.

HMRC guidance on VAT and prompt payment discounts

HMRC have issued guidance for suppliers and customers issuing/ receiving VAT invoices offering a prompt payment discount after 1 April 2015, when a change to the rules takes effect. At present, suppliers offering a prompt payment discount are able to account for the VAT on the discounted price, even if the prompt payment discount is not taken up by the customer. Following the change, suppliers must account for VAT on the amount actually received. The change took effect from 1 May 2014 for supplies of broadcasting and telecommunication services where there is no obligation to provide a VAT invoice; for other supplies, the change takes effect on 1 April 2015. The guidance sets out the processes for accounting for and recovering VAT when a prompt payment discount is offered and taken up, and provides for an alternative to issuing credit notes. If suppliers do not wish to issue credit notes, certain information must be included on the invoice, including the terms of the prompt payment discount and a statement that the customer can only recover as input tax the VAT paid to the supplier – the HMRC guidance provides

recommended wording. In addition, proof of receipt of the discounted amount will be required.

HMRC guidance for businesses supplying digital services to private consumers

From 1 January 2015, the EU VAT place of supply rules changed for sales of digital services (broadcasting, telecommunications and e-services) to non-taxable recipients – the place of taxation is now determined by the location of the recipient. HMRC have issued guidance for businesses supplying digital services to private consumers. The guidance includes: the scope of the rule change, determining the place of supply and taxation, defining digital services and ‘electronically supplied’, determining whether the customer is in business or a private consumer, and determining the place of supply. The guidance also includes a flowchart to help businesses decide if they are affected by the rule changes.

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

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

Atentamente,
Deloitte Abogados